

MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

**ORIGINAL**

ELIHU M. HARRIS STATE BUILDING  
1515 CLAY STREET  
AUDITORIUM  
OAKLAND, CALIFORNIA

MONDAY, JUNE 20, 2005  
10:30 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

APPEARANCES

BOARD MEMBERS

Mr. Cruz M. Bustamante, Lieutenant Governor, Chairperson,  
also represented by Ms. Lorena Gonzalez

Mr. Steve Westly, State Controller, represented by  
Ms. Cindy Aronberg

Mr. Tom Campbell, Director of Finance, represented by  
Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Ms. Maurya Falkner, Environmental Program Manager

Ms. Kimberly Lunetta, Executive Assistant

Mr. Mark Meier, Senior Staff Counsel

ALSO PRESENT

Mr. Jeff Browning, Sause Brothers Ocean Towing

Mr. Abe Doherty, Coastal Conservancy

Mr. Jason Lewis, The American Waterways Operators

Ms. Karen Reyna, National Marine Sanctuary

Ms. Linda Sheehan, California Coast Keepers Alliance

Ms. Erin Simmons, The Ocean Conservancy

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1                                    PROCEEDINGS

2                    ACTING COMMISSIONER GONZALEZ:  I call the State  
3 Lands Commission to order.  I'll the representatives of  
4 the Commission are present.

5                    I am not Lieutenant Governor Cruz Bustamante.  
6 I'm actually his representative, Lorraine Gonzalez.

7                    And I have with me today Cindy Aronberg from the  
8 State Controller's Office and Anne Sheehan representing  
9 the Department of Finance.

10                   The Lieutenant Governor will be here shortly and  
11 take over the meeting.  But we'll go ahead and start and  
12 try to get it moved somewhat on time.

13                   For the benefit of those in audience, the State  
14 Lands Commission administers properties owned by the state  
15 as well its mineral interests.  Today we'll hear proposals  
16 concerning the leasing and management of these public  
17 properties.

18                   The first item of business will be the adoption  
19 of the minutes from the Commission's last meeting.

20                   May I have a motion to approve the minutes.

21                   ACTING COMMISSIONER ARONBERG:  Move approval.

22                   ACTING COMMISSIONER SHEEHAN:  Second.

23                   EXECUTIVE OFFICER THAYER:  And if I could  
24 interrupt the Chair, because everyone's a representative  
25 and only one of you can vote on this.

1           ACTING COMMISSIONER GONZALEZ: Okay. You already  
2 made the motion, so let's show that it was unanimously  
3 adopted.

4           The next order of business is the Executive  
5 Officer's report.

6           Mr. Thayer.

7           EXECUTIVE OFFICER THAYER: Thank you, Madam  
8 Chair. I have only two items to report on. And, I'm  
9 sorry, I don't have the names of these.

10           But you'll recall that at our last meeting there  
11 were two gentlemen who spoke to the Commission about  
12 issues here in the Bay Area actually where they were  
13 asking for assistance from the State Lands Commission.

14           The first was a gentleman who was concerned about  
15 a section of wetland on I believe the Napa River which was  
16 part -- it wasn't even State Lands Commission ownership,  
17 but was immediate adjacent to a fill, a dump, and was  
18 seeking our assistance in getting funding and getting that  
19 area restored.

20           We've been in further discussions with the  
21 gentleman. He is appreciative of our assistance. He may  
22 be seeking a coastal conservancy grant to provide the  
23 funding for this. And we've assured him that we would  
24 write a letter in support. He's not moved on that yet.  
25 But there'll be further discussions with him to ensure

1 that we're giving whatever assistance we can give him to  
2 move that project along. This is the wetland that the  
3 gentleman at the last meeting came up during the public  
4 comment period and asked for our assistance in getting  
5 that restored in the north bay.

6 The second public commenter that the Commission  
7 heard from was a gentleman who operated a sailing school  
8 in the south bay and he was close to the South Bay Yacht  
9 Club. And he had some concerns about how the South Bay  
10 Yacht Club was run.

11 As we investigated this, we found that in fact  
12 there are a variety of disputes there, some involving the  
13 yacht club, some involving the gentleman who spoke with  
14 you, as well as several different public agencies. We've  
15 discussed the matter with all of them. And there will be  
16 a meeting involving all the principals later this month, I  
17 believe to the 27th. Although that might be postponed for  
18 a week because of some people's inability to make that  
19 meeting.

20 But at that meeting will be both of those land  
21 owners as well as the Bay Conservation Development  
22 Commission, who has jurisdiction over that area, and then  
23 the local water district, who does both flood control and  
24 water supply. So between all of those actors, we're  
25 hoping to straighten out the situation that had been

1 brought to the Commission's attention at that public  
2 comment period. I wanted to let you know of our progress  
3 on that and that we're working on that.

4 And that concludes the Executive Officer's  
5 report.

6 CHAIRPERSON BUSTAMANTE: Any questions?

7 We can go to the consent calendar.

8 Are there any items that have been pulled off of  
9 the consent calendar, off the regular list that's been  
10 given?

11 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. There  
12 are three items that we pulled off:

13 Item 16, which has to do with an overhead power  
14 transmission line. We received late word, I think on  
15 Friday, from Fish & Game that they have some concerns  
16 about that project. So we'll review those concerns with  
17 Fish & Game and probably bring back this matter at the  
18 August meeting before the Commission.

19 And then Items 39 and 51 have to do with the  
20 assignment from Plains to DCOR of some offshore leases.  
21 And we'll be having some additional conversations with the  
22 assignor and the assignee before we'll bring that back to  
23 the Commission.

24 CHAIRPERSON BUSTAMANTE: What about the South  
25 River Parkway?

1 EXECUTIVE OFFICER THAYER: I believe that's in  
2 closed session, the -- a potential settlement of that,  
3 yes.

4 CHAIRPERSON BUSTAMANTE: I see.

5 Okay. Is there a motion?

6 ACTING COMMISSIONER ARONBERG: Move the consent  
7 calendar.

8 ACTING COMMISSIONER SHEEHAN: Second.

9 CHAIRPERSON BUSTAMANTE: Motion's been made and  
10 seconded.

11 Let the record show that it's been passed  
12 unanimously.

13 The regular calendar.

14 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

15 The one remaining item on the regular calendar is  
16 the proposal for the Commission to adopt ballast water  
17 regulations. We already have some regulations in place.  
18 However, the reauthorization of the Commission's ballast  
19 water program included the new requirement that the  
20 Commission adopt regulations with respect to voyages that  
21 began and ended along the West Coast. That's within  
22 California or up to Oregon and Washington.

23 Maurya Falkner, who is in charge of this program  
24 for the State Lands Commission, will make the presentation  
25 on this.



1 CHAIRPERSON BUSTAMANTE: Also, has there been any  
2 kind of correspondence at all from any industry groups or  
3 environmental groups?

4 EXECUTIVE OFFICER THAYER: Maurya, do you have  
5 any -- we have some support letters, one from the ocean  
6 conservancy. And I think Maurya would -- who has that,  
7 might have.

8 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Yes, we  
9 received support letters from the main sanctuaries here in  
10 the state, the Blue Water Network. And I guess we have  
11 some speakers today that will be speaking in support as  
12 well of the proposed regulation.

13 I have had four meetings with industry  
14 representatives since our last Commission meeting, trying  
15 to iron out some details. And I can go into that in a  
16 little bit more detail if you'd like.

17 CHAIRPERSON BUSTAMANTE: Please.

18 ENVIRONMENTAL PROGRAM MANAGER FALKNER: And good  
19 morning.

20 (Thereupon an overhead presentation was  
21 Presented as follows.)

22 ENVIRONMENTAL PROGRAM MANAGER FALKNER: As Mr.  
23 Thayer's already mentioned, we're here to ask for your  
24 approval to adopt proposed regulations that would govern  
25 coast-wise traffic for ballast water that they carry.

1                   --o0o--

2                   ENVIRONMENTAL PROGRAM MANAGER FALKNER: Under the  
3 Marine Basic Species Act that was passed in 2003, PRC  
4 Section 71204.5 mandates the Commission to adopt  
5 regulations that would govern the management of ballast  
6 water for vessels that operate within the Pacific Coast  
7 region.

8                   --o0o--

9                   ENVIRONMENTAL PROGRAM MANAGER FALKNER: This here  
10 is kind of a rough figure that represents the Pacific  
11 Coast region. It basically extends its coastal waters, so  
12 less than 200 nautical miles from shore from Cooks Inlet  
13 in Alaska down about three-quarters of the way down the  
14 Baja coast excludes the Gulf of California. This location  
15 was identified in the laws in the region that we need to  
16 be working with.

17                   --o0o--

18                   ENVIRONMENTAL PROGRAM MANAGER FALKNER: And the  
19 Invasive Species Act specifically requires us to adopt  
20 regulations for vessels operating along the Pacific Coast  
21 region. We were mandated to consider vessel design and  
22 voyage duration. We were also mandated to look at best  
23 available technologies that were economically achievable.

24                   Finally, the regulations required us to, as  
25 appropriate, impose restrictions or prohibition on

1 discharge into areas or estuaries that were considered  
2 sensitive.

3 --o0o--

4 ENVIRONMENTAL PROGRAM MANAGER FALKNER: As I  
5 mentioned at our last Commission meeting, we've had  
6 several meetings in preparation for these rules. And they  
7 started way beyond the reauthorization of the bill. We  
8 had a meeting in March of 2002 with oceanographers. And  
9 they helped us identify areas that we -- at the very least  
10 we should not allow exchanges or ballast water discharges  
11 to occur. And those are the report summary there as to  
12 avoid discharges in 50 nautical miles around exclusion  
13 zones. And that graphic there represents, not to scale of  
14 course, but the exclusion zones that we're talking about  
15 specifically on the West Coast of North America. Those  
16 are primarily the great sanctuaries.

17 They also recommended restricting discharges  
18 within 15 nautical miles of estuaries. And, if possible,  
19 have discharges occur in waters that are deeper than a  
20 thousand meters, which would put the waters off of the  
21 continental shelf.

22 --o0o--

23 ENVIRONMENTAL PROGRAM MANAGER FALKNER: We took  
24 this information forward to a group in January of 2003,  
25 included everybody from Alaska, British Columbia, down

1 through California, and both state, federal,  
2 international, the regulated community and NGOs.

3           Came out of that workshop with surprising high  
4 level of consensus. First off, everybody agreed that  
5 ballast water transport is a significant threat. They  
6 wanted us to move forward with the data that were  
7 available and create ideally a regional uniform program  
8 that considered safety exemptions and costs and, finally,  
9 not to allow exchange to occur in waters that are less  
10 than 200 meters in depth.

11                           --o0o--

12           ENVIRONMENTAL PROGRAM MANAGER FALKNER: We had  
13 additional meetings and put forward some draft regulations  
14 with the stakeholders. Again, the general consensus was  
15 we wanted to be consistent with the other West Coast  
16 states and still be protective of California waters.

17           The industry asked us to consider a shared waters  
18 designation and a process by which to address emergencies  
19 that may come up.

20           We had a meeting with the technical advisory  
21 group in December of 2004, presented our draft  
22 regulations. And the TAG came back with some  
23 recommendations for us to clearly state the safety  
24 exemption within the regulation. It is already in the  
25 law, but they wanted it explicitly placed in the

1 regulation as well. They also wanted us to clarify our  
2 shared waters designation and to include a process by  
3 which we could address or deal with petitions for  
4 alternatives that weren't clearly stated within the  
5 regulation.

6 Again, the first and last of the exemption and  
7 the alternative section were already identified in the  
8 law. So we just restated that again in the regulation.

9 We had another meeting here with you in April.  
10 At that meeting there was some concerns raised by the  
11 industry regarding the safety exemption provision and  
12 limited delegation of authority provision, as well as a  
13 petition for alternatives.

14 --o0o--

15 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Two  
16 public hearings were held, both in June, earlier this  
17 month. And then I've had additional meetings with  
18 industry and Assembly Member Joe Nations, a staffer as  
19 well on this issue, on this regulation.

20 --o0o--

21 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Just to  
22 give you a brief overview of what the rest of the world is  
23 doing, the IMO has adopted a convention, which is a set of  
24 guidelines that requires at a minimum ballast water to be  
25 conducted at 50 nautical miles from shore and in 200

1 meters of water depth, so it's consistent -- we are  
2 consistent with IMO.

3 The U.S. right now has no regulations, and it's  
4 unclear if they're going to set a federal regulation at  
5 this point. There is some legislation going through at  
6 the federal level. But whether or not that actually makes  
7 it out and gets taken care of is unclear.

8 Canada adopted the IMO resolution. Washington  
9 has a coastal rule in place. That is a 50 nautical mile  
10 rule as well. Oregon just passed legislation this session  
11 that will go into effect at the end of this year that will  
12 require vessels to adopt California and Washington's 50  
13 nautical mile rule.

14 So basically we've succeeded in getting a  
15 regional management plan for coast-wise vessels.

16 --o0o--

17 CHAIRPERSON BUSTAMANTE: Is there something  
18 specific about the 50 nautical miles?

19 ENVIRONMENTAL PROGRAM MANAGER FALKNER: It is --  
20 it meets the scientific recommendations or the  
21 recommendations from the oceanographers that we be outside  
22 of the special exclusion zones like the sanctuaries. It  
23 is a straight line -- one of the early proposals was we do  
24 these bubbles. You know, a vessel comes out and they can  
25 exchange. Oh, here's a sanctuary. They've got it out 50

1 nautical miles if they're going to continue exchanging, or  
2 shut off.

3           And so in order for it to be as easy for the  
4 industry as possible, 50 nautical mile works well on the  
5 West Coast. It may not work real well in the rest of the  
6 country. But here, because the continental shelf drops  
7 off quickly, because of the currents and tides, the 50  
8 nautical mile we believe is going to work well here in  
9 California and here on the West Coast.

10           CHAIRPERSON BUSTAMANTE: Is that -- does the  
11 water temperature, is that -- because of the science of it  
12 or --

13           ENVIRONMENTAL PROGRAM MANAGER FALKNER: It's the  
14 combination of --

15           CHAIRPERSON BUSTAMANTE: -- has an impact on  
16 different species that are contained in ballast water?

17           ENVIRONMENTAL PROGRAM MANAGER FALKNER: We hope  
18 so. We're going to be doing some research starting up  
19 here this month that will be looking at differences  
20 between coastal water, 50 nautical mile, and further out.  
21 But the recommendations from the oceanographers were  
22 the -- because of the drop-off in the continental shelf  
23 you have -- more likely waters are going to be uplifting  
24 and moving things out instead of in to shore. The closer  
25 you're into shore, the more likely the organisms can be

1 blown into shore and survive. So it's a combination of  
2 that distance and then the water differences in depth and  
3 everything else. Is that okay?

4 Does that answer your question, I should say?

5 CHAIRPERSON BUSTAMANTE: Well, it answers the  
6 question.

7 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Okay. So  
8 at the last Commission meeting and in the comment letters  
9 that we've received, there have been three primary areas  
10 of concern that the industry has brought up to us. One is  
11 regarding the safety provision. And this is especially  
12 important with the tow barges, and in particular the  
13 barges -- there are three different types of barges.  
14 There's the articulated tug barge, the integrated tug  
15 barge, and then there's the tow barge.

16 And the tow barges in particular, they are  
17 unmanned vessels. They are, you know, literally to get  
18 tugged. And somebody's got a long tow line and they're  
19 towing this big thing.

20 In order for those vessels to conduct an exchange  
21 a person has to go from the vessel and climb up probably a  
22 J ladder up the side of a barge, get on board to do the  
23 exchange. And there's extreme concerns about safety  
24 there. But the regulation includes a safety exemption  
25 that we believe will apply to those circumstances right



1 there; that those vessels because of safety condition  
2 situations can't do an exchange can utilize that safety  
3 exemption. They still fall under the confines of the law  
4 and the regulation. They still need to minimize ballast  
5 water discharges and file reports and be in communication  
6 with State Lands Commission.

7 CHAIRPERSON BUSTAMANTE: Is it a small hole or is  
8 it a big hole?

9 ENVIRONMENTAL PROGRAM MANAGER FALKNER: A small  
10 hole?

11 CHAIRPERSON BUSTAMANTE: Or exemption.

12 ENVIRONMENTAL PROGRAM MANAGER FALKNER: It's a  
13 small hole.

14 CHAIRPERSON BUSTAMANTE: And the exemption --  
15 when you talk about safety, under what specific parameters  
16 are they able to ask for an exemption? Is it just weather  
17 or is it --

18 ENVIRONMENTAL PROGRAM MANAGER FALKNER: No, I  
19 think in this case, especially with these tow barges, that  
20 they would be able to come forward. I don't think it's --  
21 it's never been the intent of the staff nor I believe the  
22 Commission to put -- or of the legislation to put these --  
23 to put regulations or legislation in place that would  
24 jeopardize the safety of the crew. And that's why that  
25 safety provision is in there.

1           And so to get a human being, even in calm  
2 weather, from a small boat on to a barge, it is  
3 exceedingly dangerous and it's not our intent for those  
4 vessels to try to comply and lose crew members. That's  
5 not our intention.

6           CHAIRPERSON BUSTAMANTE: So those folks would  
7 have permanent exemptions? There wouldn't be a request?  
8 That would be a constant exemption that that particular  
9 barge would have in any use?

10           ENVIRONMENTAL PROGRAM MANAGER FALKNER: We could  
11 go about it that way. There are several different avenues  
12 that we can go -- that we could just --

13           CHAIRPERSON BUSTAMANTE: Well, an exemption isn't  
14 something that's regular practice. An exemption is  
15 something that takes place outside of regular practice.

16           ENVIRONMENTAL PROGRAM MANAGER FALKNER:  
17 Correct.

18           CHAIRPERSON BUSTAMANTE: So you're giving them a  
19 permanent exemption?

20           ENVIRONMENTAL PROGRAM MANAGER FALKNER: Again, I  
21 think that we can pursue this in several different ways.  
22 We can either -- on a case-by-case basis. Because some of  
23 the barges can do exchanges, some can't. Some, they don't  
24 even have pumps onboard, so there's not even an  
25 opportunity for them to say, "There's a safety exemption.

1 We don't have a pump onboard, you know. We can't do  
2 anything till we get alongside doing an exchange." So I  
3 think there is a case-by-case scenario.

4 But there's also the opportunity to come back to  
5 you with a list. We have six months before these rules  
6 will go into effect. Sit down with the vessel owners --  
7 there's only 28 barges that are operating in California  
8 waters, at least in the last 18 months. Sit down with you  
9 and get a blanket, "This is what you will do," you know.  
10 "You are not required to do a near-coast exchange because  
11 of safety concerns. However, you need to continue to file  
12 your forms and your fee and all of that." So we could go  
13 that route as well. It's really what the comfort level is  
14 between the industry and the Commission.

15 EXECUTIVE OFFICER THAYER: But to supplement  
16 that, as Maurya's pointed out, there is a requirement that  
17 they use best available technologies. And my  
18 understanding of ballast water management in general is  
19 that it's sort of a frontier sort of program and that  
20 there's a lot of new technology being developed. In fact,  
21 the Commission had approved grants to work on some of  
22 those for other than barges at the last meeting.

23 And so what's true today with respect to what's  
24 safe and is the best that a barge can do might not be true  
25 tomorrow. And these regs are written in a way that if the

1 technology is developed and it is feasible and safe, that  
2 they would be required to carry that out. And that  
3 flexibility is contained in there.

4 ENVIRONMENTAL PROGRAM MANAGER FALKNER:

5 Exactly. Things are moving forward and there  
6 are -- and I think it's important that -- the legislation  
7 spent a great deal of time during 2003 reauthorizing this  
8 act, and part of that process was to remove the exemptions  
9 that had been in the law. And so right now the only  
10 exemption is for true gray hulls, military vessels, and  
11 vessels in innocent passage. And They removed the other  
12 exemptions in there for the reasons that Mr. Thayer just  
13 mentioned, that technology is advancing, and rather than  
14 set these guys aside on remaining, you know, biological  
15 reason for it, let's work within the confines of the  
16 technology that we have at hand.

17 Another issue that came up is -- don't relate to  
18 safety concerns but relates to hardship issues. And,  
19 again, I think that within the regulation we have included  
20 a process by which shipowner/operators can come to us and  
21 then we can come to you to act to request alternatives to  
22 the prescribed management guideline -- management options  
23 that are listed in the regulation. And that's the way,  
24 again, to avoid doing the exemption and dealing with that  
25 scenario. Rather, sit down with the industry over the

1 next several months and figure out the best way that they  
2 can, if not meet the letter of the law, meet the intent of  
3 the law and the regulation.

4 CHAIRPERSON BUSTAMANTE: And the basic process  
5 for asking for exemption is what?

6 ENVIRONMENTAL PROGRAM MANAGER FALKNER: They  
7 would come to either Mr. Thayer or Mr. Gregory or me with  
8 a letter requesting that we consider an alternative  
9 management practice. You would work with that industry in  
10 developing basically a calendar item on the staff report  
11 on the applicability of the -- of what they're requesting.  
12 And if it at least meets the intent of the law, then it  
13 would come to you at a Commission meeting and request for  
14 approval of an alternative action.

15 That's under the scenario of somebody who knows.  
16 I do this voyage and 75 percent of the time I know I can  
17 do it; 25 percent of the time I'm not sure I can do it or  
18 I'm pretty sure I can't. This is what I'm proposing for  
19 that 25 percent of the time. Then we could come to you  
20 with that request.

21 The alternative is we do have, as you may recall,  
22 some limited delegation of authority to deal with those  
23 timely requests, somebody's coming down from Seattle, it's  
24 been horrible weather and they can't do an exchange in --  
25 you know, in a certain location; can they do something

1 else? And we have the authority -- Mr. Thayer has the  
2 authority to grant those timely types of requests.

3 CHAIRPERSON BUSTAMANTE: I was just concerned  
4 that the process would be such that you would have to come  
5 through us and then it would take a very long time to get  
6 authorization to be able to do that. Where it should be  
7 probably vested more in the staff to be able to do that on  
8 a regular basis, so that when things take place or the  
9 request comes in, you're not going to be holding back  
10 somebody from doing something when it's going to be  
11 necessary. So --

12 ENVIRONMENTAL PROGRAM MANAGER FALKNER: I'm  
13 hoping -- keep my fingers crossed. We have six months  
14 from the time the regulation is signed until it's  
15 implemented. And that was --

16 ACTING COMMISSIONER SHEEHAN: Yeah, my only issue  
17 is as long as there is a process that somebody isn't  
18 sitting offshore waiting for the Commission to have their  
19 next meeting.

20 (Laughter.)

21 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Sorry,  
22 we're not meeting again until August.

23 No, that's not going to happen.

24 (Laughter.)

25 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Again,

1 that's the thing. You do have the delegation of authority  
2 to deal with those kind of timely issues. And then other  
3 issues where -- let's say, this law doesn't go into effect  
4 probably until in January 2006, we have at least two more  
5 Commission meetings. I'm hoping, you know -- I'm hoping  
6 that that will be the case, once it gets through here, to  
7 get it into the Office of Administrative Law and signed.  
8 So at least six months before --

9           ACTING COMMISSIONER SHEEHAN: And you would begin  
10 the process for them to petition the Commission and the  
11 staff in how you would handle that to come up to be  
12 presented to the Commission at one of those meetings --

13           ENVIRONMENTAL PROGRAM MANAGER FALKNER: That's  
14 correct. That allows you to exert your authority and also  
15 allows it to be in a public forum so that any interested  
16 parties can be involved as well.

17                           --oOo--

18           ENVIRONMENTAL PROGRAM MANAGER FALKNER: The other  
19 issue that came up and has come up repeatedly is our  
20 shared waters designation. And we pulled together data  
21 that are available on species -- nonindigenous species  
22 occurrences within -- there were two issues that came up:  
23 The San Diego to Los Angeles route and then the San  
24 Francisco to Eureka route. These are granted short  
25 duration voyages. But in looking at the data and talking

1 to the scientific experts, the scientific experts strongly  
2 recommend us not allowing port-to-port transfers between  
3 these two -- those two pairs of ports. And one of the  
4 reasons is -- this table that I've presented up here,  
5 these data were collected by the Department of Fish & Game  
6 during the first phase of the ballast water program in  
7 2001, and it's complemented by data that have been  
8 collected by experts in the Bay Area. And what we did is  
9 we looked at the degree of overlap between those port  
10 complexes, how many species were unique to L.A. --  
11 nonindigenous species unique to L.A. that weren't found in  
12 San Diego and vice versa, and San Francisco versus Eureka.  
13 And it's a pretty frightening number of lack of overlap.  
14 And so you have 142 species that are found in L.A. that  
15 aren't found in San Diego and a huge number of -- 315  
16 species that are found in San Francisco and not in Eureka.  
17 And this suggests that allowing port-to-port transfers is  
18 going to just expand those numbers. It's going to  
19 decrease the differences between those ports and  
20 potentially the expansion of those species beyond those  
21 ports as well.

22           So, again, for those vessels where a short  
23 duration in conducting an exchange is going to be a severe  
24 hardship, we do have a process involved again petitioning  
25 for alternatives that we can address those situations.



1           So the other issue that came up was the IMO  
2 resolution that was passed in February of 2004. And some  
3 of the federal legislation includes language that  
4 basically says if a vessel is going to have an undue delay  
5 or a deviation in their voyage, they don't have to comply.  
6 And staff is very opposed to including that kind of  
7 language in these regulations for the reasons that I've  
8 listed there and are listed in the staff report. We  
9 believe it's insufficient language for a regulation. It  
10 maybe okay for an IMO resolution, which is a guideline;  
11 but that it's inadequate at the regulatory level.

12           It has no definition or boundaries to it. So  
13 conceivably somebody could say, "Hey, it's going to cost  
14 me, you know, another half hour of voyage time" or "I'm  
15 going to have to deviate two miles from my intended  
16 voyage, and so, you know, I'm not going to comply."

17           And, finally, you know, according to our legal  
18 counsel, they do not believe -- he does not believe that  
19 it's going to meet the clarity standard within the Office  
20 of Administration Procedures Act.

21           So, again, we would rather not -- we don't want  
22 that language included for those reasons.

23                           --o0o--

24           ENVIRONMENTAL PROGRAM MANAGER FALKNER: Finally,  
25 they have -- the industry has requested that we review the

1 regulations. They had originally wanted us to put  
2 language in the regulation that would require us to review  
3 the impacts after 6 to 12 months. We're opposed to  
4 putting that kind of language in the regulation. But we  
5 have asked that the Commission direct staff for us to  
6 review those regs after they're implemented, and we can  
7 report back to the Commission as well as to the  
8 Legislature in our biennial report that's due in January  
9 of 2007.

10 --o0o--

11 ENVIRONMENTAL PROGRAM MANAGER FALKNER: So, in  
12 conclusion, the regulations that we've developed, we  
13 believe they recognize operational realities in operating  
14 in California; they recognize sensitive resource areas,  
15 the need for simplicity, which will hopefully encourage  
16 and ensure compliance. We address the shared waters  
17 issue, making L.A. and Long Beach shared waters and then  
18 San Francisco Bay/Delta ports shared waters. They address  
19 the safety concerns. The safety issue is clearly listed  
20 in the regulation. Mechanisms by which alternatives can  
21 be applied for and time until the rule actually goes into  
22 effect. So this just restates that.

23 --o0o--

24 ENVIRONMENTAL PROGRAM MANAGER FALKNER: I'd be  
25 more than welcome to answer any other questions that you

1 may have.

2 CHAIRPERSON BUSTAMANTE: Any questions from the  
3 members?

4 ACTING COMMISSIONER ARONBERG: Can we just hear  
5 from the speakers?

6 CHAIRPERSON BUSTAMANTE: We have speakers. I  
7 believe we have five. The first is Erin Simmons, and then  
8 Jeff Browning, and then Linda Sheehan, Abe Doherty, and  
9 Karen Reyna.

10 MS. SIMMONS: Good morning, Lieutenant Governor  
11 Bustamante.

12 CHAIRPERSON BUSTAMANTE: Give your name for the  
13 record please.

14 MS. SIMMONS: I'm sorry. Erin Simmons with the  
15 Ocean Conservancy.

16 The following comments are submitted on behalf of  
17 my co-workers -- of the Ocean Conservancy. And I believe  
18 you have a copy of our comment letter of support.

19 We have more information than ever of the  
20 damaging effects of invasive species entered -- in ballast  
21 water. The costs associated with invasive species, both  
22 ecological and economic, are staggering and far outweigh  
23 the costs of complying with these regulations.

24 Ballast water is the number one source of marine  
25 invasions, and experts have reported that invasion

1 resulted intercoastal traffic is a very serious problem.

2 California is the first state in the nation to  
3 pass a law mandating controls on ballast water discharges  
4 into state waters. But we are behind the times because of  
5 our failure to regulate coastal traffic, which Washington  
6 and Oregon have been doing since 2000 and 2002  
7 respectively.

8 Today you're hearing from the shipping industry  
9 that they should not have to exchange ballast water when  
10 it's inconvenient for them to do so. We strongly oppose  
11 any amendments that would permit a shipper to avoid  
12 ballast water exchange because of undue delay or  
13 deviation. Such an exemption would be tantamount to  
14 declining to regulate at all.

15 The regulations that you have in front of you  
16 were developed with the assistance of a technical Advisory  
17 group in which the shipping industry was adequately  
18 represented and heard.

19 The proposed regulations are protective and will  
20 permit the defense of California waters against new and  
21 costly invasions by -- alien organisms. They contain  
22 reasonable emergency exemptions and provisions for  
23 protecting the safety of the ship and its crew. The  
24 regulations are flexible and include a range of options  
25 for compliance, a range that will only grow as the

1 Commission and Coast Guard approve additional ballast  
2 water management methods.

3 In sum, we strongly urge you to adopt the  
4 regulations as proposed. The Ocean Conservancy thanks  
5 staff and the technical advisory group for their hard work  
6 in the development of the proposed regulations. And  
7 thanks to the Commission for hearing these remarks.

8 CHAIRPERSON BUSTAMANTE: Any questions?

9 Jeff Browning.

10 Thank you.

11 MS. SIMMONS: Thank you.

12 MR. BROWNING: Good morning. Good morning,  
13 Commission, Mr. Chair. I'm Jeff Browning. I'm  
14 representing the American Waterways Operators, Inland  
15 Boatmen's Union, and the Sause Brothers Ocean Towing  
16 Company. I believe you have the comments from AWO and the  
17 Sause Brothers on file. I'm not sure if you have the  
18 Inland Boatmen's Union.

19 So I'd like to read that in a bit.

20 Our concern as industry and an operator is the  
21 safety of the crew. Maurya did point that out. We would  
22 like though an exemption that takes unmanned barges, towed  
23 unmanned barges and have them exempt. There is no time  
24 that we can put people on board at sea. It's -- calm  
25 waters, rough waters, it's unsafe.

1           There's a second issue that hasn't been  
2 addressed. These barges do have ballast systems on them.  
3 But they do not under a loaded situation allow for ballast  
4 water exchange. If we were to fill the tanks up -- the  
5 ballast tanks up at the same time as the cargo, the barges  
6 would sink. They can't do it. They don't have the  
7 capacity to do it.

8           And that's our entire fleet. Sause Brothers  
9 represents probably 50 percent of the barges that Maurya  
10 pointed out.

11           Third, now we have an environmental issue if we  
12 do do this ballast water exchange, because we have tanker  
13 fleets, oil barges and cargo barges, and that would be a  
14 pollution issue.

15           At this point I'd like to read the Inland  
16 Boatmen's Union letter in support of the opposition -- not  
17 opposition, but giving the unmanned tow barges an  
18 exemption.

19           It was addressed to Maurya Falkner.

20           "Dear Ms. Falkner: Inland Boatmen Union  
21 represents many crew members, including tug and barge  
22 operations running West Coast routes from Alaska to  
23 California, including Hawaii.

24           "The proposed legislation regarding ballast water  
25 treatment that California State Lands is considering will

1 expose tug owners to extremely dangerous conditions. To  
2 port unmanned barges in an open ocean on a regular basis  
3 poses serious safety concerns for crew members as well as  
4 the tug and barges. It's extremely dangerous even in calm  
5 waters to transfer crew members from tugs to barges.  
6 Trying to go alongside a barge in open ocean when you do  
7 not have to is going to get us a crew member killed.

8 "We request that you consider tug and barge  
9 operations exempt from legislation regarding ballast water  
10 treatment."

11 So, in closing, we are requesting that the regs  
12 be modified to give an exemption for unmanned tow barges.

13 CHAIRPERSON BUSTAMANTE: Okay. How does that  
14 impact the regulations that you're proposing right now,  
15 staff?

16 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Well,  
17 again, I think that, you know, we are opposed to any  
18 blanket exemptions. But we recognize the safety issue and  
19 that we're more than willing to work within the confines  
20 of that safety issue and provide them with -- I guess  
21 maybe exemption is the wrong word. We want them to still  
22 minimize the ballast water discharges, practice good  
23 housekeeping, submit the ballast water report forms like  
24 they're doing now, submit the fee like they're doing now.  
25 And if we can't because of technology insufficiencies at

1 this point have them conduct in exchange for a discharge  
2 to a shoreside treatment facility or some other option,  
3 then because of those safety issues they will be granted  
4 that, okay. You don't have to do a near-coast exchange.  
5 Still have to comply will all the rest of the components  
6 of the law.

7 An exemption to me says you're out, you don't  
8 have to do anything, the law doesn't apply to you any  
9 longer; which is actually a step back for us, because  
10 we're already getting forms -- we're already, you know,  
11 working with these individuals on a regular basis. So it  
12 wouldn't change much from what they're doing right now if  
13 we utilized our process within the proposed regulation.

14 CHAIRPERSON BUSTAMANTE: They would be required?

15 ENVIRONMENTAL PROGRAM MANAGER FALKNER: They  
16 would not be required to do the near coastal exchange due  
17 to the extreme safety concerns. However, I think we would  
18 definitely want to be sitting down with them and looking  
19 at exploring other options. And it may not -- we may not  
20 have any other options right now or in the next year. But  
21 there are potential shoreside treatment. It's up in the  
22 air. There's nothing available right now. But that's an  
23 option. There are technologies that are coming down that  
24 are being looked at now. But those are potential options.

25 So rather than exempt them from the whole



1 program, ask them to work within this. You know, we  
2 recognize -- we don't want them trying to put people from  
3 a boat to a barge and having somebody get killed. That's  
4 not the intent of this.

5 CHAIRPERSON BUSTAMANTE: What is the basic  
6 difference in operations that you see in reading the  
7 regulations as proposed and what you're currently doing?

8 MR. BROWNING: Well, the difference would require  
9 us to do a ballast water exchange at sea. I agree with  
10 Maurya, we agree with Maurya that we will continue to have  
11 best practices on the ballast that we do carry. That  
12 would minimize that. We'll continue to do the reporting  
13 and the fee.

14 Our exemption is purely for the ballast water  
15 exchange at sea. That's where the safety issue comes in.  
16 On safety exemption, it's regular business for us. And  
17 unmanned towed barges should be looked at as something  
18 that cannot do that.

19 CHAIRPERSON BUSTAMANTE: Well, according to  
20 staff, you heard what the response was, is that this  
21 regulation would not require you -- in the event that you  
22 believe there was safety and you were able to present that  
23 to the staff, that there would be an exemption for all  
24 safety.

25 SO does it really have an impact on what you're

1 currently doing?

2 MR. BROWNING: We would be more comfortable if it  
3 was in the reg that the barges -- unmanned towed barges  
4 were named in there as something that did not have to do  
5 that.

6 CHAIRPERSON BUSTAMANTE: But in terms of your  
7 operations, in terms of what you're actually doing, would  
8 these regulations as proposed have any effect at all in  
9 terms of your operations?

10 MR. BROWNING: If we were able to use the safety  
11 exemption each time, we could run the way we're running  
12 right now.

13 CHAIRPERSON BUSTAMANTE: Okay. Please.

14 ACTING COMMISSIONER SHEEHAN: Along the same  
15 lines of what the Lieutenant Governor said. Is it a  
16 presumption issue, that you were presumed to be required  
17 to do this unless you get an exemption, whereas right now  
18 you are not presumed to be required to do this? Is this a  
19 legal issue or is it more just an operational issue?

20 MR. BROWNING: I'm not sure I can answer that.  
21 It could be both. Our -- we -- the safety exemption is a  
22 simple process. We can write it into our plan as a safety  
23 exemption. But we would like the Commission to recognize  
24 that we're unique in how we operate.

25 ACTING COMMISSIONER SHEEHAN: Okay.

1 EXECUTIVE OFFICER THAYER: I think -- at a staff  
2 level one thing we talked about doing to make this issue  
3 clear, crystal clear, is write them a letter which  
4 basically says, you know, under existing law, under our  
5 regulations and with the existing state of technology, we  
6 believe that the safety exemption allows you to conduct  
7 operations without conducting mid-ocean -- or whatever it  
8 is -- near-ocean ballast water exchanges.

9 The letter would probably go on and say, however,  
10 your voyages are subject, as everybody else is, to the  
11 requirement of looking for feasible measures and also  
12 providing the reports so that we have the data on what's  
13 happening out there. And, you know, as a means to provide  
14 some comfort, to make it clear that we as a commission  
15 don't intend to come after them if they're using the  
16 safety exemption under the present situation.

17 CHAIRPERSON BUSTAMANTE: I think what the  
18 Commissioner is saying it's not a matter of comfort. I  
19 think she's suggesting perhaps -- maybe I should let you  
20 go ahead and speak -- but it sounds like legal matters,  
21 whether there's a legal presumption could mean it could  
22 have an impact on insurance, it could have an impact on  
23 the broader things, and is there a way of being able to  
24 resolve the legal issue --

25 ACTING COMMISSIONER SHEEHAN: I see lots of

1 pointing fingers.

2 EXECUTIVE OFFICER THAYER: I think everyone's  
3 looking for Mark Meier, who is the attorney who's  
4 worked --

5 ACTING COMMISSIONER SHEEHAN: Can I just --

6 MR. BROWNING: Yes.

7 ACTING COMMISSIONER SHEEHAN: That is what --  
8 maybe I'm reading this incorrectly -- but that is sort of  
9 the issue I see. Because from an operational perspective  
10 nothing would change. But the way the regulations, it  
11 is -- you are now required to do this unless you get the  
12 exemption. And so there was a presumption that you will  
13 comply unless you somehow get the exemption. And so my  
14 question is trying to deal with the operational. It  
15 doesn't sound like it would change really the operations,  
16 because until there's some other technology that would  
17 allow the industry to do this, you will continue to  
18 operate like you are now. And the issue would be:  
19 Notwithstanding that fact, are we creating a new legal  
20 burden for them or someone who could go after them, even  
21 though everybody agreed they can't do it now? I think  
22 that -- that's what I see as sort of the sort of the  
23 splitting of hairs the issue here. And so how could we  
24 address that issue so that operationally you're still  
25 doing the same, but re haven't somehow created --

1           CHAIRPERSON BUSTAMANTE: Paul, I think not only a  
2 letter from the regulatory agency, but perhaps a letter  
3 from the Attorney General's office would help clarify  
4 legal matters rather than thinking of this as an issue of  
5 comfort. I know you used the word -- but it's a -- it  
6 could be --

7           EXECUTIVE OFFICER THAYER: No, we don't intend to  
8 have that effect at all. And I don't know whether Mark  
9 has -- Mark's the attorney -- Mark Meier with the State  
10 Lands Commission who's worked on this.

11           SENIOR STAFF COUNSEL MEIER: Yeah, Mark Meier,  
12 Senior Staff Counsel for the Commission.

13           There are several different ways you could do it.  
14 You could draft an exemption from the exchange  
15 requirements, specifically narrowly focused on the need  
16 that -- if an exchange required the transfer of personnel  
17 from a tug to a barge, then you could say that for safety  
18 considerations you were exempt from the exchange  
19 requirement. That would be a blanket exemption.

20           It could be -- I think we could probably draft it  
21 as narrowly as possible. It would require us to go out  
22 and do a -- I believe a 15-day recirculation of the  
23 regulations.

24           CHAIRPERSON BUSTAMANTE: I don't think that's  
25 the -- where we're headed.

1            SENIOR STAFF COUNSEL MEIER:  But the point is  
2 that from a legal presumption standpoint, it seems to me  
3 to be a better way to go -- what I'm trying to say is  
4 the -- I think the exemption already exists legally under  
5 the proposed regulations, the safety exemption.  The  
6 question is is whether or not there's sufficient clarity  
7 that this safety exemption covers the transfer of  
8 personnel from the tug to the barge.  And so if you had a  
9 letter directed to the ship operator saying, "You are  
10 exempt from" -- "this particular barge from this  
11 particular activity," then it seems to me you've met all  
12 your presumptions there.  And in a way it's more narrowly  
13 defined, narrowed focused on this particular company and  
14 this particular activity, as opposed to a blanket  
15 exemption where you still have to go through a legal  
16 interpretation whether this applies to you or not.

17            CHAIRPERSON BUSTAMANTE:  Any thoughts about, you  
18 know, an AG opinion or --

19            ASSISTANT ATTORNEY GENERAL HAGER:  Well, you  
20 don't want to --

21            CHAIRPERSON BUSTAMANTE:  I'm not trying to put  
22 anybody on the hook here.  I'm just trying to figure out  
23 how to resolve it.

24            ASSISTANT ATTORNEY GENERAL HAGER:  No, no.

25            I will agree with Mark.  I think the point of --

1 the difference is: Is that what triggers the exemption?  
2 Is it an action by staff or is it the regulation itself?  
3 And I think the staff is saying it should be an action by  
4 staff, and that should create the same result. But it  
5 leaves the discretion -- or the action, I should say, with  
6 the staff.

7 SENIOR STAFF COUNSEL MEIER: The regulatory  
8 exemption already exists. It's the safety exemption.  
9 What we're doing is interpreting that exemption as it  
10 applies to this particular case. And it seems to -- it's  
11 my feeling that, from a legal standpoint and from a  
12 comfort standpoint, if I had a letter saying, the Sause  
13 Brothers, that these barges are exempt from exchanges  
14 insofar as they require need to transfer personnel from  
15 the tug to the barge, that's clearer than having a blanket  
16 exemption that you still have to go through the legal  
17 interpretation of deciding whether or not it applies to --

18 CHAIRPERSON BUSTAMANTE: Not being an attorney,  
19 I'd like to see the three attorneys not their heads in  
20 some kind of consensus.

21 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

22 CHAIRPERSON BUSTAMANTE: Okay?

23 Let the record show that the three attorneys all  
24 nodded in consensus.

25 UNKNOWN SPEAKER: In the affirmative.

1 CHAIRPERSON BUSTAMANTE: In the affirmative.

2 Thank you. Another attorney.

3 (Laughter.)

4 SENIOR STAFF COUNSEL MEIER: I think that one of  
5 the things that helps us in this case is that there are a  
6 defined number of barges that we're talking about. We can  
7 write letters that address specific barges. We don't  
8 need -- we're not talking about 150, 200 barges here.

9 CHAIRPERSON BUSTAMANTE: Okay. Thank you.

10 Is there any other comments or --

11 MR. BROWNING: I do have a question.

12 I do agree with the letter concept or the  
13 regulation because they both will work.

14 My question is: If we do get a letter naming the  
15 operation and the safety hazards, you know, that's fine.  
16 But will this letter -- you know, we've been doing this  
17 business and this trade for 50 some years and intend to  
18 for that far out in the future. Will this letter stand  
19 for that long of a time?

20 CHAIRPERSON BUSTAMANTE: Do you mean in the  
21 future?

22 MR. BROWNING: Yes.

23 CHAIRPERSON BUSTAMANTE: I don't think so.

24 MR. BROWNING: For that reason, that's why I  
25 would like to see something put in the regulations that



1 specifically names, you know, these barges -- unmanned  
2 towed barges, so, you know, we don't have to go to another  
3 letter to the next Commission.

4 CHAIRPERSON BUSTAMANTE: I understand.

5 ENVIRONMENTAL PROGRAM MANAGER FALKNER: The law  
6 sunsets in 2010. So, you know, for all we know, there  
7 won't be a reauthorization. And so we -- because of the  
8 question of the future.

9 MR. BROWNING: I understand that. But it would  
10 give the industry a comfort, you know, if we could get,  
11 you know, just that narrowed down to just the ballast  
12 water exchange for unmanned tow barges.

13 SENIOR STAFF COUNSEL MEIER: If the letter is  
14 issued by the Commission staff pursuant to a delegation,  
15 then it carries the same authority as the Commission. If  
16 the Commission itself directly authorizes this particular  
17 letter or signs the letter itself or if staff signs the  
18 letter -- if Paul signs the letter on behalf of the  
19 Commission, it's an action of the Commission. It carries  
20 from Commission to Commission. So that's -- the letter  
21 would remain in effect until it canceled.

22 CHAIRPERSON BUSTAMANTE: That doesn't mean he has  
23 an exemption for 50 years, is what he's looking for.

24 SENIOR STAFF COUNSEL MEIER: It would depend on  
25 how the letter is written.

1           ACTING COMMISSIONER SHEEHAN: Well, but the --

2           SENIOR STAFF COUNSEL MEIER: And he would never  
3 have an exemption for longer than four years because  
4 the --

5           ACTING COMMISSIONER SHEEHAN: Right. I mean the  
6 authority for the letter is the statute that caused these  
7 regulations to be developed.

8           SENIOR STAFF COUNSEL MEIER: Right.

9           ACTING COMMISSIONER SHEEHAN: And if the statute  
10 expires in 2010 --

11          SENIOR STAFF COUNSEL MEIER: But it would depend  
12 on what the legislative action -- what legislative  
13 action --

14          EXECUTIVE OFFICER THAYER: But it has to be a  
15 legislative action if these regulations go away in four  
16 years.

17          ACTING COMMISSIONER SHEEHAN: The statute goes  
18 away. Now, what would happen, my guess would be, the  
19 Legislature would come back to figure out, you know, "All  
20 right, have we learned anything new, new technology? Are  
21 we going to extend it? Are we going to change?" you know;  
22 which at that point then we would have to revisit the  
23 issue.

24          SENIOR STAFF COUNSEL MEIER: That's the purpose  
25 of the sunset provision, to revisit this issue to --

1           ACTING COMMISSIONER SHEEHAN: Correct. Exactly,  
2 to come back and see, okay, what has changed?

3           So the letter would go, at least I would read it,  
4 as long as the statute and regulations implementing that  
5 statute are in effect. And then the issue would have to  
6 be revisited at that point in time.

7           CHAIRPERSON BUSTAMANTE: Okay?

8           Thank you, sir.

9           MR. BROWNING: Thank you.

10          CHAIRPERSON BUSTAMANTE: Linda.

11          Please give your name for the record.

12          MS. SHEEHAN: Good morning, Chair Bustamante,  
13 members of the Commission. I'm Linda Sheehan. I'm the  
14 Executive Director of the California Coast Keeper  
15 Alliance.

16          The Coast Keeper Alliance represents ten  
17 individual water keepers from Humboldt Bay down to San  
18 Diego, and so we represent every port in the state, and  
19 members have great interest in these proceedings.

20          In my prior position with Ocean Conservancy I was  
21 quite active for eight years on the invasive species  
22 issues, including acting sponsor of AB 703 and AB 433, the  
23 enacting legislation that produced the regulations before  
24 you today. And I did attend to workshops that were put on  
25 by staff to help draft these proposed regulations. And I

1 can attest that staff did an excellent job in conducting  
2 outreach and communication with members of the regulated  
3 community, not only in California but up and down the  
4 coast, the entire Pacific Coast to try to gain the type of  
5 consistency that is so important in making sure that these  
6 work in the long term.

7 I do want to address the point of the -- the  
8 point that's been discussed here today, a little bit about  
9 the exemption.

10 I have some concerns about blanket exemptions in  
11 general, because the way that the law and regulations are  
12 drafted is with a focus on best available technology  
13 economically feasible. And that is -- it's in the  
14 statute. And, as Mr. Thayer said earlier, it's a changing  
15 dynamic. It could change from, you know, week to week.  
16 Who knows when the next new silver bullet's going to come  
17 out to address this problem. And so it is something that  
18 needs to be periodically evaluated. So I would certainly  
19 oppose any type of blanket exemption.

20 And one way to address sort of an ongoing safety  
21 exemption might be to go through the alternatives process,  
22 a petition for alternative action, which is detailed in  
23 the regulations and which allows for the Commission and  
24 the public to appropriately weigh in on what the best  
25 available technology economically feasible is and whether

1 the action in light of safety or other concerns is  
2 appropriate. And I think that that is an excellent  
3 system, and it could address pretty much any concern that  
4 comes up. And so I would encourage you to adopt the  
5 regulations for that purpose.

6 If you have any questions, I'd be more than happy  
7 to answer them.

8 CHAIRPERSON BUSTAMANTE: Thank you.

9 MS. SHEEHAN: Thank you.

10 CHAIRPERSON BUSTAMANTE: Abe Doherty.

11 MR. DOHERTY: Good morning. My name is Abe  
12 Doherty, and I'm a project manager of the California  
13 Coastal Conservancy. I'm here today to speak in favor of  
14 the proposed regulations as proposed by staff.

15 As you know, Mr. Chair, last week I brought  
16 projects to the California -- Protection Council for  
17 restoration of hill grass and native oysters in San  
18 Francisco Bay.

19 The Coastal Conservancy is currently spending  
20 millions of dollars to restore important habitat in the  
21 estuaries and the coastal areas of California. And  
22 invasive species really threatened these restoration  
23 projects. So whatever we can do to limit the introduction  
24 and spread of invasives in the state, we really encourage  
25 that to happen.

1           And the Coastal Conservancy is also spending  
2 millions of dollars to manage invasive species. And  
3 prevention of these invasives in the first place is the  
4 most cost effective, in some cases the only, way to manage  
5 these species.

6           So, in conclusion, these invasives threaten the  
7 significant investment the state is currently making to  
8 restore habitat and to actually manage the species that  
9 have already been introduced. So I'm hear to speak in  
10 favor of passing the proposed regulations as proposed by  
11 staff.

12           Thank you.

13           CHAIRPERSON BUSTAMANTE: Thank you.

14           Karen.

15           MS. REYNA: Hello. For the record, my name is  
16 Karen Reyna, a resource protection specialist for the Gulf  
17 of the Farallones National Marine Sanctuary.

18           The National Marine Sanctuary Program is a  
19 program of NOAA federal program. And there are four  
20 sanctuaries in California: Channel Islands, Monterey Bay,  
21 Gulf of the Farallones, and Cordell Bank. Our areas  
22 include surrounding the Channel Islands and all areas  
23 between Cambria and Bodega Bay.

24           And we also sent a letter, which I hope you  
25 received. We support the staff recommendation for the

1 proposed regulations. And we actually work with the  
2 Coastal Conservancy on eradicating and preventing invasive  
3 species. We manage Tomales Bay. And that's one of the  
4 areas that we've had problems. And then we're right off  
5 the Golden Gate. So this is an issue of concern for us.

6 This is also a timely decision for you and for  
7 us, because it complements a proposed regulation that we  
8 have, by all California sanctuaries in our management plan  
9 and review process. And that regulation is to prohibit  
10 the discharge of non-indigenous species. So this  
11 complements it quite well.

12 And that's pretty much it. Thank you.

13 I can answer any questions.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 The last speaker we have is Jason Lewis.

16 MR. LEWIS: Good morning. For the record, I'm  
17 Jason Lewis, Vice President of the American Waterways  
18 operators for the Pacific Region.

19 Actually I just want to -- I'll be very brief. I  
20 want to echo the support for Mr. Browning's statements  
21 earlier.

22 A few points that I've heard involve consistency,  
23 for one. And when we look at Washington, Oregon and  
24 California, with consistency we're talking about  
25 Washington's self-propelled vessels. And this captures

1 your unmanned tank barges because they're not  
2 self-propelled, because we're including everything that  
3 floats. We're putting it in there.

4           The other thing is about the exemption. When we  
5 look at this, we're looking at something that the staff at  
6 this time can decide that it's unsafe to do this.  
7 Tomorrow the staff can say, "Well, you know, really we've  
8 had a new innovation in the boats that are used for  
9 opening the tug to the barge. And because of that I  
10 really think it's safe." Or "Now we've developed a  
11 \$50,000 ionization process that you should be able to  
12 effect on your barge, and you shouldn't be exempt from  
13 this. We're going to rescind our letter." Because the  
14 letter's really dependent upon the staff who are issuing  
15 it and upon the Commission.

16           And I think this is a very important issue. And  
17 I consider ourselves out on the frontier of this, and  
18 that's why we're so aware of it. Right now there's  
19 nothing going on.

20           I've also heard that it expires in 2010, in four  
21 years, and that we shouldn't write anything in exemption  
22 list because it would be too far reaching. Well, I  
23 personally don't see any technology coming down the pipe  
24 in the next four years that's going to allow us to do this  
25 safely.



1           So if we have the commitment that you're willing  
2 to say, "Okay, look, we trust that you're actually doing  
3 the work to go out and look at the technology, maybe we  
4 should revisit this in a year or two and look at" -- maybe  
5 our exemption isn't warranted because there's something  
6 out there that allows us to do it. But to go the other  
7 way, we kind of have to be at the -- really at the mercy  
8 of the staff saying, "Okay. It's safe" or "unsafe and  
9 we're going to rescind the letter" or -- I know dealing  
10 with other states, I've dealt with that on other issues.  
11 And I just -- I would hate to see someone get hurt because  
12 of that. I mean those decisions really need to be made  
13 with taking safety into account.

14           And that's all I have.

15           CHAIRPERSON BUSTAMANTE: Is there a -- I thought  
16 I heard earlier. Wasn't there a set period in which we're  
17 going to review these regulations by the Commission?

18           EXECUTIVE OFFICER THAYER: The Commission in the  
19 staff recommendation will be directing staff to come back  
20 in 12 months and report to the Commission at an open  
21 hearing such as this, where people from the industry can  
22 testify as to the effect.

23           The other thing I'd like to point out is that --

24           CHAIRPERSON BUSTAMANTE: So we'll be reviewing in  
25 one year?

1 EXECUTIVE OFFICER THAYER: Yes.

2 And the other thing I'd like to point out is that  
3 no matter what staff does with this letter, two things are  
4 true: First, the regulations are worded in a way that  
5 this -- the safety exemption is not something that's  
6 decided upon by staff. They don't apply to us for a  
7 safety exemption. The master of the vessel can claim that  
8 safety exemption. If staff disagrees, ultimately we have  
9 to file some sort of litigation. And we could not do that  
10 without coming back to the Commission for approval.

11 So staff does not have the unilateral authority  
12 to enforce this in a way absent Commission input on this.

13 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Also, I  
14 think the -- the regulation and the law is very clear, is  
15 the responsibility for the vessel, the crew, and the cargo  
16 rests with the captain. So it really is your members'  
17 responsibilities to determine, if this is a safety issue,  
18 they better not do it, because they're not absolved of  
19 that responsibility. We're not taking that  
20 responsibility. It's the responsibility of the captain  
21 and the crew to determine that.

22 And as Paul said, if you claim a safety exemption  
23 and we disagree with you, we'll come back to you. But  
24 that is your -- that's a captain's exemption to take.  
25 It's not our decision. It's not their decision.

1           CHAIRPERSON BUSTAMANTE: So the presumption I  
2 guess here is that you're making the call on safety and  
3 you make that determination. And if we -- as was said  
4 here twice now, if we disagree, there will be some type of  
5 legal action that will have to come through us. You'll  
6 have a chance to be able to come back here and talk about  
7 that as we consider legal action. In the meantime, we  
8 will have a one-year period in which to review this matter  
9 so that you'll be able to come back and talk about exactly  
10 what the experiences are with your industry and this  
11 regulation.

12           MR. LEWIS: Thank you.

13           CHAIRPERSON BUSTAMANTE: All right, sir.

14           ACTING COMMISSIONER ARONBERG: I'd like to make a  
15 motion to adopt staff's recommendation, with the caveat  
16 that a letter as discussed will be provided, and then we  
17 show that that letter is satisfactory to Ms. Sheehan and  
18 the other folks who spoke on that before the letter goes  
19 out.

20           ACTING COMMISSIONER SHEEHAN: I'll second.

21           CHAIRPERSON BUSTAMANTE: The motion's been made  
22 and seconded.

23           And so let the record show that the vote is  
24 unanimous.

25           And you will be running those letters by us

1 before they go out?

2 EXECUTIVE OFFICER THAYER: Yes, sir.

3 CHAIRPERSON BUSTAMANTE: Okay. Very good.

4 I think that ends our regular calendar; is that  
5 correct?

6 EXECUTIVE OFFICER THAYER: As long as there's no  
7 public comment.

8 CHAIRPERSON BUSTAMANTE: Public comment. Okay.

9 Is there any public comment on any particular  
10 issue that you'd like to bring before the State Lands  
11 Commission?

12 Seeing none, that ends our regular calendar.

13 And we will be going into closed calendar. So  
14 those of you who are not a part of this closed session,  
15 would you please begin to exit.

16 (Thereupon the California State Lands  
17 Commission open session meeting adjourned  
18 at 11:30 a.m.)

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