

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
MEMORANDUM

DATE: October 10, 2016

TO: Members of Fish and Game Commission

FROM: Mike Yaun (Legal Counsel) and
Erin Chappell (Wildlife Advisor)

SUBJECT: Considerations for Ferret Legalization Associated with Petition #2016-008

Commission staff has drafted this memo to provide a detailed explanation for the staff recommendation regarding regulatory petition #2016-008 scheduled for Commission action under Agenda Item 32, Non-Marine Regulatory Petitions at its October 19-20, 2016 meeting.

Regulatory Overview

Petition #2016-008 requests the Commission amend Title 14 CCR Section 671(c)(2)(K) by removing any reference to domestic ferrets. Section 671 (Importation, Transportation and Possession of Live Restricted Animals) states that it is unlawful to import, transport, or possess live animals, restricted in subsection (c) except under a permit issued by the Department of Fish and Wildlife (DFW). The regulation specifically states in Section 671(b) that "the commission has determined the [animals listed in subsection (c)] are not normally domesticated in this state." Currently, all species in the Family Mustelidae, including ferrets are listed in subsection (c). Within Section 671, ferrets are further designated as "detrimental animals" because they pose a threat to native wildlife, the agricultural interests of the State, or to public health and safety.

Applicable Fish and Game Code sections include:

- Section 2 - Unless the provisions or the context otherwise requires, the definitions in this chapter [Div .5, Ch 1 of the Fish and Game Code] govern the construction of this code and all regulations adopted under this code.
- Section 54 – "Mammal" means a wild or **feral mammal** or part of a wild or feral animal, but not a wild, feral, or undomesticated burro.
- Section 89.5 – "Wildlife" means and includes all **wild** animals, birds, plants, fish, amphibians, reptiles, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.
- Section 2116 – As used in this chapter [Div. 3, Ch. 2 of the Fish and Game Code], "wild animal" means any animal of the class ... Mammalia (mammals ...

which is **not normally domesticated in this state as determined by the commission.**

- Section 2118 – Prohibited importation or release into state of live wild animals of listed species, except under revocable, nontransferable permit.
- Section 2120(a) – The commission, in cooperation with the California Department of Food and Agriculture (CDFA), shall adopt regulations governing both (1) entry, importation, possession, transportation, keeping, confinement, or release of any and all wild animals imported pursuant to Chapter; and (2) the possession of all other wild animals. Regulations shall be designed to prevent damage to native wildlife and agriculture and to provide for welfare of the animal and safety of the public

Any change to the regulation would require coordination with CDFA and the proposed action would effectively eliminate the Commission's authority to regulate ferrets, with the exception of escaped individuals to the extent those individuals could be shown to have reverted to a wild state.

Supporting Documentation

Submitted with the petition were two pieces of supporting documentation: A report published by Dr. G.O. Graening (California State University, Sacramento) in 2010 and a CEQA checklist. The report, *Analysis of the Potential Impacts of Domesticated Ferrets Upon Wildlife, Agriculture, and Human Health in North America, with a Focus Upon California, Based Upon Literature Review and Survey of North American Governmental Agencies*, provides an accurate summarization of much of the existing information on domestic ferrets. The purpose of the report was to fully summarize the body of knowledge on the domesticated ferret (*Mustela putorius furo*) for potential impacts and an analysis to identify potentially significant issues so that Commission could proceed with the preparation of an Environmental Impact Report (EIR). The report identified three items that may need further analysis in an EIR: 1) the potential for the establishment of feral breeding populations; 2) potential impacts of ferrets on wildlife, either from an established population or from intentionally or inadvertently released ferrets; and 3) the potential economic impacts both beneficial and adverse of ferret legalization. The report also identified three items that may not need further analysis in an EIR: 1) the potential impacts to agriculture since there is no indication of impacts found in the literature or from a questionnaire of agricultural departments; 2) the potential impacts to human health from rabies, noting that impacts could be mitigated to a less than significant impact with required vaccination; and 3) the potential impacts to human safety from biting, noting that with effective mitigation measures this could be reduced to a less than significant impact.

Regarding potential impacts to wildlife populations, the report finds that while the establishment of feral colonies is improbable, there is a possibility that escaped ferrets might do significant damage to wildlife, such as ground-nesting birds or listed species, during a period up to a few weeks of survival (see Chapter 8, Section 2.2). It further notes that ongoing intentional releases or inadvertent escapes might replenish the population in the wild which could pose a continued hazard to wildlife. In addition, the

report states that while pet-store ferrets do not possess the necessary traits to become invasive, pole-cat-ferret hybrids and polecats may possess the necessary traits. The report notes that both fertile ferrets and polecat-ferret hybrids are advertised for sale online. Therefore, some risk of them establishing a breeding population remains. How great a risk that poses to California's unique biodiversity remains unclear.

The CEQA Checklist provided identified biological resources, land use planning, and mandatory finding of significance as environmental factors potentially affected by the proposed change in regulation. For all three, the determination was that those impacts may be less than significant with mitigation. While the checklist did not identify any potentially significant impacts related to greenhouse gas emissions, the discussion section was not included in the materials provided. More broadly, the document does not include discussions about some of the conclusions found in the report - notably, the need to further analyze the potentially significant impacts to wildlife from the establishment of a feral breeding population of ferrets in an EIR or a discussion of the full breadth of the potential ramifications of legalization, such as the increased potential for polecat and polecat-ferret hybrids.

Even ignoring the omissions in the checklist outlined above, the findings require at a minimum, that the Commission develop a mitigated negative declaration before adopting the regulation. However, the Commission would not have authority to ensure that the proposed mitigation measures are implemented because the Commission does not have authority over domestic animals. Based on the inability to implement that mitigation, a full EIR is needed, even if founded on the existing checklist. It is important to note that if potentially significantly impacts are found in the EIR the adoption of that EIR would require a statement of overriding concern due to authority issues associated with mitigation.

Process for Preparing an EIR

As the Lead Agency under CEQA, the Commission would be responsible for preparing the EIR. Previously, the Commission directed that any new petitioner would need to fund the preparation of an environmental document, in this case an EIR, before considering any changes in the current regulation. Project proponent-funded environmental documents have been used by other agencies. For example, DFW has contract mechanism in place for this type of CEQA analysis. DFW adopted regulations (see Title 14 CCR sections 789.0-789.6) to allow for a special contract selection process. Through this process a project proponent contracts with DFW to pay for the contractor's work and DFW directs a previously-approved consultant to prepare the environmental document through the retainer contracts authorized in the regulations. The Commission would need to establish a similar process through regulations to pursue the development of a petitioner-funded EIR.

FGC Staff Recommendation

Staff recommends denying the petition. Given that the proposed action would effectively eliminate the Commission's authority to regulate ferrets, the potentially

significant impacts to wildlife identified in the report, and the inability of the Commission to implement any identified mitigation measures, staff does not recommend removing ferrets from the list of restricted species at this time. However, if the Commission would like to move forward with the preparation of an EIR to further evaluate the potential impacts, staff recommends developing regulations to establish a contract selection process similar to the DFW regulations and proceed with a petitioner-funded EIR.

Finally, it is important to note that this issue is not specific to ferrets. Other species that are sometimes kept as domestic pets, such as hedgehogs and sugar gliders (species of possum), are also included in the list of restricted species. Any requests to remove them from the list would require similar considerations.