

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
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. 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

III. 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 uninfected 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.

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.

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, 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.

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.

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.

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.

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, 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 resolving appeals in a timely manner while providing sufficient time for preparation and review of submittals.

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.

IV. 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.

V. Mitigation Measures Required by Regulatory Action:

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

VI. 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

(f) Effect on Housing Costs: None

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.

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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.

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- 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.

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 proposed regulation is neither inconsistent nor incompatible with existing federal regulations.

Regulatory Language

Section 672, Title 14, CCR is to be added as follows:

§672. Possession, Importation, and Transportation of Dreissenid Mussels

(a) Definitions.

For the purposes of sections 672, 672.1 and 672.2 of these regulations, the following definitions apply:

(1) "Control" is any activity that prevents or minimizes the movement of adult or veliger dreissenid mussels from a waterbody by any means.

(2) "Control Plan" is a written document that describes the actions to be implemented to control dreissenid mussels.

(3) "Conveyance" is any item that may contain or carry adult or veliger dreissenid mussels including, but not limited to, vehicles, watercraft, containers, and trailers.

Conveyance does not include water supply facilities and infrastructure.

(4) "Detected" means:

A) There has been an observed presence of one or more adult dreissenid mussels, or:

B) There has been an observed presence of one or more veliger dreissenid mussels that have been verified by the best available laboratory methodologies.

(5) "Dreissenid mussel" is collectively all species in the taxonomic family Dreissenidae, including quagga mussels (*Dreissena rostriformis bugensis*) and zebra mussels (*Dreissena polymorpha*).

(6) "Introduction" means the intentional or unintentional placement of adult or veliger dreissenid mussels into a reservoir.

(7) "Prevention Program" is a written document that describes the actions to be implemented at a reservoir to keep dreissenid mussels from being introduced and keep them from being moved from the reservoir should they be present.

(8) "Quarantine" means to restrict the movement and/or use of a conveyance.

(9) "Veliger" is the microscopic larva of dreissenid mussels.

(10) "Waterbody" is any water of the state that includes, but is not limited to lakes, rivers, streams, canals, ponds, flooded areas, reservoirs, sloughs, and springs.

(11) "Water Supply System" is any natural or man-made means for distributing or holding water, operated by a public or private agency.

(b) General Permit Provisions.

(1) Any person, scientific or educational institution, federal, state, or local agency, private or public district or authority may apply for a Dreissenid Mussel Permit, which, according to its terms, may authorize that entity to possess, import, ship or transport dead dreissenid mussels.

(2) Permits to possess dead dreissenid mussels will be issued only for the purpose(s) of outreach, education, species verification, training, or other purposes deemed by the department to be in the best interest of the State.

(3) This permit does not authorize the collection of live dreissenid mussels.

(4) A permit issued pursuant to this section does not supersede any federal, state, or local law regulating or prohibiting possession or transportation of dreissenid mussels.

(5) The department may enter any holding facility, vehicle, vessel, or other place where dreissenid mussels are permitted to be kept or may be kept to inspect mussels, facilities or equipment.

(c) Permit Application.

An applicant for a new permit, renewal of an existing permit, or amendment to an existing permit, must submit a completed application on Dreissenid Mussel Permit Application, DFW 1014 (NEW 09/25/14), incorporated by reference herein. Application forms are available on the department's website.

(1) Review and Approval. After receiving a complete application, the department shall review the application within 30 business days. If approved, the department shall notify the applicant via an approval letter and signed permit. The permit shall be presented upon request by any individual in possession of dreissenid mussels, to any department employee or person with delegated authority under Fish and Game Code section 2301.

(2) Denial. The department may deny the issuance, renewal or amendment of a permit if any of the following occurs:

(A) The department determines that the application or other documents submitted do not support the applicant's stated purpose or use for the dreissenid mussels.

(B) The department determines that the possession, importation, shipment or transportation of dead dreissenid mussels as proposed is not in the best interest of the state.

(C) The permittee has failed to comply with terms and conditions of a permit or any provision of the Fish and Game Code or regulations adopted pursuant thereto.

(d) Revocation. The department may revoke at any time any permit issued pursuant to these regulations for failure to comply with the terms and conditions of the permit or failure to comply with any provision of the Fish and Game Code or regulations adopted pursuant thereto. In the event of a permit revocation, the permittee shall immediately surrender any dreissenid mussels in its possession to the department.

(e) Request for reconsideration. Any applicant or permittee who is denied a permit or renewal or amendment to an existing permit, or whose permit is revoked by the department pursuant to these regulations, may request reconsideration of that denial or revocation by filing a written request with the Invasive Species Program, 1416 Ninth Street, Sacramento, California 95814, postmarked no later than 30 business days after the date of the notification letter from the department. The letter shall set forth the reason(s) for the reconsideration, including any new information or facts pertinent to the issue(s) raised by the request for reconsideration. The department shall notify the applicant or permittee, in writing, of its decision within 45 business days of its receipt of the request for reconsideration.

NOTE: Authority: Fish and Game Code Sections 702 and 2301. Reference: Fish and Game Code Section 2301.

Section 672.1, Title 14, CCR is to be added as follows:

§672.1. Dreissenid Mussel Control and Prevention.

(a) Control Plan.

If a public or private agency that operates a water supply system detects dreissenid mussels, they shall immediately begin developing a dreissenid mussel control plan and implement measures to prevent further spread.

(1) A control plan shall be submitted to the department either:

(A) Within 60 business days of the date the department requests a control plan from the operator of a water supply system that has previously reported dreissenid mussel detections; or,

(B) Within 60 business days of dreissenid mussels being detected; or,

(C) Within 60 business days of changes to the approved control plan.

(2) Control plans shall be revised within 60 business days of receipt of comments from the department.

(3) Control plans that have been approved prior to the effective date of these regulations are not required to be resubmitted for review by the department. The authorization contained in such control plans is deemed to be in effect as of the date it was approved.

(4) The department shall maintain a list of waterbodies where dreissenid mussels have been detected.

(5) Control plans shall consist of a written document describing the status of the dreissenid mussel population at the time the plan is developed, control activities, and monitoring to determine changes in the population. A control plan may also include a description of maintenance activities to maintain functionality of the water supply facility.

(6) Monitoring activities associated with an approved control plan per Fish and Game Code section 2301 do not require a separate permit for collection, transport to laboratories, or analysis, unless activities are associated with scientific research.

(7) Plan implementation shall be demonstrated through submission of annual reports (January 1 – December 31) to the department by March 31 of each year, that summarize changes in dreissenid mussel populations, control activities implemented, and monitoring results.

(8) Any public or private agency that violates this section by failing to submit a control plan, revision, or annual report is subject to a maximum penalty of \$1,000 that shall be imposed administratively by the department. The administrative penalty and appeal process are described in section 682.

(b) Prevention Program.

It is unlawful for any person, or federal, state, or local agency, district or authority that owns or manages a reservoir, as defined in section 6004.5 of the Water Code, where recreational, boating, or fishing activities are permitted, to operate without developing and implementing a dreissenid mussel prevention program that meets the requirements of this subsection.

(1) Dreissenid mussel prevention programs shall include, at a minimum, a report summarizing the following:

(A) An assessment of the vulnerability of the reservoir for the introduction of both adult and veliger dreissenid mussels.

(B) A monitoring program to detect the presence of adult and/or veliger dreissenid mussels.

(C) Management of recreational activities to prevent the introduction of mussels and that keeps them from being moved from the waterbody if present, that includes public education and outreach.

(2) Possession of dreissenid mussels as a result of early detection monitoring is not a violation of Fish and Game Code section 2301, subdivision (a) provided that monitoring is conducted under a prevention program being implemented consistent with Fish and Game Code section 2302.

(3) A written document describing the prevention program shall be submitted to the department within 90 business days of the date the department requests documentation of the prevention program.

(4) Prevention programs shall be revised within 60 business days of receipt of comments from the department.

(5) Program implementation shall be demonstrated through submission of an annual report (January 1 – December 31) to the department by March 31 of each year that summarizes any changes in the reservoir's vulnerability, monitoring results, and management activities.

(6) Any person, or federal, state, or local agency, district or authority that violates this section by failing to submit a prevention program, revision, annual report, or fails to report a new discovery of dreissenid mussels as required by Fish and Game Code section 2301, subdivision (e) is subject to a maximum penalty of \$1,000 that shall be imposed administratively by the department. The administrative penalty and appeal process are described in section 682.

(c) Inspection of Conveyances.

It is unlawful for any person to fail to fully comply with any verbal or written order, or to resist, obstruct, delay or interfere with any department employee or any other state agency representative who has been delegated the authority to enforce Fish and Game Code section 2301. Full compliance with an order shall include, but is not limited to, the order being followed in the manner, time frame, and to the degree directed by an agency representative authorized to implement Fish and Game Code section 2301.

(1) Any department employee or any other state agency representative, to whom the department has delegated the authority to implement Fish and Game Code section 2301, may impound or quarantine any conveyance known or suspected to contain dreissenid mussels for the period of time necessary to ensure the removal or death of any such mussels. Impounded or quarantined conveyances shall be stored at a location determined by the enforcing authority, and all costs associated with the impounding or quarantine are the responsibility of the owner of the conveyance or the person in possession of the conveyance. The department is not responsible for any costs that are in any way, whether directly or indirectly, related to or resulting from quarantine or storage.

(2) State agencies delegated authority to implement Fish and Game Code section 2301 are not obligated to impound or quarantine conveyances.

(3) Tags, stickers or other methods used to identify a conveyance as quarantined shall not be tampered with or destroyed prior to the conveyance being released from quarantine by the department.

(4) When a conveyance is quarantined by the department, the owner or person in possession of the conveyance will receive a copy of Quarantine Notice, DFW 1015 (NEW 09/25/14), incorporated by reference herein. If the owner is not present at time of the department-issued quarantine, the department shall provide a copy of the Quarantine Notice electronically or by mail to the owner. The conveyance will remain under quarantine until the department has re-inspected the conveyance, determined it has been properly treated to remove or kill all dreissenid mussels, and/or has released it from quarantine. The owner of the conveyance is responsible for contacting the department for re-inspection of the conveyance.

(5) In addition to any other penalty provided by law, any person who violates this section, section 2301 of the Fish and Game Code, or any verbal or written order issued pursuant to these sections, or who resists, delays, obstructs, or interferes with the implementation of these sections, is subject to a penalty of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), that shall be imposed administratively by the department. Any such person shall be issued an Administrative Penalty Citation Form DFW 1016 (NEW 05/07/14), incorporated by reference herein. The owner of any conveyance involved in the violation or quarantine may be held responsible for the violation, impoundment, or quarantine. In determining the amount of the penalty, the department may consider the willfulness of the action or failure to act, the nature and gravity of the action or failure to act, including the potential impacts on public safety, recreation, or natural resources of the state, the history of past acts or failures to act, and any other relevant factors as justice may require. The administrative penalty and appeal process is described in section 672.2 of these regulations.

NOTE: Authority: Fish and Game Code sections 702, 2301 and 2302. Reference: Fish and Game Code section 2301 and 2302.

Section 672.2, Title 14, CCR is to be added as follows:

§672.2. Dreissenid Mussel Penalty and Appeal Procedures.

(a) Penalties.

This section applies to violations of sections 672 and 672.1 of these regulations.

(1) The department will send a written notification of penalty assessment to persons against whom an administrative penalty has been imposed. The penalty amount shall be based on a review of all relevant circumstances. The department may provide notification together with its notice that a person or entity has violated section 672.1, or may provide the notification of penalty assessment by writing within 30 business days after a person has been issued a citation pursuant to subsection 672.1(c)(5). The

department may provide written notification by mail or email. The notification will at a minimum include a brief description of the reason the administrative penalty has been imposed, the amount of the administrative penalty, and the time and method for providing payment. The notification shall also include a statement of a person's right to appeal an administrative penalty and directions explaining how to initiate an appeal.

(2) Requests for an appeal must be postmarked no later than 30 calendar days after issuance of the notification of penalty assessment and shall include an advance deposit of the full amount of the administrative penalty. Any administrative penalty that has been deposited shall be refunded if it is determined, after an appeal hearing, that the penalty is reduced or excused. No request for an appeal to an administrative penalty shall be considered unless both a request for an appeal hearing and a deposit in the full amount of the penalty is received in a timely manner by the department.

(3) Anyone who is issued a citation or notice of violation pursuant to section 672.1, but does not receive a notification of penalty assessment shall contact the department within 30 calendar days of being issued a citation or notice of violation and provide the department with a current address to send the notification of penalty assessment. The department is to be reached by calling (866) 440-9530 or sending an email to invasives@wildlife.ca.gov.

(4) The department shall deposit administrative penalties into the Fish and Game Preservation Fund.

(5) In the event a person fails to pay the administrative penalty when due, the department may take any actions permitted by law to collect the unpaid penalty, which shall accrue interest at a rate of ten percent per year, commencing 30 calendar days after the administrative penalty becomes due and continuing until paid. In the event a civil action is commenced to collect the administrative penalty, the department shall be entitled to recover all costs associated with the enforcement, investigation, establishment and collection of the penalty. Costs include, but are not limited to, staff time and costs incurred in the investigation, establishment and the collection or processing of the penalty. The penalty and any late payment charges and costs shall be deposited into the Fish and Game Preservation Fund.

(b) Appeal Procedure.

This subsection shall govern appeals when a person requests an appeal of the imposition of administrative penalties.

(1) A person wishing to appeal a decision of the department shall file a written request for an appeal with the department's Office of the General Counsel, which request shall be postmarked no later than 30 calendar days after the department's issuance of the notification of penalty assessment. The time limit for filing a request for an appeal shall be deemed jurisdictional and may not be waived. A request for an appeal shall specifically set forth the decision being appealed and the legal and factual grounds for the appeal. The request for an appeal may include a request for an oral hearing. The request for an appeal and any subsequent written submittals shall be signed by the appellant under penalty of perjury.

(2) Administrative penalties imposed by the department shall be presumed to be correct, and the appellant shall have the burden of proof.

(3) Appeals shall be considered by an unbiased hearing officer designated by the director, who has not served as an investigator, prosecutor or advocate regarding the department decision. The hearing officer shall control the nature and order of the proceedings. Appeals may be informal and may, at the hearing officer's discretion, be based on written submittals only.

(4) The hearing officer shall notify the appellant if the appeal will be limited to written submittals and shall notify the appellant of the date by which the appellant must provide any additional submittals or documentary evidence to the department. No later than 30 business days after receipt of the appellant's additional submittals or evidence, the department may submit a response to the hearing officer, with a copy sent to the appellant, along with any supporting documentary evidence and/or declarations under penalty of perjury. No later than 15 business days after receipt of the department's response, the appellant may submit a reply to the hearing officer, with a copy sent to the department that addresses arguments and evidence raised in the department's response. The appellant's reply shall not contain any new evidence or new factual or legal grounds for challenging the department's action.

(5) The hearing officer shall only consider evidence that is relevant to whether the action or failure to act identified in the notification of penalty assessment in fact occurred and whether the recipient of the administrative penalty has caused or allowed the action or failure to act to occur.

(6) If determined necessary by the hearing officer, oral hearings shall be held at such times and locations as determined by the hearing officer. The hearing officer may engage in ex parte communications with the parties for the purpose of settling a time and place of hearing. The parties shall be notified of the time and place set for hearing at least 10 calendar days prior to the date of the hearing. The hearing officer may continue the hearing as he deems necessary.

(7) The failure of an appellant who has requested an oral hearing to appear at the hearing, after receiving notice of the hearing, shall constitute abandonment of the appeal unless the appellant has submitted a written request for a continuance at least two days prior to the oral hearing.

(8) Any appeal conducted pursuant to this section need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. However, the hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will cause undue consumption of time. The hearing officer may examine any party or witness.

(9) Within 45 calendar days of the conclusion of any oral hearing, or the day by which the department receives all written submittals if the appeal is based on written submittals only, the hearing officer shall provide the parties with a written decision containing the hearing officer's findings of fact and conclusions. The decision of the hearing officer shall be the final administrative decision of the department.

NOTE: Authority: Fish and Game Code sections 702, 2301 and 2302. Reference: Fish and Game Code sections 2301 and 2302.