



section addresses cost recovery for the storage and disposition of seized wildlife.

Two written comments and one oral testimony were received that expressed concerns, made comments or had questions regarding the proposed regulation change.

- Ryan English, California Hawking Club, in a letter dated December 1, 2006 addressed five topic areas and provided oral testimony on the same topics at the December 8, 2006 hearing in Santa Monica.

1. Due Process. Mr. English does not think alleged illegal wildlife should be able to be seized by enforcement officers without first having a hearing as to whether there is in fact a violation of law. He also thinks that an animal should not be seized from the alleged violator until the court has come up with a disposition in the case.

Department Response: This is not common practice when dealing with violations of law. Once an enforcement officer determines there is a violation, the wildlife in question is part of the evidence in the case. The proposed regulation addresses several options as to the handling of the seized wildlife. The Department will determine how to best store the evidence as it relates to the well being of the animal, and the chain of custody in regards to evidence storage. The wildlife will be cared for in the most appropriate manner as it relates to law and the well being of the animal seized.

2. Definitions. Mr. English wants the term “seized in place” defined and wants the definition to include that the alleged violator may continue to care for the animal until case disposition.

Department Response: Wildlife “seized in place” are not always seized from a named individual. The wildlife may be seized from a business where an exact individual cannot be named as the possessor or owner. The proposed term “seized in place” allows the wildlife to be kept by the illegal possessor, business or facility, if in the opinion of the enforcement officer, this is the best place to secure and care for the seized wildlife.

3. Differential Treatment of Native and Non-native Animals. Mr. English thinks the seizure of non-native and native wildlife should be dealt with equally.

Department Response: Animals seized that are designated as a furbearer, nongame, fully protected, threatened or endangered or is a species native to California and possessed in violation of Fish and Game Code, Section 3005.5, are usually animals that are taken from the wild.

These animals belong to the public and the illegal possessor should not have any say in where or how the animal is stored or disposed of.

4. Law Enforcement Will Receive Too Much Discretion. Mr. English states the proposed wording allows law enforcement too much discretion in deciding when, how and how long the seized wildlife is to be seized. Mr. English wants a time frame on the amount of time an animal can be seized and wants the individual who the animal was seized from to have a say in that time frame.

Department Response: Animals seized are evidence. Once the animals are seized and a case is filed, the time frame of the seizure is based on court adjudication.

5. Delicate Species. Mr. English expressed that his clients deal with delicate species such as sharp shinned hawks or kestrel falcons. He would like to see wording in the regulation that allows these types of seized animals to be transferred to another falconer both prior to and after case adjudication. He thinks seizure of these types of animals will result in death to the animal.

Department Response: The enforcement officer who seizes an animal is responsible to see that the animal is humanely cared for and is secured as evidence. If the seizing officer is not aware of the proper care for a seized animal, the officer has resources available to draw from that will be able to advise the proper care and storage of the animal.

After a case has been adjudicated, it is up to the court to determine the disposition of the animal, not the illegal possessor.

- Lori Leepin, in a letter dated December 6, 2006, expressed concerns about sick animals being seized from illegal possessors and the care of those animals once they are seized.

Department Response: This regulation allows animals to be seized in place if needed or to be transferred to a facility where the proper care can still be given.

## VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No reasonable alternatives were identified.

(b) No Change Alternative:

The no change alternative was rejected because the regulation as currently written could be misinterpreted as allowing violators of State laws and regulations to have decision-making authority over the disposition of both native and nonnative wild animals that they unlawfully possessed. Lack of clarity and the use of technical terms have also hindered the enforcement of this section.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. 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 proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

(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:

None.

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

The agency 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:

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:

None.

(h) Effect on Housing Costs:

None.

## Updated Informative Digest/Policy Statement Overview

Present wording of California Code of Regulations, Title 14, section 671.5, could be interpreted as empowering a person in violation of the law to make decisions relating to disposition of illegally possessed native wild animals, and cause the Department to react to those decisions. The proposed amendment implements and makes specific the seizure requirement of Fish and Game Code section 3005.5 relating to the illegal possession of native wildlife, and clarifies what options are available to both the illegal possessor and the Department once illegally possessed wild animals have been found. The amendments clarify that the options available to individuals that illegally possess nonnative wildlife, including the option to ship the animal out of state, are not available in the case of illegally possessed native California wildlife. The proposed amendments also clarify that following the seizure of illegally kept native wild animals, the Department has the option of releasing them back to the wild. Other proposed amendments incorporate cost recovery provisions that allow the Department to recover some of its expenses in disposing of seized wildlife. Nonsubstantive amendments throughout the text are intended to enhance the clarity of this section.

**The Fish and Game Commission adopted the proposed regulatory language at its December 8, 2006 meeting.**