

Staff Report 54

PARTY:

California State Lands Commission

PROPOSED ACTION:

Consider approval of the proposed amendments to the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.5 Marine Invasive Species Control Fund Fee.

AREA, LAND TYPE, AND LOCATION:

Statewide.

PROPOSED RULEMAKING:

The purpose of the proposed regulatory action is to amend Sections 2270 and 2271 of Title 2, Division 3, Chapter 1, of the California Code of Regulations to revise the amount of the Marine Invasive Species Control Fund Fee (Fee). The proposed action is necessary to provide sufficient funding for the California Marine Invasive Species Program and protect California from the introduction of nonindigenous species from vessels that operate in State waters.

The objective of this rulemaking is to adjust the Fee amount from one thousand dollars (\$1,000) per vessel voyage to one thousand two hundred twenty-five dollars (\$1,225) per vessel voyage.

BACKGROUND:

The California Marine Invasive Species Program (MISP) is a multi-agency program designed to reduce the likelihood of introducing nonindigenous species into State waters from vessels 300 gross registered tons and above that can carry ballast

water. MISP was established by the Ballast Water Management for Control of Nonindigenous Species Act of 1999 and reauthorized and expanded by the Marine Invasive Species Act of 2003. The purpose of MISP is to move the state expeditiously toward elimination of the discharge of nonindigenous species (NIS) into the waters of the state (Public Resources Code section 71201, subdivision (d)). MISP is funded via the Fee assessed on vessels with a qualifying voyage (i.e., arrival at a California port after operating at a port outside of California); MISP receives no General Fund dollars.

Partner agencies under the Marine Invasive Species Act include the Commission, California Department of Fish and Wildlife, State Water Resources Control Board, and Department of Tax and Fee Administration.

- The Commission is the administrator of MISP and is responsible for developing and implementing vessel vector management policies and inspecting vessels for compliance with the Marine Invasive Species Act.
- The California Department of Fish and Wildlife monitors and gathers 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 MISP.
- The State Water Resources Control Board consults with MISP partner agencies on topics related to water quality and toxicity.
- The Department of Tax and Fee Administration collects a fee from qualifying voyages to support all MISP activities (see Public Resource Code sections 71215(b)(2) and 71215(c)). All fees are deposited into the Marine Invasive Species Control Fund to fund all aspects of MISP.

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

PROBLEM STATEMENT

Public Resources Code section 71215(b)(1) requires the Commission to establish a reasonable and appropriate Fee to fund the provisions of the Marine Invasive Species Act. Since January 2000, Commission staff 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 programmatic 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 relied on 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 the Legislature reauthorized, expanded, and renamed the authorizing statute (Marine Invasive Species Act; Chapter 491, Statutes of 2003). As a result, program 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 on June 3, 2004, with permanent regulations adopting the fee at \$500 per qualifying voyage. In 2006, the Governor and the Legislature reauthorized and further expanded MISF and removed the program sunset date. As a result, program activities and budgets again expanded. In 2007 and 2008, the Governor and the 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, and assess the status of ballast water treatment systems. Consequently, the program budget increased, and the Fee was increased with permanent regulations resetting the Fee to \$850 per voyage, effective November 1, 2009. In 2016, staff reviewed the status of the Marine Invasive Species Control Fund and projections of qualifying voyages and determined that it was necessary to raise the Fee to support program costs. The Fee was raised to \$1,000 per qualifying voyage in April 2017.

The Fee amount has not been amended since April 2017. Aside from reduced voyages during the initial part of the COVID-19 pandemic, the number of qualifying voyages per year has been consistent, resulting in static revenues since 2017. During this time, the cost of implementing the MISP has continued to rise because of additional responsibilities placed on the program by the Legislature, including implementing new biofouling management regulations in October 2017 and new ballast water discharge performance standards in January 2022. Each of those new rules placed more training, inspection, implementation, and enforcement responsibilities on MISP. Program expenditures have also risen naturally due to inflation and bargained state employee salary increases over time, as well as additional responsibilities to coordinate with federal partners on policy development related to the Vessel Incidental Discharge Act (VIDA; Section 1322(p) of Title 33 of the U.S. Code) implementation and a new requirement to post vessel traffic and ballast water data on the Commission's public website at least twice annually (SB 856; Chapter 102, Statutes of 2025). Additionally, the contracted cost for the Department of Tax and Fee Administration to collect the vessel arrival fee has risen 68 percent from fiscal year 2022/2023.

Commission staff met with the TAG on August 18, 2025, to discuss the status of the Marine Invasive Species Control Fund, the trends in annual revenues and expenditures, and current and future pressures on Fee assessment and the overall fund. These pressures include a federal VIDA cap on the maximum fees that a state can charge a U.S. flagged vessel per year (Section 1322(p)(9)(A)(iv) of Title 33 of the U.S. Code) that is estimated to reduce revenues into the MISCFC by approximately \$400,000 to \$600,000 per year. Staff shared that raising the Fee to \$1,225 per qualifying voyage, the maximum allowed based on inflation under provisions put in place by the federal VIDA and consistent with State law, would stabilize the fund for about a year or two, but the future VIDA restrictions on the MISP's ability to assess the Fee on U.S. flagged vessels would result in expenditures exceeding revenues. Because of this, staff originally proposed to include an automatic adjustment for inflation five years after this proposed action, and every five years thereafter. Staff and the TAG discussed holding another TAG meeting one year prior to the automatic adjustment to review the fund status and determine if the automatic adjustment would still be necessary and whether an additional rulemaking to delay the adjustment would be required.

SUMMARY OF RULEMAKING PROCESS

The proposed regulations were published in the California Regulatory Notice Register (Register 2025, Notice File Number Z2025-1028-03) on November 7, 2025. The Public Comment Period for the proposed regulations spanned 60 days, including an additional 15 days because of the December holiday season, ending on January 6, 2026. After consideration of the written comments, Commission staff revised the proposed regulations, warranting a 15-day Public Comment period from February 9, 2026, to February 24, 2026. A complete copy of the proposed regulations is included as Exhibit A. All comments received will be addressed formally in the Final Statement of Reasons as part of the rulemaking process but are summarized below.

SUMMARY OF PUBLIC COMMENTS

Commission staff received one comment letter from one commenter, Jacqueline Moore from the Pacific Merchant Shipping Association, during the initial 60-day comment period. The commenter did not oppose the proposed fee amendment from \$1,000 to \$1,225 per qualifying arrival but contested the proposed automatic adjustment for inflation every five years.

In response to the comment, Commission staff modified the proposed regulation to remove the automatic fee adjustment for inflation every five years.

Staff received one joint comment letter from the Pacific Merchant Shipping Association, A.P. Moller – Maersk, and Western States Petroleum Association during the additional 15-day comment period. The commenters stated their pleasure that their previous concern had been addressed and that they appreciated the collaborative relationship they have with the Commission and MISP. They do not oppose this rulemaking.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 71201.7 and 71215.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

The proposed amendments will further the interests of the Public Trust by enabling continued protection of Public Trust resources. The introduction of nonindigenous species to California’s waters threatens Public Trust resources and values, including ecosystem preservation and the promotion and protection of fishing, water-related recreation, maritime commerce, and water-dependent tourism. The proposed regulations are expected to benefit both the State’s environment and the health and welfare of California residents by ensuring appropriate funding necessary to carry out the requirements of the Marine Invasive Species Act.

The proposed amendments satisfy the purpose of the Marine Invasive Species Act (Public Resources Code, § 71201, subd. (d)) “to move the State expeditiously toward elimination of the discharge of nonindigenous species into the waters of the State.” Thus, staff believes that adoption of the proposed regulations would further enhance and protect Public Trust resources and is in the State’s best interests.

CONCLUSION:

For these reasons, staff believes that the proposed amendments would benefit existing Public Trust uses and resources and be in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The proposed regulations interpret, implement, and make specific the provisions of Public Resources Code sections 71200 and 71215.
2. No alternatives would be more effective in carrying out the purposes for which the regulations are proposed, would be as effective as and less burdensome, or would more greatly lessen any adverse economic impact on small businesses or affected private persons, than the proposed regulations.
3. The Commission staff has determined that this proposed regulatory action is not a major regulation as defined by Government Code section 11342.548.
4. This action is consistent with the “Meeting Evolving Public Trust Needs” and “Committing to Collaborative Leadership” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
5. Adoption of the proposed amendments to the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.5, is not a project as defined by the

California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

EXHIBIT:

A. Text of the proposed regulation

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that adoption of the proposed amendments, or amendments substantially in the same form, will not substantially interfere with the public rights to navigation or the Public Trust needs and values at this time; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Adopt the amendments of the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.5, substantially in the form as set forth in the attached Exhibit A.
2. Authorize Commission staff to make non-substantive modifications to the proposed regulations, within the meaning of 1 Cal. Code Regs. § 100, in response to recommendations by the Office of Administrative Law.
3. Authorize Commission staff to take any actions necessary and appropriate to comply with provisions of the Government Code regarding the lawful adoption and publication of the regulations and to ensure that the regulations become effective.
4. Authorize Commission staff to take any actions necessary and appropriate to implement the regulations if/when they become effective.

Exhibit A

PROPOSED REGULATORY TEXT

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

Staff has illustrated changes to the original text in the following manner:

- Originally proposed language is underlined; deletions from the original text are shown in strikeout using a “-”.
- Modified proposed additions after comment consideration are double underlined; modified proposed deletions after comment consideration are shown in double strikethrough.

Section 2270. Definitions

For purposes of this Article, the following definitions apply.

- “Voyage” means any transit by a vessel destined for a California port from a port outside of the coastal waters of the state.
- “Waters of the state” means any surface waters, including saline waters, that are within the boundaries of the state.

Authority cited: Section 71215~~(b)~~, Public Resources Code.

Reference cited: Sections 71200~~(e)~~, 71200~~(r)~~ and 71215, Public Resources Code.

Section 2271. Fee Schedule for Marine Invasive Species Control Fund

- The Fee required under Public Resources Code Section 71215 is one thousand two hundred twenty-five dollars (\$1,225~~1000~~) per vessel voyage. ~~The fee shall adjust automatically for inflation on July 1, 2031, and on July 1 every five years thereafter, per the difference between the United States Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers on the October prior to the automatic adjustment and the October five years prior.~~
- The Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee

schedule established, including the level of the fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water and biofouling management practices of the vessels, and other relevant considerations.

- (c) The fee shall be collected from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.
- (d) (1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the fee required under Public Resource Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the fee, taking into account the provisions of Public Resources Code Sections 71200 through 71216.

(2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

Authority cited: Section 71215~~(b)~~, Public Resources Code.

Reference cited: Sections 71200 and 71215, Public Resources Code.