

**CALENDAR ITEM**

**97**

A Statewide

02/20/15

S Statewide

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**CONSIDER SPONSORING STATE LEGISLATION TO REVISE THE IMPLEMENTATION DATE FOR CALIFORNIA'S BALLAST WATER DISCHARGE PERFORMANCE STANDARDS AND MAKE OTHER IMPROVEMENTS TO THE MARINE INVASIVE SPECIES ACT IN ORDER TO MOVE THE STATE EXPEDITIOUSLY TOWARD ELIMINATION OF THE DISCHARGE OF NONINDIGENOUS SPECIES INTO STATE WATERS**

**SUMMARY:**

This proposed legislation would delay implementation of the California performance standards for the discharge of ballast water and make other improvements and updates to current law to move the state expeditiously toward eliminating nonindigenous species discharges into state waters.

In addition to changing the implementation date for the performance standards, the proposed legislation would do the following: 1) add a definition of "port" to the definitions section of the statute; 2) repeal sections of law that are no longer applicable; 3) expand the State Lands Commission's (Commission) inspection and enforcement authority for biofouling management; and 4) harmonize the ballast water management requirements for vessels arriving to California ports from inside and outside the Pacific Coast Region.

**EXISTING LAW:**

Existing law, the Marine Invasive Species Act (MISA), applies to all vessels greater than 300 gross registered tons (i.e. large commercial ships) that arrive to California ports carrying or capable of carrying ballast water. The purpose of MISA is to move the state expeditiously toward elimination of the discharge of nonindigenous species into state waters.

Existing law establishes performance standards for the maximum allowable thresholds for living organisms, by size class, in a vessel's ballast water discharge in state waters and an implementation schedule thereof, and requires the Commission to adopt the standards and implementation schedule in regulations. In 2007, the interim ballast water performance standards and implementation schedule were adopted in regulations. Interim performance standards identify a range of permissible thresholds for living organisms by size class and are currently to go into effect starting January 1,

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2016. Final performance standards are set to go into effect in 2020 with a performance standard of “zero detectable living organisms.” Existing law also requires the Commission to regularly review the efficacy, availability, and environmental impacts of ballast water treatment technologies and report its findings to the Legislature. If technologies are not available to meet the performance standards, the Commission must conduct an assessment of why they are unavailable. Reports are due to the Legislature not less than 18 months prior to each implementation date for the performance standards.

Existing law requires the Commission to develop regulations governing the management of biofouling on vessels that are based on the best available technology economically achievable to minimize the introduction of nonindigenous species into state water. Existing law also requires Commission staff to inspect a minimum of 25% of arriving vessels to assess compliance with state law.

### **BACKGROUND AND ANALYSIS:**

Nonindigenous species, commonly known as invasive species, are organisms that have been transported by human activities into regions where they did not previously exist. Once established, these species can have devastating economic, human health and ecological impacts in the receiving environment. In coastal environments, commercial shipping is the most significant vector for invasions.

Commercial ships transport organisms through two primary vectors – ballast water and vessel biofouling. Ballast water is used by ships to maintain stability while at sea. When ballast water is taken from one area of the world and discharged in another part of the world, species can be introduced. Vessel biofouling consists of aquatic species attached to or associated with submerged or wetted hard surfaces. These include organisms such as barnacles, algae, and mussels that physically attach to any vessel’s wetted surfaces, and mobile organisms such as worms, crabs, and amphipods (small shrimp-like animals) that associate with the attached biofouling community. When vessels move from port to port, biofouling communities are transported along with their “host” structure.

The most recent technology assessment report reviewing the efficacy, availability, and environmental impacts of ballast water treatment technologies was approved by the Commission and submitted to the California Legislature in August 2014.

The report adopted in 2014 evaluated several options vessels may use to comply with California's performance standards, including: 1) retention of all ballast water on board;

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2) use of potable water as a ballast water source; 3) discharge to a shore-based ballast water treatment facility; and 4) treatment of all ballast prior to discharge by a shipboard ballast water treatment system. However, in practice, the report showed that vessels have very few options available at this time to comply with California's performance standards.

While a large proportion (over 80%) of voyages to California waters retain all ballast water on board, a vessel may still need to discharge ballast on 20% of its voyages for operational or safety purposes, and thus will need a method of ensuring that any discharged ballast water is in compliance with California's performance standards. Potable water is not an option for many vessels due to cost and the volume of water needed for ballasting purposes. No shore-based treatment facilities designed to kill or remove organisms in ballast water currently exist or are in development in the United States, and shipboard ballast water treatment systems have not demonstrated the ability to meet the California performance standards. The lack of options available to the shipping industry to meet California's performance standards at this time is an obstacle to implementation of the standards.

The interim performance standards are scheduled for implementation on January 1, 2016. The implementation schedule must therefore be changed to reflect the lack of available treatment technologies.

The proposed legislation delays implementation of the California ballast water performance standards until 2020 to enable further development of treatment technologies and the adoption of regulations to specify the methods that will be used for compliance assessment. A delay until 2020 effectively eliminates the interim performance standards (which are therefore repealed) and moves the state to the "no detectable living organisms" standards. The proposed legislation also makes a clarifying change to identify the specific organism size classes in statute rather than incorporating them by reference, as is the case currently.

Additional provisions:

- 1) Add a definition of "port." Ballast water management requirements in the Marine Invasive Species Act are based on a vessel's last port of call. A "port", however, is undefined. The definition of "port" is added to provide clarity to the regulated community about what locations throughout the world should be considered "ports" under the law.

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- 2) Repeal inapplicable sections. Several provisions in the existing statute have been repealed or replaced with the adoption of regulations. Removing these obsolete provisions will improve the readability of the law and reduce confusion.
  
- 3) Expand inspection and enforcement authority for biofouling management. When the Commission's authority to manage biofouling was expanded in 2007, the Commission's inspection and enforcement authority was not expanded accordingly. This provision will ensure that the Commission can equally inspect vessels and enforce management requirements for ballast water and vessel biofouling.
  
- 4) Harmonize management requirements for vessels arriving to California ports from inside and outside the Pacific Coast Region. This provision would require the Commission to adopt regulations governing the management of ballast water for vessels arriving to California ports from outside of the Pacific Coast Region. Currently management requirements for vessels arriving to California from outside the Pacific Coast Region are set in statute, but management requirements for vessels arriving to California ports from inside the region are set in regulation. This proposed change would move the management requirements for vessels coming from outside the Pacific Coast Region to regulation, harmonizing the management requirements and enabling the Commission to manage ballast water from all vessels in a more comprehensive fashion. This amendment has the additional benefit of clarifying ballast water management requirements for the regulated industry by locating them all within one set of regulations.

**STAFF RECOMMENDATION:**

Commission staff recommends that the Commission sponsor legislation in the 2015-16 legislation session to revise the implementation date for California's ballast water discharge performance standards and make other improvements to the Marine Invasive Species Act in order to move the state expeditiously toward elimination of the discharge of nonindigenous species into state water.

**EXHIBIT:**

- A. Proposed bill language

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**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

1. Sponsor legislation in the 2015-16 legislation session to revise the implementation date for California's ballast water discharge performance standards and make other improvements to the Marine Invasive Species Act in order to move the state expeditiously toward elimination of the discharge of nonindigenous species into state water.

# EXHIBIT A

## PUBLIC RESOURCES CODE

### DIVISION 36. MARINE INVASIVE SPECIES ACT [71200 - 71271]

#### CHAPTER 1. General Provisions [71200 - 71202]

##### 71200.

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

- (a) "Ballast tank" means a tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.
- (b) "Ballast water" means water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.
- (c) "Biofouling" means the attachment or association of marine organisms to the wetted portion of a vessel or its appurtenances, including, but not limited to, sea chests, propellers, anchors, and associated chains.
- (d) "Board" means the State Water Resources Control Board.
- (e) "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.
- (f) "Commission" means the State Lands Commission.
- (g) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.
- (h) "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 mid-ocean 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 mid-ocean waters.

(i) "Mid-ocean waters" means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(j) "Nonindigenous species" means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range, including any of those organisms transferred from one country into another.

(k) "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. The commission may modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described herein.

(l) "Person" means an individual, trust, firm, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. "Person" also means a city, county, city and county, district, commission, the state, or a department, agency, or political subdivision of the state, an interstate body, or the United States and its agencies and instrumentalities, to the extent permitted by law.

**(a) "Port" means any port or place in which a vessel was, is, or will be anchored or moored, or where a vessel will transfer cargo.**

(m) "Sediments" means matter settled out of ballast water within a vessel.

(n) "Waters of the state" means surface waters, including saline waters, that are within the boundaries of the state.

(o) "Wetted portion of a vessel" means all parts of a vessel's hull and structures that are either submerged in water when the vessel is loaded to the deepest permissible legal draft or associated with internal piping structures in contact with water taken onboard.

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

(q) "Voyage" means any transit by a vessel destined for a California port or place from a port or place outside of the coastal waters of the state.

*(Amended by Stats. 2012, Ch. 550, Sec. 1. Effective September 25, 2012.)*

**71201.**

(a) This division applies to all vessels, United States and foreign carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel, and to all biofouling.

(c) This division may be known, and may be cited, as the "Marine Invasive Species Act."

(d) The Legislature finds and declares that the purpose of this division 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. This division shall be implemented in accordance with this intent, except as expressly provided by this division.

**71201.5.**

This division does not authorize the discharge of oil, noxious liquids, or other pollutants, in a manner prohibited by state, federal, or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

**71201.7.**

The commission shall adopt regulations necessary to implement this division, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**71202.**

This division does not apply to any of the following vessels:

(a) A vessel of the armed forces, as defined in paragraph (14) of subsection (a) of Section 1322 of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to subsection (n) of Section 1322 of Title 33 of the United States Code.

(b) A vessel in innocent passage, which is a foreign vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States, and that does not discharge ballast water into the waters of the state, or into waters that may impact waters of the state.

## **CHAPTER 2. Ballast Water Management Requirements [71203 - 71210.5]**

### **71203.**

- (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 division 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 paragraph (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 waters of the state.
- (c) Nothing in this division 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.

### **71204.**

Subject to Section 71203, the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

- (a) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.
- (b) Minimize the discharge or uptake of ballast water in areas within, or that may directly affect, marine sanctuaries, marine preserves, marine parks, or coral reefs.
- (c) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:
  - (1) Areas known to have infestations or populations of nonindigenous organisms and pathogens.
  - (2) Areas near a sewage outfall.
  - (3) Areas for which the master, owner, operator, or person in charge of a vessel has been informed of the presence of toxic algal blooms.
  - (4) Areas where tidal flushing is known to be poor or in turbid waters.
  - (5) In darkness when bottom-dwelling organisms may rise up in the water column.
  - (6) Areas where sediments have been disturbed, such as near dredging operations or where propellers may have recently stirred up the sediment.
- (d) Clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements in port or in drydock, to remove fouling organisms and sediments, and dispose of those organisms and sediments in accordance with local, state, and federal law.
- (e) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.
- (f) (1) Remove biofouling organisms from the hull, piping, propellers, sea chests, and other wetted portions of a vessel arriving at a California port or place, on a

regular basis, and dispose of removed substances in accordance with local, state, and federal law.

(2) For purposes of paragraph (1), prior to and until the date that the regulations described in Section 71204.6 are adopted, "regular basis" means any of the following:

(A) No longer than by the date of expiration on the vessel's full-term Safety Construction Certificate or an extension of that expiration date.

(B) No longer than by the date of expiration of the vessel's full-term United States Coast Guard Certificate of Inspection or an extension of that expiration date by the United States Coast Guard.

(C) No longer than 60 months since the time of the vessel's last out-of-water drydocking. The commission may approve a time extension to this period.

(3) Inwater cleaning that is performed on the wetted portions of a vessel while in the waters of the state shall be conducted using best available technologies economically achievable, and designed to minimize the release of coating and biological materials, cleaning agents, and byproducts of the cleaning process into the surrounding waters. The cleaning shall be performed in accordance with local, state, and federal law.

(g) Provide access to the commission, upon request, for sampling of ballast intake and discharge.

(h) Maintain a ballast water management plan that was prepared specifically for the vessel and that shall, upon request, be made available to the commission for inspection and review. This plan shall be specific to each vessel and shall provide, at a minimum, a description of the ballast water management strategy for the vessel that is sufficiently detailed to allow a master or other appropriate ship's officer or crew member serving on that vessel to understand and follow the ballast water management strategy.

(i) Train the master, operator, person in charge, and those members of the crew who have responsibilities under the vessel's ballast water management plan, on the application of ballast water and sediment management and treatment procedures, as well as procedures described in this section, in order to minimize other releases of nonindigenous species from vessels.

#### **71204.2.**

~~Prior to and until the date of implementation of the regulations described in Section 71204.5, and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the EEZ shall employ at least one of the following ballast water management practices:~~

~~(a) Exchange the vessel's ballast water in mid-ocean waters, before entering the waters of the state.~~

~~(b) Retain all ballast water on board the vessel.~~

~~(c) (1) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.~~

~~(2) For purposes of this subdivision, "same location" means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.~~

~~(d) 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.~~

~~(e) Discharge the ballast water to a reception facility approved by the commission.~~

~~(f) 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.~~

### 71204.3.

**(a) The commission shall adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place outside of the Pacific Coast Region. The commission shall consider vessel design and voyage duration in developing these regulations. The regulations shall be based on the best available technology economically achievable and shall be designed to protect the waters of the state. 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.**

**(b) Subject to Section 71203, the master, operator, or person in charge of a vessel arriving at a California port or place from a port or place outside of the Pacific Coast Region shall comply with these regulations.**

~~(c) Commencing on **Prior to and until** the date of implementation of the regulations described in Section 71204.5 **subsection (a)**, and Subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the Pacific Coast Region shall employ at least one of the following ballast water management practices:~~

~~(a)(1) Exchange the vessel's ballast water in mid-ocean waters, before entering the coastal waters of the state.~~

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

~~(c)(1)(3) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.~~

~~(2)(A) For purposes of this subdivision, "same location" means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.~~

~~(d)(4) 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.~~

~~(e)(5) Discharge the ballast water to a reception facility approved by the commission.~~

(f) **(6)** 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.

**71204.5.**

(a) On or before January 1, 2005, the commission shall 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. The commission shall consider vessel design and voyage duration in developing these regulations. The regulations shall be based on the best available technology economically achievable and shall be designed to protect the waters of the state. 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.

(b) Subject to Section 71203, and commencing no later than July 1, 2005, the master, operator, or person in charge of a vessel arriving at a California port or place from a port or place within the Pacific Coast Region shall comply with these regulations.

**71204.6.**

On or before January 1, 2012, the commission, in consultation with the board, the United States Coast Guard, and a technical advisory group consisting of interested persons including, but not limited to, shipping, port, and environmental conservation representatives, shall develop and adopt regulations governing the management of biofouling on vessels arriving at a California port or place. The commission shall consider vessel design and voyage duration in developing the regulations. The regulations shall be based on the best available technology economically achievable and shall be designed to protect the waters of the state.

**71204.7.**

(a) On or before July 1, 2005, the commission, in consultation with the United States Coast Guard, shall adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems.

(b) The regulations shall include criteria for the development of a formal application package to use those systems.

(c) (1) If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application on or before January 1, ~~2016~~ **2020**, the commission shall deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed five years from the date that the interim performance standards adopted pursuant to paragraphs (1) and (2) of subdivision (a) of Section 71205.3 would apply to that vessel.

(2) The commission may rescind its approval of the system at any time if the commission, in consultation with the board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in performance, human safety, or environmental soundness relative to

anticipated performance, or that the applicant has failed to provide the commission with required test results and evaluations.

(d) The commission shall not approve an experimental ballast water treatment system unless the owner or operator demonstrates that the system has significant potential to improve upon the ability of existing systems to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

(e) The commission shall disseminate to the public the test results and evaluations regarding experimental ballast water treatment systems described in this section.

**71204.9.**

(a) (1) On or before January 31, 2006, the commission, in consultation with the board and in consideration of the advisory panel recommendations described in subdivision (b), shall submit to the Legislature and make available to the public, a report that recommends specific performance standards for the discharge of ballast water into the waters of the state, or into waters that may impact waters of the state. The performance standards shall be based on the best available technology economically achievable and shall be designed to protect the beneficial uses of affected, and potentially affected, waters. If the commission, based on the best available information, and in consultation with the board and in consideration of the advisory panel recommendations, determines that it is technologically and economically achievable to prohibit the discharge of nonindigenous species, the commission shall include this recommendation in the report to the Legislature.

(2) As appropriate, the commission may recommend different performance standards for vessels arriving from mid-ocean waters, for vessels that travel exclusively within the Pacific Coast Region, for new or existing vessels, or for different vessel types. Each set of performance standards shall be based on the best available technology economically achievable for the described category of vessel.

(b) (1) The commission shall convene and consult with an advisory panel in developing the report required by subdivision (a). The advisory panel shall be comprised of persons concerned with performance standards for the discharge of treated ballast water. The advisory panel shall include, but not be limited to, representatives from one or more California regional water quality control boards, the Department of Fish and Game, the United States Coast Guard, the United States Environmental Protection Agency, and persons representing shipping, port, conservation, fishing, aquaculture, agriculture, and public water agency interests. The commission shall ensure that the advisory panel meets in a manner that facilitates the effective participation of both the public and panel members.

(2) The advisory panel shall make recommendations regarding the content, issuance, and implementation of the performance standards to the commission.

(3) (A) The advisory panel's meetings shall be open to the public.

(B) The commission shall provide notice of the advisory panel's meetings to any person who requests that notice in writing, as well as on the commission's Web site. The commission shall provide that notice at least 10 days before an advisory panel meeting and shall include a brief general description of the meeting's agenda and the name, address, and telephone number of a person who can provide additional information before the meeting.

(4) The advisory panel shall submit its recommendations to the commission on or before July 1, 2005.

71205.

(a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying, or capable of carrying, ballast water, that visits a California port or place, shall provide the information described in subdivision (c) in electronic or written form to the commission **at least 24 hours before the vessel arrives to that California port or place. If a vessel's voyage is less than 24 hours in total duration, the vessel shall report the required information prior to departing the port or place of departure.** ~~upon the vessel's departure from each port or place of call in California.~~

(2) The information described in subdivision (c) shall be submitted using a form developed by the United States Coast Guard.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the commission upon the vessel's departure from each port or place of call in California.

(c) (1) The master, owner, operator, or person in charge of the vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water on board, total number of ballast water tanks, capacity of each ballast water tank, and total number of ballast water tanks in ballast, using measurements in metric tons (MT) and cubic meters (m<sup>3</sup>).

(D) Ballast water management information, including all of the following:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(iv) Whether the master, operator, or person in charge of the vessel has claimed a safety exemption pursuant to paragraph (1) of subdivision (b) of Section 71203 for the vessel voyage, and the reason for asserting the applicability of that paragraph.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange is conducted, of ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, that shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

(d) The master, owner, operator, or person in charge of a vessel subject to this division shall retain for two years a separate ballast water log outlining ballast water management activities for each ballast water tank on board the vessel and shall make the separate ballast water log available to the commission for inspection and review.

(e) (1) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall provide the information described in subdivision (f) in electronic or written form to the commission annually upon request of the commission. The master, owner, operator, agent, or person in charge of the vessel shall submit that information within 60 days of receiving a written or electronic request from the commission. For purposes of this paragraph, the reporting shall begin on January 1, 2008, and continue until the date that the regulations described in Section 71204.6 are adopted.

(2) (A) The information described in subdivision (f) shall be submitted using a form developed by the commission.

(B) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a copy of the form submitted pursuant to this subdivision on board the vessel for two years.

(f) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall maintain, in written or electronic form, records that include the following information:

(1) (A) Date and location of drydocking events.

(B) Whether the vessel in general, and the wetted portion of the vessel, sea chests, anchors, and associated chains in particular, were cleaned during a drydocking event.

(2) Date and geographic location of all inwater cleaning of the wetted portion of the vessel.

- (3) (A) Date and geographic location of all antifouling paint applications to the vessel.
- (B) The manufacturer and brand name of the antifouling paint applied to the vessel.
- (4) Any additional information required by the commission by rule or regulation.
- (g) (1) The master, owner, operator, agent, or person in charge of a vessel subject to this division that has a ballast water treatment system installed on board ~~that is used to comply with this division and has discharged ballast in waters of the state~~ shall provide to the commission based on a schedule to be developed by the commission, by rule or regulation, in consultation with the advisory panel established in Section 71204.9 and the United States Coast Guard, the following information in electronic or written form:
  - (A) The manufacturer and product name of the ballast water treatment system on board the vessel.
  - (B) If applicable, the name and organization that has approved the ballast water treatment system and the approval or certification number of the ballast water treatment system technology.
  - (C) The number of tanks and the volume of each tank that is managed using the ballast water treatment system and that was discharged in waters of the state.
  - (D) Any additional information required by the commission by rule or regulation.
- (2) The information required by paragraph (1) shall be provided on a form developed by the commission.
- (h) The master, owner, operator, agent, or person in charge of a vessel subject to this division that has a ballast water treatment system installed on board that is used to comply with this division shall maintain on board the vessel, in written or electronic form, records, including, but not limited to, all of the following information:
  - (1) Copies of all reports and forms described in subdivision (g), submitted to the commission.
  - (2) Material safety data sheets for all chemicals utilized in conjunction with the ballast water treatment system.
  - (3) System manufacturer's technical guides, publications, and manuals.
  - (4) Ballast water treatment system performance information, which may be incorporated into the ballast log described in subdivision (d), and includes, at a minimum, all of the following information:
    - (A) The date, time, and location of the starting and stopping of the system for the purpose of treating ballast water.
    - (B) System malfunctions or unexpected situations, including problem resolution.
    - (C) Both scheduled and unscheduled maintenance of the system.
    - (D) All relevant measures of performance recorded during system operation.
    - (E) Any additional information required by the commission by rule or regulation.

**71205.3.**

- ~~(a) On or before January 1, 2008, the commission shall adopt regulations that do all of the following:~~
  - ~~(1) Except as provided in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the California State Lands~~

Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006.

(2) Except as provided in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with the following implementation schedule:

Ballast water capacity of vessel	Standards apply to new vessels in this size class constructed on or after:	Standards apply to all other vessels in this size class beginning on:
<1500 metric tons	January 1, 2016	January 1, 2018
1500-5000 metric tons	January 1, 2016	January 1, 2016
>5000 metric tons	January 1, 2016	January 1, 2018

(3 **(a)** Notwithstanding Section 71204.7, **the Commission shall adopt regulations that require, on or after January 1, 2020,** require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final performance standard for the discharge of ballast water of zero detectable **living organisms** for all organism size classes.

**(1) Applicable organism size classes include:**

- (A) organisms greater than 50 micrometers in minimum dimension;**
- (B) organisms equal to or less than 50 micrometers and greater than or equal to 10 micrometers in minimum dimension;**
- (C) organisms less than 10 micrometers in minimum dimension, including: Escherichia coli; intestinal enterococci; toxicogenic Vibrio cholera (serotypes O1 and O139);**
- (D) bacteria; and**
- (E) viruses.**

by 2020., as approved by the commission on January 26, 2006.

(b) Not less than 18 months prior to **January 1, 2020** the scheduled compliance date specified in paragraph (1) of subdivision (a) for each subsequent class and the date for implementation of the final performance standard, as specified in paragraph (3) of subdivision (a), the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and the advisory panel described in subdivision (b) of Section 71204.9, shall prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. If technologies to meet the performance standards are determined in a review to be unavailable, the commission shall include in that review an assessment of why the technologies are unavailable.

**71206.**  
 (a) The commission, in coordination with the United States Coast Guard, shall take samples **and inspect** of ballast water and sediment from at least 25 percent of the

arriving vessels subject to this division, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division. The commission shall provide to the board copies of all sampling results.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the commission, upon request of that commission, the records required ***to be maintained by this division*** by Section 71205.

(c) The commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

#### **71207.**

~~(a) This division describes the state program to regulate the discharge or release of ballast water and other vectors of nonindigenous species from vessels regulated pursuant to this division. Prior to January 1, 2010, a state agency, board, commission, or department shall not impose a requirement, pertaining to the discharge or release of ballast water and other vectors of nonindigenous species from a vessel regulated pursuant to this division, that is different from the requirements set forth in this division, unless that action is mandated by federal law.~~

(b) Nothing in this division restricts a state or local agency, board, commission, or department, or a subdivision of one of those entities, from enforcing this division, if the total fines imposed by those entities do not exceed the amount of the fines set forth in Section 71216.

(c) A person who violates this division is subject to civil and criminal liability in accordance with Chapter 5 (commencing with Section 71216).

(d) The commission may require a vessel operating in violation of this division to depart the waters of the state and exchange, treat, or otherwise manage the ballast water ***and/or biofouling*** at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers.

#### **71210.**

(a) The commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives, shall sponsor pilot programs for the purpose of evaluating alternatives for treating and otherwise managing ballast water. The goal of this effort shall be the reduction or elimination of the discharge of nonindigenous species into the coastal waters of the state or into waters that may impact coastal waters of the state. Whenever possible, the pilot programs shall include funding from federal grants and appropriations, vendor funding, and state bond funds, including, but not limited to, bond funds from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. Priority shall be given to projects to test and evaluate treatment technologies that can be used to prevent the introduction and spread of nonindigenous aquatic species into coastal waters of the state by ship-mediated vectors.

(b) The commission shall provide biennial summaries to the Legislature and the public, beginning on or before January 31, 2005, of the results of the pilot programs conducted pursuant to this section. These summary reports shall include, but not be limited to, a description of the projects, the relative effectiveness of the technologies examined in minimizing the discharge of nonindigenous species, and the costs of implementing the technologies.

**71210.5.**

~~The commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of interested persons including, but not limited to, shipping and port representatives, shall prepare an analysis of the vectors, other than ballast water, and relative risks of those vectors, for release of nonindigenous species from vessels. This analysis shall include, but not be limited to, the release of nonindigenous species from vessel hulls, sea chests, sea suction grids, other hull apertures, in-water propellers, chains, anchors, piping and tanks. The commission shall prepare a report summarizing the results of this analysis and recommending action to reduce the discharge of nonindigenous species from vessel vectors other than ballast water. The commission shall submit the report to the Legislature and make it available to the public on or before March 1, 2006.~~