

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 473
Title 14, California Code of Regulations
Re: Possession of Nongame Animals: Nutria

I. Date of Initial Statement of Reasons: June 11, 2019

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing: Date: August 7, 2019
 Location: Sacramento

(b) Discussion Hearing: Date: October 9, 2019
 Location: Valley Center

(c) Adoption Hearing: Date: December 11, 2019
 Location: Sacramento

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

This amendment of Section 473 would protect the State's wildlife, wetland habitats, waterways, water supplies, water conveyance and flood protection infrastructure, and agriculture from the detrimental impacts caused by invasive nutria (*Myocastor coypus*) by banning the possession of live nutria and thereby preventing new introductions of nutria in the state. The Department of Fish and Wildlife ("Department") has implemented a multi-million dollar nutria eradication program, and this regulation is an important part of this effort.

Current Regulation

Section 671, Importation, Transportation and Possession of Live Restricted Animals, restricts the possession of many non-native species. Nutria are a mammal of the order Rodentia; subsection 671(c)(2)(J) designates all rodents, including nutria, as a "detrimental animal." Nonetheless, possession of live nutria is authorized "under permit issued by the department," i.e., a "Restricted Species Permit."

Subsection 671.1, Permits for Restricted Species, describes the types of Restricted Species Permits issued by the Department and the qualifications needed to obtain a Restricted Species Permit. In addition, subsection 671.1(c)(5) sets forth the criteria for denying a new Restricted Species Permit application and the amendment of an

existing permit. The criteria include failure to comply with the terms and conditions of the permit; failure to comply with state, federal, or municipal statutes or regulations; or, if the Department finds that application documents do not support the statement of use of the requested restricted species. But these denial criteria do not authorize the Department to deny an application solely because the applicant would like to possess a live nutria.

Section 650 authorizes the Department to issue permits to take or possess wildlife for scientific, educational, and/or propagation purposes (“Scientific Collecting Permits”). Like Section 671, Section 650 also provides for the legal possession of live nongame mammals, including nutria. Subsection 650(r), which addresses Permit Denial, sets forth criteria for denial of a new Scientific Collecting Permit application and the amendment of an existing permit. As with Restricted Species Permits, the Department does not have the authority to deny a request from a Scientific Collecting Permit applicant solely because the applicant would like to possess live nutria.

Section 679, Possession of Wildlife and Wildlife Rehabilitation, also provides for the legal possession of live nongame mammals, including nutria, by wildlife rehabilitation facilities authorized under a Department-issued permit to rehabilitate injured, diseased, or orphaned animals. Subsection 679(e)(2)(E) specifies that the Department may deny a permit if either an applicant fails to allow an inspection, the facility does not meet standards set forth in the Minimum Standards for Wildlife Rehabilitation, 2000, Third Edition, or if the applicant fails to meet all applicable standards specified in subsections 679(e)(2)(A)-(D). If the applicant is in good standing and qualified to handle and treat injured or diseased nutria, the Department does not have the authority to deny the request.

Section 473, Possession of Nongame Animals, states “Any nongame bird or mammal that has been legally taken pursuant to this chapter may be possessed.” This regulation does not prohibit the possession of nutria pursuant to a Department-issued permit.

Proposed Regulation

The amendment of Section 473 makes it clear that the possession of a live nutria, including a live nutria possessed pursuant to a Department-issued permit, is unlawful. This amendment states:

“(b) It is unlawful to possess live nutria (*Myocastor coypus*), and the Department shall not issue any permit authorizing possession of any live nutria.”

Thus, the proposed amendment to Section 473 would make any possession of live nutria unlawful and authorize the Department to deny any application for the possession of live nutria.

Background

Nutria are semi-aquatic rodents native to South America and are one of the world's most destructive invasive species. Nutria are notorious for the extensive damage their herbivory and burrowing cause to wetlands, water conveyance infrastructure, and agriculture. Nutria were initially introduced to North America for the fur trade in the early 1900s and farmed in California in the 1930s-40s. Following the collapse of the market, nutria were released into the environment and established feral populations. Nutria were subsequently eradicated from the state in the 1970s.

In March 2017, a pregnant nutria was discovered in a managed wetland in California's San Joaquin Valley. Recognizing the extensive impacts nutria will undoubtedly cause to California's wetlands and wildlife, water conveyance and flood protection infrastructure, and California's agriculture, the Department responded by instituting an Incident Command System ("ICS") and redirecting staff and resources to implement long-term planning and eradication efforts. Since that time over 525 nutria have been taken, with additional detections confirmed, across San Joaquin, Stanislaus, Merced, Fresno, Mariposa, and Tuolumne Counties. The State's response now includes the Department of Food and Agriculture, U.S. Department of Agriculture, Department of Water Resources, and U.S. Fish and Wildlife Service. This effort has already cost the State millions of dollars to respond to this introduction and resulting infestation. In FY 19-20, the Department is slated to receive an on-going budget from the Legislature to address the problem, an \$8.5 million grant from the Sacramento-San Joaquin Delta Conservancy, and will transition from the ICS to a dedicated, long-term Nutria Eradication Program; we anticipate the successful eradication of nutria from California, in total, will cost the State tens of millions of dollars.

Other State's Efforts at Eradication of Nutria

Resulting from broader introductions for the fur trade, nutria are now established in nearly 20 states, with most notable feral populations in Louisiana and the Chesapeake Bay. While both regions documented environmental damages in the 1950s, by the 1990s Louisiana had documented damage to and/or complete loss of over 100,000 coastal wetland acres and the Chesapeake Bay documented loss of over 50% of the marsh habitat within the Blackwater National Wildlife Refuge. Oregon and Washington have very high relative densities of nutria and have experienced extensive damage from nutria burrowing into levees, canals, and waterways.

The Chesapeake Bay Nutria Eradication Program was established in 2002, has now spent over \$17 million to remove approximately 14,000 nutria from the Peninsula, and anticipates declaring successful eradication within the next few years. In contrast, the nutria population in Louisiana has been estimated in the millions and beyond eradication. Since 2002, Louisiana has paid up to \$2.0 million per year in \$5/tail bounties for harvest of up to 400,000 nutria every year in an effort to contain

the population and reduce environmental damage. The populations in the Pacific Northwest are also beyond eradication, and the states have not been able to secure adequate funding for control.

(b) Goals and Benefits of the Regulation:

The goal of this regulation change is to prevent the possession of live nutria in California. This regulation will benefit the Department, the State, and its resources, by reducing the potential for future, additional introductions via released or escaped nutria. Ultimately, this regulation protects California’s wetlands, waterways, infrastructure, water supplies, human health and safety, and agriculture.

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

Authority: Section 4150, Fish and Game Code.
Reference: Sections 2118, 3005.5, and 4150, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None.

(e) Identification of Reports or Documents Supporting Regulation Change:

“Discovery of Invasive Nutria in California” (Attachment A)
“Nutria Eradication Program Update” (Attachment B)

(f) Public Discussions of Proposed Regulations Prior to Notice Publication:

Implementation of the eradication effort is ongoing and has been supported by individuals and environmental and agricultural groups interested in the protection of the environment and infrastructure from damage by nutria. To date, the following meetings regarding nutria have been held:

3/12/2018	CDFW outreach meeting to Ag Commissioners, trappers - San Luis NWR
3/12/2018	CDFW outreach meeting to Water Agencies, Land Managers - San Luis NWR
3/28/2018	Delta Conservancy Board Meeting
4/11/2018	Senate Ag Informational Committee Meeting
4/11/2018	Wildlands IPM Symposium
5/17/2018	Delta Protection Commission Meeting
5/19/2018	Grasslands Water District Public Meeting
5/22/2018	California Ag Commissioners and Sealers Association Spring Meeting
5/24/2018	Wildlife Conservation Board
6/13/2018	MARAC (Mutual Aid Region Information Exchange Meeting)
6/13/2018	San Joaquin Farm Bureau Board Meeting
6/22/2018	Central Valley Flood Protection Board
7/11/2018	San Joaquin Farm Bureau Federation Workshop/Coalition for a Sustainable Delta
7/16/2018	WAFWA AIS Committee

7/18/2018	MARAC meeting - Region IV (Modesto)
7/25/2018	MARIX Meeting - Region V (Fresno)
7/27/2018	Department of Water Resources field staff
8/6/2018	Stanislaus County Ag Advisory Board Meeting
8/16/2018	CA Invasive Species Council Meeting
8/21/2018	San Joaquin County Board of Supervisors Meeting
8/22/2018	State Parks' Division of Boating and Waterways field staff
8/23/2018	Rotary Club of Newman
9/5/2018	Collaborative Science and Adaptive Management Program - Policy Group Meeting
9/11/2018	Bay-Delta Science Conference
10/23/2018	San Joaquin Farm Bureau Water Committee
11/5/2018	Delta Stewardship Council - Delta Interagency Implementation Committee (DPIIC)
11/6/2018	Delta Rec District Winter Weather Briefing (CalOES hosted)
11/8/2018	Alameda County grower CE training
11/8/2018	California Invasive Plant Council
11/14/2018	SSJ Delta Conservancy Board Meeting
11/14/2018	CA Forest Pest Council Meeting
11/29/2018	Association of Applied IPM Ecologists Conference (Visalia)
12/6/2018	Delta Independent Science Board non-native species workshop
2/7/2019	Western Section of the Wildlife Society Annual Meeting
3/19/2019	Wildlands IPM Symposium
4/4/2018	Yolo Basin Foundation Flyway Nights
4/8/2019	Delta Plan Interagency Implementation Committee
4/12/2019	Mokelumne River Association
4/30/2019	Assembly Committee on Water, Parks, and Wildlife Hearing on AJR-8
5/18/2019	Grasslands Water District Public Meeting
5/21/2019	California Association of Ag Commissioners and Sealers Association Spring Meeting
5/24/2019	Central Valley Flood Protection Board
6/5/2019	California Invasive Species Action Week - Lunchtime Webinar Series

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change: No alternative was considered.

(b) No Change Alternative:

If no regulatory change occurs, live nutria could be lawfully possessed by holders of restricted species, wildlife, rehabilitation, and scientific collecting permits. Possession of these animals would increase the risk of accidental or intentional reintroduction of nutria, frustrating Department efforts to eradicate this non-native invasive species and reverse the severe environmental impacts it causes.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action: None.

VI. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action is an additional component of the state's nutria eradication program that is anticipated to minimize the costly risks to infrastructure and resources that nutria pose. Reducing the potential for the spread of escaped nutria should help protect California's business activities that draw upon well-functioning wetlands, waterways, infrastructure, and water supplies, such as agriculture and associated businesses.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates no impacts on the creation or elimination of jobs within the state and no impact on the creation of new businesses or the elimination of existing businesses because the proposed amendment is anticipated to aid in the preservation of existing water infrastructure with no cost to current business activities. The Commission anticipates benefits to the health and welfare of California residents by the protection of water supplies. The proposed action is not anticipated to directly affect worker safety. The Commission anticipates benefits to the State's environment by supporting strategies that further the control of invasive species.

(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.

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

No new costs to the State. Additionally, the proposed action will aid in the prevention of future importations and releases, preventing loss of state agency and/or federal funding to response costs.

- (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.

VII. Economic Impact Assessment

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission anticipates no impacts on the creation or elimination of jobs within the state because the proposed action would have such limited scope to affect businesses or the demand for labor.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission does not anticipate any effects of the proposed regulation on the creation of new businesses or the elimination of existing businesses within the state because it would not directly affect the demand for business products or services.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate the any effects of the proposed regulation on the expansion of businesses currently doing business within the state because the proposed action would not directly affect the demand for business products or services.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission anticipates benefits to the health and welfare of California residents by contributing toward the protection of water supplies.

(e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate benefits to worker safety because the proposed amendment would not impact working conditions.

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's environment through support of strategies that control damaging invasive species.

(g) Other Benefits of the Regulation: None.

Informative Digest/Policy Statement Overview

This amendment of Section 473 would ban the possession of live nutria to prevent new introductions of nutria in the state. Nutria affect the State's wildlife by damaging wetland habitats, and put waterways, water supplies, water conveyance and flood protection infrastructure, and agriculture at risk from damage through their burrowing and herbivory of aquatic vegetation. The Department has implemented a multi-million dollar nutria eradication program, and this regulation is an integral part of this effort.

Possession of nutria is only possible under a permit issued by the Department. But, the permit denial provisions in California Code of Regulations, Title 14, subsection 671.1(c)(5), sections 670 and 650 have no provisions for banning the possession of live nutria in California.

Section 473 provides exceptions to FGC 4150, allowing for the possession of legally taken non-game birds and mammals, including rodents such as nutria, but not prohibiting the possession of live nutria pursuant to a Department-issued permit. Thus, the Commission proposes an addition to subsection 473(b) stating:

“It is unlawful to possess live nutria (*Myocastor coypus*), and the Department shall not issue any permit authorizing possession of any live nutria.”

Goals and Benefits of the Regulation:

The goal of this regulation change is to prohibit any possession of live nutria and ensure the Department no longer issues permits allowing the possession of live nutria in California. This regulation will benefit the Department, State, and its resources by reducing the potential for future, additional introductions via released or escaped nutria and thereby protect California's wildlife, wetland habitats, waterways, water supplies, water conveyance and flood protection infrastructure, and agriculture.