

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1006, 1050, 2118, 2120, 2301, 6400, 6401, 7701, 7708, 8040, 15004, 15005, 15102, 15200, 15202, 15400, 15600, and 15601 of the Fish and Game Code and to implement, interpret or make specific sections 17, 1006, 1050, 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, 2156, 2185, 2186, 2187, 2189, 2190, 2192, 2193, 2270, 2270.5, 2271, 2272, 2301, 2348, 3201, 3202, 3203, 3204, 6400, 6401, 7700, 7701, 7702, 7702.1, 7703, 7704, 7705, 7706, 7707, 7708, 8040, 8371, 8431, 8435, 8436, 15004, 15005, 15200, 15202, 15400, 15401, 15402, 15403, 15404, 15405, 15406, 15406.5, 15406.7, 15407, 15408, 15409, 15410, 15411, 15412, 15413, 15414, 15415, and 15505 of said Code, proposes to add Section 235.3 and amend sections 236, 238, and 240, Title 14, California Code of Regulations, relating to Marking and Inspections of Live Fish Transportation Vehicles and Inspections of Aquaculture Facilities.

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.

Section 236 will be revised to require vehicles transporting live aquatic plants and animals to be clearly marked and make 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 and make inspection related changes. 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 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 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 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 make 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 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 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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, June 25, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 30, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 4, 2009. All comments must be received no later than August 6, 2009, at the hearing in Woodland, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Anita Biedermann at the preceding address or phone number. **Mr. Neil Manji, Chief, Fisheries Branch, Department of Fish and Game, phone (916) 327-8840, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(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 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 as 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 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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: May 19, 2009

John Carlson, Jr.
Executive Director