

## NOTICE OF PROPOSED RULEMAKING

**Division of Boating and Waterways** (“Department”) proposes to amend the Quagga and Zebra Mussel Infestation Prevention Program (“QZ Program”) regulations after considering all comments, objections, and recommendations regarding the proposed action.

### PUBLIC HEARING

The Division has not scheduled a public hearing on this proposed action. However, the Division will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Such request should be addressed to the Division contact person identified in this Notice and should specify the QZ Mussel Sticker regulations for which the hearing is being requested.

### WRITTEN COMMENT PERIOD; CONTACT PERSON(S)

All persons or their identified representative are invited to submit written comments relevant to the proposed regulations during the public comment period.

**(December 27, 2019 to February 11, 2020)**

The public comment period will end at mid-night **February 11, 2020**. Please direct all written comments to the following contact person(s):

Primary Contact: Charley Hesse  
Department of Parks and Recreation  
Division of Boating and Waterways  
One Capitol Mall, Suite 500  
Sacramento, CA 95814  
[charley.hesse@parks.ca.gov](mailto:charley.hesse@parks.ca.gov)  
916.327.1741 office telephone

Back-Up Contact: Lane Massey  
Department of Parks and Recreation  
Division of Boating and Waterways  
One Capitol Mall, Suite 500  
Sacramento, CA 95814  
[lane.massey@parks.ca.gov](mailto:lane.massey@parks.ca.gov)  
916.327.1916 office telephone

Comments shall satisfy the following requirements:

- Comments shall be in writing, which includes email.
- Comments shall identify the regulations being addressed.
- Comments shall be sent to the rulemaking agency's primary contact person for the regulations.
- All comments no matter how they are routed to primary contact will be made part of the record.

### **AUTHORITY AND REFERENCE**

The Division is authorized by Harbors and Navigation Code, Division 2, Chapter 2, Article 2, Section 63.9, to adopt any rule or regulation or take any action it deems reasonable and necessary to carry out the provisions of the division, and Division 3 commencing with Section 399.

The Division is proposing this action pursuant to the authority vested by the Harbors and Navigation Code, Chapter 5, Division 3, Article 1.3, Section 675 (c): "The department shall adopt an emergency regulation to prescribe procedures for the collection and use of the quagga and zebra mussel infestation prevention fee for the purposes of this article. The emergency regulations shall include rules for administering the grants awarded pursuant to Section 676."

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

This rulemaking action clarifies the procedures for the collection of the quagga and zebra mussel infestation prevention fee in order to comply with federal law and allow the Division to continue receiving its full allocation of federal funding from the Recreational Boating Safety Grant ("RBS") program (46 U.S.C.A. § 12307). This includes changes to provisions in order uncouple the quagga and zebra mussel infestation prevention fee and the vessel registration fee.

The Legislature enacted Vehicle Code, Chapter 2, Division 3.5, sections 9853 and 9860, which became effective January 1, 1971. These statutes require vessel owners to file an application for original vessel registration and its renewal with the Department of Motor Vehicles ("DMV"), and establishes the fee for such registration. These statutes also require the DMV to collect a QZ Mussel prevention fee from vessel registrants.

This article shall not prevent a special district, city, county or joint powers authority from adopting local regulations or ordinances related to the prevention and eradication of invasive species that exceed the requirements of this article.

## **ANTICIPATED BENEFITS OF THE PROPOSED REGULATION**

The payment of the QZ Mussel Prevention Fee will be uncoupled from the payment of the Vessel Registration Fee.

Division will continue to receive the necessary funding to support critical boating safety and enforcement programs by promulgating these regulations. These programs include mandated school-age boating education materials, boating safety publications, a boating safety media campaign, life jacket programs, mandated aquatic center grants, and equipment and training for boating law enforcement. All of these programs enhance boating safety on California's waterways, as well as providing the necessary law enforcement to keep boaters safe.

The Division can continue receiving annual federal grant funding from the RBS Grant program, administered by the U.S. Coast Guard. If withholdings to the RBS grant continue as a result of non-compliance with federal law, the Division would be forced to defund critical programs in the Harbors and Watercraft Revolving Fund ("HWRF"). The HWRF is a special fund supported by vessel registration fees, gas taxes attributed to boats, and interest collected on construction loans. These expenditures are monies that provide the required match for the federal funds. In recent years, the HWRF has become insolvent due to transfers out of the fund, while also experiencing marked decreases in vessel registration income and repaid loan interest. If the US Coast Guard ceases to grant RBS funds to the Department, it would not be feasible for the HWRF to fund an additional \$2-5 million dollars annually due to the loss of federal funding.

## **DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Division has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulation that would relate to or affect this area, The Division has concluded that these are the only regulations that concern the quagga and zebra mussel infestation prevention fee.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Division has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to this State: The US Coast Guard will continue to withhold approximately \$2.5 million in federal grant dollars until the mussel fee collection process complies with federal law. This reduction in annual funding (approximately) \$2.5 million will hinder the Department's ability to maintain existing programs and the HWRF.

Cost impacts on a representative private person or business: None.

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.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The Division concludes that it is (1) unlikely the proposed action will eliminate any jobs, (2) unlikely the proposed action may create an unknown number of jobs, (3) unlikely the proposal will create new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposal will impact the expansion of existing businesses.

The quagga and zebra mussel infestation prevention fee will be transferred to the Harbors and Watercraft Revolving Fund pursuant to the Harbors and Navigation Code section 675(d). While the proposed amendments make changes to the way in which the fee is collected, the amount of the fee itself remains the same.

The payment of the QZ Mussel Prevention Fee will be uncoupled from the payment of the Vessel Registration Fee through these regulatory actions.

The Division will continue to receive the necessary funding to support critical boating safety and enforcement programs by promulgating these regulations. These programs include mandated school-age boating education materials, boating safety publications, a boating safety media campaign, life jacket programs, mandated aquatic center grants, and equipment and training for boating law enforcement. All of these programs enhance boating safety on California's waterways, as well as providing the necessary law enforcement to keep boaters safe.

The Division can continue receiving annual federal grant funding from the RBS Grant program, administered by the U.S. Coast Guard. If withholdings to the RBS grant continue as a result of non-compliance with federal law, the Division would be forced to defund critical programs in the Harbors and Watercraft Revolving Fund ("HWRF"). The HWRF is a special fund supported by vessel registration

fees, gas taxes attributed to boats, and interest collected on construction loans. These expenditures are monies that provide the required match for the federal funds. In recent years, the HWRF has become insolvent due to transfers out of the fund, while also experiencing marked decreases in vessel registration income and repaid loan interest. If the US Coast Guard ceases to grant RBS funds to the Department, it would not be feasible for the HWRF to fund an additional \$2-5 million dollars annually due to the loss of federal funding.

### **SMALL BUSINESS DETERMINATION**

The Division has determined that it is unlikely the proposed regulations will adversely affect small businesses. The proposed regulations will amend existing regulations, 14 CCR sections 5200.5, 5201, 5202, 5203, 5207, 5209, and adopt section 5212, to clarify procedures for the collection and use of the quagga and zebra infestation prevention fee ("prevention fee"), as required by California Harbors and Navigation Code Chapter 5, Division 3, Article 1.3, section 675. These regulations clarify how the fee will be collected in accordance with the statute and provide consistency with federal law. (46 U.S.C.A. § 12307).

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code 11346.5, subdivision (a)(13), the Division must determine that no reasonable alternatives considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective 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.

The Division is not aware of any reasonable alternatives. However, the Division invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Charley Hesse  
Department of Parks and Recreation  
Division of Boating and Waterways  
One Capitol Mall, Suite 500  
Sacramento, CA 95814  
[charley.hesse@parks.ca.gov](mailto:charley.hesse@parks.ca.gov)  
916.327.1741 office telephone

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Lane Massey  
Department of Parks and Recreation  
Division of Boating and Waterways  
One Capitol Mall, Suite 500  
Sacramento, CA 95814  
[lane.massey@parks.ca.gov](mailto:lane.massey@parks.ca.gov)  
916.327.1916 office telephone

### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE**

The Division will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date of this notice is published in the Notice Register, the rulemaking file consists of this Notice, the Proposed Text of Regulations, the Economic and Fiscal Impact Statement (STD 399) and the Initial Statement of Reasons. Copies may be obtained by contacting **Charley Hesse** at the address or phone number above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing, if any, and considering all timely and relevant comments received the Division may adopt the proposed regulations substantially as described in this notice. If the Division 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 Division adopts the regulations as revised, please send requests for copies of any modified regulations to the attention of **Charley Hesse** at the address indicated above. The Division will accept written comments on the modified regulations for 15 days after the date of which they are made available.

### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting **Charley Hesse** at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at [www.dbw.ca.gov](http://www.dbw.ca.gov).