

**CALENDAR ITEM
C46**

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| A) | | 02/08/00 |
| | | W 9777.234 |
| |)Statewide | Falkner |
| S) | | Kloman |
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**CONSIDERATION OF A LIMITED DELEGATION OF AUTHORITY
TO THE EXECUTIVE OFFICER REGARDING DISCRETIONARY APPROVALS,
EXCLUDING FEE SETTING, NECESSARY TO IMPLEMENT BALLAST WATER
MANAGEMENT PROGRAMS FOR CONTROL OF NONINDIGENOUS SPECIES**

PROPOSAL

The Commission's Staff proposes that the Commission delegate to the Executive Officer certain discretionary authority over issues relating to ballast water management programs for control of nonindigenous species. Any approvals given under this delegated authority would require confirmation by the Commission in order to remain in effect.

BACKGROUND

On January 1, 2000, the State began a new initiative for the control of nonindigenous species through management of ballast water releases from ships coming into California waters from overseas ports. This new effort is codified in the Public Resources Code in a new division entitled, "Ballast Water Management for Control of Nonindigenous Species" (the Act), comprised of Public Resources Code Sections 71200 through 71216.

The Commission's primary role under the Act is to oversee ballast water management and to monitor compliance with control requirements. Vessels carrying ballast water into California ports after operating outside the United States' Exclusive Economic Zone (the EEZ) must carry out certain specified measures to control release of nonindigenous species within California. The primary control method required is exchange of the ballast water in deep ocean waters (at least 200 nautical miles from shore and more than 2000 meters deep), where there are few nonindigenous species present that can survive in coastal waters. Some alternative methods are permitted under certain specified circumstances.

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As part of its responsibilities, the Commission must exercise certain specified discretionary authority under the Public Resources Code:

- Section 71202(b)(1): Before a passenger vessel may be exempt from the Act, the Commission must determine whether a passenger vessel's functioning ballast water treatment system is at least as effective as ballast water exchange at reducing the risk of transfer of nonindigenous species into State waters.
- Section 71204(a)(3): A vessel may employ an alternative environmentally sound method of ballast water management during a voyage only if, before the voyage begins, the Commission has approved the method and has determined that it is at least as effective as ballast water exchange in removing or killing nonindigenous species.
- Section 71204(a)(4): The Commission must approve any ballast water reception facility.
- Section 71204(a)(5): If the Commission approves, a vessel, under extraordinary conditions, may exchange ballast water in a specified area other than the deep ocean.
- Section 71207(e): The Commission may require any vessel operating in violation of the Act to depart State waters and exchange, treat or otherwise manage the ballast water at a location determined by the Commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel architectural design, equipment failure, or any other extraordinary condition.
- Section 71215(b): The Commission must establish a reasonable and appropriate fee, up to \$1000 per voyage, to fund the programs under the Act.

In most cases, delaying a discretionary action until the Commission has an opportunity to meet may cause substantial hardship to vessel operators. Under certain circumstances, without timely action, an operator may be required to

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travel hundreds of miles out of its intended course simply to complete a deep ocean exchange, even though a perfectly acceptable alternative is available.

Staff therefore proposes that the Commission delegate to the Executive Officer the discretionary authority conferred upon the Commission under the Act. This delegation would be limited in that any approval given by the Executive Officer would remain in effect only until the Commission next has an opportunity to consider and take action on the matter. Furthermore, this delegation would not apply to establishment or modification of the fee for the Exotic Species Control Fund under Public Resources Code Section 71215, because any change in the fee may be accomplished only through a Commission-approved regulatory amendment.

STATUTORY AND OTHER REGULATIONS:

A. Public Resources Code Sections 71200 through 71217

PERMIT STREAMLING ACT DEADLINE:

N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21084 and 14 Cal. Code Regs. 15300.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 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. DELEGATE TO THE EXECUTIVE OFFICER ALL DISCRETIONARY AUTHORITY CONFERRED UPON THE COMMISSION UNDER PUBLIC RESOURCES CODE SECTION 71200 THROUGH 71216, SUBJECT TO THE FOLLOWING LIMITATIONS:

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- A. ANY APPROVAL GIVEN BY THE EXECUTIVE OFFICER IN EXERCISE OF THIS DELEGATED AUTHORITY SHALL REMAIN IN EFFECT ONLY UNTIL THE COMMISSION NEXT HAS AN OPPORTUNITY TO CONSIDER AND TAKE ACTION WITH REGARD TO THE APPROVAL.

- B. THIS DELEGATION SHALL NOT APPLY TO ESTABLISHMENT OR MODIFICATION OF THE FEE FOR THE EXOTIC SPECIES CONTROL FUND UNDER PUBLIC RESOURCES CODE SECTION 71215.