

Section 238.5, Title 14, CCR, is amended to read:

§238.5. Stocking of Aquaculture Products.

Upon stocking, aquaculture products are wild and therefore "fish" as defined by Section 45 of the Fish and Game Code, except when stocked into a registered aquaculture facility. No person shall stock aquaculture products in this state except in accordance with the following general terms and conditions:

(a) All aquaculture products stocked under these provisions must be legally reared or possessed by an aquaculturist registered in this state. No person shall stock aquaculture products which are parasitized, diseased or of an unauthorized species.

(b) Live aquaculture products shipped to Inyo or Mono counties must be certified by the department as disease and parasite-free before being stocked in waters in those counties.

(c) All private stockings of fish shall undergo a pre-stocking evaluation of the proposed stocking location prior to issuance of a private stocking permit:

(1) Pre-stocking evaluation conditions to achieve approval of proposed stocking location.

(A) The proposed stocking location has no conflicts with department fisheries management programs, biodiversity management plans, state or federal conservation strategies, or species recovery plans.

(B) The proposed stocking location has no known significant impacts to a decision species in subsection 238.5(c)(2).

(C) The proposed stocking location is not within the historic range or federally designated critical habitat of a decision species in subsection 238.5(c)(2).

1. If all of the above conditions (A), (B), and (C) are met, the proposed stocking location is approved, otherwise proceed to condition (D).

(D) The proposed stocking location has no suitable habitat for a decision species in subsection 238.5(c)(2).

1. If the above condition (D) is met, the proposed stocking location is approved, otherwise proceed to condition (E).

(E) The proposed stocking location has an existing biological community that would preclude a self-sustaining population of a decision species in subsection 238.5(c)(2).

1. If the above condition (E) is met, the proposed stocking location is approved, otherwise proceed to condition (F).

(F) If a decision species in subsection 238.5(c)(2) is not be present at the proposed stocking location.

1. If the above condition (F) is met, the proposed stocking location is approved, otherwise proceed to condition (G).

(G) If a decision species in subsection 238.5(c)(2) is present at the proposed stocking location and the proposed stocking has no significant effect on the decision species.

1. If the above condition (G) is met, a private stocking permit can be issued, otherwise the proposed stocking location is not approved.

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- (2) Decision species potentially affected by private stocking programs.
 - (A) Invertebrates
 - (1) Shasta crayfish *Pacifastacus fortis*
 - (2) California freshwater shrimp *Syncaris pacifica*
 - (B) Lampreys
 - (1) River lamprey *Lampetra ayresii*
 - (2) Kern brook lamprey *Lampetra hubbsi*
 - (3) Klamath River lamprey *Lampetra similis*
 - (C) Anadromous or Estuarine Non-salmonid Fish
 - (1) Green sturgeon (southern DPS) *Acipenser medirostris*
 - (2) Delta smelt *Hypomesus transpacificus*
 - (3) Longfin smelt *Spirinchus thaleichthys*
 - (4) Eulachon *Thaleichthys pacificus*
 - (5) Tidewater goby *Eucyclogobius newberryi*
 - (D) Freshwater and Estuarine Fish
 - (1) Owens tui chub *Gila bicolor snyderi*
 - (2) Goose Lake tui chub *Gila bicolor thalassina*
 - (3) Arroyo chub *Gila orcuttii* (none)
 - (4) Hardhead *Mylopharodon conocephalus*
 - (5) Owens speckled dace *Rhinichthys osculus* ssp. 2
 - (6) Santa Ana speckled dace *Rhinichthys osculus* ssp. 3
 - (7) Owens sucker *Catostomus fumeiventris* (none)
 - (8) Modoc sucker *Catostomus microps*
 - (9) Santa Ana sucker *Catostomus santaanae*
 - (10) Cui-ui *Chasmistes cujus*
 - (11) Unarmored three-spined stickleback *Gasterosteus aculeatus williamsoni*
 - (12) Sacramento perch (within native range only) *Archoplites interruptus*
 - (E) Salmonid Fish
 - (1) Coastal cutthroat trout *Oncorhynchus clarkii clarkia*
 - (2) Lahontan cutthroat trout *Oncorhynchus clarkii henshawi*
 - (3) Paiute cutthroat trout *Oncorhynchus clarkii seleniris*
 - (4) California (Volcano Creek) golden trout *Oncorhynchus mykiss aguabonita*
 - (5) Eagle Lake rainbow trout *Oncorhynchus mykiss aquilarum*
 - (6) Kern River rainbow trout *Oncorhynchus mykiss gilberti*
 - (7) Goose Lake redband trout *Oncorhynchus mykiss* ssp. 1
 - (8) McCloud River redband trout *Oncorhynchus mykiss* ssp. 2
 - (9) Warner Valley redband trout *Oncorhynchus mykiss* ssp. 3
 - (10) Little Kern golden trout *Oncorhynchus mykiss whitei*
 - (11) Steelhead (Klamath Mountains Province DPS) *Oncorhynchus mykiss irideus*
 - (12) Steelhead (northern California DPS) *Oncorhynchus mykiss irideus*
 - (13) Steelhead (Central Valley DPS) *Oncorhynchus mykiss irideus*
 - (14) Steelhead (central California coast DPS) *Oncorhynchus mykiss irideus*

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- (15) Steelhead (south/central California coast DPS) *Oncorhynchus mykiss irideus*
- (16) Steelhead (southern California DPS) *Oncorhynchus mykiss irideus*
- (17) Coho salmon (southern Oregon/northern California coast ESU) *Oncorhynchus kisutch*
- (18) Coho salmon (central California coast ESU) *Oncorhynchus kisutch*
- (19) Chinook salmon (Klamath-Trinity rivers spring-run ESU) *Oncorhynchus tshawytscha*
- (20) Chinook salmon (California coastal ESU) *Oncorhynchus tshawytscha*
- (21) Chinook salmon (Sacramento River winter- run ESU) *Oncorhynchus tshawytscha*
- (22) Chinook salmon (Central Valley spring-run ESU) *Oncorhynchus tshawytscha*
- (23) Chinook salmon (Central Valley fall-/late fall–run ESU) *Oncorhynchus tshawytscha*
- (F) Amphibians
 - (1) California tiger salamander *Ambystoma californiense*
 - (2) Northwestern salamander *Ambystoma gracile*
 - (3) Long-toed salamander *Ambystoma macrodactylum*
 - (4) Santa Cruz long-toed salamander *Ambystoma macrodactylum croceum*
 - (5) California giant salamander *Dicamptodon ensatus*
 - (6) Pacific giant salamander *Dicamptodon tenebrosus*
 - (7) Southern torrent salamander *Rhyacotriton variegatus*
 - (8) Rough-skinned newt *Taricha granulosa*
 - (9) Red-bellied newt *Taricha rivularis*
 - (10) Sierra newt *Taricha torosa sierrae* (= *Taricha sierrae*)
 - (11) Coast Range newt (Monterey County and south, only) *Taricha torosa torosa*
 - (12) Western tailed frog *Ascaphus truei*
 - (13) Western spadefoot *Spea* (= *Scaphiopus*) *hammondii*
 - (14) Western toad *Bufo boreas*
 - (15) Arroyo toad *Bufo* (= *Anaxyrus*) *californicus*
 - (16) Yosemite toad *Bufo* (= *Anaxyrus*) *canorus*
 - (17) Woodhouse's toad *Bufo woodhousii*
 - (18) California treefrog *Hyla* (= *Pseudacris*) *cadaverina*
 - (19) Pacific treefrog *Hyla* (= *Pseudacris*) *regilla*
 - (20) Northern leopard frog (native populations only) *Rana* (= *Lithobates*) *pipiens*
 - (21) Lowland leopard frog *Rana* (= *Lithobates*) *yavapaiensis*
 - (22) Northern red-legged frog *Rana aurora aurora*
 - (23) California red-legged frog *Rana draytonii*
 - (24) Foothill yellow-legged frog *Rana boylei*
 - (25) Mountain yellow-legged frog (southern DPS) *Rana muscosa*
 - (26) Sierra Madre yellow-legged frog (*Rana muscosa*)
 - (27) Sierra Nevada yellow-legged frog (*Rana sierrae*)
 - (28) Cascades frog *Rana cascadae*
 - (29) Oregon spotted frog *Rana pretiosa*
- (G) Reptiles

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- (1) Western pond turtle *Clemmys marmorata*
- (2) Southwestern pond turtle *Actinemys marmorata pallida*
- (3) Common garter snake *Thamnophis sirtalis*
- (4) Mountain garter snake *Thamnophis elegans elegans*
- (5) Sierra (western aquatic) garter snake *Thamnophis couchii*
- (6) Two-striped garter snake *Thamnophis hammondi*
- (7) Giant garter snake *Thamnophis gigas*
- (8) San Francisco garter snake *Thamnophis sirtalis tetrataenia*
- (9) South Coast garter snake *Thamnophis sirtalis* ssp.

(H) Birds

- (1) Bald eagle *Haliaeetus leucocephalus*
- (2) Osprey *Pandion haliaetus*
- (3) Willow flycatcher *Empidonax traillii*
- (4) Southwestern willow flycatcher *Empidonax traillii extimus*
- (5) California black rail *Laterallus jamaicensis coturniculus*

(I) Mammals

- (1) Pacific fisher *Martes pennanti (pacifica)* DPS

(3) The conditions to allow stocking location approval and the list of decision species potentially affected by private stocking program may be modified and amended by the commission rulemaking process as new species are listed, the department list of special status is updated, or new state or federal management measures are enacted.

(d) Permit Application.

(1) Application for the private stocking permit shall be made to the department's regional office in which the fish are to be stocked. An application will be supplied to each applicant upon request.

(2) Each stocking of fish shall require the applicant to submit the completed application and fees, as specified in Section 703, to the address listed on the application. A copy of this permit shall accompany all shipments. However, a copy of the same permit may be used for additional consignments of the same species when stocked in the same water or waters, until cancelled by the department.

(3) A stocking permit is valid only when signed by the applicant and the appropriate Regional Manager or his/her designee.

(e) Permits issued under the provisions of this Section shall be valid for a term of 5 years from the date of issue unless otherwise specified on the permit or unless the underlying pre-stocking evaluation completed for the permit has changed or been amended such that a shorter term is warranted. Any special notifications, requirements and conditions shall be attached to the permit on a separate page.

(f) No person shall stock any species of fish in any water in which the stocking of such fish is contrary to the fisheries management programs of the department for that water or drainage, or in any water from which such fish might escape to other waters where such fish are not already present. All applicants will be advised upon request of the said departmental fisheries management programs.

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(g) Permittee shall notify the regional office of the department not less than 10 days in advance of stocking in order to make arrangements for inspection. Such inspection may be waived at the discretion of the department. If, upon inspection, diseased or parasitized fish or fish of unauthorized species are found by the department to be present, they shall be disposed of by the permittee as directed by the department. The department may require that the expense of any inspection made necessary by the provisions of these regulations be borne by the permittee.

(h) A registered aquaculturist selling and transporting aquatic plants and animals for the purpose of stocking in this state shall retain copies of documents required by Section 15005(b) of the Fish and Game Code for a period of three years following stocking of the fish. The documents shall be shown upon written demand by the director of the department. The information contained in the documents is confidential except that such information may be disclosed in accordance with a proper judicial order in cases or actions instituted for enforcement of this section or for prosecution of violations of this section.

(i) Denial.

(1) The department may deny the issuance of a permit or amendment of an existing permit if:

(A) the applicant or permittee has failed to comply with terms and conditions of a permit or any provision of the Fish and Game Code or regulations adopted pursuant thereto;

(B) the applicant or permittee has failed to comply with any provision of any statute, regulation, rule or ordinance existing in any other state or in any city, county, or other local governing entity in any other state that is related to aquaculture activities described in subsection 238.5(a), so long as the failure to comply would constitute a violation of the Fish and Game Code or regulations adopted pursuant thereto if it had occurred in this state;

(C) the applicant or permittee has failed to comply with any provision of any federal statute, regulation, or rule that is related to aquaculture activities described in subsection 238.5(a), so long as the failure to comply would constitute a violation of the Fish and Game Code or regulations adopted pursuant thereto if it had occurred in this state or

(D) the applicant or permittee's proposed stocking location does not achieve the approval conditions of a pre-stocking evaluation described in subsection 238.5(c).

(2) The department shall deny the issuance of a permit or amendment of an existing permit if the applicant or permittee fails to demonstrate compliance with the conditions of this section. Before denying an application for this reason, however, the department shall notify the applicant that it has not received sufficient materials or information pursuant to this section. The applicant may amend or supplement an application with additional information or materials, but these supplemental materials shall be postmarked no later than 30 days after the date of the proof of service accompanying receipt (postmark) of the department's notification. New applications may be submitted at any time.

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(3) All notifications, denials, or other correspondence sent from the department to an applicant or permittee shall include a proof of service that consists of a declaration of mailing, under penalty of perjury, indicating the date of mailing the department's notification, denial, or other correspondence.

(4) An applicant who is denied initial issuance of a permit for any reason may request an application review by the department in writing describing the basis for the request. The request for an application review shall be received, or if mailed, postmarked, no later than 60 days from the date of the notification of the denial by the department. Application reviews by the department shall be done by the director or his designee, and must be completed within 60 days of the department's receipt of the request for an application review. If no decision is made by the department within 60 days of the department's receipt of the request for an application review, the review will be deemed denied and the applicant may appeal such denial to the commission within 30 days of the date that the application was deemed denied. If the department does make a decision within 60 days of the department's receipt of the request for an application review, that decision may be appealed in writing to the commission within 30 days of the date of the department's denial.

(j) Revocation. Any permit issued pursuant to these regulations may be suspended or revoked at any time by the department for failure to comply with the terms and conditions of the permit or for failure to comply with any provision of the Fish and Game Code or regulations adopted pursuant thereto. If the underlying pre-stocking evaluation initially done to issue the permit is changed and the department shortens the term of the permit, that will not be considered a revocation of the permit. Instead, if the pre-stocking evaluation changes, and a term of a permit is shortened, the permit ends and the applicant must submit a new application. Unless the permittee has been convicted in a court of competent jurisdiction of violating one of these provisions, the suspension or revocation shall not take effect until the time to request an appeal pursuant to subsection 238.5(k) has expired. A timely request for an appeal will stay the department's suspension or revocation if the permittee was not convicted of violating the Fish and Game Code or regulations adopted pursuant thereto.

(k) Appeal. Any applicant or permittee who is denied a permit, an amendment to an existing permit or has a permit suspended or revoked by the department pursuant to these regulations may appeal that denial, suspension, or revocation by filing a request for an appeal with the commission that is postmarked no later than 30 days after the date of the proof of service accompanying the department's notice of denial, suspension, or revocation. The commission shall not consider a request for an appeal with a postmark later than 30 days after the date of the proof of service accompanying the notice of denial, suspension, or revocation.

(1) No later than 30 days after filing an appeal (as indicated by the postmark on the request for an appeal), a person requesting an appeal (appellant) shall submit a written statement to the commission that specifically identifies the legal and factual grounds for challenging the department's action. Upon a showing of good cause, the commission

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may grant an appellant's request for an additional 30 days to submit appellant's written statement provided the appellant's request for additional time is received by the commission no later than 30 days after the postmarked date of the request for appeal. The appellant's written statement shall be signed by the appellant under penalty of perjury. Upon receipt, the commission shall forward to the department a copy of all appeal-related materials it receives from the appellant, including, a copy of the request for an appeal, any requests for additional time, and the appellant's written statement.

(2) No later than 30 days after receipt of the appellant's written statement, the department shall submit a response to the commission, with a copy sent to the appellant, along with any supporting documentary evidence and/or declarations under penalty of perjury.

(3) No later than 15 days after receipt of the department's response, the appellant may submit a reply to the commission signed by the appellant under penalty of perjury, with a copy sent to the department.

(4) The commission's president may appoint a commissioner, a former executive director of the commission, or a member of the state bar of California with at least 10 years experience in the active practice of law and determined qualified by the president, to serve as a hearing officer. Following the appellant's and the department's submittals on the appeal, the hearing officer may request additional information, including testimony under oath, from either party, and may permit either party to present additional information or rebuttal if the hearing officer determines such to be helpful in reaching a correct decision.

(5) In any appeal of the department's denial of an application for a permit or to amend an existing permit, if the hearing officer determines the appeal is based upon new evidence or factual information that was not included in the application or otherwise submitted to the department prior to the department's denial, the hearing officer shall direct the applicant or permittee to file a new application or seek reconsideration by the department, and the request for appeal shall be closed.

(6) No later than 60 days after receipt of all submittals and any additional information or rebuttal permitted by the hearing officer under subsection 238.5(k)(4), the hearing officer shall prepare and submit a proposed decision to the executive director of the commission. The decision shall contain proposed findings and reasons for the commission's action. Upon receipt, the executive director of the commission shall provide both parties a copy of the hearing officer's proposed decision.

A cover letter accompanying the proposed decision shall indicate the date when the commission will consider the proposed decision and a deadline for the parties to comment on the proposed decision. Copies of the proposed decision shall include a proof of service indicating the date the proposed decision is mailed to the parties. Each party may submit written comments on the proposed decision to the commission, however, these comments shall not exceed two pages, and they shall not refer to or introduce any new factual information or evidence that was not previously submitted to the commission.

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(7) At a meeting of the commission no later than 60 days after the hearing officer's proposed decision is mailed to the parties, the commission shall consider adoption of the proposed decision, unless good cause exists to delay consideration of the proposed decision. The commission may by order adopt, revise or reject the proposed decision. The commission shall serve both parties a copy of the commission's order and decision. The order is final.

(8) A party may request judicial review by filing a petition for writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code.

NOTE:

Authority cited: Sections 1050, 2363, 6401, 7701, 7708, 15005, 15200, 15202, 15501 and 15504, Fish and Game Code. Reference: Sections 17, 45, 1050, 6400, 6400.5, 6401, 7701, 7702, 7703, 7706, 7707, 7708, 8371, 8435, 8436, 15005, 15200, 15202 and 15504, Fish and Game Code.

Section 703, Title 14, CCR, is to be added as follows:

703. Miscellaneous Applications, Tags, Seals, Licenses, Permits, and Fees.

(a) Applications, Forms and Fees for January 1 through December 31 (Calendar Year).

(4) Private Stocking Permits

(A) 2011 Private Stocking Permit Fees

1. New Application Fee (Non-refundable)	\$ 57.97
2. Private Stocking Permit Fee (New and Renewal)	\$ 91.11
3. Hourly fee for additional review/inspection time	\$ 57.97
4. Hourly fee for travel for site inspections	\$ 96.15

(B) Private Stocking Permit Application (FG 749 (Rev.11/10), which is incorporated by reference herein)

(b) Pursuant to the provisions of Section 699, Title 14, the department shall annually adjust the fees of all licenses, stamps, permits, tags, or other entitlements required by regulations set forth in this section.

NOTE:

Authority cited: Sections 713, 1002, 1050, 1053, 2118, 2120, 2122, 2150, 2150.2, and 2157, Fish and Game Code. Reference: Sections 713, 1050, 1053, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2190, 2193, 2271, 12000, and 12002, Fish and Game Code.