

TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED RULEMAKING
JANUARY 23, 2015

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to adopt the regulations described below regarding dreissenid mussels after considering all comments, objections, and recommendations regarding the proposed action. The Department invites interested persons to present statements or arguments with respect to alternatives to the regulations at the scheduled hearing or during the written comment period.

PUBLIC HEARING

The Department will hold a public hearing on March 12, 2015, from 10:00 a.m. to 11:30 a.m., at the Resources Building located at 1416 9th Street, Sacramento, California, twelfth floor in Room 1206. The Resources Building Room 1206 is wheelchair accessible. At the public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. All written comments must be received by the Department at the office below not later than 12:00 p.m. on March 12, 2015. All written comments must include the true name and mailing address of the commenter.

Written comments may be submitted by mail, fax, or e-mail as follows:

California Department of Fish and Wildlife
Invasive Species Program
Attn: Jennifer LaBay
1416 9th Street, 12th Floor
Sacramento, CA 95814
Telephone: (916) 653-3868
Fax: (916) 651-3120
Email: Jennifer.LaBay@wildlife.ca.gov

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

INFORMATIVE DIGEST (Policy Statement Overview)

Add sections 672, 672.1, and 672.2 to Title 14, CCR.

Quagga and zebra mussels (*Dreissena rostriformis bugensis* and *Dreissena polymorpha*) are two species of freshwater mussels, native to Ukraine and Russia, which were discovered in the Great Lakes in the 1980s. The genus *Dreissena* was added to Section 671, Title, CCR (California's Restricted Species List) in April 1994. The mussels were first discovered in California in 2007. This discovery 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.

The purpose of the proposed regulations is to address: 1) establishment of 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 at reservoirs open to the public; 4) the process for quarantining conveyances when CDFW, or other state agencies acting on its behalf, determines the conveyance has the potential to spread dreissenid mussels; and 5) Procedure and appeal processes 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 ACTION:

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. This benefits the state of California by reducing the number and severity of 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.

COMPATIBILITY WITH EXISTING STATE REGULATIONS:

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.

DOCUMENTS INCORPORATED BY REFERENCE:

Dreissenid Mussel Permit Application, DRW 1014 (NEW 09/25/14)

Quarantine Notice, DFW 1015 (NEW 09/25/14)

Administrative Penalty Citation Form DFW 1016 (NEW 05/07/14)

DISCLOSURES REGARDING THE PROPOSED ACTION:

Mandate on local agencies or school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary costs or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: There are no related costs or savings in Federal Funding to the State.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on small business: The Department has determined that the reporting requirements of the proposed regulations will predominantly effect water supply systems that are not classified as small businesses (Government Code Section 11342.610). The possession permit requirements may affect a limited number of small businesses, however these permits impose no additional costs. The expenses incurred by local agencies, including small businesses, are an incidental impact of the regulation that apply generally to all state residents and entities. In addition, the only costs that will be incurred as a result of these regulations are reporting costs, unless deadlines are not met, then businesses may incur penalties if in violation of Fish and Game Code or regulations.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would

necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, the expansion of businesses in California, or benefits to worker safety.

Benefits 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 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.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

MITIGATION MEASURES REQUIRED BY REGULATORY ACTION:

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jennifer LaBay
CDFW – Invasive Species Program
1416 9th Street, 12th Floor
Sacramento, CA 95814
Telephone: (916) 653-3868
Email: Jennifer.LaBay@wildlife.ca.gov

The backup contact person for these inquires is:

Martha Volkoff
CDFW – Invasive Species Program
1416 9th Street, 12th Floor
Sacramento, CA 95814
Telephone: (916) 651-8658
Email: Martha.Volkoff@wildlife.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. LaBay at the above address.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:

The Department will have the entire rulemaking file available for inspection and copying at its offices at the above addresses. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, the Economic Impact Assessment, the Economic and Fiscal Impact Assessment (STD. Form 399).

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

Website Access: The entire rulemaking file is available at:
<https://www.wildlife.ca.gov/Notices/Regulations>

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Jennifer LaBay as indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Jennifer LaBay as indicated above.