

**DEPARTMENT OF PARKS AND RECREATION,
DIVISION OF BOATING AND WATERWAYS**

NOTICE OF PROPOSED READOPTED EMERGENCY RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Parks and Recreation, Division of Boating & Waterways (hereafter department) proposes to readopt the Quagga and Zebra Mussel Infestation Prevention Fee Emergency Regulations pursuant to AB 1302 which established standard for when an emergency regulation should be readopted by providing that readoption permissible only when “the agency has made substantial progress and proceeded with diligence” to adopt the emergency regulations on a permanent basis. Pursuant to Government Code (GC), Sections 11346.1 (e) and (h), emergency regulations are effective for 180 days. Office of Administrative Law (OAL) may approve two readoptions, each for a period not to exceed 90 days. In the absence of readoption the emergency regulations will expire on July 8, 2014. Pursuant to (GC) Section 11346.1 (3)(h), the proposed language for the readopted emergency regulation “is the same as or substantially equivalent to the language of the original emergency regulation”.

REQUEST FOR READOPTION OF EMERGENCY REGULATORY ACTION

On October 1, 2013, the emergency regulations for the Quagga and Zebra Mussel Infestation Prevention Fee were approved by (OAL). The department requests to readopt the emergency regulations after the department has made substantial progress towards the adoption of the permanent regulations, such as collection of fees, progress towards completion of the permanent regulations, and hiring of staff needed to manage the Quagga and Zebra Mussel Infestation Prevention Program.

ADOPTED EMERGENCY REGULATORY ACTION

The emergency regulations provide procedures for the collection and use of the Quagga and Zebra Mussel Infestation Prevention Fee as required by California Harbors and Navigation Code Division 3, Chapter 5, Article 1.3 Section 675 through Section 676 beginning with the 2014 recreational vessel registrations payable on December 31, 2013 and thereafter on a bi-annual basis. These emergency regulations also specify the criteria for administering the grants in accordance with the statutes.

The regulations shall not apply to registered vessels used exclusively in marine waters as defined in the regulations, estimated by the department to be approximately 40% of registered vessels. It is up to the vessel owners to opt out of the prevention fee using the method specified in the regulations.

The prevention fee amount was based on input from a Technical Advisory Group (TAG) to determine the amount of the fee, not to exceed \$10. After the TAG meetings held late Spring of 2013, the department took into consideration the comments given and research obtained from those meetings, and set the fee at \$8 per year with billing to start with the biennial registration beginning January 1, 2014 for \$16 for the two-year registration.

All revenues collected from the fee will 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 Department of Motor Vehicles initial programming costs, adoption of the regulations, and administering the prevention grant; no more than 15% of the remaining revenues collected may be expended by the Department of Fish and Game for inspection, quarantine and enforcement of quagga and zebra mussel prevention activities according to 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.

This article shall not prevent a special district, city, county or joint powers authority from adopting local regulations or ordinances related to the prevention and eradication of invasive species that exceed the requirements of this article. The department intends to follow the emergency rulemaking with a regular rulemaking for permanent regulations. The department intends to have the permanent regulations in place no more than 180 days after the expiration of the emergency regulations.

OPPORTUNITY FOR PUBLIC COMMENT

(GC) section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action readoption to the Office of Administrative Law, the agency will provide a notice of the proposed emergency action readoption to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency readoption to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed readopted emergency regulations as set forth in (GC) section 11349.6.

Please note that this is merely an advance notice of proposed readoption of the same regulations that have been in effect since October 10, 2013. The department is required to send out this notice pursuant to (GC) Section 11346.1(a)(2). This notice does not impose any new requirements or impose any type of new fee. You are not required to take any action in response to this notice.

This Notice of Proposed Readopted Emergency Rulemaking is being provided five days prior to the date that the department will submit the regulation to the Office of Administrative Law.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relative to the proposed readopted emergency regulatory action.

Comments must satisfy the following requirements:

- Comment must be in writing, which includes email
- Comment must identify the emergency regulation being addressed
- Comments must be sent to the rulemaking agency's contact person for the emergency regulations
- Comment must be sent to (OAL) and received by (OAL) before (OAL) makes its decision and within five calendar days of the filing of the readopted emergency regulations with (OAL)

Submit comments to BOTH:

Office of Administrative Law (OAL)
Reference Attorney
300 Capitol Mall, Suite 120
Sacramento, CA 95814

staff@oal.ca.gov

Robin Turgeon
Department of Parks and Recreation
Division of Boating and Waterways
1 Capitol Mall, Suite 410
Sacramento, CA 95814

robin.turgeon@parks.ca.gov

FINDING OF EMERGENCY

As authorized by California Harbors and Navigation Code Division 3, Chapter 5, Article 1.3 Section 675 through Section 676, relating to vessels, the Legislature declared and found that:

(a) Quagga and zebra mussels, nonnative dreissenid mussels introduced in the United States from Europe in 1988, pose an immediate and significant threat to California's water supply, flood control, power generation, and aquatic recreation infrastructure. Once established in a body of freshwater, quagga and zebra mussels latch onto pipes, valves, screens, irrigation canals, and gates, often in quantities that severely impede the movement of water and the necessary operation of other critical water management infrastructure.

(b) 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.

(c) Quagga and zebra mussel infestations have been identified in 25 bodies of freshwater 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 infrastructure 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 watersheds.

(d) Existing law prohibits the possession, importation, shipment, transportation, planting, or placement of quagga and zebra mussels in any water within the state.

(e) Due to the tremendous water management impacts and state and local government costs associated with quagga and zebra mussel infestation an urgency exist to prevent the potential impacts to the state's water supply infrastructure that such infestation could cause.

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.

AUTHORITY AND REFERENCE

The Department of Parks and Recreation Division of Boating and Waterways is proposing this action pursuant to the authority vested by the Harbors and Navigation Code, Division 3, Chapter 5, Article 1.3 Section 675 (3) (c), “The department shall adopt an emergency regulation to prescribe procedures for the collection and use of the quagga and zebra mussel infestation prevention fee for the purposes of this article. The emergency regulations shall include rules for administering the grants awarded pursuant to Section 676.” There will be no changes in the readoption.

The Department of Parks and Recreation Division of Boating and Waterways 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 Division of Boating and Waterways posts resources on its Website, develops and distributes joint press releases and publications, and distributes information at events and via other media. The Division of Boating and Waterways’ Deputy Director serves as the State’s

Boating Law Administrator and interacts with other states and federal agencies to control the spread of these 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 fees intended to cover the costs of prevent dreissenid mussel introduction prevention activities as required by statute, . The fee administration includes identification of the fee amount and how the fee will be collected and spent within the statutes. and to determine the amount of the fees and how they will be collected and spent within 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 promulgate emergency regulations to prescribe procedures for the collection and use of the fee.

2) The Fish and Game Code Division 3, Chapter 3.5, Section 2301 was amended in 2010 and became effective in January 1, 2011 prohibiting the transportation or placement of dreissenid mussels in the state, and required the inspection, disinfection and quarantine of boats, trailers and other conveyances of aquatic invasive species as determined necessary by the Department of Fish and Game. The statute also requires reporting of waterway and facility exposure to dreissenid mussels, closure of a waterway to the Department of Boating and Waterways as an affected agency.

3) The Fish and Game Code Division 3, Chapter 3.5, Section 2302 was added in 2008 and became effective January 1, 2009 calling for the combined effort of federal, state, and local entities to address the serious threat of dreissenid mussels to reservoirs owned or managed by governmental entities and private persons or entities used by the public. These statutes authorize fines to reservoir managers who refuse to monitor the spread of these aquatic invasive species in water bodies throughout the state, or do not develop a public education and management program where water recreation, boating or fishing are permitted.

4) The Fish and Game Code Division 3, Chapter 3.5, Section 2300 was amended in 2007 and became effective immediately prohibiting a person from

possessing, importing, shipping, transporting, or placing in any state waterway, dreissenid mussels and authorized the Department of Fish and Game and other agencies, as specified, to inspect and order the cleaning, impounding, or quarantine as necessary, of any conveyance potentially carrying dreissenid mussels, including at water delivery and storage facilities under specified circumstances. It also 1) authorized the Department of Fish and Game, with the concurrence of the Secretary of the resources Agency, to close or restrict access to waterways as necessary to prevent the spread of dreissenid mussels, and 2) provided that any entity in the state discovering dreissenid mussels must 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 Boating and Waterways, the Department of Water Resources, the Department of Parks and Recreation, and the State Lands Commission in the event of a decision to close, quarantine, or restrict a facility according to this section.

B. Comparable Federal Statutes

1) According to the California Invasive Species Management Plan, no single federal agency has comprehensive authority for all aspects of aquatic invasive species 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 economic, ecological and human health impacts of invasive species.

Estimate of Costs or Savings (Attached Form 399)

At the direction of the legislature not to exceed a fee of \$10 per year per registered recreational vessel, and following the input of TAGs and the Department of Motor Vehicles, the department determined a lesser annual fee amount of \$8 per registered vessel per year once it became clear that the DMV programming/collection fees would be a one-time expense rather than on-going.

Based on \$8 fees paid by 60% of California's estimated 776,000 registered boat owners, an 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.