

STAFF REPORT

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CONSIDER OPPOSING PROVISIONS OF SB 69 (WIENER) THAT WOULD REQUIRE THE STATE WATER RESOURCES CONTROL BOARD, INSTEAD OF THE STATE LANDS COMMISSION, TO ADOPT REGULATIONS RELATED TO BALLAST WATER DISCHARGE PERFORMANCE STANDARDS

SUMMARY:

Provisions of SB 69 (Wiener) would require the State Water Resources Control Board, instead of the Commission, to adopt ballast water discharge regulations that require an owner or operator of a vessel capable of carrying ballast water to comply with interim ballast water discharge performance standards by 2021 and a final performance standard of zero detectable living organisms by 2030. SB 69 will be heard in the Senate Natural Resources and Water Committee on April 9, 2019.

DISCUSSION:

In 2006, the Legislature established aspirational ballast water discharge performance standards for large oceangoing vessels entering state waters, along with a requirement that the Commission report to the Legislature on the efficacy, availability, and environmental impacts of ballast water treatment technologies before those standards became effective. The Commission issued its first report to the Legislature in 2007, finding that technology was not available to meet California's interim ballast water discharge performance standards. Since then, staff has produced [five comprehensive reports](#) that have made similar conclusions—there are no ballast water treatment technologies available to enable implementation of the interim ballast water discharge standards for all vessels.

Existing law requires that the interim ballast water discharge standards are implemented on January 1, 2020. In its [2018](#) report to the Legislature, Commission staff reviewed testing data for 15 shipboard ballast water management systems. Based on that data, staff determined that shipboard technology cannot meet the interim California performance standards.

Furthermore, there are no shore-based ballast water treatment facilities in California to enable vessels to comply with the standards. The Commission funded a study to assess the feasibility of shore-based ballast water treatment in California. The study was finalized in April 2018 and is currently the most

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comprehensive review of shore-based treatment options in California. The authors concluded that a network of treatment barges would be the best shore-based approach to enable vessels to meet the California standards. According to the study, such an approach would not come without impacts or costs. A barge-based network could lead to increased air emissions and congestion at California's ports. The long-term cost of building and operating those barges is estimated at \$1.45 billion, and vessel operators will bear an additional \$2.17 billion to outfit their vessels to discharge ballast to those barges. The study authors estimated that it will take a minimum of nine years to implement such a treatment network once the funding is secured.

Due to the lack of available shipboard and shore-based treatment options, Commission staff are actively investigating the role of novel approaches to ballast water management, including pairing existing management strategies (e.g., ballast water exchange) with shipboard treatment systems to improve on the performance of the best available technologies. Commission staff is also working with the California Maritime Academy to support research on the training ship Golden Bear during the summer of 2019 that will gather data on the efficacy of exchange plus treatment. These data are critical for California to effectively engage in the upcoming federal rulemakings that will occur in the coming years as the federal Vessel Incidental Discharge Act is implemented.

The Commission, through its professional scientists, has gained extensive experience in the evaluation of ballast water treatment technologies over the past 13 years—since California's standards were adopted. Commission staff has amassed a network of technical experts and research laboratories, including, among others, the Smithsonian Environmental Research Center, Moss Landing Marine Laboratories, California State University Maritime Academy, Michigan State University and the Royal Netherlands Institute for Sea Research to help address technical questions on treatment technology performance. The Commission has also funded numerous projects to assist with the installation and evaluation of shipboard ballast water management systems on vessels and to evaluate the feasibility and performance of shore-based treatment and other contingency or emergency treatment measures. should initial options fail.

Transferring authority to the State Water Resources Control Board to implement California's ballast water discharge standards, as proposed in SB 69, while delaying implementation for one year will not solve the problem. California cannot implement the existing interim ballast water discharge standards owing to the lack of available treatment technologies to enable vessels to comply with the discharge standards. California has faced challenges in the review of ballast water treatment technologies because of factors outside of California's control. The U.S. Coast Guard process for approving shipboard ballast water

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management systems, the most detailed evaluation protocol in the world, was developed to determine the ability of systems to meet federal ballast water discharge standards, which are weaker than the California performance standards. The U.S. Coast Guard refuses to release the test data for approved systems. Another hindrance is the lack of suitable methods to analyze ballast water samples for some of the interim performance standards. The Commission will remain unable to determine if any ballast water treatment technologies can meet California's performance standards unless there are future scientific breakthroughs on methods to assess the concentration of all living organisms for the applicable size classes.

Transferring authority from an agency with decades of experience to one with less expertise is counterproductive and will not compel technology development. What it will do is detract from the goal of moving California and the nation toward the most protective and implementable ballast water management requirements. Importantly, this transfer of authority would happen at a time when California can least afford it. Now that the federal government has enacted the Vessel Incidental Discharge Act, California needs to marshal its core expertise to pursue all options to regain as much of California's authority as possible.

Marine Invasive Species Program

For two decades, the Commission has administered California's Marine Invasive Species Program to prevent the introduction of nonindigenous species into state waters. The Commission is a recognized leader throughout the world in the fields of vessel vector management and marine invasive species prevention, recently becoming the first government agency in the world to implement mandatory biofouling management regulations—an important step in the holistic management of vessels as the pathway of aquatic species introductions. International, federal, and state entities and governments have long recognized the Commission's leadership in this realm.

The mandate of the Marine Invasive Species Program is "to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable." The Commission and its sister agencies within the Marine Invasive Species Program—the State Water Resources Control Board, Department of Fish and Wildlife, and Department of Tax and Fee Administration, take that mandate seriously and work proactively with environmental organizations, research universities/organizations, the shipping industry, and state and federal agencies to develop strong, internationally-recognized science-based laws and regulations to manage vessel vectors of species introductions.

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Program accomplishments and successes are summarized in the Commission's [biennial reports](#) to the Legislature on the Marine Invasive Species Program.

Vessel Incidental Discharge Act

For many years, the shipping industry has advocated for enactment of one uniform national standard for ballast water discharge to replace the perceived patchwork of state and federal ballast water management requirements. The legislation it sought, the Vessel Incidental Discharge Act (VIDA), failed repeatedly in recent years. Commission staff vigorously fought past versions of VIDA, working closely with Congress to protect California's authority to establish its own standards. But in December 2018, VIDA became law. When fully implemented, VIDA will preempt California's authority to establish or implement state-specific ballast water management requirements, including ballast water discharge standards. Although the bill was signed in December 2018, preemption of state authority will not occur until after the U.S. EPA (setting national discharge standards) and the U.S. Coast Guard (establishing implementation and enforcement protocols) adopt and implement regulations. These regulations may take four years or more to adopt.

During VIDA negotiations, staff worked closely with Governor Brown's office, the California Natural Resources Agency, the State Water Resources Control Board, the California Attorney General's office, state agency partners (Oregon, Washington, Hawaii, Michigan, Wisconsin, Minnesota, New York, and Rhode Island), environmental organizations, and congressional staff to protect as much of California's existing authority as possible. Staff was successful in preserving authority to impose state fees to support program operations, inspection and enforcement authority, and notification and vessel reporting requirements—authorities that were absent from initial versions of VIDA.

The Commission is committed to continue leveraging all available resources to proactively move the state expeditiously toward the elimination of the discharge of nonindigenous species into California waters—its mandate under the Marine Invasive Species Act. There is no doubt that the Commission is displeased about the lack of technological progress for ballast water treatment technology, but there are legitimate impediments to technological progress that are outside of government's control. There is no evidence that transferring authority to another government agency, as proposed in SB 69, will solve the lack of technology problem or improve current law.

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OTHER PERTINENT INFORMATION:

On March 22, 2019, staff was copied on an opposition letter to AB 912, legislation the Commission is sponsoring to change the implementation date of California's ballast water discharge performance standards, authorize the Commission to enforce federal ballast water discharge standards, and authorize the Commission to sample ballast water and biofouling for research purposes. On March 26, 2019, AB 912 was pulled from the Assembly Environmental Safety and Toxics Committee hearing agenda—the day it was scheduled to be heard.

STAFF RECOMMENDATION:

Commission staff recommends that the Commission oppose the provisions of SB 69 (Wiener) that would require the State Water Resources Control Board, instead of the State Lands Commission, to adopt regulations related to ballast water discharge performance standards unless SB 69 is amended to delete this portion of the bill.

RECOMMENDED ACTION:

It is recommended that the Commission:

Adopt an oppose unless amended position on SB 69.