

**CALENDAR ITEM
C42**

A Statewide

10/16/08
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**CONSIDER ADOPTION OF REGULATIONS FOR THE COLLECTION OF
INFORMATION RELATED TO THE HUSBANDRY PRACTICES OF COMMERCIAL
VESSELS FOR THE CONTROL OF MARINE INVASIVE SPECIES IN CALIFORNIA
WATERS**

PROPOSAL:

The Commission staff is proposing to adopt Section 2298 under Article 4.8 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). This section would require the master, owner, operator, agent, or person in charge of a vessel specified in Section 71201 of the California Public Resources Code (P.R.C.) to submit information on the vessel's husbandry practices and voyage characteristics to the Commission, as directed by Sections 71205(e) and 71205(f) of the P.R.C. This information would be required to be submitted via the Hull Husbandry Reporting Form, incorporated by reference through the proposed Section 2298(b) of the CCR.

BACKGROUND:

Vessel fouling is a shipping-related vector for the introduction of nonindigenous species (NIS) and occurs when aquatic organisms attach to, or associate with, the hull and other submerged vessel surfaces. Because they are attached to the exterior surface of the vessel, these organisms are shuttled from port to port along a voyage route and have the potential for introduction and establishment in these new areas if they spawn, fall off, or are physically removed. This vector has been implicated in over 25% of the established NIS introductions in the San Francisco Bay and may be responsible for over 70% of all established coastal NIS introductions to North America.

The accumulation of fouling organisms on the submerged surfaces of vessels also increases the drag placed on these vessels during transit and ultimately decreases fuel efficiency, resulting in higher operating costs. Because of this, most vessels undergo an assortment of husbandry practices (e.g. hull cleaning and the application of antifouling coatings) aimed at removing or limiting the

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amount of fouling organisms associated with the vessel. This also serves to reduce the risk of NIS introduction associated with the vessel. However, the regularity with which some of these practices are conducted is largely unknown. Also unknown are the trends displayed by the commercial fleet operating in California regarding certain voyage characteristics (e.g. traveling speeds and the amount of time spent in port) that are believed to influence fouling levels.

This limited amount of baseline information relating to vessel fouling and NIS across the types of vessels operating in California was indicated as a major hindrance to the evaluation of the risk of NIS from the vessel fouling vector in the Commission's report "Commercial Vessel Fouling in California", which was presented to the California Legislature in April 2006. The Legislature acted on many of the recommendations made in that report through the passage of AB 740 (Chapter 370, Statutes of 2007) which was signed by the Governor in October 2007. This statute amended Section 71205 of the P.R.C. and requires annual submission of information relating to vessel husbandry practices to the Commission using a form to be developed by the Commission. In response to this directive, the Commission convened a Technical Advisory Group (TAG) consisting of scientists, shipping industry representatives, and State, Federal, and international agency representatives with expertise in fouling-related issues. Using input from the TAG, Commission staff have developed the Hull Husbandry Reporting Form (HHRF) (Exhibit B), which has been incorporated by reference in the proposed Section 2298(b) of the CCR.

Specifically, the Hull Husbandry Reporting Form requests information related to the following:

- Date and location of last dry dock and antifouling paint application
- Manufacturer and product name of antifouling paint applied
- Specific locations of the vessel where antifouling paint was applied
- Whether vessel's sea chests were inspected and cleaned during dry dock
- Manufacturer and product name of marine growth protection system (MGPS) used to prevent fouling growth in the vessels sea chests and piping system
- Date and location of last in-water cleaning, including specific locations of the vessel that were cleaned
- Whether anchors and anchor chains are rinsed upon retrieval
- Average traveling speeds over previous four months
- Average time spent in port over previous four months
- Number of times vessel has visited freshwater ports, tropical ports, and the Panama Canal since the vessel's last dry dock
- Whether vessel follows a regular route
 - If yes, names of ports included in regular route

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- If no, names of the previous ten ports visited
- Whether the vessel has spent ten or more consecutive days in a single location since the most recent dry dock
 - If yes, names of port(s) and length of visit(s)
 - If no, name of port where longest stay occurred, including amount of time spent there

ISSUES OR CONCERNS

Commission staff received one comment letter relevant to the proposed regulatory action. The commentor requested that the proposed text of the regulation include language regarding the timing of the submission requirement and also clarification of this requirement on the supplemental instructions (Part II of the HHRF). Commission staff accepted this comment and modified the language accordingly.

STATUTORY AND OTHER REGULATIONS:

- A. Public Resources Code Section 71200 through 71271

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

2. The proposed regulatory amendments do not affect small businesses as defined in Gov. C. Section 11342.610, because all affected businesses are transportation and warehousing businesses having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342.610 sub. (c)(7).

Exhibit:

- A. Proposed Amendments.
- B. Hull Husbandry Reporting Form

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IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) 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 REGULATORY AMENDMENT DOES NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOV. C. SECTION 11342.610, BECAUSE ALL AFFECTED BUSINESSES ARE TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAN \$1,500,000, AS SPECIFIED UNDER GOV. C. SECTION 1342.610(c)(7).
3. FIND THAT THE REGULATORY AMENDMENT WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITHIN CALIFORNIA, NOR WILL IT HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.
4. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE REGULATION IS PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATION.
5. ADOPT ARTICLE 4.8, SECTION 2298 IN TITLE 2, CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THAT SET FORTH IN EXHIBIT "A" TO BECOME EFFECTIVE JANUARY 1, 2009.
6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS TO 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 REGULATION BECOMES EFFECTIVE.
8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT TO THE REGULATION AT SUCH TIME AS IT BECOMES EFFECTIVE.