

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
AMENDED INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Sections 672, 672.1, and 672.2
Title 14, California Code of Regulations
Re: Dreissenid Mussels

- I. Date of Initial Statement of Reasons: January 8, 2015
- II. Date of Amended Initial Statement of Reasons: September 16, 2015
- III. Dates and Locations of Scheduled Hearings:
 - (a) Public Hearing: Date: March 12, 2015
Time: 10:00 to 11:30 a.m.
Location: Room 1206, 12th Floor
Resources Building
1416 9th Street
Sacramento, CA 95814
- IV. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Introduction

Quagga and zebra mussels (*Dreissena rostriformis bugensis* and *Dreissena polymorpha*) are two species of freshwater mussels that are native to Ukraine and Russia. In the late 1980s both species were discovered in the Great Lakes. Researchers believe they were brought to the United States in the ballast water of trans-oceanic ships. Quagga mussels were discovered in Lake Mead, Nevada on January 6, 2007, and later throughout Lake Mead's lower basin. It was the first discovery of these mussels west of the Continental Divide. Subsequent surveys in California found smaller numbers of quagga mussels in lakes Mohave and Havasu on the Colorado River, and in the Colorado River Aqueduct System that serves Southern California. All reservoirs, lakes, and watersheds receiving raw Colorado River water have since been exposed to quagga mussels. Zebra mussels were found at San Justo Reservoir, San Benito County, on January 10, 2008. To date, 33 waterbodies in California have become infested with dreissenid mussels.

Both species of non-native aquatic mollusks wreak havoc on the environment by disrupting the natural food chain and can contribute to the release of harmful bacteria that affect other aquatic species. Quagga and zebra mussels are filter feeders that consume large portions of the microscopic plants and animals that form the base of the food web. Their consumption of significant amount of phytoplankton from the water decreases zooplankton and can cause disruption to the ecological balance of entire bodies of water. The mussels can displace native species, further upsetting the natural food web. In addition to devastating the natural environment, quagga and zebra mussels pose an economic threat to California. The greatest impact is on infrastructure and water conveyances. Mussels attach to surfaces such as piers, pilings, water intakes, and fish screens. These invasives spawn multiple times a year and, as a result, intake structures can become clogged, hampering the flow of water threatening municipal water supply, agricultural irrigation and power plant operations. Mussels can also negatively impact recreational boating by colonizing the hulls, engines and steering components of boats and other recreational equipment, and can damage boat motors and restrict cooling. Boats are the primary transporters of quagga and zebra mussels to uninfested areas either as adults attached to vessels or as larvae in engine, bilge or live well water.

The discovery of mussels in California prompted legislative action, and Governor Arnold Schwarzenegger signed Assembly Bill (AB) 1683, Wolk, on October 10, 2007. AB 1683 enacted Fish and Game Code section 2301, which makes the possession of dead or live mussels illegal without Department of Fish and Wildlife (Department) approval, authorizes the Department to conduct inspections, order quarantines, work with water managers in the development of mandated response plans for infested waterbodies, and to take other actions to prevent the spread of invasive quagga/zebra mussels. On September 30, 2008, the Governor signed AB 2065, Hancock. Implemented as Fish and Game Code section 2302, this legislation requires that uninfested reservoirs open to the public for recreational opportunities implement a program to prevent the introduction of mussels, which includes public education, monitoring, and management of recreational activities. Fish and Game Code sections 2301 and 2302 both authorize the Department to adopt regulations to implement and enforce these code sections.

Fish and Game Code section 2301 prohibits possession of dead or live dreissenid mussels unless authorized by the Department. The Department has existing regulations enabling it to issue permits for individuals to possess live mussels, but does not have regulations for issuance of

permits to possess dead mussels. Water districts, recreational entities, trainers and museums have requested authorization from the Department to possess dead mussels for educational and outreach purposes. Regulations are necessary in order for the Department to have an established process to allow individuals to possess dead mussels for purposes including outreach and education, training, or maintenance at infested waters.

Fish and Game Code section 2301 requires public and private agencies that operate a water supply facility that becomes infested with dreissenid mussels to outline how the agency will control or eradicate the infestation. However, the law does not provide timelines for when these plans must be submitted, nor does it require agencies to continue to update the Department on the implementation of these programs. Fish and Game Code section 2302, requires that responsible entities implement prevention programs. The Department does not receive any information from these entities to assess what programs are being implemented and how effective they are at preventing the introduction of dreissenid mussels into uninfested reservoirs. Regulations are necessary to require information be submitted, which will provide the Department the ability to verify that Fish and Game Code sections 2301 and 2302 are being properly implemented at the local level.

Fish and Game Code section 2301 grants authority to the Department, or other state agencies acting on its behalf, to conduct inspections of conveyances that may carry or contain adult or larval dreissenid mussels and quarantine those conveyances if mussels are discovered. However, the process to do so has not yet been set in regulations, and it is necessary to do so because it will provide for consistent procedures and inform the public of the formal process of how the department handles conveyances that are suspected to have dreissenid mussels.

Fish and Game Code sections 2301 and 2302 authorize the Department to assess administrative penalties for violations of sections 2301 and 2302; however, the penalty cannot be imposed for violations of section 2301 unless the Department has adopted regulations specifying the amount of the penalty and the procedure for imposing and appealing the penalty. The Department does not have an administrative penalty process that can be utilized for the penalties specified in sections 2301 and 2302; therefore, regulations that set up an administrative penalty and appeal process are necessary in order for the Department to impose penalties for violation of dreissenid mussel law.

Proposal Overview

The purpose of the proposed regulations is to provide the Department with additional oversight of dreissenid mussel programs throughout the State. The regulations will establish:

- 1) a program to permit the possession of dead dreissenid mussels;
- 2) deadlines and reporting requirements for control plans for water supply systems infested with dreissenid mussels;
- 3) deadlines and reporting requirements for prevention programs for reservoirs open to the public;
- 4) the process for quarantining conveyances when the Department, or other state agencies acting on its behalf, determines the conveyance has the potential to spread dreissenid mussels; ~~and~~
- 5) procedure and appeal process for imposing an administrative penalty for violations of Fish and Game Code, sections 2301 and 2302 and the proposed regulations or related orders; and
- 6) three new forms to be available on the Department's web site or upon request are proposed to be incorporated by reference as it would be unduly expensive and impractical to publish them in the Title 14, California Code or Regulations.

Present Regulations

Title 14 does not currently include regulations related to dreissenid mussels other than listing the species as a restricted species in section 671: Importation, Transportation, and Possession of Live Restricted Animals. Title 14 sections 650 and 671.1 also allow for the collection and possession of live dreissenid mussels for scientific, educational, or propagation purposes through the Scientific Collecting Permit and Restricted Species Permit processes.

Proposed Regulations

All of the following proposed subdivisions will be new provisions in Title 14.

Section 672, Subdivision (a). This provision defines terms used within Fish and Game Code sections 2301 and 2302 and/or within the proposed regulations. These definitions are necessary in that they provide the public with detail necessary to understand and comply with the Code and regulations, as well as insure that the regulations are clear and legally enforceable.

Section 672, Subdivision (b). This provision creates a permit process for the possession of dead mussels. Authorization from the Department is required in order to possess any dreissenid mussels pursuant to Fish and Game Code section 2301. The Department does not currently have any permitting regulations to allow for the possession of dead mussels. This section creates a process for issuance of Dreissenid Mussel Permits, through which the Department may authorize possession of dead mussels by individuals or entities for educational, outreach or similar purposes. Such authorization is necessary to further the Department's goal of educating the public about and preventing the spread of dreissenid mussels and enhancing compliance with Fish and Game Code. This subdivision includes general permit provisions for such permits that are necessary to set out basic parameters for the permits. **Provisions describing a permit process are necessary to implement and clarify the Department's means of authorizing the activities that are otherwise prohibited by Fish and Game Code section 2301, subdivision (a)(1).**

Section 672(b)(1). Subdivision (b)(1) defines the types of entities that may apply for a Dreissenid Mussel Permit and specifies what the permit authorizes. This provision is necessary in order to implement and interpret the statute because it is important for the public to be aware of the types of entities to which the Department would issue a Dreissenid Mussel Permit that would allow for actions otherwise prohibited by the statute. It is necessary to clarify that the Department may issue a permit to an institution or agency, to provide for administrative efficiencies. This provision is also necessary to clarify and inform the public of the scope of authorization that may be obtained.

Section 672(b)(2). Subdivision (b)(2) identifies the purposes for which a Dreissenid Mussel Permit will be issued. This provision is necessary because it clarifies the types of requests that may be granted for possessing dreissenid mussels. The Department will approve a Dreissenid Mussel Permit only if the purpose for the permit falls under one of the identified purposes.

Section 672(b)(3). This provision states that Dreissenid Mussel Permits do not authorize the collection of live dreissenid mussels. This provision is necessary because it clarifies the intent of the Dreissenid Mussel Permit and will avoid applicants seeking permits for an activity that the Department will not authorize under this permit program.

Section 672(b)(4). Subdivision (b)(4) states that the Dreissenid Mussel Permit does not supersede any other laws or regulations. This provision is necessary because it notifies applicants that there may be other laws and regulations related to the possession of dead dreissenid mussels that this permit does not cover, and therefore clarifies and prevents overstating the scope of the permit.

Section 672(b)(5). Subdivision (b)(5) specifies that the Department may enter any location where dreissenid mussels are kept to inspect mussels, facilities or equipment. This provision is necessary because the Department may need to inspect a facility to verify that an entity is complying with an issued Dreissenid Mussel Permit. The provision provides notification to any entity interested in obtaining a permit that it would have to allow for such entrance and inspection of an area where dreissenid mussels are kept.

Section 672, Subdivision (c). This subdivision specifies information that applicants for a Dreissenid Mussel Permit must submit to the Department and describes how the Department will review the application and issue the permit. The proposed regulations include a new application form, Dreissenid Mussel Permit Application DFW 1014 (NEW 09/25/14). This form is the required permit application for a Dreissenid Mussel Permit. The information specified in this subdivision is necessary to define the permit process, ensure the collection of appropriate information with which to review the application and make a determination, define the review and approval process, and the basis for the Department's denial of a permit. This section is necessary to set out a standardized process for authorizing possession of dead mussels, enabling outreach and education, training, species verification and other purposes that are in the best interest of the state.

Section 672(c)(1). Subdivision (c)(1) describes the review and approval of permit applications. It specifies that the Department has 30 business days to review an application. The provision also requires permittees to present an approved permit upon request. A permit application process is necessary for the Department to implement the statute and authorize otherwise prohibited activities. This provision is necessary because it specifies the amount of time the Department needs to review and process a Dreissenid Mussel Permit application. This is necessary to provide potential applicants with an understanding of the duration of the process. The Department has determined that 30 business days is an adequate amount of time to review and approve or deny a permit request. This

provides the Department with enough time to review, while still being a reasonable amount of time to respond to the applicant. The statement that permittees will receive an approval letter and signed permit is necessary to notify applicants of the form of authorization they would receive. In addition, presenting an approved permit upon request is necessary because it verifies that any dreissenid mussels in an entity's possession have been legally obtained.

Section 672(c)(2)(A)-(C). Subdivisions (c)(2)(A) through (C) describe the circumstances under which a Dreissenid Mussel Permit application may be denied. The regulations specify specific scenarios in which a permit would be denied. This provision is necessary because it informs individuals and entities interested in obtaining a Dreissenid Mussel Permit that there are certain circumstances under which the Department may deny a permit. This information is necessary because it alerts applicants to the types of concerns the Department would have and provides transparency and consistency when it comes to denying a permit.

Section 672, Subdivision (d). This provision specifies conditions for the revocation of a Dreissenid Mussel Permit. It is necessary to provide information to the permittee on any conditions that may warrant revocation and what the permittee is required to do if a permit is revoked.

Section 672, Subdivision (e). This provision specifies a process for reconsideration in the event a permit is denied. ~~The provision is necessary to establish a uniform, transparent and timely process available to all applicants, and a means for contesting the Department's decision should an applicant disagree with the outcome.~~ In combination with Section 672, subdivision (c)(2), this provision is necessary to establish a uniform, transparent and timely process available to all applicants, and a means for contesting the Department's decision should an applicant disagree with the outcome. It is necessary to require that reconsideration requests be made in writing and address the reasons for the request and pertinent facts and issues, to provide the public with an understanding of the process and the information needed to support a request. Deadlines for such requests and a Department response are necessary to allow for timely decision making and avoid regulatory uncertainty. The Department considered 30 business days to be an adequate time for an applicant or permittee to prepare a request, while avoiding extensive delays. The Department determined that 45 business days would allow the Department

sufficient time to review and consider the request without creating extensive delays.

Dreissenid Mussel Permit Application DFW 1014:

DFW 1014 Section 1. Section 1 of the Dreissenid Mussel Permit Application includes information related to the permittee and those that may be covered under the permit. An application form is necessary to implement the statute and to provide for a clear and efficient administrative process. Section 1 of the application is necessary because it provides the Department with information on who is requesting the permit and how the Department can contact them. In addition, this section requires information on the type of permit being requested (new, renewal, amendment). This information is necessary for permit tracking purposes and to allow for administrative efficiency. Finally, Fish and Game Code section 2301, subdivision (a) states that it is illegal for anyone to possess mussels without Department approval; therefore, to comply with the statute it is necessary to require the names and contact information for all individuals that will possess the dead dreissenid mussels. This is necessary because permits may be issued to organizations such as an educational institution, and it is necessary for tracking and enforcement purposes for the permit to state which individuals associated with the organization are authorized to possess the dead dreissenid mussels.

DFW 1014 Section 2. Section 2 of the Dreissenid Mussel Permit Application includes information on the type of dreissenid mussels being requested. Fish and Game Code section 2301 makes it illegal to possess dreissenid mussels without approval. This applies to all types of dreissenids and all life stages; therefore, in order to approve a request to possess dead mussels, it is necessary for the application to include the species and the life stage being requested so that the permit can be issued with a specific scope. It is also necessary to indicate the number of individuals or material description so that the Department can issue a permit with a specific scope.

DFW 1014 Section 3. Section 3 of the Dreissenid Mussel Permit Application includes information on the purpose for possessing dead dreissenid mussels. Section 3 of the application requires the applicant to specify how the dead dreissenid mussels will be used. This information is necessary because it allows the Department to evaluate whether the purpose to possess dead dreissenid mussels is

consistent with the purposes stated in the regulations and whether such purposes will be in the best interest of the state.

DFW 1014 Section 4. Section 4 of the Dreissenid Mussel Permit Application requires contact information for whoever will be providing the mussels and information on how the mussels were killed and preserved. Information related to the source of the mussels and contact information for the person supplying the mussels is necessary to record in the application form because it allows the Department to verify that mussels are not being collected within California. In addition, it is necessary for the Department to know how the mussels were killed and preserved because it verifies that the mussels are dead and properly preserved prior to an individual/entity receiving the mussels. This reduces the risk of mussels being spread.

DFW 1014 Section 5. This section requires information on preservation, storage, and transport of the dead dreissenid mussels. Information on preservation, storage and transportation is necessary because it provides the Department with data needed to track mussels authorized by the Department. It also provides the Department with assurances that mussel shells will not be deposited in areas near waters, which could result in public concerns of new infestations.

DFW 1014 Section 6. Section 6 of the Dreissenid Mussel Permit Application requires documentation of other necessary permits. Providing copies of other permits is necessary because it notifies the Department about the applicant's other obligations and informs the Department as to whether there should be coordination with other agencies prior to approving a Dreissenid Mussel Permit.

DFW 1014 Application Certification. The Dreissenid Mussel Permit Application requires an applicant's signature certifying that everything is correct in the application. A signature on the application is necessary because it validates and verifies that the information included in the application is accurate and truthful. It also provides proof to the Department that the applicant understands all related rules and regulations.

DFW 1014 CDFW Only Section. The Dreissenid Mussel Permit Application includes an area for the Department to include a permit number, permit term, and approval signature. This information is necessary because the Department needs to be able to track

approved permits and the signature provides verification of approval for the applicant.

DFW 1014 Instructions. The Dreissenid Mussel Permit Application includes instructions for how to complete the application form. Instructions to the permit form are necessary to reiterate information from the regulations and to avoid incomplete or insufficient applications. These instructions also provide information on other Department permit programs that may be applicable to an applicant's proposed activities.

Section 672.1, Subdivision (a). The subdivision applies to public or private agencies that are required per Fish and Game Code section 2301 to develop and implement a dreissenid mussel control plan. The subdivision includes standardized deadlines for submission of control plans, minimum components of a plan, requirements for annual reporting, and penalties for violations of the section. This subdivision gives the Department the ability to maintain information on infested waterbodies and the control activities taking place at those waterbodies. This subdivision is necessary to ensure responsible agencies take prompt action to contain dreissenid mussel infestations, preventing their further spread, and provides the Department with the ability to enforce failures to prepare and implement approved containment plans. This subdivision provides that control plans submitted prior to the effective date of the regulations need not be resubmitted, which is necessary to state in order to avoid duplicative work by the Department or agencies subject to this requirement. To avoid confusion, it is also necessary to clarify what additional permitting is required for monitoring activities undertaken pursuant to a control plan. The requirements in this subdivision for initial and updated plan submittals, as well as annual reports, ensures the Department has complete information about efforts at infested waterbodies for resource management and enforcement purposes, and also will enable other interested parties to have access to that information. This subdivision is generally necessary to implement and make specific the steps agencies must take to comply with the statutory requirements.

Section 672.1(a)(1)(A). This provision requires that a control plan must be submitted to the Department within 60 business days of a request from the Department. It is necessary to specify a timeline within which agencies must submit a control plan. Requiring submittal provides transparency and clarifies requirements for the public and is necessary so that agencies develop their control plans in coordination with the Department, as the statute requires. Timelines in this subdivision are necessary to address the different

circumstances under which a control plan's preparation, revision, or update may be required. The Department has determined that 60 business days is an adequate amount of time for an agency to develop and submit a control plan following a request by the Department, while also ensuring timely actions are taken to control dreissenid mussels.

Section 672.1(a)(1)(B). This provision requires that a control plan must be submitted to the Department within 60 business days of mussels being detected. As with subdivision (1)(B), it is necessary to specify a timeline within which a control plan must be submitted by agencies obligated to comply with the law by coordinating with the Department in the preparation and implementation of a control plan. A deadline provides transparency and clarifies requirements for the public. The Department has determined that 60 business days is an adequate amount of time for an agency to develop and submit a control plan following mussel detection, while also ensuring timely actions are taken to respond to and control newly detected dreissenid mussels.

Section 672.1(a)(1)(C). This provision requires that a control plan must be submitted to the Department within 60 business days of changes to an approved plan. Changes to a control plan are required to be reviewed and approved by the Department so that the Department has up-to-date information and to comply with the statutory requirement that agencies update plans to address scientific advances in the methods of controlling or eradicating mussels and veligers. It is necessary to specify a timeline for Plan submission for agencies obligated to comply with the law and develop their plans in coordination with the Department. A deadline provides transparency and clarifies requirements for the public. The Department has determined that 60 business days is an adequate amount of time for an agency to submit a revised Plan following changes to the control program, while also ensuring timely actions are taken to control dreissenid mussels and control plans.

Section 672.1(a)(2). Subdivision (a)(2) requires that a control plan must be revised within 60 business days of receipt of comments from the Department. This provision is necessary to ensure that agencies are responsive to comments from the Department on their control plans, so that the agency is coordinating in the development of the control plan and it is sufficient for approval. A deadline provides transparency and clarifies requirements for the public. The Department has determined that 60 business days is an adequate

amount of time for an agency to revise a plan following Department comments, while also ensuring timely actions are taken to control dreissenid mussels.

Section 672.1(a)(3). Subdivision (a)(3) states that previously approved control plans do not need to be resubmitted to the Department. It is necessary to notify the regulated community that Plans approved prior to these regulations do not need to be resubmitted. Because Fish and Game Code section 2301, subdivision (d) has been in place prior to these regulations, many agencies have already worked with the Department to develop approved plans. This provision is necessary to clarify requirements related to the submission of control plans and is necessary to avoid confusion or duplicative work by public agencies.

Section 672.1(a)(4). Subdivision (a)(4) requires that the Department will maintain a list of infested waters. It is necessary for the Department to provide a list of waters where dreissenid mussels have been detected. This is necessary for administrative efficiency and entities discovering dreissenid mussels are required to immediately report the discovery to the Department. The list is also necessary to provide transparency to the public regarding waters where dreissenid mussels may occur.

Section 672.1(a)(5). This provision describes the components of a control plan. This provision implements the statute by identifying statutorily required elements. Describing what must be covered in the control plan in the regulation provides clarity for the regulated public.

Section 672.1(a)(6). Subdivision (a)(6) states that monitoring activities under a control plan do not need a separate permit. It is necessary to notify the regulated community of any activities that may or may not trigger permitting requirements. This clarifies the Department's permitting requirements.

Section 672.1(a)(7). Subdivision (a)(7) requires that annual reports of control plan implementation must be submitted to the Department by March 31 for the previous year's activities. The statute requires that public or private agencies operating a water supply system where dreissenid mussels have been detected prepare and implement control plans. Annual reports ensure the Department has complete information about control efforts at infested waterbodies, which is necessary to inform resource management and enforcement.

Annual reports also enable other interested parties to have access to this information. Adequate time is needed for an agency to prepare an annual report for a prior year, and a deadline is necessary to ensure compliance and provide transparency and clarity. The Department has determined that requiring annual reports by March 31 for the previous calendar year provides entities adequate time to develop and submit the report, while allowing for timely review by the Department prior to the following year's boating season.

Section 672.1(a)(8). Subdivision (a)(8) states that violations are subject to a maximum penalty of \$1,000 to be imposed administratively. This provision sets a maximum penalty amount of \$1,000 per Fish and Game Code section 2301, subdivision (f). Including penalties in the regulations is necessary for clarity regarding enforcement related to the control of dreissenid mussels.

Section 672.1, Subdivision (b). The subdivision applies to entities that are required to implement a prevention program per Fish and Game Code section 2302. The subdivision includes a new reporting requirement for prevention plans and annual reports, sets standardized deadlines for report submittals, and penalties for violations of the section. The statute does not specify submission of prevention plans, but requires that they are implemented. This subdivision is necessary for the Department to obtain information on existing prevention programs to verify that entities subject to Fish and Game Code section 2302 are preventing the introduction and spread of dreissenid mussels throughout California. Annual reports allow the Department to keep apprised of prevention activities at uninfested reservoirs and share that information with other interested parties. To avoid confusion, it was also necessary to clarify that detection of dreissenid mussels in the course of monitoring activities undertaken pursuant to a prevention plan is not a violation of Fish and Game Code section 2301, subdivision (a). This subdivision also ensures the Department has the ability to enforce compliance with the requirements to develop and implement prevention programs. **This subdivision is also necessary to implement and make specific the steps agencies must take to comply with the statutory requirements.**

Section 672.1(b)(1)(A)-(C). These subdivisions require submittal of a summary report of prevention activities and specify required program components. The statute requires that reservoir owners or managers must develop and implement a program designed to prevent the introduction or spread of dreissenid mussels, containing certain elements specified in the statute. To ensure this is occurring,

the regulations require the submittal of an annual program summary report. It is necessary to clarify what components are required to be included in a prevention program. Describing what must be covered in the plan provides clarity for the regulated public and provides explanation and detail beyond the statutorily described elements.

Section 672.1(b)(2). This provision states that a permit is not needed for early detection monitoring. It is necessary to notify the regulated community of any activities that may or may not trigger permitting requirements. This clarifies the Department's permitting requirements.

Section 672.1(b)(3). Subdivision (b)(3) requires that the prevention program summary must be submitted within 90 business days of the Department's request. It is necessary to specify a timeline for Plan submission for agencies obligated to comply with the law. A deadline provides transparency and clarifies requirements for the public. The Department has determined that 90 business days is an adequate amount of time for an agency to develop and submit documentation of its prevention program following a Department request, while also ensuring timely actions are taken to prevent the introduction of dreissenid mussels.

Section 672.1(b)(4). Subdivision (b)(4) requires that programs must be revised within 60 business days of receipt of comments by the Department. It is necessary to specify a timeline for plan submission for agencies obligated to comply with the law. A deadline provides transparency and clarifies requirements for the public. The Department has determined that 60 business days is an adequate amount of time for an agency to revise a summary document following Department comments, while also ensuring timely actions are taken to prevent the introduction of dreissenid mussels.

Section 672.1(b)(5). Subdivision (b)(5) requires that annual reports of prevention programs must be submitted by March 31 for the previous year's activities. Annual reports allow the Department to keep apprised of prevention activities at uninfested reservoirs and share that information with interested parties. Adequate time is needed for a reservoir operator to prepare an annual report for a prior year. The Department has determined that requiring that annual reports are due by March 31 for the previous calendar year provides entities adequate time to develop and submit the report, while allowing for timely review by the Department prior to the following year's boating season.

Section 672.1(b)(6). This provision states that violations of this subdivision are subject to a maximum penalty of \$1,000 to be imposed administratively. This provision sets a maximum penalty amount of \$1,000 per Fish and Game Code section 2302, subdivision (f). Including penalties in the regulations is necessary for clarity regarding enforcement.

Section 672.1, Subdivision (c). This subdivision specifies a Department process for inspection and quarantine of conveyances. The Department has authority under Fish and Game Code section 2301 to inspect, impound and quarantine conveyances that may be carrying dreissenid mussels; however, the process is not specified in Code. This subdivision provides information to the public on the inspection and quarantine process, including the use of a Quarantine Notice, DFW 1015 (NEW 09/25/14) and the means of contacting conveyance owners who are not present at the time of an inspection. The subdivision describes the involvement of other state agencies to whom the Department may grant authority to implement Fish and Game Code section 2301, subdivision (a). The subdivision also sets out penalties for violation of the section as specified in Fish and Game Code 2301, describes the reasons for which a citation may be issued, and includes a new Administrative Penalty Citation Form DFW 1016 (NEW 05/07/14). This subdivision is necessary to create a clear and legally enforceable means for stopping, detaining and quarantining vessels that pose a threat of spreading dreissenid mussels to new waterbodies throughout the state. This is necessary to inform the public and the Department or its representative of the procedures that must be followed. **Subdivision (c) specifically addresses the inspection of conveyances and states that it is unlawful to fail to comply with verbal or written order, resist, obstruct, delay or interfere with enforcement of Fish and Game Code section 2301. This particular provision is necessary because it clarifies the law for the regulated public related to the inspection and quarantining of conveyances. Because penalties may be imposed on a person who resists, delays, obstructs, or interferes with the implementation of Fish & Game Code, section 2301, it is necessary to describe what the Department considers to be compliance with an order, both to inform the public and to provide for consistent enforcement.**

Section 672.1(c)(1). Subdivision (c)(1) states the authority to quarantine a conveyance known or suspected to contain mussels, and describes the quarantine process. This provision states the Department's authority to impound or quarantine a conveyance known or suspected to contain dreissenid mussels. The provision

provides information to the public on the inspection and quarantine process. It is necessary because it implements the statutory authorities to quarantine conveyances and provides transparency on the Department's quarantine process and describes a conveyance owner's responsibilities in the event of quarantine. It is necessary to state that the storage and other costs associated with the quarantine are the responsibility of the owner or person in possession of the conveyance to avoid confusion.

Section 672.1(c)(2). Subdivision (c)(2) states that agencies with delegated authority are not obligated to quarantine a conveyance. This is necessary to provide clarity to the public and the agencies with delegated authority under Fish and Game Code section 2301.

Section 672.1(c)(3). Subdivision (c)(3) states that it is illegal to tamper with tags, stickers, or other methods used to identify a conveyance as quarantined. This provision is necessary to notify the regulated public of illegal activities. This is also necessary because tags, stickers or similar methods are typically used by the Department and agencies with delegated authority to identify quarantined conveyances and are an important means of avoiding the spread of mussels.

Section 672.1(c)(4). Subdivision (c)(4) requires that owners or persons in possession of quarantined vessels must be given Form DFW 1015 if their conveyance is quarantined by the Department. If the owner not present, a copy must be mailed or emailed. A vessel is quarantined until reinspected or released from quarantine. This subdivision is necessary to implement the Department's quarantine authority. It is necessary to provide information and documentation to the regulated public of quarantine procedures that must be followed. Ultimately, owners of conveyances are responsible for quarantined vessels, but it is common for conveyances to be under the control of others, such as commercial haulers; therefore, it is necessary to verify that Quarantine Notices are provided either electronically or by mail to the owner of the quarantined conveyance. This provision also informs the regulated public of the steps that must be taken to release a conveyance from quarantine.

Section 672.1(c)(5). This subdivision states that a violation of this subdivision may be subject to a penalty of \$100-\$1000, which will be issued using Form DFW 1016. Including penalties in the regulations is necessary because they inform the public of the range of potential penalties and ensure the Department has the ability to enforce

compliance related to inspections, quarantines, and spread of dreissenid mussels in California. This provision is also necessary to implement the statute because it affirms that a conveyance owner may be held responsible for a conveyance. This provision also describes the factors that the Department will consider in establishing a penalty amount, which provides clarity for the public and administrative guidance.

Quarantine Notice DFW 1015:

Quarantine Notice DFW 1015 Inspection Information. The form includes boxes for the time, date and location of inspection. The time, date and location for the quarantine are necessary so the Department can track issued Quarantine Notices. This information is also necessary so that basic factual information is reported.

Quarantine Notice DFW 1015 Inspector Information. The form includes boxes for the inspector name and contact information. The inspector's name and contact information is necessary because it provides Department staff with a contact for follow up in the event of questions.

Quarantine Notice DFW 1015 Conveyance-Vessel Information. The form includes boxes for the vessel identification information. The vessel identification information is necessary so the Department can track the vessel and will have a consistent means of identifying the vessel. These means of identification are known to the Department and commonly used to identify vessels.

Quarantine Notice DFW 1015 Other Information. The form includes boxes for the information on other types of conveyances. Information on other types of conveyances is necessary because a Quarantine Notice may be issued for a conveyance other than a vessel. This information is necessary to capture in the Quarantine Notice, and this box provides an inspector with the flexibility to address this situation.

Quarantine Notice DFW 1015 Origin Information. The form includes boxes for the location where the conveyance originated. Conveyance origin is necessary because the Department needs to know if a conveyance originated at a waterbody infested by dreissenid mussels. This is necessary to provide information to the Department's invasive species program, and also ensures that basic factual information about the quarantine is reported.

Quarantine Notice DFW 1015 Destination Information. The form includes boxes for the location where the conveyance was going. Destination information is necessary because the Department needs to be able to know if a conveyance is destined for an uninfested water body within the state, an out of state destination, or dry dock.

Quarantine Notice DFW 1015 Person in Possession Information. The form includes boxes for the contact information for the person in possession of the conveyance. Contact information is necessary for follow-up and tracking purposes. This ensures that basic factual information about the quarantine is reported.

Quarantine Notice DFW 1015 Owner Information. The form includes boxes for the contact information for the conveyance owner if different than the person in possession. The owner of the conveyance is ultimately responsible for the quarantine; therefore it is necessary for the Department to have the owner's contact information so a copy of the Quarantine Notice can be provided. This is necessary so that the Department can comply with section 672.1, subdivision (c)(4), above.

Quarantine Notice DFW 1015 Quarantine Information. The form includes boxes for the reason for the quarantine and the seal number. The quarantine and seal number are necessary for follow-up and tracking purposes. This also ensures that basic factual information about the quarantine is reported.

Quarantine Notice DFW 1015 Location Information. The form includes boxes for the location where the conveyance will be taken and held following quarantine. The location of where the conveyance will be stored during the quarantine period is necessary for tracking and follow-up purposes. This is also necessary because it puts the conveyance owner or person in possession of the conveyance on notice of the responsibility to store or impound the conveyance.

Quarantine Notice DFW 1015 CDFW Contact Information. The form includes boxes for the CDFW contact. A Department contact is necessary for the regulated public so they have a point of contact as well as for internal program management.

Quarantine Notice DFW 1015 Certification/Signature. The form includes boxes for the certification and signature by the individual

being issued the Quarantine Notice. A signature on the notice is necessary because it validates and verifies that the information included in the Quarantine Notice is accurate. It also indicates to the Department that the individual understands all related rules and regulations.

Administrative Penalty DFW 1016

The following sections are present on all copies of DFW 1016:

DFW 1016 DFW No./DM No. The form includes a box where the DFW number and DM number are recorded. The DFW number and DM number are necessary so the Department can track issued citations. In general, all information on this form is also necessary to have as a record in the event the individual appeals the administrative penalty.

DFW 1016 Time/Date. The form includes boxes where the time and date are recorded. The time and date on the citation is necessary for tracking purposes. Such basic information on the citation form is necessary to capture factual information of the incident.

DFW 1016 Individual's Information. The form includes boxes where the basic contact and identifying information for the person who is subject to the penalty are recorded. An individual's contact information and individual characteristics are necessary for identification and tracking purposes and to capture basic factual information of the incident.

DFW 1016 Vessel Information. The form includes boxes where information on the vessel at issue is recorded. Vessel information is necessary for tracking purposes and to capture basic factual information of the incident.

DFW 1016 Other Property. The form includes a section where information on other property may be recorded. This section of the form is necessary in the event that there is property other than a vessel that is at issue. This ensures that basic factual information of the incident is recorded.

DFW 1016 Location. The form includes a section where information on the location of the incident may be recorded. This information is necessary because it ensures that basic factual information of the incident is recorded.

DFW 1016 Violation Description. The form includes a section where operative code or regulation sections can be identified and the violation can be described. The violation description is necessary because it documents the violation for both the Department and the individual receiving the citation.

DFW 1016 Employee Information. The form includes boxes to identify the employee issuing the citation. The employee information is necessary so that staff finalizing the administrative penalty has a point of contact in the event of questions.

The following sections are present on the Department Copy of DFW 1016:

DFW 1016 Fee Amount & Justification. The form includes a section to describe the recommended penalty amount and reason for it. Documenting the fee amount and justification is necessary because it provides information necessary to evaluate and process the administrative penalty.

DFW 1016 Report. The form includes a section where a narrative report can be written. This section is necessary to provide employees with a place to narratively describe the incident, which is needed to evaluate and process an administrative penalty.

DFW 1016 Employee Information. The form includes boxes to identify the employee issuing the citation. Employee information is necessary because it provides the Department with necessary contact information for follow-up.

The following sections are present on the Respondent Copy of DFW 1016:

DFW 1016 Statutory and Regulatory Information. The form includes a brief description of the statutory and regulatory basis for the administrative penalty. The legal summary on the back of the Respondent Copy is necessary because it informs the regulated public what violations of the law are associated with this particular citation.

DFW 1016 Instructions. The form includes a description of what a person who has been issued this form must do to follow up. The instructions related to an individual's responsibility following a citation are necessary because the regulated public needs to

understand what they are obligated to do once they have been issued a citation. This language provides transparency and clarifies the responsibility of an individual who has received a citation. The information restates requirements listed in the regulations.

The following section is present on the Employee Copy of DFW 1016:

DFW 1016 Field Notes. The employee's copy includes another area where a description of the incident or other notes may be written. This is necessary to allow for additional explanation that an employee may feel is necessary to document at the time of the incident and may be included in the notification of administrative penalty.

Section 672.2, Subdivision (a). This subdivision outlines the administrative penalty process. The Department does not currently have an appropriate administrative penalty process; therefore, it must be specified in regulations. The subdivision is necessary to define for the public how a penalty will be issued, how they must respond to a citation, and timely deadlines for requesting an appeal. In addition, this subdivision is necessary because, pursuant to Fish and Game Code section 2301, subdivision (f)(1), the Department must adopt regulations specifying the administrative penalty process before penalties may be imposed. Details in this subdivision regarding contents of the appeal are necessary to provide clarity to the public and avoid undue delay in penalty assessment and appeal. Provisions relating to payment of the penalty are necessary to avoid undue delay in penalty collection, including in the event of an appeal.

Section 672.2(a)(1). This provision explains what actions the Department will take following an imposed penalty and how the penalty amount will be set. It also includes what information will be included in the penalty notice. This provision is necessary because it defines for the public and the Department what the notification of penalty assessment includes and states that it will be in writing, which is necessary to inform the public of the process. The provision requires that the notification include information on the reason for the penalty, its amount and the means of payment or appeal so that individuals will have complete information on the assessment and the responses required. This is necessary to provide for consistent and complete documentation by the Department, and to fully inform the person receiving the notice. This also requires that the Department's assessment determination must be based on all relevant circumstances, which is necessary to define

the standard on which decisions will be made and inform the public of this standard. The subdivision describes two means by which a person may receive a notification of penalty assessment, which is necessary because of the different circumstances under which a penalty may arise, pursuant to section 672.1, subdivisions (a) or (b), versus subdivision (c). It is necessary to describe notification by mail or email to allow for administrative efficiency.

Section 672.2(a)(2). This provision explains how and when the public can request an appeal. It includes stipulations related to the penalty due. It specifies that an appeal must be requested no later than 30 calendar days after issuance of the notification of penalty assessment. This provision is necessary because it clarifies the steps an individual must take to request an appeal. This is necessary to inform individuals of their rights and the means by which they can exercise them. The Department has determined that 30 calendar days is sufficient time for an individual to request an appeal, while still allowing the process to move forward in an appropriate amount of time. Requiring that the appeal must be accompanied by a refundable deposit of the penalty amount provides clarity and further implementation of the appeals process.

Section 672.2(a)(3). Subdivision (a)(3) provides instructions for individuals who have not received a penalty assessment within 30 calendar days of receipt of a citation or notice of violation. This provision is necessary because it directs the public on actions that must be taken to follow up on receiving a citation or notice of violation. Although the Department anticipates generally issuing a penalty assessment in a timely manner, this provision is necessary in the event that unusual circumstances arise. The Department determined that 30 calendar days is adequate time for an individual to have received a notification, and that follow up is necessary if more time has passed.

Section 672.2(a)(4). This provision specifies where penalty funds will be directed. This provision is necessary because it provides transparency for the public on where the collected penalties will be deposited. This is also necessary to provide for administrative consistency.

Section 672.2(a)(5). This provision explains the Department's allowed actions upon failure to pay a penalty, which is necessary to include in the regulations to inform the public of its rights and consequences of failure to pay. A period of 30 calendar days before interest

accrues allows for some flexibility. This is necessary to inform the public of the potential consequences of failure to pay the penalty. The provision requires all late payment charges and costs to be deposited in the Fish and Game Preservation Fund, consistent with subdivision (a)(4).

Section 672.2, Subdivision (b). This subdivision outlines the appeal procedure for any administrative penalty citation. This subdivision is necessary to define for the public and the Department how to request an appeal, information that is required to be submitted, how an appeal will be evaluated and when a decision will be provided to the appealing party. This subdivision includes various deadlines that are necessary to resolve appeals in a timely manner while providing sufficient time for preparation and review of submittals.

Section 672.2(b)(1). This provision specifies actions an individual should take if requesting an appeal. Appeals must be post-marked no later than 30 calendar days after issuance of a penalty assessment. This provision is necessary because it defines what steps an individual must take to request an appeal and what information must be included in the request. This is necessary to inform individuals of their rights and the means by which they can exercise them. It is also necessary to describe the process so that it can be implemented consistently by the Department. This provision specifies that an oral hearing may be requested by the appellant, which is necessary because later provisions state that hearings may be based on written submittals only. This provision also informs the public of the consequences of failing to meet the time limit for the appeal request. The Department has determined that 30 calendar days is sufficient time for an individual to prepare and submit an appeal request, while still allowing the Department to move forward with the process in an appropriate amount of time. The appeal request must be signed under penalty of perjury because the appeal request would be evidence informing the decision on the appeal.

Section 672.2(b)(2). Subdivision (b)(2) specifies that the burden of proof falls on the appellant. This provision is necessary because it notifies the public of the burden of proof in the appeal process and avoids inconsistent applications of the burden of proof.

Section 672.2(b)(3). This provision specifies that appeals must be heard by a hearing officer designated by the Director. It specifies the role of the hearing officer and details of the hearing format. This provision is necessary because it provides transparency in the

appeal process. It also defines the role of the hearing officer for the impacted parties and clarifies what format the hearing may take. To provide for a fair hearing, it is necessary to clarify that the hearing officer will not be a person who has participated in the Department's penalty assessment decision.

Section 672.2(b)(4). Subdivision (b)(4) specifies information the hearing officer must provide to the appellant and dates upon which any additional submittals and responses are to be submitted by the Department and appellant. This provision is necessary because it notifies the public and the Department of information that must be provided during an appeal process and the timeline for submitting that information. This provision enables the hearing officer to request additional submittals or documentary evidence, which may be necessary to clarify issues. The Department has determined that 30 business days is an adequate amount of time for the Department to review and respond to the appellant's submittals and/or evidence and to prepare a response. The Department has also determined that 15 business days is an adequate amount of time for the appellant to review and reply to the Department's response, because this reply will be limited to evidence, facts or legal issues addressed in the Department's response and the reply cannot raise new issues.

Section 672.2(b)(5). Subdivision (b)(5) specifies the types of evidence that can be considered during an appeal. This provision is necessary because it notifies the public and the Department of the scope of issues that will be considered in an appeal. This is necessary to provide notice and clarity to the public and to avoid introduction of evidence or issues that are not relevant.

Section 672.2(b)(6). This provision specifies details on oral hearings if they are deemed necessary. Parties must be notified as to the place and time of the hearing at least 10 calendar days prior. This provision is necessary because it provides necessary information related to oral hearings, should they occur. The provision allows for flexibility in time and location, ex parte communication for the purposes of setting the hearing, and the ability to continue hearings, all of which are necessary to provide the hearing officer with flexibility. The Department has determined that 10 calendar days is an adequate amount of time to notify all parties of a scheduled oral hearing to allow for adequate preparation and avoid undue delays.

Section 672.2(b)(7). This provision specifies that failing to appear at an oral hearing constitutes abandonment of the appeal unless the

appellant submits a written request for continuance at least two days prior to hearing. This provision is necessary because it notifies the public of their obligation to attend the appeal hearing or to request a continuance. The Department has determined that at least two days prior to the hearing is needed to make changes to a scheduled hearing, while still allowing the appellant enough time to request a continuance if needed.

Section 672.2(b)(8). Subdivision (b)(8) specifies rules of the appeal. This provision is necessary because it defines the types of evidence that may be admitted. This is necessary to inform appellants of the information that the hearing officer will consider, and allows appellants to prepare accordingly. This provision is necessary to notify the public of the nature of appeals proceedings.

Section 672.2(b)(9). This provision specifies that a decision on the appeal must be given to all parties within 45 calendar days of the conclusion of the hearing or following all written submittals. The decision of the hearing officer is the final decision of the Department. This provision is necessary because it defines for the public when a decision will be made and clarifies that the decision of the hearing officer is the final decision for the Department and no further administrative processes are available. The Department has determined that 45 calendar days is an adequate amount of time for the hearing officer to reach a final decision based on the information presented at the oral hearing or in written submittals, and to notify the parties of the appeal decision.

Benefits of the Proposed Regulations

The proposed regulations provide the Department with the ability to verify that the control and prevention of dreissenid mussels is taking place throughout the state and provides a process to impound conveyances which may be carrying mussels, and to issue administrative penalties. The permitting process for possession of dead mussels facilitates public education and awareness efforts. This benefits the state of California by reducing the number and severity dreissenid mussel infestations. These actions will help maintain recreational opportunities at reservoirs, and prevent adverse impacts to local businesses that rely upon water based recreation. Water supply infrastructure also benefits due to an infestation's ability to stop the flow of water within the infrastructure leading to economic impacts for local agencies and the public. Preventing new dreissenid mussel infestations and controlling current infestations also helps maintain natural resources that the Department is tasked with

managing for their ecological values and for their use and enjoyment by the public.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 702, 2301, and 2302, Fish and Game Code.

Reference: Sections 2301 and 2302, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None

- (d) Identification of Reports or Documents Supporting Regulation Change:

Economic Impact Assessment Re: Dreissenid Mussels prevention and control

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

The Department distributed the proposed regulations to a subset of stakeholders and all tribal representatives in California. The goal of the outreach was to address major concerns prior to the formal rulemaking process. Based upon the feedback received from stakeholders, the Department made changes to the preliminary regulatory language that was distributed prior to publication of the Notice.

V. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

The first alternative to the proposed regulation considered was to revise the proposed regulations to include statewide standards for dreissenid mussel control and prevention. This would require all entities that manage infested and uninfested waters within the state to implement specific standards related to control and prevention programs for dreissenid mussels. Currently, Fish and Game Code sections 2301 and 2302 require entities that own or manage infested water supply facilities, and entities that own or manage reservoirs open to the public for recreation, to develop and implement control and prevention programs. The Code requires each program to include specific components; however, it does not specify how those components must be implemented. Developing standards that are required to be implemented at the local level would be creating a state mandate. This would make the State obligated to

reimburse local agencies for the required control and prevention programs.

(b) No Change Alternative:

If no regulatory action occurs, regulations implementing the three broad categories of the law would not be in place; (1) Department approval to possess dead mussels, (2) timelines and penalties related to control and prevention plans/programs, (3) and a Department inspection and quarantine process. The absence of supporting regulations would hinder the successful implementation and enforcement of Fish and Game Code sections 2301 and 2302 because necessary processes and definitions would be absent and there would be no defined administrative penalty process to allow enforcement of dreissenid mussel related law. Further, without any formal regulation in place, the Department will be at risk of being accused of acting arbitrarily or having “underground” regulations when it attempts to implement Fish and Game Code sections 2301 and 2302. The proposed regulation will avoid such scenarios by addressing how the Department will implement Fish and Game Code sections 2301 and 2302.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Fish and Game Code section 2301, subdivision (g), and section 2302, subdivision(f), specifically grant the Department authority to adopt regulations to carry out Fish and Game Code sections 2301 and 2302. Therefore, the statute recognizes that regulations would facilitate the implementation of the legislation.

VI. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VII. Economic Impact Assessment:

The proposed regulations will provide the Department of Fish and Wildlife (Department) with additional oversight of dreissenid mussel programs throughout the State. The regulations will establish:

- 1) a program to permit the possession of dead dreissenid mussels;

- 2) deadlines and reporting requirements for control plans for water supply systems infested with dreissenid mussels;
- 3) deadlines and reporting requirements for prevention programs for reservoirs open to the public;
- 4) the process for quarantining conveyances when the Department, or other state agencies acting on its behalf, determines the conveyance has the potential to spread dreissenid mussels; and
- 5) the amount, procedure, and appeal process for imposing an administrative penalty for violations of Fish and Game Code, sections 2301 and 2302 and the proposed regulations or related orders.

The proposed regulations provide the Department with the ability to verify that the control and prevention of dreissenid mussels is taking place throughout the state and provides a process to impound conveyances which may be carrying mussels. These actions will help to ensure the maintenance of recreational opportunities at reservoirs which also ensures the continued promotion of businesses that support these recreational activities. Additionally, control and prevention programs benefit water supply infrastructures by curtailing infestations that can impede the flow of water within the infrastructure leading to economic impacts for local agencies and the public.

Each water supply system and /or reservoir will incur some compliance costs. Cost estimates to produce annual status reports on prevention and control programs to the Department were requested from the affected parties and are summarized in Table 1.

Table 1. Costs Estimate.

Quagga and Zebra Mussel Prevention Program Summary and Annual Report				
Cost Description	Hours	Wages	Benefits	Total
Facility Staff	15-35	\$ 65	35%-40%	\$1,300-\$3,100
Administrative Assistant	8-10	\$ 35	35%-40%	\$380-\$500
General Manager	2-3	\$ 95	35%-40%	\$250-\$400
Report Development Total Costs				\$2,000-\$4,000

After the first report is developed, costs are anticipated to decrease in subsequent reports that may only require annual updates. The costs of these reports are anticipated to be relatively minor with respect to the total operating costs for the water supply systems sector.

The Department has authority under Fish and Game Code section 2301 to inspect, impound and quarantine conveyances that may be carrying dreissenid mussels; however, the process is not specified in Code. This subdivision

provides information to the public on the inspection and quarantine process. The quarantining of conveyances that have the potential to spread dreissenid mussels has typically occurred one to two times a year. At the anticipated rate of quarantining, the agency costs are absorbable and the costs to the conveyance owner are only incurred if insufficient care was taken to drain and dry the conveyance.

Effects of the regulation on the creation or elimination of jobs within the State

The Department does not anticipate any significant impacts on the creation or elimination of jobs, because the proposed regulatory action will not have a significant net effect on the volume of economic activity.

Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State

The Department does not anticipate any significant impacts on the creation of new businesses or the elimination of existing businesses in California because the proposed regulatory action will not have a significant net effect on the volume of economic activity.

Effects of the regulation on the expansion of businesses currently doing business within the State

The Department does not anticipate any significant impacts on the expansion of businesses currently doing business in California because the proposed regulatory action will not have a significant net effect on the volume of economic activity.

Benefits of the regulation to the health and welfare of California residents

The Department anticipates benefits to the health and welfare of California residents from better protection of the State's natural resources.

Benefits of the regulation to worker safety

The Department does not anticipate any benefits to worker safety because this regulatory action will not impact working conditions or worker safety.

Benefits of the regulation to the State's environment:

The Department anticipates benefits to the environment through the prevention of new dreissenid mussel infestations and the control of infestations that have already occurred in waters of the state to help maintain the natural resources that the Department is tasked with managing for their ecological values and for their use and enjoyment by the public.

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been evaluated in the above Economic

Impact Assessment, and the following initial determinations relative to the remaining statutory categories have been made:

(a) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(b) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(c) Nondiscretionary Costs/Savings to Local Agencies: None

(d) Programs Mandated on Local Agencies or School Districts: None

(e) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with section 17500) of Division 4, Government Code: **None**

The proposed regulation will result in compliance costs for water supply systems and /or reservoirs. These costs are not reimbursable by the State (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code). The California Constitution prohibits the State from imposing costs of a new program or increased level of service on a local agency or school district without providing a subvention of funds, except under certain circumstances. (Cal. Const. Art. XIII, Sec. 6, Govt. Code § 17514). The California Supreme Court has held that the constitutional provision applies to “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.)

The bar against state mandates was intended to require reimbursement for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. In addition, Government Code 17556 (d) states that the Commission on State Mandates cannot find that a mandate has been imposed if the Commission finds that the local agency or school district has the authority to levy service charges,

fees, or assessments sufficient to pay for the mandated program or increased level of service. This applies regardless of whether the local agency or district has enacted or adopted such fees or assessments.

Section 2302 and the related draft regulations apply to “any person, federal, state, or local agency, district, or authority that owns or manages a reservoir...where recreational, boating, or fishing” is permitted.” Therefore, this includes any person or entity that owns or manages a reservoir where recreational, boating, or fishing is allowed, regardless of whether they are a local agency, and the reporting requirement is not a governmental service being provided to the public. The reporting requirements do not impose a state mandate on local agencies.

- (f) Effect on Housing Costs: None

Amended Informative Digest/Policy Statement Overview

Quagga and zebra mussels (*Dreissena rostriformis bugensis* and *Dreissena polymorpha*) are two species of freshwater mussels that are native to Ukraine and Russia. In the late 1980s both species were discovered in the Great Lakes. Researchers believe they were brought to the United States in the ballast water of trans-oceanic ships. Quagga mussels were discovered in Lake Mead, Nevada on January 6, 2007, and later throughout Lake Mead's lower basin. It was the first discovery of these mussels west of the Continental Divide. Subsequent surveys in California found smaller numbers of quagga mussels in lakes Mohave and Havasu on the Colorado River, and in the Colorado River Aqueduct System that serves Southern California. All reservoirs, lakes, and watersheds receiving raw Colorado River water have since been exposed to quagga mussels. Zebra mussels were found at San Justo Reservoir, San Benito County, on January 10, 2008. To date, 33 waterbodies in California have become infested with dreissenid mussels.

Both species of non-native aquatic mollusks wreak havoc on the environment by disrupting the natural food chain and can contribute to the release of harmful bacteria that affect other aquatic species. Quagga and zebra mussels are filter feeders that consume large portions of the microscopic plants and animals that form the base of the food web. Their consumption of significant amount of phytoplankton from the water decreases zooplankton and can cause disruption to the ecological balance of entire bodies of water. The mussels can displace native species, further upsetting the natural food web. In addition to devastating the natural environment, quagga and zebra mussels pose an economic threat to California. The greatest impact is on infrastructure and water conveyances. Mussels attach to surfaces such as piers, pilings, water intakes, and fish screens. These invasives spawn multiple times a year and, as a result, intake structures can become clogged, hampering the flow of water threatening municipal water supply, agricultural irrigation and power plant operations. Mussels can also negatively impact recreational boating by colonizing the hulls, engines and steering components of boats and other recreational equipment, and can damage boat motors and restrict cooling. Boats are the primary transporters of quagga and zebra mussels to uninfested areas either as adults attached to vessels or as larvae in engine, bilge or live well water.

The discovery of mussels in California prompted legislative action, and Governor Arnold Schwarzenegger signed Assembly Bill (AB) 1683, Wolk, on October 10, 2007. AB 1683 enacted Fish and Game Code section 2301, which makes the possession of dead or live mussels illegal without Department of Fish and Wildlife (Department) approval, authorizes the Department to conduct inspections, order quarantines, work with water managers in the development of mandated response plans for infested waterbodies, and to take other actions to prevent the spread of invasive quagga/zebra mussels. On September 30, 2008, the Governor signed AB 2065, Hancock. Implemented as Fish and Game Code section 2302, this legislation requires that uninfested reservoirs open

to the public for recreational opportunities implement a program to prevent the introduction of mussels, which includes public education, monitoring, and management of recreational activities. Fish and Game Code sections 2301 and 2302 both authorize the Department to adopt regulations to implement and enforce these code sections.

Fish and Game Code section 2301 prohibits possession of dead or live dreissenid mussels unless authorized by the Department. The Department has existing regulations enabling it to issue permits for individuals to possess live mussels, but does not have regulations for issuance of permits to possess dead mussels. Water districts, recreational entities, trainers and museums have requested authorization from the Department to possess dead mussels for educational and outreach purposes. Regulations are necessary in order for the Department to have an established process to allow individuals to possess dead mussels for purposes including outreach and education, training, or maintenance at infested waters.

Fish and Game Code section 2301 requires public and private agencies that operate a water supply facility that becomes infested with dreissenid mussels to outline how the agency will control or eradicate the infestation. However, the law does not provide timelines for when these plans must be submitted, nor does it require agencies to continue to update the Department on the implementation of these programs. Fish and Game Code section 2302, requires that responsible entities implement prevention programs. The Department does not receive any information from these entities to assess what programs are being implemented and how effective they are at preventing the introduction of dreissenid mussels into uninfested reservoirs. Regulations are necessary to require information be submitted, which will provide the Department the ability to verify that Fish and Game Code sections 2301 and 2302 are being properly implemented at the local level.

Fish and Game Code section 2301 grants authority to the Department, or other state agencies acting on its behalf, to conduct inspections of conveyances that may carry or contain adult or larval dreissenid mussels and quarantine those conveyances if mussels are discovered. However, the process to do so has not yet been set in regulations, and it is necessary to do so because it will inform the public of the formal process of how the department handles conveyances that are suspected to have dreissenid mussels.

Fish and Game Code sections 2301 and 2302 authorize the Department to assess administrative penalties for violations of sections 2301 and 2302; however, the penalty cannot be imposed for violations of section 2301 unless the Department has adopted regulations specifying the amount of the penalty and the procedure for imposing and appealing the penalty. The Department does not have an administrative penalty process that can be utilized for the penalties specified in sections 2301 and 2302; therefore, regulations that set up an administrative penalty and appeal process are necessary in order for the Department to impose penalties for violation of dreissenid mussel law.

Proposal Overview

The purpose of the proposed regulations is to provide the Department with additional oversight of dreissenid mussel programs throughout the State. The regulations will establish:

- 1) a program to permit the possession of dead dreissenid mussels;
- 2) deadlines and reporting requirements for control plans for water supply systems infested with dreissenid mussels;
- 3) deadlines and reporting requirements for prevention programs for reservoirs open to the public;
- 4) the process for quarantining conveyances when the Department, or other state agencies acting on its behalf, determines the conveyance has the potential to spread dreissenid mussels; ~~and~~
- 5) procedure and appeal process for imposing an administrative penalty for violations of Fish and Game Code, sections 2301 and 2302 and the proposed regulations or related orders; and
- 6) **three new forms to be made available on the Department's web site or upon request are proposed to be incorporated by reference as it would be unduly expensive and impractical to publish them in the Title 14, California Code or Regulations.**

Benefits of the Proposed Regulations

The proposed regulations provide the Department with the ability to verify that the control and prevention of dreissenid mussels is taking place throughout the state and provides a process to impound conveyances which may be carrying mussels and issue administrative penalties. The permitting process for possession of dead mussels facilitates public education and awareness efforts. This benefits the state of California through control and prevention of dreissenid mussel infestations. These actions maintain reservoirs as recreational opportunities, which promote businesses that rely upon recreation. Control and prevention benefits water supply infrastructure since infestations in these facilities can stop the flow of water within the infrastructure leading to economic impacts for local agencies and the public. Preventing new dreissenid mussel infestations and controlling infestations that already occur in waters of the state help maintain the natural resources that the Department is tasked with managing for their ecological values and for their use and enjoyment by the public.

The Department has reviewed its own regulations and finds that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. The Department has searched the California Code of Regulations and finds no other state agency regulations pertaining to dreissenid mussels. **The Department has searched the Code of Federal Regulations and finds that** the proposed regulation is neither inconsistent nor incompatible with existing federal regulations.