

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 203, 265, 355, 1050, 2120, 2122, 2150, 2355, 3003.1, 3005.5, 3800, and 4150 of the Fish and Game Code and to implement, interpret or make specific sections, 13.5, 33, 80, 110, 200, 201, 203, 203.1, 240, 260, 265, 270, 275, 355, 356, 1001, 1008, 2055, 2116.5, 2118, 2118.2, 2118.4, 2120, 2121, 2122, 2124, 2150, 2150.2, 2150.4, 2150.5, 2151, 2185, 2186, 2187, 2189, 2190, 2193, 2350, 2353, 2355, 3003.1, 3004.5, 3219, 3800, 3950, 4011, and 4150 of said Code, proposes to amend sections 257.5, 475, 676, and 712 and add sections 681, and 714, Title 14, California Code of Regulations (CCR), relating to mitigating risks for cervid importation and movement.

### **Informative Digest/Policy Statement Overview**

Unless otherwise specified, all section references in this document are to Title 14, CCR.

The California Department of Fish and Wildlife (Department) is recommending that the California Fish and Game Commission (Commission) amend sections 257.5, 475, 676, and 712 and add sections 681, and 714 to target known risk factors for the introduction and spread of wildlife diseases such as chronic wasting disease (CWD) to California's cervid populations.

Diseases can have significant long-term effects on native wildlife populations, especially novel diseases. Once a disease becomes established in a wild population there are often very few management strategies available, and successes are limited. Prevention is generally the most effective management practice for diseases affecting wildlife. CWD is the most significant disease affecting cervids (deer, elk, moose, caribou) in North America, but it has never been detected in California. To prevent CWD and other diseases from being imported into California, the Department recommends that new regulations be adopted which will target known risk factors and mitigate the possibility of accidental importation.

Detecting CWD in California's deer or elk would require irrevocable changes to how the Department manages these species. As CWD prevalence increases in a population, population growth rates ( $\lambda$ ) decrease and once past a certain threshold, populations will decline. CWD in California could result in changes to California's hunting regulations and traditions, and would require significant Department resources to manage.

While CWD poses a significant risk to cervids, it is not the only disease of concern associated with the movement of captive cervids. Cervids are susceptible to bovine tuberculosis (bTB) and brucellosis, two important diseases that affect the livestock industry. The USDA has established disease programs to limit or eliminate these diseases from livestock. While the Commission's regulations currently require testing for these diseases, the testing requirements have not been amended for many years. To align with current USDA testing standards, the Commission is updating disease testing requirements in addition to introducing CWD-specific regulations.

The proposed changes include:

- Section 257.5 adds cervid-derived biofluid to the list of substances which can be used to define a "baited area", and adds a new subsection which makes it unlawful to use any lures or similar materials that contain, or are labeled or advertised to contain, biological fluids from cervids to take game birds or mammals.
- Section 475 adds a new subsection making it unlawful to use lures or similar materials that contain, or are labeled or advertised as containing, any biological fluid derived from a cervid.

- Section 676 removes the currently incorporated Fallow Deer Farming Importation Application form and replaces it with a new Cervidae Importation Application form (DFW 1681), defines requirements for a health certificate to accompany imported live cervids, and updates testing requirements for bTB and brucellosis.
- Section 681 will be added to implement the new importation permit for any live cervids and outlines the requirements for permit application.
- Section 712 adds a new definition of skull plate to clarify importation requirements.
- Section 714 will be added to make it unlawful to import or possess any material that contains or is labeled or advertised as containing any biological fluid derived from a cervid.

### *Benefit of the Regulations*

The goal of these regulations is to prevent the importation of CWD, and other diseases affecting cervids, into California by enhancing the Department's ability to regulate known risk factors for the movement, transmission, and spread of CWD and other diseases: movement of live cervids, their parts, and their products. The proposed regulations provide the Department with greater control over the importation of live animals which may carry the disease. Prohibition on the possession and use of cervid-derived biofluids, such as urine-based lures, mitigates the risk of importing infectious prions through such products. Additional specificity in hunter importation regulations will make it clear to the regulated public which animals are included in the cervid group and therefore require precautions to be imported after harvest and assist them in processing their harvested animals to avoid potentially importing parts of animals which may carry infectious prions. The benefit of these proposed regulations is to provide tools to further prevent to importation of diseases like CWD.

### *Consistency and Compatibility with Existing Regulations*

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Section 2118 of the Fish and Game Code classifies cervids as wild animals. Pursuant to Fish and Game Code section 2120, the Commission has the authority to regulate the entry, importation, possession, transportation, keeping, confinement, and release of all wild animals that will be or have been imported into California. Pursuant to Section 200 of the Fish and Game Code, the Commission has the authority to regulate the taking and possession of mammals. Section 80 of the Fish and Game Code provides that a provision of the Fish and Game Code that applies to a whole animal is presumed to also apply to a part of the animal. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to the importation of live cervids, importation of hunter harvested cervid parts, or use and possession of lures.

## **Public Participation**

### **Comments Submitted by Mail or Email**

It is requested, but not required, that written comments be submitted on or before September 28, 2023 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on October 6, 2023. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

## Meetings

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in River Lodge Conference Center, 1800 River Walk Drive, Fortuna, California, which will commence at **8:30 a.m.** on **Tuesday August 22, 2023**, and may continue at **8:30 a.m.** on **Wednesday August 23, 2023**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in San Jose, California, which will commence at **8:30 a.m.** on **Wednesday, October 11, 2023**, and may continue at **8:30 a.m.** on **Thursday, October 12, 2023**. The exact location of this meeting has not yet been determined. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

## Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov). The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Jenn Bacon at [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number. **Brandon Munk, Wildlife Veterinarian, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Mr. Munk can be reached at (916) 358-2790 or [WHLab@wildlife.ca.gov](mailto:WHLab@wildlife.ca.gov).**

## Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

## Impact of Regulatory Action/Results of the Economic Impact Assessment

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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Commission does not anticipate significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The businesses affected by cervid importation permit requirements would largely be 1) restricted species (Title 14, section 671) permit holders that have cervids (e.g. zoos, sanctuaries, and other exhibitors) and permitted fallow deer farms (Title 14, Section 676); people looking to start one of these businesses; similar businesses looking to travel through CA, (i.e. import permits would still be required even if just traveling through CA); 2) businesses affected by a cervid-derived biofluid ban, including retailers that sell cervid-derived biofluid-based lures which are not widely sold or used in the state, but artificial scent lures would not be affected by these regulations and would remain available; and 3) restricted species breeder permit holders looking to import semen for artificial insemination. Clarifications of the regulations regarding the importation of cervid body parts into the state will not introduce any new costs or demand for goods and services.

- (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 that the proposed regulations will not impact 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 because these proposed regulatory changes to mitigate CWD and other diseases will impose discretionary non-monetary costs on a small sector of the state with little to no stimulus to the demand for goods or services within the state economy. The proposed prevention measures will benefit fallow deer farming and outdoor recreation businesses by helping to ensure healthy cervid populations.

Direct benefits are anticipated to the state's environment, specifically the native deer and elk populations while indirect benefits are anticipated to be the health and welfare of California residents by preserving hunting traditions and wildlife viewing opportunities.

Additionally, the proposed disease prevention measures would deter substantially increased Department management costs in the long-run by preventing the importation of CWD. This will allow current budgets to continue to further conservation programs to preserve deer, elk, and other California native species for their ecosystem values and as a resource for consumption and enjoyment by state and non-state residents. The Commission does not anticipate any benefits to worker safety with the proposed regulations.

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

The Commission estimates no cost impacts on representative businesses for importing live cervids for restricted species or fallow deer farming permit holders. The import application and permit approval would have no associated fee. Costs for disease testing and Certificate of

Veterinary Inspection are already incurred for most cervid imports into California because of federal interstate movement regulations and best practices. These proposed requirements would not increase that cost. Records retention requirements may involve additional time that live deer farming businesses and zoos will incur should they continue to choose to import live deer. Importing deer is not strictly necessary for fallow deer farms and is discretionary. Time spent on permit applications and records retention requirements will remain a small fraction of the total cost of importation of live cervids. The Commission 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:

The Commission anticipates no new costs or savings to state agencies or to federal funding to the State. The proposed regulatory measures to mitigate the risk of disease importation into the state are projected to save the Department costs in the long-run. Other states' experiences show that state wildlife agencies spend eight-fold more managing CWD once the disease is detected within the state. The Department Wildlife Health Laboratory (WHL) effort to review and approve cervid importation permits is expected to be unchanged. Department law enforcement costs are expected to be unchanged, as the routine level of field enforcement is expected to be sufficient. There may be a decrease in the number of citations for improper importation of parts from hunter harvested animals as the regulation change will clarify what can and cannot be imported from cervids harvested out-of-state.

(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.

**Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

## **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: July 27, 2023

Melissa Miller-Henson  
Executive Director