

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

Amend Sections 671, 671.1 and 671.7 and Add Section 703
Title 14, California Code of Regulations
Re: New Restricted Species Permits and Requirements

- I. Date of Initial Statement of Reasons: April 7, 2009
- II. Date of Amended Initial Statement of Reasons: January 5, 2010
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: May 14, 2009
Location: Sacramento, CA
 - (b) Discussion Hearing: Date: June 25, 2009
Location: Woodland, CA
 - (c) Discussion Hearing: Date: August 6, 2009
Location: Woodland, CA
 - (d) Re-Notice Hearing: Date: February 4, 2010
Location: Sacramento, CA
 - (e) Discussion Hearing: Date: March 4, 2010
Location: Upland, CA
 - (f) Adoption Hearing: Date: April 8, 2010
Location: Monterey, CA
- IV. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

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, **compete with or prey upon native fish, and act as a vector for** 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 **until purchased** for human consumption when **they** 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.

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 importation, aquaculture and sales of live barramundi under controlled conditions as follows:**

- 1. Importation of live barramundi from an approved distributor under controlled conditions specified on the permit.**
- 2. Aquaculture farming purposes by a registered aquaculturist under controlled conditions specified on the permit.**
- 3. Retail sales for human consumption of live barramundi from 1 to 3 pounds where it will be sold dead and packaged before leaving the commercial establishment.**

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. **Narrow** size and

weight ranges coupled with strict geographic distribution ensures low probability of surviving to **sexual** 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 **wildlife** species (a human fatality incident and separate escaped animal incidents) have necessitated reconsideration, modification, and/or addition to the existing regulations to address **emerging** 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 changes **related to capture of restricted wildlife** 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 for human consumption that are 300 mm (11.8 inches) to 500 mm (19.6 inches) in total length, or weigh 1 to 3 pounds.
- 3) Allow live retail sales of barramundi in all counties except **Santa Barbara, Ventura**, San Bernardino, Los Angeles, Orange, Riverside, San Diego, and Imperial.
- 4) 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.

- 5) 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 **before leaving the establishment.**
- 6) Propose regulations to address emergency contingency planning and cost recovery in the event of an escape or a containment failure involving a restricted species.

In addition, the restricted species aquaculture permit portion of this proposal is structured with four options to facilitate Commission discussion as follows:

Option 1 – Live sales of restricted aquaculture product to the public to be restricted to northern California areas and all importers, producers and sellers must be permitted.

Option 2 – No geographic restriction and all importers, producers and sellers must be permitted.

Option 3 – Live sales of restricted aquaculture product to the public to be restricted to northern California areas and terminal markets that purchase from a permitted source and only sell restricted aquaculture product to the public are not required to be permitted.

Option 4 – No geographic restriction and terminal markets that purchase from a permitted source and only sell restricted aquaculture product to the public are not required to be permitted.

Wildlife

- 7) 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.
- 8) 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.
- 9) 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 searches **involving a restricted species.**

Regulatory Simplification

- 10) 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.
- 11) Propose additional minor changes to align and clarify the regulations and reduce public confusion.

Effects of Invasive Species on Natural Resources

Californians have benefited from the introduction of plant and animal species necessary for food or other human pursuits; however, there are many other introduced species that can wreak havoc on the state's environment and economy. Those species that cause harm and once established, spread quickly from their point of introduction are often called "invasive."

Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat. Through their impacts on natural ecosystems, agricultural and other developed lands, water delivery and flood protection systems, invasive aquatic species may also negatively affect human health and/or the economy. Examples of direct impact to human activities include the clogging of navigable waterways and water delivery systems, weakening flood control structures, damaging crops, introducing diseases to animals that are raised or harvested commercially, and diminishing of fish populations.

A large population of an invasive species can start from a very small number of individuals, and those individuals can be difficult to see, so they may easily go unnoticed. The tiny young of invasive shellfish or insects, a fragment of an aquatic weed or a single plant ready to release its seeds can be enough to start off a population that will ultimately become a multimillion dollar headache for the state.

Evaluation of Risk from Aquaculture and Live Sales of Barramundi

Most of the current testimony on this proposal has been focused upon the establishment of self-sustaining populations in marine waters, but the short term impact to native freshwater species, their environment and established fisheries based on non-native fisheries must also be considered. Past importations and introductions of non-native species emphasize the difficulty to assess the full impact to California's highly varied natural environment and its native species (Dill and Cordone 1997).

The following outline was developed to provide a framework for risk evaluation to facilitate discussion of the potential risks associated with aquaculture and live sales of barramundi.

1. Biological Factors

a. Feeding behavior

- i. Barramundi are aggressive predators and mainly nocturnal feeders. In the wild, a broad range of food items are eaten. Adults feed on crustaceans, mollusks, and smaller fishes. Juveniles feed on zooplankton, insects, and other smaller prey. They are generally placid in the aquarium and feed in daylight, although the feeding reflex is still violent and sudden (Native Fish Australia).

b. Reproductive patterns

- i. The species is sequentially hermaphroditic. They start life as males, mature at 3-4 years, and most fish undergo sex reversal to females around 5 years of age (Native Fish Australia).
- ii. Barramundi are highly fecund with a single female of 120 cm total length producing 30-40 million eggs. Larvae use the estuary as a nursery grounds for several months before moving into freshwater (FAO 2009).
- iii. Barramundi larvae and eggs can't survive in freshwater (Sea Watch 2006).

c. Life cycle requirements

- i. Barramundi are a catadromous, euryhaline, species found in freshwater, brackish, and marine habitats of the tropical and semi-tropical Indo-Pacific Region from the Persian Gulf to Japan. It is a relatively hardy species that tolerates crowding and has wide physiological tolerances (FAO 2009),

d. Normal temperature tolerances

- i. Natural environment 15 - 28°C (59 - 82.4°F) (Froese and Pauly 2009).
- ii. Barramundi stop feeding below 20°C (68°F) and death occurs below 13°C (55.4°F) (Sea Watch 2006).

2. Native and Listed Species and Established Non-native Fisheries Factors

a. Potential to compete for food and habitat

- i. The native freshwater fishes of California are in a general state of decline, and a new non-native fish species became established in California every three years for the past 20 years (Moyle and Davis 2000).

- ii. Any non-authorized release or escape of a non-native species into the wild environment must be considered a serious threat given the depressed status of native stocks.
 - iii. There is strong concern for damage to commercial and recreational established fisheries for non-native species.
- b. Potential to reduce populations through predation.
 - i. While the Seafood Watch Report (2006) is supportive of closed system aquaculture for barramundi, this report also acknowledges a high risk to wild stocks if the fish escape from an aquaculture facility and are able to survive in the natural environment.
 - ii. There is strong concern for predation damage to established recreational fisheries for non-native species in public and private lakes and waterways.
- c. Potential to physically or chemically alter habitat.
 - i. None have been identified at this time.
- d. Potential to survive and/or thrive in state waters/habitats
 - i. The potential for barramundi to survive in northern California waters ranges from low for marine waters to moderate for the summer months in Sacramento-San Joaquin Delta. (Delta).
 - 1. NOAA (2009) shows northern California marine water temperature range from 11.7 – 18.8°C (53 – 66°F).
 - 2. DWR (2004) shows Delta water temperature ranges from 7.1 – 26.9°C (44.8 – 80.4°F) with monthly temperatures usually above 20°C (68°F) from July to October.
 - ii. The potential for barramundi to survive in southern California waters ranges from low for marine waters to moderate for inland waters.
 - 1. NOAA (2009) shows southern California marine water temperature range from 13.3 – 21.1°C (55 – 70°F).
 - 2. The inland water temperature along the south Pacific Coast ranges from 9.2 - 28°C (48.6 – 82.4°F) (Moss Landing Marine Laboratories 2005, Lyons and Birosik 2007).
 - 3. The eastern inland waters have a broader water temperature range of 9.3 – 29.1°C (48.8 – 84.3°F) at Lake Havasu on the Colorado River which is usually above 20°C (68°F) from May through October (USBR unpublished data).

- iii. Dill and Cordone (1997) documented some fish species surviving lethal water temperatures near warm water refugia that exist near power plant and sewer outfalls.
 - 1. This potential is very low throughout most of California.
 - 2. It could be considered low to moderate in the Delta and southern California marine lagoons.
 - iv. Climate change could increase the risk potential in Southern California. Kiparsky and Gleick (2003) report that the average temperature in southern California has risen 2.0°C (3.6°F) since 1900 with the highest increase coming in the second half of the 20th century (NASA 2007).
 - e. Potential to reproduce in state waters
 - i. The potential of a self-sustaining population is presently minimal throughout most of California.
 - f. Is barramundi considered to be an invasive species in other states or countries?
 - i. It is not known to be an invasive species in any location, although it exists in Florida.
- 3. Disease Factors
 - a. What diseases or parasites might these species carry?
 - i. Lymphocystis disease is from an iridovirus and causes a benign tumor-like growth on the surface of fish.
 - ii. The encephalitis virus (nodavirus) infecting barramundi is also referred to as viral nervous necrosis virus (VNNV). This virus is very difficult to identify at the 1" fry stage, the most economical size to import. Vertical transmission is expected to occur, but the actual means remains unclear.
 - b. Are these diseases already in California?
 - i. While common in many areas of the world, lymphocystis is virtually never reported from California waters.
 - ii. VNNV is not presently found in California's freshwater and the possible pathways of infection and species at risk are not fully understood at this time.
 - c. Could these diseases impact native species?
 - i. Yes. This was one of the reasons that barramundi was added to the Restricted Species list in 2007. It has led to development of proposed size criteria for the proposed regulations to prevent establishment of natural populations.
 - d. Can the disease risks be negated by actions and testing?
 - i. Disease screening of imported broodstock, improved aquaculture hygiene, low larval densities, and optimal

larval and broodstock nutrition can reduce the risk. (FAO 2009).

4. Factors Associated with Movement and Sales

a. Live market sales

- i. There are at least several thousand locations that sell live aquatic animals for human consumption in California, and barramundi would be a highly desirable species.
- ii. The terminal market proprietors and their staff must implement the new regulations, which could be difficult due to language and cultural barriers.
- iii. Substantial initial education and annual follow-up by the permitted importer is necessary for the permitted or non-permitted terminal market measures to be effective.

b. Proximity to suitable habitat at the sales destination

- i. The southern California sub-tropical fresh and marine waters are suitable for barramundi during much of the year.

c. Transportation factors

- i. With several thousand live markets and the strong interest in barramundi, there is a serious potential risk from moving live fish around California in proximity to southern state waters.

d. Could it be considered a desirable recreational animal?

- i. Barramundi are an exciting and popular target for anglers in northern Australia where they are highly prized for their good fighting ability.
- ii. Barramundi fee fishing operations in private ponds are popular in Florida.

e. Is there a chance for illegal releases in the hopes of creating a recreational fishery?

- i. Yes. As with northern pike and other non-native game fish, it is possible that an angler will try to establish a fishery in their home waters, if an easy source of live fish could be found.

f. What is the potential that this species would be utilized for live bait?

- i. This has very low probability at this time.

5. Factors Associated with Holding Facilities

a. Proximity of suitable habitat at the holding facility, culture facility, or transportation corridors

- i. This must be evaluated on a site-specific basis.

b. Characteristics of holding facility

- i. The proposed facility requirements should reduce the risk potential.

- c. Quality of rearing facility
 - i. This must be evaluated on a site-specific basis.
- d. Risk of escapement
 - i. This must be evaluated on a site-specific basis.
- e. Existing bio-security at the facility
 - i. This must be evaluated on a site-specific basis.

Final Conclusion

The proposed Options 1 and 2 that require all importers, producers and sellers to be permitted with the lowest overall risk to native species. If the terminal markets are exempted from holding a permit then the risk is moderate (Option 3 and 4), but only if strong regulatory compliance is achieved at these terminal markets. If poor regulatory compliance is achieved at any level, the risk should be considered moderate to high, depending upon the level of non-compliance.

The proposed Options 1 and 3 with regulations limiting live sales of barramundi to Northern California within the size criteria will present a low risk to native species. If poor regulatory compliance is achieved at any level, the risk should be considered low to moderate, depending upon the level of non-compliance.

If only the proposed size criteria is adopted in Option 4, then the risk will likely be moderate depending whether the terminal market is located in northern or southern California. If poor regulatory compliance is achieved at any level, the risk should be considered moderate to high, depending upon the level of non-compliance.

The key to overall success is adequate communication, education and enforcement at all levels of the importation chain. However, good communication and education within the importation industry for existing regulations has been difficult in the past.

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 **four options with** the following changes to current regulations:

Option 1 – Geographic restrictions and everyone must be permitted

Section 671 will be revised to allow for an exception for barramundi importation and sales under certain conditions **with** 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. **Additional changes were added for clarity.**
- 2) **Subsection 671(c)(2)(B) is proposed to be updated with a recent Order name change to Xenarthra.**
- 3) Subsection 671(c)(3)(B)1. will be updated to add the common name clawed frog to the genus *Xenopus*.
- 4) Subsections 671(c)(5)(J), (O) and (R) are proposed to be updated with recent scientific name changes by the American Fisheries Society. **Additional name changes for tilapia are proposed to provide the correct scientific name.**
- 5) **Subsection 671(c)(5)(U) is proposed to be modified to include 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 total length will be allowed in all counties except for Santa Barbara, Ventura, 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.
 - e. **Two additional counties, Santa Barbara and Ventura, are proposed to be added to the barramundi “live sales” exclusion area due to their proximity and easy access to live markets in the Los Angeles area.**
 - f. **The proposed size criteria is proposed to be moved into a new subsection 671(c)(5)(U)(2), the county restriction is proposed to be moved in a new subsection 671(c)(5)(U)(3), and the requirement of adhering to Section 671.7 conditions is proposed to be moved into a new subsection 671(c)(5)(U)(1).**
- 6) 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.
 - 7) Subsection 671(c)(9)(D) will be revised to correct the species name for pink abalone.
 - 8) Subsection 671(c)(10) will be revised to add the common name quagga mussel to the genus *Dreissena*.
 - 9) 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 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 **annual** 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 **moved** 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. The breeding plan requirement was modified to include exhibition purposes and the addition of a licensed professional with a working history of 5 years
 - 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 of 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. **Add licensed professionals in breeding or exhibition of restricted species to the list of entities that may certify if there is a legitimate need for the breeding and add exhibition to the list of legitimate breeding needs.**
- 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)(J)(4) will be added to require the permit holder to immediately report the escape or release of the wild animal to the Department and the nearest law enforcement agency.**
- 17) 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. **The compliance date for this new requirement was changed to December 31, 2010.**
- 18) **Add subsection 671.1(c)(2)(K)(3) to state the Department shall maintain the unique identifiers for each animal until they are deceased.**
- 19) Subsection 671.1(c)(2)(L) will be added to list the information needed from bona fide scientific institutions for the initial application and for each additional new species.
- 20) Subsection 671.1(c)(2)(M) will be added to ensure adequate documentation of federal requirements.
- 21) **Add subsection 671.1(c)(2)(N) to require the permit holder to notify the Department within 10 days when taking possession or transferring an animal or when an animal is deceased.**
- 22) Subsection 671.1(c)(4) and (c)(5) will be modified and add (c)(6) to standardize **and update** denial, revocation and appeal procedures for permits.
- 23) **Subsection 671.1(c)(4)(A) will be added to allow the Department to deny a permit or amendment of an existing permit request if the application and/or additional material does not support the statement of purpose.**
- 24) Subsection 671.1(c)(6) will be **moved** 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 aquaculture or wholesale/importation permits, if their facilities have been previously inspected or **had** 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 **with the removal of the permit exception** 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 **at** 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 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) **with the removal of the permit exception.**
 1. 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 **subsection 240(c)** of these regulations. **The subsection (c) of 240 was added for clarification.**
 2. No live restricted species product shall be allowed to leave a terminal market or **be released in any** 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.

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.

Subsection (a) 2010 Restricted Species Permit Fees

1. Restricted Species Permit Application (New)	[\$51.25-\$101.50]
2. Restricted Species Permit Application (Amended or Renewal)	\$ 51.25
3. Animal Care – Welfare Species	\$ 50.75
4. Animal Care - Detrimental Species	\$426.00
5. Aquaculture	\$426.00
6. AZA	\$426.00
7. Breeding	\$426.00
8. Resident Broker/Dealer	\$426.00
9. Nonresident Broker/Dealer	\$851.75
10. Resident Exhibiting	\$426.00
11. Nonresident Exhibiting	\$851.75
12. Native Species Exhibiting	\$426.00
13. Resident Nuisance Bird Abatement	\$426.00
14. Nonresident Nuisance Bird Abatement	\$851.75
15. Research – Detrimental Species	\$426.00
16. Shelter	\$ 50.75
17. Single Event Breeding for Exhibitors	\$ 50.75
18. Wholesale/Importation	\$426.00

- 19. Fee for two initial inspections
- 20. Hourly inspection fee (> 2 hrs)

[\$170.50-\$3000.00]
 [\$ 42.50-\$100.00]

Table 1. Estimated Inspection Costs for Restricted Species Permits		
<i>100 mile local round trip ¹</i>		
Inspection time	2 hrs.	\$91.91
Vehicle costs ²	100 miles	\$55.00
Travel time ³	1.7 hrs.	\$76.59
<i>Staff time and vehicle costs total</i>		<i>\$223.50</i>
Dept. overhead (21.91%)		\$48.97
Total Cost		\$272.47
Estimated cost for 100 mile roundtrip = \$250		
<i>850 mile round trip from Sacramento to southern CA ¹</i>		
Inspection time	2 hrs.	\$91.91
Vehicle costs ²	800 miles	\$440.00
Lodging and meals	1 day	\$140.00
Travel time ³	13.3 hrs.	\$612.73
<i>Staff time and vehicle costs total</i>		<i>\$1284.64</i>
Dept. overhead (21.91%)		\$281.46
Total Cost		\$1566.11
Estimated cost for 850 mile roundtrip = \$1500		
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 703(B) to (H) Restricted Species Application Forms

- (B) New Restricted Species Permit Application
FG 1312 (New 10/2009)
- (C) Native Species Exhibiting Permit Amendment Form
FG 1312a (New 10/2009)
- (D) New Native Species Exhibiting Permit Application
FG 1312b (New 10/2009)
- (E) Restricted Species Permit Inventory of Animals Form
FG 1313 (New 10/2009)
- (F) Native Species Exhibiting Permit Inventory of Animals Form

- FG 1313a (New 10/2009)
- (G) Restricted Species Permit Amendment Form
FG 1313b (New 10/2009)
- (H) Restricted Species Nonresident Exhibiting Itinerary Form
FG 1316 (New 10/2009)

Option 2 – No geographic restrictions and everyone must be permitted

All proposed changes in Option 1 are included in Option 2 except for the following subsection.

Subsection 671(c)(5)(U) is proposed to be modified as follows:

- 1) The proposed county restriction will be removed.
- 2) The proposed size criteria is proposed to be moved into a new subsection 671(c)(5)(U)(2) and the requirement of adhering to Section 671.7 conditions is proposed to be moved into a new subsection 671(c)(5)(U)(1).

Option 3 - Geographic restrictions and terminal markets not permitted

All proposed changes in Option 1 are included in Option 3 except for the following subsections.

Subsection 671.7 is proposed to be modified as follows:

- 1) Keep the original definition for terminal markets in subsection 671.7(a).
- 2) Keep the original sales requirements by terminal markets in subsection 671.7(g) with the following changes.
 - 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 **subsection 240(c)** of these regulations. **The subsection (c) of 240 was added for clarification.**
 - c. No live restricted species product shall be allowed to leave a terminal market or **be released in any** waters of the state.

Option 4 – No geographic restrictions and terminal markets are permitted

All proposed changes in Option 1 are included in Option 4 except for the following subsections.

Subsection 671(c)(5)(U) is proposed to be modified as follows:

- 1) The proposed county restriction will be removed.
- 2) The proposed size criteria is proposed to be moved into a new subsection 671(c)(5)(U)(2) and the requirement of adhering to Section 671.7 conditions is proposed to be moved into a new subsection 671(c)(5)(U)(1).

Subsection 671.7 is proposed to be modified as follows:

- 1) Keep the original definition for terminal markets in subsection 671.7(a).
- 2) Keep the original sales requirements by terminal markets in subsection 671.7(g) with the following changes.
 - 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 **subsection 240(c)** of these regulations. **The subsection (c) of 240 was added for clarification.**
 - c. No live restricted species product shall be allowed to leave a terminal market or **be released in any** waters of the state.

- (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:

Department of Water Resources. 2004. Water Quality Conditions in the Sacramento-San Joaquin Delta during 1997-2000.

http://www.water.ca.gov/pubs/waterquality/water_quality_conditions_in_the_sacramento-san_joaquin_delta_during_1997-2000/quadrpt97_00_low_res.pdf

Dill, William A. and Almo J. Cordone. 1997. History And Status of Introduced Fishes In California, 1871 – 1996. Fish Bulletin 178.

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FAO. 2009. Cultured Aquatic Species Information Programme. Text by Rimmer, M.A. In: FAO Fisheries and Aquaculture Department. Rome.

http://www.fao.org/fishery/culturedspecies/Lates_calcarifer/en

Froese, R. and D. Pauly. Editors. 2009. FishBase. World Wide Web electronic publication. www.fishbase.org

Kiparsky, Michael and Peter H. Gleick. 2003. Climate Change and California Water Resources: A Survey and Summary of Literature. Pacific Institute.

http://www.pacinst.org/reports/climate_change_and_california_water_resources.pdf

Lyons, J.M. and S. Birosik. 2007. Water Quality in the Dominguez Channel and Los Angeles/Long Beach Harbor Watershed Management Area Under the Surface Water Ambient Monitoring Program Fiscal Year 2002-2003. California Regional Water Quality Control Board, Los Angeles Region.

http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/reports/r4_swamp_report_dominguez_channel.pdf

Moss Landing Marine Laboratories. 2005. Water Quality in the Santa Monica Bay Watershed. Surface Water Ambient Monitoring Program Under the Surface Water Ambient Monitoring Program Fiscal Year 2001-2002. California Regional Water Quality Control Board, Los Angeles Region.

http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/r4smb_swampfinalrpt.pdf

Moyle, P.B. and L. H. Davis. 2000. A list of freshwater, anadromous, and euryhaline fishes of California. California Fish and Game 86:244-258

Native Fish Australia. World Wide Web electronic publication.
www.nativefish.asn.au/barramundi.html

National Aeronautics and Space Administration. 2007. Earth Observatory:
Image of the Day Report. April 17, 2007.
<http://earthobservatory.nasa.gov/IOTD/view.php?id=7596>

National Oceanic and Atmospheric Administration. 2009. NDOC Coastal
Water Temperature Guide.
<http://www.nodc.noaa.gov/dsdt/cwtg/index.html>

Seafood Watch. 1996. Seafood Report - Farmed Barramundi. Monterey
Bay Aquarium. December 19, 2006.
[http://www.montereybayaquarium.org/cr/cr_seafoodwatch/content/media/
MBA_SeafoodWatch_FarmedBarramundiReport.pdf](http://www.montereybayaquarium.org/cr/cr_seafoodwatch/content/media/MBA_SeafoodWatch_FarmedBarramundiReport.pdf)

(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.

V. 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.

VI. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment. Therefore, no mitigation is necessary.

VII. 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.

Updated 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, **compete with or prey upon native fish, and act as a vector for** 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 **until purchased** for human consumption when **they** 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.

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 importation, aquaculture and sales of live barramundi under controlled conditions as follows:**

- 1. Importation of live barramundi from an approved distributor under controlled conditions specified on the permit.**
- 2. Aquaculture farming purposes by a registered aquaculturist under controlled conditions specified on the permit.**
- 3. Retail sales for human consumption of live barramundi from 1 to 3 pounds where it will be sold dead and packaged before leaving the commercial establishment.**

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. **Narrow** size and weight ranges coupled with strict geographic distribution ensures low probability of surviving to **sexual** 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 **wildlife** species (a human fatality incident and separate escaped animal incidents) have necessitated reconsideration, modification, and/or addition to the existing regulations to address **emerging** 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 changes **related to capture of restricted wildlife** are combined with the proposed aquaculture and seafood changes to reduce Commission workload and regulatory rulemakings.

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 for human consumption that are 300 mm (11.8 inches) to 500 mm (19.6 inches) in total length, or weigh 1 to 3 pounds.
- 3) Allow live retail sales of barramundi in all counties except **Santa Barbara, Ventura, San Bernardino, Los Angeles, Orange, Riverside, San Diego, and Imperial.**

- 4) 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.
- 5) 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 **before leaving the establishment.**
- 6) Propose regulations to address emergency contingency planning and cost recovery in the event of an escape or a containment failure involving a restricted species.

In addition, the restricted species aquaculture permit portion of this proposal is structured with four options to facilitate Commission discussion as shown below:

Option 1 – Live sales of restricted aquaculture product to the public to be restricted to Northern California areas and all importers, producers and sellers must be permitted.

Option 2 – No geographic restriction and all importers, producers and sellers must be permitted.

Option 3 – Live sales of restricted aquaculture product to the public to be restricted to Northern California areas and terminal markets that purchase from a permitted source and only sell restricted aquaculture product to the public are not required to be permitted.

Option 4 – No geographic restriction and terminal markets that purchase from a permitted source and only sell restricted aquaculture product to the public are not required to be permitted.

Wildlife

- 7) 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.
- 8) 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.
- 9) New and revised regulations to address issues such as breeding, escape and emergency contingency planning, public safety, identification of **restricted** animals, and cost recovery for escape or emergency searches **involving a restricted species.**

Regulatory Simplification

- 10) 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.
- 11) Propose additional minor changes 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 **four options with** the following changes to current regulations:

Option 1 - Geographic restrictions and everyone must be permitted

Section 671 will be revised to allow for an exception for barramundi importation and sales under certain conditions **with** 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. **Additional changes were added for clarity.**
- 2) **Subsection 671(c)(2)(B) is proposed to updated with a recent Order name change to Xenarthra.**
- 3) Subsection 671(c)(3)(B)1. will be updated to add the common name clawed frog to the genus *Xenopus*.
- 4) Subsections 671(c)(5)(J), (O) and (R) are proposed to be updated with recent scientific name changes by the American Fisheries Society. **Additional name changes for tilapia are proposed to provide the correct scientific name.**
- 5) Subsection 671(c)(5)(U) is proposed to be modified to include 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 **total** length will be allowed in all counties except for **Santa Barbara, Ventura, 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 sexual 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.
 - e. **Two additional counties, Santa Barbara and Ventura, are proposed to be added to the barramundi “live sales” exclusion area due to their proximity and easy access to live markets in the Los Angeles area.**
 - f. **The proposed size criteria is proposed to be moved into a new subsection 671(c)(5)(U)(2), the county restriction is proposed to be moved in a new subsection 671(c)(5)(U)(3), and the requirement of adhering to Section 671.7 conditions is proposed to be moved into a new subsection 671(c)(5)(U)(1) for clarity.**
- 6) 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.
 - 7) Subsection 671(c)(9)(D) will be revised to correct the species name for pink abalone.
 - 8) Subsection 671(c)(10) will be revised to add the common name quagga mussel to the genus *Dreissena*.
 - 9) 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 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 **annual** 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 **moved** 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 of following the application requirements in Section 671.7. This proposed change will establish better application instructions and requirements.
 - 12) Subsection 671.1(c)(2)(F) will be amended to describe the requirements for a breeding plan for restricted species. **Add licensed professionals in breeding or exhibition of restricted species to the list of entities that may certify if there is a legitimate need for the breeding and add exhibition to the list of legitimate breeding needs.**
 - 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)(J)(4) will be added to require the permit holder to immediately report the escape or release of the wild animal to the Department and the nearest law enforcement agency.**
 - 17) 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. **The compliance date for this new requirement was changed to December 31, 2010.**
 - 18) **Add subsection 671.1(c)(2)(K)(3) to state the Department shall maintain the unique identifiers for each animal until they are deceased.**

- 19) Subsection 671.1(c)(2)(L) will be added to list the information needed from bona fide scientific institutions for the initial application and for each additional new species.
- 20) Subsection 671.1(c)(2)(M) will be added to ensure adequate documentation of federal requirements.
- 21) **Add subsection 671.1(c)(2)(N) to require the permit holder to notify the Department within 10 days when taking possession or transferring an animal or when an animal is deceased.**
- 22) Subsection 671.1(c)(4) and (c)(5) will be modified and add (c)(6) to standardize denial, revocation and appeal procedures for permits.
- 23) **Subsection 671.1(c)(4)(A) will be added to allow the Department to deny a permit or amendment of an existing permit request if the application and/or additional material does not support the statement of purpose.**
- 24) Subsection 671.1(c)(6) will be **moved** 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 aquaculture or wholesale/importation permits, if their facilities have been previously inspected or **had** 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 an Aquaculture and Wholesale/Importation restricted species permit.
- 2) Add definition for closed-water system and terminal markets **with the removal of the permit exception** 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 **at** 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 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 **be released in any** waters of the state.
- 8) Specify the sales requirements by terminal markets in subsection 671.7(g) **with the removal of the permit exception.**
- a. 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 **subsection 240(c)** of these regulations. **The subsection (c) of 240 was added for clarification.**
 - b. No live restricted species product shall be allowed to leave a terminal market or **be released in any** 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. **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 to recover Department costs.

Subsection (A) 2010 Restricted Species Permit Fees

1. Restricted Species Permit Application (New)	[\$51.25-\$101.50]
2. Restricted Species Permit Application (Amended or Renewal)	\$ 51.25
3. Animal Care – Welfare Species	\$ 50.75
4. Animal Care - Detrimental Species	\$426.00
5. Aquaculture	\$426.00
6. AZA	\$426.00
7. Breeding	\$426.00
8. Resident Broker/Dealer	\$426.00
9. Nonresident Broker/Dealer	\$851.75
10. Resident Exhibiting	\$426.00
11. Nonresident Exhibiting	\$851.75

12. Native Species Exhibiting	\$426.00
13. Resident Nuisance Bird Abatement	\$426.00
14. Nonresident Nuisance Bird Abatement	\$851.75
15. Research – Detrimental Species	\$426.00
16. Shelter	\$ 50.75
17. Single Event Breeding for Exhibitors	\$ 50.75
18. Wholesale/Importation	\$426.00
19. Fee for two initial inspections	[\$170.50-\$3000.00]
20. Hourly inspection fee (> 2 hrs)	[\$ 42.50-\$100.00]

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

- (B) New Restricted Species Permit Application
FG 1312 (New 10/2009)
- (C) Native Species Exhibiting Permit Amendment Form
FG 1312a (New 10/2009)
- (D) New Native Species Exhibiting Permit Application
FG 1312b (New 10/2009)
- (E) Restricted Species Permit Inventory of Animals Form
FG 1313 (New 10/2009)
- (F) Native Species Exhibiting Permit Inventory of Animals Form
FG 1313a (New 10/2009)
- (G) Restricted Species Permit Amendment Form
FG 1313b (New 10/2009)
- (H) Restricted Species Nonresident Exhibiting Itinerary Form
FG 1316 (New 10/2009)

Option 2 – No geographic restrictions and everyone must be permitted

All Proposed changes in Option 1 are included in Option 2 except for the following subsection.

Subsection 671(c)(5)(U) is proposed to be modified as follows:

- 1) The proposed county restriction will be removed.
- 2) The proposed size criteria is proposed to be moved into a new subsection 671(c)(5)(U)(2) and the requirement of adhering to Section 671.7 conditions is proposed to be moved into a new subsection 671(c)(5)(U)(1).

Option 3 - Geographic restrictions and terminal markets not permitted

All Proposed changes in Option 1 are included in Option 3 except for the following subsections.

Subsection 671.7 is proposed to be modified as follows:

- 1) Keep the original definition for terminal markets in subsection 671.7(a).

- 2) Keep the original sales requirements by terminal markets in subsection 671.7(g) with the following changes.
 - 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 **subsection 240(c)** of these regulations. **The subsection (c) of 240 was added for clarification.**
 - c. No live restricted species product shall be allowed to leave a terminal market or **be released in any** waters of the state.

Option 4 – No geographic restrictions and terminal markets are permitted

All Proposed changes in Option 1 are included in Option 4 except for the following subsections.

Subsection 671(c)(5)(U) is proposed to be modified as follows:

- 1) The proposed county restriction will be removed.
- 2) The proposed size criteria is proposed to be moved into a new subsection 671(c)(5)(U)(2) and the requirement of adhering to Section 671.7 conditions is proposed to be moved into a new subsection 671(c)(5)(U)(1).

Subsection 671.7 is proposed to be modified as follows:

- 1) Keep the original definition for terminal markets in subsection 671.7(a).
- 2) Keep the original sales requirements by terminal markets in subsection 671.7(g) with the following changes.
 - 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 **subsection 240(c)** of these regulations. **The subsection (c) of 240 was added for clarification.**
 - c. No live restricted species product shall be allowed to leave a terminal market or **be released in any** waters of the state.