

Comment 2, 3 & 4

(Received via letters to the commission on April 30, 2012, May 2, 2012, May 11, 2012 from Tom Anspach and Co Signed by Don Richardson from the California Living Museum, Sandra Masek, Exotic Feline Breeding Compound, Joe Maynard, Exotic Feline Breeding Compound and Donald Zeigler from Orange County Zoo.)

Would like the Commission to add ZAA to section granting AZA an exemption for inspections.

Response: Reject. Currently there is not language in regulation, law or a written protocol that gives the Department a clear process on how to discern if additional entities should receive an exemption from inspections/permitting for “justified reasons”. This concern was not addressed as part of the ISOR. Fish and Game Code Section 2150(c) gives the exemption to AZA accredited Zoos and states the Department may grant or deny the request for a waiver for “justified reasons.” The Department has denied any request thus far because ZAA is not the same as AZA, and “justified reasons” is not defined and needs future scoping and development.

Comment 5

(Received in the form of an email on May 30, 2012 from Steve Angeli, reptile breeder.)

Concerned about the inspections being based on a number of enclosures because he breeds reptiles and has many small containers containing juvenile reptiles on a “rack system”.

Response: Reject. If there are unusual caging circumstances, the permittee may call the Department for direction on how to proceed with counting enclosures.

Comment 6

(Received during public testimony at the May 23, 2012, Commission meeting from Brad Felger, Nuisance Bird Abatement permittee.)

In favor of improving the current regulation that allows veterinarians to inspect facilities by adding a checklist.

Response: Reject. Fish and Game Code Section 2150.4 states only the Department or an ELE can conduct inspections and eliminates the use of a permittee’s own veterinarian as currently used.

Comment 7

(Received during public comment at a commission meeting May 23, 2012, from David Jackson, Zoo to You, Paso Robles.)

Supports proposal of the use of Fish and Game Law Enforcement for inspections because the profession has accountability. Also supported veterinarians conducting inspections in addition to wardens.

Response: Reject. Fish and Game Code Section 2150.4 states only the Department and or ELE can conduct inspections eliminating the use of a permittee's own veterinarian as currently used.

Comment 8

(Received via email on May 31, 2012, from Doug Price.)

Reptile permittees should not be charged per enclosure (as enclosure is defined in proposed regulations) due to the many small box type enclosures used for breeding reptiles. Reptile breeders are different and should not be categorized the same as permittees with mammals and birds. If a "per enclosure fee" is established, he suggests it may get too expensive.

Response: Reject. There is already cap on the inspection fee of \$2,994.44 dollars for 500+ enclosures. Also, the Department recognizes there may have to be some considerations for defining enclosure for specific species due to the many different types of animals being held in many different types of enclosures under restricted species permits. The Department will work with permittees to better ascertain if there are discrepancies in the definition of enclosures. If discrepancies emerge, the Department may need to make further regulation changes, but additional information is needed through conducting inspections and seeing the different enclosures.

Comment 9

(Received via letter on June 1, 2012, and from public comment on June 20, 2012, from Amanda Banks, president of the California Biomedical Research Association.)

Supports the proposed change to 671.1 and supports Option 1/A for section 671.8.

Response: Accept.

Comment 10

Received via letter on June 11, 2012, and by public comment on June 20, 2012, from Victor Lukas, DVM, University California, Davis.

Supports proposed changes to 671.1, ten day notification modification, and Option one/A in reference to 671.8.

Response: Accept as department's preferred alternative.

Comment 11

Received via email on June 17, 2012, from Rita Clark.

Would like the department to continue to allow veterinarians to inspect small facilities like hers and suggests the department only inspect facilities with dangerous animals.

Response: Reject. Fish and Game Code Section 2150.4 states only the Department and or ELE can conduct inspections eliminating the use of a permittee's own veterinarian as currently used.

Comment 12

Received letter via email on June 18, 2012, from Nicole Paquette, Humane Society of United States:

1. Supports swift adoption of Option A and urges commission to reject all other alternatives, however, has a concern about the research facilities MOU process because there is no language that precludes self-inspections.

Response: Accept: support of adoption of Option A.

2. HSUS proposes research permit applicants apply for annual permits and ELE MOU in order to inspect only "other unrelated" facilities.

Response: Reject: The department wishes not to accept the proposed language because such language can be made via the Memorandum of Understanding, if necessary, and most research facilities have a dedicated veterinarian who is intimately knowledgeable and responsible for the state, federal and accreditation rules and laws associated with each research project.

Comment 13

Received via letter on June 19, 2012, from Kele Young, Sandra Leos, Tonya Carloni and Dan Westfall.

Suggests these regulation changes are: 1. unwarranted; 2. utterly ineffective; 3. unfairly selective; 4. predatory and offensive; 5. usurps federal regulations and; 6. fraudulently depicts AB 820. Supports amendment to Section 671.1 in reference to the 10 day notification process.

Proposes a fee exemption for shelter permittees. Proposed the cost of the inspection shall be borne solely by the Department.

Response: Reject. FGC section 2150.2 states the Department shall establish fees for permits, permit applications, and facility inspections in the amounts sufficient to cover the costs of administering, implementing, and enforcing this chapter. FGC Section 2150.4 states the Department or an eligible local entity shall inspect wild animal facilities as determined by the directors advisory committee of each person holding a permit issued pursuant to Section 2150 authorizing the possession of a wild animal. Section 2150.4 (b) states the facility inspections are for the purpose of determining whether the animal is being cared for in accordance with all applicable statutes and regulations. The Department shall collect an inspection fee, in an amount determined by the Department pursuant to Section 2150.2. FGC Section 2150.4 states the Department shall develop and implement facility inspections no later than January 1, 2009. The Department fails to find any determining factors that seem unwarranted because these regulations are being created to comply with statute. All permittees will be required to abide by the same standards so “unfairly selective” is not a justified statement. The comments provided by this group of individuals do not refer to specific federal regulations and therefore we cannot respond as to what we are “usurping”. This regulation package was noticed on April 19, 2012, Office of Administrative Law Notice I.D. # Z2012-0417.03. The letter does not specify what was depicted fraudulently in Assembly Bill 820 and the Department does not believe any part of the bill is depicted fraudulently but has been complied with accordingly.

Comment 14

Received via public comment at the June 20, 2012, commission meeting from Donna Routley, University Of California, Davis.

Supports amendment to 671.1 in reference to the 10 day notification process and supports option 1 in regards to 671.8.

Response: Accept as department’s preferred alternative.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action: Two alternatives were proposed Option 1 and Option 2
- (b) No change Alternative: No change would result in non-compliance with the Fish and Game Code, specifically 2150.4.
- (c) Consideration of Alternatives: In view of 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 the affected private persons than the proposed regulation.
- (d) Description of Reasonable Alternatives that would lessen adverse impact on small business: None.

X. 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 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: None. The same regulations will apply to non-resident permittees.
- (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 proposed regulations will identify the Department as the primary inspectors for approximately 260 Restricted Species facilities (this package does not include Research, Aquaculture or Fish inspections) in California. Currently, most of the inspections are conducted by veterinarians hired by or employed by the restricted species facility. Less work for veterinarians currently conducting these inspections may occur. It is unknown how much each private veterinarian charges restricted species permittees for inspection services but the statute (FGC Section 2150.4) requires the Department or an eligible local entity to conduct the inspections. The impacted veterinarians are generally employed otherwise and may still be employed by these facilities to conduct medical exams and other duties dealing with the health of the animals at the facility.

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

As the number of permitted persons for all Restricted Species permits is small (approximately 300 permittees statewide) the impacts are not consequential to the State. However, there will be cost impacts that a representative private person or business who is among the 300 permittees would necessarily incur in reasonable compliance with this proposed action. Fish and Game Code Section 2150.2 states the Department “shall establish fees... in amounts sufficient to cover the costs...” These costs would occur in applying for an inspection to house restricted wild animals and subsequent maintenance if deficiencies are found and will be established under a separate rulemaking by the Department of Fish and Game.

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

Statutorily, there must be no net cost to the State. All costs, such as those incurred for application reviews, processing, issuing permits, maintaining databases, inspections, development and maintenance of a mammal registry, and other administrative or enforcement costs will be fully offset by fees paid by the regulated parties.

- (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

Existing regulations specify the conditions under which an individual or entity can lawfully possess restricted species in California. The proposed regulatory changes are needed to comport with AB 820 (Statutes of 2005) (now sections 2116-2195 Fish and Game Code). The statute and consequent regulations are intended to implement a comprehensive, self-supporting program for inspection and monitoring of restricted species facilities in California.

Recent events involving captive restricted species (a human fatality incident and separate escaped animal incidents) demonstrated the need for reconsideration, modification, and addition to the existing regulations to address issues such as escape contingency planning, public safety, and inspection.

Proposed Regulations

Consideration and adoption of these proposed regulations will result in the following:

Amend 671.1

Elimination of language that authorized a veterinarian to approve inspection and resulted in a fee waiver for permit holders.

Clarification that permitted animal facilities will require only one inspection per year, and not two.

Modification of a 10-day notification requirement in the event of the death of restricted species under permit. The Department is also proposing to modify Section 671.1 (c)(2)(N) regarding the 10 business day notification requirement for transfers, receipt, birth or death of an animal of any restricted species. Large zoos and research facilities requested a change to this section due to the regular deaths of a large number of small, short-lived restricted species such as fish, amphibians, and rodents.

The Department already has a 10-day reporting requirement for elephants, non-human primate, bears, wolves, gila monsters and members of the Family Felidae when these animals are transferred, received, have a birth or death, or there is a change in a unique identification. Because this is already required for these animals, the Department is being adequately notified. If the Department ever wishes to investigate the transfer, death, receipt, or birth of the other species not required to be uniquely identified, the permittee will be required to maintain and produce such records at the facility.

The proposal also provides clarification of the appeal process and other minor editorial cleanup changes.

Add 671.8

Establishes annual inspection requirements and types of inspections to be conducted.
Establishes inspection options that includes defining an eligible local entity and

establishing a memorandum of understanding process specifically for research entities.

For public notice purposes and to facilitate Commission discussion, the Department presented the two regulatory options (Alternative 1/Option 1 and Alternative 2/Option 2) for Section 671.8 that encompassed differing opinions on who may conduct inspections, and under what circumstances, for Commission consideration. The following option is the Department proposed option and the option the commission chose.

Proposed Action - § 671.8. Inspection of Facilities

This proposed new section establishes the annual inspection requirements and types of inspections to be conducted to be compliant with recent statute. The fee for inspections would be based on the number of enclosures that a facility has, using actual inspection information that the Department gained from limited testing of the method on permitted facilities.

Establishes a permitting capability that includes inspection by an eligible local entity (ELE) through a memorandum of understanding (MOU) process specifically, and only, for research entities such that the Department would not be inspecting those research facilities. The facilities would not be required to pay the enclosure-based inspection fee. This option allows for a five year MOU with annual renewals during that five year time period. Research entities are already subject to inspections by USDA, and have special public health related or animal care standards and accreditations that must be met for the research activities to be conducted.

The major changes would include:

- a more efficient method for inspecting nonresident applicants for restricted species;
- clarification and description of types of inspections (initial, renewal, amendment); and
- providing for research entities to be considered ELE's and enter into an MOU with the Department for inspection purposes.
- the applicant or permittee requesting ELE/MOU status would be required to pay a new ELE/MOU fee to cover the cost of administering an ELE/MOU process. The Department would not reimburse any entity that becomes an ELE.

Minor editorial changes were made to clarify the regulations as a result of the Commission voting to adopt Option 1 of the text at its June 20, 2012 Commission meeting in Mammoth Lakes, CA.

ADDENDUM TO FINAL STATEMENTS OF REASONS
Amend Section 671.1 and Add Section 671.8, Title 14, CCR

The following addendum is made to replace subsection IX(c), on page 6 of the Final Statement of Reasons:

IX. Description of Reasonable Alternatives to Regulatory Action:

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The first option was selected for Section 671.8 due to the requirements of additional inspector certifications, accreditations and reporting required within the selection of the second option.