

**INITIAL STATEMENT OF REASONS**  
**TITLE 2. ADMINISTRATION**  
**DIVISION 3. STATE PROPERTY OPERATIONS**  
**CHAPTER 1. STATE LANDS COMMISSION**  
**ARTICLE 4.5. MARINE INVASIVE SPECIES CONTROL FUND FEE**

**PROBLEM STATEMENT**

Public Resources Code section 71201(d) states that the purpose of the Marine Invasive Species Act (Act) (Public Resources Code section 71200 et seq.) is to “move the state expeditiously toward elimination of the discharge of nonindigenous species (NIS) into the waters of the state or into waters that may impact the waters of the state. . . .” NIS are organisms that are transported by humans to locations where they do not naturally or historically occur. Once established, NIS can have adverse economic, ecological, and public health consequences. The Act created the Marine Invasive Species Program (MISP) to minimize NIS introduction by regulating operational and reporting requirements for ocean-going vessels arriving at the state’s ports.

This proposed regulatory action addresses two problems associated with the MISP. First, the definition of “Voyage” in Title 2 of the California Code of Regulations, section 2270 matched the statutory definition of that term. Recent statutory amendments to definitions in the Public Resources Code slightly amended the term “Voyage,” thus creating an inconsistency with Title 2 of the California Code of Regulations, section 2270. Specifically, as of January 1, 2016, AB 1312 (Chapter 644, Statutes of 2015) amended the definition of “Voyage” under Public Resources Code section 71200 (definitions), which replaced the word “any” with “a” before the word “California” and deleted “or place” before the word “outside.” These changes are proposed so that the regulatory text mirrors that in statute for clarity purposes. Additionally, the recent statutory amendment requires a change to the reference citation at the end of section 2270. The reference cited is amended from 71200(q) to 71200(r). Finally, the statute has a comma after the word “waters” that is not present in the regulation. It is possible that these inconsistencies could create confusion as to the applicability of statutory and regulatory requirements.

Second, the current balance of the Marine Invasive Species Control Fund Fee (Fee) is too low to provide secure funding for the MISP. Public Resources Code section 71215(b)(2) requires the Commission to establish in regulations a reasonable and appropriate Fee to fund the implementation of the Act. The Fee amount is set based upon a model that includes current and projected MISP budgets, estimated number of qualifying voyages, and the fee payment compliance rate. A qualifying voyage, as

defined in Title 2, California Code of Regulations, section 2271, is a vessel that arrives at a California port from a port outside of California. Based on the current Fee amount of \$850 per qualifying voyage and the existing assumptions for percent compliance and number of qualifying voyages, the current fees will not match the needs of the MISP to perform as mandated under the Act by 2018. The proposed Fee revision is necessary to meet the cost of administration, implementation, and enforcement of the MISP.

## BENEFITS

The proposed amendments to the definitions under section 2270 would make the regulatory and statutory definitions completely consistent. The resulting benefit would be avoiding confusion and ensuring clarity as to the applicability of the statute and regulations.

Additionally, the Fee increase would better secure funding to sustain the MISP. As discussed in detail below, the current Fee amount of \$850 would result in a fund deficit by 2018, whereas the increased Fee of \$1,000 would fund the MISP through Fiscal Year 2019/2020. The increased Fee would allow the Commission and other state agencies to continue implementing the MISP, thereby reducing the number of NIS introductions in the waters of California. With reduced introductions of NIS in its waters, the state will be better protected from human health and safety, environmental, and economic impacts caused by NIS.

### **Background of the MISP**

In 1999, the Governor and Legislature recognized the urgent need to curtail introductions of NIS from ships' ballast water discharges into State waters. The Ballast Water Management for Control of Nonindigenous Species Act established a new division in the Public Resources Code titled, "Division 36. Ballast Water Management for Control of Nonindigenous Species" (Public Resources Code section 71200 et seq.). In 2003, the ballast water management program was renamed the MISP, and the MISP was reauthorized and expanded through passage of the Marine Invasive Species Act (Chapter 491, Statutes of 2003).

Responsible agencies under the Marine Invasive Species Act include the Commission, the California Department of Fish and Wildlife, the State Water Resources Control Board, and the Board of Equalization.

- The Commission is the administrator of the MISP and responsible for developing and implementing vessel vector management policies.

- The California Department of Fish and Wildlife partners with the Smithsonian Environmental Research Center to monitor and gather data on species to maintain an inventory of NIS populations in the coastal and estuarine waters of the state. These data are used in conjunction with information on vessel arrivals and NIS management practices to assess the effectiveness of the MISP.
- The State Water Resources Control Board consults with MISP sister agencies on topics related to water quality and toxicity. More recently, the Commission has worked with the Water Board on the implementation of the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels and on policies related to in-water cleaning of vessels in California.
- The Board of Equalization collects the Fee from qualifying voyages to support all MISP activities (see Public Resources Code sections 71215(d) and 71215(c)). All fees are deposited into the Marine Invasive Species Control Fund. The MISP does not receive any General Fund dollars.

Each agency is required to work in cooperation with the others to prepare mandated reports, develop management recommendations for the state legislature, enforce regulations, and research the extent of current invasions and potential long-term solutions to the problem of NIS introductions.

MISP mandates and requirements are numerous. Central is the requirement that vessels arriving at California ports manage their ballast water prior to entering State waters; the Commission is charged with implementing an extensive vessel monitoring program to ensure management is performed. The enforcement program includes the imposition of criminal and administrative penalties.

In 2006, the Legislature passed the Coastal Ecosystems Protection Act (Chapter 292, Statutes of 2006), which, among its provisions, removed the expiration date for the MISP and established performance standards for the discharge of ballast water; in 2007, the Commission adopted these standards via regulations. Staff is currently developing protocols to assess vessel compliance with the performance standards. The Commission also regularly assesses the availability of treatment technologies to meet the ballast water discharge performance standards. As part of the assessment of ballast water treatment technology availability, in 2010, the Commission began collecting information on vessel use of ballast water treatment technologies in state waters.

The Commission also has mandates to implement programs to manage vessel biofouling in state waters. In 2007, the Legislature approved amendments to the Marine Invasive Species Act (Chapter 370, Statutes of 2007) that require vessels to remove biofouling on a regular basis. In 2008, the Commission began collecting annual information from vessel owners on their biofouling management practices. This information is used, in part, to develop regulations that govern vessel biofouling management practices.

The Commission submits biennial MISP reports to the Legislature that synthesizes and analyzes vessel arrival data, ballast water management statistics, vessel biofouling management strategies, and vessel monitoring and inspection information to evaluate the effectiveness of the MISP. These reports are available on the Commission's website ([www.slc.ca.gov](http://www.slc.ca.gov)).

### **The Fee**

Public Resources Code section 71215(b)(2) requires the Commission to establish a reasonable and appropriate fee to fund the implementation of the Marine Invasive Species Act. Since January 2000, Commission staff members have met periodically with representatives from the regulated community in a Technical Advisory Group (TAG) to assess the condition of the Marine Invasive Species Control Fund, identify research needs, and discuss any other MISP issues. It is during these meetings that Fee increases or decreases are discussed. The Commission has reset the Fee several times since 2000.

The Fee was initially established at \$600 per qualifying voyage by emergency regulations that became effective on January 1, 2000. This initial Fee amount utilized very conservative assumptions about qualifying voyage numbers and compliance with paying the Fee. Based on data gathered during the first quarter of 2000, Commission staff determined that the existing Fee amount exceeded the fixed programmatic budgets and should be reduced. The Fee was reduced to \$400 per qualifying voyage effective April 30, 2000, by emergency regulation. That emergency regulation was replaced on August 29, 2000, with permanent regulations setting the fee at \$400 per qualifying voyage. An assessment of the Fund conducted in early 2002, predicted a significant surplus through the end of 2003. Therefore, the Fee was further reduced by emergency regulation to \$200 per qualifying voyage, effective July 1, 2002. That emergency regulation was replaced on November 14, 2002, with permanent regulations setting the fee at \$200 per qualifying voyage.

In 2003, the Governor and Legislature reauthorized, expanded, and renamed the authorizing statute (Marine Invasive Species Act; Chapter 491, Statutes of 2003). As a

result, MISP activities and budgets expanded, and the Fee was increased by emergency regulation to \$500 per qualifying voyage effective February 1, 2004. That emergency regulation was replaced June 3, 2004, with permanent regulations adopting the fee at \$500 per voyage.

In 2006, the Governor and Legislature reauthorized and further expanded the MISP and removed the sunset date. As a result, programs and budgets expanded. In 2007 and 2008, the Governor and Legislature passed additional legislation requiring the Commission to collect information from vessel owners on their biofouling management practices, develop regulations that govern biofouling management practices by January 1, 2012, and assess the availability of ballast water treatment systems. Consequently, the MISP budget increased, and the Fee was increased with permanent regulations resetting the Fee to \$850 per voyage, effective November 1, 2009.

The Fee amount is set based upon a model that includes the current and projected MISP budgets, estimated number of qualifying voyages, and the fee payment compliance rate. A qualifying voyage, as defined in section 2271, is a vessel that arrives at a California port from a port outside of California. During an annual review of the Fund status by Commission staff in January 2016, several assumptions used to set the Fee at \$850 per qualifying voyage in 2009 were reevaluated. Currently, the State is seeing a Fee payment compliance rate exceeding 98 percent; in 2009, a compliance rate of 95 percent was used in the Fee model. The number of qualifying voyages arriving in California annually has remained relatively constant at approximately 5,700, but projections provided by the maritime industry suggest further decreases in qualifying voyages to an estimated 5,300 voyages annually through year 2020 (MISP TAG meeting notes, April 6, 2016). Based on the current Fee amount of \$850 per qualifying voyage, and the revised assumptions for percent compliance and number of qualifying voyages, revenues will not meet the costs of the MISP mandated under the Act as of 2018 (Table 1). Utilizing the revised assumptions, the Commission and TAG concluded that the Fee could be set at one thousand dollars (\$1,000) per qualifying voyage, beginning on or about January 1, 2017. The Commission and the TAG concluded that this Fee model would be necessary to cover the MISP costs while maintaining a prudent reserve through FY 2019/2020 (Table 2).

The amount of the Fee under the Marine Invasive Species Act may be modified in the future. If the Commission finds that collection rates are higher or lower than anticipated, or that qualifying voyages increase or decrease, the Commission will have to consider again the appropriate amount of the Fee. If that action is necessary, the modification will be made as an amendment to these regulations.

In summary, an annual review of the Fund status by Commission staff predicts that, based on conservative assumptions, a continued Fee set at \$850 will not cover budgetary needs beginning in 2018 (Table 1). If the proposed amendment is not adopted, the State will not collect the funds needed to fulfill the mandates of the Marine Invasive Species Act through FY 2019/2020. Establishing the Fee at \$1,000 per qualifying voyage will ensure the necessary funds are available along with a prudent reserve through FY 2019/2020 (Table 2).

Table 1 Projected Fund status under current fee amount.

<b>Current MISP Fee (\$850/QV)</b>			
<b>Voyages</b>	<b>5300</b>		
<b>Percent Paying</b>	<b>100%</b>		
<b>Period</b>	<b>Fee Amt</b>	<b># QVs</b>	<b>Revenues</b>
07/01/09 to 10/31/09	625	5783	\$1,772,806
11/01/09 to 06/30/10	850		\$3,284,552
07/01/10 to 06/30/11	850	6123	\$5,144,058
07/01/11 to 06/30/12	850	5390	\$4,475,610
07/01/12 to 06/30/13	850	5629	\$4,684,787
07/01/13 to 06/30/14	850	5711	\$4,769,321
07/01/14 to 06/30/15	850	5468	\$4,549,598
<b>07/01/15 to 06/30/16*</b>	850	<b>5300</b>	<b>\$4,505,000</b>
<b>07/01/16 to 06/30/17*</b>	850	<b>5300</b>	<b>\$4,505,000</b>
<b>07/01/17 to 06/30/18*</b>	850	<b>5300</b>	<b>\$4,505,000</b>
<b>07/01/18 to 06/30/19*</b>	850	<b>5300</b>	<b>\$4,505,000</b>
<b>07/01/19 to 06/30/20*</b>	850	<b>5300</b>	<b>\$4,505,000</b>
<b>Cost of Program</b>	<b>Annual</b>		<b>Annual</b>
	<b>Costs</b>		<b>Fund Balance</b>
Year 6 (09-10)	\$4,853,360		\$1,313,000
Year 7 (10-11)	\$4,998,961		\$1,590,000
Year 8 (11-12)	\$4,246,000		\$3,268,000
Year 9 (12-13)	\$4,754,000		\$3,474,000
Year 10 (13-14)	\$4,712,000		\$4,246,000
Year 11 (14-15)	\$4,589,000		\$4,230,000
Year 12 (15-16)	\$5,009,000		\$3,427,000
<b>Year 13* (16-17)</b>	\$6,054,000		<b>\$1,878,000</b>
<b>Year 14* (17-18)</b>	\$5,823,620		<b>\$559,380</b>
<b>Year 15* (18-19)</b>	\$5,542,039		<b>-\$477,659</b>
<b>Year 16* (19-20)</b>	\$5,211,000		<b>-\$1,183,659</b>
<b>*includes an annual 3% cost of living increase</b>			

Table 2 Projected fund status with Fee increase.

<b>Proposed MISP fee (\$1000/QV)</b>				
<b>Voyages</b>	<b>5300</b>			
<b>Percent Paying</b>	<b>100</b>			
<b>Period</b>	<b>Fee Amount</b>	<b>Actual QVs</b>	<b>Revenues</b>	
07/01/09 to 10/31/09	625		\$1,772,806	Actual Revenues
11/01/09 to 06/30/10	850	5783	\$3,284,552	
07/01/10 to 06/30/11	850	6123	\$5,144,058	
07/01/11 to 06/30/12	850	5390	\$4,475,610	
07/01/12 to 06/30/13	850	5629	\$4,684,787	
07/01/13 to 06/30/14	850	5711	\$4,769,321	
07/01/14 to 06/30/15	850	5468	\$4,549,598	
<b>07/01/15 to 06/30/16*</b>	850	<b>5300</b>	<b>\$4,505,000</b>	Estimated Revenues
<b>07/01/16 to 12/31/16*</b>	850	<b>5300</b>	<b>\$2,252,500</b>	
<b>01/01/17 to 06/30/17*</b>	1000	<b>5300</b>	<b>\$2,650,000</b>	
<b>07/01/17 to 06/30/18*</b>	1000	<b>5300</b>	<b>\$5,300,000</b>	
<b>07/01/18 to 06/30/19*</b>	1000	<b>5300</b>	<b>\$5,300,000</b>	
<b>07/01/19 to 06/30/20*</b>	1000	<b>5300</b>	<b>\$5,300,000</b>	
<b>07/01/20 to 06/30/21*</b>	1000	<b>5300</b>	<b>\$5,300,000</b>	
<b>07/01/21 to 06/30/22*</b>	1000	<b>5300</b>	<b>\$5,300,000</b>	
<b>Cost of Program</b>	<b>Annual Costs</b>		<b>Annual Fund Balance</b>	
Year 6 (09-10)	\$4,853,360		\$1,313,000	Actual Balance
Year 7 (10-11)	\$4,998,961		\$1,590,000	
Year 8 (11-12)	\$4,246,000		\$3,268,000	
Year 9 (12-13)	\$4,754,000		\$3,474,000	
Year 10 (13-14)	\$4,712,000		\$4,246,000	
Year 11 (14-15)	\$4,589,000		\$4,230,000	
Year 12 (15-16)	\$5,009,000		\$3,427,000	
<b>Year 13* (16-17)</b>	\$6,054,000		<b>\$2,275,500</b>	Estimated Balance
<b>Year 14* (17-18)</b>	\$5,823,620		<b>\$1,751,880</b>	
<b>Year 15* (18-19)</b>	\$5,998,329		<b>\$1,053,551</b>	
<b>Year 16* (19-20)</b>	\$5,721,988		<b>\$631,563</b>	
<b>Year 17* (20-21)</b>	\$5,893,648		<b>\$37,915</b>	
<b>Year 18* (21-22)</b>	\$6,070,458		<b>-\$732,543</b>	
<b>*includes an annual 3% cost of living increase</b>				

## ECONOMIC IMPACT ASSESSMENT

Commission staff has conducted an Economic Impact Assessment that analyzes the:

- Creation or elimination of jobs within the State of California;
- Creation of new businesses or the elimination of existing businesses within the State of California;
- Expansion of businesses currently doing business within the State of California; and
- Benefits of the regulations to the health & welfare of the California residents, worker safety, and the State's environment.

### A. The creation or elimination of jobs within the State of California

The proposed amendments are not expected to impact the creation or elimination of jobs associated with vessel owners and operators within the State of California. Most, if not all, of the potentially affected businesses are based outside of California. Accordingly, any creation or elimination of jobs, if any, would likely occur outside California. However, as discussed below, staff has determined that the proposed increase would have a negligible impact on businesses within the shipping industry. It is unlikely that the Fee increase would result in the creation or elimination of jobs in California.

Conclusion:

- The proposed regulation will likely have no impact on the creation or elimination of jobs within the State of California.

### B. The creation of new businesses or the elimination of existing businesses within the State of California

The proposed amendment is estimated to result in an increased total annual cost of seven hundred ninety-five thousand dollars (\$795,000) to the regulated community. Because the regulated community has been operating under the statutes and regulations of the MISP since 2000, and the proposed regulations do not add new environmental protection requirements, the proposed regulations are not expected to affect the creation or elimination of businesses within the state. Moreover, as discussed below, because the Fee increase would have a negligible impact on the industry, the proposed increase is not expected to result in the elimination of existing businesses.

Conclusion:

- The proposed regulation will likely have no impact on the creation or elimination of businesses within the State of California.

C. The expansion of businesses currently doing business within the State of California

As stated below, the proposed regulations add minimal costs to businesses overall, without imposing additional requirements or standards. Therefore, the proposed regulations are not expected to impact the expansion of businesses currently doing business in California.

Conclusion:

- The proposed regulations are not expected to expand businesses currently doing business with the State of California.

D. Benefits of the regulations to the health and welfare of California residents, worker safety, and the State's environment

The proposed regulation would amend the Fee requirements pursuant to California Public Resources Code section 71215. The proposed regulations do not make changes to existing worker safety requirements, and therefore should not have an impact on worker safety within the State of California.

The proposed regulations are expected to benefit both the state's environment and the health and welfare of California residents.

NIS introductions cause significant impacts to California's economy, human health, and environment. In the United States, invasive species are believed to be responsible for approximately \$120 billion in losses and damages each year (Pimentel et al. 2005). In California, NIS and invasive species may threaten the coastal tourism and recreation industries. These industries represent a large component of California's Gross State Product, nearly \$17 billion in 2011 (NOEP 2014). NIS pose a threat to these and other components of California's economy including fish hatcheries and aquaculture, recreational boating, and marine transportation.

NIS also pose a risk to human health. Vessels and port areas have been connected to the spread of epidemic human cholera in a number of instances (Ruiz et al. 2000, Takahashi et al. 2008), including the transport of the toxigenic *Vibrio cholerae* serotype O1 from Latin America to Mobile Bay, Alabama in 1991. This introduction led to the closure of nearly all Mobile oyster beds during the summer and fall of 1991, resulting in

losses and damages estimated at \$700,000 (Lovell and Drake 2009). In addition to cholera, microbes that have been found in ships include the microorganisms that cause paralytic shellfish poisoning (Hallegraeff 1998), human intestinal parasites (*Giardia lamblia*, *Cryptosporidium parvum*, *Enterocytozoon bieneusi*) and the microbial indicators for fecal contamination (*Escherichia coli* and intestinal enterococci) (Reid et al. 2007).

A local example of human health impacts, the Japanese sea slug *Haminoea japonica* was introduced, likely via ballast water, to San Francisco Bay in 1999. This slug is a host for parasites that cause cercarial dermatitis, or “swimmer’s itch,” in humans. Since 2005, cases of swimmer’s itch at Robert Crown Memorial Beach in Alameda have occurred on an annual basis and are associated with high densities of *Haminoea japonica* (Brant et al. 2010).

NIS can also present environmental impacts that are difficult to quantify economically. In San Francisco Bay, the overbite clam (*Corbula amurensis*) spread throughout the region’s waterways within two years of being detected in 1986. The clam can account for up to 95% of the living biomass in some shallow portions of the bay floor (Nichols et al. 1990). It is believed to be a major contributor to the decline of several pelagic fish species in the Sacramento-San Joaquin River Delta, including the threatened delta smelt, by reducing the planktonic food base of the ecosystem (Feyrer et al. 2003, Sommer et al. 2007, MacNally et al. 2010).

The proposed changes to the Fee amount are important to providing sufficient funding for the MISP and protect California from the introduction of nonindigenous species from vessels that operate in State waters. These regulations satisfy the purpose of the Marine Invasive Species Act (Public Resources Code section 71201(d)) “to move the State expeditiously toward elimination of the discharge of nonindigenous species into the waters of the State.”

#### Conclusions:

- The proposed amendments will have no impact upon worker safety within the State of California.
- By ensuring sufficient funding for the MISP, continued protection of California from the introduction of nonindigenous species from vessels that operate in State waters will occur. Commission staff has determined that the proposed amendments will benefit:
  - The health and welfare of California residents; and
  - The State’s environment.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE  
ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed regulatory action would likely not have a significant adverse economic impact, including businesses' ability to compete with businesses in other states. First, the amendments to the regulatory definitions would not change existing requirements or impose any economic impact on businesses.

Second, the Fee increase would likely not have a significant impact. The proposed regulation would set the fee to support the MISPA at one thousand dollars (\$1,000) per qualifying voyage. This is a one hundred fifty dollars (\$150) increase per qualifying voyage to directly affected businesses (vessel owners and operators). Commission staff estimates the annual cost to an individual business subject to the Marine Invasive Species Act will range from one hundred fifty dollars (\$150) to forty-seven thousand two hundred fifty dollars (\$47,250). These estimates are based on 2015 data provided by the Board of Equalization (minimum of one qualifying voyage per company, up to a maximum of 315 qualifying voyages per company) (Lovell, D. Personal Communication, July 20, 2016). Commission staff estimates that this proposed amendment will result in an increased total annual cost of seven hundred ninety-five thousand dollars (\$795,000) to the regulated community (\$150 x 5300 qualifying voyages = \$795,000 revenue generated).

The only other nearby ports are located in Oregon and Washington. Commission staff, with assistance from TAG members, summarized the cost of conducting business at the major port complexes along the US West Coast (Table 3).

**Table 3 – Comparison of average daily operating costs by vessel type among major port complexes on U.S. West Coast**

	<b>Bulker</b>	<b>Container Ship</b>	<b>Tanker</b>	<b>Cruise Ship</b>
<b>Ports of LA &amp; Long Beach</b>	\$36,878	\$46,342	\$47,536	\$63,850
<b>Ports in San Francisco Bay</b>	\$43,770	\$53,020	\$64,320	\$75,070
<b>Port of Portland</b>	\$70,318	\$0	\$0	\$0
<b>Port of Seattle</b>	\$60,430	\$96,290	\$87,370	\$50,950

Costs include vessel reporting, pilotage, dockage, line handling, tug assist and escort, federal fees, husbandry fees and terminal fees. Data are presented as average cost per vessel type per day at a specific port. Fuel and labor costs are not included in this summary. With the exception of cruise ships, the cost of doing business in California is significantly less than that in Oregon and Washington. Additionally, the proposed increase of one hundred fifty dollars (\$150) per qualifying voyage would result in a one third of one percent (0.3%) increase in average daily operating cost to vessel owners and operators subject to the Fee. Thus, despite the Fee increase, California businesses would remain competitive against nearby market competitors in other states.

## COST/SAVINGS IMPACT TO STATE

The proposed Fee increase is not a cost nor a savings to the State as defined in the State administrative manual section 6602. The proposed regulation does not create the need for additional personnel, does not entail additional fringe benefits, equipment needs or other costs. MISP costs are driven by the requirements of the Act and the MISP program itself in response to threats of NIS introduction. The proposed regulation does not implicate the conduct of those activities. Further, the Fee increase will not result in budget reductions or the “freeing up” of staff or resources. The MISP manages staff positions that are funded under the Marine Invasive Species Control Fund. That fund is financed through the Fee and not from other budgetary sources. If funding cannot match certain costs of the program, program resources and activities may have to be curtailed. Therefore, the proposed increase in the Fee provides no Savings to the State.

## SMALL BUSINESS IMPACTS

The proposed regulatory action may affect small businesses. The proposed action would amend the Fee requirements pursuant to California Public Resources Code section 71215. The majority, if not entirety, of the regulated community are not small businesses. Most affected businesses are commercial maritime transportation vessel owners and operators, having annual gross receipts of more than \$1,500,000, as specified under Government Code section 11342.610(c)(7). Nonetheless, it is possible that a small but unknown number of barge businesses qualify as small businesses. If they exist, these businesses would potentially be subject the increased fee. However, barge businesses that are small businesses are unlikely to travel between California ports and are more likely to remain within a single port, which would not render the businesses subject to the Fee. Commission staff believes that there are few of these small barge businesses, if any. Consequently, impacts on small businesses are unlikely but may result.

## REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission 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 or would be more cost effective to affected private persons and equally effective in implanting the statutory policy or other provision of law. The Commission invites interested persons to submit comments on potential alternatives to the proposed regulations during the written comment period.

Since January 2000, the Commission staff has met periodically with representatives from the regulated community in a Technical Advisory Group (TAG). During these meetings, the TAG and staff considered all alternatives permitted under the law, from no fee at all up to the maximum level of \$1,000, adjustable for inflation, per qualifying voyage. A variety of tiered Fees were also considered, including a cap on the number of voyages any individual shipping company would be charged, a lower Fee specifically for the Hawaiian trade, and a lower Fee for operators that make certain commitments, such as compliance with the Act. Any reduction in the Fee for some might likely require an increase in the Fee for others to support the program. As a result, the TAG recommended a flat Fee for everyone. Taking into account past results from collection efforts (98%), a flat Fee set at \$1,000 per qualifying voyage is projected to produce revenues sufficient to cover costs for all elements of the MISP mandated under the Law without producing a significant surplus through FY2019/2020 (Table2).

Commission Staff has determined that there are no reasonable alternatives because even the maximum amount of \$1,000 per qualifying voyage, without adjustments for inflation, will not sustain the fund beyond FY 2019/20. Accordingly, there is no lesser amount that could accomplish the goals as effectively as the proposed amount.

## EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed regulations would amend the Fee requirements pursuant to California Public Resources Code section 71215. Because this proposed action applies to the function of state law and to meet state budgets, no duplication or conflict with federal regulations are expected to occur.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON

*Meeting notes*

MISP TAG meeting notes. April 6, 2016.

*Personal Communications*

Lovell, D. Personal Communication. July 20, 2016.

*Peer-reviewed primary literature*

Brant, S.V., A.N. Cohen, D. James, L. Hui, A. Hom, and E.S. Loker. 2010. Cercarial dermatitis transmitted by exotic marine snail. *Emerging Infectious Diseases* 16:1357-1365.

Feyrer, F., H.B. Matern, and P.B. Moyle. 2003. Dietary shifts in a stressed fish assemblage: Consequences of a bivalve invasion in the San Francisco estuary. *Environmental Biology of Fishes* 67: 277-288.

Hallegraeff, G.M. 1998. Transport of toxic dinoflagellates via ships' ballast water: bioeconomic risk assessment and efficacy of possible ballast water management strategies. *Marine Ecology Progress Series* 168: 297-309.

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Title 2, Division 3, Chapter 1, Article 4.5. MARINE INVASIVE SPECIES CONTROL FUND FEE

The following is the statement of the specific purpose and rationale for each amendment of the regulations. Prior to the explanation for each provision, the text of the regulation is set forth and indented. Proposed additions to the regulation are underlined and items removed from the regulation are crossed out.

**SECTION 2270. Definitions.**

For purposes of this Article, the following definitions apply.

(a) "Voyage" means any transit by a vessel destined for ~~any~~ a California port from a port ~~or place~~ outside of the coastal waters of the state.

(b) "Waters of the state" means any surface waters, including saline waters, that are within the boundaries of the state.

Note: Authority cited: Section 71215(b), Public Resources Code. Reference cited: Sections 71200(o), 71200(q) and 71215, Public Resources Code.

#### SPECIFIC PURPOSE OF THE REGULATION

The purpose of the changes to section 2270 is to align the regulations with statute.

#### NECESSITY

Due to statutory amendments in 2015 (Chapter 644, Statutes of 2015), “any” was replaced with “a” before the word “California” and “or place” was deleted before the word “outside.” These changes are being made so that the regulatory text mirrors that in statute for clarity purposes. The definition of “voyage” is no longer Public Resources Code section 71200(q), it is now Public Resources Code section 71200(r). This proposed amendment to the regulation ensures the appropriate reference is used. Additionally, the statute has a comma after the word “waters” that is not present in the regulation. This change is being made so that the regulatory text mirrors that in statute for clarity purposes.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS

The Commission Staff has determined that there are no alternatives which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected parties.

#### **SECTION 2271. Fee Schedule for Marine Invasive Species Control Fund.**

- (a) The Fee required under Public Resources Code section 71215 is ~~eight hundred fifty dollars (\$850)~~ one thousand dollars (\$1,000) per vessel voyage.

Note: Authority cited: Section 71215(b), Public Resources Code. Reference cited: Sections 71200 and 71215, Public Resources Code.

#### SPECIFIC PURPOSE OF THE REGULATION

The purpose of section 2271(a) is to amend the existing Fee payable to fund the Marine Invasive Species Control Fund at one thousand dollars (\$1,000) per qualifying voyage. Public Resources Code section 71215(b) requires the Commission to establish a

reasonable and appropriate Fee to carry out the provisions of the Marine Invasive Species Act.

## NECESSITY

The proposed amendment is necessary to expressly informing the public of the increased fee to be collected for the Marine Invasive Species Control Fund. The fee increase itself is necessary to secure adequate funding for the continued administration, implementation, and enforcement of the Act.

## ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS

Since January of 2000, the Commission Staff has met periodically with representatives from the regulated community in a Technical Advisory Group (TAG). During these periodic meetings, the TAG and Commission staff considered all alternatives permitted under the law, from no fee at all up to the maximum level of \$1,000, without adjustments for inflation, per qualifying voyage. A variety of tiered Fees were also considered, including a cap on the number of voyages any individual shipping company would be charged, a lower Fee specifically for the Hawaiian trade, and a lower Fee for operators that make certain commitments, such as comply with the Act. Any reduction in the Fee for some would result in an increase in the Fee for others. As a result, the TAG recommended a flat Fee for everyone. Taking into account past results from collection efforts (nearly 100%), a flat Fee set at \$1,000 per qualifying voyage is projected to produce revenues sufficient to cover costs for all elements of the MISP mandated under the Law without producing a significant surplus through FY2019/2020 (Table 2).

Commission Staff has determined that there are no reasonable alternatives, which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons, because even the maximum amount of \$1,000 will not sustain the fund beyond FY 2019/20. Accordingly, there is no lesser amount that could accomplish the goals as effectively as the maximum.