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The California aquaculture industry has continued to express strong interest in farming Barramundi in appropriate areas, e.g. in the desert and isolated from suitable Barramundi habitat, and the use of effective recirculation and containment to minimize disease risks.

### **Proposal Overview**

With a broader understanding of the risks associated with importation of live Barramundi, and development of adequate control procedures to address the risks to the natural environment, the Department is proposing to allow Barramundi importation under controlled conditions for aquaculture farming purposes and retail sales in a commercial establishment where it will be maintained alive for human consumption until killed and packaged for consumer use.

The Department's proposal will allow transportation of all life stages of Barramundi, including broodstock, between permitted aquaculture facilities for aquaculture farming purposes. Also permitted importers, wholesalers, and aquaculturists will be allowed to transport live Barramundi that are 300 mm to 500 mm in total length or weigh 1 to 3 pounds for retail sales at terminal markets in approved geographic regions. These narrow size and weight ranges coupled with strict geographic distribution ensures low probability of surviving to sexually maturity, if there is any accidental or illegal release into the natural environment. This size/weight requirement also ensures that the fish are out of the juvenile life stage to facilitate disease detection and management. All activities will be required to maintain effective biosecurity conditions at all times.

Additionally, passage of AB 820 (Strickland, Chapter 689, Statutes of 2005) resulted in substantial modification and/or addition to existing laws (sections 2116-2195 of the Fish and Game Code (FGC)) related to possession of wild animals in California. Also recent events involving captive restricted species (a human fatality incident and separate escaped animal incidents) have necessitated some reconsideration, modification, and addition to the existing regulations to address unanticipated issues.

The Department proposal achieves a balance between the Department's mission to protect California's natural resources and the strong demand

for new marketing opportunities and growth by California's aquaculture and seafood industries. The wildlife related changes are combined with the proposed aquaculture and seafood changes to reduce Commission workload and regulatory rulemakings.

This proposal complies with the Aquaculture Development Committee recommendation for support of the aquaculture industry's desire to farm new aquaculture products that are sustainable and economically viable.

The following proposed changes will amend the Restricted Species List for Barramundi and add four new Restricted Species permits and associated permitting requirements as follows:

#### Aquaculture and Seafood

- 1) Allow live importation, possession, transportation, and sales of Barramundi under an authorized permit.
- 2) Allow live retail sales of Barramundi that are 300 mm (11.8 inches) to 500 mm (19.6 inches) in total length or weigh 1 to 3 pounds into the counties north of the Tehachapi Mountains under an authorized permit.
- 3) Establish a new permit and requirements for live importation, possession, transportation and sales of a restricted aquatic species for aquaculture farming purposes by a registered aquaculturist.
- 4) Establish a new permit and requirements for live importation, possession, transportation and sales of a restricted species for retail sales from a commercial establishment where it will be maintained alive for human consumption until purchased when it will be killed and packaged for consumer use.
- 5) Propose regulations to address emergency contingency planning and cost recovery in the event of an escape or a containment failure involving a restricted species.

#### Wildlife

- 6) Establish a new permit and requirements for a person who is in the business of exhibiting animals, and clarify the qualifications to transport and possess a restricted species.
- 7) Establish a new permit and requirements for a person who is a resident or nonresident, is in the business of using birds to abate nuisance birds, and possesses the qualifications to import, transport, and possess a restricted species.

- 8) New and revised regulations to address issues such as breeding, escape and emergency contingency planning, public safety, identification of animals, and cost recovery for escape or emergency animal searches.

#### Regulatory Simplification

- 9) Move all restricted permit fees and add application form numbers into a new proposed Section 703 to facilitate annual fee updates pursuant to FGC Section 713 and 699, Title 14, CCR, and necessary form revisions.
- 10) Proposed additional minor changes are to align and clarify the regulations and reduce public confusion.

#### **Present Regulations**

Section 671, Title 14, CCR, contains the list of restricted species that are unlawful for any person to import, export, transport, maintain, dispose or use except as authorized in a permit issued by the department.

Section 671.1, Title 14, CCR, establishes the categories of permits that allow a person to import, export, transport, maintain, dispose of, or use for any purpose animals restricted by Section 671 to protect native wildlife, agriculture interests, animal welfare, and/or human health and safety.

671.7, Title 14, CCR, states the Department may issue permits for importation, possession, transportation and sales of aquatic animals listed in Section 671 for aquaculture purposes.

#### **Proposed Regulations**

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

Section 671 will be revised to allow for an exception for Barramundi importation and sales under certain conditions under of an authorized permit.

- 1) Subsection 671(c)(2)(K)2.i. will be removed since any wolf hybrid whelped before February 5, 1998 is now deceased.
- 2) Subsection 671(c)(3)(B)1. will be updated to add the common name Clawed frog to the genus *Xenopus*.
- 3) Subsections 671(c)(5)(J), (O) and (R) are proposed to updated with recent scientific name changes by the American Fisheries Society.
- 4) Subsection 671(c)(5)(U) is proposed to be modified to with an exception for importation, transportation, possession, or sales of

Barramundi. Live sales for human consumption of Barramundi that range from 1 to 3 pounds in weight or 300 mm (11.8 inches) to 500 mm (19.6 inches) in length will be allowed in all counties except for San Bernardino, Los Angeles, Orange, Riverside, San Diego, and Imperial, under the conditions set forth in Section 671.7.

- a. These narrow size and weight ranges coupled with strict geographic distribution ensures low probability of surviving to sexually maturity, if there is any accidental or illegal release into the natural environment.
  - b. This size/weight requirement also ensures that the fish are out of the juvenile life stage to facilitate disease detection and management.
  - c. These proposed changes will ensure Barramundi are not sold alive for human consumption unless they are within the appropriate size/weight range and from a location out of the southern area of California.
  - d. These restrictions only apply to live sales for human consumption and do not apply to shipments for aquaculture farming purposes.
- 5) Subsection 671(c)(7)(g) will be revised to apply to all Gila monsters in the genus *Heloderma* to strengthen enforcement measures and increase public safety from venomous reptiles.
  - 6) Subsection 671(c)(9)((D) will be revised to correct the species name for pink abalone.
  - 7) Subsection 671(c)(10) will be revised to add the common name quagga mussel to the genus *Dreissena*.
  - 8) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

Section 671.1 will be revised to establish four new Restricted Species Permits for Aquaculture, Native Species Exhibiting, Nuisance Bird Abatement and Wholesale/Importation. The section will also be revised to address breeding, escape/emergency contingency planning, public safety, identification of animals, and cost recovery for animal searches. Additional minor changes are proposed to align and clarify the regulations and reduce public confusion. The following list contains the substantial proposed changes:

- 1) Subsection 671.1(a)(2) will be modified to allow that the department may enter all holding facilities, vehicles, vessels or other places where restricted species are kept or may be kept and these inspections may be made at any time with or without prior notification. This proposed change will facilitate enforcement measures
- 2) Subsection 671.1(a)(3) will be modified to reduce the reporting requirement of name or address changes to five from 14 days to ensure quick Department notification.

- 3) Subsection 671.1(a)(4) will be modified to require all records be legible, written in English, and available at the holding facility. This proposed change will ensure all records are easy to understand and available for all inspections.
- 4) Subsection 671.1(a)(5) will be expanded to apply to the all importers and add poundage and sex, if available, to the transportation records. This proposed change will ensure adequate transportation records are retained for all importations into the state.
- 5) Subsection 671.1(a)(6) will be modified to state a business can qualify for a permit by having at least one full time employee who meets qualifications for obtaining a restricted species permit as specified in section 671.1(c)(1) and requires annually proof of continued employment for a full time employee if the owner doesn't possess the required qualifications.
- 6) Subsection 671.1(a)(9)(A) will be modified to clarify that the municipal treated sewage is not considered waters of the state for purposes of this section.
- 7) Subsection 671.1(a)(10) will be added to allow the Department to confer with other state and federal agencies or any other person or entity in order to verify information on the application or to determine if the importation, transportation, or possession of any animal requested will be in the best interest of the state and animal.
- 8) Subsection 671.1(b) will be modified to state the fees will be adjusted annually and moved to the new Section 703 and that the department may make amendments to existing permits under certain conditions.
- 9) Subsection 671.1(b)(1) through (8) was struck-out and the eight original permits and four new permits restructured alphabetically with the fees being move to the New Section 703 and the following proposed changes:
  - a. Subsection 671.1(b)(1) will contain the Animal Care permit regulations with minor clarification changes.
  - b. Subsections 671.1(b)(2) will contain the new Aquaculture permit and requirements for a person who is a registered aquaculturist to import, transport, possess, and offer for sale restricted species for aquaculture purposes.
  - c. Subsection 671.1(b)(3) will contain the AZA permit regulations with minor clarification changes.
  - d. Subsection 671.1(b)(4) will contain the Breeding permit regulations with a new requirement of a breeding plan.
  - e. Subsection 671.1(b)(5) will contain the Broker/Dealer permit regulations with minor clarification changes.
  - f. Subsection 671.1(b)(6) will contain the Exhibiting permit regulations with minor clarification changes.

- g. Subsection 671.1(b)(7) will contain the new Native Species Exhibiting permit and requirements for a person who is in the business of exhibiting native animals, and possesses the qualifications listed in Section 671.1(c)(1) to transport and possess restricted species.
  - h. Subsection 671.1(b)(9) will contain the new Nuisance Bird Abatement permit and requirements for a person who is a resident or nonresident, is in the business of using raptors to abate nuisance birds, and possesses the qualifications listed in Section 671.1(c)(1) to import, transport, and possess restricted species.
  - i. Subsection 671.1(b)(9) will contain the Research permit to require a research institution to demonstrate to the Department that they meet or exceed the requirements as part of a federal program or permit.
  - j. Subsection 671.1(b)(10) will contain the Shelter permit regulations with minor clarification changes.
  - k. Subsection 671.1(b)(11) will contain the Single Event Breeding for Exhibitors permit regulations with minor clarification changes.
  - l. Subsections 671.1(b)(12) will contain the new Wholesale/Importation permit and requirements for a person who is a resident and is in the wholesale or importation business of selling fish or aquaculture product to import, transport, possess, and offer for sale restricted species.
- 10) Subsection 671.1(c)(1) will be modified to require qualifying experience to be within 10 years of application data. Aquaculture and Wholesale/Importation permittees will be exempt from these qualifications and must instead follow the requirements in Section 671.7. This proposed change will establish better qualification requirements for these new permits.
- 11) Subsection 671.1(c)(2) will be modified to clarify the application process and exempt Aquaculture and Wholesale/Importation permittees from the application requirements listed in subsection 671.1(c)(2)(A) through (M) instead following the application requirements in Section 671.7. This proposed change will establish better application instructions requirements.
- 12) Subsection 671.1(c)(2)(F) will be amended to describe the requirements for a breeding plan for restricted species.
- 13) Subsection 671.1(c)(2)(G) will be added to establish new requirements for nonresident exhibitors to ensure the Department has the exhibiting schedule or any changes to ensure compliance.
- 14) Subsection 671.1(c)(2)(H) and 671.1(c)(2)(I) will be added to ensure adequate documentation of federal requirements.

- 15) Subsection 671.1(c)(2)(J) will be added to provide for "Emergency Action Plans" in the event of escape or injury involving a restricted species. This subsection will also enable cost-recovery from the permittee for Department involvement in capturing or ending the threat from escaped animals.
- 16) Subsection 671.1(c)(2)(K) will be added to provide "Unique Identification" for every elephant, non-human primate, bear, wolf, gila monster, and animal in the Family Felidae that is possessed under a restricted species permit.
- 17) Subsection 671.1(c)(2)(L) will be added to list the information needed from a Bona fide scientific institutions for the initial application and for each additional new species.
- 18) Subsection 671.1(c)(2)(M) will be added to ensure adequate documentation of federal requirements.
- 19) Subsection 671.1(c)(4) and (c)(5) will be modified and add (c)(6) to standardize denial, revocation and appeal procedures for permits.
- 20) Subsection 671.1(c)(6) will be change to (c)(7) and updated to move all permit fees to the new Section 703, clarify fee waiver conditions, and add an inspection fee waiver for an aquaculture or wholesale/importation permits, if their facilities have been previously inspected or have no fish health issues in the past year. This proposed change establishes clearer conditions for fee waivers.

Section 671.7 will be revised to add the following restricted species permit conditions for the Aquaculture and Wholesale/Importation permits. The following proposed changes establish adequate containment and control procedures to ensure protection of the natural environment. Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

- 1) Specify that a Section 236 importation permit is not required for aquatic animal importations under a Aquaculture and Wholesale/Importation restricted species permit.
- 2) Add definitions for closed-water system and terminal markets in subsection 671.7(a).
- 3) Specify the general permit requirements in subsection 671.7(b).
  - a. All live restricted species shall be held, raised, and transported in a closed-water system.
  - b. Facilities and transport systems must be designed so that biosecurity is maintained in the case of failure of the primary containment system.
  - c. Access to facilities and transport systems containing restricted species shall be restricted to assure against unauthorized removal of animals.

- d. Co-mingling or hybridization of restricted and non-restricted species is prohibited unless authorized by the Department.
  - e. Require a written Emergency Action Plan that describes the emergency measures in the event of an escape or a containment failure involving a restricted species. This subsection will also enable cost-recovery from the permittee for Department involvement in the capture of escaped animals or a containment failure.
  - f. In the event of adverse impacts arising from the farming of restricted species, or from violation of articles in this section, the Department is authorized to take appropriate and reasonable actions to remedy the situation.
- 4) Specify the permit application requirements in subsection 671.7(c)
- a. The following information shall accompany an application for each new restricted species permit, amendment, or renewal:
  - b. New Applicants and Permittees Requesting Amendments: An inventory of all restricted species requested including the common and scientific name of the each species, and the weight, volume, or count of each species.
  - c. Renewals: An inventory of all restricted species presently held at their aquaculture facility including the common and scientific name of the each species, and the weight, volume, or count of each species.
  - d. A written statement detailing the type of business that will be conducted with the restricted species requested.
  - e. A copy of the applicant's current aquaculture registration, if an aquaculture permit is being requested.
  - f. A copy of their Emergency Action Plan.
  - g. For annual renewal of a restricted species permit, the permittee shall report to the Department on the importation, production and/or dispensation of all restricted species their facility and on other information as specified in the permit.
- 5) Specify the live importation requirements in subsection 671.7(d).
- a. No shipment of restricted species into the state may be made without permit.
  - b. All importations of restricted species shall be accompanied by a bill of lading, and a copy of the restricted species permit shall accompany each shipment.
  - c. The authorized source of restricted species must have good record of husbandry and health management as determined by the Department.
  - d. Notification of each restricted species animal importation shall reach the Department regional office at least five days in advance

- of the importation date to allow for adequate time to organize Department staff for entry inspections.
- e. All restricted species animals imported into California under these regulations may be inspected by the Department at either the place of entry into the state or at another location as specified by the department.
- 6) Specify the live transportation requirements within the state in subsection 671.7(e).
- a. All shipments of live restricted species animals shall be accompanied by a bill of lading.
  - b. Notification of restricted species animal shipment(s) shall reach the Department regional office at least 48 hours in advance of the movement date.
  - c. Both the seller and consignee of restricted species shall retain a copy of the invoice, bill of lading or similar accountable document for three years.
- 7) Specify the sales requirements by permittees in subsection 671.7(f).
- a. Restricted species products may be sold alive by aquaculture facilities or fish businesses with the appropriate permit.
  - b. All shipping containers of restricted species animals shall be labeled as restricted aquaculture product unless specifically authorized in the restricted species permit.
  - c. All restricted species products sold shall be accompanied by a sales invoice, showing the name and address of the permittee, the restricted species permit number, date of sale, the common and scientific name of the species, and the weight, volume, or count of each species sold. All applicable documents shall be immediately made available to the department upon request.
  - d. No live restricted species product shall be stocked in private, public or fish-for-fee facilities or released in the waters of the state.
- 8) Specify the sales requirements by terminal markets in subsection 671.7(g).
- a. Terminal markets that purchase live restricted species product from permitted importer or permitted aquaculturist are not required to hold a restricted species permit provided the live restricted species product is maintained in a closed-water system.
  - b. All restricted species products sold or leaving the premises of a terminal market 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.
  - c. No live restricted species product shall be allowed to leave a terminal market or released in the waters of the state.

Section 703 will be added to contain the restricted species permit fees and various application form numbers that are incorporated by reference. The permit fees are adjusted annually pursuant to the provisions of Section 699 and FGC Section 713. The proposed additions are outlined below:

The new application fees are proposed to be double the present application fee since it takes twice as long to process new applications for restricted species permits. The inspection fees are proposed to be increased as shown in Table 1 for further discussion during the public notice period.

<b>Table 1. Estimated Inspection Costs for Restricted Species Permits</b>		
<i>100 mile local round trip <sup>1</sup></i>		
Inspection time	2 hrs.	\$91.91
Vehicle costs <sup>2</sup>	100 miles	\$55.00
Travel time <sup>3</sup>	1.7 hrs.	\$76.59
<i>Staff time and vehicle costs total</i>		<i>\$223.50</i>
Dept. overhead (21.91%)		\$48.97
<b>Total Cost</b>		<b>\$272.47</b>
<b>Estimated cost for 100 mile roundtrip = \$250</b>		
<i>850 mile round trip from Sacramento to southern CA <sup>1</sup></i>		
Inspection time	2 hrs.	\$91.91
Vehicle costs <sup>2</sup>	800 miles	\$440.00
Lodging and meals	1 day	\$140.00
Travel time <sup>3</sup>	13.3 hrs.	\$612.73
<i>Staff time and vehicle costs total</i>		<i>\$1284.64</i>
Dept. overhead (21.91%)		\$281.46
<b>Total Cost</b>		<b>\$1566.11</b>
<b>Estimated cost for 850 mile roundtrip = \$1500</b>		
Footnotes		
1) Salary estimates derived from 50/50 split of Associate and Senior Fish Pathologist positions.		
2) Vehicle costs based 55 cents per mile for private vehicles.		
3) Travel time based upon 60 mph.		

Subsection (A) 2009 Restricted Species Permit Fees

1. Restricted Species Permit Application (New)	[\$ 50.75-\$101.50]
2. Restricted Species Permit Application (Amended or Renewal)	\$ 50.75
3. Animal Care – Welfare Species	\$ 50.25
4. Animal Care - Detrimental Species	\$422.25
5. Aquaculture	\$422.25
6. AZA	\$422.25
7. Breeding	\$422.25
8. Resident Broker/Dealer	\$422.25
9. Nonresident Broker/Dealer	\$844.50
10. Resident Exhibiting	\$422.25
11. Nonresident Exhibiting	\$844.50
12. Native Species Exhibiting	\$422.25
13. Resident Nuisance Bird Abatement	\$422.25
14. Nonresident Nuisance Bird Abatement	\$844.50
15. Research – Detrimental Species	\$422.25
16. Shelter	\$ 50.25
17. Single Event Breeding for Exhibitors	\$ 50.25
18. Wholesale/Importation	\$422.25
19. Fee for two initial inspections	[\$169.00-\$3000.00]
20. Hourly inspection fee (> 2 hrs)	[\$ 42.25-\$100.00]

Subsection 703(B) to (H) Restricted Species Application Forms

- (B) New Restricted Species Permit Application  
FG 1312 (New 4/2009)
- (C) Native Species Exhibiting Permit Amendment Form  
FG 1312a (New 4/2009)
- (D) New Native Species Exhibiting Permit Application  
FG 1312b (New 4/2009)
- (E) Restricted Species Permit Inventory of Animals Form  
FG 1313 (New 4/2009)
- (F) Native Species Exhibiting Inventory of Animals Form  
FG 1313a (New 4/2009)
- (G) Restricted Species Permit Amendment Form  
FG 1313b (New 4/2009)
- (H) Restricted Species Nonresident Exhibiting Itinerary Form  
FG 1316 (New 4/2009)

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

Authority: Sections 200, 202, 205, 220, 713, 1002, 1050, 1053, 2118, 2120, 2122, 2150, 2150.2, 7701, 7708, 15005, 15102, 15200, 15202 and 15600, Fish and Game Code.

Reference: Section 200, 202, 205, 206, 220, 713, 1050, 1053, 1055, 2116, 2116.5, 2117, 2118, 2118.5, 2119, 2120, 2121, 2122, 2123, 2125, 2150, 2150.1, 2150.2, 2150.3, 2150.4, 2150.5, 2151, 2152, 2153, 2155, 2156, 2157, 2185, 2186, 2187, 2188, 2189, 2190, 2271, 7700, 7701, 7702, 7702.1, 7703, 8371, 8431, 15200, 15201, 15202, 15400 15505, and 15600, 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:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative would prevent registered aquaculturists to import, transport, possess or offer for sale those aquatic animals listed on the restricted species lists in Section 671, Title14, CCR or Fish and Game Code Section 2118 for aquaculture purposes.

(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 negative impact on the environment. Therefore, no mitigation is necessary.

VI. 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 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 is necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

(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:

The net impacts are unknown at this time.

(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. The proposed action will open up new marketing opportunities for the California's aquaculture and retail seafood industries which will offset the new permit fees and inspection costs.

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

The proposed regulation changes would provide a cost recovery mechanism to offset Department costs related to permitting restricted species and for escaped animals.

(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)

In December 2007, the Commission added Barramundi, *Lates calcarifer*, to the Restricted Species List in Section 671, Title 14, California Code of Regulations (CCR). The placement of Barramundi on the Restricted Species List addressed the potential for escaped Barramundi to adapt to California conditions and a virus found in juvenile Barramundi that was not fully understood at the time. Although the Commission agreed that Barramundi posed a threat to California's wildlife resources, the Department was directed to continue working with the aquaculture industry on a reasonable approach to support aquaculture and sales of Barramundi in California.

Since 2007, the Department has held discussions with California aquaculture industry representatives on reasonable measures that could be implemented to allow the development of aquaculture of Barramundi with facilities and practices that would ensure minimal risk to California wildlife resources.

In late 2008, the Department was also approached by a California seafood importer who is seeking to import live farmed Barramundi for human consumption. The seafood importer wants to import live Barramundi into retail commercial establishments where they will be maintained alive for human consumption until purchased when it will be killed and packaged for consumer use.

The California aquaculture industry has continued to express strong interest in farming Barramundi in appropriate areas, e.g. in the desert and isolated from suitable Barramundi habitat, and the use of effective recirculation and containment to minimize disease risks.

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## **Present Regulations**

Section 671, Title 14, CCR, contains the list of restricted species that are unlawful for any person to import, export, transport, maintain, dispose or use except as authorized in a permit issued by the department.

Section 671.1, Title 14, CCR, establishes the categories of permits that allow a person to import, export, transport, maintain, dispose of, or use for any purpose animals restricted by Section 671 to protect native wildlife, agriculture interests, animal welfare, and/or human health and safety.

671.7, Title 14, CCR, states the Department may issue permits for importation, possession, transportation and sales of aquatic animals listed in Section 671 for aquaculture purposes.

## **Proposed Regulations**

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

Section 671 will be revised to allow for an exception for Barramundi importation and sales under certain conditions under of an authorized permit.

- 1) Subsection 671(c)(2)(K)2.i. will be removed since any wolf hybrid whelped before February 5, 1998 is now deceased.

- 2) Subsection 671(c)(3)(B)1. will be updated to add the common name Clawed frog to the genus *Xenopus*.
- 3) Subsections 671(c)(5)(J), (O) and (R) are proposed to be updated with recent scientific name changes by the American Fisheries Society.
- 4) Subsection 671(c)(5)(U) is proposed to be modified to with an exception for importation, transportation, possession, or sales of Barramundi. Live sales for human consumption of Barramundi that range from 1 to 3 pounds in weight or 300 mm (11.8 inches) to 500 mm (19.6 inches) in length will be allowed in all counties except for San Bernardino, Los Angeles, Orange, Riverside, San Diego, and Imperial, under the conditions set forth in Section 671.7.
  - a. These narrow size and weight ranges coupled with strict geographic distribution ensures low probability of surviving to sexually maturity, if there is any accidental or illegal release into the natural environment.
  - b. This size/weight requirement also ensures that the fish are out of the juvenile life stage to facilitate disease detection and management.
  - c. These proposed changes will ensure Barramundi are not sold alive for human consumption unless they are within the appropriate size/weight range and from a location out of the southern area of California.
  - d. These restrictions only apply to live sales for human consumption and do not apply to shipments for aquaculture farming purposes.
- 5) Subsection 671(c)(7)(g) will be revised to apply to all Gila monsters in the genus *Heloderma* to strengthen enforcement measures and increase public safety from venomous reptiles.
- 6) Subsection 671(c)(9)(D) will be revised to correct the species name for pink abalone.
- 7) Subsection 671(c)(10) will be revised to add the common name quagga mussel to the genus *Dreissena*.
- 8) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

Section 671.1 will be revised to establish four new Restricted Species Permits for Aquaculture, Native Species Exhibiting, Nuisance Bird Abatement and Wholesale/Importation. The section will also be revised to address breeding, escape/emergency contingency planning, public safety, identification of animals, and cost recovery for animal searches. Additional minor changes are proposed to align and clarify the regulations and reduce public confusion. The following list contains the substantial proposed changes:

- 1) Subsection 671.1(a)(2) will be modified to allow that the department may enter all holding facilities, vehicles, vessels or other places where restricted species are kept or may be kept and these inspections may be made at any time with or without prior notification. This proposed change will facilitate enforcement measures
- 2) Subsection 671.1(a)(3) will be modified to reduce the reporting requirement of name or address changes to five from 14 days to ensure quick Department notification.

- 3) Subsection 671.1(a)(4) will be modified to require all records be legible, written in English, and available at the holding facility. This proposed change will ensure all records are easy to understand and available for all inspections.
- 4) Subsection 671.1(a)(5) will be expanded to apply to the all importers and add poundage and sex, if available, to the transportation records. This proposed change will ensure adequate transportation records are retained for all importations into the state.
- 5) Subsection 671.1(a)(6) will be modified to state a business can qualify for a permit by having at least one full time employee who meets qualifications for obtaining a restricted species permit as specified in section 671.1(c)(1) and requires annually proof of continued employment for a full time employee if the owner doesn't possess the required qualifications.
- 6) Subsection 671.1(a)(9)(A) will be modified to clarify that the municipal treated sewage is not considered waters of the state for purposes of this section.
- 7) Subsection 671.1(a)(10) will be added to allow the Department to confer with other state and federal agencies or any other person or entity in order to verify information on the application or to determine if the importation, transportation, or possession of any animal requested will be in the best interest of the state and animal.
- 8) Subsection 671.1(b) will be modified to state the fees will be adjusted annually and moved to the new Section 703 and that the department may make amendments to existing permits under certain conditions.
- 9) Subsection 671.1(b)(1) through (8) was struck-out and the eight original permits and four new permits restructured alphabetically with the fees being move to the New Section 703 and the following proposed changes:
  - a. Subsection 671.1(b)(1) will contain the Animal Care permit regulations with minor clarification changes.
  - b. Subsections 671.1(b)(2) will contain the new Aquaculture permit and requirements for a person who is a registered aquaculturist to import, transport, possess, and offer for sale restricted species for aquaculture purposes.
  - c. Subsection 671.1(b)(3) will contain the AZA permit regulations with minor clarification changes.
  - d. Subsection 671.1(b)(4) will contain the Breeding permit regulations with a new requirement of a breeding plan.
  - e. Subsection 671.1(b)(5) will contain the Broker/Dealer permit regulations with minor clarification changes.
  - f. Subsection 671.1(b)(6) will contain the Exhibiting permit regulations with minor clarification changes.
  - g. Subsection 671.1(b)(7) will contain the new Native Species Exhibiting permit and requirements for a person who is in the business of exhibiting native animals, and possesses the qualifications listed in Section 671.1(c)(1) to transport and possess restricted species.
  - h. Subsection 671.1(b)(8) will contain the new Nuisance Bird Abatement permit and requirements for a person who is a resident or nonresident, is in the business of

- using raptors to abate nuisance birds, and possesses the qualifications listed in Section 671.1(c)(1) to import, transport, and possess restricted species.
- i. Subsection 671.1(b)(9) will contain the Research permit to require a research institution to demonstrate to the Department that they meet or exceed the requirements as part of a federal program or permit.
  - j. Subsection 671.1(b)(10) will contain the Shelter permit regulations with minor clarification changes.
  - k. Subsection 671.1(b)(11) will contain the Single Event Breeding for Exhibitors permit regulations with minor clarification changes.
  - l. Subsections 671.1(b)(12) will contain the new Wholesale/Importation permit and requirements for a person who is a resident and is in the wholesale or importation business of selling fish or aquaculture product to import, transport, possess, and offer for sale restricted species.
- 10) Subsection 671.1(c)(1) will be modified to require qualifying experience to be within 10 years of application data. Aquaculture and Wholesale/Importation permittees will be exempt from these qualifications and must instead follow the requirements in Section 671.7. This proposed change will establish better qualification requirements for these new permits.
- 11) Subsection 671.1(c)(2) will be modified to clarify the application process and exempt Aquaculture and Wholesale/Importation permittees from the application requirements listed in subsection 671.1(c)(2)(A) through (M) instead following the application requirements in Section 671.7. This proposed change will establish better application instructions requirements.
- 12) Subsection 671.1(c)(2)(F) will be amended to describe the requirements for a breeding plan for restricted species.
- 13) Subsection 671.1(c)(2)(G) will be added to establish new requirements for nonresident exhibitors to ensure the Department has the exhibiting schedule or any changes to ensure compliance.
- 14) Subsection 671.1(c)(2)(H) and 671.1(c)(2)(I) will be added to ensure adequate documentation of federal requirements.
- 15) Subsection 671.1(c)(2)(J) will be added to provide for "Emergency Action Plans" in the event of escape or injury involving a restricted species. This subsection will also enable cost-recovery from the permittee for Department involvement in capturing or ending the threat from escaped animals.
- 16) Subsection 671.1(c)(2)(K) will be added to provide "Unique Identification" for every elephant, non-human primate, bear, wolf, gila monster, and animal in the Family Felidae that is possessed under a restricted species permit.
- 17) Subsection 671.1(c)(2)(L) will be added to list the information needed from a Bona fide scientific institutions for the initial application and for each additional new species.
- 18) Subsection 671.1(c)(2)(M) will be added to ensure adequate documentation of federal requirements.
- 19) Subsection 671.1(c)(4) and (c)(5) will be modified and add (c)(6) to standardize denial, revocation and appeal procedures for permits.

20) Subsection 671.1(c)(6) will be changed to (c)(7) and updated to move all permit fees to the new Section 703, clarify fee waiver conditions, and add an inspection fee waiver for an aquaculture or wholesale/importation permits, if their facilities have been previously inspected or have no fish health issues in the past year. This proposed change establishes clearer conditions for fee waivers.

Section 671.7 will be revised to add the following restricted species permit conditions for the Aquaculture and Wholesale/Importation permits. The following proposed changes establish adequate containment and control procedures to ensure protection of the natural environment. Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

- 1) Specify that a Section 236 importation permit is not required for aquatic animal importations under a Aquaculture and Wholesale/Importation restricted species permit.
- 2) Add definitions for closed-water system and terminal markets in subsection 671.7(a).
- 3) Specify the general permit requirements in subsection 671.7(b).
  - a. All live restricted species shall be held, raised, and transported in a closed-water system.
  - b. Facilities and transport systems must be designed so that biosecurity is maintained in the case of failure of the primary containment system.
  - c. Access to facilities and transport systems containing restricted species shall be restricted to assure against unauthorized removal of animals.
  - d. Co-mingling or hybridization of restricted and non-restricted species is prohibited unless authorized by the Department.
  - e. Require a written Emergency Action Plan that describes the emergency measures in the event of an escape or a containment failure involving a restricted species. This subsection will also enable cost-recovery from the permittee for Department involvement in the capture of escaped animals or a containment failure.
  - f. In the event of adverse impacts arising from the farming of restricted species, or from violation of articles in this section, the Department is authorized to take appropriate and reasonable actions to remedy the situation.
- 4) Specify the permit application requirements in subsection 671.7(c)
  - a. The following information shall accompany an application for each new restricted species permit, amendment, or renewal:
  - b. New Applicants and Permittees Requesting Amendments: An inventory of all restricted species requested including the common and scientific name of the each species, and the weight, volume, or count of each species.
  - c. Renewals: An inventory of all restricted species presently held at their aquaculture facility including the common and scientific name of the each species, and the weight, volume, or count of each species.
  - d. A written statement detailing the type of business that will be conducted with the restricted species requested.

- e. A copy of the applicant's current aquaculture registration, if an aquaculture permit is being requested.
  - f. A copy of their Emergency Action Plan.
  - g. For annual renewal of a restricted species permit, the permittee shall report to the Department on the importation, production and/or dispensation of all restricted species their facility and on other information as specified in the permit.
- 5) Specify the live importation requirements in subsection 671.7(d).
- a. No shipment of restricted species into the state may be made without permit.
  - b. All importations of restricted species shall be accompanied by a bill of lading, and a copy of the restricted species permit shall accompany each shipment.
  - c. The authorized source of restricted species must have good record of husbandry and health management as determined by the Department.
  - d. Notification of each restricted species animal importation shall reach the Department regional office at least five days in advance of the importation date to allow for adequate time to organize Department staff for entry inspections.
  - e. All restricted species animals imported into California under these regulations may be inspected by the Department at either the place of entry into the state or at another location as specified by the department.
- 6) Specify the live transportation requirements within the state in subsection 671.7(e).
- a. All shipments of live restricted species animals shall be accompanied by a bill of lading.
  - b. Notification of restricted species animal shipment(s) shall reach the Department regional office at least 48 hours in advance of the movement date.
  - c. Both the seller and consignee of restricted species shall retain a copy of the invoice, bill of lading or similar accountable document for three years.
- 7) Specify the sales requirements by permittees in subsection 671.7(f).
- a. Restricted species products may be sold alive by aquaculture facilities or fish businesses with the appropriate permit.
  - b. All shipping containers of restricted species animals shall be labeled as restricted aquaculture product unless specifically authorized in the restricted species permit.
  - c. All restricted species products sold shall be accompanied by a sales invoice, showing the name and address of the permittee, the restricted species permit number, date of sale, the common and scientific name of the species, and the weight, volume, or count of each species sold. All applicable documents shall be immediately made available to the department upon request.
  - d. No live restricted species product shall be stocked in private, public or fish-for-fee facilities or released in the waters of the state.
- 8) Specify the sales requirements by terminal markets in subsection 671.7(g).
- a. Terminal markets that purchase live restricted species product from permitted importer or permitted aquaculturist are not required to hold a restricted species permit provided the live restricted species product is maintained in a closed-water system.

- b. All restricted species products sold or leaving the premises of a terminal market 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.
- c. No live restricted species product shall be allowed to leave a terminal market or released in the waters of the state.

Section 703 will be added to contain the restricted species permit fees and various application form numbers that are incorporated by reference. The permit fees are adjusted annually pursuant to the provisions of Section 699 and FGC Section 713. The proposed additions are outlined below:

The new application fees are proposed to be double the present application fee since it takes twice as long to process new applications for restricted species permits. The inspection fees are proposed to be increased as shown in Table 1 for further discussion during the public notice period.

Subsection (A) 2009 Restricted Species Permit Fees

1. Restricted Species Permit Application (New)	[\$ 50.75-\$101.50]
2. Restricted Species Permit Application (Amended or Renewal)	\$ 50.75
3. Animal Care – Welfare Species	\$ 50.25
4. Animal Care - Detrimental Species	\$422.25
5. Aquaculture	\$422.25
6. AZA	\$422.25
7. Breeding	\$422.25
8. Resident Broker/Dealer	\$422.25
9. Nonresident Broker/Dealer	\$844.50
10. Resident Exhibiting	\$422.25
11. Nonresident Exhibiting	\$844.50
12. Native Species Exhibiting	\$422.25
13. Resident Nuisance Bird Abatement	\$422.25
14. Nonresident Nuisance Bird Abatement	\$844.50
15. Research – Detrimental Species	\$422.25
16. Shelter	\$ 50.25
17. Single Event Breeding for Exhibitors	\$ 50.25
18. Wholesale/Importation	\$422.25
19. Fee for two initial inspections	[\$169.00-\$3000.00]
20. Hourly inspection fee (> 2 hrs)	[\$ 42.25-\$100.00]

Subsection 703(B) to (H) Restricted Species Application Forms

- (B) New Restricted Species Permit Application  
FG 1312 (New 4/2009)
- (C) Native Species Exhibiting Permit Amendment Form

- FG 1312a (New 4/2009)
- (D) New Native Species Exhibiting Permit Application  
FG 1312b (New 4/2009)
- (E) Restricted Species Permit Inventory of Animals Form  
FG 1313 (New 4/2009)
- (F) Native Species Exhibiting Inventory of Animals Form  
FG 1313a (New 4/2009)
- (G) Restricted Species Permit Amendment Form  
FG 1313b (New 4/2009)
- (H) Restricted Species Nonresident Exhibiting Itinerary Form  
FG 1316 (New 4/2009)

**Table 1. Estimated Inspection Costs for Restricted Species Permits**

<i>100 mile local round trip <sup>1</sup></i>		
Inspection time	2 hrs.	\$91.91
Vehicle costs <sup>2</sup>	100 miles	\$55.00
Travel time <sup>3</sup>	1.7 hrs.	\$76.59
<i>Staff time and vehicle costs total</i>		<i>\$223.50</i>
Dept. overhead (21.91%)		\$48.97
<b>Total Cost</b>		<b>\$272.47</b>
<b>Estimated cost for 100 mile roundtrip = \$250</b>		
<i>850 mile round trip from Sacramento to southern CA <sup>1</sup></i>		
Inspection time	2 hrs.	\$91.91
Vehicle costs <sup>2</sup>	800 miles	\$440.00
Lodging and meals	1 day	\$140.00
Travel time <sup>3</sup>	13.3 hrs.	\$612.73
<i>Staff time and vehicle costs total</i>		<i>\$1284.64</i>
Dept. overhead (21.91%)		\$281.46
<b>Total Cost</b>		<b>\$1566.11</b>
<b>Estimated cost for 850 mile roundtrip = \$1500</b>		
Footnotes		
1) Salary estimates derived from 50/50 split of Associate and Senior Fish Pathologist positions.		
2) Vehicle costs based 55 cents per mile for private vehicles.		
3) Travel time based upon 60 mph.		