

MINUTE ITEM

This Calendar Item No. 50 was approved as
Minute Item No. 50 by the California State Lands
Commission by a vote of 3 to 0 at its
6-20-05 meeting.

**Minute Item
50**

06/20/05
W 9777.234
M. Falkner
G. Gregory
M. Meier

**CALIFORNIA STATE LANDS COMMISSION
(PARTY)**

Regular Item 50: The Commission listened to a staff report on consideration of regulations governing the management of ballast water vessels. The Commission approved the item as presented with the amendment that staff write a letter to persons or companies qualifying for a safety exemption and equipment so qualifying, by a 3-0 vote.

**CALENDAR ITEM
50**

- A)) Statewide
- S)

W 9777.234
M. Falkner
G. Gregory
M. Meier

**CONSIDERATION OF PERMANENT REGULATIONS GOVERNING THE
MANAGEMENT OF BALLAST WATER FOR VESSELS ARRIVING AT CALIFORNIA
PORTS OR PLACES AFTER DEPARTING FROM PORTS OR PLACES WITHIN THE
PACIFIC COAST REGION**

PROPOSAL

As mandated by Section 71204.5 of the Public Resources Code (P.R.C.) the Commission's Staff is proposing the adoption of permanent regulations titled "Ballast Water Regulations for Vessels Arriving at California Port of Places after Departing from Ports or Places within the Pacific Coast Region." The purpose of these regulations is to establish management practices for ballast water that is taken on by marine vessels in ports or places within the Pacific Coast Region and is to be discharged in a California port or place. This, in turn, would minimize the transport of nonindigenous species (NIS) in ballast water discharged into state waters.

The proposed regulations would implement and make specific the ballast water management requirements under P.R.C. Section 71204.5. Without the regulations, the purpose of the Act as described in P.R.C. Section 71201(d) cannot be achieved. The ballast water management practices prescribed by these proposed regulations are necessary to minimize the transport of Pacific Coast Region NIS into the waters of the State of California.

BACKGROUND

P.R.C. Section 71204.5, which became effective January 1, 2004, requires the Commission adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast

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Region. Under Section 71200(j), "Pacific Coast Region" is defined as all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. Section 71204.5 also mandates the Commission to consider vessel design and voyage duration in developing these regulations. The section further requires adoption of regulations by the Commission that shall be based on the best available technology economically achievable and that shall be designed to protect the waters of the state. Finally, in developing the regulations the Commission may include restrictions or prohibitions on the discharge of ballast water containing nonindigenous species within and outside of estuaries and into ocean areas shown to have a capacity to retain organisms, as appropriate.

A nonindigenous species is an organism that has been transported by humans to locations beyond its natural range. Once a species becomes established in a new area, it can cause severe adverse economic, ecological, and public health consequences in its new habitat. The most infamous example is the zebra mussel (*Dreissena polymorpha*) introduced to the Great Lakes from the Black Sea. They attach to hard surfaces in dense populations that clog municipal water systems and electric generating plants, resulting in costs of approximately a billion dollars a year (Pimentel et al. 2004). The Asian clam (*Potamocorbula amurensis*) spread throughout the San Francisco Bay and its tributaries two years after its introduction, and accounts for up to 95% of living biomass in some shallow portions of the bay floor (Nichols et al., 1990). Like its Great Lakes counterpart, the Asian clam fouls power plant structures, costing approximately a billion dollars per year during the early 80's for control and losses (Lovell and Stone 2005). The Chinese mitten crab, *Eriocheir siensis*, was first sighted in the San Francisco Bay in 1992, and quickly spread through the system, clogging pumping stations and riddling levies with burrows (Rudnick et al. 2000). Costs for control and research were \$1 million in 2000-2001 (Carlton 2001).

The transport of ballast water in marine vessels is recognized as a major vehicle through which aquatic NIS are spread. Ballast water is necessary for many functions related to the trim, stability, maneuverability, and propulsion of large seagoing vessels (Stemming The Tide 1996). Vessels may take on, discharge, or redistribute water during cargo loading and unloading, as they encounter rough seas, or as they transit through shallow coastal waterways. Typically, a vessel will take on ballast water after cargo is unloaded in one port to compensate for the weight imbalance, and later discharge water when cargo is loaded in another. As ballast is transferred from "source" to "destination" ports, so are the many organisms taken into its tanks along

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with the port water. In this fashion, it is estimated that some 7000 plus organisms are moved around the world on a daily basis (Carlton 1999). Current California law requires that vessels originating from places outside of the United States Exclusive Economic Zone (U.S. EEZ) manage ballast water to reduce the discharge of nonindigenous organisms in California waters. However, there is currently no ballast management requirement for vessels that arrive in California ports from places within the U.S. EEZ, and in particular, the Pacific Coast Region, even though research has shown that there is a significant threat for such voyages to facilitate the establishment and spread of NIS throughout a region.

A preliminary analysis of data compiled by the CA Department of Fish and Game in 2002 revealed notable differences in introduced (non-native) species between the port zones of concern (Table 1). Between 66 and 142 introduced species can be found in the Los Angeles/Long Beach port zones and not in the San Diego Harbor area, and between 203 and 315 introduced species found in the San Francisco Bay area have not yet been observed in the Eureka port zone area.

Table 1

Species found in:	LA/LB not SD	SD not LA/LB	SF not Eureka	Eureka not SF
Introduced	66	10	203	30
Cryptogenic (Likely Introduced)	76	7	112	35

*LA/LB = Los Angeles/Long Beach Port Zones, SD = San Diego Port Harbor Zone, SF = San Francisco Port Zone

In 2003, the statutes controlling ballast water management was readopted under the Marine Invasive Species Act, which took effect on January 1, 2004. Although Staff, the regulated community and interested parties were considering potential controls on ballast water transported within the Pacific Coast Region, adoption of regulations specifically addressing that issue was first required by P.R.C. Section 71204.5 under the new Act. The regulated community has been fully aware of that requirement and participated fully in the legislative process leading up to its passage.

In the preparation of these proposed regulations, a workshop, hosted by the West Coast Ballast Outreach Project and Portland State University, took place in March 2002 to gather information on the physical oceanography of the West Coast. As a result of this workshop a draft report was produced outlining recommendations for coastal ballast water management with respect to the physical oceanography of the region. In

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January 2003, the Marine Facilities Division (MFD) of the California State Lands Commission (Commission) and the West Coast Ballast Outreach Project formed a Technical Advisory Group (TAG) to provide input toward the implementation of the provisions of P.R.C. Section 71201.7. The TAG represented a wide cross section of the marine transportation, terminalling, and oil industries together with representatives from maritime shipping associations, state and local harbor organizations, port authorities, state and federal regulators, environmental organizations, and academicians. Following adoption of the new Marine Invasive Species Act and P.R.C. 71204.5, the members of the TAG extensively reviewed the draft report on physical oceanography and draft text of the regulations at two meetings and proposed changes were incorporated into the regulations. In addition, ballast water management guidelines adopted by the UN International Maritime Organization's International Convention for the Control and Management of Ships' Ballast Water and Sediments of February 2004 have been used in these proposed regulations.

SUMMARY OF THE REGULATIONS

The proposed regulations contain five sections of management requirements:

- Section 2280 describes the purpose, applicability and date of implementation
- Section 2281 describes the safety exemption
- Section 2282 defines several key terms used throughout the regulation
- Section 2283 describes the process for submission and approval of alternatives
- Section 2284 describes the ballast water management options, which includes exchange in "near coastal waters".

The requirement to conduct ballast water exchange in "near coastal waters" that are at least 50 nautical miles (nm) from shore, was selected based on input received from the scientific community, maritime industries, and state and federal government management agencies during several workshops. These workshops were held to ensure that decision was founded upon the best scientific information available, while also considering concerns of affected industries. The 50 nautical mile limit incorporates several key issues. Although ballast water exchange at distances more than 200 nm offshore is considered the most biologically prudent to prevent NIS discharge in port, under such a requirement vessels traveling within the Pacific Coast Region could be diverted more than 100 nautical miles (nm) offshore from their normal route. For most voyages, the 50 nm distance would require no course deviation for some vessels and a

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minor deviation for many. Exchange at 50 nm avoids ballast discharge in coastal "retention zones" and at the mouths of estuaries, where currents and tides can carry organisms to shore or sweep them into bays and estuaries. The limit also lies beyond the boundaries of sensitive protected areas, such as Marine Sanctuaries. Further, the maritime industry requested that California's regulation be consistent with other U.S. state, federal and international regulations, in order to avoid confusion that would occur should vessels encounter a patchwork of varying regulations as they traveled across jurisdictions. The 50 nautical mile limit also addressed this request, as Washington, and the International Maritime Organization require that ballast water exchange be conducted 50 nm offshore. Additionally, Oregon has passed legislation that would adopt the 50 nm offshore ballast water exchange requirement by January 2006.

ISSUES OR CONCERNS:

The Commission staff held two public hearings. The first on June 2, 2005 at the Port of Long Beach and the second on June 8, 2005 at the Elihu M. Harris State Building, in Oakland. Two people presented oral statements relevant to the proposed regulatory action. In addition, Commission staff received eight comment letters relevant to the proposed regulatory action. A summary of the comments received to date is included as Exhibit D. The specifics of each comment will be addressed in the Final Statement of Reasons; however, a few concerns and comments have been repeatedly raised and warrant discussion here.

For the vast majority of commercial vessels that fall under this regulation, near-coastal ballast exchange will be the primary method of ballast water management. Currently, it is the best compromise of efficacy, environmental safety, and economically practicality. According to industry representatives, the vast majority of vessels are capable of conducting exchange, and the management practice does not require any special structural modification to most of the vessels in operation.

The shipping industry has expressed concern that a small minority of vessels and/or commercial shipping routes may be significantly impacted by the proposed regulations. Commission staff recognizes this possibility. These vessels and/or commercial shipping routes can be categorized in two ways. The first are vessels that, due to special safety circumstances, are unable to perform ballast water management as described in Article 4.5, Section 2284 of the proposed regulation. For example, ballast water exchange as outlined in the regulations may pose a serious personnel safety

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concern for tugs and barges. Safely moving a crew from a small boat to a barge could pose a serious safety risk. To address this issue, a provision (Section 2281) is included in the regulation, ensuring that the safety of the vessel, its crew, or its passengers is not compromised by the management requirements specified in the PRC.

The second general concern relates to a minority of vessels, for which compliance with the proposed ballast water management requirements may present some hardship not related to safety. To address this issue, a petition process has been included in the Rulemaking package that would allow impacted entities to present individual hardship cases and associated alternative ballast management proposals to the Commission. This section is necessary to provide flexibility for the Commission to consider special hardship cases from the maritime industry, and associated alternative management proposals, on a case-by-case basis, while providing a formal public notification and/or review process.

A third concern is related to the "shared water" designation. It has been suggested that the proposed regulations should include geographically extensive shared water designations similar to those used in Oregon and Washington. For example, for transits between Los Angeles and San Diego, and for voyages between the San Francisco Bay-Delta to Eureka, the industry has requested various relaxations to the requirement for exchanging ballast at locations 50nm offshore and 200 m depth. In response to similar comments voiced at the April 26th, 2005 commission meeting, Lieutenant Governor Bustamante indicated that science would guide the final decision.

In consideration of these concerns, staff subsequently contacted several scientific experts, reviewed relevant scientific literature, and completed preliminary analyses to address the issue. In summary, the best available information strongly indicates that estuarine (bay/port) ballast water should not be transported between California ports, and this includes voyages between the specifically mentioned short-haul voyages.

- Natural transport of organisms between estuaries appears to be very low, in the absence of human activity.
- Short coastal voyages are more likely to transport organisms in good physical condition, maximizing chance for establishment in a new area.
- The San Francisco Bay estuary is one of the most highly invaded areas of the world, and is likely to act as a "hub" from which non-indigenous species can

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spread to other areas of California.

- Many non-indigenous organisms found in one of the aforementioned ports are not yet found in the other. The potential for their continued spread should be minimized.
- Some non-indigenous species in San Francisco Bay are clearly problematic or are found in very high numbers, and have not yet been found in Humboldt Bay. Examples include the Chinese mitten crab and the Asian clam.
- The region between San Diego and Point Conception is an oceanographic "retention zone" where water re-circulates for extended periods. These zones have the capacity to retain organisms released in them, and oceanographers have explicitly recommended avoiding ballast exchange in them.

Several commenters have suggested the inclusion of language stating that a vessel should not be required to deviate from its intended voyage or unduly delay its voyage to comply with ballast water management. The International Maritime Organization (IMO) has adopted recommended guidelines for this issue containing such language with regard to deviation and undue delay. Staff feels that, while the language may be appropriate for a negotiated international recommendation or guideline, it is wholly insufficient for a regulation that must meet the mandate of P.R.C. Section 71204.5. Staff has been unable to find any data with regard to compliance with the IMO guideline, but anecdotal evidence strongly suggests that the "undue delay and deviation" exemption is used readily, thereby rendering the guideline of little value. Without further contingencies and definition, a small deviation or minor delay in an intended voyage could easily be claimed, exempting those voyages and significantly weakening the ability of this regulation to effectively prevent or minimize the introduction and spread of NIS. One may consider analogous to a speed limit that prohibits driving over the posted speed "...unless it is inconvenient." The inclusion of the language, that would allow noncompliance in the event that it would necessitate deviation from an intended voyage or undue delay, puts the decision to comply entirely in the hands of the regulated community, not the regulatory agency. If there were a clear definition of an acceptable deviation or undue delay, it may be possible to craft an enforceable regulation. However, the commenters suggesting the language have not provided such definitions. Therefore, protection of the State's waterways from nonindigenous species, as required under P.R.C. Section 71204.5, would not be assured if such a vague, undefined and lenient exemption were allowed. Additionally, it is believed that without

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sufficient definition, this language would not meet the "Clarity Standard" required in the Administrative Procedures Act. As an alternative, Staff has included a petition process, under Section 2283, that would allow impacted entities to present individual hardship cases and associated alternative ballast management proposals to the Commission. If compliance with the regulation would clearly cause significant hardship, then the Commission and the affected operator could determine what course of action could be taken as an appropriate alternative to meet the mandate of the statute while at the same time limiting or eliminating the hardship.

Finally, one commenter suggested that Staff include in the proposed regulations, a provision requiring an evaluation of these regulations and their impact on the shipping industry, six to twelve months after their implementation. While Staff disagrees with the need to include such a provision in the regulation, Staff does agree that the effectiveness of the proposed regulations should be evaluated on a regular basis. To that end, Staff recommends that the Commission direct Staff to review and evaluate the impact of the amendment on the regulated community 12 months after its implementation date and report back to the Commission on its findings. Also, the Act already requires the Commission to evaluate, summarize, and report to the Legislature and the public on the status of the Program, including the effectiveness of adopted regulations. This report is due biennially, with the next scheduled for January 2007.

STATUTORY AND OTHER REGULATIONS:

A. Public Resources Code Section 71200 through 71271

PERMIT STREAMLINING 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.

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

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

EXHIBITS:

- A. Proposed Amendment.
- B. Initial Statement of Reasons
- C. Notice of Proposed Rulemaking
- D. Summary of Comments

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. 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 WITH CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.

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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 AMMEND ARTICLE 4.6, SECTION 2280 - 2284, TO TITLE 2, DIVISION 3, CHAPTER 1, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE 180 DAYS AFTER THEY HAVE BEEN FILED WITH THE SECRETARY OF STATE.
6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.
7. DIRECT THE 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 BECOME EFFECTIVE.
8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT AT SUCH TIME AS IT BECOMES EFFECTIVE.
9. DIRECT COMMISSION STAFF TO EVALUATE THE IMPACT OF THE AMENDMENT ON THE SHIPPING INDUSTRY 12 MONTHS AFTER ITS IMPLEMENTATION DATE AND REPORT BACK TO THE COMMISSION ON THEIR FINDINGS.

Title 2, Division 3, Chapter 1,

Article 4.6 Ballast Water Regulations for Vessels Arriving at California Ports or Places after Departing from Ports or Places within the Pacific Coast Region

Section 2280. Purpose, Applicability, and Date of Implementation.

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.6 of the California Code of Regulations 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.
- (b) The provisions of Article 4.6 apply to all vessels arriving at a California port or place carrying ballast water from another port or place within the Pacific Coast Region. For the purposes of Article 4.6 all ports and places in the San Francisco Bay area east of the Golden Gate bridge including the Ports of Stockton and Sacramento, shall be construed as the same California port or place; and the Ports of Los Angeles, Long Beach and the El Segundo marine terminal shall be construed as the same California port or place.
- (c) The provisions of Article 4.6 do not apply to vessels that arrive at a California port or place after departing from ports or places outside of the Pacific Coast Region.
- (d) The provisions of these regulations become effective 180 days after they have been filed with the Secretary of State.

Authority: Public Resources Code Sections 71201.7, 71203, and 71204.5

Reference: Public Resources Code Sections 71203 and 71204.5.

Section 2281. Safety of Ballasting Operations.

- (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.
- (b) (1) The master, operator, or person in charge of a vessel is not required by this provision to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in subsection (b)(1) is made, the master, operator, or person in charge of the vessel shall take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact the waters of the state.

(c) Nothing in this provision relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

Authority: Public Resources Code Sections 71201.7, 71203, and 71204.5

Reference: Public Resources Code Sections 71203 and 71204.5.

Section 2282. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this Article:

(a) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.

(b) "Commission" means the California State Lands Commission.

(c) "Exchange" means to replace the water in a ballast tank using either of the following methods:

(1) "Flow through exchange," which means to flush out ballast water by pumping three full volumes of near-coastal water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.

(2) "Empty/refill exchange," which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with near-coastal waters.

(f) "Near-coastal waters" means waters that are more than 50 nautical miles from land and at least 200 meters (656 feet, 109 fathoms) deep.

(g) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.

(h) "Vessel" means a vessel of 300 gross registered tons or more.

Authority: Public Resources Code Sections 71201.7 and 71204.5

Reference: Public Resources Code Sections 71200 (e), (j) and (n), 71201, 71201.7 and 71204.

Section 2283. Alternatives.

(a) Petitions for Alternatives.

(1) Any person subject to these regulations may submit a petition to the Commission for alternatives to the requirements of Article 4.6 as applied to the petitioner.

(2) All petitions for alternatives must be submitted in writing. A petition may be in any form, but it must contain all data and information necessary to evaluate its merits.

(b) Approval of Alternatives.

(1) The Commission may approve any proposed alternatives to the requirements of Article 4.6 if it determines that the proposed alternatives will fulfill the purpose of these regulations as outlined in subsection (a) of Section 2280 of this Article.

(2) If the Commission approves any proposed alternatives under this section, a letter of approval shall be issued to the petitioner setting forth the findings upon which the approval is based.

(3) The Commission may withdraw the letter of approval of any alternative requirements at any time if it finds that the person or persons subject to these regulations have not complied with the approved alternative requirements.

(4) Withdrawal of a letter of approval under this section shall be effective upon receipt by the petitioner of written notification of the withdrawal from the Commission.

Authority: Public Resources Code Sections 71201.7 and 71204.5

Reference: Public Resources Code Sections 71201, 71201.7, 71204 and 71204.5

Section 2284. Ballast Water Management Requirements

- (a) The master, operator, or person in charge of a vessel that arrives at a California port or place from another port or place within the Pacific Coast Region shall employ at least one of the following ballast water management practices:
- (1) Exchange the vessel's ballast water in near-coastal waters, before entering the waters of the state, if that ballast water has been taken on in a port or place or within the Pacific Coast region.
 - (2) Retain all ballast water on board the vessel.
 - (3) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.
 - (4) Discharge the ballast water to a reception facility approved by the commission.
 - (5) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

Authority: Public Resources Code Section 71201.7 and 71204.5

Reference: Public Resources Code Sections 71200, 71201.7, 71204 and 71204.5

STATE LANDS COMMISSION

REGULATIONS GOVERNING THE MANAGEMENT OF BALLAST WATER FOR VESSELS ARRIVING AT CALIFORNIA PORTS OR PLACES AFTER DEPARTING FROM PORTS OR PLACES WITHIN THE PACIFIC COAST REGION

Initial Statement of Reasons

Title 2, Division 3, Chapter 1, Article 4.6

SPECIFIC PURPOSE OF THE REGULATION

As mandated by Section 71204.5 of the Public Resource Code, the purpose of this regulation is to establish management practices for ballast water that is taken on by marine vessels in ports or places within the Pacific Coast Region and is to be discharged in a California port or place. This, in turn, would minimize the transport of nonindigenous species in ballast water discharged into state waters.

NECESSITY

A nonindigenous species (NIS) is an organism that has been transported by humans to locations beyond its natural range. Once a species becomes established in a new area, it can cause severe adverse economic, ecological, and public health consequences in its new habitat. The transport of ballast water in marine vessels is recognized as a major vehicle through which aquatic NIS are spread. Current California law requires that vessels originating from places outside of the United States Exclusive Economic Zone (U.S. EEZ) manage ballast water to reduce the discharge of nonindigenous organisms in California waters. However, there is currently no ballast management requirement for vessels that arrive in California ports from places within the U.S. EEZ, and in particular, the Pacific Coast Region, even though research has shown that there is a significant threat for such voyages to facilitate the establishment and spread of NIS throughout a region.

The ballast water management practices prescribed by these proposed regulations are necessary to minimize the transport of Pacific Coast Region NIS into the waters of the State of California.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

Barth, J., Collins, C., Hickey, B. 2003. West Coast Oceanography: Implications for Ballast Water Exchange, Draft Report prepared for West Coast Ballast Outreach Project. McDowell, K, and Sytsma M. Ed. San Francisco, CA. 36 pgs.

Carlton, James. Williams College. (personal communication, 12/13/2004).

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Cohen, Andrew. San Francisco Estuary Institute. (personal communication, 12/13/2004).

Crooks, Jeffrey. Tijuana Estuary National Estuarine Research Reserve. (personal communication, 12/14/2004).

Kimmerer, Wim. Romberg Tiburon Center, San Francisco State University. (personal communication, 12/15/2004).

Lavoie, D.M., L.D. Smith, G.M. Ruiz. 1999. The potential for Intracoastal Transfer of non-indigenous species in the Ballast Water of Ships. *Estuarine, Coastal, and Shelf Science*. 48: 551-564.

Mikel T.K., Velarde, R.G., Ranasinghe, J.A., Weisberg, S.B., Montagne, D.E., Cadien, D.B., Smith, R.W., Dalkey, A. 2004. The prevalence of non-indigenous species in southern California embayments and their effects on benthic macroinvertebrate communities. Southern California Coastal Water Research Project. Annual Report 2001-2002.. 246-252.

Parsons, M.G. 1998. Flow-through ballast water exchange. *Society of Naval Architects and Marine Engineers Transactions*. 106: 485-493.

Ruiz, G.M., J.T. Carlton, E.D. Grosholz, A.H. Hines. 1997. Global invasions of marine and estuarine habitats by non-indigenous species: Mechanisms, extent and consequences. *American Zoologist*. 37: 621-632.

Zhang, F., and Dickman, M. 1999. Mid-Ocean exchange of container vessel ballast water. 1: Seasonal factors affecting the transport of harmful diatoms and dinoflagellates. *Marine Ecology Progress Series*. 176: 243-251.

In the preparation of these proposed regulations, the Marine Facilities Division (MFD) of the California State Lands Commission (the Commission) and the West Coast Ballast Outreach Project formed a Technical Advisory Group (TAG) in January 2003 to provide input toward the implementation of the provisions of Public Resources code (P.R.C.) §§71201.7. The TAG represented a wide cross section of the marine transportation, terminalling, and oil industries together with representatives from maritime shipping associations, state and local harbor organizations, port authorities, state and federal regulators, environmental organizations, and academicians. The members of the TAG extensively reviewed draft text of the regulations at two meetings and proposed necessary changes to text and requirements of the regulations. In addition, ballast water management practices adopted by the United Nations International Maritime Organization's International Convention for the Control and Management of Ships' Ballast Water and Sediments of February 2004 have been used in these proposed regulations.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

The possibility for exchanging ballast water in waters at least 200 m deep, and outside of "no-discharge zones" consisting of retention zones and marine protected areas was considered. However, the delineation of boundaries around these irregularly shaped, irregularly spaced areas combined with specific depth requirements would create a complex geographic patchwork where ballast exchange could occur in some areas and would be prohibited in others. Such a regulation would also be inconsistent with regulations in neighboring Pacific Region states and with regulations established by the International Maritime Organization. It was decided by members of the Technical Advisory Group that such a scenario would pose unreasonable difficulties for mariners attempting to comply as well as for enforcement.

SMALL BUSINESS IMPACTS.

The commission finds that the adoption of Title 2, Division 3, Chapter 1, Article 4.6 will not have a significant adverse impact on small business. None of the businesses that will be governed by these proposed regulations can be considered "small business" as defined in Government Code Section 11342.610.

Title 2, Division 3, Chapter 1, Article 4.6

The following is the initial statement of reasons for each of the regulations. Prior to the explanation for each provision, the text of the regulation is set forth indented and underlined.

Ballast Water Regulations for Vessels Arriving at California Ports or Places after Departing from Ports or Places within the Pacific Coast Region

Section 2280. Purpose, Applicability, and Date of Implementation.

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.6 of the California Code of Regulations 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.

SPECIFIC PURPOSE OF THE REGULATION

This regulation addresses the overall intent of the proposed regulations in Article 4.6

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NECESSITY

PRC §71201.7 authorizes the Commission to adopt regulations to implement the provisions of the amendments of the Marine Invasive Species Act (the Act). §2280(a) clearly states the purpose of the regulation.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

- (b) The provisions of Article 4.6 apply to all vessels arriving at a California port or place carrying ballast water from another port or place within the Pacific Coast Region. For the purposes of Article 4.6 all ports and places in the San Francisco Bay area east of the Golden Gate bridge including the Ports of Stockton and Sacramento, shall be construed as the same California port or place; and the Ports of Los Angeles, Long Beach and the El Segundo marine terminal shall be construed as the same California port or place.

SPECIFIC PURPOSE OF THE REGULATION

This provision specifies the vessels and voyages to which these regulations apply. It further clarifies applicability for two multiple port regions in California, by designating them each as single "ports" or "places". For the purposes of this regulation, all ports and places in the San Francisco Bay area, and upstream from the Golden Gate Bridge to the port of Sacramento, will be considered a single "port or place". Likewise, the Ports of Los Angeles, Long Beach and El Segundo shall be construed as a single port or place.

NECESSITY

Existing statutes that require ballast water management practices for vessels that arrive in California ports or places from outside the U.S. EEZ did not prescribe practices for vessels arriving at California ports or places after departing from ports or places within the U.S. EEZ and the Pacific Coast Region. Therefore, it is necessary to clearly identify the vessels to which these regulations apply.

The 'port or place' designation applied to the San Francisco Bay/San Joaquin Delta, and to the Los Angeles/Long Beach/El Segundo Port complexes are necessary due to the logistical and economic difficulties expected for many vessels in the absence of such a designation. It is anticipated that near-coastal ballast water exchange (at 50 nm from shore) will be the sole management option feasible for the majority of vessels. Without the 'port or place' designations presented here, the 50 nm requirement would

be problematic for a vessel transiting between ports contained within a single port region (i.e. the San Francisco Bay/Delta region). For example, a vessel traveling from Oakland to Stockton that had to discharge ballast for navigational purposes, would otherwise be required to leave San Francisco Bay and travel 50 nautical miles offshore before returning to the Bay and continuing inland to Stockton. Scientific experts consulted agreed that, biologically, the designation was reasonable given the current knowledge of NIS dispersal within an estuary, and given the logistical realities of vessel voyage patterns. This provision is therefore necessary to avoid unreasonable burdens for vessels transiting entirely within these multiple port regions.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

(c) The provisions of Article 4.6 do not apply to vessels that arrive at a California port or place after departing from ports or places outside of the Pacific Coast Region.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this provision is to make clear that the regulations will not apply to vessels that arrive at a California port or place after departing from a port or place outside the Pacific Coast Region.

NECESSITY

This provision differentiates between the vessels to which the regulations will apply and those to which they will not apply, depending on their port or place of departure prior to their arrival at a port or place in California. Existing legislation requires that vessels entering California from ports or places outside of the US EEZ be subject to the ballast water management requirements of PRC §§ 71204.2. Upon adoption of this proposed rulemaking, vessels entering California from ports or places outside the Pacific Coast Region are subject to the ballast water management requirements of PRC §§ 71204.3. This provision clarifies to whom these requirements apply.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

- (d) The provisions of these regulations become effective 180 days after they have been filed with the Secretary of State.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this provision is to make clear that the effective date of the regulations.

NECESSITY

This provision will obviate ambiguity.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

Section 2281. Safety of Ballasting Operations.

- (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.
- (b) (1) The master, operator, or person in charge of a vessel is not required by this provision to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.
- (2) If a determination described in subsection (b)(1) is made, the master, operator, or person in charge of the vessel shall take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact the waters of the state.
- (c) Nothing in this provision relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

SPECIFIC PURPOSE OF THE REGULATION

This regulation describes special safety circumstances under which a vessel may not be required to perform ballast water management as directed in Article 4.6 of section 2284. It identifies the person(s) responsible for determining if a vessel has encountered such a circumstance, the person(s) responsible for the safety of the vessel and persons on board, and describes the obligations a vessel must strive to fulfill on those occasions.

NECESSITY

These provisions are prescribed directly by PRC §71203, and are reiterated here to maintain the continuity and clarity of Article 4.6

Ballast water is needed for the stability and navigation of most vessels. It may be taken in, discharged, or redistributed to compensate for unbalanced cargo, navigate through a channel or beneath a bridge, or to improve stability in rough seas. The process of ballast management, particularly ballast exchange, can place stress on a vessel. In some circumstances, including adverse weather, equipment failure, or because of some vessel designs, these processes can undermine safety. This provision is therefore necessary to ensure that the safety of a vessel, its crew, or its passengers is not compromised by the management requirements specified in the PRC. Should a vessel's master, operator or person in charge determine that the vessel has encountered such a situation, the provision is also necessary to ensure that the vessel makes every feasible effort to minimize nonindigenous species discharge in waters impacting the state, while reasonably maintaining safety.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives which would be more effective in maintaining safety of vessels, crew, and passengers while carrying out the purposes of the proposed regulation, or would be as effective and less burdensome to affected private persons.

Section 2282. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this Article:

- (a) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.
- (b) "Commission" means the California State Lands Commission.

- (c) "Exchange" means to replace the water in a ballast tank using either of the following methods:
- (1) "Flow through exchange," which means to flush out ballast water by pumping three full volumes of near-coastal water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.
- (2) "Empty/refill exchange," which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with near-coastal waters.
- (f) "Near-coastal waters" means waters that are more than 50 nautical miles from land and at least 200 meters (656 feet, 109 fathoms) deep.
- (g) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.
- (h) "Vessel" means a vessel of 300 gross registered tons or more.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of section 2282 is to define several key terms that are used throughout the language of the regulation to describe management requirements and regulation applicability. These definitions ensure that the ballast specific management practices are clear to the shipping industry, and compliance occurs as intended by the regulation.

NECESSITY

All the aforementioned provisions, except Section 2282(f), are defined directly by PRC §71200 and are reiterated here to maintain the continuity and clarity of Article 4.6.

Specific terms are used in the regulation text to describe fundamental components of the regulation, including which vessels and voyages are required to comply, locations where certain management practices may take place, and what constitutes ballast water exchange. Without clarification, many of these terms can be subject to differing interpretation. These definitions, therefore, are necessary to ensure that the presented regulations precisely convey the requirements of this regulation.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

Section 2283. Alternatives.

(a) Petitions for Alternatives.

- (1) Any person subject to these regulations may submit a petition to the Commission for alternatives to the requirements of Article 4.6 as applied to the petitioner.**
- (2) All petitions for alternatives must be submitted in writing. A petition may be in any form, but it must contain all data and information necessary to evaluate its merits.**

(b) Approval of Alternatives.

- (1) The Commission may approve any proposed alternatives to the requirements of Article 4.6 if it determines that the proposed alternatives will fulfill the purpose of these regulations as outlined in subsection (a) of Section 2280 of this Article.**
- (2) If the Commission approves any proposed alternatives under this section, a letter of approval shall be issued to the petitioner setting forth the findings upon which the approval is based.**
- (3) The Commission may withdraw the letter of approval of any alternative requirements at any time if it finds that the person or persons subject to these regulations have not complied with the approved alternative requirements.**
- (4) Withdrawal of a letter of approval under this section shall be effective upon receipt by the petitioner of written notification of the withdrawal from the Commission.**

SPECIFIC PURPOSE OF THE REGULATION

In unusual cases, compliance with the ballast water management requirements described in this regulation may present some hardship not related to safety. It is anticipated that these situations will be infrequent and unique, and should they arise, will affect only a small minority of shipping companies, vessels, or voyage routes. This section describes a process for the submission and approval of petitions for alternatives to Article 4.6, should such cases occur. Alternatives proposed in petitions must fulfill the purpose of the regulation in section 2280 (a), and will be approved or withdrawn by the commission.

NECESSITY

The shipping industry expressed concern that a small minority of vessels and/or commercial shipping routes may be severely impacted by the ballast management requirements presented by these regulations. The uniqueness and rarity of such cases excluded them from direct inclusion into the regulation. Rather, a petition process would allow impacted entities to present individual hardship cases and associated alternative ballast management proposals to the Commission. Additionally, environmental organizations expressed concern that some sort of public notification and/or review process be included in this rulemaking process to ensure that the public is informed on the application of this alternative compliance process. This section is necessary to provide flexibility for the Commission to consider special hardship cases from the maritime industry, and associated alternative management proposals, on a case-by-case basis, while providing a formal public notification and/or review process.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

Section 2284. Ballast Water Management Requirements

- (a) The master, operator, or person in charge of a vessel that arrives at a California port or place from another port or place within the Pacific Coast Region shall employ at least one of the following ballast water management practices:

SPECIFIC PURPOSE OF THE REGULATION

This section offers five specific ballast water management options for vessels that arrive to a California port or place from a port or place within the Pacific Coast Region. Through meetings of a Technical Advisory Committee, the ballast water management options described here have been deemed as the most biologically effective and economically feasible actions that would move expeditiously toward the elimination of the discharge of nonindigenous species into the waters of the state.

NECESSITY

The implementation of ballast water management regulations for vessels traveling within the Pacific Coast Region is mandated by §§71204.5 of the PRC. Currently, vessels traveling wholly within the US EEZ are not subject to ballast management requirements, even though research indicates that ballast water transferred between ports within a region can spread nonindigenous marine, estuarine, and aquatic species.

This section is required to delineate specific ballast water management actions a vessel may conduct to comply with the regulation.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

- (1) Exchange the vessel's ballast water in near-coastal waters, before entering the waters of the state, if that ballast water has been taken on in a port or place or within the Pacific Coast region.

SPECIFIC PURPOSE OF THE REGULATION

This section presents near coastal ballast water exchange as one of five ballast water management practices that a vessel traveling between ports within the Pacific Coast Region may conduct. During exchange, the biologically rich water that is loaded while a vessel is in port or near the coast is exchanged with the comparatively depauperate and inhospitable waters of the open ocean. Scientific research indicates that offshore ballast exchange eliminates 70% - 95% of the organisms originally taken into a tank while at or near port. In addition, most vessels can conduct exchange without any structural modification.

NECESSITY

For the vast majority of commercial vessels that fall under this regulation, open ocean ballast exchange will be the primary method of ballast water management. Currently, it is the best compromise of efficacy, environmental safety, and economic practicality. The vast majority of vessels are capable of conducting exchange, and the management practice does not require any special structural modification to most of the vessels in operation.

The requirement to conduct ballast water exchange in "near coastal waters" that are at least 50 nautical miles (nm) from shore, was selected based on input received from the scientific community, maritime industries, and state and federal government management agencies during several workshops. These workshops were held to ensure that decision was founded upon the best scientific information available, while also considering concerns of affected industries. The 50 nautical mile limit incorporates several key issues. Although ballast water exchange at distances more than 200 nm offshore is considered the most biologically prudent to prevent NIS discharge in port under such a requirement vessels traveling within the Pacific Coast Region could be diverted more than 100 nm offshore from their normal route. For most voyages, the 50 nm distance would require no course deviation for some vessels and a minor deviation for many. Exchange at 50 nm avoids ballast discharge in coastal "retention zones" and

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at the mouths of estuaries, where currents and tides can carry organisms to shore or sweep them into bays and estuaries. The limit also lies beyond the boundaries of sensitive protected areas, such as Marine Sanctuaries. Further, the maritime industry requested that California's regulation be consistent with other U.S. state, federal and international regulations, in order to avoid confusion that would occur should vessels encounter a patchwork of varying regulations as they traveled across jurisdictions. The 50 nautical mile limit also addressed this request, as Washington, and the International Maritime Organization require that ballast water exchange be conducted 50 nm offshore. Additionally, Oregon is considering legislation that would adopt the 50 nm offshore ballast water exchange requirement.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

As an alternative to the requirement to exchange a designated distance offshore, the possibility for exchanging ballast water in waters at least 200 m depth, and outside of "no-discharge zones" consisting of retention zones and marine protected areas, was considered. However, the delineation of boundaries around these irregularly shaped, irregularly spaced areas combined with specific depth requirements would create a complex geographic patchwork where ballast exchange could occur in some areas and would be prohibited in others. Such a regulation would also be inconsistent with regulations in neighboring Pacific Region states and with regulations established by the International Maritime Organization. It was decided by members of the Technical Advisory Group that such a scenario would pose unreasonable confusion for mariners attempting to comply, as well as for enforcement.

(2) Retain all ballast water on board the vessel.

SPECIFIC PURPOSE OF THE REGULATION

This section presents and describes the second of five ballast management practices vessels may conduct. Whenever possible, vessels can refrain from discharging any ballast water into the waters of the state or into waters that impact the state.

NECESSITY

Some vessels on some voyages will be able to complete cargo and navigational operations without discharging any ballast water within California state waters or in waters which impact the state. Retention is, logically, the most effective management technique for eliminating the discharge of nonindigenous species through ballast water. This option is therefore necessary to encourage vessels to retain ballast water on board, whenever it is safe to do so.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

- (3) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

- (4) Discharge the ballast water to a reception facility approved by the commission.

SPECIFIC PURPOSE OF THE REGULATION

These sections present and describe the third and fourth of five ballast management practices vessels may conduct. Ballast water may be treated prior to discharge using shipboard or shore side treatment systems that have been approved by the Commission.

NECESSITY

Though it is anticipated that near coastal exchange will be employed by nearly all vessels subject to this ballast water management regulation, it is widely considered an interim ballast water management tool due to several operational limitations. An effective exchange can take several hours to complete, and in some circumstances, may not be possible without compromising safety (i.e. adverse sea conditions, antiquated vessel design). In the future, a vessel would ideally utilize alternative ship-based or shore side treatment systems that reduce organisms in ballast water as well as or better than open ocean exchange. The development of these systems has been encouraged through government financial and regulatory incentives, and several are currently in conceptual or experimental testing stages. None, however, are available for widespread application. These sections are necessary in the event that effective alternative treatment technologies are available prior to the sunset of AB 433 on January 1, 2010. They are also necessary to encourage private and industry investment in the advancement of alternative ballast water treatment systems.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

- (5) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

SPECIFIC PURPOSE OF THE REGULATION

This section presents the fifth ballast water management practice that vessels may conduct. Specifically, this management option is offered for the rare times when a vessel is unable to conduct any of the four management options described in Sections 2284 1-4 of this regulation.

NECESSITY

Under extraordinary circumstances, a vessel may be completely unable to complete any of ballast water management options described in section 2284 (a-e). In such a circumstance, he or she is required to take all feasible measures to minimize the discharge of ballast water containing nonindigenous species into state waters, without compromising safety. Section 2284 is essential to assure that vessels make every attempt to conduct ballast management during instances when the remaining management options are not possible.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.6. Ballast Water Regulations for Vessels Arriving at California Ports or Places after Departing from Ports or Places within the Pacific Coast Region

The California State Lands Commission (the Commission) proposes to adopt the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to adopt Section 2280, 2281, 2282, 2283, and 2284 under new Article 4.6 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (C.C.R.). These sections would establish regulations governing the management of ballast water taken on within the Pacific Coast Region by vessels arriving at a California port or place. Provisions are also included to provide a process for the submission and approval of petitions for alternatives to Article 4.6, should such cases occur.

PUBLIC HEARING

The Commission Staff will hold two public hearings. The first will begin at 10.00 a.m. on June 2, 2005 at the Port of Long Beach Board Room, 925 Harbor Plaza, 6th Floor, Long Beach, CA 90802 and the second will begin at 10.00 a.m. on June 8, 2005 at the Elihu M. Harris State Building, 1515 Clay Street, Room 9, Oakland, CA 94612. Both locations are wheelchair accessible. At the hearings, any person may present statements or arguments orally or in writing, relevant to the proposed regulatory action described in the Informative Digest. The Commission requests, but does not require, that persons who make oral comments at the hearings also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5:00 p.m. on June 8, 2005. All written comments must be received at the Commission, by that time. Written comments should be submitted to:

Livin Prabhu
Supervisor, Planning Branch
California State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802-4246

AUTHORITY AND REFERENCE

P.R.C. Section 71207 describes the State program to regulate discharges of ballast water in order to limit the introduction of nonindigenous species. In enforcing the provisions of the Act, the Commission is authorized to adopt the proposed regulations, which would implement, interpret or make specific P.R.C. Section 71204.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

P.R.C. Section 71204.5, which became effective January 1, 2004, requires the Commission adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast Region. Under Section 71200(j), "Pacific Coast Region" is defined as all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. Section 71204.5 also mandates the Commission to consider vessel design and voyage duration in developing these regulations. The section further requires the Commission to develop the regulations based on the best available technology economically achievable and shall be designed to protect the waters of the state. Finally, the Commission in developing the regulations shall include, as appropriate, restrictions or prohibitions on discharge of ballast water containing nonindigenous species into areas in and outside estuaries and into ocean areas shown to have a capacity to retain organisms.

Accordingly, the proposed regulation would implement and make specific the ballast water management requirements under P.R.C. Section 71204.5. Without the regulations, the purpose of the Act as described in P.R.C. Section 71201(d) cannot be achieved.

Section 2280 would state the purpose of the regulation.

Section 2280(b) would specify the vessels and voyages to which these regulations apply.

Section 2280(c) would identify the date of implementation of the regulation.

Section 2281 would specifically describe special safety circumstances under which a vessel may not be required to perform ballast water management as

directed in Article 4.6 of section 2284. It identifies the person(s) responsible for determining if a vessel has encountered such a circumstance, the person(s) responsible for the safety of the vessel and persons on board, and describes the obligations a vessel must strive to fulfill on those occasions.

Section 2282 would narrowly define several key terms that are used throughout the language of the regulation to describe management requirements and regulation applicability. These definitions ensure that the ballast specific management practices are clear to the shipping industry, and compliance occurs as intended by the regulation.

Section 2283(a) would describe a process for the submission and approval of petitions for alternatives to Article 4.6, should such cases occur. Alternatives proposed in petitions must fulfill the purpose of the regulation in section 2280 (a), and will be approved or withdrawn by the Commission.

Section 2284 would describe ballast water management options that have been deemed the most biologically effective and economically feasible action moving the state expeditiously toward the elimination of the discharge of nonindigenous species into the waters of the state.

DIFFERENCES FROM FEDERAL REGULATIONS

Recognizing the severity of the problem, the federal government implemented a voluntary national ballast water management and reporting program in July 1999. In September 2004, the federal government made mandatory this voluntary ballast water management program for vessels entering the United States. However, this mandatory program does not apply to vessels operating inside the United States Exclusive Economic Zone (U.S. EEZ). The transport of ballast water in marine vessels is recognized as a major vehicle through which aquatic nonindigenous invasive species (NIS) are spread. Current California law requires that vessels originating from places outside of the U.S. EEZ manage ballast water to reduce the discharge of nonindigenous organisms in California waters. However, there is currently no ballast management requirement for vessels that arrive in California ports from places within the U.S. EEZ, and in particular, the Pacific Coast Region, even though research has shown that there is a significant threat for such voyages to facilitate the establishment and spread of NIS throughout a region.

The ballast water management practices prescribed by these proposed regulations are necessary to minimize the transport of Pacific Coast Region NIS into the waters of the State of California.

PLAIN ENGLISH DETERMINATION AND OVERVIEW

Small Business Determination

The Commission has determined that these regulations do not affect small businesses as defined in Government Code (Gov. C.) Section 11342.610, because all affected businesses are commercial maritime transport owners and operators, as specified under Gov. C. Section 11342.610(c)(7) and having annual gross receipts of more than \$1,500,000.

Plain English Policy Overview

The proposed regulations have been drafted in a plain and straightforward manner and do not contain technical terms that require a plain English policy overview.

ESTIMATED COSTS TO THE STATE

No costs to the State would be incurred in implementing and enforcing these proposed regulations. The programs mandated by the Act are funded exclusively by the Marine Invasive Species Control Fund, through fees collected from the owners of vessels subject to the Act. Since the regulations here proposed are already mandated by the Act, the regulations will not increase costs to the State.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Part 7 (commencing with section 17500) of Division 4 of the Government Code. None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Costs or savings in federal funding to the state: None.

Cost impact on private persons or directly affected businesses: For each voyage that would be subject to the proposed regulations, but that would not otherwise be subject to the existing California ballast water management regulations, incremental costs would include the per voyage fee of \$500. Based on information provided by members of the regulated community, in some instances, changes in voyages and ballast water management practices could result in incremental costs for a voyage in an amount between \$3000 and

\$40,000. These assertions have not been verified. Furthermore, of the 450 ship owners that have operated in California waters in the past 18 month, only four (4) responded to the Commission's request for cost impacts, and only one of the four companies assert cost impacts of approximately \$40,000 per voyage. Such additional operational costs would occur, if at all, for less than 10% of those voyages which would not otherwise be subject to the existing ballast water regulations, but would be subject to the new requirements.

Creation or elimination of jobs within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of jobs within the State of California.

Creation of new businesses or the elimination of existing businesses within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of businesses within the State of California.

Expansion of businesses currently doing business within the State of California: The Commission has determined that the proposed regulations would not have a significant impact upon expansion of businesses currently doing business within the State of California.

The Commission has made an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Gov. C. Section 11346.5, sub. (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the Commission's attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearings or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Maurya B. Falkner
Environmental Program Manager I
State Lands Commission
Marine Facilities Division
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
Telephone: (916) 574-2568

Or to: Mark A. Meier
Senior Staff Counsel
State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-1853

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Livin Prabhu
Supervisor, Planning Branch
State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802-4246
Telephone: (562) 499-6400

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at either of the above addresses. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Livin Prabhu at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the hearing and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Livin Prabhu at the

address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Livin Prabhu at the address or telephone number listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations, can be accessed through the Commission's website at:

http://www.slc.ca.gov/Division_Pages/MFD/MFD_Programs/Ballast_Water/Ballast_Water_Default.htm

Draft Summary of Comments

Article 4.6: Ballast Water Regulations for Vessels Arriving at California Ports or places after Departing from Ports or Places within the Pacific Coast Region

Commenter 1:

Generally supportive of proposed rule.

1.01: Clarify that vessels arriving from outside the PCR must comply with the ballast management requirements in the PRC, Section 71204.3. Add text to Section 2280 (c).

1.02: Clarify Section 2293, "Alternatives" by providing more guidance on how the process may be utilized (paperwork steps, timelines, where to file), and what the regulated community can expect during Commission evaluation (i.e. evaluation criteria, commission turn around time).

1.03: Clarify text in section 2284 (a), by correcting an apparent typographical error. "Exchange the vessel's ballast water.....taken on in a port or place ~~of~~ within the Pacific Coast Region."

1.04: Add a section describing the criminal and civil penalties for not complying with the regulations.

Commenter 2:

Note: Not sure if statements 2.01-2.07 are "comments" as they do not explicitly suggest a modification to the rule. They appear to be statements meant to reinforce the final comment, 2.08.

2.01: Consider that regulation will increase risk of vessel collision because vessels will be forced into tanker traffic lanes to conduct exchange.

2.02: Consider that short haul voyages must travel at slower speeds to exchange, reducing maneuverability and control, and are a higher security risk.

2.04: Consider that rule will require vessels to travel longer distances, increasing fuel consumption and negatively affecting air quality.

2.05: Consider economic issues: increase in costs to business, cost of goods to consumers, and potential loss of business to California if port operators move to less restrictive states.

2.06: Consider inconsistencies with other west coast ports esp. with relation to voyage delay provisions, and no requirement to exchange within state in WA, OR & BC. (Claims a voyage from San Diego to LA will require a 30-hour delay for exchange).

2.07: Consider financial hardship that will be incurred by owners & operators if seamen are required to work more hours to comply with requirement.

2.08: Make accommodations for vessels that are unable to with the proposed regulation.

Commenter 3:

3.01: USGS & IMO accommodate vessels required to make voyage deviation or delay.

3.01 (a): Failure to accommodate vessels that are unable to comply due to vessel design or trade route may result in financial hardship to operators, port authorities and consumers, and may reduce trade in California.

3.02: Allow vessels that are unable to comply due to vessel design or voyage duration to exchange ballast to the extent possible in near coastal waters.

3.02 (a): Allow vessels that are on regular trade routes and unable to comply to apply for a petition for a variance to the regulation.

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3.03: Allow vessels that are unpredictably/irregularly unable to comply to petition for a one time exemption that is approved at the staff level of the California State Lands Commission.

3.04: Require a review of the regulation's impact on commerce after 6-12 months.

**Public Hearing, June 8th (Oakland), John Berge: The rule is impractical for voyages between San Diego and LA/Long Beach, and for voyages between San Francisco and Eureka. Vessels on these routes should be accommodated.

Commenter 4:

4.01: Request an exemption for company vessels from the proposed regulation until approved ballast water reception facilities are available (due to safety issues of transferring personnel to unmanned barges in order to exchange).

**Public Hearing, June 8th (Oakland): Similar comments were given by Jason Lewis (Pacific Region American Waterways Association).

Commenter 5: William J . Douros, on Behalf of Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary.

5.01: Sanctuaries support the restrictions of discharge proposed in the regulation.

Summary of Comments

Comments received from the maritime industry have suggested that the regulation may be onerous for a small number of vessels on short-haul voyages. Specifically, for transits between Los Angeles and San Diego, and for voyages between the San Francisco Bay-Delta to Eureka, the industry has requested various relaxations to the requirement for exchanging ballast at locations 50nm offshore and 200 m depth. In response to similar comments voiced at the April 26th, 2005 commission meeting, Lieutenant Governor Bustamante indicated that science will guide the final decision.

In consideration of these concerns, staff subsequently contacted several scientific experts, reviewed relevant scientific literature, and completed preliminary analyses to address the issue. In summary, the best available information strongly indicates that estuarine (bay/port) ballast water should not be transported between California ports, and this includes voyages between the specifically mentioned short-haul voyages.

- Natural transport of organisms between estuaries appears to be very low, in the absence of human activity.
- Short coastal voyages are more likely to transport organisms in good physical condition, maximizing chance for establishment in a new area.
- The San Francisco Bay estuary is one of the most highly invaded areas of the world, and is likely to act as a "hub" from which non-indigenous species can spread to other areas of California.
- Many non-indigenous organisms found in one of the aforementioned ports are not yet found in the other. The potential for their continued spread should be minimized.
- Some non-indigenous species in San Francisco Bay are clearly problematic or are found in very high numbers, and have not yet been found in Humboldt Bay. Examples include the Chinese mitten crab and the Asian clam.
- The region between San Diego and Point Conception is an oceanographic "retention zone" where water re-circulates for extended periods. These zones have the capacity to retain organisms released in them, and oceanographers have explicitly recommended avoiding ballast exchange in them.