

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

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 RATIONALE

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.

Harbors and Navigation Code Section 675 requires the Department of Motor Vehicles (DMV) to collect an additional fee on behalf of the department on all recreational vessels subject to registration in the State of California. The 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.

Pursuant to Harbors and Navigation Code 676, 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 Rationale for 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 section references the title of the regulations and suggests how to cite the title in accordance with the statute.

Rationale for Necessity: this section is necessary to assist the public with the location of the statute pertaining to these regulations.

Section 5200.5. Definitions.

Purpose

The provisions of this section establish definitions for the terms used throughout these regulations.

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.

Rationale for Necessity: these definitions are 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

This section explains that there will be a mussel fee due when registering a new vessel or a newly acquired vessel with an existing vessel number on a biennial basis and the cost of the new fee will be \$16. Whenever the fee for the original registration of the

vessel becomes due between January 1 and December 31 of any even-number year the application shall be accompanied with a fee of \$8. Whenever the fee for the original registration of the vessel becomes due between January 1 and December 31 of an odd-numbered year the application shall be accompanied with a \$16 fee and \$16 thereafter on a biennial basis.

Rationale for Necessity: In determining the amount of the fee imposed pursuant to this section, Harbors and Navigation Code 675(a) states that the Director of the department shall established and consulted with a Technical Advisory Group (TAG). This TAG established consists of interested persons made up of representative from California Marine Parks and Harbors Association, Recreational Boaters of California, Division of Boating and Waterways and the Department of Fish and Wildlife. TAG estimated, based on a 6-year trend provided by DMV vessel registration records that 40% of vessels will be exempt. According to DMV vessel registration records out of 804,000 vessels, 320,000 vessels will register. The number of registered vessels that would be paying the mussel fee was taken into consideration when deciding the annual mussel fee of \$8. With projected expenses and administrative costs the annual fee of \$8 would result in an estimated \$2.5 million annually to be awarded in grant funding. This amount of the mussel fee was determined by the TAG to be what was needed to reach the grant award and the consideration of costs to implement the mussel fee, pursuant to Harbors and Navigation Code 676. Details of the estimated fiscal impact from the TAG are as follows: Administrative costs for DBW are \$85,000.00 annually in addition to operating expenses of \$150,000.00 annually. There will be a one-time start-up cost for the DMV that was estimated at \$338,000.00. The Department of Fish and Wildlife is not to receive more than 15% of the remaining revenue collected and not less than 85% of the remaining revenue deposited into the Harbors and Watercraft Revolving Fund shall be made available for grants subject to subdivision (a) of Section 2302 of the Fish and Game Code.

5202. Mussel Fee Due Dates.

Purpose

This section explains the conditions under which the mussel fee becomes payable.

Subsection (a) specifies that the fee will become payable upon application for a new vessel number.

Subsection (b) specifies that any time a California vessel registration is due the mussel fee will be due.

Subsection (c) states that whenever a marine water exemption is no longer applicable the mussel fee will be due. Marine waters are defined in this article under section 5207.

Subsection (d) states that a fee will be due for a newly acquired vessel that has an existing vessel number.

Rationale for Necessity: Once the fee was established the procedures were set in accordance with Sections 9853 and 9860 of the Vehicle Code as to when the fees would be due.

5203. Late Payment of Mussel Fee.

Purpose:

This section specifies that up to two years of mussel fees shall be due if the payment for the mussel fee was not received by the DMV with the registration fees.

Rationale for Necessity: The fees are collected on a two year cycle except for the first year if it becomes due between January 1 and December 31 on an even-numbered year. Thereafter the fee is due between January 1 and December 31 on an odd-number year. In order to stay within the odd-number cycle of two years the late payment is collected in the same cycle.

5204. Adjustment of Mussel Fee.

Purpose

This section specifies that there will be “no adjustment” or “pro-ration” to the mussel fee.

Rationale for Necessity: DMV’s interpretation of their authority does not allow for any pro-rations or adjustments in the mussel fee. All mussel fees are due according to Section 9853 and 9860 of the Vehicle Code.

5205. Refund of Mussel Fee.

Purpose

This section provides that refunds of paid mussel fees which are subject to the business rules and processing procedures established by the DMV.

Rationale for Necessity: In accordance to DMV business rules and processing procedures, a determination will be made by DMV regarding a refund of vessel/mussel fees. This determination will be made once a refund application is received by the DMV.

5206. Evidence of Payment of Mussel Fee.

Purpose

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

Subsection (b) specifies the color that the current registration year sticker and the “Mussel Fee Paid” sticker will be.

Subsection (c) 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) specifies that verification of payment for the mussel fee is indicated by the proper display of the “Mussel Fee Paid” sticker.

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

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

Rationale for Necessity: The department needs to be able to readily determine if a vessel’s mussel fee is up-to-date. This is done by issuance of a “Mussel Fee Paid” sticker by DMV and proper placement of the sticker on the vessel. 33 CFR 174.15 provides the following with regard to validation stickers:

(a) If a State issues validation stickers, its numbering system must contain the requirements that stickers must be displayed within 6 inches of the number and the stickers must meet the requirements in paragraphs (b) and (c) of this section.

(b) Validation stickers must be approximately 3 inches square.

(c) The year in which each validation sticker expires must be indicated by the colors, blue, international orange, green, and red, in rotation beginning with blue for stickers that expire in 1973.

The requirements of this CFR regulation are incorporated into the DMV business rules and processing procedures and is utilized for validation and enforcement purposes. The CFR does not apply to vessel exemptions.

5207. Marine Water Exemption

Purpose

Subsection (a) establishes the boundaries for an exemption in the San Francisco Bay Estuary which includes Suisun Bay up to and west of Chipps Island.

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

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

Paragraph (1) provides one way of claiming an exemption by placing a mark on the designated portion of the Application for Registration using DMV Form (BOAT 101).

Paragraph (2) provides an additional way of claiming an exemption by placing a mark in the designated portion of the Renewal Notice for Vessel Registration by using DMV Form (ISD 83VR).

Paragraph (3) provides an additional way of claiming an exemption by marking the appropriate field in the Vessel Registration Internet Renewal webpage.

Paragraph (4) provides an additional way of claiming an exemption by notifying the DMV through its Interactive Voice Response System.

Subsection (d) specifies that when the mussel fee exemption applies vessel owners must reapply every biennial registration cycle.

Rationale for Necessity: The determination of the boundaries for the exemption are 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. If vessel owners are within this boundary of exemption, a Mussel Fee Paid sticker will not be required. The DMV provides a variety of ways to register a vessel and claim the exemption.

Subsection (e) states that the DMV shall provide a quarterly report of this information. Additionally, information provided in this report to the department, will consist of the number of vessels claiming the exemption and the number of vessels paying the additional mussel fee.

Rationale for Necessity: This allows the department access to records of revenue collected from the fee which will be available for public information. Additionally, these records will be maintained as information for budgeting of the future fiscal year grant funding.

5208. Substitute "Mussel Fee Paid" Sticker.

Purpose

This section 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 section also specifies a \$16 fee shall be required for this substitute sticker.

Rationale for Necessity: This aligns with the biennial registration amount which was determined to be the amount of the cost for a lost or stolen replacement sticker.

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

Purpose

This section specifies the fee requirement if the marine water exemption no longer applies.

Rationale for Necessity: This section explains that a fee will be imposed once a vessel is no longer marine water exempt, as defined in Section 5207 of this article, pursuant to section 5206(e).

5210. Deposit of Revenues.

Purpose

This section states that the revenues which are collected from the “Mussel Fee Paid” sticker by the DMV shall be deposited into the Harbors and Watercraft Revolving Fund (HWRF).

Rationale for Necessity: It is necessary to inform the public, which affords accountability and transparency, that the funds for the mussel fee will be deposited into the HWRF according to Harbors and Navigation Code, Section 676.

5211. Fee Exemption Vessels.

Purpose

This section specifies the limited types of exemptions under this article.

Subsection (a) 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) specifies that pursuant to Chapter 1 of Division 1 Article 3.2 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. (note: the citation to section 190.16 of the vehicle was incorrect and should have been Title 13, California Code of Regulations, Section 190.16, modification is being made to correct the citation in this 15-day notice)

Rationale for Necessity: Pursuant to Title 13, California Code of Regulations, Section 190.16, boats belonging to State, County or City Governments and Federal agencies of the United States shall not be required to pay state vessel registration fees.

Article 1.6 Quagga and Zebra Mussel Infestation Prevention Grant Regulations

5300. Short Title.

Purpose

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

Rationale for Necessity: This section is necessary to assist the public with the location of the statute pertaining to these regulations.

Section 5301. Purpose.

Purpose

The Quagga and Zebra Mussel Infestation Prevention Grant Program is to provide for reasonable regulatory costs which includes costs associated with the investigation and inspection of a conveyance for the presence of dreissenid mussels prior to contact with a reservoir. The implementation of a prevention plan may include several components.

Subsection (a) Assessing the vulnerability of a reservoir may be one of the components implemented in a prevention plan.

Subsection (b) states the components to be included when developing and implementing a program designed to prevent the introduction of non-native dreissenid mussel species.

Paragraph (1) gives “public education” as a component of the prevention plan

Paragraph (2) states that “monitoring” of water bodies/and or vessels for quagga or zebra mussel infestation as one of the components of a prevention plan.

Paragraph (3) “management” of those recreational, boating, or fishing activities that are permitted is another component of a prevention plan.

Rationale for Necessity: Quagga and zebra mussel infestation poses tremendous financial burden on local governments and local economies. 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. Urgency exists due to the tremendous water management impacts and state and local government costs associated with quagga and zebra mussel infestation. The fees required by Harbors and Navigation Code, Section 675, as determined by DBW, are primarily for the reasonable regulatory costs incident to performing investigations and inspections necessary to prevent and control the infestation of California waters by quagga and zebra mussels. Since section 5301 cross references Fish and Game Code section 2302 as to entities subject to that section for purposes of receiving Quagga and Zebra Mussel Infestation Prevention Grant Program funds, setting forth the specific activities required by Fish and Game Code section 2302 within section 5301 clarifies what the Quagga and Zebra Mussel Infestation Prevention Grant Program funds are to be used for which is 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 section provides instructions as to the eligibility of grant applicants.

Beginning paragraph of this section requires applicants to be subject to Fish and Game Code 2302.

Subsection (a) requires a Resolution or Order from a governing board or an executive officer in order for this grant process to be authorized.

Paragraph (1) 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) requires the Resolution or Order to authorize the designated representative(s) to sign not only the application but also to sign the contract and any claims for payment or reimbursement.

Paragraph (3) provides that an application may be denied if an applicant fails to provide the required Resolution or Order with their application.

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

Rationale for Necessity: The importance of obtaining a Resolution or Order from governing entities that have jurisdiction over a reservoir assures that the designated representative has legal authority to act on behalf of the governing entities as to the specific actions delegated to the designated representative. Without this authorization, it would be unclear whether the designated representative would have legal authority to carry out the activities required by the use of grant funds.

Section 5303. Grant Application.

Purpose

Subsection (a) should make all grant applicants aware that in order for a grant to be awarded under this article the application 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.

Subsection (b) adds requirements to the grant application for a prevention plan and a measurable performance goal report. This required report was considered relevant during the emergency regulations 5-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) states if applications are received after the deadline they will not be considered.

Rationale for Necessity: An application is a necessary part of the process for awarding grant funds. Section 5303 provides the range of information that is required for a grant application to allow the department to ascertain the identity, contact information, and eligibility of the applicant and how grant funds would be used in compliance with the program such as certification, permits and licenses that may be required for particular elements of a prevention plan.

Section 5304. Grant Award Factors.

Purpose

Subsection (a) 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) gives preference to a regional-scale prevention plan which shall include a regional impact from a dreissenid mussel infestation in a surrounding area.

Subsection (c) states that the prevention plan considers the impacts to rural and urban reservoirs as economic, ecological and recreational.

Subsection (d) states that infested water bodies will not be considered for the grant program

Rationale for Necessity: Subdivision (a)–(c) restates Harbors and Navigation Code, Section 676(b). The language duplicates Harbors and Navigation Code, Section 676(b) in order to satisfy the clarity standard of Government Code Section 11349.1. Section 5304 implements Harbors and Navigation Code section 476(b) in setting forth the factors that the Division of Boating and Waterways must consider in granting awards. Setting forth the factors from Harbors and Navigation Code section 476(b) provides clarity and continuity in section 5304 so that the regulated public does not have to refer back to Harbors and Navigation Code section 476(b) for the regulation to make sense. Subsection (d) restates the objective in 2302(g) of the Fish and Game Code.

5305. Allowable and Non-Allowable Costs.

Purpose

This section states that grant funding can only be used for reasonable regulatory costs pursuant to Section 2302 of the Fish and Game Code.

Subsection (a) 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) 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) defines “conveyance” for purposes of subsection (b).

Rationale for Necessity: Subsection (b) restates Harbors and Navigation Code, Section 676(c). The duplication is necessary to satisfy the clarity standard of Government Code 11349.1. Section 5305(b) implements and restates Harbors and Navigation Code section 476(c), which provides clarity and continuity in section 5305 so that the regulated public does not have to refer back to Harbors and Navigation Code section 476(c) for the regulation to make sense.

Section 5306. Grant Reporting and Reimbursement.

Purpose

As a condition of the dreissenid mussel infestation prevention grant program, the grantee shall submit a quarterly report on prevention and inspection programs implemented.

Subsection (a) states the data that shall be submitted on a quarterly basis to the department regarding dreissenid mussel prevention and inspection programs implemented by the grantee.

Subsection (b) states that once approved by the department, the grantee shall receive reimbursement for invoices related to expenditures regarding the dreissenid mussel infestation prevention plan and inspection program.

Subsection (c) states that once a budget is approved expenses not contained in that budget will not be reimbursed unless the grantee notifies the department in advance of the changes resulting in a budget revision. If changes are unapproved reimbursement will not be made above the grant award.

Rationale for Necessity: In order for a grantee to receive reimbursement they must meet requirements of the guidelines that include quarterly documentation such as reporting of measurable performance and goals, submission of invoices along with a reimbursement claim form and prior approval if changes result in a budget revision. Any

changes to the agreement resulting in changes in expenses must be reported in advance. Failure to provide the required documents could alter the amount that may or may not be reimbursed once a grantee submits a reimbursement claim. Such reporting and submission of invoices with claims for reimbursement assures grant funds are being used for agreed purposes and timely reimbursement of expenses of the grantee.

Section 5307. Audits and Appeals.

Purpose

Subsection (a) 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) specifies that the grantee will be notified one (1) week in advance of all audits.

Subsection (c) 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.

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

Subsection (e) 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) 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) 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.

Rationale for Necessity: The audit process is necessary to assure compliance of the grant funding requirements. In addition compliance with state and federal law should be maintained through the grant agreement period. The audit will include monitoring of, but not be limited to, all receipts and invoices for expenditures made using grant funds. In the event that a reimbursement claim is denied or an audit results in a grantee's

obligation to provide a refund to the department, a grantee is afforded an opportunity to appeal an audit decision. The appeal procedure allows any disputes over reimbursement or refunds to be resolved through informal and formal procedures.

NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

Although the proposed action may affect businesses statewide, including small businesses, the department concludes that the economic impact, including the ability of California business to compete with businesses in other states, will not be significant. . These proposed regulations serve to provide funding through the collection of a fee. The fee will provide grant funding which will be awarded to reservoir owners/managers for the implementation of a prevention plan of a dreissenid mussel infestation.

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.