

**STAFF REPORT
97**

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**CONSIDER SPONSORING A LEGISLATIVE RESOLUTION TO
DEFEND CALIFORNIA’S AUTHORITY TO PROTECT STATE WATERS
AND PREVENT INVASIVE SPECIES INTRODUCTIONS**

SUMMARY:

In December 2018, as part of the Coast Guard Authorization Act of 2018, the federal government enacted legislation that will preempt California’s authority to establish or implement state-specific ballast water management requirements. The new law is the Vessel Incidental Discharge Act (VIDA). Under VIDA, the U.S. Environmental Protection Agency (U.S. EPA) is responsible for establishing a uniform national standard for ballast water discharge, among other vessel discharges. The U.S. EPA has until December 2020 to adopt vessel discharge regulations, and the U.S. Coast Guard, the entity charged with implementing and enforcing the discharge standards, has 2 years thereafter to adopt implementation and enforcement regulations. State laws remain effective until the U.S. Coast Guard promulgates regulations establishing enforcement protocols.

In February 2017, the Commission opposed VIDA ([Item 66, February 7, 2017](#)). Staff recommends that the Commission direct staff to work with the California Legislature to develop a resolution to oppose federal preemption of California’s authority to protect State waters, memorialize California’s commitment to preserve and strengthen its world-leading program to reduce the risk of aquatic nonindigenous species introductions into State waters, and to consider appropriate actions to overturn or curtail the federal preemption.

BACKGROUND:

Nonindigenous species (NIS) are transported to new environments, intentionally and unintentionally, through human activities, including shipping. Once NIS are established in new environments, they can quickly spread and threaten human health, the economy, and the environment. Attempts to eradicate species after they become established are often unsuccessful and expensive. Prevention of species introductions through vector management is the most effective way to protect California.

In aquatic environments, NIS threaten aquaculture operations, recreational boating, agriculture, water conveyance, commercial and recreational fishing,

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marine transportation, and tourism, among other industries, all of which are essential to California's economy—the fifth largest in the world. Based on data from the National Ocean Economics Program, California's ocean-based economy employed roughly 542,000 people in 2015 and accounted for almost \$44 billion of California's total gross domestic product.

A major pathway for the introduction of NIS is through the discharge of ballast water, which often contains species that are in the water when a ship takes on ballast water at ports around the world. California's ports, including Long Beach, Los Angeles, and Oakland, three of the busiest ports in the nation, are ground zero for NIS introductions into California's coastal and marine waters. The San Francisco Bay is one of the most heavily invaded estuaries in the world. Approximately 80 percent of the over 250 invasive species in California coastal waters are the result of shipping activity at California ports.

The California Marine Invasive Species Program (MISP) is a multi-agency program designed to reduce the risk of introducing NIS into State waters from vessels 300 gross registered tons and above that are capable of carrying ballast water. The Legislature established the Program in 1999 when it enacted the Ballast Water Management for Control of Nonindigenous Species Act and expanded it in 2003 when it enacted the Marine Invasive Species Act. The purpose of the MISP is to move the State expeditiously toward elimination of the discharge of NIS into State waters based on the best available technology economically achievable.

The Commission takes a multi-faceted approach to advancing MISP goals, including:

- Developing sound, science-based policies in consultation with technical experts and stakeholders.
- Tracking and analyzing the ballast water and vessel biofouling management practices of California's commercial vessel fleet.
- Enforcing laws and regulations to prevent NIS introductions.
- Conducting and facilitating outreach to promote information exchange among scientists, regulators, the shipping industry, and other stakeholders.

Staff works closely with other MISP agencies, including the California Department of Fish and Wildlife, the State Water Resources Control Board, and the Department of Tax and Fee Administration. Staff also works closely with state, federal, and foreign entities; technical advisory groups; non-governmental organizations; scientists and researchers; and the shipping industry. This collaboration, a hallmark of the MISP, improves protection of California waters

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from NIS introductions by creating regional and international consistency and a forum to share successes and challenges.

Before VIDA, regulation of ballast water discharges was under the jurisdiction of the U.S. Coast Guard, operating under the authority of the National Invasive Species Act, and the U.S. EPA, operating under the authority of the Clean Water Act. The dual federal agency regulation of vessel discharges led to confusing, and at times conflicting, requirements for vessel NIS management activities.

DISCUSSION:

For years, the shipping industry 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, VIDA, failed repeatedly in recent years. But, in late 2018, after months of negotiations, the President signed VIDA, included as Title IX within S.140, the Frank LoBiando Coast Guard Reauthorization Act of 2018. The law:

- Designates the U.S. EPA as the lead authority to establish national water quality standards for vessel discharges, including ballast water.
- Designates the U.S. Coast Guard as the lead authority to implement and enforce the national standards.
- Preempts state authority to adopt or implement state-specific management requirements or standards for vessel discharges, including ballast water.
- Retains state authority to conduct vessel inspections and enforce the federal ballast water management requirements.
- Retains State authority to collect fees that fund implementation, including enforcement and ballast water management reporting forms from vessels arriving at State ports.

Despite the limited authority that states retain under it, VIDA threatens California's economy, the environment, and the health of its residents by preempting state rights as originally authorized under the National Invasive Species Act and the Clean Water Act. A one-size-fits-all approach to environmental regulation ignores state-specific environments and concerns. California, as with other states, must be able to implement its own protective ballast water management program that works in concert with the federal program to prevent invasive species introductions and safeguard its strong economy and coastal environment.

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OTHER PERTINENT INFORMATION:

This action is consistent with Strategic Goal 1.1, Key Action 1.1.3 of the Commission's Strategic Plan. This Action calls for staff to implement ballast water discharge performance standards and biofouling management strategies that prevent the introduction of NIS into State waters.

RECOMMENDED ACTION:

It is recommended that the Commission:

Direct staff to work with the Legislature to develop a resolution to defend California's authority to protect state waters and prevent invasive species introductions.