

State of California
Fish and Game Commission
Final Statement of Reasons for Regulatory Action

Amend Section 257.5, 475, 676 and 712, and Add Sections 681 and 714
Title 14, California Code of Regulations
Re: Mitigating risks for cervid importation and movement

I. Dates of Statements of Reasons

- | | |
|--------------------------------------------------------|-------------------------|
| (a) Initial Statement of Reasons | Date: April 26, 2023 |
| (b) Email in lieu of Pre-adoption Statement of Reasons | Date: September 1, 2023 |
| (c) Final Statement of Reasons | Date: June 19, 2024 |

II. Dates and Locations of Scheduled Hearings

- | | | |
|--------------------------------------------------------------------------|---------------------------|----------------------------------------------------------------------|
| (a) Notice Hearing | | |
| | Date: June 14-15, 2023 | Location: Sacramento |
| (b) Discussion Hearing | | |
| | Date: August 22-23, 2023 | Location: Fortuna |
| (c) Adoption Hearing | | |
| | Date: October 11-12, 2023 | Location: San Jose |
| (d) Consideration of recommended changes to approved regulatory language | | |
| | Date: May 15, 2024 | Location: Teleconference, Trinidad, Sonoma, La Jolla, and Sacramento |

III. Update

Section 475 of Title 14, California Code of Regulations has been further amended to remove Fish and Game Code Section 202 from its Reference. Section 712 has been further amended to remove section 240 from its Authority, and that section has also been removed from the Reference of newly proposed sections 681 and 714. This is because both sections 202 and 240 of Fish and Game Code have been repealed. There have been no changes to the proposed regulations from the effects described in the Notice of Proposed Action.

The Commission adopted the proposed regulations in October 2023. In accordance with the Administrative Procedures Act, the final approved rulemaking package was submitted to the Office of Administrative Law (OAL). The review by OAL resulted in requested changes to the adopted language. This in turn, necessitated the withdrawal of the package for the purpose of correction.

Section 257.5 was in the process of being amended in a separate rulemaking. Language regarding game mammals and exotic game mammals that was added in the rulemaking OAL file# 2024-0416-03S was inadvertently left out of the amended regulatory language. The language has been corrected in the final regulatory language for this rulemaking.

In accordance with Government Code 11346.8(c):

“No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

In accordance with Government Code 11346.9(a)(1)

“An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, amendment, or repeal of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with Section 11347.1.”

The Department believes that the changes are “*sufficiently related*” to the proposal’s original proposed regulatory action, notice and presentation to the Commission that a 15-day renote will be acceptable to OAL. A 15-day renote allowed the public an opportunity to review the corrections. Section VII of this document specifically addresses every change, with reasons, made to the regulatory language that was adopted on October 11, 2023.

IV. Availability of Documents

Pursuant to Section 20, Title 1, California Code of Regulations, the Fish and Game Commission has already incorporated by reference form DFW 1681, as it is cumbersome and impractical to publish the form in the California Code of Regulations, and that the form DFW 1681 was made available upon request and was reasonably available on the Fish and Game Commission’s website.

Links to the documents relied upon for this rulemaking were included in the Initial Statement of Reasons and the documents were made available to the public upon request.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

No public comments, written or oral, were received during the 45-day and 15-day public comment periods or the four public hearings.

VI. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

The following alternatives were considered, but not pursued:

- Live cervid import permit – outright ban on the importation of any cervid.
- Cervid-derived biofluids – allow for the use and possession of products certified through Responsible Hunting Scent Association (RHSA). While this may

decrease the risk, it would not eliminate the risk of using cervid-derived biofluid-based lures or products and the consequences of chronic wasting disease (CWD) in California are immense. During proposal development, hunting conservation organizations posed additional questions about the proposed prohibitions to cervid-derived biofluids. The questions received led to additional research into cervid-derived biofluids, the hunting scent lure industry, and current CWD certification programs, yielding additional justification for the proposed prohibitions:

- Commercially available biofluid-based scent lures were developed and marketed for white-tailed deer hunting and are almost exclusively derived from captive white-tailed deer. There are currently no white-tailed deer hunting opportunities in California.
- While the commercial scent lure industry has developed a program to certify urine-based lures as “CWD free,” there is no agency oversight, the test used for these certifications is not United States Department of Agriculture (USDA) approved for the detection of CWD, and the test and testing process, as a whole, lack the sensitivity and specificity analyses to fully evaluate the effectiveness of such a program.
- USDA’s Herd Certification Program for CWD has multiple certified “CWD-free” herds turn up CWD-positive every year, highlighting the difficulties of testing, preventing, and managing CWD due to the ecology and pathophysiology of the disease.
- Informal surveys and market research confirmed that scent lures are not widely used in California. One reason for this may be that mule deer behavior is different from white-tailed deer behavior and scent lures may not be particularly effective.
- Synthetic alternatives are available and would remain an option for use in California.
- While the risk associated with a single biofluid-derived product is likely small, that risk compounds with repeated use over time as prions remain infectious in the environment for years to decades and the infectious dose for CWD is exceedingly small.
- Clarifying hunter import regulations – none.

(b) No Change Alternative

- Live cervid import permit – there would be little to no regulatory authority to deny the import of CWD-susceptible, at risk, and potentially infectious lives cervids.
- Cervid-derived biofluids – would continue to be used and possessed increasing the risk of infectious prions being brought into California and placed on the landscape increasing the risk of contaminating California’s deer and elk habitat with infectious prions allowing susceptible deer or elk to be exposed and infected by CWD.
- Clarifying hunter import regulations – would remain vague as to which species the regulation applies to and what parts can be imported.

(c) Consideration of Alternatives

In view of information currently possessed, no 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 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.

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 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 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.

(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. No cost impacts to representative private persons are anticipated.

(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.

VIII. Updates made to the prior adopted regulatory text.

The proposed amendments to the adopted regulatory text are indicated as follows:

All Sections

- The acronym "CWD" has been replaced by spelling out "chronic wasting disease" this change was necessary for consistency and clarity throughout the regulations.

Section 257.5

- Subsection 257.5(a): Previously included the definition of “bait” and “baited area”. The definition of “baited area” has been moved to subsection (b). The language, “...or cervid derived biofluid” has also been added. This amendment was necessary to define “bait” and clarify the difference between “bait” and “baited area”.
- Subsection 257.5(b): Previously part of subsection (a), The language “shelled, shucked or unshucked corn, wheat or other grains, salt, or other feed whatsoever, or cervid derived biofluid” has been replaced with “bait”. This amendment is necessary to clarify what needs to be present to constitute what is considered a “baited area”.

Section 475

- Subsection (g): The language, “(a) of these regulations” has been removed. This amendment was necessary to make the regulatory language consistent.

Section 676

- Subsection 676(e)(1): “obtain” was changed to “import”. This amendment is necessary to clarify that the permit is for importation of cervids into California. “This application and documentation identified below...” has been changed to “The application and documentation identified in subsections 676(e)(2) and (3) shall...”. This amendment was necessary to clarify where to find the requirements of the application documents.
- Section 2355 Fish and Game Code has been added to the authority cited. This amendment is necessary to clarify the authority for the importation of deer into the state.

Section 681

- Subsection 681(c)(6): New language added to clarify what the department will base the decision to deny, revoke, or reconsider a permit or permit application. This amendment is to clarify how the department will make decisions regarding the denial, revocation, and reconsiderations of permits for cervid importation.
- Subsection 681(c)(7): Denial of Application. Previously subsection 681(c)(6). After the title “Denial of Application” the remaining language from this section has been moved into a new subsection, 681(c)(7)(A). The last sentence “Past behavior will be taken into consideration...” has been removed. This sentence is no longer necessary as the new subsection 681(c)(6) clarifies how the Department will make decisions regarding denial, revocation, and reconsideration.
- Subsection 681(c)(8): Previously subsection 681(c)(7). “The department is authorized to revoke...” was changed to “The department may revoke...” This change was made to clarify and make the language throughout the regulation consistent.
- Subsection 681(c)(9): Reconsideration. New language added regarding reconsideration of denied or revoked applications. This amendment is necessary to provide instructions for having applications and revocations reconsidered by the Department.
- Subsection 681(c)(10): New subsection has been added regarding written notices about the Department’s determinations of reconsiderations. This amendment is necessary to clarify how applicants will be notified by the Department.
- Subsection 681(e): Title of the subsection was changed from “Inspection and Retention of Health Records” to “Retention of Health Records.” This amendment is necessary to clarify the context of the subsection.

- Subsection 681(e)(1): This subsection has been deleted. The language from this subsection has been added to subsection 681(e). This amendment is necessary for consistency of the numbering in the regulation.
- Subsection 681(f): Previously subsection 681(e)(2). This has been changed to subsection 681(f) as it did not pertain only to the retention of health records. The title “Inspection” has been added to clarify the context of the subsection.
- Subsection 681(g): Previously subsection 681(e)(3). This amendment as the language does not only pertain to subsection 681(e) and is necessary for consistency of the numbering in the regulation.
- Section 2355 Fish and Game Code has been added to the authority cited. This amendment is necessary to clarify the authority for the importation of deer into the state.

Section 712

- No changes

Section 714

- Subsection 714(a): The language, “but is not limited to” has been added to the description of biofluid. This amendment is necessary to make the language in the regulations consistent with sections 257.5 and 475.
- Section 2355 Fish and Game Code has been added to the authority and references cited. This amendment is necessary to clarify the authority and reference for the importation of deer into the state.

IX. Edits Made to Adopted Department Forms

- No changes to DFW form 1681

Updated Informative Digest/Policy Statement Overview

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 few effective management strategies, 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, and as of yet, has not been detected in California. The disease is caused by mis-folded proteins called prions which can be found in just about every tissue as well as glandular secretions, blood, feces, and urine of an infected animal. Once established in an area, eradication is infeasible if not impossible. The Department has been testing for CWD since 1999 and, to date, it has never been detected in California's deer or elk herds. Detection of CWD in California's deer or elk would require irrevocable changes to how the Department manages these species. The most effective management practice for CWD and other diseases that affect wildlife is prevention. 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.

Current Regulations

Section 257.5 prohibits taking resident game birds and mammals by the aid of bait. The current definition of bait in this section does not include cervid-derived biofluid-based lures which may attract animals through scent or hormonal cues.

Section 475 defines methods of take that are allowed for nongame birds and nongame mammals; this section also prohibits use of bait but, as in 257.5, but does not include cervid-derived biofluid-based lures.

Section 712 regulates what parts of hunter harvested cervid carcasses may be imported and possessed but the language used seems to define cervid as deer and elk only. This section also permits the importation of clean skull plates but does not define skull plate.

Section 671 establishes a list of restricted species, which may not be imported into California without a permit issued by the Department. It further outlines requirements for possession, importation, and movement of restricted species including disease testing requirements. All Cervidae are considered "detrimental animals" under section 671, and therefore may only be possessed under permit by the Department. There is currently no regulatorily established permitting process specifically for the importation of species listed as restricted species, including the broader group Cervidae.

Section 676 outlines requirements for possession, use, movement, and importation of live fallow deer, a cervid, including permitting and disease testing requirements for fallow deer farming. The importation permit incorporated in this section was last updated in 1997 and covers only the species *Dama dama* (fallow deer).

Proposed Changes

- Section 257.5 – Add cervid-derived biofluid-based lures to the list of prohibited baits for the take of game birds and mammals.
- Section 475 – Add cervid-derived biofluid-based lures to the list of prohibited baits for the take of nongame birds and nongame mammals.
- Section 676 – Remove the current Fallow Deer Farming Importation Application, LRB 1676A (3/97) from regulation, it will be superseded by a new importation permit for all members of the family Cervidae including fallow deer.
- Section 712 – Clearly state that the regulation applies to all species in the family Cervidae, not just deer and elk. Define what a skull plate is to clarify what parts may be imported.
- Add a new section (Section 681) requiring a Cervidae Importation Permit to import live animals in the family Cervidae. This section will provide details on requirements for permit application, disease testing, and identifying markers for imported cervids as well as clear denial authority based on disease risk.
- Add a new section (Section 714) that defines cervid-derived biofluids and prohibits the possession of cervid-derived biofluids, or products containing cervid-derived biofluids.

Benefit of the Regulations

These regulations will benefit California's environment by helping to prevent the importation of CWD and other diseases to protect California's native deer and elk populations. This will provide further benefits to California's hunting community, fallow deer farming community, and outdoor recreation communities by maintaining healthy cervid populations as a resource for consumption and enjoyment. Keeping California's deer and elk populations free of chronic wasting disease will save the Department and stakeholders money and resources allowing for more conservation programs protecting deer, elk, and other California native species.

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.

Update

Section 475 has been further amended to remove Fish and Game Code Section 202 from its Reference. Section 712 has been further amended to remove section 240 from its Authority, and that section has also been removed from the Reference of newly proposed sections 681 and 714. This is because both sections 202 and 240 of Fish and Game Code have been repealed.

On May 15, 2024, the Commission approved significantly related changes to the original proposed regulatory action. Prior to its approval, a 15-day notice outlining the specific changes was issued to allow the public an opportunity to review the changes.

Section 257.5 was recently amended in a separate rulemaking related to game mammals and exotic game mammals, which was approved by Office of Administrative Law (OAL rulemaking file 2024-0416-03S). The approved amendments to 257.5 will go into effect on July 1, 2024. The updated language was inadvertently omitted in the amended regulatory language of this rulemaking and has been corrected in the final regulatory language.