

**FISH AND GAME CODE - FGC**

**DIVISION 3. FISH AND GAME GENERALLY [2000 - 2948]**

*( Division 3 enacted by Stats. 1957, Ch. 456. )*

**CHAPTER 6.5. Control of Illegally Taken Fish and Wildlife [2580 - 2589]**

*( Chapter 6.5 added by Stats. 1988, Ch. 1059, Sec. 4. )*

**2580.**

The definitions in this section govern the construction of this chapter.

(a) "Qualified hearing officer" means an attorney admitted to the State Bar of California who is knowledgeable in fish and wildlife law.

(b) "Transport" means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, conveyance, carriage, or shipment.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

**2581.**

If the loss is lawful under this code and regulations adopted under this code, this chapter does not apply to the loss of any bird, mammal, amphibian, reptile, or fish as a result of any of the following acts:

(a) Implementing lawful forestry practices.

(b) Implementing lawful agricultural practices.

(c) Any development or maintenance activity carried out pursuant to the terms of a permit issued by the federal government, the state, or any city, county, or district, or any agency thereof.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

**2582.**

(a) The department may impose civil liability upon any person pursuant to this chapter for any of the following acts done for profit or personal gain:

(1) Unlawfully export, import, transport, sell, possess, receive, acquire, or purchase, or unlawfully assist, conspire, or aid in the importing, exporting, transporting, sale, possession, receiving, acquisition, or purchasing of, any bird, mammal, amphibian, reptile, or fish which are taken or possessed in violation of this code or the regulations adopted pursuant to this code.

(2) Unlawfully export, import, transport, sell, possess, receive, acquire, or purchase, or unlawfully assist, conspire, or aid in the importing, exporting, transporting, sale, possession, receiving, acquisition, or purchasing of any plants, insects, or other species listed pursuant to the California Endangered Species Act

(Chapter 1.5 (commencing with Section 2050)), which are taken or possessed in violation of this code or the regulations adopted pursuant to this code.

(3) Unlawfully export, import, transport, sell, possess, receive, acquire, or purchase any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish which has been taken, possessed, transported, or sold in violation of this code or the regulations adopted pursuant to this code.

(4) Unlawfully possess any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish which has been taken, possessed, transported, or sold in violation of this code or any regulations adopted pursuant to this code within the maritime and territorial jurisdiction of the state or within the portions of the special maritime jurisdiction of the United States upon which the State of California exercises concurrent jurisdiction, either by statute, deputation, or by contract with the United States.

(5) Having exported, imported, transported, sold, purchased, or received any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish, unlawfully make or submit any false record, account, label, or identification thereof.

(6) Attempt to commit any unlawful act, or unlawfully attempt to commit any act, described in paragraphs (1) to (5), inclusive.

(b) The department may impose civil liability upon any person pursuant to this chapter for unlawfully exporting, importing, possessing, receiving, or transporting in interstate commerce any container or package containing any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish unless the container or package has previously been plainly marked, labeled, or tagged in accordance with this code and the regulations adopted pursuant to this code.

(c) The department may impose civil liability upon any person pursuant to this chapter for any unlawful failure or refusal to maintain any records or paperwork as required by this code.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

### 2583.

(a) Except as provided in subdivision (b), any person who violates this code or any regulation adopted to carry out this code, and, with the exercise of due care, should have known that the birds, mammals, amphibians, reptiles, or fish, or the endangered or threatened species, or the fully protected birds, mammals, or fish were taken, possessed, transported, imported, received, purchased, acquired, or sold in violation of, or in a manner unlawful under, this code, may be assessed a civil penalty. The civil penalty imposed under this chapter by the department shall not be more than ten thousand dollars (\$10,000) for each bird, mammal,

amphibian, reptile, or fish, or for each endangered or threatened species, or each fully protected bird, mammal, or fish unlawfully taken, possessed, transported, imported, received, purchased, acquired, or sold. This civil penalty may be in addition to any other penalty, civil or criminal, provided in this code or otherwise by law.

(b) No civil penalties shall be imposed under this chapter until the guidelines for the imposition of the penalties are adopted by the commission pursuant to Section 500.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

#### 2584.

(a) Upon an actionable violation, the department shall consult, as to the appropriate civil or criminal remedy, with the district attorney in the jurisdiction where the violation was alleged to have occurred. Before proceeding with a civil action, the department shall seek the concurrence of the Attorney General.

(b) The director shall appoint a qualified referee or hearing board, composed of one or any combination of the following persons:

(1) A qualified hearing officer, as defined in subdivision (a) of Section 2580.

(2) A retired judge of the Superior Court who is knowledgeable in fish and wildlife law.

(3) A qualified neutral referee, appointed upon petition to the Superior Court in which the violation was alleged to have occurred.

(c) The director, after investigation of the facts and circumstances, may issue a complaint to any person on whom a civil penalty may be imposed pursuant to Section 2582 or 2583. The complaint shall allege the acts or failures to act that constitute a basis for a civil penalty and the amount of the proposed civil penalty. The complaint shall be served by personal service or certified mail and shall inform the person so served that a hearing shall be conducted within 60 days after the person has been served, unless the person waives the right to a hearing. If the person waives the right to a hearing, the department shall issue an order setting liability in the amount proposed in the complaint. If the person has waived the right to a hearing or if the department and the person have entered into a settlement agreement, the order shall be final.

(d) Any hearing required under this section shall be conducted by a referee or hearing board according to the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise provided in this section. In making a determination, the hearing officer may consider the records of the department in the matter, the complaint, and any new facts brought to his or her attention by that person. The hearing officer shall be the sole trier of fact as to the existence of a basis for liability under Section 2582 or 2583. The hearing officer shall make the determination of the facts of the case and shall prepare

and submit the proposed decision, including recommended penalty assessment, to the director for his or her review and assistance in the penalty assessment process.

(e) The director may assess the civil penalty, and may reduce the amount, or not impose any assessment, of civil penalties based upon the nature, circumstances, extent, and gravity of the prohibited acts alleged, and the degree of culpability of the violator; or the director may enter into a settlement agreement with the person in the best interests of the state or confirm the amount of civil penalties contained in the complaint. If the director reduces the amount of the civil penalty, does not impose the civil penalty, or enters into a settlement agreement, the director shall seek the recommendation of the hearing officer and enter into the records of the case the reasons for that action, including the hearing officer's recommendation. The decision of the director assessing the civil penalty is final. The proposed decision is a public record and shall be served upon the person. The director may approve the proposed decision in its entirety, or the director may reduce the proposed penalty and adopt the balance of the proposed decision.

(f) Upon the final assessment of the civil penalty, the department shall issue an order setting the amount of the civil penalty to be imposed. An order setting civil liability under this section becomes effective and final upon the issuance thereof, and payment shall be made within 30 days of issuance. Copies of the order shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared before the director and requested a copy. Copies of the order shall be provided to any person within 10 days of receipt of a written request from that person.

(g) Within 30 days after service of a copy of an order setting the amount of the civil penalty, any person so served may file with the superior court a petition for a writ of mandate for review of the order. In all proceedings pursuant to this subdivision, the court shall exercise its independent judgment on the evidence in the whole record. The filing of a petition for a writ of mandate shall not stay any other civil or criminal action.

(h) The records of the case, after all appeals are final, are public records, as defined in subdivision (d) of Section 6252 of the Government Code.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

## 2585.

The civil penalties imposed under this chapter are in addition to any forfeiture of equipment pursuant to Section 12157 or forfeiture of birds, mammals, amphibia, reptiles, or fish pursuant to Section 12159.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

**2586.**

(a) The director may pay a reward from any funds available for that purpose to any person who furnished information which led to an arrest, a criminal conviction, an order of assessment of a civil penalty, or for forfeiture of property for any violation of this code or any regulation adopted pursuant to this code. The amount of reward, if any, shall be designated by the director with the advice of the CalTIP Award Board.

(b) This chapter does not apply to any action brought to recover damages under Section 2014.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

**2587.**

(a) Notwithstanding Section 12511 of the Government Code, the department may retain or appoint legal counsel to prepare and prosecute civil actions under this chapter.

(b) Any action to recover civil penalties imposed under this chapter shall be commenced within three years after discovery of the commission of the offense.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

**2588.**

All civil penalties and revenues from forfeitures collected pursuant to this chapter shall be deposited in the Fish and Game Preservation Fund.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*

**2589.**

The commission and the department may adopt regulations as are necessary to carry out their responsibilities under this chapter.

*(Added by Stats. 1988, Ch. 1059, Sec. 4.)*