



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
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COMMISSION
EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



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February 9, 2015

Gene Livingston
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814-3938

Dear Mr. Livingston:

Subject: Sales of GloFish® in California

I am writing in response to your January 29, 2015 letter in which you indicated that your client, Yorktown Technologies, L.P., seeks to sell fluorescent tropical aquarium fish, known as GloFish®, in California. The term GloFish includes five lines of zebrafish, six lines of white tetras, and one line of tiger barb. Zebrafish, tetras, and barbs are all commonly sold through the aquarium pet trade, and Yorktown currently sells the GloFish variants of these species in forty-nine states.

In 2002, Yorktown sought permission from the Department of Fish and Wildlife (then the Department of Fish and Game) and the Fish and Game Commission to sell its products in California. In response, the Commission initially adopted a broad regulation banning importation, possession, and sale of "transgenic" species, including GloFish, in California. However, the Department concluded that GloFish, while transgenic, posed no foreseeable threat to native fish and wildlife and proposed that the Commission adopt an exemption for GloFish. The Commission voted to proceed with rulemaking for the exemption, but disagreements over the nature, extent, and cost of environmental review led both the Commission and Yorktown to abandon their efforts at that time.

Yorktown now requests in its January 29, 2015 letter that the Department exercise its discretion not to enforce these regulations because GloFish pose no risk to the environment or native wildlife and are widely sold throughout the country. In November and December 2014, Yorktown provided the Department with letters from the U.S. Food and Drug Administration, Florida Department of Agriculture and Consumer Services, and academic biologists and geneticists, as well as peer-reviewed studies, analyzing and assessing the risk of invasiveness and the ability of these species to become established and have detrimental impacts on wildlife. The Department has reviewed this information and agrees with Yorktown that GloFish pose no foreseeable risk of harm to native fish and wildlife in California.

While the Department still concludes that GloFish are "transgenic" species within the meaning of Section 1.92, the Department also recognizes the application of that regulation to GloFish is somewhat ambiguous, particularly in light of the Department's conclusion that GloFish pose no foreseeable risk of harm. While the

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regulation of harmless aquarium fish is not central to the Department's mission, the Department does have a strong interest in ensuring that those transgenic species that pose real risks to native wildlife are not imported, sold, possessed, or released in California. The Department is concerned that the potential ambiguities in the current regulations could be exploited in a manner that would pose such a risk. Specifically, the Department remains concerned about transgenic salmon species that would risk impacts to native salmon. For these reasons, the Department will propose to the California Fish and Game Commission to amend Section 1.92 to clarify the definition of transgenic to further ensure the protection of native fish and wildlife. At the same time, the Department will propose the addition of an exception that would allow the sale of transgenic tropical aquarium fish that the Department has determined pose no foreseeable risk of harm to native fish and wildlife.

The Department is tasked with many duties as the state's trustee agency for fish and wildlife. Given limited resources, the Department must prioritize its enforcement to ensure it devotes sufficient resources to address the most significant threats to California's fish and wildlife. GloFish are not a high priority for the Department, because the Department has found no foreseeable risk of harm from GloFish and determined that application of Sections 1.92 and 671 to GloFish is uncertain. The Department may reevaluate this position if it obtains new information indicating a potential threat to native fish and wildlife or the Commission declines to approve the proposed amendments to Section 1.92. The Department will take immediate steps to amend the definition to protect against risks to native species and create an exception for your client's product. We will do so through the Commission process to ensure public review and comment opportunity.

Sincerely,



Charlton H. Bonham
Director

cc: Sonke Mastrup, Executive Director
California Fish and Game Commission

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