FISH AND GAME COMMISSION STAFF RECOMMENDATIONS REGARDING NON-NATIVE FROGS AND TURTLES
SEPTEMBER, 2010

BACKGROUND

In 1998, the Fish and Game Commission (Commission) considered banning the import of frogs and turtles as food products for the live animal markets, but instead chose to notify live animal market merchants that signs must be posted stating that frogs and turtles should not be sold alive and their release is against the law (Attachment 1).

AB 2479 (Kuehl; Attachment 2) added Section 597.2 to the Penal Code, with requirements to operate live animal markets and penalties for violating these requirements. Additionally, AB 238 (Honda; Attachment 3) added Section 111067 to the Health and Safety Code, which provided for city and/or county regulation and enforcement regarding the disposition of frogs and turtles in the live animal market.

Periodically since 1998, members of the public have spoken at Commission meetings and opposed sales of frogs and turtles in the live animal market (Attachment 4 summarizes such discussions at Commission meetings from 2006 through February, 2010). On March 3, 2010, the Commission directed the Department of Fish and Game (Department) to stop issuing import permits pursuant to Section 236, Title 14, California Code of Regulations for non-native frogs and turtles (Attachment 5). The Commission adopted a formal policy statement at its April 8, 2010 meeting (Attachment 6); merchants and consumers of frogs and turtles in the live animal market have appeared at subsequent Commission meetings and requested that the Commission rescind the policy. The Commission took public comments and reconsidered the policy at its May 20, 2010 teleconference; however a motion to rescind the policy failed. A subsequent motion, drafted immediately and passed unanimously by the Commission, was:

> To direct staff to come back with recommendations on regulatory/legislative/policy solutions to close the loop hole to ensure that purchased non-native animals are humanely euthanized prior to leaving food market premises; to increase penalties for violations; and to comprehensively explore the non-native species importation issues.

STAFF RECOMMENDATIONS

Staff acknowledges the diverse public opinions on the import/sale of frogs and turtles, with three conflicting interests. One segment of the public is involved in marketing non-native frogs and turtles for human consumption. This activity has cultural significance and long standing in California, Asia and other parts of the world. Another segment is opposed to live animal market activity, purportedly because of threats to native frogs and turtles from disease, hybridization, competition and/or predation. Some if not all of this group is opposed to live animal market activity for animal welfare reasons. Finally, pet

industry sales of non-native frogs and turtles are significant in California and occur with minimal disease monitoring or regulatory restrictions.

Against this backdrop of three divergent interests, staff has prepared recommendations for Commission consideration. The first two are intended to ensure that all non-native frogs and turtles are humanely dispatched prior to removal from live animal markets, whereas the third increases penalties for violating Penal Code Section 597.2. Remaining recommendations emphasize exploring non-native species importation issues in general, and in particular, those related to frogs and turtles. Some recommendations could be considered in tandem (e.g., see # 2 and 5 below), while others can be considered individually. Specific recommendations are as follows:

1. Amend Section 236 of Title 14 or add a new Section to require that frogs and turtles be euthanized before leaving live animal markets (using Barramundi regulations in Section 671.7 as a model). Alternatively, amend Section 597.2 of the Penal Code or 111067 of the Health and Safety Code (this requires legislation) to require that all frogs and turtles be dispatched humanely before being removed from live animal markets.
2. Encourage development of county/local ordinances (as provided for by Section 111067 of the Health and Safety Code) to regulate live animal markets, ensure humane treatment of frogs and turtles and require that all animals be dispatched humanely prior to leaving the premises (see recommendation 5 below).
3. Amend Section 597.2 of the Penal Code to increase penalties. (Note: staff can not quantify past violations of Section 597.2; local district attorneys have discretion in determining whether to prosecute violations and there is judicial latitude in assigning monetary fines and other punishments. Thus, increasing the penalty for violating Section 597.2 may not serve as a deterrent.)
4. Request that the Department specify conditions under which frog and turtle importation permits could be issued without adversely impacting native species. The Department has identified provisions that protect native fish and wildlife while allowing the non-native Barramundi to be sold for human consumption, thus a precedent for this recommendation exists.
5. Consider revising the Commission's April 8, 2010 policy to temporarily allow import of non-native frogs and turtles, provided the Department can identify provisions to protect native species. Consider the feasibility of specifying that, beginning in 2012, import permits will not be issued to businesses unless respective county/local ordinances are in place to regulate live animal markets, provide for humane treatment of frogs and turtles, and ensure that all such animals are dispatched humanely prior to leaving the premises (as described in #2 above).
6. Request that the Department evaluate potential risks/benefits associated with commercial production of non-native frogs and turtles at an in-state facility, as opposed to importing them from out-of-state producers.
7. Consider the feasibility of a permit fee program with required screening and/or testing to reduce disease threats to native species.
8. Whether for pet trade or the live animal market, importing non-native frogs and turtles poses potential threats to native species from disease, hybridization, competition and predation. The academic/scientific community may be of

assistance in comprehensively exploring these threats and a thorough review of epidemiological and other scientific evaluations could be beneficial. Absent this information, it is not conclusive that prohibiting the importation of frogs and turtles for the live animal market will increase the protection afforded to native frogs and turtles, especially if pet industry protective measures are inadequate.

9. Promoting humane treatment of exotic frogs and turtles is desirable, within both the pet trade and live animal market industries. The Department lacks staff to ensure humane treatment of exotic frogs and turtles and enforce a requirement to euthanize such species prior to removing them from live animal markets. In adding Section 111067 to the Health and Safety Code, the Legislature correctly stated that local governments are in a good position to regulate live animal markets and should "… play an active role over the sale of live animals for food, as they deem necessary…"

DISCLAIMERS AND LIMITATIONS

In preparing these recommendations, staff has made a number of assumptions and disclaimers which are specified as follows:

1. Other non-native species (such as Barramundi) are only briefly referenced in the report. At a later time it may become appropriate to expand the focus to include additional non-native species. These recommendations pertain to non-native frogs and turtles rather than the more general non-native *animals* in the Commission's motion.

2. Fish and Game Code and Title 14 violations involving frogs, turtles and the live animal market or pet industry can not be readily quantified by staff, nor can violations of Penal Code Section 597.2 or Health and Safety Code Section 111067.

3. This report does not constitute a detailed legal analysis or recommendation; such analysis may be warranted from the Commission's Legal Counsel or the Department's General Counsel.

4. Protecting native species and habitat is critically important to the Commission. Constituent groups interested in protecting native frogs and turtles from disease, hybridization, competition and/or predation should seek legislation with appropriate funding to enable the Commission and Department to accomplish this. The Department lacks staffing and financial resources to adequately enforce, manage or monitor the efficacy of any restrictions of non-native frogs and turtles. Ultimately, the Commission may want to consider amending Section 671 of Title 14 to add certain species of frogs and turtles to the restricted species list. Such an amendment would likely require CEQA compliance and should be undertaken in combination with educational outreach and stakeholder participation.