

**Department of Parks and Recreation,
Division of Boating and Waterways**

INITIAL STATEMENT OF REASONS

Article 1.5 Quagga and Zebra Mussel Infestation Prevention Fee Regulations

STATUTORY HISTORY AND REGULATORY OVERVIEW

The proposed regulations set procedures in Article 1.5 Quagga and Zebra Mussel Infestation Prevention Fee in Title 14, Chapter 1 of Division 4, for the collection and use of the Quagga and Zebra Mussel Infestation Prevention Fee as required by California Harbors and Navigation Code Chapter 5 of Division 3, Article 1.3, Sections 675 through 676 beginning with the 2014 recreational vessel registration renewals payable by December 31, 2013 and thereafter.

These proposed regulations specify how and when the fee will be collected, enforcement of the required fee and the criteria for administering the Quagga and Zebra Mussel Infestation Prevention grant in accordance with the statutes stated above.

Department of Parks and Recreation, Division of Boating and Waterways (department) proposes to adopt the Quagga and Zebra Mussel Infestation Prevention Fee permanent regulations after a 45-day comment period in which the department will consider comments, objections and recommendation regarding the proposed action.

DETAILED STATEMENT OF THE SPECIFIC PURPOSE AND RATIONAL

Quagga and zebra mussel infestation poses tremendous financial burdens on local governments and local economies. Between 2000 and 2010, widespread zebra mussel infestation of the Great Lakes region resulted in over \$5 billion in economic impacts. Were it to become infested, California's Lake Tahoe alone would likely incur economic impacts of over \$20 million annually.

Quagga and zebra mussel infestations have been identified in over 25 bodies of fresh water in California, most within the southern California region. These infestations threaten additional water management and recreational facilities throughout southern California as well as facilities across the state. Facilities threatened with infestation include, but are not limited to, agricultural water management infrastructures in the central valley, drinking water facilities in the central coast and north coast regions, power generation infrastructure in the Sierra Nevada, and flood control facilities throughout California's watershed.

Recent legislation requires the Department of Motor Vehicles (DMV) to collect an additional fee of \$8 per year (\$16 total on a two-year registration renewal) on behalf of the department on all recreational vessels subject to registration in the State of California. The original legislation set the fee to be no greater than \$10 a year per boat and directed a Technical Advisory Group (TAG) made up of specific interested parties

to advise the department on what the fee should be, based on administrative cost and expenses in addition to grant funding for education and prevention. After meeting with TAG the department determined that the fee should be set at \$8 per year (\$16 total for a biennial registration).

The regulations shall not apply to registered vessels used exclusively in marine waters as defined in Section 5207, of this article and will be up to the vessel owner to opt out of the prevention fee using the method specified which is also found in Section 5207 of this article.

All revenues collected from the fee shall be deposited into the Harbors and Watercraft Revolving Fund and shall be used for the following purposes:

- to cover reasonable costs incurred by the department associated with determining the prevention fee and the initial DMV programming costs, adoption of the regulations and administering the prevention grants; no more than 15% of the remaining revenues collected may be expended by Department of Fish and Wildlife for inspection, quarantine and enforcement of quagga and zebra mussel prevention activities according to the statute; and no less than 85% of the remaining revenues collected shall be made available for grants to entities for dreissenid mussel prevention, vulnerability assessment, monitoring, inspection and education according to Fish and Game Code Section 2302.

Purpose and Necessity:

This proposed text would adopt regulations within Division 4 of Title 14 of the California Code of Regulations. The specific purpose of each proposed action, and the rationale for the determination that each action is reasonably necessary to carry out the purpose for which it is proposed, is as follows:

Section 5200. Short Title.

Purpose

This proposed action references the title of the regulations and suggests how to cite the title in accordance with the statute.

Necessity: this proposed action is necessary to assist the public with the location of the statute pertaining to these regulations.

Section 5200.5. Definitions.

Purpose:

Subsection (a) defines the term “Biennial period” as occurring every two years.

Subsection (b) defines the term “Conveyance” as the action of transporting someone or something from one place to another.

Subsection (c) defines the term “Dreissenid” as the genus of a fresh water mussel.

Subsection (d) defines the term “Mussel Fee Exemption” as meaning no fee is due for the Quagga and Zebra Mussel Infestation Prevention Fee.

Subsection (e) defines the term “Mussel Fee” as the Quagga and Zebra Mussel Infestation Prevention Fee which shall be paid along with vessel registration, upon purchase of a new vessel or newly acquired used vessel and bi-annually thereafter in odd years when the vessel registration renewal is due.

Subsection (f) defines the term “Prevention Plan” as an organized approach to prevent the spread of dreissenid mussels into a defined water body and shall include public education, monitoring and inspecting for infestation.

Subsection (g) defines the term “Quagga Mussel” as a non-native dreissenid mussel.

Subsection (h) defines the term “Regional-Scale Prevention Plan” As a plan that shall include the impact such as an economic, ecological, recreational and/or other regional impact from a dreissenid mussel infestation in a surrounding area.

Subsection (i) defines the term “Reservoir” as a body of water which contains or will contain the water impounded by a dam.

Subsection (j) defines the term “Stickers” as an indicator of a paid mussel fee and is issued by the Department of Motor Vehicles to be displayed on a registered vessel.

Subsection (k) defines the term “Undocumented Vessel” as a vessel required to be registered through the California State DMV and not through the Federal vessel documenting system.

Subsection (l) defines the term “Zebra Mussel” as a non-native dreissenid mussel.

Necessity: this proposed action is necessary to assure regulatory consistency and clarify terms that have a specific meaning in the context of the regulations that differ from the generally understood meaning.

Section 5201. Mussel Fee Amount.

Purpose

The DMV shall provide documentation of its administrative costs according to Section 9860 of the Vehicle Code. This proposed action explains the development of the biennial Quagga and Zebra Mussel Infestation Prevention Fee of \$16 which resulted in the estimated “Annual Fiscal Impact Summary” for fiscal year 2014/15 below:

ESTIMATED ANNUAL FISCAL IMPACT SUMMARY

	<u>Total Staff Cost</u>
Additional DBW Staff (\$85,000/year)	\$85,000
DBW Operating Expenses & Equipment	\$150,000
DMV Sticker Expenses/One Time Start-Up Cost	\$338,000

DFG costs to implement DFG prescribed preventions plans (15% of remaining funds after DBW/DMV expenses)	\$659,000
Grant funding (85% of remaining funds after DBW/DMV expenses)	\$3.7 mil

Necessity: this proposed action is necessary to establish an amount for the biennial fee of \$16 for the Quagga and Zebra Mussel Infestation Prevention Fee (mussel fee). As required by the statute, the amount of the fee was established following input from the mussel fee Technical Advisory Group (TAG) made up of representatives from California Marine Parks and Harbors Association, Recreational Boaters of California, Division of Boating and Waterways and the Department of Fish and Wildlife. The revenue collected will provide grant funding to managers/owners of reservoirs that are open to the public, to implement programs for the prevention of an infestation of quagga and zebra mussels in freshwater.

The estimated revenue collected as of May 1, 2014 is provided by the DMV Forecast Unit and is outlined in the table below:

<u>FY</u> <u>13/14</u>	<u>QZ Fee</u>	<u>Substitute</u> <u>Sticker</u> <u>Fee</u>	<u>Total</u>
Jul	\$0	\$0	\$0
Aug	\$0	\$0	\$0
Sep	\$3,040	\$0	\$3,040
Oct	\$1,705,312	\$0	\$1,705,312
Nov	\$2,412,304	\$16	\$2,412,320
Dec	\$3,447,617	\$112	\$3,447,729
Jan	\$1,063,016	\$1,856	\$1,064,872
Feb	\$258,336	\$1,304	\$259,640
Mar	\$225,296	\$2,656	\$227,952
Apr	\$228,528	\$5,630	\$234,158
May	Only Partial Month Forecast Available		
June	Unavailable		
YTD Total	\$9,343,449	\$11,574	As of May 1, 2014 \$9,355,023

5202. Mussel Fee Due Dates.

Purpose

This proposed action explains the conditions under which the mussel fee becomes payable.

Subsection (a) the proposed action is to inform vessel owners that whenever a new vessel is purchased a "Mussel Fee Paid" sticker will be required and a fee will be due.

Subsection (b) the proposed action is to inform vessel owners that any time a California vessel registration is due the mussel fee will be due.

Subsection (c) the proposed action is to inform vessel owners that when a marine water exemption is no longer applicable the mussel fee will be due.

Subsection (d) the proposed action is to inform vessel owners that whenever a vessel with an existing vessel number is purchased the mussel fee will be due.

Necessity: this proposed action is necessary to define the many ways that the mussel fee may become due in accordance with Section 675, Harbors and Navigation Code, Sections 9853, 9860 Vehicle Code and reference is made to Sections 61.8, 63.9, Harbors and Navigation Code.

5203. Late Payment of Mussel Fee.

Purpose:

This proposed action is to advise all vessel owners that there will be a late fee if the mussel fee is not paid by the due date and it also establishes what the late fee amount will be.

Necessity: This proposed action is necessary to make it clear that there will be a fee if the mussel fee is not paid on time. In the event that the registration is late, it is necessary to state what the late fee will be.

5204. Adjustment of Mussel Fee.

Purpose

This proposed action specifies that there will be "no adjustment" or "pro-ration to the mussel fee.

Necessity: the necessity of this proposed action is to explain that under no circumstances will there be any adjustments or pro-rations to the mussel fee. All mussel fees are due according to Section 5202, of this article.

5205. Refund of Mussel Fee.

Purpose

This proposed action specifies the rules established by the DMV and the processing procedures after an application for a refund is made to the DMV.

Necessity: this proposed action is necessary to clarify that determination will be made by the DMV as to a refund according to DMV business rules and processing procedures. This determination will be made once a refund application is received by the DMV. Refund forms and information about a refund are available on the DMV website at: <http://apps.dmv.ca.gov/forms/adm/adm399.pdf>

5206. Evidence of Payment of Mussel Fee.

Purpose

Subsection (a) this proposed action indicates that upon payment, two (2) Mussel Fee Paid stickers will be issued for the registered vessel.

Subsection (b) this proposed action specifies what the current registration year sticker shall look like.

Subsection (c) This proposed action gives instructions as to where the “Mussel Fee Paid” sticker must be placed, which shall be on both sides of the vessel next to, and in line with the CF number and vessel registration.

Subsection (d) this proposed action specifies that verification of payment for the mussel fee is indicated by the placement of the “Mussel Fee Paid” sticker.

Paragraph (1) this proposed action indicates the types of enforcement strategies which will be utilized to enforce this regulation.

Subsection (e) this proposed action specifies that unless an exemption applies all vessels registered in California will be required to purchase a “Mussel Fee Paid” sticker.

Necessity: this proposed action is necessary to describe the particular type of enforcement strategies which will apply if a vessel owner has not purchased the “Mussel Fee Paid” sticker. It is also necessary to state that due to the absence of the “Mussel Fee Paid” sticker, which indicates to enforcement that the fee has not been paid, a penalty resulting in a fine shall be imposed by a court of law if found in violation.

5207. Marine Water Exemptions

Purpose

Subsections (a) this proposed action establishes the boundaries for an exemption in the San Francisco Bay Estuary which includes Suisun Bay up to and west of Chipps Island. This determination is based on salinity levels taken from a study by the State Land Commission’s Environmental Impact Report 4.2 Biological Resources, 4.2.1 Environmental Setting, 4.2.1.1 San Francisco Bay Estuary, dated October 2013. The

study of salinity levels in the San Francisco Bay Estuary indicated high salinity levels in the Suisun Bay as far east as Chipps Island. The Dreissenid mussel cannot survive in high levels of salinity such as were detected in this study.

Subsection (b) this proposed action specifies that vessels used exclusively in marine water shall be exempt from the mussel fee.

Subsection (c) this proposed action provides direction as to the exemption process. The following paragraphs to this section in the proposed action give guidelines and explain the process for exemption and the systems that are available to effectively communicate this exemption to the DMV.

Paragraph (1) this proposed action specifies that one of the rules to claiming an exemption are, placing a mark on the designated portion of the Application for Registration using DMV Form (BOAT 101).

Paragraph (2) this proposed action specifies an additional indicator for an exemption as placing a mark in the designated portion of the Renewal Notice for Vessel Registration by using DMV Form (ISD 83VR).

Paragraph (3) this proposed action specifies a source for indicating an exemption as the Vessel Registration Internet Renewal webpage.

Paragraph (4) this proposed action specifies a source for indicating the exemption as notifying the DMV through its Interactive Voice Response System.

Subsection (d) this proposed action specifies when the mussel fee exemption applies vessel owners must reapply for the exemption every year even though the vessel registration is due on a biennial cycle.

Subsection (e) this proposed action states that to keep accurate records on the revenue obtained by the DMV for the Quagga and Zebra Mussel Infestation Prevention Fee and to monitor the expenses that have incurred as a result of this program, the DMV shall provide a quarterly report of this information. Also provided in this report to the department will be the number of vessels claiming the exemption and the number of vessels paying the additional mussel fee.

Necessity: this proposed action is necessary to specify that the marine water definition is also defined as salt water which is exempt from the mussel fee and it is necessary to establish the boundaries for an exemption in the San Francisco Bay Estuary. Also, this proposed action is necessary when specifying how to apply for an exemption and is necessary to indicate that registrations that are exempt must re-apply for the exemption each time the Renewal Notice for Vessel Registration is received. Additionally, the DMV shall provide a quarterly report to the department regarding the number of these exemptions.

5208. Substitute “Mussel Fee Paid” Sticker.

Purpose

This proposed action specifies that the “Mussel Fee Paid” stickers are generated by the DMV when an owner of a currently registered vessel requests a substitute sticker. This action also specifies the fee that shall be required for this substitute sticker.

Necessity: this proposed action is necessary to define a “Substitute” sticker which is a sticker that has been lost or stolen. If this occurs a \$16 fee shall be required by the vessel owner to pay for a substitute “Mussel Fee Paid” sticker.

5209. Payment of Mussel Fee with Marine Water Exemption Status Change.

Purpose

This proposed action specifies what is required if the exemption no longer applies.

Necessity: this proposed action is necessary to explain that a fee will be imposed once a vessel is no longer marine water exempt, as defined in Section 5207 of this article.

5210. Deposit of Revenues.

Purpose

This proposed action specifies that the mussel fees collected by the DMV shall be deposited into the Harbors and Watercraft Revolving Fund (HWRF).

Necessity: this proposed action is necessary to inform the public, which affords accountability and transparency, that the funds for the mussel fee will be deposited according to the statute, into the HWRF.

5211. Fee Exemption Vessels.

Purpose

This proposed action is to describe the limitations to the exemption as defined in Section 5207 of this article.

Subsection (a) this proposed action specifies that vessel used exclusively in marine water as defined in section 5207 of this article are exempt and no payment is due for the mussel fee.

Subsection (b) this proposed action specifies that pursuant to Chapter 1 of Division 1, Article 3.2, Section 190.16 of the Vehicle Code, irrespective of whether the vessel is operated in fresh or marine waters, the vessel shall be exempt from the mussel fee.

Necessity: this proposed action is necessary to give direction as to when the exemption applies and the statute to refer to.

Article 1.6 Quagga and Zebra Mussel Infestation Prevention Grant Regulations

5300. Short Title.

Purpose

This proposed action specifies that the following sections of the regulations are described as the Quagga and Zebra Mussel Infestation Prevention Grant Regulations.

Necessity: this proposed action is necessary to assist the public with the location of the statute pertaining to these regulations.

Section 5301. Purpose.

This proposed action gives an explanation as to the purpose of the grant funding from the mussel fee collection.

Purpose

Subsection (a) this proposed action makes specific the criteria for assessing the reservoir for vulnerability pertaining to a dreissenid mussel infestation.

Subsection (b) this proposed action states what should be included when developing and implementing a program designed to prevent the introduction of the nonnative dreissenid mussel species. The following paragraphs specify the elements of the prevention plan.

Paragraph (1) this proposed action describes the prevention methods through “education” – Clean, Drain and Dry, which can be accessed on the department’s website at www.dbw.parks.ca.gov.

Paragraph (2) this proposed action describes the “monitoring” efforts through inspection stations which are now in place to inspect and provide certification stickers to those vessels who are free of dreissenid mussels. A list of Watercraft Inspection Programs in California can be accessed on the department’s website at www.dbw.parks.ca.gov.

Paragraph (3) this proposed action describes “management” as primary oversight of marina processes through water body managers and local agencies and enforcement through state and local peace officers. This would not apply to private water bodies that are not open to the general public.

Necessity: The necessity of this proposed action is to specify the criteria for assessing a reservoir as part of the grant review, the programs that are to be designed for the prevention of dreissenid mussel infestation and the viable components of the prevention plan, which include education, monitoring and management.

Section 5302. Eligibility.

Purpose

This proposed action provides instructions as to the application process and policy. It also specifies the importance of the deadline to submit a completed application. This required application process is necessary to lessen the amount of applications that may be rejected due to non-compliance according to section 2302 of the Fish and Game code.

Subsection (a) this proposed action is calling for a Resolution or Order from a governing board or executive Officer in order for this grant process to be authorized.

Paragraph (1) this proposed action gives an additional requirement to the resolution or Order in the case of a local government agency within a county. It is required to have a separate resolution or order from the local government entity to accompany the grant application in order to qualify for the grant program.

Paragraph (2) this proposed action allows, with the resolution and order to authorize the designated representative(s) to sign not only the application but it will be combined authorization to sign the contract and any claims for payment or reimbursement.

Paragraph (3) this proposed action shall deny any applicant that fails to provide the required resolution or order with their application.

Subsection (b) this proposed action specifies that all applicants must comply with the requirements of Section 5303 of this article concerning information required on the application.

Necessity: You are required to submit with the application, a resolution adopted by your governing board which authorizes a representative to apply for funding from the department's, Harbors and Watercraft Revolving Fund, sign contracts and any claims for payment or reimbursement.

Section 5303. Grant Application.

Purpose

Subsection (a) this proposed action is to make all grant applicants aware that in order for a grant to be awarded under this article the applicant shall meet all of the requirements of this article. It also outlines the requirements of the application process which states that the grant application will be provided by the department and will require that all information requested be provided in order to be eligible. Additional requirements are set forth in Section 5302 of this article. Guidebooks shall be available.

Subsection (b) this proposed action adds a requirement to the grant application for a measurable performance goal report. This required report was considered relevant during the emergency regulations 15-day comment period. This suggestion was taken

into consideration as a tool to monitor the grantees progress toward the prevention plan. This is consistent with Section 2302 of the Fish and Game Code.

Subsection (c) This proposed action makes it possible to stay within the time frame of grant funding award.

Necessity: It is necessary to provide all the requirements of the grant application process and to make it clear that all applicants understand that if an application is incomplete it shall be returned to be completed and if the application is filed after the deadline it will be rejected. There are no exceptions.

Section 5304. Grant Award Factors.

Purpose

Subsection (a) this section is an important part of the grant review and specifies that the department will give priority to a well thought out infestation prevention plan that is consistent with Section 2302 of the Fish & Game Code, the Invasive Mussel Guidebook for Recreational Water Managers and Users or the Natural Resources Agency's Aquatic Invasive Species Management Plan.

Subsection (b) this proposed action gives preference to a regional-scale prevention plan which shall include the impact such as an economic, ecological, recreational and/or other regional impact from a dreissenid mussel infestation in a surrounding area.

Subsection (c) This proposed action takes into consideration the uniqueness of an economic, ecological, and recreational impact a dreissenid mussel infestation would create.

Subsection (d) this proposed action is necessary to specify that infested water bodies will not be considered for the grant program.

Necessity: Priority is given to those water body managers or owners that take into consideration a regional-scale dreissenid mussel infestation prevention plan. It is necessary to specify that a local or regional dreissenid mussel infestation prevention plan is a condition of receiving grant funding pursuant to Section 676, of the Harbors and Navigation Code.

5305. Allowable and Non Allowable Costs.

Purpose

This proposed action specifies that the funds will only be used for reasonable regulatory costs pursuant to Section 2302 of the Fish and Game Code.

Subsection (a) this proposed action specifies that a local or regional dreissenid mussel infestation prevention plan meets the requirements of Section 2302 of the Fish and Game Code.

Subsection (b) this proposed action specifies that costs connected with the investigation and inspection of a conveyance for the presence of dreissenid mussel be considered reasonable regulatory costs.

Paragraph (1) this proposed action specifies the means of carrying or containing adult or larval dreissenid mussels.

Necessity: It is necessary to define reasonable regulatory costs pursuant to Section 2302 of the Fish and Game Code as the prevention plans that have the required components pursuant to the statute.

Section 5306. Grant Reporting and Reimbursement.

Purpose

This proposed action specifies guidelines for a grantee to follow in order for a grantee to be reimbursed under this grant program such as, quarterly reports on measurable performances and goals as stated in the prevention plan and inspection program.

Necessity: It is necessary to make specific in this proposed action, that it is required of a grantee to provide a budget change request in advance in order to be reimbursed and that reimbursement of any expenses are made only after the departments approval.

Section 5307. Audits and Appeals.

Purpose

Subsection (a) this proposed action specifies that the department will maintain control to ensure responsibility and accountability of the funds that are granted. In order to maintain this control the department shall conduct inspections of projects to determine if the grantee is in compliance with State and Federal law and audits will be performed to monitor whether the requests for the grant funding represents the amount due to the grantee.

Subsection (b) this proposed action specifies that the grantee will be notified one (1) week in advance of all audits.

Subsection (c) this proposed action specifies that the grantee shall make all records available at all times and gives examples of records that shall be requested in the event of an audit. These records are a vital component of the audit process.

Subsection (d) this proposed action specifies that an audit report will be given to each grantee in the event of an audit. This describes the audit performed, findings and any reimbursements in which the grantee was not entitled.

Subsection (e) this proposed action specifies that there shall be a "refund" due to the department from the grantee, in the event that the "audit report" indicates that the grantee has requested and received payment it is not entitled to, the grantee shall reimburse the department within 90 days of notification by the department, unless the grantee submits an appeal within those 90 days.

Subsection (f) this proposed action specifies that this is a “refund” due to the “department” from the grantee. When it is “established” that a grantee improperly requested and received payment and is not entitled to the grant the grantee shall reimburse the department within 90 days of notification by the department, unless the grantee submits an appeal within those 90 days.

Subsection (g) this proposed action clarifies the appeal process. A grantee has the right to appeal the findings of any audit of its reimbursement. Appeals shall be substantiated by written evidence supporting the grantee’s appeal. Review of the evidence shall be between a representative of the department and the grantee.

Necessity: This proposed action is necessary to specify that compliance with State and Federal Law and the requests for reimbursement submitted by a grantee accurately represents the amount due to the grantee. It is necessary to specify grantees rights pertaining to non-compliance of the grant funding use and the appeal process.

ECONOMIC IMPACT ASSESSMENT

In accordance with GC section 11346.3(b), the department has made the following assessments regarding the proposed regulations:

CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The regulations establish an additional boater registration fee to provide grant funding for education, prevention and management of uninfected rivers, lakes and streams that flow into a reservoir and the reservoirs themselves, which is defined in the regulations. Water managers may be performing prevention activities, and grant funding may create an unknown number of jobs in California. No jobs will be eliminated.

CREATION OF NEW OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The regulations establish an additional boater registration fee to provide grant funding for education, prevention and management of uninfected rivers, lakes and streams that flow into a reservoir, which is defined in the regulations. Water managers may be performing prevention activities, and grant funding may create an unknown number of new businesses in California. No businesses will be eliminated.

EXPANSION OF BUSINESSES OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The regulations establish an additional boater registration fee to provide grant funding for education, prevention and management of uninfected rivers, lakes and streams that flow into a reservoir, which is defined in the regulations. Water managers may be performing prevention activities, and grant funding may create an unknown number of expanded businesses in California. No businesses will be eliminated.

ANTICIPATED BENEFITS OF THE REGULATIONS

The potential savings to the State due to prevention and education efforts provided through the grant program could avert significant damage to the water delivery system that provides drinking water to millions of southern Californians, or damage to the irrigation network that supports a \$30 billion per year agricultural industry, and could produce extraordinary economic and social consequences.

MATERIALS RELIED UPON

- [California Aquatic Invasive Species Management Plan and Appendices](#). California Department of Fish and Game (DFG), 2008. – A comprehensive study of AIS including recommendations for management and prevention.
- [Invasive Mussel Guidebook for Recreational Water Managers and Users](#). California Department of Fish and Game (DFG), 2010. An overview of the threat quagga and zebra mussels pose to California's water managers and users. The Guidebook recommends AIS prevention and containment measures, early-detection monitoring for mussels and methods for checking boats, trailers and vehicles for mussels.
- [Sacramento-San Joaquin Delta Boating Needs Assessment 2000 – 2020](#). A study undertaken on behalf of the California Department of Boating and Waterways (DBW) in cooperation with the Delta Protection Commission's Recreation Citizen's Advisory Committee. The study was carried out during the period of 2000 to 2002.
- [Legal and Regulatory Efforts to Minimize Expansion of Invasive Mussels through Watercraft Movements: A Co-learning Workshop](#), August 22–23, 2012, hosted by the Arizona Game and Fish Department and convened in Phoenix, Arizona, by the US Fish and Wildlife Service, the National Association of Attorneys General, Oregon Sea Grant, the National Sea Grant Law Center, and the Western Regional Panel on Aquatic Nuisance Species. (Reports, white papers, action plans and other resources online.)
- [Addressing the Challenge of Mutual Acceptance of Dreissenid Mussel Vessel Certification Programs – A Pathway to Reciprocity](#), 2010. (DFG) By Gregory A. Giusti.
- [Survey of Watercraft Interception Programs for Dreissenid Mussels in the Western United States](#) - Results of an On-line Survey Completed in February 2009. Produced for the Western Regional Panel on Aquatic Nuisance Species by Bill Zook and Stephen Phillips, Pacific States Marine Fisheries Commission.
- [Recommended Uniform Minimum Protocols and Standards for Watercraft Interception Programs for Dreissenid Mussels in the Western United States](#) - A report to the Western Regional panel on Aquatic Nuisance Species by Bill Zook and Stephen Phillips, Pacific States Marine Fisheries Commission.

- [The 100th Meridian Initiative in Nevada](#): Assessing the Potential Movement of the Zebra Mussel to the Lake Mead National Recreation Area, Nevada, USA. 2004.
- [Assessment of Potential for Dispersal of Aquatic Nuisance Species by Recreational Boaters into the Western United States](#) 2001.
- [State Land Commission](#): Assessing the salinity levels of the San Francisco Bay estuary, October 2013.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law

AUTHORITY AND REFERENCE

The department is proposing this action pursuant to the authority vested by AB 2443, Chapter 485 “Legislative Counsel’s Digest”. The department is a member of California’s Quagga and Zebra Mussel Interagency Working Group which works to develop ways for recreational boaters to prevent the spread of these aquatic invasive species. The department posts resources on its Website, develops and distributes joint press releases and publications, and distributes information at events and via other media. The Deputy Director of the Division of Boating and Waterways serves as the California Boating Law Administrator and interacts with other states and federal agencies to control the spread of invasive species across the state and nation.

INFORMATIVE DIGEST

Objectives of the Regulations

The objective of the regulations is to clarify the procedures related to administering the mussel fee intended to cover the costs of dreissenid mussel prevention activities as required by statute. The fee administration includes identification of the fee amount and procedures pertaining to how the fee will be collected and spent within the authority granted by the statutes.

Existing Laws Related Directly to the Proposed Action

A. Comparable State Statutes

1) The Legislature enacted Harbors and Navigation Code, Division 3, Chapter 5, Article 1.3 Sections 675 and 676, which became effective January 1, 2013. Those statutes require that the department promulgate regulations to impose an additional

quagga and zebra mussel infestation prevention fee to the boater registration fee collected by the Department of Motor Vehicles, to implement and administer dreissenid mussel monitoring, inspection, and infestation prevention programs, and to prescribe procedures for the collection and use of the fee.

2) Fish and Game Code Division 3, Chapter 3.5, Section 2301 was amended in 2007 and became effective October 10, 2007. That statute prohibits any person from possessing, importing, shipping, transporting, or placing dreissenid mussels in any state waterway. The statute also authorizes the Department of Fish and Game and other agencies to inspect and order the cleaning, impounding, or quarantine of any conveyance potentially carrying dreissenid mussels. The statute also 1) authorizes the Department of Fish and Game, with the concurrence of the Secretary of the Natural Resources Agency, to close or restrict access to waterways as necessary to prevent the spread of dreissenid mussels, and 2) requires any entity in the state that finds dreissenid mussels to report the finding to the Department of Fish and Game immediately. The Department of Fish and Game must then notify affected local and federal agencies including the Department of Parks and Recreation, Division of Boating and Waterways, the Department of Water Resources, and the State Lands Commission in the event of a decision to close, quarantine, or restrict a facility according to this section. Fish and Game Code 2301 was amended in 2011 and became effective on January 1, 2012. The amendment extended the sunset date from January 1, 2012 to January 1, 2017.

3) The Legislature enacted Fish and Game Code Division 3, Chapter 3.5, Section 2302 in 2008, which became effective January 1, 2009. That statute requires the combined efforts of federal, state, and local entities to address the serious threat that dreissenid mussels pose to reservoirs owned or managed by governmental entities and private persons or entities used by the public. These statutes authorize fines to be assessed against reservoir managers who refuse to develop and implement a dreissenid mussel prevention program that includes monitoring, public education, and management of recreational activities where water recreation, boating or fishing are permitted.

B. Comparable Federal Statutes

According to the California Invasive Species Management Plan, no single federal agency has comprehensive authority for all aspects of aquatic invasive species (AIS) management. Federal agencies with regulatory authority over the introduction and transport of aquatic species that may be invasive or noxious include the U.S. Department of Agriculture Animal Plant Health Inspection Service, the U.S. Department of Agriculture Agricultural Marketing Service, the U.S. Fish and Wildlife Service (USFWS), the U.S. Department of Commerce (DOC), and the U.S. Coast Guard (USCG). Many other agencies have programs and responsibilities that address components of AIS, such as importation, interstate transport, exclusion, control and eradication.

The primary federal authorities for managing and regulating AIS derive from the National Environmental Policy Act, the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA, 1990), the National Invasive Species Act (NISA, 1996), the

Lacey Act, the Plant Pest Act, the Federal Noxious Weed Act, and the Endangered Species Act. An Executive Order signed by President William J. Clinton on February 3, 1999 expanded federal efforts to address AIS. The order created a National Invasive Species Council charged with developing a comprehensive plan to minimize the negative economic, ecological and human health impacts of invasive species.

C. Estimate of Costs or Savings

Harbors and Navigation Code Section 675 prohibits that the quagga and zebra mussel infestation fee from exceeding \$10 per year per registered recreational vessel. After receiving input from the Technical Advisory Group and the Department of Motor Vehicles, the department determined that an annual fee amount of \$8 per registered vessel per year is appropriate, once it became clear that the DMV programming/ collection fees would be a one-time expense rather than an on-going one.

Based on \$8 fees paid by 60% of California's estimated 776,000 registered boat owners, an estimated average of \$3.7 million per year will be raised for the Quagga and Zebra Mussel Infestation Prevention Program. (Forty percent of vessels are registered in 13 counties which are on or near marine waters.)

The potential savings to the State due to prevention and education efforts provided through the grant program could avert significant damage to the water delivery system that provides drinking water to millions of southern Californians, or damage to the irrigation network that supports a \$30 billion per year agricultural industry, and could produce extraordinary economic and social consequences.