

STAFF SUMMARY FOR OCTOBER 11-12, 2017

10. AMERICAN BULLFROGS AND NON-NATIVE TURTLES**Today's Item****Information** **Action**

Discuss staff proposal for stakeholder engagement on American bullfrog and non-native turtles statutes and regulations.

Summary of Previous/Future Actions

- FGC discussion Feb 8-9, 2017; Rohnert Park
- FGC discussion Apr 26-27, 2017; Van Nuys
- **Today's discussion Oct 11-12, 2017; Atascadero**

Background

Annually there are approximately two million non-native American bullfrogs and 300,000 non-native turtles (mostly red-eared sliders and softshell turtles) imported into California for food and the pet trade. Even though these species are not imported into California with the intention of being released, they have established wild populations that threaten native amphibians, fish, and wildlife by direct predation, competition for resources and habitat, and disease.

In Feb 2015, DFW provided a report regarding the implications of American bullfrog importation and notified FGC of its decision to stop issuing long-term importation permits and to only issue short-term individual event permits, consistent with Section 236(c)(6)(I) of Title 14. At its Feb 2015 meeting, FGC directed staff to work with DFW to identify a list of potential actions FGC could take to further address the issues identified in the DFW report.

In Feb 2017, FGC staff presented four possible regulatory options to address impacts on California's native wildlife resulting from the importation of American bullfrogs and non-native turtles, and provided additional information in a joint memorandum prepared by FGC and DFW staff (Exhibit 1). At the meeting, FGC directed staff to add this topic to the Apr 2017 agenda for further discussion with more information on two of the four options. In Apr 2017, FGC directed FGC and DFW staff to develop a proposal for stakeholder engagement to further evaluate possible solutions to address the impacts of American bullfrogs and non-native turtles on native wildlife. Today, staff will present the stakeholder engagement proposal for FGC consideration.

Significant Public Comments (N/A)**Recommendations**

FGC staff: Provide input on the staff proposal and direction on next steps.

Exhibits

1. [FGC and DFW joint memorandum, dated Jan 26, 2017](#)
2. [Staff proposal on stakeholder engagement, dated Sep 15, 2017](#)

Motion/Direction (N/A)

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
and
DEPARTMENT OF FISH AND WILDLIFE
JOINT MEMORANDUM

DATE: January 26, 2017

TO: President Sklar and Members
Fish and Game Commission

FROM: Mike Yaun (Legal Counsel, Commission)
Erin Chappell (Wildlife Advisor, Commission)
Kevin Shaffer (Chief, Fisheries Branch, Department)
Karen Mitchell (Senior Environmental Scientist, Fisheries Branch, Department)

SUBJECT: Importation of live American bullfrogs and non-native turtles

Commission and California Department of Fish and Wildlife (Department) staff drafted this memo to inform the Commission of regulatory options to address impacts on California's native wildlife resulting from the importation of American bullfrogs and non-native turtles.

Background

Approximately two million non-native American bullfrogs and 300,000 non-native turtles (mostly red-eared sliders and softshell turtles) are imported into California annually for the food and pet trade. Even though the species are not imported into California with the intention of being released, these species have established wild populations in California's wetlands and waterways. For instance, the American bullfrog (*Rana catesbeiana*) was introduced into California in the late 19th century and has since established wild populations throughout the state which threaten populations of native amphibians, fish, and wildlife by direct predation and competition for resources and habitat. Bullfrogs are gape-limited generalist predators that will consume anything they can catch and fit in their mouths.

The California red-legged frog (*Rana draytonii*) is an example of a native amphibian that has been severely impacted by the introduction and invasion of American bullfrog populations into California's waterways. Similarly, non-native turtles, in particular red-eared sliders (*Trachemys scripta elegans*) and softshell turtles (*Apalone* spp.), have also established wild populations in California and can out-compete native western pond turtles (*Emys marmorata*) for basking space and food. The western pond turtle is the only freshwater turtle species native to California. It is listed as a Species of Special Concern by the Department and is currently under review for listing under the federal Endangered Species Act. Western pond turtles in California evolved without any other turtles. As a result, interspecific competition and

disease may put them at greater risk from introduced turtles than other areas where sliders and softshell turtles are released. Studies in Europe that investigated the impact of sliders on European pond turtles (related to western pond turtles) found that sliders did out-compete pond turtles for basking spots and reduced their growth. Western pond turtles are documented to aggressively defend their basking space, and less time basking can result in lower metabolic rate, which can affect growth, reproduction, and survival in extreme cases.

Importation of these species also serves as a vector for the introduction of novel diseases into California. One such introduction is chytrid fungus (*Batrachochytrium dendrobatidis*), a waterborne fungus that leads to a potentially fatal amphibian disease Chytridiomycosis. Chytrid fungus has spread from ports of entry across California and into high elevation waters of the Sierra Nevada Mountains, where it has significantly impacted two species of native mountain yellow-legged frogs (*Rana sierrae* and *Rana muscosa*) that are listed under both the California and federal Endangered Species Acts. In the State of Washington, where western pond turtles are listed as endangered under the federal Endangered Species Act, one population declined by a third due to an upper respiratory tract disease that was suspected to have been introduced by sliders.

A ban on the importation of American bullfrogs would bring California in line with the States of Oregon and Washington, which do not allow the importation of American bullfrogs. Also, the State of Oregon does not allow the importation of *Apalone* (softshells) and *Trachemys* (slider) species of non-native turtles.

State regulations must comply with the protections for interstate commerce contained in the United States Constitution. When a state's regulation prohibits importation of an item, but allows continued commercial activity of an item, that regulation disproportionately impacts interstate commerce. To comply with the constitutional protections, such a regulation must be for a legitimate state purpose and the purpose cannot be satisfied by a non-discriminatory method. The U.S. Supreme Court has upheld state regulation prohibiting live importation of species to protect native fish and wildlife species from the consequences of the importation when the state could show harm that could not otherwise be avoided.

Currently the Department is issuing Importation Permits for American bullfrogs and non-native turtles in an effort to provide a level of control to protect the native resources of the state. The conditions for these permits are:

1. Long-term importation permits valid for one month (turtles)
2. Standard importation permits valid for one shipment (bullfrogs)
3. No stocking in waters of the state
4. Operators must retain copies of sales information for one year
5. All products must be killed before leaving the store
6. Operators must keep a distribution report

Recent Commission Actions

There is a long history related to this subject, and the Commission has received considerable testimony on this issue. Periodically since 1998, members of the public have spoken at Commission meetings in opposition to sales of frogs and turtles in the live animal market. On March 3, 2010, the Commission directed the Department to stop issuing importation permits for non-native frogs and turtles pursuant to Section 236, Title 14, CCR, citing potential threats to the state's natural resources as the result of live escapes or releases. The Commission then adopted a formal policy statement on the matter at its April 10, 2010 meeting. In September 2010, the Commission directed the Department to prepare an Initial Statement of Reasons that would ban the importation of live bullfrogs and turtles. At the February 2011 meeting, the Commission rescinded their direction to prepare the Initial Statement of Reasons but approved Department amendments to the permits. These amendments included shortening the permit period from annual to one month, including reporting and documentation provisions, and requiring that animals be killed prior to leaving the stores.

Based on public testimony received at Commission meetings over the last 20 years, there are diverse opinions on the importation and sale of American bullfrogs and non-native turtles with three primary conflicting interests. One segment of the public is involved in marketing bullfrogs and turtles for human consumption. California's Asian-American and Asian immigrant communities are the largest consumers of American bullfrogs and imported turtles in the state. Banning importation for the live animal food market could impact long-standing cultural practices and have financial impacts on the businesses and individuals that profit from importation and retail sale of these animals if the market declines or collapses. The second segment of the public is opposed to the importation and sale of American bullfrogs and non-native turtles due to potential threats to native amphibians from disease, hybridization, competition, and predation; a portion of this segment is also opposed due to animal welfare concerns. Finally, the third segment of the public is involved in marketing bullfrogs and turtles for the pet industry. Pet industry sales of non-native frogs and turtles are significant in California and occur with minimal disease monitoring or regulatory restrictions.

In February 2015, the Commission and Department revisited the issue again. The Department provided an overview of their report, *Implications of Importing American Bullfrog (*Lithobates catesbeianus* = *Rana catesbeiana*) into California*. The Department determined that American bullfrogs posed a significant risk to the fish and wildlife resources of the state. At the meeting, the Department notified the Commission of its decision to stop the issuance of long-term importation permits and to only issue short-term individual event permits, consistent with Section 236(c)(6)(I) of Title 14, CCR. At the meeting, the Commission directed staff to work with Department staff to identify a list of potential actions the Commission could take to further address the issues identified in the Department's report.

Since 2015, the Commission and the Department have received numerous requests via e-mail, letter, and public comment, to ban the importation of live bullfrogs and non-native turtles due to the potential threats to native amphibians from disease, hybridization, competition, and predation. Two petitions for regulatory change were submitted to the Commission with requests to add American bullfrogs to the list of restricted species (Section 671(c), Title 14, CCR) in 2016. The first petition (#2016-016) submitted by Save the Frogs was rejected during Commission staff review as incomplete. The second petition (#2016-030) was submitted jointly by the Center for Biological Diversity and Save the Frogs in December. This petition was reviewed and accepted by Commission staff and will be received by the Commission at the February 2017 Commission meeting (see Agenda Item 2 - Public Forum).

Options for Restricting Importation

Per Commission direction, Commission and Department staff evaluated four potential options to restrict the importation of live American bullfrogs and non-native turtles. All of these options will require compliance with California Environmental Quality Act (CEQA; Public Resources Code, Section 21000 et seq.) prior to final Commission action.

- *Option 1*

Ban the importation of live American bullfrogs and *Apalone* and *Trachemys* species of non-native turtles into California, except as allowed under Section 236(b)(2). This option would prohibit the importation of American bullfrogs and non-native turtles for the live food market but allow aquaculture facilities to continue to raise bullfrogs and non-native turtles for commercial purposes, including human consumption, and allow for their importation for personal, pet, or hobby purposes without an importation permit.

This option would require amendments to sections 236 and 41.7 Title 14, CCR. Section 236 regulates the importation of live aquatic plants and animals. Section 41.7 regulates the commercial take and use of frogs for human consumption.

- *Option 2*

Ban the importation of live American bullfrogs and *Apalone* and *Trachemys* species of non-native turtles into California with no exceptions. This option would prohibit the live importation of American bullfrogs and *Apalone* and *Trachemys* species of non-native turtles into California for any purpose but would still allow for them to be sold alive.

This option would require amendments to sections 236 and 41.7, Title 14, CCR and Fish and Game Code sections 2271 and 15300. Fish and Game Code Section 2271(b)(2) allows for the importation of live animals for personal, pet industry, or hobby purposes without an importation permit. Fish

and Game Section 15300 permits the importation of aquatic animals for aquaculture purposes. Therefore, this option would require the Legislature to amend these code sections prior to the Commission adopting regulations to implement it.

- *Option 3*

Ban the importation *and sale* of live American bullfrogs and *Apalone* and *Trachemys* species of non-native turtles in the State of California, with no exceptions. This option would affect businesses that import these animals into the state for use by educational and scientific institutions, the pet industry, and those that raise and/or sell bullfrogs and turtles for human consumption.

This option would require amendments to sections 236 and 41.7 Title 14, CCR and Fish and Game Code sections 2271(b)(2), 15300; 6851 and 6852. Fish and Game Code Section 6851 prohibits the taking or possession of frogs for commercial purposes but does not apply to aquaculture. Section 6852 authorizes possession of frogs, pursuant to the Fish and Game Code or regulations adopted by the Commission, by any person in the business of selling frogs. This section applies to the selling of frogs for food and to educational and scientific institutions. In addition to importation, Section 15300 also allows frogs to be obtained from “(a) A holder of a commercial fishing license (b) A registered aquaculturist or (c) The department.” This option would also require the Legislature to amend these sections of Fish and Game Code prior to the Commission adopting regulations to implement it.

- *Option 4*

Add American bullfrog and *Apalone* and *Trachemys* species of non-native turtles to the list of restricted species, making it unlawful to import, transport, or possess them without a permit issued by the Department.

This option would require amendments to sections 671 and 41.7 Title 14, CCR and Fish and Game Code sections 6881, 6883, and 6885. Fish and Game Code sections 6881, 6883, and 6885 apply to the acquisition, use, and possession of frogs for use in frog-jumping contests. They are found in Division 6, Chapter 7, Article 2 of the Fish and Game Code. Section 6881 allows frogs for use in frog-jumping contests to be taken at any time without a license or permit. Section 6883 allows any person to possess any number of live frogs to use in frog-jumping contests. Section 6885 specifies that the Commission has no power to modify the provisions of this article by any order, rule, or regulation. This option would require the Legislature to amend these sections of Fish and Game Code prior to the Commission adopting regulations to implement it.

Staff Recommendation

Based on the Department's finding that American bullfrogs and non-native turtles pose a significant risk to the fish and wildlife resources of the state, staff recommends Option 1, amending sections 236 and 41.7, Title 14, CCR, to prohibit the live importation of American bullfrogs and non-native turtles into California, except for as allowed under Section 236(a)(2). Option 1 would thereby reduce threats to California's native reptile and amphibian populations. Unlike Options 2-4, Option 1 would allow aquaculture facilities to continue to raise bullfrogs and non-native turtles for commercial purposes and allow the importation of live American bullfrogs and non-native turtles for personal, pet, or hobby purposes without an importation permit. However, because Option 1 is consistent with the Commission's current authority under the Fish and Game Code, the Commission would not have to ask the Legislature to amend any provision of the code to implement the option.

Justification for Staff Recommendation

An importation restriction on American bullfrogs and non-native turtles into California would help protect California's native fauna, especially state-listed species including California red-legged frog, western pond turtle, mountain yellow-legged frog, California tiger salamander, and the giant garter snake, from predation, competition, and disease. These stressors result in significant impacts and declines to native California fauna, particularly native amphibians and reptile species. Imported live American bullfrogs and non-native turtles have served as vectors for the introduction of novel wildlife diseases to California. In addition, ecological restoration efforts benefitting California's native amphibians often involve costly efforts to eradicate American bullfrogs. An importation restriction would reduce the potential for continued introduction of American bullfrogs into these restored habitats and benefit taxpayers from the reduction in costly bullfrog eradication programs implemented by federal, state, and local wildlife protection agencies.

An importation restriction may have cultural as well as fiscal impacts. Businesses and individuals that profit from importation and retail sale of American bullfrogs and non-native turtles for the live animal food market will suffer impacts as the market declines or collapses. It is also possible the market will move underground and will necessitate the use of law enforcement resources to maintain a ban. Therefore, additional funds and wildlife officers may be necessary to enforce the new law.

In addition, it was determined that changes to regulations in Title 14, CCR, would require CEQA compliance, potentially incurring significant cost to the Department in staff time or costs to contract with outside consulting services. The Department would lose about \$7,200 annually in permit fees from an importation ban on American bullfrogs and non-native turtles; however, staff time associated with permitting may then be spent on other issues.

California Fish and Game Commission
Staff Proposal for
Stakeholder Engagement on American Bullfrogs and Non-native Turtles

Purpose: Fish and Game Commission (FGC) and California Department of Fish and Wildlife (CDFW) staff recommendation on a process and timeline for stakeholder engagement to identify potential regulatory and statutory changes, funding mechanisms, and strategies for existing wild populations of American bullfrogs and non-native turtles to reduce the impacts on California's native wildlife.

List of Possible Participants:

- Environmental / Animal welfare Non-Governmental Organizations
 - Petitioners – Center for Biological Diversity and Save-the-Frogs!
 - Action for Animals
 - Humane Society of the United States
 - Rescue group representative – TBD
- Industry Representatives
 - Live Food Market – TBD
 - Aquaculture – TBD
 - Pet trade – TBD
- Agency Representatives
 - FGC - Executive Director, Wildlife Advisor, and Legal Counsel
 - CDFW - Wildlife Branch, Wildlife Investigations Lab, Fisheries Branch, and Law Enforcement Division
 - California Department of Food and Agriculture (CDFA) - TBD
 - California Department of Public Health (CDPH) - TBD
 - U.S. Fish and Wildlife Service (USFWS) – TBD; Region 1 and Region 8
 - Santa Cruz County and/or City - TBD
 - State of Washington and/or Oregon – Fish and Wildlife departments
- Legislature
 - California Asian and Pacific Islander Legislative Caucus staff
 - Natural Resources Committee staff
 - Joint Committee on Fisheries and Aquaculture staff

Proposed Process:

- Agency Outreach - FGC staff hold several meetings (2-4) with agency staff to discuss implementation, management, enforcement, and regulatory consistency and compatibility.
 - One or two conference calls with implementing agencies CDFW, USFWS, Santa Cruz, Washington, and Oregon to discuss management strategies, implementation, and enforcement

- One or two meetings with state agencies CDFW, CDFA, CDPH to discuss regulatory consistency and compatibility and enforcement of regulations (Sacramento)
- Stakeholder Outreach - FGC staff hold series of small meetings (2-4) with key stakeholders to solicit input on options, including possible statutory and regulatory changes and management strategies.
 - Invitation only
 - Size – limit to 10-12 people each
 - Locations – Sacramento, Bay Area, Southern California
 - Structure
 - One or two meetings with environmental/animal welfare organizations, CDFW staff, and FGC staff (Sacramento)
 - One to two meetings with industry representatives, California Asian and Pacific Islander Legislative Caucus staff, CDFW staff, and FGC staff (Bay Area and Southern California)
- Legislative Outreach – FGC staff meetings (3) with California Asian and Pacific Islander Legislative Caucus, Natural Resources Committee, and Joint Committee on Fisheries and Aquaculture staff
- CDFW and FGC staff compile meeting outcomes and draft proposal
- FGC and CDFW staff co-host one-day public workshop to present draft proposal
 - Open to all interested parties
 - Location – Bay Area
 - Facilitated by FGC staff
 - Attendance by 1-2 Commissioners
- CDFW and FGC staff prepare and present final proposal to Commission
- Commission action on final proposal

Proposed Timeline:

- **Oct 2017** - Present stakeholder outreach proposal to Commission
- **Oct-Dec 2017** –
 - Identify and confirm stakeholders for small group and agencies meetings
 - CDFW and FGC staff preparation for meetings (logistics, materials, format, etc.)
- **Jan-Apr 2018** – Hold stakeholder and agencies meetings
- **Apr-Oct 2018** –
 - Outreach meetings with legislative caucus/committees
 - CDFW and FGC staff draft proposal
 - CDFW and FGC staff preparation for workshop
- **Oct 2018** – Public workshop
- **Nov-Dec 2018** – CDFW and FGC finalize proposal
- **Feb 2019** – Staff presentation and possible action on proposal by Commission