

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

---

|                         |   |                       |
|-------------------------|---|-----------------------|
| OPINION                 | : | No. 79-1020           |
|                         | : |                       |
| of                      | : | <u>April 30, 1980</u> |
|                         | : |                       |
| GEORGE DEUKMEJIAN       | : |                       |
| Attorney General        | : |                       |
|                         | : |                       |
| Paul H. Dobson          | : |                       |
| Deputy Attorney General | : |                       |
|                         | : |                       |

---

SUBJECT: NET FORFEITURE—The Department of Fish and Game may refrain from commencing a civil action under Fish and Game Code section 8630 to forfeit a net until after the criminal prosecution is completed so long as the action is commenced within the period provided for in the statute of limitations, which is one year from the date of the violation for which the net was seized.

The Honorable E. C. Fullerton, Director, Department of Fish and Game, has requested an opinion on questions which we have phrased as follows:

1. Is a net used to take fish in violation of a state fishing regulation enacted pursuant to Fish and Game Code section 8553 subject to seizure under Fish and Game Code section 8630?
2. Is a net seized for a violation of a state fishing regulation or statute subject to forfeiture pursuant to Fish and Game Code section 12157?
3. Would the forfeiture of a net under Fish and Game Code section 12157 in a criminal action relieve the Department of Fish and Game of the responsibility of

commencing a civil action under Fish and Game Code section 8630 to forfeit the same net as a public nuisance?

4. May the Department of Fish and Game refrain from commencing a civil action under Fish and Game section 8630 to forfeit the net until after the criminal action is completed?

## CONCLUSIONS

1. A net used to take fish in violation of a state fishing regulation enacted pursuant to Fish and Game Code section 8553 is subject to seizure under Fish and Game Code section 8630.

2. A net seized for violation of a state fishing regulation or statute is not subject to summary forfeiture pursuant to Fish and Game Code section 12157 because that section may not be constitutionally applied to the forfeiture of fishing nets.

3. The Department of Fish and Game is not relieved of responsibility for commencing a civil action pursuant to Fish and Game Code section 8630 to forfeit a net which has been purportedly forfeited under Fish and Game Code section 12157.

4. The Department may refrain from commencing a civil action under Fish and Game Code section 8630 to forfeit a net until after the criminal prosecution is completed so long as the Department commences forfeiture proceedings within one year period specified in the applicable statute of limitations.

## ANALYSIS

This opinion concerns tow forfeiture procedures set forth in the Fish and Game Code.<sup>1</sup> The first is a civil forfeiture action expressly applicable to fishing nets. Section 8630 provides:

“Any net or trap used for taking fish in violation of the provisions of this code is a public nuisance. It is the duty of every person authorized to make an arrest for such violation to seize and keep such net and report the seizure to the department.

“The department shall commence proceedings in the superior court of the county or city and county in which the seizure is made by petitioning the

---

<sup>1</sup> All unidentified section references are to the Fish and Game Code.

court for a judgment forfeiting the net. Upon the filing of such petition, the clerk of the court shall fix a time for a hearing and cause notices to be posted for 14 days in at least three public places in the place where the court is held, setting forth the substance of the petition and the time and place fixed for its hearing.

At such time the court shall hear and determine the proceeding, and upon proof that the net was used in violation of this code shall order it forfeited. Any net so forfeited shall be sold or destroyed by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.”

Section 8631 provides that in lieu of a seizure pursuant to section 8630, a net may be officially tagged by department personnel and it will be deemed seized Section 8632 provides:

“Within three days after the department has been notified in writing that a vessel carrying a seized net has arrived in port, the department shall remove the net from the vessel, unless the owner has furnished a bond in accordance with Section 8633. The notice shall be sufficient when delivered to the patrol office of the department nearest to the port at which the vessel has arrived.”

Section 8633 provides:

“When any net is seized pursuant to this article, the owner or any other person otherwise entitled to possession of the net may apply to the superior court of the county or city and county in which the seizure was made, or the county or city and county of which the claimant is a resident, for leave to file a bond and regain possession of the net during the pendency of the proceeding. The bond shall be in an amount determined by the judge to be the actual value of the net at the time of its release. It shall be filed within three days after the seizure of the net, and shall be conditioned upon the return of the net to the custody of the department in the event the net is ordered forfeited. Upon filing the bond, the person on whose behalf it is given shall be put in possession of the net and may use the net until it is finally ordered delivered up and forfeited, if such be the judgment of the court.”

Section 8634 requires a net which is released on bond to the owner or possessor to be returned in the event the net is forfeited.

The second forfeiture procedure relates to a criminal action. Except for two specified felony offenses not applicable here, a violation of any provision of the Fish and Game Code or rule, regulation or order made or adopted pursuant thereto is a misdemeanor. (§ 12000.) Section 12157 provides:

“The judge before whom any person is tried for a violation of any provision of this code or regulation made pursuant thereto may, in his discretion, upon the conviction of the accused, order the forfeiture of *any device or apparatus designed to be, and capable of being, used to take birds, mammals, fish, reptiles, or amphibia and which was used in committing the offense charged.* Any device or apparatus so forfeited shall be sold or destroyed by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund. For the purpose of this section forfeiture of bail shall constitute a conviction.” (Emphasis added.)

Thus, this section authorizes a judge in a criminal -action upon conviction to order the forfeiture of a “device or apparatus” used to catch fish in violation of state fishing laws and regulations.

With these two forfeiture procedures in mind we address the questions presented. The first question concerns only the provisions of section 8630. We are asked whether a net used in violation of a fish and game regulation, as opposed to a code provision, is subject to seizure and forfeiture under section 8630. Specifically we are referred to sections 8550 and 8553, which, when read in conjunction, provide that the Fish and Game Commission may make and enforce regulations concerning commercial fishing for herring.

Section 8550 provides that commercial herring fishing is to be regulated by the commission by means of permits. Section 8553 provides:

“The commission may make and enforce such regulations as may be necessary or convenient for carrying out any power, authority, or jurisdiction conferred under this article.”

Section 8556 provides:

“Notwithstanding any other provision of law, the commission shall determine, by regulation, if drift or set gill nets may be used to take herring for commercial purposes. The commission may also determine, by regulation, the size of the meshes of the material used to make such gill nets.”

The commission has promulgated a regulation (tit. 14, Cal. Admin. Code, § 163) which includes restrictions on the use of various types of nets.

In other words, the question is whether a net used by a commercial fisherman in violation of the regulation is subject to seizure and forfeiture pursuant to section 8630. The specific issue is whether the meaning of the phrase “provisions of this code” in section 8630 includes regulations adopted pursuant to the code. We conclude that it does.

It is a fundamental principle of statutory construction that the primary and controlling consideration in the construction of a statute is the determination of and the giving effect of the legislative intent behind the statute. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 163; *Select Base Materials, Inc. v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) In determining legislative intent, the words used in the statute should be interpreted to give effect to the statute according to the usual ordinary import of the language. (*Moyer v. Workmen’s Comp. Appeals Board* (1973) 10 Cal. 3d 222, 230.) Furthermore, as a general rule, statutes on the same subject matter must be construed together in light of each other so as to ascertain the legislative intent and harmonize the statutes. (*Moyer v. Workmen’s Comp. Appeals Bd.*, *supra*, at p. 230.) Specifically, it has been held that a statute imposing a forfeiture must be strictly construed in a sense most favorable to the property owner as is consistent with the principles of interpretation. (*People v. One 1950 Mercury Sedan* (1953) 116 Cal. 2d 746, 742; *People v. One 1939 Buick Coupe* (1942) 56 Cal. App. 2d 163, 166–167; accord *People v. United Bonding Ins. Co.* (1971) 5 Cal. 3d 898, 906.)

The reference to “violation of the provisions of this code” in section 8630 presents a knotty problem of statutory construction. Section 12157, the other forfeiture provision we have quoted, expressly refers to “a violation of any provision of this code or regulation made pursuant thereto . . . .” The other provisions of the Fish and Game Code not dealing with nets refer to violations of the provisions of the code and regulations made pursuant thereto. (See, e.g., §§ 9001.5, 12154, 12155, 12156, 12158.) Yet, section 12153 provides:

Any commercial fishing license is forfeited for the violation of any of the provisions of Sections 1050 to 1060, inclusive, or 2012 of this code, or of any of the provisions of this code relating to the use of nets. (Emphasis added.)

Both sections 8630 and 12153 share two common characteristics. Neither refers to regulations and both concern nets.

It is generally assumed that the Legislature meant to say what it said in drafting a statute. (*Tracy v. Municipal Court* (1978) 22 Cal. 3d 760, 764.) Thus, it could be argued that the inclusion of reference to violation of regulations in some code sections and the

omission of the reference in others demonstrate legislative intent to limit applicability of the code sections in which there is no such reference to only violations set forth in the code itself. (*Cf. Safer v. Superior Court* (1975) 15 Cal. 3d 230, 238.) Such a construction would be in accordance with the rule of “strict construction” applicable to forfeiture statutes. However, further review of the statutory framework of the Fish and Game Code related to forfeitures demonstrates such an argument must be rejected.

Initially we note that “[i]t is well established that administrative regulations must conform to applicable legislative provisions, and that an administrative agency has no discretion to exceed the authority conferred upon it by statute.” (*California Welfare Rights Organization v. Brian* (1974) 11 Cal. 3d 237, 242. Thus, the source of authority of a regulation is the statute which it implements. A regulation enacted pursuant to section 8553 or section 8556 is an implementation of the authority conferred upon the Fish and Game Commission by the Legislature pursuant to a provision of the Fish and Game Code. Thus, in one sense a violation of such a regulation is a violation of a provision of the code which it implements.

Next we note that a violation of a regulation is made a misdemeanor by section 12000. Section 12002 specifies the punishment for such an offense. A crime (or public offense) is defined in Penal Code section 15 to be “an act committed or omitted in violation of a law forbidding it and to which is annexed, upon conviction . . .” a punishment which, among other things, could be imprisonment or a fine. Since sections 12000 and 12002 establish a violation of a regulation as a crime, one who violates a regulation also commits a crime in violation of sections 12000 and 12002.

In *Moore v. Municipal Court* (1959) 170 Cal. App. 2d 548, the court discussed the power of the Legislature to delegate by statute to an administrative agency (the *Salinas Rural Fire District*) the authority to make regulations (“ordinances”):

“Turning, accordingly, to the contention that we treat here an unlawful delegation of a power to fix a penalty, we recognize that the Legislature may not delegate to a subordinate administrative body the power to promulgate rules and regulations coupled with the power to fix the penalty for their violation. The power to fix the penalty cannot be fragmentized without the danger that multiple administrative agencies may impose different sanctions for the same violation. The Legislature must retain the prerogative of the definition of the penalty because its distribution to various agencies could cause disparate and inequitable punishment for identical offenses. But so long as the Legislature determines the penalty it may leave the administrative body the actual making of the multiple rules called for by the specific subject matter regulated.

“The Legislature in this instance did enact a statute which provides that the violation of any of the provisions of an ordinance issued pursuant to it would constitute a misdemeanor. *In essence the violation of any provision of the ordinance is tantamount to a violation of the legislation itself.* (See Davis, *Administrative Law* (1951), 69–70.) The Legislature fixed the penalty; it did not transgress the principle that it not turn over to others this important function.” (170 Cal. App. 2d at pp. 555–556; emphasis added.)

For all intents and purposes, therefore, a violation of a fishing regulation is a violation of the provisions of the Fish and Game Code. Thus, despite the omission of reference to regulations in section 8630 we do not believe that the Legislature intended a regulation violation to not fall within the purview of the section.

Thus, we conclude, in answer to the first question, that a net to take fish in violation of a state fishing regulation enacted pursuant to Fish and Game Code section 8553 is subject to seizure under Fish and Game Code section 8630.

The second question is whether a net seized for violation of a state fishing regulation or statute is subject to forfeiture pursuant to Fish and Game Code section 12157. By its express terms, that section authorizes a judge upon a conviction of a person for a violation of any provision of the Fish and Game Code or regulation made pursuant to the code, to “order the forfeiture of any device or apparatus designed to be, and capable of being, used to take . . . fish . . . and which was used in committing the offense charged.” A net used to catch fish in violation of a fish and game regulation or statute would clearly be a “device or apparatus” within the meaning of section 12157.

However, we see a constitutional problem with section 12157. In *Leck v. Anderson* (1881) 57 Cal. 251, the Supreme Court held former Penal Code section 636, which authorized the seizure and summary forfeiture of fishing nets and other fishing gear used unlawfully to take fish, unconstitutional in that it deprived the owner of property without due process of law. The court stated:

“It follows, that so much of the statute under consideration as authorized defendant to arbitrarily seize and destroy or sell the property of the plaintiff for alleged forfeiture without judicial proceedings for its condemnation, or monition or notice, actual or constructive, to its owner, of the charges for which the forfeiture was claimed, and of the time and place for determining them, was unconstitutional and void, and afforded no protection to the defendant for the detention of the property in question.

(Emphasis added.)<sup>2</sup>

In *People v. Broad* (1932) 216 Cal. 1 the court considered the constitutionality of former Narcotics Act section 15 which provided:

“Any automobile or other vehicle used to convey, carry or transport any of the drugs mentioned in section one of this act which are not lawfully possessed or transported is hereby declared to be forfeited to the state, and may be seized by any duly authorized peace officer, and when such seizure is made shall be considered as part of the evidence under this act, and the magistrate shall upon conviction of the party charged of the violation of said act turn the automobile or other vehicle over to the Department of Finance and said Department of Finance shall deliver to the Division of Narcotic Enforcement of the state of California such number of said automobiles or other vehicles as may be needed by the said Narcotic Division in enforcing the provisions of this act, provided that nothing contained herein shall apply to common carriers or to an employee acting within the scope of his employment under this act.”

The court held that because section 15 did not provide for notice to the owner of an automobile so forfeited, it deprived the owner of property without due process of law and was thus unconstitutional. Quoting the text of Court of Appeal opinion in the case the Supreme Court stated:

“The rule is well settled that to constitute due process of law in regard to the taking of property the statute should give the parties interested some adequate remedy for the vindication of their rights (12 Cor. Jur., Constitutional Law, sec. 997, p. 1220); and while it is a proper exercise of legislative power to provide for the destruction of property without notice when the public welfare demands summary action—instances of this kind being the power to destroy diseased meat or decayed fruit, to kill diseased cattle, or to destroy property kept in violation of law which is incapable of lawful use (12 Cor. Jur., Constitutional law, sec. 999, p. 1224)—nevertheless, where the property involved is what is sometimes termed innocent property, threatening no danger to the public welfare, the owner must be afforded a fair opportunity to be heard (*Modern Loan Co. v. Police Court*, 12 Cal. App. 582; and it has accordingly been held that to constitute

---

<sup>2</sup> Subsequent to the decision in *Ieck v. Anderson*, *supra*, 57 Cal. 251, the Legislature enacted—former Penal Code section 636a (Stats. 1901, § 56) which provided for a civil forfeiture proceeding similar to that provided by section 8630 *et seq.*

due process the statute itself must provide for notice of the time and place of hearing where the parties may present in a regular and orderly manner issues of law and fact *Ieck v. Anderson*, 57 Cal. 251). The same rule was declared in *Moffat v. Hecke, etc.*, 68 Cal. App. 35, where it was held that the essential validity of the law was to be tested not by what has been done under it, but by what may by its authority be done; and where a statute authorizes the taking of private property but makes no provision for bearing or notice, either actual or constructive, such defect is not supplied by the voluntary adoption by public officers of rules covering the situation. So in *Security Trust Co. v. Lexington*, 203 U.S. 323, a case involving the validity of an assessment, it was held that if a statute makes no provision for notice in any form it is not material that as a matter of grace or favor notice may be given. As the court stated, "it is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is whether any notice is provided by the statute." Nor can extra official or casual notice, or a hearing granted as a matter of discretion, be deemed a substantial substitute for the due process that the Constitution requires (*Stuart v. Palmer*, 74 N.Y. 183; *Coe v. Armour Fertilizer Works*, 237 U.S. 413; *Louisville & Nashville R. R. v. Stockyards Co.*, 212 U.S. 132.)" (216 Cal. at pp. 7-8; accord *People v. One 1941 Chevrolet Coupe* (1951) 37 Cal. 2d 283.)

The court in *Broad* expressly rejected the contention that because the criminal proceedings would be conclusive as to the grounds for forfeiture, the owner of the automobile did not need to be given an opportunity to appear:

"It is admitted by plaintiff that notice and an opportunity to be heard are necessary to constitute due process; but it is urged that where the owner cannot possibly show facts that would relieve him from forfeiture notice to him would be an idle act; that the person using the automobile is the only one in a position to make a defense, and, consequently, notice to him with an opportunity to be heard was sufficient to meet the constitutional requirements.

"Whatever the effect of the criminal proceedings upon *Broad's* interest in the automobile (and this we do not decide) he was not appellant's [the owner's] agent for any purpose; and the sole question here is the sufficiency of the statute as against the latter. As held in the cases above cited, the question of the sufficiency of the statute does not depend upon the notice or hearing actually afforded by the court [citation], and it is no answer to one who protests against the taking of his property that in his particular case due process would have led to the same result because he had no

adequate defense on the merits [citations].” (216 Cal. at pp. 8–9, quoting the Court of Appeal opinion.)

Thus, the rule of *People v. Broad*, *supra*, 216 Cal. 1 is that statutory forfeiture proceedings must provide for notice to the owners and an opportunity for the owner to be heard before the forfeiture. The exceptions to this rule are where the property is contraband (i.e., illegal to possess), has no lawful use, or constitutes a danger to the public safety demanding summary action.

With the above constitutional requirements in mind we now examine section 12157. The section does not expressly limit forfeiture to property which is contraband, which has no lawful use, or which presents an immediate danger to public safety. It does not provide for notice to the owner of the property or an opportunity for the owner to be heard.

We are aware of no case which addresses the issue of the constitutionality of section 12157. Section 12157’s predecessor, former section 1414 of the Fish and Game Code, which contained substantially the same language, was discussed in two cases, neither of which addressed the constitutionality of the statute.

In *Santos v. Dondero* (1936) 11 Cal. App. 2d 720, the Court of Appeal held an automobile was improperly forfeited under former section 1414. The defendant had been convicted of illegally using a spotlight attached to the car in hunting game. The Court held the car was not a “device or apparatus” designed to be, and capable of being used to take “the game.” By way of dictum the court in *Santos v. Dondero*, *supra*, 11 Cal. App. 2d at p. 722 stated: “The right of the state to declare a forfeiture of property used in the commission of a criminal offense upon the conviction of such offense is too well settled to require a review of authorities.” Among the authorities not reviewed was *People v. Broad*, *supra*, 216 Cal. 1, decided by the Supreme Court just four years earlier.

In *Brace v. Sibeck* (19&8) 25 Cal. App. 2d 691, the plaintiff in a replevin action had been arrested by the defendant game warden for unlawfully fishing with a set line. In addition to the set line the defendants seized two boats, an outboard motor, tools, a shotgun, two coats and some fishing gear. The plaintiff was convicted in the justice court and an order was made forfeiting the property pursuant to section 1414. In the replevin action plaintiff contended defendants had illegally *seized* the property other than the set line because the other items were not “designed” to catch fish illegally. The Court of Appeal distinguished its holding in *Santos* on the ground that in this case, that with the exception of the shotgun, “all the instrumentalities found in the possession of the plaintiff at the time of his arrest were not only adapted to the uses and purposes for which they were being applied, but also absolutely necessary in order to accomplish the criminal purposes in which the plaintiff was engaged.” (25 Cal. App. 2d at pp. 695–696.)

Thus, the court held the defendants lawfully seized the property and held it for evidence and safekeeping noting that “[i]t was their duty to take possession of the property being used in the commission of the offense, and see that it was safely cared for until the time of the trial . . . .” (*Id.*, at p. 696.)

The plaintiff in *Bruce v. Sibeck* did not attack the forfeiture of the property by the justice court pursuant to former section 1414. Rather, lie attacked the initial seizure and holding of the property. The holding of the Court of Appeal was limited to finding that an action in replevin did not lie against the defendant game wardens for seizing and holding most of the property.<sup>3</sup> Thus, neither *Santos v. Dondero* nor *Bruce v. Sibeck* addressed the constitutionality of former section 1414.

In view of the holding in *People v. Broad*, *supra*, 216 Cal. 1, we believe Fish and Game Code section 12157 is unconstitutional as applied to the forfeiture of nets because it does not provide the owner of the property with notice of hearing before taking the property. (See *People v. One 1941 Chevrolet Coupe*, *supra*, 37 Cal. 2d 283.) We conclude that a purported forfeiture of a net pursuant to its provisions would be void. (*People v. Broad*, *supra*.)

By the third question, we are asked whether forfeiture of a net under Fish and Game Code section 12157 in a criminal action relieves the Department of Fish and Game of the responsibility of commencing a civil action under Fish and Game Code section 8630 to forfeit the same net as a public nuisance. Since we believe that a net may not be lawfully forfeited to the state under section 12157, we conclude that the Department of Fish and Game is not relieved of responsibility for commencing a civil action pursuant to section 8630 to forfeit a net which purportedly has been forfeited under section 12157.

The fourth question is whether the Department may refrain from commencing a civil action under section 8630 to forfeit a net until after the criminal action is completed. Section 8630 provides that “[t]he department shall commence proceedings in superior court . . . by petitioning the court for a judgment forfeiting the net.” The use of the word “shall” clearly demonstrates that there is an obligation imposed upon the Department to commence the proceedings after the seizure pf the net. (See § 79.) However, the statute does not specify a time frame in which that obligation must be performed.

---

<sup>3</sup> The court in *Bruce v. Sibeck*, *supra*, 25 Cal. App. 2d at page 699 did refer to “the right of the people of the state of California to have the [property] forfeited and turned over to the fish and game commission.” However, the reference was made as an additional reason for the need for the defendants to safely preserve the property and thus it was dictum.

Code of Civil Procedure section 340 specifies a one year statute of limitations for “[a]n action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this state. In *People v. One 1951 Chevrolet Coupe, supra*, 157 Cal. App. 2d 301, the facts established that appellants automobiles were forfeited in proceedings commenced by the state pursuant to the provisions of former section 11612 *et seq.* of the Health and Safety Code by reason of their unlawful use in transporting drugs. Former section 11611 made it the duty of peace officers in enforcing drug laws to seize a vehicle used in violation of such laws, and deliver it to the Department of Justice to be held as evidence until a forfeiture had been declared. It was stipulated by the parties on appeal that the automobiles involved were not seized on behalf of the state at the time of their unlawful use but at a later date when they were not being unlawfully used. The sole question presented on appeal was “whether or not proceedings of the type involved in superior court and judgments or forfeitures rendered therein can be based upon delayed seizures.” (157 Cal. 2d at p. 302.) The court in upholding the forfeitures stated.

“In the instant cases the seizures were made prior to the filing of the forfeiture proceedings. The cars were in the custody of the officers when the notices of seizure and intended forfeiture were filed and the court then had jurisdiction of the subject matter involved and of the parties upon whom notice was served and who appeared in the action. The provisions of section 11611 are merely directory, giving certain instructions to peace officers and there is nothing in section 11610 to the effect that a forfeiture depends upon the immediate seizure of a vehicle at the time of the arrest. *The right of forfeiture accrued in the instant cases at the time when the vehicles were used in violation of the statute and the failure of the officers to seize the vehicles immediately upon the arrest did not in our opinion defeat such right.*

“Appellant further contends that the State waived the right to forfeiture by failing to seize the vehicles at the time of their unlawful use. However, appellant cites no authorities which support this argument. The right of forfeiture is governed by section ‘11610 of the Health and Safety Code and since the cars were seized prior to the filing of the notices of seizure and intended forfeiture, *the failure of the officers to follow the’ directory provisions of section 11611 of said code cannot be held to be a waiver of the right of forfeiture, where as here, the proceedings were filed within the period specified in section 340 of the Code of Civil Procedure.*” (157 Cal. App. 2d at p. 305; emphasis added.)

The facts of the case of *People v. One 1951 Chevrolet Coupe, supra*, 157 Cal. App. 2d 301 are distinguishable from the facts presented by the instant question. Here, we are not concerned with the effect of a failure of Department of Fish and Game officers to

immediately seize nets found to be used unlawfully in taking fish. We are only concerned with whether the Department may delay the commencement of forfeiture proceedings. However, the case is instructive in that it points out that the right to commence the forfeiture proceedings is independent of the duty of officers to seize the property.

Section 8630 creates a duty to seize nets found being used in violation of the law; it does not necessarily require the immediate commencement of forfeiture proceedings after the seizure. The right to seize is independent from the right to forfeit the nets. The applicable statute of limitations provides the action need only commence within one year of the violation.

Thus, we conclude that the Department may refrain from commencing a civil action under Fish and Game Code section 8630 to forfeit a net until after the criminal prosecution is completed so long as the action is commenced within the period provided for in the statute of limitations, which is one year from the date of the violation for which the net was seized.

\*\*\*\*\*