

Regulatory Language

Section 235.3, Title 14, CCR, is added to read:

§235.3 Inspection of Aquaculture Facilities and Permitted Businesses

Notwithstanding other sections of these regulations, department peace officers may enter any business licensed or permitted pursuant to the Fish and Game Code or regulations adopted pursuant thereto, for purposes of inspecting aquatic plants and aquatic animals, as well as the water, structures and equipment used to hold, transport or transfer the aquatic plants and aquatic animals. All documents relating in any way to aquatic plants or aquatic animals shall be displayed immediately upon demand of the inspecting peace officer. It is unlawful to obstruct or delay a department peace officer who is conducting an inspection pursuant to this section. A department peace officer can designate employees of this department, who are not peace officers, to accompany the officer and assist in the inspection. Such department initiated inspections are not subject to cost recovery under Section 15004 (b), except pursuant to an order by the court of jurisdiction.

NOTE

Authority cited: Sections 1006, 1050, 2118, 2120, 2301, 6400, 15004, 15005, 15200, 15202, 15400, 15600 and 15601, Fish and Game Code. Reference: Sections 17, 1006, 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, Title 14, CCR, is amended to read:

§236. Importation of Live Aquatic Plants and Animals.

The provisions of this section shall apply to the importation of all live aquatic plants and animals.

(a) No person shall import into this state any prohibited species of live aquatic plant or animal listed pursuant to Section 2118 of the Fish and Game Code or Section 671 of these regulations unless specifically authorized by the commission.

(b) Unless specifically prohibited by these regulations, plants and animals within the following groups may be imported without an importation permit from the department:

(1) Mollusks and crustaceans intended to go directly into the seafood market and which will not be placed into the waters of the state nor placed in waters which are discharged to waters of the state.

(2) Live ornamental tropical marine or freshwater plants or animals that are not utilized for human consumption or bait purposes, are maintained in closed systems for personal, pet industry or hobby purposes, and which will not be placed in waters of the state.

(3) Brine shrimp.

(c) With the exception of those importations described in Section 236(a) and (b), live aquatic plants and animals may be imported into this state only in accordance with the following terms and conditions:

(1) A standard importation permit signed by the director or his a designated agent is required, and no shipment into the state may be made prior to the issuance of the permit authorizing the shipment or shipments. The department shall charge a fee of \$25.00 for issuing each permit. Fees charged for inspections shall be independent of the fees charged for issuing permits.

(2) A vehicle transporting live aquatic plants or aquatic animals and registered to, rented, leased or otherwise used by a person or business directly involved with the production or sale of live aquatic plants or aquatic 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, at least one-half inch in thickness and displayed in plain view. The words "LIVE FISH" shall be in a color which contrasts with their background and which can be easily read. 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 that vehicle is not transporting a load that by weight, number, or monetary value consists of fifty percent or more of live aquatic plants or aquatic animals.

~~(2)~~ (3) With the exceptions of the live aquatic animals listed in subsection 236(c)(6), a permit is required for each lot or load, and each shipment must be accompanied by the original copy of the importation permit. Unless otherwise authorized, the person who is to receive any shipments of aquatic plants and animals shall apply to the department for this importation permit.

~~(3)~~ (4) Application for a standard importation permit shall be made on a form ~~(an Application for Standard Importation Permit, FG 789 (2/91), an Application for Importation Permit, FG 789 (12/07)~~ which is incorporated by reference herein) supplied by the department, as directed in Section 235(d) and shall reach the department's headquarters office at least 10 working days in advance of the probable arrival date of the shipment. A legible copy of the permit authorized by the director or his a designated agent must accompany each load. If a change in date of shipment becomes necessary after a permit has been issued, the permittee shall notify the Aquaculture Development Section Coordinator at least 5 days before the new date of shipment. Under special circumstances, the department may waive this 5-day notice requirement.

~~(4)~~ (5) All live aquatic plants and aquatic animals imported into California may be inspected by the department, either at the place of entry into the state or at other locations suitable to the department. The person importing the aquatic plants or aquatic animals may be required to provide facilities for inspecting and sorting them, and may be required to pay inspection costs, including salary and travel expenses of the inspector. Such inspection authority includes but is not limited to stopping, for purposes of inspection, shipments in or on vehicles required to be labeled with the words "LIVE FISH" pursuant to subsection 236 (c)(2) as well as inspection of accompanying documentation.

~~(5)~~ (6) Any lot or load of aquatic plants and aquatic animals found by the inspector to be diseased, parasitized or to contain species not authorized by the importation permit

must be immediately destroyed or transported out of California within a period of time and in a manner specified by the department. In such cases, the importation permit is automatically revoked.

~~(6)~~ (7) In lieu of the permits specified in subsection 236(c)(1), long-term permits for the following aquatic animals may be issued by the department for periods of up to one year. Application shall be made on a ~~form (Application for Long-term Permit to Import Animals into California, FG 786 (2/91), which is incorporated by reference herein)~~ an Application for Importation Permit, FG 789 (12/07) supplied by the department. The department shall charge a fee for issuing each permit. See subsection 699(b) of these regulations for the fee for this permit.

(A) Oyster, oyster larvae and oyster seed.

(B) Ghost shrimps (*Callinassa* spp).

(C) Mud shrimps (*Upogebia* spp).

(D) Longjaw mudsuckers (*Gillichthys mirabilis*).

~~(E) Red swamp crayfish (*Procambarus clarkii*).~~

~~(E)~~ ~~(F)~~ Orconectes virilis.

~~(F)~~ ~~(G)~~ Marine Annelid worms (*Phylum Annelida*).

~~(G)~~ ~~(H)~~ Sacramento blackfish (*Orthodon microlepidotus*).

~~(H)~~ ~~(I)~~ Other species under conditions which the department determines represent no significant risk to the fish and wildlife resources of the state.

~~(7)~~ (8) Importation of Salmonid Eggs. Applications to import eggs of fishes of the family salmonidae (trout, salmon and char) shall be accompanied by a health certificate signed by a person competent in the diagnosis of fish diseases stating that the hatchery or other sources of the eggs to be imported and the eggs themselves are free of the following diseases: infectious pancreatic necrosis (IPN); bacterial kidney disease (BKD); infectious hematopoietic necrosis (IHN); and viral hemorrhagic septicemia (Egtved). In questionable cases, the director or a designated agent of the department shall determine whether or not the person making the certification is technically qualified to do so.

~~(8)~~ (9) Only those aquatic plants and animals lawfully obtained in another state or country may be imported.

(10) Denial. The department may deny the issuance of a permit or amend a permit upon failure to comply with terms and conditions of a permit or any provision of the Fish and Game Code or regulations adopted pursuant thereto. Any applicant who is denied a permit or an amendment to an existing permit by the department pursuant to these regulations may appeal that denial to the commission in writing, describing the basis for the appeal. The appeal shall be received by the commission or, if mailed, postmarked within 120 days of the department's denial.

(11) Revocation. Any permit issued pursuant to these regulations may be canceled or suspended at any time by the commission for failure to comply with the terms and conditions of the permit or for failure to comply with any provision of the Fish and Game Code or regulations adopted pursuant thereto.

NOTE

Authority cited: Sections 1050, 2118, 2120, 2301, 6401, 15004, 15005, 15600 and 15601, Fish and Game Code. Reference: ~~Sections 2116-2191, 2270-2272, and 3201-3204,~~ 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, Title 14, CCR, is amended to read:

§ 238. Sale, Possession, and Transportation of Live Aquatic Plants and Animals.

~~Importation of live aquatic plants and animals is governed by Section 236 of these regulations.~~ Aquatic plants and aquatic animals include, but are not limited to, aquatic plants and aquatic animals that are aquaculture products. Except as provided for by Section 236, all aquaculture products may be possessed, sold or transported in this state only in accordance with the following general terms and conditions:

(a) All aquaculture products possessed, sold or transported under the provisions of this section must have been legally reared or imported by an aquaculturist registered in this state. It is unlawful for any person involved in any aspect of the possession, transportation or sale of aquaculture products to refuse or otherwise fail to exhibit the aquaculture products, sales invoice, waybill, bill of lading, or other applicable accompanying documentation, equipment, substance, or item to a peace officer of the department upon the officer's demand to do so. Such inspection authority includes but is not limited to inspection of aquaculture products, vehicles or containers that may contain or transfer aquaculture products, and the water and equipment in which the aquaculture products are contained, transported or transferred.

(b) For purposes of this section, permitted businesses are those business permitted to conduct activities relating to aquatic plants and aquatic animals pursuant to the Fish and Game Code. Nothing in this section authorizes any activity not specifically authorized in the permit of such a business. The following provisions apply to transactions of permitted businesses and aquaculturists involving aquaculture products, and other aquatic plants and aquatic animals:

(1) A permitted business or registered aquaculturist may sell and transport live aquaculture products authorized by that registration to any other permitted business or aquaculturist authorized to possess the same species.

(2) All shipments of ~~authorized~~ aquaculture products shall be accompanied by a duplicate of a sales invoice ~~or waybill, waybill, bill of lading, or importation permit~~ showing the name of the producer, the producer's aquaculture registration number, date of shipment, the species being transported, the weight, volume or count of each species in the shipment, and the name and address of the consignee.

(3) A vehicle transporting live aquatic plants or aquatic animals and registered to, rented, leased or otherwise used by a person or business directly involved with the production or sale of live aquatic plants or aquatic 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, at least one-half inch in thickness, and displayed in plain view. The words "LIVE FISH"

shall be in a color which contrasts with their background and which can be easily read. 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 that vehicle is not transporting a load that by weight, number, or monetary value consists of fifty percent or more of live aquatic plants or aquatic animals. Department peace officers may at any time inspect shipments of aquatic plants or aquatic animals and accompanying documentation in, on, or with vehicles required to be labeled with the words "LIVE FISH". Inspection authority includes but is not limited to the stopping and inspecting of vehicles or containers that may contain water, aquatic plants or aquatic animals. An employee of the department, who is not a peace officer, has authority pursuant to this subsection and Section 238 (a) only when conducting an inspection at a Department of Food and Agriculture Border Protection Station.

~~(3)~~ (4) Duplicates of the required sale or shipping documents shall be retained by the producer, and by the shipper, if different from the producer, for a period of one year from the date of sale. The records shall be shown upon ~~written~~ demand by ~~the director~~ a peace officer of the department. The information contained in these documents is confidential except that such information may be disclosed in accordance with a proper judicial order in cases or actions instituted for enforcement of this section, or for investigation or ~~for~~ prosecution of possible violations of this section.

(c) A registered aquaculturist may sell and transport live those aquaculture products authorized by that registration to any of the following whose licenses or permits authorize the possession of the same live plants and animals for commercial purposes. Documents as described in Section 238(b)(2) shall accompany each shipment. Aquaculture products may not be stocked in any water of the state, except as provided for in Section 238.5 of these regulations.

(1) Scientific or educational establishments;

(2) Aquarium Dealer Permittees (See Section 227 of these regulations);

(3) Live Freshwater Bait Fish Licensees (See Sections 200 through 200.31 of these regulations);

(4) To any other legal purchaser or possessor for whom possession is legal.

(d) The following provisions apply to the owner or operator of any commercial establishment where aquaculture products, or imported live aquatic plants or aquatic animals are maintained alive for human consumption:

(1) Under no condition shall these aquaculture products or imported live aquatic plants or aquatic animals be stocked in any waters of this state. The aquaculture products or imported live aquatic plants or aquatic animals which are in possession or under the control of the owner and or operator must have documentation showing the direct source of the aquaculture products or imported wild aquatic plants or animals. The aquaculture products and the applicable documentation must be immediately made available, for inspection by the department, upon demand of a department official.

(2) The owner or operator may transport live aquaculture products or imported live aquatic plants or aquatic animals between aquaculture facilities, retail sales stores, and/or wholesale distribution points. Documents as described in Section 238(b)(2) shall

accompany each shipment and be displayed upon demand by a peace officer of the department.

(3) The owner or operator shall retain copies of all sales invoices or waybills, waybills, bills of lading or importation permits received with the products. ~~Such invoices or waybills shall be retained by the operator for a period of at least one year following receipt of the aquaculture products listed thereon, and such.~~ Such sales invoices or waybills, waybills, bills of lading, or importation permits shall be produced upon request demand of an official peace officer of the department.

(4) All aquaculture products and imported live aquatic plants or aquatic animals, except live shellfish, sold and leaving the premises of the operator shall be killed and accompanied by a sales receipt showing the date of purchase and name of business where purchased or be packaged in accordance with Section 240 of these regulations. The sales receipt, aquaculture products, aquatic plants, and aquatic animals shall be immediately made available, for inspection by the department, upon demand of a department peace officer.

(e) Marking and Tagging Requirements.

(1) Abalone.

(A) All abalone produced by an aquaculturist registered pursuant to Section 15101 of the Fish and Game Code may be possessed, harvested, sold and transported, provided the abalone are identifiable as being cultivated or are packaged in sealed containers as provided for in Section 240 of these regulations.

~~Such abalone are exempt from the size limits established by Section 8304 of the Fish and Game Code.~~

(B) Abalone which spend part of their life in marine waters of the state, other than while in an aquaculture facility, must have an identifying mark or tag approved by the Department, or be otherwise identified as a product of aquaculture by a method approved by the Commission. Such identifying mark or method must be approved, or a tag attached, prior to the abalone being placed in waters outside the aquaculture facility. For purposes of this section, the term "aquaculture facility" includes a hatchery, rearing facility, pen, cage or any similar structure or device.

(C) Any person other than a registered aquaculturist processing cultured abalone at the wholesale level must possess a revocable processing permit for cultured abalone, as issued by the department.

(f) Retail Sales of Aquaculture Products at an Aquaculture Facility. All aquaculture products sold at an aquaculture facility shall be dead at the time of sale except for:

(1) Aquaculture products sold under the provisions of Sections 238(c), 238(d)(2), or 238.5 of these regulations. Aquaculture products sold under provisions of Section 238.5 of these regulations may be transported live and stocked as provided for by Section 238.5 of these regulations by retail customers. Documents as described in Section 238(b)(2) shall accompany each shipment, and records as described in Section 238(b)(3) shall be maintained by the aquaculturist and the retail customer.

(2) Striped bass, hybrid striped bass, abalone, steelhead trout and sturgeon sold pursuant to the provisions of Section 240 of these regulations.

(3) Aquaculture produced shellfish purchased at retail and taken from the aquaculture facility by the purchaser need only be accompanied by a sales receipt showing the name and aquaculture registration number of the producer, the item(s) and quantity purchased and the date of purchase. All other shipments of aquaculture products shall be accompanied by a sales invoice ~~or waybill, waybill, bill of lading, or importation permit~~ as provided in Section 238(b)(2) of these regulations.

(4) Those freshwater bait fishes that would be legal for sale as live bait by a licensed Live Freshwater Bait Fish Dealer in the same sport fishing district or portion of sport fishing district in which the aquaculture facility is located (see Sections 4.10 through 4.30 and Sections 200.13 through 200.31 for legal live bait fishes).

NOTE

Authority cited: Sections 1050, 2301, 6401, 7701, 8040, 15005, 15200, 15202 and 15400, Fish and Game Code. Reference: Sections 17, 1050, 2301, ~~6400-6401, 7701-7708, 6400, 6401, 7701, 7702, 7702.1, 7703, 7704, 7705, 7706, 7707, 7708, 8040, 8304, 8371, 8435, 8436, 15005, 15200, 15202 and 15400-15415, 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, Title 14, CCR, is amended to read:

§ 240. Transportation, Possession and Sale of Sturgeon, Striped Bass, Hybrid Striped Bass (Striped Bass Crossed with White Bass), Abalone and Steelhead Trout Produced or Imported by Registered Aquaculturists for Aquaculture Purposes.

All sturgeon, striped bass, hybrid striped bass, abalone and steelhead trout produced or imported by registered aquaculturists for aquaculture purposes shall be transported, possessed and sold as provided in this section. For purposes of these regulations, aquaculture products are products of aquaculture as defined by Section 17 of the Fish and Game Code.

(a) Such aquaculture products must be accompanied by a duplicate of a sales invoice ~~or waybill, waybill, bill of lading, or importation permit~~ showing the name and address of the producer, the producer's aquaculture registration number, date of shipment, the species being transported, the weight, volume, or count of each species in the shipment, the name and address of the intended receiver and tag number if subject tag is required. It is unlawful for any person involved in any aspect of the possession, transportation, or sale of aquaculture products to delay, obstruct, or otherwise interfere with the inspection of aquaculture products, sales invoices, waybills, bills of lading, or other applicable accompanying documentation, by a peace officer of the department. All such documentation and aquaculture products shall be displayed immediately upon demand by the officer. Such inspection authority includes but is not limited to inspection of aquaculture products, vehicles or containers that may contain or transfer aquaculture

products, and the water and equipment in which the aquaculture products are contained, transported or transferred.

(b) A vehicle transporting live aquatic plants or animals and registered to, rented, leased or otherwise used by a person or business directly involved with the production or sale of live aquatic plants or aquatic 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, at least one-half inch in thickness, and displayed in plain view. The words "LIVE FISH" shall be in a color which contrasts with their background and which can be easily read. 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 that vehicle is not transporting a load that by weight, number, or monetary value consists of fifty percent or more of live aquatic plants or aquatic animals. Department peace officers may at any time inspect shipments of aquatic plants or aquatic animals and accompanying documentation in, on, or with vehicles required to be labeled with the words "LIVE FISH". Inspection authority includes but is not limited to the stopping and inspecting of vehicles or containers that may contain water, aquatic plants or aquatic animals. An employee of the department, who is not a peace officer, has authority pursuant to this subsection and subsection (a) above only when conducting an inspection at a Department of Food and Agriculture Border Protection Station.

~~(b)~~ (c) The consignee shall retain a copy of the bill of lading or similar accountable document for one year and make it available to the department upon request.

~~(c)~~ (d) Live aquaculture products are not subject to the provisions of subsections (c), (d) and (e). All dead aquaculture products or parts thereof, except hybrid striped bass sold whole or in the round with the head attached, transported or sold within the state pursuant to this section shall be either:

- (1) Packaged in sealed containers or boxes. Each container or box shall be clearly labeled showing a description of the contents and an identification of the shipper; or
- (2) Tagged with consecutively numbered cinch-up vinyl plastic spaghetti tags with a legend showing the name of the shipper along with the city and state of origin. The tag sequence shall be present on all invoices and waybills. Reusable tags may not be possessed in the State of California. When tags are removed from the aquaculture products they must be destroyed by cutting through that portion of the tag which contains the name of the shipper and the tag number; or
- (3) Clearly marked, using liquid nitrogen and a metal band, with an "A," 1/2- inch square, posterior to the head, anterior to the dorsal fin and above the lateral line. All aquaculture products shall be marked when alive but may be killed prior to transport or sale.

(d) No such dead aquaculture products may be possessed at a place where aquaculture products are sold unless packaged, marked or tagged in the manner described in subsection (c) except that operators or employees of retail stores, restaurants or other eating establishments may remove portions from packaged, marked or tagged aquaculture products when such portions are being displayed or prepared for actual sale to a consumer or for actual consumption on the premises.

- (e) Aquaculture products tagged, marked and/or packaged under subsection (c) above may be processed and repackaged or retagged by dealers possessing a revocable processing permit issued by the ~~Wildlife Protection Division~~ of the department specifically for striped bass, hybrid striped bass, sturgeon, abalone and steelhead trout. The permit shall be issued free of charge on a calendar year basis, or part thereof. When transported for sale such aquaculture products or portions of aquaculture products shall meet the transportation requirements of subsections (a) and (b).
- (f) Live aquaculture products may not be imported except in accordance with Section 236, Title 14, California ~~Administrative Code~~ of Regulations.
- (g) Live hybrid striped bass may not be imported or possessed by registered aquaculturists except under the terms of a permit issued by the department, specifying conditions under which these aquaculture products may be reared and transported. Requests for permits shall be submitted to the Department of Fish and Game ~~Aquaculture Development Section~~ Coordinator, 1416 Ninth Street, Sacramento, California 95814.
- (h) Live hybrid striped bass shall only be possessed or sold in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura, Lassen and Modoc counties.
- (i) All aquaculture products held live for retail sale shall be killed at the time of sale and be dead before leaving the retailer's premises, and under no condition may these aquaculture products be stocked in any lake, pond or stream.

NOTE

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