

## **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**

#### **GENERAL PURPOSE OF THE REGULATION**

The purpose of the proposed regulation is to amend Sections 2270 and 2271 of Title 2, Division 3, Chapter 1, of the California Code of Regulations. The purpose of these amendments is to revise the amount of the Marine Invasive Species Control Fund Fee (Fee) and to adopt a Fee adjustment schedule to fund the State's Marine Invasive Species Program. Division 36 of the Public Resources Code mandates both the Marine Invasive Species Program (MISP) requirements and the program funding mechanism. The specific amount of the Fee is not set in the statute and must be adopted in regulations. The proposed change to the fee amount is necessary to provide sufficient funding for the Marine Invasive Species Program and protect California from the introduction of nonindigenous species from vessels that operate in State waters. The regulation also makes a change without regulatory affect to the authority and reference citations in Sections 2270 and 2271.

The objectives of this rulemaking are to:

1. 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; and
2. Automatically adjust the Fee amount for inflation every five years.

#### **PROBLEM STATEMENT**

In 1999, the Governor and the Legislature recognized the urgent need to curtail introductions of nonindigenous species from ships' ballast water discharges into state waters. The Ballast Water Management for Control of Nonindigenous Species Act, applicable to vessels 300 gross register tons and above that are capable of carrying ballast water, established a new division in the Public

Resources Code entitled, "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 Marine Invasive Species Program, and the program was reauthorized and expanded through passage of the Marine Invasive Species Act (Chapter 491, Statutes of 2003).

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

- The Commission is the administrator of the Marine Invasive Species Program and 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 the Marine Invasive Species Program.
- The State Water Resources Control Board consults with Marine Invasive Species Program 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 Marine Invasive Species Program activities (see Public Resource Code sections 71215(b)(2) and 71215(c)). All fees are deposited into the Marine Invasive Species Control Fund (MISCF). The Marine Invasive Species Program 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 conduct research into the extent of current invasions and potential long-term solutions to the problem of nonindigenous species introductions.

Marine Invasive Species Program mandates and requirements are numerous. Central is the requirement that vessels arriving at California ports manage their ballast water and biofouling 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 as well as administrative penalties.

In 2007, the Legislature approved amendments to the Marine Invasive Species Act (Chapter 370, Statutes of 2007) that required vessels to remove biofouling on a regular basis and required the Commission to develop and adopt regulations governing the management of biofouling for vessels operating in California. The Commission adopted and began implementing these regulations in 2017.

In 2021, the Legislature passed SB 822 (Chapter 770, Statutes of 2021) which, among its provisions, mandated the Commission codify federal ballast water discharge performance standards in state regulations. The Commission adopted these standards via regulations and implemented them in 2022.

The Commission submits regular program reports (previously biennial, now triennial as a result of the passage of SB 856 in 2025) to the Legislature that synthesize and analyze vessel arrival data, ballast water management statistics, vessel biofouling management strategies, and vessel monitoring and inspection information to evaluate the effectiveness of the Marine Invasive Species Program. 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)(1) requires the Commission to establish a reasonable and appropriate fee (the 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 (i.e., arrival at a California port after operating at a port outside of California) 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 June 3, 2004, with permanent regulations adopting the fee at \$500 per voyage.

In 2006, the Governor and the Legislature reauthorized and further expanded the Marine Invasive Species Program and removed the program sunset date. As a result, programs and budgets 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.

Staff reviewed the status of the fund and projections of qualifying voyages in 2016 and determined that it would be necessary to raise the Fee to support the cost of the program. The Fee was officially raised to \$1,000 per qualifying voyage beginning 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 fairly 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 the 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 (SB 856; Chapter 102, Statutes of 2025) to post vessel traffic and ballast water data on the Commission's public website at least twice annually.

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 number of times a state can assess a fee on U.S. flagged vessels per year (Section 1322(p)(9)(A)(iv) of Title 33 of the U.S. Code) that is estimated to reduce revenues into the MISCF by approximately \$400,000 to \$600,000 per year. Staff shared that raising the Fee to \$1,225 per qualifying voyage, the maximum allowed under provisions put in place by the federal VIDA (note: VIDA set an initial \$1,000 cap in 2018 with an allowance to adjust for inflation every five years), 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 proposes 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.

## **SPECIFIC PURPOSE OF AMENDMENTS AND NECESSITY**

### **Section 2270 Purpose and Applicability**

#### Proposed amendments to Section 2270

For purposes of this Article, the following definitions apply.

- (a) "Voyage" means any transit by a vessel destined for a California port from a port 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.

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

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

Specific Purpose:

The purpose of the amendment is to remove subdivisions from the authority and reference cited fields.

Necessity:

The proposed amendment is a change without regulatory effect. As of January 1, 2022, SB 824 (Chapter 432, Statutes of 2021) amended Public Resources Code section 71200 (definitions), which re-lettered the definition of "Voyage" and "Waters of the state." These changes to statute require a change to the authority and reference citations at the end of Section 2270. The proposed amendment would remove the subdivisions for these citations and prevent misalignment resulting from future re-lettering of the definitions in statute.

### **Section 2271 Fee Schedule for Marine Invasive Species Control Fund**

#### Proposed amendment to Section 2271, subdivision (a)

- (a) The Fee required under Public Resources Code Section 71215 is one thousand two hundred twenty-five dollars (\$1,225,000) 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.

Specific Purpose:

The purpose of the amendment is to increase the amount of the existing vessel qualifying voyage Fee and to enable automatic fee adjustments every five years to align with the rate of inflation.

Necessity:

The proposed amendment to Section 2271 is necessary because the existing Fee amount is no longer sufficient to meet projected budgets of the Marine Invasive Species Program. If the Fee is not raised, the State will not collect sufficient funds to implement the mandates of the Marine Invasive Species Act (Public Resources Code section 71200 et seq.). The proposed automatic adjustment to the Fee amount every five years is also necessary to ensure that the MISPP remains adequately funded over time.

Proposed amendment to Section 2271, subdivision (b)

- (b) 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.

Specific Purpose:

The purpose of this amendment is to include biofouling in the management practices of the vessel that should be considered when setting the Fee amount.

Necessity:

This amendment is necessary because the Commission adopted biofouling management regulations in 2017, after the previous Fee adjustment. This amendment aligns this subdivision with the suite of vessel management practices that are required of vessels to comply with the Marine Invasive Species Act.

### Proposed amendment to Section 2271, Authority Cited

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

#### Specific Purpose:

The purpose of the amendment is to remove a subdivision from the authority cited field.

#### Necessity:

The proposed amendment is a change without regulatory effect. Removing this subdivision from the authority cited will prevent the need for a future rulemaking if the lettering of the statute changes.

### **ECONOMIC IMPACT ASSESSMENT**

The proposed regulations would amend the Fee requirement pursuant to California Public Resources Code section 71215. The Fee is required to fulfill the specific multi-agency tasks mandated by the Marine Invasive Species Act. Commission staff has determined that the proposed regulations will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

#### **Evidence Supporting No Significant Adverse Economic Impact On Business**

The majority of owners of vessels that operate in California are international companies and not California businesses. The affected industry will consist mainly of non-California based international businesses. These regulatory amendments will not affect the ability of California businesses to compete with other states and will not make it more costly for California businesses to produce goods and services here.

The proposed action would increase the Fee amount by two hundred twenty-five dollars (\$225) per qualifying voyage. Using vessel voyage information from between July 1, 2023, and June 30, 2024 (i.e., fiscal year 23-24), Commission staff estimates the overall economic impact of this regulation to be approximately \$1,180,125 per year spread across the entire shipping industry that calls at California ports (see Worksheet for STD.399 Calculations contained within the rulemaking record). The estimated economic impact on individual businesses is



estimated to range from two hundred twenty-five dollars (\$225) to forty-nine thousand two hundred seventy-five dollars (\$49,275).

The cost associated with the proposed action is insignificant compared to the current costs of operating a vessel at California ports. For example, using numbers obtained from the Pacific Merchant Shipping Association in June 2023, the average partial cost of a container vessel calling at the Port of Los Angeles, including dockage and pilotage fees, is about \$58,061. This estimate includes an average port call length of 4.5 days and a container vessel about 150,000 gross registered tons in size. The overall average cost is likely higher, as there are other fees associated with the total costs of a port call, but Commission staff could not obtain reliable values, and they are not included in this estimate.

**Potential cost impacts on representative persons or businesses are summarized below and are categorized by the major provisions of the proposed regulations.**

(A) The creation or elimination of jobs within the State of California

Analysis: Businesses will incur costs resulting from this action. However, staff expects that because these costs will be relatively minimal (\$225 per qualifying vessel voyage), and because most of these corporations are headquartered internationally, they are unlikely to result in the creation or elimination of jobs within the State of California.

Conclusion:

- The proposed regulation will 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

Analysis: The proposed action does not impose any new requirements. Therefore, staff does not expect the regulations to create or eliminate any businesses. Most shipping businesses that operate within the State of California are international corporations that are not based in California. Additionally, the proposed Fee increase is only \$225 per qualifying voyage, a very small fraction of total operating costs.

Conclusion:

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

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

Analysis: This proposed action does not impose any new requirements. Therefore, staff does not expect the regulations to affect the expansion of businesses currently doing business within the State of California. Additionally, the proposed Fee increase is only \$225 per qualifying voyage, a very small fraction of total operating costs.

Conclusion:

- The proposed regulations will have no impact on the expansion of businesses currently conducting businesses within the State of California.

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

Analysis: The proposed regulation amendments do not make changes to existing worker safety requirements and therefore should not have a significant positive or negative 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 and invasive species have impacted California's economy, human health, and environment. NIS and invasive species threaten the coastal tourism and recreation industries. In 2020, these industries represented nearly \$18.5 billion (NOEP 2024) of California's Gross State Product. Additionally, 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; see below for full citation).

Of the more than 250 established NIS in California's coastal waters, up to 81 percent are believed to have been introduced through the discharge of ballast water and from vessel biofouling (Ruiz et al. 2011). In recognition of the substantial threat to the State's economy, environment, and human health, California enacted the Marine Invasive Species Act (2003).

The functioning of the Marine Invasive Species Program is reliant on the vessel arrival Fee that supports all program activities. The MISP does not receive any General Fund dollars. Inadequate funding will jeopardize the ability of the MISP to carry out its varied and important functions to protect California waters from species introductions. Adjusting the Fee to an amount that will support program activities will allow the MISP to continue fulfilling Legislative mandates and satisfy the purpose of the Marine Invasive Species Act, which is (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 regulations will have no impact upon worker safety within the State of California.
- By maintaining the functions of the MISP, Commission staff has determined that the proposed regulations will significantly benefit:
  - o The health and welfare of California residents; and
  - o The State's environment.

#### **Small Business Impacts**

The Commission finds that the adoption of these regulation amendments will not have a significant adverse economic impact on small businesses. The majority of the businesses that own vessels that operate in California are large international companies.

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

*MISP Technical Advisory Group materials*

MISP TAG meeting notes. August 18, 2025.

Figure 1. Annual revenues and expenditures chart discussed during August 18, 2025, TAG meeting.

Figure 2. Fee and inflation adjustment chart discussed during August 18, 2025, TAG meeting.

#### *Peer-reviewed primary literature*

Pimentel, D., Zuniga, R., Morrison, D. 2005. Update on the environmental and economic costs associated with alien-invasive species in the United States. *Ecological Economics*, 52: 273-285.

Ruiz, G.M., Fofonoff, P.W., Steves, B., Foss, S.F., Shiba, S.N. 2011. Marine invasion history and vector analysis of California: a hotspot for western North America. *Diversity and Distributions* 17: 362-373.

#### *Periodicals and internet-based sources*

NOEP (National Ocean Economics Program). 2024. State of the U.S. Ocean and Coastal Economies.

[https://www.oceaneconomics.org/ocean\\_econ/ocean\\_econ.html](https://www.oceaneconomics.org/ocean_econ/ocean_econ.html). (Accessed 7 May 2024).

## **BENEFITS**

The proposed action will allow for the continuance of the state's Marine Invasive Species Program to protect state waters from the introduction of nonindigenous species and the negative environmental, economic, and human health impacts that could result from their establishment.

## **REASONABLE ALTERNATIVES**

Since January 2000, the Commission Staff has met periodically with representatives from the regulated community in a TAG. During these periodic meetings, the TAG and Commission considered all alternatives permitted under

the law, from no fee to the maximum allowable level of \$1225 per qualifying voyage. A variety of tiered Fees have also been considered during these discussions, 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. Any reduction in the Fee for some would result in an increase in the Fee for others. As a result, the TAG had consistently recommended a flat Fee for everyone.

Commission staff considered two reasonable alternatives to the proposed action, a smaller increase of \$100 per qualifying arrival and a larger \$400 increase per qualifying arrival. The smaller increase was rejected because it would not produce revenues necessary to support the operations of the MISPP. The larger increase was rejected because VIDA restrictions would prevent an increase to that level. Commission staff has determined that there are no alternatives considered that could be adopted via regulation and that would be more effective in carrying out the purpose of the proposed regulations, or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small business.

### **SPECIFIC TECHNOLOGY OR EQUIPMENT**

The proposed regulation does not mandate the use of specific technology or equipment.

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

The proposed regulation would amend the Fee requirements pursuant to California Public Resources Code section 71215. Although the federal government regulates ballast water management, the Commission is proposing these amendments to the Fee to support the California Marine Invasive Species Program under authority granted by the California Legislature. The amount of the proposed Fee amendment is consistent with the cap, timeline, and adjustment for inflation authorized by the federal Vessel Incidental Discharge Act.