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 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215, 220, 316.5, 5508 and 5509, of said Code, proposes to amend Sections 671.1 and 703, and Add Section 671.8, Title 14, California Code of Regulations, relating to Inspection of Facilities for Restricted Species.

Informative Digest/Policy Statement Overview

Existing regulations specify the conditions under which an individual or entity can lawfully possess restricted species in California. The proposed regulatory change completes the modifications needed in regulation to comport with AB 820 (Statutes of 2005) (now sections 2116-2195 Fish and Game Code). The statute and consequent regulations are intended to implement a more comprehensive, self-sustaining, self-funded program for inspection and monitoring of facilities in California.

There is a provision in regulation that essentially delegated Department authority for facility inspections to veterinarians in some cases and resulted in waived fees to permit holders. The Department has determined that the authority needs to be with the Department and that the Department still had incurred costs/expenses even when a veterinarian exercised the approval.

Fish & Game Code section 2150.2 explicitly requires that the inspection program be self-funding. To conform to this requirement, the Department must eliminate the veterinarian "fee waiver" provision. Because the Department is obligated to conduct its own inspections under Fish & Game Code section 2150.4 regardless of whether or not a veterinarian also inspects the animals, the fee waiver would cause the Department to conduct inspections without receiving any compensation; were the Department to do so, the program would not be self-funding.

The Department has assessed the anticipated costs to implement this inspection program and based on cost-calculations, has estimated an average annual cost per permit (Table 1). The.$670 annual inspection fee is to cover the costs of implementing the legislation and regulation through hiring of two environmental scientists and a half-time office assistant.

Table 1. Estimated Average Inspection Costs for Restricted Species Permits (assumes 320 permits/year and excluding fish/aquaculture permits)

200 mile round trip (estimated average) from duty station to permit facilities and return

Inspection time [1]	2 hrs.	$105
Vehicle travel costs [2]	200 miles	$100
Lodging and meals[3]	Estimated that 1/3 of trips will require overnight travel (average cost)	$47
Travel time [4]	4 hrs.	$210
Staff time and vehicle costs total		$462
Dept. overhead (20.43%)		$116
Fixed annual DFG costs (Office rent, Technology support) [5]		$52
One time fees- averaged over 5 year phase-in[6]		$40
Total Cost		$670

Comprehensive estimated cost for each inspection assuming an average 200 mile roundtrip = $670

Hourly Inspection Fee (applies to additional hours and represents average cost estimate whether the Department respondent is in a scientist classification or Law Enforcement classification)

Inspection time [7]	1 hr.	$60.00
Staff time total		$60.00
Dept. overhead (20% rounded)		$12.00
Total Cost per hour		**$72.00**

Estimated cost for an extra hour of inspection time = $72

One-time costs required to establish inspection team

Vehicles (2)	$50,000
Computers, Desks, Equipment	$15,000
Total Cost	**$65,000**

Estimated One-time Costs to Implement Regulations (averaged in on a per inspection cost over five years and assuming 320 inspections/yr) =$65,000

Footnotes

1) Salary estimates derived from 2 ES positions ($42.28/hr and 1 ½-time OA ($10.24/hr).
2) Vehicle costs based 50 cents per mile for vehicles.
3) Lodging & meals based on estimate that 1 of 3 trips will be distant enough to require overnight travel.
4) Travel time based is estimated considering travel in Southern California as well as N. California.
5) Fixed costs are $6,000/py/yr for office rent and $750/py/yr for Technology support (x 2.5 py) = $16,865/yr
6) One-time costs to Implement Regulations (averaged in on a per inspection cost over five years and assuming 320 inspections/yr
7) Does not include administrative cost of Office Asst. position which is assumed to be the same for each inspection regardless of duration.

Permitted individuals and facilities for restricted species occur throughout the state. Currently, the Department has approximately 320 permitted facilities that would require inspection. The Department estimates that 2.5 new positions (two Environmental Scientists (ES) for 160 inspections and reports each (one northern California, one Southern California); and one ½-time Office Assistant (OA) for compiling records and maintaining databases) could handle the workload. Estimated total costs for these positions is currently $87,274/yr for each ES; and $21,150/yr for the half-time OA, not including operating costs. Administrative costs would be borne by the Department at the estimated overhead rate of 20.43%. Department office rental costs are currently $6,000/position, $750/yr for technology support (emails, internet, etc.) or $15,000/yr for this proposal. Operating costs consisting of training, two vehicles, computers/desks, inspection equipment, vehicle maintenance, fuel, and travel costs are approximately $1,000/month per field position. One time costs for computers, vehicles, etc. would total approximately $65,000.

Monthly vehicle rentals from the State garage are in approximately $700/mo in addition to added cost of staff time to pick up and drop off. With the current number of permit inspections the cost to the department for state garage vehicles would annually exceed $16,800; or $84,000 prorated to five years. Additionally, these employees will have full time jobs traveling daily for inspections around the state. Use of private cars would be also an expensive alternative for the state at >0.50 cents a mile. Therefore the best financial solution for transportation will be to purchase two state owned vehicles at a five year prorated total of $50,000; or $10,000 annually.

Existing regulations specify fees for the permitted activities of possession of restricted species and activities that may be undertaken with them. The proposed regulatory changes will establish fees for inspection of restricted species facilities including clarifying the aquaculture and fish species facilities inspections.

The proposed regulatory change additionally clarifies the type of permit(s) required to enable a permit holder to sell restricted species.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lexington Plaza Waterfront Hotel, Stockton, California, on Thursday, June 30, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the State of California Resources Agency Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, August 4, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 25, 2011 at the address given below, or by fax at (916) 653-5040, or by e-mail

to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on July 25, 2011. All comments must be received no later than August 4, 2011, at the hearing in Ontario, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Jon K. Fischer, Acting Executive Director, Fish and Game Commission, 1416 Ninth 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 Jon K. Fischer or Jon Snellstrom at the preceding address or phone number. **Dr. Eric Loft, Department of Fish and Game, (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

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. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. 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

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 Businessmen 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.

Considering the small number of permits issued over the entire state, this proposal is economically neutral to business in general. As the number of permitted persons is so small (approximately 300-320 in all of California) there will be cost impacts that a representative private person or business who is among the 300-320 permittees would necessarily incur in reasonable compliance with legislative requirements directing this proposed action. Fish and Game Code Section 2150.2 states the Department "shall establish fees... in amounts sufficient to cover the costs...". These costs would occur in applying for an inspection to house restricted wild animals and subsequent maintenance if deficiencies are found. Part of the reason that costs/person are at the proposed levels are because of the relatively small number of permittees and the high amount of Department staff time needed for reviewing/approving applications and/or conducting inspections.

(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.

Due to the limited number of permittees, the impacts are expected to be minimal but are unknown at this time.

(c) Cost Impacts on Private Persons.

There will be cost impacts that a representative private person conducting business and who is among the 300-320 permittees would necessarily incur in reasonable compliance with legislative requirements directing this proposed action.

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

Costs to the State for application reviews, processing, issuing permits, maintaining databases, inspections, development and maintenance of a mammal registry, and other administrative or enforcement costs are intended to be revenue neutral by being offset through an appropriate fee structure.

(e) Other 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.

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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Jon K. Fischer
Acting Executive Director

Dated: May 17, 2011