

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Section 235.3 and Amend Section 236, 238 and 240
Title 14, California Code of Regulations
Re: Marking and Inspections of Live Fish Transportation Vehicles and
Inspections of Aquaculture Facilities

I. Date of Initial Statement of Reasons: February 19, 2009

II. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: May 14, 2009
Location: Sacramento, CA |
| (b) | Discussion Hearing: | Date: June 25, 2009
Location: Woodland, CA |
| (c) | Adoption Hearing: | Date: August 6, 2009
Location: Woodland, CA |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The Commission may regulate the transportation, purchase, possession and sale of aquaculture products to protect native wildlife. Each owner of a commercial aquaculture facility must register with the Department and provide sufficient information to allow determination of the potential wildlife impacts. The Department may prohibit operations that are detrimental to adjacent wildlife.

Importation, transportation and stocking of aquaculture products and other live aquatic plants and animals are regulated by the Commission under sections 236, 238 and 240, Title 14, California Code of Regulations (CCR) Intrastate transportation requires that specific documents regarding the movement of live aquaculture products be maintained. This includes a requirement that shipments be accompanied by an invoice or waybill, bill

of lading or importation permit describing contents, origin and destination of the load.

Importations of live aquatic plants and animals, with some specific exemptions, are required to be preauthorized by the Department and accompanied by an importation permit. Unauthorized importations of live aquatic plants and animals have exceptional potential to adversely impact the California environment as evidenced by recent illegal introductions of several damaging invasive aquatic nuisance species. Some species of fish preferred in the seafood marketplace or for sport fishing are not allowed for aquaculture purposes in California, or for importation alive, because of their potential to negatively impact the State's wildlife resources. Illegal importations also create a risk of introduction of fish diseases which may damage California aquaculture production operations and wildlife.

While current regulations provide appropriate limits to safely authorize legal transportation they do not require marking of transport vehicles, for inspection purposes, to help ensure that transportation is legal. Because illegal transportation of aquatic plants and animals has such potential to damage both State environmental resources and in-state aquaculture producers, it is prudent to facilitate compliance checks by requiring vehicles to be marked and enhance the Department's inspection authority for shipments of aquaculture products and businesses dealing in aquatic plants and animals.

In California, commercial aquaculture is a competitive business and recognized as a form of agriculture (FGC 17, Food and Agricultural Code 23.5, Public Resource Code (PRC) 30300.2) and it is the policy of the State to encourage its development (FGC 1700, PRC 30411(c)). Nonetheless, it is evident by the comprehensive set of existing FGC statutes and Fish and Game Commission regulations in place to ensure against negative wildlife resource impacts, that the industry has the significant potential to negatively impact those resources. Operators that do not comply with the regulations provide both a risk to the State's environmental resources and may operate with an unfair advantage over legal operators.

The Department proposes requiring vehicles with aquaculture products to be clearly marked. The proposal also clarifies the inspection authority of the Department, helps provide a level playing field for the State's legal aquaculture producers, and provides assurance that distribution of aquaculture products will not cause negative impacts to the State's environmental resources.

This proposal is reasonable because, as the courts have ruled (People vs. Harbor Hut Restaurant), highly regulated businesses should expect periodic inspections undertaken to further the regulatory objective, and the proposed inspection authority is well defined, limited, and enhances the protection of the State's resources. Such regulation should include inspections of all department licensed or permitted facilities that have aquatic plants and aquatic animals whether the plants or animals are alive or dead as well as all documentation relating to aquatic plants and animals. Present inspection authority relating to "fish" does not include some businesses which possess aquatic animals, such as aquaculture facilities. This is based on "animals" in aquaculture facilities not meeting the definition of "fish", pursuant to the Fish and Game Code, until they are stocked (released into lakes, streams, etc). The amendment would also place all department licensed and permitted businesses who possess aquatic plants and animals under the same inspection authority, as described in the amendment to Section 235.3. The term aquatic animals include both "fish" and aquaculture "animals".

Proposed Regulatory Changes

Section 235.3 will be added for the inspection of aquaculture facilities and permitted businesses as follows:

- 1) This will allow the Department to enter any businesses licensed or permitted pursuant to the Fish and Game Code or CCR, T-14 for purposes of inspecting aquatics plants and animals, structures, documents, and holding equipment.

Section 236 will be revised to require vehicles transporting aquaculture products to be clearly marked and inspection related changes. The following list contains the proposed changes:

- 1) Add subsection 236(c)(2) to require a vehicle transporting live aquatic plants or animals and used for the production or sale of live aquatic plants or animals must be labeled on each side and at the rear with the words "LIVE FISH" in legible letters at least six inches in height, one-half inch in thickness, and in plain view. A vehicle registered to a common carrier, seafood business, or pet trade business is not required to be labeled with the words "LIVE FISH" if the load is not predominately live aquatic plants or animals.
- 2) Revise subsection 236(c)(5) to clarify that the Department's inspection authority includes stopping, for purposes of inspection, shipments in or on vehicles labeled "LIVE FISH" as well as inspection of accompanying documentation.

- 3) Add subsections 236(c)(10) and (11) to list the information for denial and revocation for regulatory alignment and improve clarity.
- 4) Revise subsection 236(c)(7) to remove red swamp crayfish from the list of animals approved for long-term permits to require Department review of each shipment of this potentially invasive species.
- 5) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

Section 238 will be revised to require vehicles transporting aquaculture products to be clearly marked. The following list contains the proposed changes:

- 1) Revise subsection 238(a) to require any person involved in possession, transportation or sale of aquaculture products to exhibit the aquaculture products, sales invoice, waybill, bill of lading, or other applicable accompanying documentation or equipment upon demand of a department official. This inspection authority includes inspection of aquaculture products, vehicles, containers, or equipment in which the aquaculture products are contained, transported or transferred.
- 2) Add subsection 238(b)(3) to require a vehicle transporting live aquatic plants or animals and used for the production or sale of live aquatic plants or animals must be labeled on each side and at the rear with the words "LIVE FISH" in legible letters at least six inches in height, one-half inch in thickness, and in plain view. A vehicle registered to a common carrier, seafood business, or pet trade business is not required to be labeled with the words "LIVE FISH" if the load does not predominately contain live aquatic plants or animals. The department may at any time inspect shipments of aquatic plants or animals contained in vehicles required to be labeled with the words "LIVE FISH".
- 3) Revise subsection 238(c)(4) to require the sales receipt and aquaculture products shall be immediately made available for inspection upon demand of a department employee.
- 4) Strike subsection 238(e)(1)(A) reference to abalone size limits pursuant to FGC Section 8304 since this section was repealed.
- 5) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

Section 240 will be revised to require vehicles transporting aquaculture products to be clearly marked and inspection related changes. The following list contains the proposed changes:

- 1) Revise subsection 240(a) to require any person involved in possession, transportation or sale of aquaculture products to exhibit the aquaculture products, sales invoice, waybill, bill of lading, or other applicable accompanying documentation or equipment upon demand

of a department official. This inspection authority includes inspection of aquaculture products, vehicles, containers, or equipment in which the aquaculture products are contained, transported or transferred.

- 2) Revise subsection 240(b) to require a vehicle transporting live aquatic plants or animals and used for the production or sale of live aquatic plants or animals must be labeled on each side and at the rear with the words "LIVE FISH" in legible letters at least six inches in height, one-half inch in thickness, and in plain view. A vehicle registered to a common carrier, seafood business, or pet trade business is not required to be labeled with the words "LIVE FISH" if the load is not predominately live aquatic plants or animals. The department may at any time inspect shipments of aquatic plants or animals contained in vehicles required to be labeled with the words "LIVE FISH".
- 3) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Section 235.3:

Authority cited: Sections 1050, 2118, 2120, 2301, 6400, 15004, 15005, 15200, 15202, 15400, 15600 and 15601, Fish and Game Code.

Reference: Sections 17, 2116, 2116.5, 2117, 2118, 2120, 2121, 2122, 2127, 2150, 2150.4, 2151, 2152, 2153, 2155, 2156, 2186, 2189, 2190, 2192, 2193, and 15004 Fish and Game Code.

Section 236:

Authority cited: Sections 1050, 2118, 2120, 2301, 6401, 15004, 15005, 15600 and 15601, Fish and Game Code.

Reference: Sections 2116, 2116.5, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2125, 2127, 2150, 2150.1, 2150.2, 2150.4, 2150.5, 2151, 2152, 2153, 2155, 2185, 2186, 2187, 2189, 2190, 2270, 2270.5, 2271, 2272, 3201, 3202, 3203, 3204, and 15005, Fish and Game Code.

Section 238:

Authority cited: Sections 1050, 2301, 6401, 7701, 8040, 15005, 15200, 15202 and 15400, Fish and Game Code.

Reference: Sections 17, 1050, 2301, 6400, 6401, 7701, 7702, 7702.1, 7703, 7704, 7705, 7706, 7707, 7708, 8040, 8371, 8435, 8436, 15005, 15200, 15202, 15400, 15401, 15402, 15403, 15404, 15405, 15406, 15406.5, 15406.7, 15407, 15408, 15409, 15410, 15411, 15412, 15413, 15414, and 15415 Fish and Game Code.

Section 240:

Authority cited: Sections 1050, 2120, 2301, 7701, 7708, 15005, 15102, 15200, 15202 and 15600, Fish and Game Code. Reference: Sections 17, 1050, 2301, 2348, 7700, 7701, 7702, 7702.1, 7703, 8371, 8431 and 15505, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

None

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

None.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Seek legislation to accomplish the objectives of the proposed regulatory changes.

(b) No Change Alternative:

Continued lack of knowledge as to the specific ability of the Department to conduct inspections rather than clarify the issues through the describing of specific measures the Department can take to conduct inspections.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no significant adverse environmental impact. Therefore, no mitigation is necessary.

VI. Impact of Regulatory Action:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action will not have a significant statewide adverse economic impact directly affecting legal business or businesses that are free of diseases and invasive species such as quagga mussels. Inspection authority impacts those businesses operating in violation of laws and regulations or businesses that may contribute to the spread of invasive species, while at the same time enhancing the ability of businesses that are in compliance to compete for market share. Appropriate inspection measures may help in the fight against invasive species such a quagga mussels. The spread of invasive species can have a serious economic and environmental impact within California.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

Informative Digest (Policy Statement Overview)

Importation, intrastate transportation, and stocking of live aquatic plants and animals have the potential to impact California's wildlife resources and the State's aquaculture industry. Laws and regulations have been enacted to help ensure against the importation and/or spread of aquatic nuisance species and fish diseases that might damage State wildlife and industry resources. Importation, transportation, and stocking require Department of Fish and Game authorization and documentation to ensure that those activities will not cause damage. The current regulatory structure does not, however, require that transporting vehicles be marked to identify them as containing live fish nor does it provide specific methods to carry out inspection authorization found within the Fish and Game Code relating to aquaculture.

The proposed regulatory action would amend existing regulations governing importation and transportation to require that vehicles transporting live aquatic plants and animals be clearly marked with signs reading "LIVE FISH." Those same regulations would be clarified by specifically addressing the inspection of vehicles and businesses which may contain live aquatic plants and animals, including invasive species such as quagga mussels. The proposed amendment would exempt common carriers, seafood dealers, and the pet trade when their load is not primarily live fish. Requiring all such vehicles to be marked would be unreasonable and would create a counterproductive distraction for Department peace officers. The proposed amendment will better enable the Department to ensure compliance with existing law.

Better compliance will help ensure against damage to state wildlife and industry resources. More effective enforcement may also reduce the competitive advantage enjoyed by some illegal operators dealing with products desired in the marketplace but not allowed because of their potential resource impacts.

Proposed Regulatory Changes

For public notice purposes to facilitate Commission discussion, the Department is proposing the following changes to current regulations:

Section 235.3 will be added for the inspection of aquaculture facilities and permitted businesses as follows:

- 1) This will allow the Department to enter any businesses permitted or licensed pursuant to the FGC or CCR for purposes of inspecting aquatics plants and animals, water, structures, documentation, and holding equipment.

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