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EXECUTIVE DIRECTOR
1416 Ninth Street
Box 944209
Sacramento, CA 94244-2090
(916) 653-4899
(916) 653-5040 Fax
fgc@fgc.ca.gov

STATE OF CALIFORNIA

Fish and Game Commission

April 27, 2012

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to the amendment of Sections 671.1 and addition of Section 671.8, Title 14, California Code of Regulations, relating to Permits and Inspection of Facilities for Restricted Species, which will be published in the California Regulatory Notice Register on April 27, 2012.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments. Pursuant to Section 2150.2 of the Fish and Game Code, establishment of fees in the amount sufficient to cover the costs for permits and inspections of facilities falls under the authority of the Department of Fish and Game. It is anticipated that the Department will publish a notice proposed changes to fees in the California Notice Registry in late June or early July, under a separate rulemaking. Any comments the Commission receives regarding costs and fees will be forwarded to the Department of Fish and Game.

Dr. Eric Loft, Chief Wildlife Branch, Wildlife and Fisheries Division, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Jon D. Snellstrom
Associate Governmental Program Analyst

Attachment

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, 203, 203.1, 1002, 2118, 2120, 2122, 2127, 2150, 2150.4, 2157, and 2193 Fish and Game Code. Reference: Sections 2116, 2116.5, 2117, 2118, 2120, 2150, 2151, 2157, 2190, 2193, 2271 and 3500 of said Code, proposes to Amend Section 671.1, and Add Section 671.8, Title 14, California Code of Regulations, relating to Permits for Restricted Species and Inspection of Facilities.

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 changes are needed 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 comprehensive, self-supporting program for inspection and monitoring of restricted species facilities in California.

Recent events involving captive restricted species (a human fatality incident and separate escaped animal incidents) demonstrated the need for reconsideration, modification, and addition to the existing regulations to address issues such as escape contingency planning, public safety, and inspection.

Proposed Regulations

Consideration and adoption of these proposed regulations will result in the following:

Amend 671.1

Elimination of language that authorized a veterinarian to approve inspection and resulted in a fee waiver for permit holders.

Clarification that permitted animal facilities will require only one inspection per year, and not two.

Modification of a 10-day notification requirement in the event of the death of restricted species under permit. The Department is also proposing to modify Section 671.1 (c)(2)(N) regarding the 10 business day notification requirement for transfers, receipt, birth or death of an animal of any restricted species. Large zoos and research facilities requested a change to this section due to the regular deaths of large number of small, short-lived restricted species such as fish, amphibians, and rodents.

The Department already has a 10-day reporting requirement for elephants, non-human primates, bears, wolves, gila monsters and members of the Family Felidae when these animals are transferred, received, have a birth or death, or there is a change in a unique identification. Because this is already required for these animals, the Department is being adequately notified. Should the Department ever wish to investigate the transfer, death, receipt, or birth of the other species not required to be uniquely identified, the permittee will be required to maintain and produce such records at the facility.

The proposal also provides clarification of the appeal process and other minor editorial cleanup changes.

Add 671.8

Establishes annual inspection requirements and types of inspections to be conducted. Establishes inspection options that includes defining an eligible local entity and establishing a memorandum of understanding process specifically for research entities; and depending on Commission action either would or would not include the potential for a similar ELE/MOU process for other entities.

For public notice purposes and to facilitate Commission discussion, the Department is presenting the two regulatory options (Option A and Option B) for Section 671.8 that encompass differing opinions on who may conduct inspections, and under what circumstances, for Commission consideration:

Proposed Action - § 671.8. Inspection of Facilities

This proposed new section establishes the annual inspection requirements and types of inspections to be conducted to be compliant with recent statute. The fee for inspections would be based on the number of enclosures that a facility has, using actual inspection information that the Department gained from limited testing of the method on permitted facilities.

Establishes a permitting capability that includes inspection by an eligible local entity ELE through a memorandum of understanding (MOU) process specifically, and only, for research entities such that the Department would not be inspecting those research facilities. The facilities would not be required to pay the enclosure-based inspection fee. This option allows for a five year MOU with annual renewals during that five year time period. Research entities are already subject to inspections by USDA, and have special public health related or animal care standards and accreditations that must be met for the research activities to be conducted.

The major changes would include:

a more efficient method for inspecting nonresident applicants for restricted species;

clarification and description of types of inspections (initial, renewal, amendment); and

providing for research entities to be considered ELE's and enter into an MOU with the Department for inspection purposes.

The applicant or permittee requesting ELE/MOU status would be required to pay a new ELE/MOU fee to cover the cost of administering an ELE/MOU process. The Department would not reimburse any entity that becomes an ELE.

Alternative 2 - § 671.8. Inspection of Facilities

Alternative 2 includes all of the proposed regulations plus additional regulatory language that would enable the Department to potentially authorize a restricted species applicant or existing permittee (as a trained private individual) to be an ELE for inspection purposes starting in 2015. The ELE's would then enter into an MOU with the Department that would allow for inspection of

the facilities. The applicant or permittee requesting ELE/MOU status would be required to pay a new ELE/MOU fee to cover the cost of administering an ELE/MOU process. The Department would not reimburse any entity that becomes an ELE.

Establishes permitting options so that the Department would not be inspecting those permitted facilities, and the facilities would not be required to pay the enclosure-based inspection fee. Allows for a five year MOU with annual renewals during that five year time period.

This alternative will likely receive both support and opposition as it could lead to "self inspection" which has been an issue in the past. The alternative is similar to the veterinarian inspection process which led to the requirement to change the regulations because of settlement language from a lawsuit that the Department agreed to, but it prohibits an ELE from conducting inspections of an exhibitor if that local entity is employed by, or receives compensation from, that exhibitor. However, the payment of inspection fees to the ELE does not constitute employment or compensation for purposes of this section. Compared to current conditions, the Department anticipates that, with the additional inspection fees based on a number of enclosures, there will be increased Department enforcement of inspection requirements and ensuring animal care standards are met.

The Department does not have a process where fees can be collected to be paid to an ELE and a compensation program would be administratively difficult for the Department to implement considering current contracting difficulties with private entities.

Alternative 2 would add the following elements to the regulatory package:

Requires a permit holder to enter into an MOU with the Department to avoid the inspection fees that are based on a number of animal enclosures.

Sets as the criteria for a trained private individual to be an ELE, that the individual must meet the qualification requirements for a restricted species permit as specified in Section 671.1.

Provides that the director's "Committee on the Humane Care and Treatment of Wild Animals" shall advise and assist the Department in entering into MOU's and in determining whether an MOU meets the requirements of applicable laws and regulations.

Allows the Department to grant or deny the request to become an ELE and/or obtain an MOU for justified reasons.

Prohibits an ELE from conducting inspections of an exhibitor if the ELE is employed by, or receives compensation from, that exhibitor.

Establishes January 2015 as the date that the Department would start to consider and enter into MOUs with permittees. This allows two full years for advance planning and preparation by the Department for this process.

The applicant or permittee requesting ELE/MOU status would be required to pay a new ELE/MOU fee to cover the cost of administering an ELE/MOU process. The Department would not reimburse any entity that becomes an ELE.

The Commission anticipates that this regulation will not have any effect on the overall health and welfare of California residents except to improve public safety through more thorough restricted species facility inspections. Animal escapes should be reduced with the more consistent inspection of minimum caging standards that will be implemented by the Department.

The Commission may anticipate this regulation change will have a possible effect on the environment because the animals involved are captive. Where this regulation may have some effect on the environment is in the aspect of the Department being more familiar with each facility and monitoring for violations on a regular basis. The are two possible ways captive animals could cause a problem in the environment: 1) If non-native animals escape and establish breeding populations in California; and 2) If restricted species are imported into California with a wildlife disease and the disease spreads to native wildlife. Conducting regular, consistent and thorough inspections may help to reduce the probability of either scenario.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate regulations establishing the procedures for inspections of wildlife facilities; however, the Department of Fish and Game, pursuant to Section 2150.2, Fish and Game Code, has the authority to set inspection fees and will proceed under a separate rulemaking.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Mountainside Conference Center, 1 Minaret Road, Rooms 4 and 5, Mammoth, California, on Wednesday, June 20, 2012, 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 June 20, 2012 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 June 18, 2012. All comments must be received no later than June 20, 2012, at the hearing in Mammoth, 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, Sonke Mastrup, 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 Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Dr. Eric Loft, Chief Wildlife Branch, Wildlife and Fisheries Division, Department of Fish and Game, telephone (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 and applies evenly to resident and nonresident permittees.

Results of the Economic Impact Analysis

(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.

The proposed regulations will identify the Department as the primary inspectors for approximately 260 Restricted Species facilities (this package does not include Research, Aquaculture or Fish inspections) in California. Currently, most of the inspections are conducted by veterinarians hired by or employed by the restricted species facility. Less work for veterinarians currently conducting these inspections may occur. It is unknown how much each private veterinarian charges restricted species permittees for inspection services but the statute (FGC Section 2150.4) requires the Department or an eligible local entity to conduct the inspections. The impacted veterinarians are generally employed otherwise and may still be employed by these facilities to conduct medical exams and other duties dealing with the health of the animals at the facility.

This regulation change will neither create new businesses in California or eliminate businesses currently doing business in this state nor expand the businesses currently doing business in this state.

The Commission anticipates that this regulation will not have any effect on the overall health and welfare of California residents except to improve public safety through more thorough restricted species facility inspections. Animal escapes should be reduced with the more consistent inspection of minimum caging standards that will be implemented by

the Department.

The Commission anticipates this regulation change will have a possible effect on the environment because the animals involved are captive. Where this regulation may have some effect on the environment is in the aspect of the Department being more familiar with each facility and monitoring for violations on a regular basis. The are two possible ways captive animals could cause a problem in the environment: 1) If non-native animals escape and establish breeding populations in California; and 2) If restricted species are imported into California with a wildlife disease and the disease spreads to native wildlife. Conducting regular, consistent and thorough inspections may help to reduce the probability of either scenario.

(c) Cost Impacts on Representative Private Person or Business

As the number of permitted persons for all Restricted Species permits is small (approximately 300 permittees statewide) the impacts are not consequential to the State. However, there will be cost impacts that a representative private person or business who is among the 300 permittees would necessarily incur in reasonable compliance with 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 a permit and the required inspection to house restricted wild animals and subsequent maintenance if deficiencies are found. The costs will be established under a separate rulemaking by the Department of Fish and Game.

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

Statutorily, there must be no net cost to the State. All costs, such as those incurred for application reviews, processing, issuing permits, maintaining databases, inspections, development and maintenance of a mammal registry, and other administrative or enforcement costs will be fully offset by fees paid by the regulated parties.

(e) Other Nondiscretionary Costs/Savings to Local Agencies.

The effects to local agencies are unknown at this time.

(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.

<u>Effect on Small Business</u>

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: April 17, 2012