

State of California  
FISH AND GAME COMMISSION

MINUTES, APRIL 6-7, 2000

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PASSED UNANIMOUSLY.

Mr. Treanor indicated that if the Department provided the Initial Statement of Reasons in a timely manner, the regulatory action would be scheduled for the Commission's June 15, 2000, meeting in Truckee.

7. REQUEST OF CALIFORNIANS FOR FERRET LEGALIZATION FOR COMMISSION CONSIDERATION TO AMEND SECTION 671, TITLE 14, CCR, REGARDING THE LEGALIZATION OF FERRETS. (NOTE: This item is scheduled to begin at 1:30 p.m. Proponents and opponents will each have one hour to provide their comments. There will be 10 minutes for rebuttal. Please select a spokesperson or spokespersons.)
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#### Summary of Issue

The Commission, at its February 3, 2000, meeting in Long Beach, heard Mr. Floyd Carley's request on behalf of Californians for Ferret Legalization for the Commission to consider amending Section 671, Title 14, CCR. At that time, the Commission decided to schedule an additional hearing for its April 6 meeting to receive additional information from the scientific community, conservation organizations, and state or federal agencies. It also directed the Department to provide its recommendation at the Commission's March meeting regarding potential criteria the Commission may utilize when it considers proposals to remove a species from the prohibited species list (Section 671, Title 14, CCR).

At the Commission's March 2 meeting, the Department recommended that the Commission consider the following categories of potential effects of restricted species on native wildlife:

1. Predation;
2. Competition for food, cover, water, and space;
3. Displacement from specialized habitats; and
4. Potential to transmit diseases and parasites.

As background, ferrets have been prohibited in California since 1933 by both statute and Commission regulation. The ferret is listed as a detrimental species because of its potential threat to public health and safety, agricultural interests of the State, and California's native species. Ferrets are known to be aggressive hunters and, in places such as New Zealand, have caused problems to ground nesting bird populations. If feral populations become established in California, ferrets could also compete with California's native mustelids. In previous discussions regarding the legalization issue, the prohibition of ferrets in California has been supported by the Department of Food and Agriculture and the Department of Health Services, as well as numerous sportsmen's groups, environmental groups, humane societies, and animal rights activists.

Numerous groups have been trying to get ferrets legalized in California for a number of years. Legislation has been introduced since about 1993 to legalize ferrets in California; however, each time, that legislation has failed. The California Domestic Ferret Association (CDFA) brought this issue to the Commission in 1995-96. The Commission, on a 3-2 vote, decided to publish notice of its intent to consider amending Section 671. At its November 8, 1996, meeting, the Commission's legal counsel indicated that he was not certain the Commission had clear authority to remove ferrets from the list of prohibited species. He suggested that the statute be clarified. Based on its legal counsel's opinion, the Commission took no action on CDFA's request. Marshall Farms sued the Commission in the San Diego Municipal Court. The Court ruled that the Commission had the authority to remove ferrets from the prohibited species list and directed it to do so. The Commission appealed that decision. The Court of Appeals ruled that the Superior Court was correct in that the Commission had the authority but that the Court could not mandate the Commission to take the action; i.e., the Commission has discretionary power on whether or not to utilize that authority.

A 355-page exhibit provided by Mr. Carley was previously supplied to the Commissioners and the Department for evaluation. Commissioners were provided with copies of a Chronology of Selected Ferret Issues, two reports from the New Zealand Department of Conservation regarding ferrets, letters from the Audubon Society, the California Waterfowl Association, and the Western Section of the Wildlife Society, a 1996-97 Nationwide Ferret Survey of State Wildlife Agencies, a Department letter to Assemblyman Cunneen responding to questions from the Assemblyman, a report re: A Review of National and California Population Estimates of Pet Ferrets, An Annotated Bibliography on the Ferret (*Mustela putorius furo*), as well as some additional background information from Mr. Carley.

#### Department Recommendation

"The Department of Fish and Game recommends that the Fish and Game Commission retain the existing regulations which prohibit importing, transporting and possessing ferrets for pet purposes in California. This recommendation is based on the authority contained in Fish and Game Code sections 2116.5 and 2118 related to protecting native wildlife, agricultural interests and public health and safety. This statutory authority was originally put in place by the Legislature in 1933. It requires the Commission and the Department to develop appropriate regulations and to implement those regulations in cooperation with the departments of Food and Agriculture and Health Services.

"Based on experience in California, and after reviewing the available scientific literature from throughout the world, regarding the demonstrated ability of ferrets to survive in the wild and predation effects of ferrets on ground nesting birds and small mammals, the Department has determined that the risks to California's native wildlife would be significant. Those risks are primarily related to predation by ferrets which may be released or escape to the wild. In addition, ferrets have the potential to compete with and displace native species of carnivores, including other members of the weasel family. California has a very rich diversity of native wildlife, with many species of ground nesting birds and small mammals vulnerable to impacts from nonnative predators. The need to protect those sensitive species requires strict regulations to

prohibit the importation and possession of detrimental species, including the ferret. The Legislature has provided the Commission with that authority and the existing regulations are warranted to assist the Department in achieving its mission.

"The proposal to remove ferrets from the detrimental species list contained in the Commission's regulations and to allow the possession of ferrets as pets also presents concerns related to consistency in policy regarding detrimental species, including species like the hedgehog, sugar glider and monk parakeet, which are also available as 'pets' in other states and countries. The Department's obligation to protect California's native wildlife, which it holds in trust for all the State's citizens, compels it to recommend that the existing restrictions on ferrets be retained.

"It is the Department's position that prior to considering amending the regulations to allow the possession of ferrets as pets, the proposed action should be analyzed in an environmental impact report to comply with the California Environmental Quality Act (CEQA). That task is the responsibility of the project sponsor and the costs should not be borne by the State. The Department and other concerned parties would then have the opportunity to review and comment on the report and the Commission would then be required to certify the report as fully complying with CEQA before taking the regulatory action.

"As important background, the Commission may be interested to note that for a period of time prior to 1985, the regulations provided for the possession of only neutered males of selected detrimental species, including ferrets. That regulation was deemed to be unenforceable as both females and intact males were being imported and possessed in violation of the regulations without permits. It was extremely difficult for the Department to identify individual ferrets and to verify the health records and reproductive status of the permitted ferrets. Violations of the regulations were common. Based on this experience, the regulation was repealed in 1985. The Department further recommends that the Commission not amend the regulation to recreate that time consuming and unenforceable compromise which was tested and failed prior to 1985. Experience has demonstrated that compliance with a law or regulation which puts the burden on the Department to verify health records and reproductive status of ferrets was problematic and would place a severe strain on the Department's enforcement staff."

#### Action

Commissioner Chrisman provided opening remarks and described the structuring of receiving public comments.

Executive Director Treanor provided a slide presentation on the chronology of ferret issues in California. He summarized the possible Commission actions as follows: 1) pursuant to CEQA, Commission directs project proponents to prepare an environmental document to determine impacts to the environment; 2) Commission decides further information is necessary and conducts additional hearings; or 3) Commission denies request and no further action necessary.

Deputy Attorney General Christison provided the following analysis:

"The question before the Commission is whether there should be a change in Section 671, Title 14, CCR, governing the determination by the Commission of whether a ferret should be determined no longer a wild animal. A wild animal is one that is not normally domesticated in California as determined by the Commission (Section 2116, Fish and Game Code).

"Ferrets first became the subject of Legislative treatment in 1933, an outright prohibition, and has been more or less prohibited since then. There was a period of time where the animals were subject to possession pursuant to a restricted species permit. Other than that, the prohibition has been continuous and virtually complete.

"The court of appeal in *Marshall Farms v. F&G Commission*, held (1) that the Commission had the authority to determine whether ferrets are wild or not, (2) that any duty to make such a determination was satisfied in 1975 with the adoption of regulations finding ferrets are wild, and (3) that the Commission may either summarily deny the petition to amend or consider it on its merits.

"If the Commission desires to consider the petition on the merits, it should consider whether, based on the scientific evidence, the animal is normally domesticated in California.

"The term, 'normally,' connotes a requirement that the typical or ordinary animals are to be considered, not ones so unusual as not to be considered the 'normal' for the species.

"The 'in California' suggests that whatever may be the evidence, it must be such that it relates to California and conditions in California.

"An illustration would be suppose there is a species, say a wolf, that has wide distribution, but one strain has been kept apart and has been bred for 15,000 years in Sri Lanka such that it has been domesticated. But throughout the world the animal is wild—same species. What then would be its effect in California.

"The third term is 'domesticated'. The scientific literature definitions, which should be important if not controlling, are not as clear as I would like. Most definitions of domestic talk about living close to man and not wild, and 'wild' means not domesticated. The circulatory becomes quite frustration. Probably of more assistance is to identify the factors normally associated with domestication and by inductive reasoning conclude the status.

"What factors are commonly found are: 1) safe cohabitation - does the animal live with its human master and family safely; 2) is its behavior predictable and amenable to human control (the mere fact it responds to some commands is not dispositive); 3) is the animal's taxonomy instructive, is it the same species as a wild animal; 4) does it exhibit any of the behavior found among wild animals; and 5) is it capable of living in



the wild where conditions are favorable?

"Factors that are ambiguous or are not indicative of domesticity are: 1) mere length of time cohabiting with humans; and 2) fact that animals do sometimes or other successfully cohabit; 3) fact that some animals are kept as pets; and 4) use of terms 'wild' & 'domestic' such as wild salmon v. hatchery.

"One should note that a dispassionate analysis could lead to the conclusion that domestic cats are wild. Indeed, more than one observer has considered cats wild animals which are temporarily using humans for their own ends. Why then aren't we finding cats wild animals- Section 2118(b) specifically excludes cats along with dogs, horses, pigs, sheep, cattle and others. So, comparisons with cats, horses, pigs and the rest, is really of no help in analyzing our problem.

"The legality or regulatory condition in other states is irrelevant to the question here."

### Proponents Testimony

Floyd Carley requested the Commission make the determination that domestic ferrets are normally domesticated in California and that the scientific evidence, both historical and genetic, is massive and overwhelming and confirms the fact that this is a domesticated animal. He commented, that in his opinion, CEQA was not applicable and also added that ferrets are no threat to California's native wildlife as they live in cages in a house and can only survive for maybe two to three days in the wild. He urged the Commission to legalize ferrets.

The following persons spoke in support of the legalization of ferrets: Alice Kaiser, Dennis Feil, Karen Pinney, Adam Switzer, Ashley Welden, Hildy Langewis, Dr. Jyl Rubin, Rene Gandolfi, Dr. Deborah Sell, Kimberly Bruno, Laurie Blakemore, Don Hunt, Ann Arnold, and Michael Smith. The main points covered were:

1. Ferrets are already in California.
2. Pet stores stock and sell large numbers of ferret items.
3. No other state completed an environmental document to legalize ferrets. No need for expensive studies; time to legalize ferrets.
4. There are no ferrets living in the wild in this country. Ferrets can not live/survive in the wild. Ferrets are no threat to wildlife. Surveys show there has not been a single incident documented in the United States of a domesticated ferret turning feral.
5. Why is California so different from other states and constantly opposed to the legalization of ferrets?
6. Ferrets are safe for children to hold.
7. Many people are allergic to other pets and not to ferrets.
8. Ferrets are very popular; supplies and books are available in California.
9. Ferrets are definitely domesticated animals and not wild animals.
10. California is losing resources when non-Californian's want to come to California to vacation and can't bring their pet ferrets.
11. Ferrets are a therapy pet.

12. Criminalization and current ban of ferrets prevent the veterinary community from providing public health services to the public by having the public feel uncomfortable in requesting veterinary care for their ferrets.
13. There is a proven licensed vaccine for rabies for ferrets.
14. New Zealand is not comparable to California, but the rest of the United States is.

Dr. Jyl Rubin suggested the following: 1) if ferrets are legalized, purchase must only be from a licensed breeder; 2) ferrets should be spayed or neutered; 3) ferrets should be micro-chipped; and 4) require a license, like a dog or cat license.

#### Opponents Testimony

John McCaull expressed significant concerns about the request to legalize ferrets and urged that the Commission not take any action for the following reasons: 1) the Commission is obligated under the California Environmental Quality Act (CEQA) to meet CEQA's substantive requirements for any discretionary action which falls within the Commission's certified regulatory program; 2) the Commission has the authority to require the proponents of ferret legalization to bear the cost of preparation of the draft environmental document to be used in the Commission's regulatory review of the issue; and 3) before making any regulatory decision on ferret legalization, the Commission should begin to establish the evidentiary and legal standards for how and when the Commission is to remove, or condition the possession of, species currently on the restricted species list of Title 14, Section 671. He requested additional time to prepare a detailed presentation on why ferrets should not be allowed as pets in California.

Dr. Bob McLandress referred to letters received from New Zealand and Delta Waterfowl Foundation opposing the legalization of domestic ownership of ferrets in California. He indicated that the mass importation of domestic ferrets into California would, eventually, result in feral populations and an increase in waterfowl predation. Dr. McLandress stated that the California Waterfowl Association strongly opposed any action which would allow ferrets to be owned as pets in California. He reported there are documented feral ferret populations.

Executive Director Treanor asked if anyone else in the audience wished to speak in opposition to the legalization of ferrets. There was no response.

#### Proponents Rebuttal

Floyd Carley commented that the California Waterfowl Association has been in opposition to the legalization of ferrets for some time. He commented that ferrets are not a predator to waterfowl and that there is no documentation that ferrets harm native wildlife. He requested the Commission to make a decision today based on the facts.

Dr. Rubin expressed concern about how many more meetings will be held.

### Opponents Rebuttal

Dr. Desley Whisson recommended a complete environmental assessment before legalization was considered and that captive bred ferrets have been found to survive in the wild in Australia, Alaska, United Kingdom, New Zealand, Tasmania, and the San Juan Islands in Washington State. She indicated that ferrets could be a risk factor. She reported that ferrets have the ability to hunt, carry tuberculosis and are a threat to native wildlife.

Executive Director reported that as part of the Commission's statutory responsibility in dealing with this issue, it has have been instructed by the Legislature to work with the Department of Food and Agriculture (comment letter dated April 5, 2000) as well as the Department of Health Services (comment letter dated March 30, 2000).

Dr. Mark Starr stated that the legalization of domestic ferrets will have a negative impact on the public health and safety of California's citizens and opposed the legalization. He provided the following comments: 1) removal of ferrets from the prohibited species list would likely increase ferret numbers significantly and could create a stray and abandoned ferret population thereby placing a significant burden on local animal control agencies; 2) there are no existing provisions to regulate ferret rabies vaccination and licensing; 3) a decision to remove a species from the prohibited species list could set a precedent; 4) concerns related to disease and injury risks to humans from nondomestic animals; and 5) ferrets are inappropriate pets in certain circumstances.

Deputy Director Mansfield read into the record the Department's recommendation that the existing restrictions on ferrets be retained.

Floyd Carley asked why is the domestic ferret legal in 48 states and not in California?

Commissioner Thieriot explained that California is a leader in environmental protection and just because other states may allow something doesn't make it right as California is unique in its needs and requirements to protect its environment.

Deputy Director Mansfield summarized the delisting process as it related to the water buffalo; there was no controversy, no opposition and no threat to native wildlife.

The Commission suggested Californians for Ferret Legalization fund and complete a draft Environmental Document, with a consultant agreed upon by the proponents, the Department, the departments of Food and Agriculture and Health Services, the Commission, hunting and environmental organizations; to report back to the Commission once the draft Environmental Document is completed; and the Commission would make a decision at that time on whether to legalize ferrets.

It was then:

MOVED BY MR. SCHUCHAT, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY TAKES NO ACTION ON THE REQUEST OF THE CALIFORNIANS FOR FERRET LEGALIZATION TO AMEND SECTION 671, TITLE 14, CALIFORNIA CODE OF REGULATIONS, RE: REMOVE FERRETS FROM THE PROHIBITED SPECIES LIST. FURTHER, THE COMMISSION REQUESTS THE DEPARTMENT TO DEVELOP DRAFT REGULATIONS ON THE PROCESS TO BE UTILIZED BY THE COMMISSION IN CONSIDERING FUTURE REQUESTS. THE COMMISSION ALSO DIRECTS THE CALIFORNIANS FOR FERRET LEGALIZATION, AS PROJECT PROPONENTS, TO FUND THE PREPARATION OF AN ENVIRONMENTAL DOCUMENT TO COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. THE CONSULTANTS HIRED FOR PREPARATION OF THAT ENVIRONMENTAL DOCUMENT ARE TO BE AGREED UPON BY THE PROPONENTS, HUNTING AND ENVIRONMENTAL ORGANIZATIONS OPPOSED TO FERRET LEGALIZATION, AND THE STATE DEPARTMENTS OF FISH AND GAME, HEALTH SERVICES, AND FOOD AND AGRICULTURE. THE COMMISSION WILL CONSIDER THIS MATTER AFTER THE ENVIRONMENTAL DOCUMENT IS COMPLETED.

PASSED UNANIMOUSLY.

Floyd Carley requested the Commission consider a grandfather clause for existing ferrets while the process continues. The Commission took no action on this request.

8. RECEIPT OF DEPARTMENT LEGISLATIVE REPORT.

Summary of Issue

This item is scheduled to afford the Department an opportunity to discuss proposed legislation which could impact the Department and/or the Commission. The Department will provide a copy of its report at the meeting and will be prepared to discuss its Legislative Report and respond to any questions the Commission may have at that time.

Action

Julie Oltmann reported that the Department was analyzing 134 bills and provided a list of the Department's priority bills. She reviewed the following bills: SB 1311, Chesbro - salmon and steelhead conservation; SB 1544, Sher - market squid; AB 2401, Papan - squid; AB 238, Honda & Migden - importation of bullfrogs and turtles; AB 2479, Kuehl - animal cruelty and retail food markets; AB 2356, Keeley - Department sponsored bill to revise the existing streambed alteration agreement program; SB 1704, Costa - Kings River Fishery Management Plan; AB 1741, Thomson - water transfers; AB 1758, Kuehl - endangered species listing; SB 2179, Johannessen - fully protected species; and AB 2800, Shelley - Marine Managed Areas Consolidation and Improvement Act.