

**CALENDAR ITEM
C07**

A Federal

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**CONSIDER OPPOSING FEDERAL LEGISLATION THAT WOULD PREEMPT
STATES' AUTHORITY TO ADDRESS VESSEL DISCHARGES AND ELIMINATE THE
LONG-STANDING ABILITY OF STATES TO PROTECT THEIR WATERS FROM
INVASIVE SPECIES INTRODUCTIONS**

INTRODUCTION:

State Lands Commission (Commission) staff has been reviewing various legislative proposals introduced in the 113th Congress that involve lands under the Commission's jurisdiction. This report describes the Vessel Incidental Discharge Act (S. 2094 – Senator Begich) and proposes a Resolution for the Commission to consider adopting in opposition to this bill.

LEGISLATIVE PROPOSAL:

S. 2094 (Senator Begich) Vessel Incidental Discharge Act:

SUMMARY:

S. 2094 would preempt states' authority to protect their waters from the threat of nonindigenous species introductions by establishing a uniform, nationwide standard for regulating discharges incidental to the normal operation of a vessel, including ballast water; undoing California's past and current efforts to protect its water from the threat of invasive species.

BACKGROUND:

California's coast and waterways are among the most beautiful in the world. From the coast of Humboldt, to the San Francisco Bay, and San Diego, millions of people visit California's coasts and estuaries each year, spending money on tourism and recreational activities that are directly related to the health of coastal ecosystems. Ocean-based tourism and recreation industries accounted for almost \$17 billion of California's gross state product in 2011 (National Ocean Economics Program "State of the U.S. Ocean and coastal Economies 2014 - NOEP 2014), and direct expenditures for

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recreational beach activities alone likely exceed \$3 billion each year (Kildow and Pendleton, "The Non-Market Value of Beach Recreation in California," 2006). In total, California had the second largest ocean-based GDP in the U.S., and ranked number one for employment and second in wages (NOEP 2014). International trade is a major component of California's ocean-based economy.

According to the California Association of Port Authorities, international trade involving California's ports account for nearly 25 percent of the State's economy. California is a major gateway for products entering and leaving the United States. Many goods moving through California ports, such as industrial and postconsumer secondary materials, originated in other states. According to the California Trade and Commerce Agency, California exports of secondary materials have typically exceeded \$1 billion annually. As vessels move from port to port around the world, so do the organisms that attach or are entrained in those vessels. It is estimated that more than 7000 species are moved around the world on a daily basis due to shipping activity. In California, ships are responsible for the introduction of nearly 81% of invasive species in coastal waters.

Invasive species introductions from vessels are a significant threat to the health and safety of state waters, and the international trade, tourism and recreation they support. Invasive species harm human health, the economy, and have a significant negative impact on ecological health. In recognition of the importance of protecting state waters from invasive species, the Legislature in 1999 directed the Commission to create a program to manage vessel discharges of ballast water and prevent invasive species release to California waters. Like California, other states vulnerable to invasive species have established programs to manage vectors of introduction. These programs are consistent with the structure of federal laws that authorize states to regulate their own waters, such as the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, reauthorized as the National Invasive Species Act (NISA), and the federal Clean Water Act (CWA). Each of these acts recognizes that the unique characteristics of individual states necessitate unique state regulation of state waters.

In California, vessel discharges are addressed through the State's Marine Invasive Species Program, which is administered by the Commission. As directed by the Legislature, this program develops and implements, in collaboration with other entities, practical and progressive strategies to limit the introduction and spread of invasive species from vessels in ballast water and, more recently, vessel biofouling. In enacting this program, the Legislature intended for California to take action to protect its waters from invasive species, rather than relying on a one-size-fits-all national standard. This

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approach is consistent with NISA and the CWA, both of which recognize the importance of states' rights and specifically preserve states' authority to regulate their waters.

S. 2094

S. 2094 would eliminate states' authority to protect their waters from the threat of invasive species by establishing a uniform, nationwide standard for regulating ballast water and other discharges incidental to the normal operation of a vessel, which would preempt any state law on this issue. The bill includes a provision allowing states' to petition for more stringent standards, but the short time frame and onerous requirements make it virtually impossible for states to meet the criteria required. The nationwide standard required under S. 2094 would be based upon the best available technology economically achievable; and would supersede any permitting requirement or incidental ban on discharges required under any other provision of law, including all the work that has been done pursuant to California law through the Marine Invasive Species Program administered by the Commission.

S. 2094 would require the Secretary of the department in which the Coast Guard is operating to administer and enforce a uniform national standard and other requirements under the Act. States would be authorized to enforce the uniform national standards. Commission staff believes these standards are not sufficiently protective. For example, scientific studies have shown that some vessels could meet these standards by simply conduct

In terms of ballast water management requirements, S. 2094 applies the standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (77 Fed. Reg. 17254, March 23, 2012, as corrected at 77 Fed. Reg. 33969, June 8, 2012), as the management requirements for a ballast water discharge incidental to the normal operation of a vessel until the Secretary revises the ballast water performance standard or adopts a more stringent State standard. In this regard, S. 2094 allows the adoption of a more stringent state standard if the Secretary makes a determination in favor of a State petition filed pursuant to the provisions of the bill.

Additionally, two years after the date of enactment, the Secretary would issue a final rule establishing best management practices for discharges incidental to the normal operation of a vessel other than ballast water.

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OTHER PERTINENT INFORMATION:

1. It is imperative that states continue to have the authority to safeguard their own unique waters from the threat of invasive species. The preemption provisions in S. 2094 would effectively dismantle California's existing program to prevent the introduction of marine invasive species from vessels.
2. S. 2094 was introduced in the Senate on March 6, 2014 and has been referred to the Senate Committee on Commerce, Science, and Transportation. The legislation has 27 cosponsors.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Preserve the rights of states to regulate their waters by adopting a resolution in opposition to S. 2094 in substantially the form attached hereto as Exhibit A.

Exhibit A

RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION OPPOSING FEDERAL LEGISLATION THAT WOULD PREEMPT STATES' AUTHORITY TO ADDRESS VESSEL DISCHARGES AND ELIMINATE THE LONG-STANDING ABILITY OF STATES TO PROTECT THEIR WATERS FROM INVASIVE SPECIES INTRODUCTIONS

WHEREAS, the California State Lands Commission has exclusive jurisdiction over school lands and approximately 4 million acres of tide and submerged lands owned by the State, including 120 navigable rivers and sloughs, 40 navigable lakes, tidal bays, inlets, straits, lagoons and estuaries, and along the State's over 1,100 miles of coastline and offshore islands from the mean high tide line to three nautical miles offshore; and,

WHEREAS, the people of California are guaranteed the right to enjoy these waters by the State Constitution and common law and all of these waterways are held by the State as trustee of a public trust for the benefit of the people; and,

WHEREAS, California's most unique and valuable asset is its coastal and bay waters and resources; and,

WHEREAS, nonindigenous species can have severe ecological, economic, and human health impacts on California's coastal and bay waters; and,

WHEREAS, the rate of species introductions, and thus the risk of invasion by species with detrimental impacts, has increased significantly during recent decades, with the San Francisco Bay Estuary being one of the most heavily invaded estuaries in the nation; and,

WHEREAS, the costs of addressing nonindigenous species in California waters is immense, with tens of millions of dollars already having been spent to control zebra and quagga mussels in California since the species were first identified; costs which represent only a fraction of the expected cumulative costs over time because eradication is not possible and control is an ongoing expense; and,

WHEREAS, effective policies to reduce the risk of species introductions differ from state to state and coast to coast due to unique, region-specific geographies and associated biological, chemical and physical conditions; consequently, federal policies that intend to reduce the risk of nonindigenous species introductions broadly across all ports in the United States may not be the most protective or appropriate policies for California; and,

Exhibit A

WHEREAS, in 1999, the Legislature enacted the Ballast Water Management for Control of Nonindigenous Species Act to address concerns about discharges of nonindigenous species from vessels into State waters; and,

WHEREAS, the California Marine Invasive Species Act of 2003 renewed and expanded the Ballast Water Management for Control of Nonindigenous Species Act of 1999, charging the California State Lands Commission with oversight and administration of the State's program to prevent or minimize the release of nonindigenous species from vessels that are 300 gross registered tons and above and requiring the Commission to expeditiously eliminate discharge of invasive species into waters of the state; and,

WHEREAS, to minimize the threat of nonindigenous species introductions, the Commission's Marine Invasive Species Program uses an inclusive, multi-faceted approach to: develop sound, science-based policies in consultation with technical experts and stakeholders; track and analyze ballast water and vessel biofouling management practices of the California commercial fleet; enforce laws and regulations to prevent introductions; and facilitate outreach to promote information exchange among scientists, legislators, regulators, and other stakeholders; and,

WHEREAS, the risk of nonindigenous species introduction to California is influenced by California's specific vessel traffic patterns, vessel ballasting operations, and vessel biofouling management practices; and,

WHEREAS, effective policies to reduce the risk of species introductions to California must take these nonindigenous species introduction risk factors into consideration, and federal policies that intend to reduce the risk of nonindigenous introduction broadly across all ports in the United States may not be the most protective or appropriate policies for California; and,

WHEREAS, S. 2094 would eliminate California's authority to protect its waters from the threat of nonindigenous species introductions by establishing a uniform, nationwide standard for regulating ballast water and other discharges incidental to the normal operation of a vessel, preempting states from instituting state policies that address unique environmental resources; and,

WHEREAS, while S. 2094 does include a mechanism for states to petition to preserve existing regulatory programs, the criteria makes reaching this threshold virtually impossible; and,

Exhibit A

WHEREAS, it is imperative that States continue to have the authority to safeguard their own unique waters from the threat of nonindigenous species; and,

WHEREAS, the California State Lands Commission, as the agency charged with moving 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; now therefore, be it

RESOLVED BY THE CALIFORNIA STATE LANDS COMMISSION that it opposes the Vessel Incidental Discharge Act (S. 2094), which would preempt States authority to regulate vessel discharges in state waters, thereby dismantling California's Marine Invasive Species Program and reducing California's protection from invasive species; and be it further

RESOLVED, that the Commission's Executive Officer transmit copies of this resolution to the President and Vice President of the United States, to the Governor of California, to the Majority and Minority Leaders of the United States Senate, to the Speaker and Minority Leader of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.