

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 **1050, 2118, 6401, 15004, 15600 and 15601** of the Fish and Game Code and to implement, interpret or make specific Sections **2116, 2190, 2270-2272, and 3201-3204** of said Code, proposes to **amend** Section 236, Title 14, California Code of Regulations, relating to **importation of live aquatic plants and animals for research purposes.**

Informative Digest/Policy Statement Overview

There is a biological and public trust need for scientific research to respond to the challenges presented by diseases, pathogens, or parasites, and uncover solutions that can halt the deterioration and improve the condition of aquatic and other ecosystems. However, existing state regulations limit the scope of importation for research purposes. The goal of this proposed action is to allow the importation of live aquatic plants and animals into California by a registered aquaculturist for the purposes of research, including when a disease, pathogen, or parasite has been detected in a shipment prior to importation.

The proposed regulatory amendments would allow for importation of live aquatic plants and animals for the purpose of research, subject to approval and permit conditions specified by the Department of Fish and Wildlife (Department). The regulations would restrict importation to closed facilities that prevent release and with no intent to outplant or offer for sale. The registered aquaculturist will be required to maintain all aquatic plants or animals identified in the permit in a fully closed system that does not have an outlet into the waters of the state. The proposed changes will serve as an avenue for facilitating further research of diseases in controlled environments, and address inconsistencies with allowances for catastrophic or other disease types and to allow research under safe and prescribed conditions.

Proposed Amendments

In order to improve the permitting process and oversight of importation of live aquatic plants and animals for the purpose of research, the Department proposes amendment to Section 236 as follows:

- Amend Section 236(c)(2): to add “aquatic plants” to the existing exceptions that currently only apply to live aquatic animals to fully implement Fish and Game Code Section 15600 for both aquatic plants and animals.
- Amend Section 236(c)(5): to add the words “...except as otherwise provided in subsection 236 (c)(6)...” which points to the new added subsection (c)(6), and would not require destruction or export from the state of aquatic plants and animals that have been found to be diseased, parasitized, or contain a species not authorized.
- Add Section 236(c)(6):
 - Establishes that a registered aquaculturist, solely for research purposes, may import aquatic plants or animals for which a disease or pathogen has been detected in the shipment prior to importation, subject to written approval and permit conditions specified by the department.

- Requires the registered aquaculturist to maintain all aquatic plants or animals identified in the permit to be in a closed water system, for which an applicable definition is referenced from subsection 671.7(a)(1) of Title 14, California Code of Regulations.
- Specifies that if a disease or pathogen listed in Section 245(c) of these regulations, not originally detected prior to importation, is identified by a fish pathologist, the registered aquaculturist shall comply with subdivision (c)(5) and Section 245 of these regulations.
- Amend Section 236(c)(7): Re-number and amend subsection 236(c)(7) to add “aquatic plants” to the existing exceptions that currently only apply to live aquatic animals to fully implement Fish and Game Code Section 15600 for both aquatic plants and animals.
- Re-number subsection 236(c)(7) to (c)(8), and (c)(8) to (c)(9).
- Add Section 236(d): establishes an enforcement clause for the terms and special conditions of an importation permit issued pursuant to Section 236.

Benefits of the regulations

Existing regulatory mechanisms regarding diseased aquatic plants seem to only encompass after-the-fact discoveries of diseases, but no mechanism currently exists to allow research to be conducted on aquatic plants and animals that are known to be infected. This proposed regulation is necessary for the interest of addressing inconsistencies with allowances made for catastrophic diseases (and other disease categories) and allowing research under prescribed conditions. This regulation provides potential indirect benefits to the state’s environment through increased control of importations, the containment of diseases or pathogens in research, and the benefits derived from disease or pathology research that may include improving diagnoses, preventative measures, and treatments. Overall, the goal of this proposed action is to allow the importation of live aquatic plants and animals into California by a registered aquaculturist for the purposes of research, including when a disease or pathogen has been detected in the shipment prior to importation.

Evaluation of incompatibility with existing regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt regulations governing aspects of importation of live aquatic plants and animals by a registered aquaculturist (California Fish and Game Code Section 15600), an authority that no other state agency has. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other live aquatic plant and animal importation regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before **November 27, 2024** at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received on **December 9, 2024**. 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 HEREBY GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the **Natural Resources Headquarters Building, 715 P Street, Sacramento, California**, which will commence at **8:30 a.m.** on **December 11, 2024**, and may continue at **8:30 a.m.**, on **December 12, 2024**. 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 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. 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 **David Haug** at FGC@fgc.ca.gov or at the preceding address or phone number. **Samara Maxey, Marine Region Program Manager, Department of Fish and Wildlife, samara.maxey@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.**

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 that the proposed action will have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed change will remove the competitive disadvantages for businesses currently operating within the state that are currently unable to import species without this regulatory change.

(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 does not anticipate adverse impacts on the creation or elimination of jobs within the state. The Commission does not anticipate adverse impacts on the creation of new business, the elimination of existing businesses, or the expansion of businesses in California. The proposed changes are to allow for a more streamlined and efficient process for importation of live aquatic plants and animals for the purpose of research and limit the use of importation to closed facilities that prevent release and with no intent to outplant or offer for sale. Under the proposed action a registered aquaculturist will be required to maintain all aquatic plants or animals identified in the permit in a fully closed system that does not have an outlet into the waters of the state in order to prevent the specified pathogen or disease from entering the environment. The Commission expects at least one aquaculturist to begin operating in the state as a result of the proposed regulations but does not expect demand for goods and services related to the aquaculture industry to significantly change. The Commission does not anticipate that the proposed regulation will negatively impact the demand for labor, nor induce the elimination nor the expansion of businesses in California. The Commission does not anticipate any benefits to the health and welfare of California residents or to worker safety. The Commission anticipates benefits to the State's environment indirectly through increased control of importations, which may prevent the introduction of pathogens into the state.

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

The Commission anticipates that the proposed regulatory action will have minor economic impacts on businesses and small businesses that operate as aquaculturists and seek to import specimens with non-catastrophic diseases or pathogens; however, these are not new costs imposed by the proposed regulatory action but rather the current cost of compliance that aquaculturists seeking to import specimens already face as part of the permitting process. The proposed regulatory action removes a prohibition on the importation of species identified as being infected with non-catastrophic diseases or pathogens to allow the research of diseased aquatic plants under safe and prescribed conditions. The costs for diagnostics & testing services for pathogens required by applicants for an importation license under current regulations is approximately \$4,000-\$10,000 depending on the need for repeated testing, with a median cost of \$8,000. Currently most aquaculturists happen to qualify as small businesses, but the sector is not limited to small

businesses in terms of who may enter the market. In 2024 there are approximately 130 registered aquaculture facilities in the state, with some of those facilities operated by the same company. Only a fraction of them will likely conduct the kind of research being contemplated for approval under the proposed regulatory action, and the Commission expects the percentage of affected aquaculturists to be 15-20%, which would create an approximate annual cost of \$156,000-\$208,000 based on the median testing cost of \$8,000. However, this testing cost is the same cost that all other importers face when importing a species into the state and does not represent a new cost created or imposed by these regulations.

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

None.

(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: **October 11, 2024**

Melissa Miller-Henson
Executive Director