

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Section 243  
Title 14, California Code of Regulations  
Re: Take of Wild Broodstock for Aquaculture Purposes

I. Date of Initial Statement of Reasons: August 8, 2008

II. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: September 4, 2008  
Location: Kings Beach, CA
- (b) Discussion Hearing: Date: October 3, 2008  
Location: Santa Rosa, CA
- (c) Adoption Hearing: Date: November 14, 2008  
Location: Huntington Beach, CA

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

At the Commission's March 6, 2008 meeting, the Department discussed possible changes to Section 243, Title 14, California Code of Regulations. This Title 14 section contains the regulations governing the take of wild aquatic plants and animals for use as broodstock for aquaculture purposes. The Commission concurred with the Department's request for regulatory changes to Section 243.

The Department's proposal will increase protection of wild aquatic populations from potential disease issues, strengthen the regulatory language for enforcement purposes, and revise outdated regulatory language. This proposal is a joint effort between the Department's Fisheries Branch, Law Enforcement Division, and the Aquaculture Coordinator.

The current regulations allow the release of hatchery-reared progeny from wild broodstock into state waters, lack effective enforcement measures to monitor, inspect and track wild broodstock collection and collection permit violations, and contain outdated provisions. The proposed changes are outlined in the following paragraphs organized by the categories of disease issues, enforcement needs and regulatory clean-up.

Disease issues

White Sturgeon Iridiovirus (WSIV) is a lethal viral pathogen of juvenile white sturgeon, *Acipenser transmontanus*. The virus has been isolated in farm-reared white sturgeon in the Pacific Northwest of North America, California, and Canada. Currently, there is no treatment for WSIV and it is considered a significant threat to wild sturgeon stocks by the Department.

Cultured sturgeon progeny from wild broodstock are allowed by current regulations to be released into state waters. This mitigation measure raises serious concern of the potential spread of diseases and pathogens from cultured stocks into wild native

populations. A similar situation exists concerning abalone and uncertified sabellid-free aquaculture facilities.

The proposed changes for this category are:

1. Remove the subsection 243(b)(2) language that allows the release of wild broodstock progeny into the state waters to reduce or waive wild broodstock permit fees. The fee reduction or wavier exemption is no longer used by the Department due to the potential threat to California's wild aquatic populations.
2. Modify subsection 243(g) to specify that wild broodstock may required to be held separately from other broodstock due to disease concerns.

#### Enforcement Needs

Section 243 lacks regulatory authority for law enforcement to identify people who assist collection operations, ensure the collector and/or permit holder is present with the proper documentation, stop assistants from conducting collection operations independently, restrict recreational take activities by personnel during collection operations, allow Department inspections anywhere that wild broodstock may be held, and clarify that a violation of regulations or any permit condition may result in permit revocation or suspension.

The proposed changes for this category are:

1. Modify subsection 243(b) language to clarify the annual expiration date, require all people assisting the collector and/or permit holder need to be listed on the permit with sufficient identification information, and ensure all special permit notifications, requirements and conditions are listed on the permit or attached pages.
2. Modify subsection 243(c) language to require the collector and/or permit holder to be present during collection operations with a commercial fishing license in their possession, require all collectors and assistants to carry proper identification, and restrict assistants to assisting with the broodstock landing, collection equipment, or boat operation, and eliminate assistants from conducting collection operations independently.
3. Modify subsection 243(d) language to restrict all personnel from recreational take of any kind while performing collection activities authorized by the permit.
4. Modify subsection 243(e) to ensure the collector and/or permit holder will notify the Department (as specified in the permit) 48 hours prior to the onset of collection operations and clarify the notification process.
5. Modify subsection 243(f) to require activity reports to be sent to the Aquaculture coordinator and Department. Also if logbooks are required by the permit, they must be in immediate possession of the collector and/or permit holder while performing collection activities.
6. Modify subsection 243(g) to clarify that the Department will determine the final disposition of the wild broodstock and specify that the wild broodstock collected will be marked as specified in the permit.
7. Modify subsection 243(h) to add that facilities, vehicles, vessels or other places where broodstock might be present, can be inspected at anytime without prior notification.

8. Modify subsection 243(i) to clarify that any person currently listed on a wild broodstock permit and violates the terms of their permit, these wild broodstock regulations, or has been convicted of a Fish and Game Code or Title 14 violation may be have their application denied or have their permit revoked.
9. Add subsection 243(j) to ensure all permit requirements and conditions shall be followed and any violation of the permit provisions may lead to permit revocation or suspension.
10. Add subsection 243(k) to list the appeal information in a separate subsection for clarity.

Regulatory clean-up

The Section 243 was last updated in 1991. Several of subsections contain outdated regulatory structure, fees that need to be clarified and updated, and minor changes to clarify the regulations and reduce public confusion.

The proposed changes for this category are:

1. Modify subsection 243(a) to update the regulation citations and remove the reference to Ocean Ranching regulations as the Fish and Game Code section was repealed and the Title 14 section has expired.
2. Modify subsection 243(b) to update the regulation citations, list the 2008 administration fee as a range of [\$100-\$500] for discussion on Department permit administration and site inspection costs, add the form number and revision date for the application form, update the aquaculture coordinator's title, and clarify that the \$25 fee is a nonrefundable application fee.

Additional minor changes are proposed to clarify the regulations and reduce public confusion.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 1050, 1907, 5503, 15001 and 15300, Fish and Game Code.

Reference: Sections 2000, 2052, 2273, 5503, 8430, 8433, 8435, 8436, 8460 and 15004, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

None

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45 day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The current regulations will continue to raise concern about the spread of diseases and pathogens from cultured stocks into wild native populations, law enforcement will continue to lack effective measures concern wild broodstock, and the outdated provisions in the regulatory language will remain.

(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 effective as and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. 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 initial 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. The proposed changes are necessary to control threats to wild aquatic animals and eliminate enforcement and regulatory issues, therefore the prevention of adverse economic impacts.

(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.

## Informative Digest/Policy Statement Overview

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Additional minor changes to the subsection of Section 243 are proposed to clarify the regulations and reduce public confusion.