CALENDAR ITEM
C47

A	)	08/11/09
	) Statewide	W 9777.234
S	)	M. Falkner
		G. Gregory
		M. Meier

CONSIDERATION OF REGULATIONS RESETTING THE FEE USED TO FUND CALIFORNIA'S MARINE INVASIVE SPECIES CONTROL PROGRAMS

PROPOSAL:
The Commission proposes to amend Sections 2270 and 2271 under Article 4.5 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). Section 2270 is being amended as a change without regulatory effect under Title 1, Division 1, Article 2, §100(a)(6). As of January 1, 2008, AB 740 (Chapter 370, Statutes of 2007) amended PRC Section 71200 (definitions) which renumbered the definition of "Voyage." This change to statute requires a change to the Reference citation at the end of Section 2270. The Reference cited is amended from 71200 (m) to 71200 (q). Section 2271 would amend the fee to be paid by vessels calling at California ports (the Fee). The Fee is to be used for the Marine Invasive Species Control Fund (the Fund) under Division 36 of the Public Resources Code (P.R.C.) entitled, "Marine Invasive Species Act," established under Chapter 491, Statutes of 2003 (the Act). The proposed regulation would set the fee at eight hundred fifty dollars ($850) per vessel per voyage if the vessel has traveled outside of California. Provisions are also included that authorize the Commission's Executive Officer to appoint a technical advisory group (TAG) to provide recommendations with regard to the Fee.

BACKGROUND:
P.R.C. Section 71215 created the Fund and requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Marine Invasive Species Act. It also mandates that the Fee may not exceed one thousand dollars ($1,000) per vessel voyage. This amount may be adjusted for inflation every two years. Under P.R.C. Section 71215(c), the State Board of Equalization shall collect the fee from the owner or operator of each vessel that arrives at a California port of place from a port or place outside 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

CALENDAR PAGE
MINUTE PAGE

California or moved outside the U.S. Exclusive Economic Zone (EEZ) prior to arrival at the subsequent California port or place.

The Fee was established initially at $600 per voyage and has been reset (increased or decreased) via regulations several times since January 1, 2000. For example, in 2003, the Governor and the Legislature reauthorized, expanded and renamed the law (Division 36. Marine Invasive Species Act, Chapter 491, Statues of 2003). Accordingly, programs and budgets expanded as did the Fee. In 2006, the Governor and the Legislature again reauthorized and further expanded the law and removed the 2010 sunset date. As a result, programs and budgets further expanded. Annual review of the Fund status by Board of Equalization and State Land Commission staff predicts that under conservative assumptions, a continued Fee set at $400 will not cover budgetary needs beginning mid-2008.

Representatives from the community subject to the fee have concurred with the imposition of a flat fee for each voyage. Since January of 2000, the Commission Staff has met periodically with representatives from the regulated community in a Technical Advisory Group (TAG). In 2000, the TAG took note of the fact that the budgets for the various programs through the end of 2003 have largely been established, so costs are essentially fixed. As a result, any reduction in the Fee for some would result in an increase in the Fee for others. The TAG therefore recommended a flat Fee for everyone.

The amount of the Fee charged earlier was based upon an analysis that entailed a number of assumptions, the primary one being that the financial needs for the program will be in accordance with the Budget Change Proposals, which have been submitted to date. The other two assumptions were that the State would see about 8500 voyages each year against which the Fee could be levied and that the State would likely see a compliance rate of approximately 95 percent. These figures were based upon the experience of the shipping community and the Board of Equalization (BOE). Calculations were therefore based upon 8500 qualifying voyages per year. With these assumptions, the Commission (CSLC) and the TAG concluded that the Fee could be set at $400 per voyage.

In August 2007, staff from BOE and CSLC, after reviewing costs and other factors, recommended that the Fee be reset to $700 per qualifying voyage. The TAG was asked to respond to this proposed Fee increase in October and November 2007. During the October 2007 meeting, TAG members asked the staff to consider an alternative Fee model, which would establish a base fee and an annually adjusted qualifying voyage fee based on the consumer price index (CPI Fee Model). Staff

investigated this fee model and determined that it would have similar affects on the Fund as the existing fee model. Staff presented both models to TAG members in November 2007. The majority of TAG members recommended Staff adopt the CPI Fee Model. This regulatory action would, for the first 12-month period of this regulation, commencing on or about April 1, 2008, establish the Base Fee of six hundred and twenty five dollars ($625) per vessel voyage. After the first 12-month period of this regulation, the owner or operator of a vessel shall pay an amount per qualifying voyage, called the "Annual Qualifying Voyage Fee", which is determined in accordance with subsection (b) entitled "Annual Qualifying Voyage Fee Adjustment Formula", of this Article.

The amount previously charged for the Fee was based upon an analysis that entailed a number of assumptions, the primary one being that the financial needs for the program will be in accordance with the Budget Change Proposals, which have been submitted to date. These call for expenditures of $4,043,000 in Fiscal Year (FY) 2007/2008, $ 4,493,000 in FY 2008/2009, $4,536,000 in FY 2009/2010, and $4,450,000 in FY 2010/2011. The other two assumptions were that the State would see about 7350 voyages each year against which the Fee could be levied, and that the State would likely see a compliance rate with Fee submittal of approximately 95 percent. These figures were based upon the experience of the shipping community and the BOE. Calculations were therefore set using 7000 qualifying voyages per year. With these assumptions, the Commission and the TAG concluded that the Base Fee could be set at $625 per voyage.

During an annual review of the Fund status by BOE and Commission staff in January 2009, several assumptions used to set the Fee at $625 per voyage were reevaluated. Currently, the State is seeing a compliance rate of approximately 98 percent; however, due to the global economic crisis the number of qualifying voyages arriving to California annually has decreased dramatically to approximately 5700. Projections provided by the maritime industry suggests further decreases in billable voyages to an estimated 5350 voyages annually through the year 2010. Based on the current Fee amount of $625 per voyage, and the revised assumptions, projections estimate that revenues will not meet the costs of the Program mandated under the Act. Utilizing the revised assumptions, the Commission and the TAG concluded that the Fee could be set at eight hundred fifty dollars ($850) per qualifying voyage, beginning on or about October 1, 2009. The TAG also decided that the CPI model was inadequate for adjusting the Fee, given its inability to address fluctuations in variables that affect revenues, such as Fee compliance rates and the volume of vessel traffic to California ports. The TAG therefore recommended returning to the flat fee model instead of the CPI Model. The Commission and the TAG concluded that this fee model would be sufficient to cover the

program costs though FY 2010/2011.

The amount of the fee under this Law 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.

STATUTORY AND OTHER REGULATIONS:

A. P.R.C. Sections 71200 through 71271

PERMIT STREAMLING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

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

2. The proposed regulatory amendments do not affect small businesses as defined in Government Code section 11342, subsection (h), because all affected businesses are transportation and warehousing businesses having annual gross receipts of more than $1,500,000, as specified under Government Code section 11342, subsection (h)(2)(I)(vii).

EXHIBIT:

A. Proposed Amendments.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY

PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

2. FIND THAT THE AMENDMENT WILL NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE SECTION 11342(h), BECAUSE ALL AFFECTED BUSINESSES ARE TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAN $1,500,000, AS SPECIFIED UNDER GOVERNMENT CODE SECTION 11342(h)(2)(I)(VII).

3. FIND THAT THE AMENDMENT WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITHIN CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.

4. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE AMENDMENT IS PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.

5. ADOPT THE PROPOSED AMENDMENT, WHICH WOULD AMEND TITLE 2, DIVISION 3, CHAPTER 1, ARTICLE 4.5, SECTION 2271, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE ON OR ABOUT OCTOBER 1, 2009.

6. AUTHORIZE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.

7. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND AMENDMENTS AND TO ENSURE THAT THE AMENDMENT BECOMES EFFECTIVE.

CALENDAR PAGE
MINUTE PAGE

8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT AT SUCH TIME AS IT BECOMES EFFECTIVE.

CALENDAR PAGE
MINUTE PAGE