MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

LEGISLATIVE OFFICE BUILDING
1020 N STREET, ROOM 100
SACRAMENTO, CALIFORNIA

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Michael Mac Iver
Shorthand Reporter

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APPEARANCES

Cruz Bustamante, Chairperson

Steve Peace, Director of Finance, represented by David Takashima

Steve Wesley, State Controller, represented by Cindy Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Maurya Falkner, Environmental Planner

ALSO PRESENT

Alan Hagar, Deputy Attorney General
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PETERS SHORTHAND REPORTING CORPORATION  
3336 BRADSHAW ROAD, SUITE 240, SACRAMENTO, CA  95827 / (916) 362-2345
CHAIRPERSON BUSTAMANTE: Why don't we go ahead and start and call the meeting to order. And we'll have Mr. Takashima join us I'm sure very shortly.

Is Cindy with us?

EXECUTIVE OFFICER THAYER: Yes, she's coming up.

CHAIRPERSON BUSTAMANTE: Just to do a little preliminary. The State Lands Commission is the entity that provides management over all state lands. And it is about, what, four million acres now?

EXECUTIVE OFFICER THAYER: Yes, sir, four and a half.

CHAIRPERSON BUSTAMANTE: Also along all tidelands and riverways and lakebeds and marinas and coastal areas. What else?

EXECUTIVE OFFICER THAYER: If it's wet, we're interested.

(Laughter.)

CHAIRPERSON BUSTAMANTE: If it's wet, we're interested, for the record.

And joining me today is Cindy Aronberg, who is representing Controller Steve Wesley. David Takashima, when he comes before us, he will be representing Steve Peace with the Department of Finance.

At this point I guess we can just start with the
first item of business, which is to approve the minutes of
the last meeting.

    ACTING COMMISSIONER ARONBERG: I move approval.
    CHAIRPERSON BUSTAMANTE: And I'll second it. And
we'll assume it's unanimous, unless Takashima objects, and
then we'll record it as a two-to-one vote.
    (Laughter.)
    CHAIRPERSON BUSTAMANTE: Mr. Thayer, do you have
an executive report?
    EXECUTIVE OFFICER THAYER: Yes, Mr. Chair, I have
    three items I wanted to mention, or four items to mention.
    First, playing newsman here for a moment, I just
    wanted to report and you'll probably see it on the news, if
you haven't already seen it, that there was an explosion and
fire at a marine oil terminal back east, Staten Island near
New York City. The preliminary indication we have is that
it was a barge that was involved. The barge is in pieces,
according to our staff, at this point. The fire is mostly
under control, there is some left at the manifold, but it's
not causing greater damage.
    The preliminary report I saw indicated that the
FBI was going to investigate, but they had no indication at
this point that terrorism was involved. And, of course, our
staff will be reviewing whatever information comes out of
the investigation there to see if there are any, you know,
what the causative factor was, what made this happen, and to make sure that we're looking to see that the same thing can't happen in California.

CHAIRPERSON BUSTAMANTE: And who was the company who was involved?

EXECUTIVE OFFICER THAYER: I believe it was ExxonMobil.

CHAIRPERSON BUSTAMANTE: Well, maybe we can -- welcome David, in a coat and tie.

(Laughter.)

CHAIRPERSON BUSTAMANTE: So will we also be checking with ExxonMobil to make sure that we get their side?

EXECUTIVE OFFICER THAYER: That's a good point, and we'll do that. Of course, we want to do everything we can to prevent it from happening in California.

CHAIRPERSON BUSTAMANTE: Of course.

EXECUTIVE OFFICER THAYER: But we'll check into it because there may be lessons there for us.

The second item I wanted to note was that in response to the Commission's direction last year, Commission staff has met with George Vinson, California's Security Chief. It was a very fruitful conversation. I think he's up to his eyeballs in so many different aspects of security for California that he's very grateful that we've offered to
work with him on determining what role the State Lands Commission can undertake to assist in meeting California's security needs with respect to ports and other lands under our jurisdiction.

CHAIRPERSON BUSTAMANTE: There was quite a report on that, I think it was MSNBC just a few days ago.

EXECUTIVE OFFICER THAYER: I might have missed that.

CHAIRPERSON BUSTAMANTE: On new technology and what's guarding the nation's ports.

EXECUTIVE OFFICER THAYER: Uh-huh.

CHAIRPERSON BUSTAMANTE: I can get my staff to give you a copy, if you'd like. We can get you a copy of that.

EXECUTIVE OFFICER THAYER: I'd very much appreciate that.

CHAIRPERSON BUSTAMANTE: We also had a bill last year and both as the Chair of the Economic Development Commission, as well as a member of State Lands, we had a bill last year that would have provided somewhere in the neighborhood of around $1.1 billion dollars for ports and communities, and the impact that ports have on residents of communities around them. Everything from air pollution to traffic patterns to any toxicity issues, but also the major issue was that instead of being in a situation where we were
going to have to review only 2 percent of the containers coming into California ports, we're going to have to probably review 98 percent, and how do you do that with existing technology.

And one of the things that we talked about in that bill that failed on the last night of the legislative session was making sure that we have the appropriate camera and other types of new technology for these purposes, things that can look right through containers and view what's in those containers, live or not, and to be able to identify different kinds of explosives just by reviewing containers from the outside, without having to go through the labor-intensive process of opening them up.

There was a concern that defeated the bill that night, which is something you probably should take under advisement, the issue of providing the various security personnel, whether it's law enforcement at a city or port security, the issuance of new technology in which the State has not actually established any protocols for. It was a tremendous concern by Members of the Legislature, in fact that it was enough of a concern, three votes to be exact, that defeated that bill on that last night. It also didn't receive any Republican votes that night, not to be partisan, but we didn't receive any votes that night which also hurt our chances to get that bill out.
Again, those three Democratic votes were concerned about the establishment of protocols. We have a new privacy issue when we introduce the new technology and so we might want to consider engaging with either law enforcement, security, other ports, maybe even some of the civil rights organizations to try to identify ahead of time the kinds of concerns that they're going to be interested in so that we might be able to establish some kind of reasonable protocol that would give us the opportunity of doing our business, and yet being able to do what we can to preserve the rights of individuals and privacy.

So I believe that that bill will come up again this year and we'll -- I believe it was around 1.1 billion for this purpose. It was very flexible money. It was going to the ports and to the various communities and regions around the state for not only water ports, but airports and other kinds of ports of entry activity.

EXECUTIVE OFFICER THAYER: We'll see. That's a great idea and we'll see how we can be involved in that and trying to determine specifically what those concerns were of the members that didn't vote for it.

CHAIRPERSON BUSTAMANTE: And I would like to welcome for the first time a new member. Cindy's an old member.

(Laughter.)
CHAIRPERSON BUSTAMANTE: But we have an old guy with a new boss, David Takashima. Welcome.

Go ahead.

ACTING COMMISSIONER TAKASHIMA: Thank you, Mr. Bustamante.

Also I would like to just comment that last night the Director and I were having a conversation about this issue, and I think we would like to assist your office on your legislation and investigate what options are available, because it is a concern that we all have in trying to deal with security issues.

And we would like to participate. And a member of our staff we talked briefly about that and how we can try to find a funding source available. And I don't know the history, whether there was a relationship, and I want to try to look at ways of being creative. Because at this point we need to do something and do it now, rather than wait for a problem, just because the example of the strike we had last year at the port up in Oakland, the impact that had on the California economy, any kind of activity or problems we have at the Port of Oakland impacts California at a time we cannot have that problem.

CHAIRPERSON BUSTAMANTE: Well, we should be able to have the votes this year, it's not an election year.

(Laughter.)
CHAIRPERSON BUSTAMANTE: And there were partisan concerns of assisting me in my efforts, and so that should fall by the wayside. But we may have to narrow the bill just because of the fiscal issues that are now involved, and not trying to put too many bond bills on the ballot at the same time, et cetera. Those should be primary focused for economic development, economic stimulus, and infrastructure activities. And so hopefully we'll have a better opportunity and a nonpartisan or a nonpolitical, not as political year.

Is there anything else, Mr. Takashima?

ACTING COMMISSIONER TAKASHIMA: One thing that I think I want to get clear is that at present the bond capacity that we have and concerns about where we're at today and in the next few years. I would rather see a funding source, not bonds, and that would be immediate. So I want to be very creative and get our department to investigate the real opportunity to address this problem as soon as possible.

CHAIRPERSON BUSTAMANTE: If you find the dough, we'll be a go.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Go ahead.

ACTING COMMISSIONER ARONBERG: I just wanted to let you both know that if there's anything that the
Controller's office can do, if there is any way to be of assistance.

CHAIRPERSON BUSTAMANTE: Great.

ACTING COMMISSIONER TAKASHIMA: You can sign the check.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Okay, anything else, Mr. Thayer?

EXECUTIVE OFFICER THAYER: A couple other minor items. You may recall that at our last meeting in December, a John Williams addressed the Commission during the public comment period concerning the Yuba gold fields. And we indicated we would come back to the Commission with some additional information.

We met with Mr. Williams in the last few weeks and we are further researching this matter. The Commission has been involved for about 20 years and there are a variety of local, state, and federal agencies, as well as this mining company, involved, so it's pretty complex. But we'll be coming back to you at the next meeting with more information about that item.

And then finally I wanted to mention that in fact our next meeting, we plan on having it in April, we're that close to a date, and I think it's probably going to work out, and we're expecting to meet in San Diego.
CHAIRPERSON BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: And that concludes the Executive Officer's report.

CHAIRPERSON BUSTAMANTE: I would like to make sure we add one other item for review, and that is that in all the work that we do in trying to process various projects, I want to make sure that in this difficult time in our economy that we are fast tracking and, for the lack of a better term, we should establish some red team activity to ensure that projects aren't -- not that they would ever be left on the desk without the attention, especially on one of your staff's desks. But just to make sure, if we could review the process by which projects are brought in, projects that are ready to go, that are financed and funded, they don't have the legal or environmental or other kinds of issues.

If there's a way of being able to push those out the door, we deal with quite a few projects, and a lot of small projects and a few large ones, it helps to stimulate the economy. And so anything that we can do here to be able to assist that effort, I'd like to see us move in that direction. And if you could by the next meeting come back to us with some type of a plan or tell us what you're doing and how we might be able to expedite more projects.

EXECUTIVE OFFICER THAYER: Certainly. And I think actually that direction is really timely, in light of the
budget cuts and the staff losses that we're incurring, that
we're going to need to go back and see how we're focusing
the resources we have left. And I think this concept of
looking to see which projects have the greatest bang for the
buck for the state will be useful in terms of how we're
dealing with that impact to the staff as well. So we will
be back at the next meeting with something on that.

CHAIRPERSON BUSTAMANTE: I think we're at the
point of adopting the consent calendar. Is there any
concerns by the Commissioners regarding the consent
calendar?

Mr. Thayer, is there any consent items that have
been taken off this?

EXECUTIVE OFFICER THAYER: Item 51 has been
removed and will be heard at a subsequent meeting.

CHAIRPERSON BUSTAMANTE: At a subsequent meeting,
it will not be heard today?

EXECUTIVE OFFICER THAYER: Correct.

CHAIRPERSON BUSTAMANTE: At the next meeting or
subsequent?

EXECUTIVE OFFICER THAYER: Subsequent, maybe.

CHAIRPERSON BUSTAMANTE: Just in case there's
anybody here who's interested.

If there's no other concerns, I would entertain a
motion for accepting the consent calendar.
ACTING COMMISSIONER ARONBERG: Move adoption of
the calendar.

ACTING COMMISSIONER TAKASHIMA: I second it.

CHAIRPERSON BUSTAMANTE: Okay. Let the record
show that it was unanimously agreed.

I should have asked if there was anybody in the
audience who wanted to speak on any of the issues that were
on the consent? Seeing none, then we will go ahead and move
the -- so that the record shows that it was passed
unanimously.

The item on the regular calendar, we have only
one?

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: And this is Item Number
52?

EXECUTIVE OFFICER THAYER: That's it. This has to
do with the Ballast Water Program. The legislation which
established that program required that the Commission report
back so that the Legislature could decide whether or not to
extend it. That staff report has been on the web and is in
your binders.

Making the staff presentation is Maurya Falkner,
Senior Biologist or Environmental Planner.

CHAIRPERSON BUSTAMANTE: Glad we were able to
help, everybody.
EXECUTIVE OFFICER THAYER: Sometimes I wish I had a mirror so I could see what's going on.

So Maurya Falkner, a Senior Environmental Planner with our staff and in the Marine Facilities Division where our Ballast Water Program has been carried out will make the presentation today.

MS. FALKNER: Good morning.

CHAIRPERSON BUSTAMANTE: Good morning.

MS. FALKNER: As Mr. Thayer mentioned, I'm here this morning to talk about the legislative report regarding the California Ballast Water Management and Control Program.

Since we have one new Commissioner, I thought I would briefly step back and give some background information on ballast water itself and nonindigenous aquatic species, and then go on to briefly discuss the agencies that are responsible under the law, that have responsibilities under the law, and summarize the last two and a half years of the program, and then briefly present the recommendations.

So as we are all probably aware, vessels and maritime commerce is very important to the economy of the United States and California. With the recent shutdown of the ports, billions of dollars were lost during that time. And vessels, by design, require ballast water for their normal ship's operations. Ballast water helps reduce stress...
on the hull and provides stability and aids propulsion and maneuverability.

Vessels generally take on ballast water when they unload cargo or when they're utilizing use of that fuel and water, and they generally discharge that ballast water when they load cargo at another port. Ballast water volumes on vessels can range from 700,000 gallons on a small passenger vessel, up to 5 to 6 million gallons on a tanker or bulk vessel. So there's huge volumes of water that are necessary for the operations of a vessel.

Ballast water is obtained from all over the world. Wherever vessels go, they're picking up ballast water and discharging ballast water. And when they pick up that ballast water within a port, they also pick up any organisms that might reside in that port, anything small enough to get through the screens, which in some cases are small fish. If they survive the ballast pumps themselves, then they're in a nice little microcosm, a little system going on in the ballast tank.

Ballast water introductions have become more and more apparent with the size of the vessels that we're talking about and the speed of transportation. An organism is more likely to survive in a ballast tank over a two-week voyage than over the old historic six month or four month or whatever type of voyage it was. So we have organisms being
transported around the world wherever ports are located.

Some examples. Some prime examples of nonindigenous aquatic species, and nonindigenous aquatic species can be defined as anything that's not native, exotic. We prefer not to use exotic, because it gives it kind of this nice flavor and they're not. So one example, this is kind of a poster child of nonindigenous aquatic species, the zebra muscle. It came in in ballast in the 1980s. It's now spread to at least 20 states and two Canadian provinces, and it's also a risk for here in California. Vessels are checked and fresh water systems when they come into the state for this organism. They spend tens of millions of dollars annually just to control this species because as you can see it's tiny, it fills up pipes, clogs intakes, things like that. And unfortunately, once it's established in a community, so far it's been impossible to eradicate it. So control is the only option, which means that to reduce further problems, we want to prevent it from getting into other systems.

A California example is the Chinese mitten crab. And those of you who were around in the mid to late '90s might remember this organism. It came in, I believe, in 1992, and there's been some discussion as to whether it came in in ballast or in live bait material. But in any case, it came in in the early '90s.
In 1998, due to its life cycle, it exploded and just became incredibly prevalent in the Bay Area. It closed down water facilities in municipalities for about four days, and that was unfortunately right directly on the Chinook winter-run salmon. So it impacted that organism, and it also disrupted water supplies throughout the state, or throughout the northern part of the state. It's also subsequently been found to like to burrow into levees and that's very problematic, as you can imagine. So this is our poster child in California.

In addition to plants and animals that are coming in in ballast water, pathogens are also being brought in and transported around the world in ballast water. In 1991, a strain of cholera was brought into Mobile, Alabama in the ballast of a vessel coming up from South America. They had just experienced a bad epidemic and outbreak of cholera and lots of people died and millions of people were sick. It was subsequently found in the shellfish farms in Mobile and they shut those farms down. So it severely impacted the economy of that area for that season. And recent studies that the Smithsonian Environmental Research Center has been conducting, they have looked at ballast water coming in on vessels on the Chesapeake Bay, every vessel that they looked at had cholera in the ballast.

So nonindigenous species and pathogens are of
great concern and recognizing that threat, the Legislature created Assembly Bill 703 in an attempt to reduce the amount of foreign ballast water and nonindigenous species introductions in the State of California. The bill was signed by the Governor in October of '99 and it went into effect January 1st of 2000. The bill has a sunset clause in it. It sunsets January 1st of 2004. The primary reason for the sunset was the uncertainty surrounding the development and effect of the Ballast Water Program. The Legislature, you know, we're pretty much the first out there. We're in the forefront establishing this program and nobody was quite sure as to how effective it was going to be, so they put in a sunset date basically to require and force the Legislature to readdress this issue.

The act is a mandatory statewide program. It applies to all vessels entering the state waters after operating outside the U.S.E.Z. It's similar to the Coast Guard program, except that everything under the Coast Guard program says it's voluntary, we make it mandatory. And we also have a fee collection program to fund the program, and stiffer criminal or civil penalties involved. The first four years was dedicated a lot to research and data collection, and as I said, to allow the Legislature an opportunity to craft a better bill.

There are four agencies that were identified with
responsibilities. The Board of Equalization is responsible for collecting the fee, and it's a per-voyage fee. The California Department of Fish and Game conducted a baseline biological inventory to kind of give us an idea of where we were in California waters with regard to nonindigenous species. The State Water Board was responsible for evaluating alternatives. And the State Lands Commission was responsible for, in addition to setting the fee, basically in developing and implementing an inspection and monitoring program.

All the agencies are required to report to the Legislature in advance of the sunset date, and again, the idea behind this was to provide the lawmakers with the best available information in order to craft new legislation.

Here it's a little bit more detailed on the State Lands Commission's responsibilities. We are responsible for setting the fee amount, and currently the fee amount is $200 per voyage. At the recommendation of the Commission, in January of 2000, we established a technical advisory group made up of industry and regulatory representatives and came up with a per voyage amount that's based on the budget and the estimated number of voyages and compliance rate. So of all the data gathering and compilation, vessel inspections.

Research. In the model we were asked to conduct research as necessary and we've gotten probably more
involved in it than we had initially anticipated, and it's been quite rewarding. Outreach, education and collaboration is a big goal that we've been playing, and then of course the report which I will now start to go into.

As you all know, the State of California, our port zones that we deal with, as you can see, are spread out across the state. And the majority of vessels, foreign vessels that are coming into California ports are arriving at the Long Beach/Los Angeles complex. It's 73 percent of those vessels. Oakland receives about eight and a half percent of the foreign arrivals annually.

The majority of the vessels that come into the state of California are container vessels, with a smattering of a little bit of everything else. It's kind of important to keep these numbers in mind. Container vessels. We see 50 percent of the vessels are container vessels, and a little bit later, that kind of becomes important because of the number of containers involves us as well.

This is some of the statistics that we pulled together over the last two and a half years. With regards to ballast water reporting, 92 percent of the vessels, the qualifying voyages that are coming in, have supplied a Ballast Water Report Form. And based on this form, 96 percent of those vessels complied with the mandatory requirements. Which about 73 percent of the vessels
retained their ballast on board, 23 percent discharging.

The number of vessels that are discharging unexchanged ballast water, although it's a small number, only about 4 percent of the overall total, that number has been increasing slightly over the last two and a half years. The pattern is kind of complex, it's hard to determine. Some ports are showing vessels with less discharge and exchanged ballast water and others more and others have remained fairly stable. So it's kind of difficult to tease out what the pattern is and why we're seeing an increase, a slight increase, from 4 to 6 percent over the last two and a half years. It is a bit concerning though.

For example, Martinez, they saw a decrease in ballast water that was discharged that hadn't been exchanged from 14 percent to 5 percent, and Oakland remained about the same and San Diego increased, 10 percent of the water wasn't exchanged and now it's 30 percent. So there's a little bit of variability that we're still trying to tease out.

CHAIRPERSON BUSTAMANTE: No percentage shifts of the kinds of containers or the kinds of ships going in and out of the harbor?

MS. FALKNER: Not that we can see, although San Diego gets a large number of bulk vessels coming up from Rosarito.

CHAIRPERSON BUSTAMANTE: I notice there's a 30
percent increase. Was there some kind of a pattern change?

    MS. FALKNER: Not that I have been able to tease 
out thus far. It's pretty complex. Because the numbers of 
vessels discharging remained pretty constant, the numbers of 
proportionate vessels coming in has remained fairly 
constant.

    So although we have pretty good, we had very 
good --

    CHAIRPERSON BUSTAMANTE: Let me ask you one 
question.

    MS. FALKNER: Sure.

    CHAIRPERSON BUSTAMANTE: Is there any pattern in 
terms of the increase in what types of vessels we're 
finding, not just in terms of how many vessels are coming 
in, but also where we're finding this pattern is 50 percent. 
There has to be a pattern.

    MS. FALKNER: I have been looking at that and it 
appears that -- a little bit later you'll see that one of 
the biggest dischargers of ballast water is the bulk 
vessels. Even though they only make up 14 percent or 12 
percent of the population overall. So it's a small number 
of vessels that are contributing a large degree to the 
discharges. And one or two big vessels discharging, you 
know, five million gallons of water can skew the numbers. 
So I'm working through that as well, but I'm suspecting that
it's more the case that we're having one or two big discharges, rather than a big shift in vessel type.

So we're getting a fairly good compliance with submitting the form, although it should be noted that we have 10 percent of the forms that we're receiving, or 10 percent of the vessels are not filling out forms at all on the average. Ten to 20 percent of the forms are being submitted late. The number 10 to 20 percent depends on if you were to use five days late or two weeks late, but we're still having problems with late forms coming in. And that's in spite of our monthly notification, the system that we started in July of 2001 where we contact the agents every month and we're still having forms that are being late. We're still having forms that are not being submitted at all. And we have --

CHAIRPERSON BUSTAMANTE: It actually a piece of paper or can they do this on the internet?

MS. FALKNER: Yes, both. They can submit the form to us electronically via e-mail as an attachment. We're working with the Coast Guard in trying to get -- also as you file your taxes, you enter in this stuff and it just dumps it into a database directly. We're working with the Coast Guard on that process. Or they can submit it by fax or regular mail.

CHAIRPERSON BUSTAMANTE: Are the forms very long?
MS. FALKNER: The forms are very complex and that is a big problem that we consider, it's a continuous problem. We're working again with the Coast Guard and the industry to try to develop some training materials that are applicable to this huge variety of vessels and crews. I mean we have every different nationality that you can imagine that we deal with on a regular basis. It's a highly developed training sheet that shows people how to file forms and do all that.

But we're working on that with the Coast Guard and field staff is going out and working with the shipping industry and trying to get a better form to try to improve compliance and filling out the form and those kinds of things. So we are working on that. It's just it's going to be a continuous process, we can't -- as much as the inspectors would like or any of us would like to go on board a vessel and go, okay, here you go, here's all your stuff that you need to do this, to fill out this form, to comply with the law, a month later you get a new crew that comes in and so you have to start the process all over again. So it's a very intensive outreach and education.

The next slide is just a little bit more detailed information on discharges, and the far left column is just the port zones. And this is a compilation of two and a half years' worth of data, to break it down again into annual,
you see some slight changes. There is more discharges in some ports now than there was a year and a half ago and vice-versa. But this gives you an idea of the volumes that we're dealing with of ballast water and this is likely an underestimate. We're just, again, because of the confusion or the difficulty and the complexity of the form.

This is another example. This kind of gets a little bit more at your question about the types of vessels. You can see bulk vessels, they're only 12 percent of the vessels that come into the state, but they discharge the vast majority of the ballast water, and if you add any vessels in there, it brings it up even higher. So they're contributing 46 percent of the water being discharged, although they only make up 12 percent of the vessels.

So just to kind of continue on. Vessel inspections. Our inspectors have been aboard, have conducted over 3,800 vessel inspections on over 2,000 different vessels. We've noted 532 --

CHAIRPERSON BUSTAMANTE: This is over how long a period of time?

MS. FALKNER: This is two and a half years.

We have been targeting, attempting to do about 25 percent of the qualifying voyages that come in, and that is stratified by vessel type and by port. Last year we implemented a new database that allows us to do a little bit
more targeted inspections. So if a vessel has never been in, it's a high priority. If the vessel had a violation the last time it was in and it wasn't corrected on the spot, then it's a high-priority inspection.

Five hundred and thirty two violations. Some vessels have more than one violation. Some vessels may not have the paperwork necessary to comply with the law or they may have an operational violation. An operational violation is basically they didn't manage the ballast water per the law, and so it's higher, we consider it a higher risk type of a violation than simply not having a nice book for their ballast water measurements.

CHAIRPERSON BUSTAMANTE: What's the potential penalty?

MS. FALKNER: The potential penalty is for not having paperwork and things like that, it's $500 per violation. For violating the ballast water management requirements, it's a potentially $5,000 violation. We have not moved forward on any violations enforcing any of that at this point, primarily because --

CHAIRPERSON BUSTAMANTE: Why not?

MS. FALKNER: Primarily because we have viewed this first four years as a data gathering and public outreach and education for the maritime industry. So we're trying to work with the maritime industry to correct these
problems rather than put up a big hammer. Now, we have sent
out some letters and, in fact, we just recently sent out
letters last week, in fact, regarding the late or delayed
forms. And it was a first step. You are put on notice on
the next day, if you do not comply, we will start with
enforcement actions. So that seems to have worked fairly
well in the past, and we're hoping it works well in the
future so that we don't have to go through a big enforcement
action.

CHAIRPERSON BUSTAMANTE: When do you anticipate
having these kinds of major penalties in place?

MS. FALKNER: Depending on what the new
legislation looks like. We made an assumption that the law
is going to move forward relatively intact as it is now.

CHAIRPERSON BUSTAMANTE: You have a company that
has had several violations having to do with ballast water.
I'm assuming you have that type of a company, multiple
companies?

MS. FALKNER: A few.

CHAIRPERSON BUSTAMANTE: And you're going to allow
them another two years?

MS. FALKNER: Yes.

CHAIRPERSON BUSTAMANTE: Okay. Maybe you can tell
me under what --

MS. FALKNER: Well, I think that we've been
talking about beginning when the new law goes into effect, which would be January 1st, 2004.

CHAIRPERSON BUSTAMANTE: Well, it just seems a little unfair. You have a bunch of people who are complying and they're busting their tails to do all the paperwork, they've taken the time to do all the reports, doing all the things that they're supposed to do, and yet you have a few people who are out there who are messing everything up for everyone else. And so what we're going to have to end up doing is cracking down on the entire industry because of a few people, and we're going to allow them to continue to just go ahead and do whatever they want to do. And we give them excuses because of language, we give them excuses because of distance, we give them all kinds of other excuses, and we don't deal with it.

And then what happens is that as the legislators begin to look at all the problems that take place, they'll take the worst case scenarios and then they'll build in those scenarios into legislation and they'll create even more problems for those folks who have been trying to comply. So either we deal with those folks now that are having problems and we either show them how to deal with it, or we begin to do the penalty phase quickly so that the rest of the industry isn't going to be in a difficult situation when the legislation comes up.
I know what's going to take place. I know as a legislator what I'd do. I know as a part of leadership what I would do. And I mean sitting down with the industry and then having to listen to all the potential stories about other kinds of organisms and having to explain to my constituents, especially if I'm a representative along the coast, explain to my constituents why these folks are still bringing in pathogens. And it's not a difficult position for a legislator along the coast to take, especially when there is going to be a new bill that's coming up.

So instead of putting the industry and those legislators at that point, you have an opportunity here. Don't you have the ability under the current statute to begin that process?

EXECUTIVE OFFICER THAYER: The current statute does give us some enforcement authority. It's a little bit awkward because we have to work through the Oil Spill Administrator who is involved with a different program other than us. Although there are some other actions where we can bring them more directly using the Attorney General's office.

CHAIRPERSON BUSTAMANTE: But, Paul, what we're doing is that we're building a case against the industry.

EXECUTIVE OFFICER THAYER: I hear what you're saying.
CHAIRPERSON BUSTAMANTE: Why would we want to do that?

EXECUTIVE OFFICER THAYER: I hear what you're saying, but so far --

CHAIRPERSON BUSTAMANTE: We should build a case against those companies that are not doing a good job.

EXECUTIVE OFFICER THAYER: I agree.

CHAIRPERSON BUSTAMANTE: And let's go after them.

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON BUSTAMANTE: You're going allow a few people to create a panic, and they are going to take it out on the entire industry.

EXECUTIVE OFFICER THAYER: So far what we've done is worked very closely with the industry groups in enforcing and bringing about compliance here. And actually, they've been as useful as any enforcement mechanism in terms of going to their own members and using the exact same argument you just gave, which is don't screw it up for the rest of us. But there's always going to be some shippers that perhaps don't see it that way and that's what these enforcement mechanisms are going to be involved with. And you're absolutely right. And these letters that recently have gone out, in the past we've had problems with the cruise lines and we have sent out several letters which brought greater cooperation in their reports.
CHAIRPERSON BUSTAMANTE: I can understand a period of time.

EXECUTIVE OFFICER THAYER: That's right.

CHAIRPERSON BUSTAMANTE: I can understand a period of time that people need to be made aware of the process. That's only fair. And if you're going to begin the process of enforcing certain kinds of codes and laws, you have to be able to give people the information.

EXECUTIVE OFFICER THAYER: Right.

CHAIRPERSON BUSTAMANTE: But at some point, especially if we're coming up on the sunset and the reissuance, what you're doing is that you're just building a case against the industry.

EXECUTIVE OFFICER THAYER: That's right, and --

CHAIRPERSON BUSTAMANTE: And there are people in those committees who are only going to look at the worse case scenario. So we ought to allow the environmental concerns to be extremely important in how we deal with this issue. But why would we want to put the industry at a disadvantage in this timeframe, instead of saying that, well, we were able to identify a certain percentage of those folks who were not in compliance on a regular basis, some who were at the extreme end of noncompliance, and we went after them, and the process worked. We were able to bring them back into compliance within this period of time. And
so if you're looking at this proposal, the industry and the
environmental community can then see a real good snapshot, a
moving snapshot, over a period of time how the existing law
could work. Right now, you're not allowing it to work,
because we're not enforcing.

EXECUTIVE OFFICER THAYER: I would say that we are
enforcing, but you're right, we're not going to court with
somebody at this point. Where in the past we've gotten
better compliance when we have paid attention to people who
have been a problem. But that's not to say we're not going
to take the next step, and as Maurya indicated, we're in the
process, we have sent letters out.

CHAIRPERSON BUSTAMANTE: The way I look at is
tactically.

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON BUSTAMANTE: I look at it
strategically, and if we're going to be strategic in this
process, we're going to have to make sure that we can
demonstrate that we have the capability of managing this
entire law in the first place.

EXECUTIVE OFFICER THAYER: Right.

CHAIRPERSON BUSTAMANTE: And if we never take it
to the next step and somebody's a bad actor, then we haven't
demonstrated our own ability first of all.

EXECUTIVE OFFICER THAYER: Right.
CHAIRPERSON BUSTAMANTE: Second of all, we have not allowed the legislation to fully implement and so there's no real review. So what are you going to do, have another two or three or four-year period after that to try to figure out the best way of dealing with the poorest actors? But in the meantime what we're going to do is add a whole lot more restrictions and paperwork requirements on the entire industry. Are we going to move the increases of the costs up to $400 so that we can add even more monitors and more paperwork and then in the meantime we're still not dealing with the -- I understand that strategically.

I think we need to be able to go through that process all the way through to be able to see if in the event that we do have bad actors, that we, in fact, bring them either into compliance or move them out, and what kind of effect does that have on our ports, what kind of effect does it have on our economy, what kind of effect does it have on the industry, what kind of effect does it have on et cetera, et cetera, et cetera.

EXECUTIVE OFFICER THAYER: Right.

CHAIRPERSON BUSTAMANTE: In the meantime, it could be certain parts of the industry, certain groups of vessels that in fact have a much easier time of compliance and they're having to bear the burden of the increased requirements. And so I really think strategically we need
to move through this process. Nobody wants to go after an industry group just to go after them. Nobody wants to. We're supposed to be basing all this information on good science.

EXECUTIVE OFFICER THAYER: Correct.

CHAIRPERSON BUSTAMANTE: I'm assuming that's what we are still doing.

EXECUTIVE OFFICER THAYER: Certainly.

CHAIRPERSON BUSTAMANTE: Okay. So then what we should probably do is that we should figure out and I'm hoping that in the next week or so that we'll have an opportunity to hear a report as to how we're in fact taking it to the next step. I would hope that you would be clearly, or already have been, working with the industry representatives, as well as the environmental representatives. I'm hoping that you keep doing that so that we can make sure that strategically we make this thing work or provide examples of how there needs to be changes.

EXECUTIVE OFFICER THAYER: Certainly. And I think that the report recognizes a lot of the issues that we've developed so far along those lines and makes changes which aren't pejorative because of problems, but recognize better ways to implement. But as part of that program, we entirely agree with you that enforcement is ultimately going to be needed.
CHAIRPERSON BUSTAMANTE: Is there a way of posting
the results or reviews and evaluations?

EXECUTIVE OFFICER THAYER: Of individual ships?

CHAIRPERSON BUSTAMANTE: Of individual ships or
companies.

EXECUTIVE OFFICER THAYER: I presume we could,
yes.

CHAIRPERSON BUSTAMANTE: You might want to talk
about that with the industry folks, that maybe we should
post all of our results on the internet.

EXECUTIVE OFFICER THAYER: We'll look into that.

CHAIRPERSON BUSTAMANTE: Maybe we should just go
ahead and post how many have had problems with ballast, and
just paperwork problems, who have been the bad actors.
Maybe we should just kind of like open up the process and
let the clean water shine in.

(Laughter.)

EXECUTIVE OFFICER THAYER: It sounds like a good
idea.

CHAIRPERSON BUSTAMANTE: But we should take it to
the next point.

EXECUTIVE OFFICER THAYER: And we're in that
process. We agree.

CHAIRPERSON BUSTAMANTE: Do you have any more? Go
ahead.
MS. FALKNER: Okay.

CHAIRPERSON BUSTAMANTE: You have about five more minutes.

MS. FALKNER: Okay, good. The fee submission has been outstanding. We originally set up our fee amount based on an estimated 75 percent compliance, that's what the industry was kind of talking about, and it is now over 95 percent. We are still having some problems, as well as with getting some of the fees submitted to them, but overall the fee submission has been great, and in large part, that's because of the technical advice we've provided. We sat down and discussed the problems and discussed what the possible solutions are, and it's much -- it's a peer group pretty much and they have decided that, for example, they didn't want to establish all of these complex fee schedules but rather a flat fee per voyage was the best way to go. It was the fair way across the board, and that helps when you have peer pressure like that. The VOA's implemented self-reporting program has assisted the larger carriers so they are not getting 30 pieces of paper, but rather they self-report and that's been beneficial.

I'll just speed this up. These are just inspection violations.

Research that we are involved with. The State Lands Commission lead on the West Coast Demonstration.
Project, which I talked about last year briefly at a Commission meeting, that's still ongoing. We have one vessel that's completed and we're waiting on a final report from the research team, and the other vessel we will hopefully be doing evaluations on.

We're working with the Coast Guard to advance the approval process by the evaluation of technologies on vessels, and taking technologies and trying to motivate and stimulate things so they put them on their vessels and find alternatives to ballast water exchange. And we're also participating in several other studies, primarily working to facilitating access to vessels and collection of samples and things such as that. So we're moving along in those areas.

Several partnerships that we're involved with. The West Coast Outreach Project, we work with them pretty intimately and we've co-hosted several workshops and conferences. The Ballast Water Group just recently had a meeting in January in Oakland talking about coastline vessel traffic and how to deal with those vessels that are coming up from Mexico or down from Canada or often between the west coast ports and, you know, come up with a regional plan that will minimize the confusion and improve the protective regulatory process that we're doing.

We're also looking at a regional database right now. We're working with Oregon and British Columbia in
trying to develop a regional database where our database is combined and it would be web-based. They can enter their data. We're doing a funded project on the west coast so they can combine somehow with their programs and we can provide outside sources to get that web-based system up and running with better ballast water management on the west coast.

When we get into the recommendations, some of the things that we already talked about. Because of the program's success, it is successful especially when you compare it to the national program where you have 30 percent compliance on the national level, and we're looking at over 90 percent compliance. It's a local program and we have a system in place and the state's program, because of the success, we continue.

As I mentioned, we were working on the coastwise traffic issue. Vessels moving from San Francisco up to Oregon or vessels moving down from Seattle are often just the right way to transport organisms that are established in those ports into our ports or vice-versa. Oregon and Washington already have legislation on the books that regulate vessels that come out of California. Before they go into their waters, they are required to do certain things. We don't have the language in our existing bill, and I think everybody recognizes that it's an important
component of invasions and we need to regulate that.

Again, regulating or including reporting for all ports of call. Right now we have gaps. If a vessel comes into LA and it goes up to San Francisco, they're only required to submit a ballast water report form in LA. They're supposed to identify their estimated discharges in San Francisco. And what we have found is, and the federal program has found this as well, as has Oregon and Washington, that frequently additional reports are not being submitted and many of the reports aren't being submitted.

Okay. Continue a fee-based program. Everybody, national and the other states, have commented on the success of our program is because it's a fee-based program. Because we can afford to do the job well.

Proof of compliance and enforcement. I think that the other recommendations, the previous recommendations will help compliance, but that we do need to have a strong enforcement of compliance.

Coordinated research, continued biological surveys.

That completes my presentation, and I guess I would like to request that Commission direct the staff to submit the report to the Legislature, as per section 71212 of the Public Resources Code. And I'd be happy to answer any additional questions you might have.
CHAIRPERSON BUSTAMANTE: Any questions from the Commissioners?

We have several members of the audience that would like to come to speak. Where are we going to speak from?

EXECUTIVE OFFICER THAYER: Right here where Maurya is.

CHAIRPERSON BUSTAMANTE: Okay. The first person I have on my list is Michael Sowby.

MR. SOWBY: Sowby.

CHAIRPERSON BUSTAMANTE: Sowby. Environmental Program Manager with the Department of Fish and Game. Please come up.

After Michael is Linda Sheehan with the Ocean Conservancy, you're on deck. And Tim Eichenberg from Oceana, you're in the hole.

MR. SOWBY: Thank you, Commissioners. My name is Michael Sowby. I'm with the California Department of Fish and Game. And I'd like to thank you for the opportunity to speak this morning on the report that was just presented, as I have worked on the Ballast Water Program for the Department of Fish and Game for over the past 10 years. As part of a team that was designed and implemented for biological survey, which Maurya talked about, and the survey was to determine the nature and extent of the problem of nonindigenous species introductions in coastal waters of the
state. Our survey has ended up identifying about 760 plus species of nonindigenous species in the coastal bays and estuaries of the state of California.

The biological surveys, as Maurya had indicated, were required under the Ballast Water Management Act of 1999 and was undertaken to establish a baseline inventory of nonindigenous species in our state waters. The baseline was intended to be used to measure the effectiveness of ballast control, measures that were put in place by the act that we're working with right now, as well as any other legislation that may be implemented in the future.

I am here today to speak to Recommendation Number 11, of the report, which calls for the continued monitoring of coastal waters for the introduction of a range of existing nonindigenous species populations. The Department wholeheartedly supports this recommendation and, in fact, has made a similar recommendation in our report which was submitted to the Legislature.

The Department, as you know, is a trustee for fish and wildlife resources in the state of California and believes that the introduction of nonnative species is vitally important to both the environmental and economic health of coastal habitats and communities. To ensure that nonnative species and pathogens are not transported to California or moved between our ports, a strong ballast
control program in essential and monitoring is an important element to ensure the success of any program that is instituted.

And the results of future biological surveys will be compared to the baseline that we've developed and used to determine where and possibly how many introductions are occurring. This information can be used to develop more effective control procedures to target hot spot areas or problem areas. Focusing resources where they're most needed will help keep the program cost effective and it will provide important environmental protection.

Again, I want to thank you for the opportunity to comment and the Department looks forward to continuing its partnership with the State Lands Commission staff and the Ballast Water Control Program in the ongoing biological health of the environment.

CHAIRPERSON BUSTAMANTE: As the members come up to speak, it would be helpful if you have a specific concern about the report or any portion of the report, a number of the recommendation, suggested changes, recommended language, anything along that line which you submitted for consideration before we make a decision to submit or not to submit the report. It would be very helpful if you have something in your hand that you can pass out to people. And you were talking about your support of Recommendation Number
MR. SOWBY: Right.

CHAIRPERSON BUSTAMANTE: Okay. Very good. Thank you.

MR. SOWBY: Thank you very much.

CHAIRPERSON BUSTAMANTE: Linda. Tim, you're on deck.

MS. SHEEHAN: Good morning everybody. Commissioners, I'm Linda Sheehan. I'm the Director of the Pacific regional office for the Ocean Conservancy. And the Ocean Conservancy, we're the cosponsors of the original bill AB 703 and we're working with Assembly Member Nation on the new phase of the Ballast Water Management Program.

I'd first like to commend the staff, especially Maurya, for all of their dedication to this program. They've really worked hard. California, as Maurya mentioned, was the first state to have a state ballast water law, so we were really working in uncharted ground. And California has really led the nation, the United States, on the President's National Invasive Species Advisory Committee and working on the new federal National Invasive Species Act. And the problem with those federal folks, I can see how much influence California has had at the national level. Other states in the nation, they're really looking to us for leadership on this issue, they're looking to our program in
terms of how to mold their programs as well, and in the
process, California is likely preventing many new invasions.
And I'd like to thank the State Lands Commission for that.

Because California's original law was limited to
the existing federal statute, we were limited to making it
mandatory, not voluntary, basically. This new phase of the
Ballast Water Program provided by the sunset, this is a real
key opportunity to make changes and improvements in the
program that will help us in correcting some gaps that were
evident from the first time around that we're seeing as we
moved forward, and it's a really good opportunity.

And I think the report before you, the
recommendations in there, made some very important points as
to what needs to be in the legislation. And I would support
all of the recommendations in the report and the report as
well, in particular reauthorizing the program, the
continuing fee program, and continuing in making the
enforcement powers more clear as it's described in the
report. Because we were basing the law on the federal law,
the enforcement powers of State Lands weren't as clear I
think as they could be, and I think the report made some
good recommendations about making that more clear.

And I'd like to thank you, Commissioner
Bustamante, for your remarks with respect to making it clear
about enforcement violations, so the public knows where
those problems are. And I would like to say that in my experience, most of the shipping industry has been working very hard to try and comply with this new law, this new program, and I think that addressing some of the problems will make that program even better. It's very important to try to get full compliance with this particular issue, because it's like chemical pollution, once these forbidden species have taken hold, it can be very difficult, if not impossible, to get rid of them. So full compliance is very important.

A couple of other recommendations we do support is developing ballast water treatment performance standards, developing coastline monitoring programs so we can really see the impact that this important program is having. And then also our organization is working on Prop 51, funding for various initiatives, and one of those is a ballast water testing evaluation center to test out the new pilot projects in one place so you're on a level playing field when you're trying to see what works and what doesn't. That's something our organization is trying to advocate for and we're hoping that State Lands will be supportive in that project as well.

So in conclusion, the Ocean Conservancy strongly supports the report and its recommendation, and we ask that you send it to the Legislature with your approval. Thank you.
CHAIRPERSON BUSTAMANTE: Thank you.

Tim Eichenberg with Oceana. And on deck is Jane DeLai, with Save Our Shores.

MR. EICHENBERG: Thank you very much. My name is Tim Eichenberg, I'm with Oceana. We're an international environmental organization. We have offices in San Francisco.

We're concerned obviously with the quality of the marine environment. And ballast water is a major vector for the introduction of invasive species and we're very concerned about ballast water, particularly from large vessels, and including cruise ships, which is not perhaps in terms of quantity a major impact, a major discharger of ballast water, but in terms of quality, it may be a very important vector.

The rate of introductions has increased a lot over the last 200 years and the state and federal ballast water regulations are really inadequate to deal with them, except for the state of California, which has developed this landmark law which has been uniquely implemented by the State Lands Commission.

CHAIRPERSON BUSTAMANTE: The cruise ships, is that more ballast water, or is that more sewage or other kinds of discharge?

MR. EICHENBERG: There's a big problem with sewage
and gray water, which is completely unregulated. But ballast water is sort of a less known, but just as important impact from cruise vessels, because they go into some very sensitive areas around the world. Particularly they like to take their passengers into pristine areas to show them whales and like Glacier Bay and places like that, Monterey Bay. They're coming in greater quantities into these pristine areas and when they discharge their ballast water into those areas, they can have a very devastating impact.

And the reason that we're here to support the staff's recommendations and the staff's report and urge that you do submit these to the State Legislature with their recommendations. We are particularly supportive of Recommendation Number 1, which is to continue the State's mandatory program through reauthorization of AB 703.

We're also especially supportive of Recommendation Number 2, to broaden the State's program to phase in exchange and treatment for coastwise traffic, for the same reasons that I just spoke to you about. That it's not so much the quantity, but the quality of a lot of the discharges that are important. And there are many ships that go along the coast that discharge ballast water into areas that need to also be addressed, where they have not been addressed to date. So that's one improvement that we would like to see in the law when it's reauthorized.
And the third recommendation that we're especially supportive of is Recommendation Number 9, and we urge you to work with the State Water Resources Control Board to establish interim ballast water treatment standards. Right now, the majority of the technology is in ballast water exchange, but as the report notes and many other reports, including this report by the Clean Oceans Commission, that ballast water exchange is an imperfect way of treating ballast water and really the best way to do it is through these new treatment technologies that your staff is doing some groundbreaking work on which is reported in there in the report that you're making to the State Legislature.

And to ensure that ballast water doesn't contain metal and harmful marine species, but also toxic substances and chemicals, pathogens and viruses and bacteria as we saw in the report, fecal coliform bacteria, we really need to develop a treatment program for ballast water. And secondly, the state program, a mandatory program, is necessary to drive the development funding and installation and use of the alternative technologies. So without these standards there would be no method to really drive the installation of new treatment systems.

So we applaud the work that the Commission and staff have done and we urge you to submit your report and the recommendations to the State Legislature. Thank you.
CHAIRPERSON BUSTAMANTE: Thank you.

Jane. We have John Berg of the Pacific Merchant Shipping Association on deck.

MS. DELAI: Good morning. I'm Jane DeLai from Save Our Shores. I'm the Marine Policy Coordinator for the organization. And I want to thank you for welcoming us here this morning and for the opportunity to speak in support of this program.

I want to commend the State Lands Commission and their staff for their review of this important program and for the set of recommendations presented in the report that we believe to be both useable and achievable.

Save Our Shores urges the State Lands Commissioners to adopt the report with its recommendations to provide the greatest possible protection for the coastal resources of the state. The state of California has a very real threat from nonindigenous aquatic species. The international maritime community recognizes the introduction of nonindigenous aquatic species as one of the four greatest threats to the world's oceans.

Save Our Shores also wants to commend those members of the shipping industry whose compliance and cooperation with the development and implementation of the California Ballast Water Management Program have demonstrated that important management measures such as this
can be successful in protecting marine resources. Save Our Shores supports all of the recommendations presented in the State Lands Commission report.

We urge the Commissioners approve that recommendations and we want to continue the State's mandatory ballast water exchange program through legislative reauthorization of AB 703.

And in view that the shipping industry transports over 80 percent of the world's commodities, transferring from 3 to 5 billion tons of ballast water throughout the world, we all recognize that the exchange of ballast water is an essential to the safe operation of modern ships. Without an effective managed ballast water exchange program such as the one implemented by the State of California, ballast water poses a serious ecological, economic, and health threat to coastal communities worldwide.

Save Our Shores also strongly supports Recommendation Number 2, to broaden the State's program to include coastwise traffic. As stated by colleagues earlier, once aquatic invasive species are established, they are virtually impossible to eradicate and often spread from one region to another. For example, San Francisco Bay and the San Joaquin River delta are some of the most heavily invaded waterways in the world. And obviously a ship taking on ballast water in San Francisco, would likely transport that
to another area of the state while transporting up and down the coast. An appropriate ballast water exchange program is the best defense.

Number three, we urge the Commission to approve Recommendation Number 4, to remove the selected exceptions listed on section 71202. The efficacy of the Ballast Water Exchange Program protecting California resources is weakened by the number of types of ships exempt from compliance with this measure.

Save Our Shores not only supports Recommendation Number 6 to continue the fee-based program to fund the State Exotic Species Control Project. The fund has been an invaluable source of income to support the work of enforcement capacity of the program, without which the successful compliance and the communication of the stakeholders would not have been successful.

And finally, Save Our Shores endorses Recommendation Number 11 to continue the biological surveys to monitor the success of the program. In addition, we request that the State Water Resources Control Board also monitor the ballast water for evidence of fecal, chemical, and other pollutants and pathogens that would indicate ballast water intake near sewage outfalls or cross contamination of the shipping systems.

In conclusion, Save Our Shores reiterates our
support for the work of the State Lands Commission and it's
development and implementation of this important program,
and we commend the State Legislature for increasing the
national programs and protecting the coastal resources of
California. And we urge the Commission to adopt the report
and send it with your approval to the State Legislature.
Thank you for your consideration and for having us here this
morning.

CHAIRPERSON BUSTAMANTE: Thank you. John Berg.

Teri Shore will be on deck.

MR. BERG: Thank you, Commissioners, for allowing
me to speak before you today. My name is John Berg and I am
the vice president of the Pacific Merchant Shipping
Association, a trade association which represents carriers
going to all of California's ports.

I'm not here to speak directly to any particular
items in the report, but generally just to give a few
comments and speak in support of the work that State Lands
has done with the California Ballast Water Program.

Invasive species introduction is one of the most
important issues facing our industry today, and we see this.
First of all, the shipping industry operates in an
international arena and we see this as a problem of
international scope. So consequently, it is receiving
attention at that level through the International Maritime
We feel strongly that the ultimate solution to this problem rests in the development of international ballast water management and treatment standards. These are best facilitated by uniform standards administered nationally and enforced by port and state control agencies, such as the U.S. Coast Guard. The Coast Guard is currently working towards developing such a mandatory program and we hope to see it well established within the next few years.

Until such time, we understand the need for California to move ahead with a separate program to protect our ports and estuaries. The California program in place since 2000 has helped to move the ball down the field. The State Lands has done an admirable job of administering this program, and the maritime industry has enjoyed an excellent working relationship with them.

Our industry is proud of the high levels of compliance demonstrated in both the data and payment of fees over the last few years. This has largely been facilitated by the type of work done by the State Lands' staff in reaching out and educating the many members of our industry. In addition, we enjoy good communications and an open dialogue with State Lands through the Ballast Water Technical Advisory Group. This has allowed candid and frank discussions sometimes lacking in other agencies.
So in conclusion, our industry does look forward to working closely with Senator Joe Nation and the State Lands' staff and Commission in the development of new ballast water legislation to extend the current program and to continue to promote environmental benefits to the waters of our state. Thank you.

CHAIRPERSON BUSTAMANTE: Thank you. Teri Shore.

MS. SHORE: Good morning. My name is Teri Shore from Blue Water Network. We're a national environmental advocacy group based in San Francisco. And our Clean Vessels Campaign is focused on reducing air and water pollution from various cruise ships and personal vessels.

We strongly support the reauthorization of the State's Ballast Water Management Program and we urge the Commission to forward this excellent report to the Legislature. We specifically support the following elements and recommendations. The Ship Board Demonstration Project, the building of a test and violations center, new reporting requirements, the need for treatment standards, and the need for coastwise standards.

We would also urge that the State Lands Commission give a greater emphasis in the new bill to no discharge of ballast water. Because 73 percent of reported vessels already do not discharge ballast water into state waters, it is clear that this is a reasonable goal. In particular, we
would ask for creation of no ballast water discharge zones in sensitive waterways and in bays and estuaries. We would also call for a plan for coastal ballast water management that also emphasizes no discharge zones as part of the program. We would also like to see a strong consideration of the construction of a prototype shoreside ballast water treatment facility in San Francisco Bay or somewhere along the coast that could be funded in partnership with industry, port, federal agencies, and private foundations.

A couple of other items we'd like to go on record with. We'd like to see consideration of some sort of disincentive for the industry to build more integrated tug barges. As I understand, these particular types of vessels which are engaged in coastwise traffic are unable to conduct ballast water exchange because of their design, and they also are not able to hold the ballast water. And because there are more and more of these vessels being built, I think there's a risk of it being a potential problem. So we would like the industry to look at alternatives with regard to how they design and perhaps the State Lands Commission can provide incentives to go in a different way.

We would urge extreme caution in the use of biocides and other methods for treating ballast water that could potentially introduce new toxins in the coastal waters. We very much would like to support Commissioner
Bustamante's comments about actually imposing penalties and fines on violators and we love the idea of posting them up on the website for the public to see. I think that's a really good incentive for the bad actors to comply.

I thought you might also be interested, just as a point of information, that Blue Water Network is engaged in litigation against a number of cruise lines for violating the State Ballast Water Law. And yesterday, a superior court judge in Los Angeles ruled in our favor over the particular fact that Carnival Cruise Lines continues to violate our state ballast water law without any real penalties. And the next stage of this lawsuit will be a trial on March 25th, and at that point we hope the judge will provide some injunctive relief or some other penalty for this particular bad actor.

So that is all I can offer today. Again, I would urge you to forward this report to the Legislature with our support. Thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you, Teri.

Tim.

MR. SCHOTT: Commissioners, thank you for the opportunity to speak to you today. My name is Tim Schott and I represent the California Association of Port Authorities, which is an association comprised of the state's 11 commercial publicly-owned ports.
First, we want to just commend the State Lands Commission for handling the program as a model, not only in terms of the actual process of managing ballast water, but in terms of outreach and bringing the industry into the fold, working with industry and the environmental community to try to craft a better solution. The maritime industry recognizes this as a serious problem and we are doing our best to address it.

We would like you to just keep three things in mind as we move forward. We are working with Senator Nation's office and we are most interested with the environmental community as we go forward and hopefully reauthorize a strong ballast water management program. We ask everybody to consider coordinating as much as possible at the national and international levels, with the Coast Guard. Again, ultimately this is a problem much larger than the state of California. We recognize that the state of California is leading the way, and it's probably appropriate to the extent that we can coordinate our efforts.

As research moves forward we will do more research as necessary and we would emphasize that using supply technology research is probably where we should spend the bulk of our time, energy and resources, as opposed to academic or life sciences. We know what the problem is, we have to figure out how to address the ballast water itself.
We would throw a little bit of caution to development of standards, only because the current technology does not exist to properly cleanse water to the extent we need to. So we would simply make sure that as we develop standards, we do it in a way that isn't detrimental to our economy and doesn't cause cargo to move out of the state because California is too far ahead of the national regulations.

And we would also urge everybody involved to pursue funding for that research through programs like Proposition 50 and those that might be out there where we can find some money to address this very real problem.

That's all I have today. Thank you very much.

CHAIRPERSON BUSTAMANTE: Very good. Thank you.

ACTING COMMISSIONER TAKASHIMA: I have a question.

CHAIRPERSON BUSTAMANTE: What is it?

ACTING COMMISSIONER TAKASHIMA: The recommendation in Item 9 reads, "establish interim and final ballast water treatment technology performance standards." Would it be your recommendation that that would be revised in your report, that final standard?

MR. SCHOTT: It seems to me as though the lines are just crafted fairly carefully. I forget how it actually reads, but pardon --

ACTING COMMISSIONER TAKASHIMA: It says establish
interim and final ballast water treatment technology
performance standards.

MR. SCHOTT: The last line we would suggest is an
important piece of that. A timeline for the development of
regulations on the treatment technology standards, I think,
is perhaps a very important reading to that. CAPA has
recognized that. I don't think anybody right now would
suggest that we're at a point where we could actually
develop final standards this year, unless it was to say no
discharge. And with even that, I think we would have
problems of determining whether it was true or not and we've
had other possible contaminants that aren't living organisms
that we've had to take control. I think it's in a timeframe
we believe it might be manageable. We would ask you to look
at the Washington model where they have developed standards,
I believe on more than one occasion, and failed to meet
those standards and had to go back to the Legislature
because the standard couldn't be met. And we would just
like to remember that as we try to develop those standards.

CHAIRPERSON BUSTAMANTE: The Washington standards,
when was Washington standards?

MR. SCHOTT: In '95.

MS. FALKNER: Yeah. By July of 2002, all vessels
were supposed to meet X standard, none of them could, and
the technology is not available. So they're back up to
2004, and it's very likely that they will not be able to reach that date either, simply because the technology is not available at this time.

MR. SCHOTT: Again, this is why we need to do research and to focus our department on finding technologies and trying to establish this. We have a little bit of a Catch-22 in that shippers don't want to put technology on their ships that can't be a standard and then have to go reinvest in additional technologies to meet that standard. Until we can establish the technology perhaps, we're going to have to work together with that standard technology.

ACTING COMMISSIONER TAKASHIMA: As written, the status report to the Legislature as we propose, the reports, you would recommend for the Commission adoption?

MR. SCHOTT: I'm afraid I don't have authorization from our membership to speak directly to that. So I'd like to pass on it and just throw in that caution. As I understand, the timeframe phrase was a key ingredient to that recommendation.

ACTING COMMISSIONER TAKASHIMA: But the report in its entirety, what's the view of the ports?

MR. SCHOTT: I believe we are in general in support of the report as written.

ACTING COMMISSIONER TAKASHIMA: All right. Thank you.
CHAIRPERSON BUSTAMANTE: Any other questions?

ACTING COMMISSIONER ARONBERG: I have two questions of staff. I'll ask you about the reauthorizing legislation, if it's going to be tacked on or expanded to cover the various items mentioned by Ocean Conservancy, Oceana, Blue Water Networks, with respect to the discharges in pristine waters, which sounds pretty serious, by the cruise ships, treatment rather than exchange as an option? I guess the question is whether the technology exists for that at this this point? Someone mentioned water resources and monitoring for pathogens, and what about discharge zones?

EXECUTIVE OFFICER THAYER: Some of these issues and those discharge zones I'm not as familiar with. We're working with Assembly Member Nation. Of course, he's the one who ultimately will decide as the author what sort of abilities are going to carry forward, and I think his report provides the basis for a lot of the provisions that are going to be in the bill.

I should note for the information of those who want to follow this that Bill Morrison, our legislative staff, who points out that bill number 8433 has already being introduced for us to track. So I expect as this bill moves through and I think you can tell from some of the comments of industry that there is going to be ongoing
discussions about what the exact provisions are. And I think the input from this report, as well as the people who have spoke here today, are going to help shape that.

But we're going to stay involved, because a lot of the recommendations deal with kind of our implementation of the enforcement issue that the Lieutenant Governor particularly focused on. If one of the recommendations in the report is to try and come up with a better enforcement mechanism, that kind of thing.

So I guess the short answer is all of those issues are going to be coming to the author and we're going to be pushing a lot of that, and our report is to be comprehensive in terms of looking at all that. We don't talk specifically about no-discharge zones, but I think that's an issue that's on the table and everything's going to be reviewed.

ACTING COMMISSIONER ARONBERG: The Controller would wholeheartedly support any efforts to chain bad actors into compliance such as those stated and anything else that can be created to get compliance and any enforcement mechanism that is within the law for us to undertake.

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON BUSTAMANTE: Is there a motion, or a question?

ACTING COMMISSIONER TAKASHIMA: I have a couple of questions, since I'm the rookie here.
When you say reauthorization which is a term of art, I just wondered what do you mean by reauthorization? Are you going to try to do another four year sunset bill or are you going lift the cap on the Sunset Committee permanently? That's one question.

EXECUTIVE OFFICER THAYER: I think the author is sponsored by several of the groups that were here today, but I think the answer is that it's going to become a permanent program as the result of this reauthorization with regards to that.

MS. FALKNER: I think that that issue is up for discussion.

ACTING COMMISSIONER TAKASHIMA: Okay. And then the second question I have is, there's a recommendation in the report about lifting different exemptions. And based on that, I guess my question would be whether or not that there's been some hearings about lifting of those exemptions by anybody or any discussions with those parties that would now be coming within the purview of this legislation?

EXECUTIVE OFFICER THAYER: I guess I would give a couple different responses to that. First, the basis for that recommendation is the science and our experience, which is that these ships have the potential of bringing in some of the same ballast water that other ships are being regulated on. So as the Lieutenant Governor pointed out,
out of an interest of fairness and also trying to make sure that we're comprehensively dealing with the problem, that was the basis for that recommendation. We haven't had particular hearings. We tried to make this report available in advance on the internet, but I expect that as with the other issues that Cindy was talking about, this will be the basis of some of the discussion before the Legislature.

ACTING COMMISSIONER TAKASHIMA: I just would suggest really outreaching to those other folks who are not here who now you are suggesting would be included in discussions, and I just think that we should try to do that. And I think the final issue would be then the cost, do when then lift and remove something with the exemption, include more people in this legislation and activity, whether or not from the fees that we're going to have, is it going to cover sufficiently and will we have enough staff to do the work that we're trying to achieve? And that's a question I guess from a finance view of today's budget. And that's just a concern that I just want to make sure people put in as something that needs to be addressed and looked at seriously.

EXECUTIVE OFFICER THAYER: I'm very much sympathetic to that view, because we're really concerned about having the resources to do a good job on this. We don't want to be assigned something and not be able to do
it. But I think that will be discussed as the bill goes forward in terms of whether or not there are any other caps on the fee. I believe the fee under the present legislation is capped at a thousand dollars, and we start at one level and kept moving down because we found compliance by industry has been good enough that we can lower it, we're getting enough ships that are paying. But the new program, I understand, it is everyone's intent that it will be fee based and that that will take care of the financing necessary. But we'll keep track of this.

CHAIRPERSON BUSTAMANTE: Any other questions?

ACTING COMMISSIONER ARONBERG: I'd make a motion.

CHAIRPERSON BUSTAMANTE: A motion.

ACTING COMMISSIONER ARONBERG: Move to adopt staff's recommendation to submit the report.

ACTING COMMISSIONER TAKASHIMA: And I second it.

CHAIRPERSON BUSTAMANTE: I'd like to say to staff thank you for the report. Clearly you've been able to put together a report that has included both environmental and industry issues. There was obviously some concerns by both groups. I think the staff report clearly demonstrated that it is a very complicated issue. The important piece of this is that the port system is an extremely delicate part of California's legacy. It's also a very strong part of our economic engine. Hundreds of thousands of jobs are related
to it, it is the gateway for services and goods across the
genation from the Pacific rim. It is an important piece of
the nation's infrastructure, and, therefore, we must and we
try to glean California's demand for both.

We want it all. We want the great port system, we
want to be efficient, we want to be business friendly, but
we also want it to fit into all of the ecological needs of
having as pristine a legacy for the environment as possible.
We do want it all and we're going to try to work to get it
all. And if that conflicts, which is natural, hopefully
we'll find an opportunity to be able to do all that we can
toward both those main goals.

And I would support the moving of the report to
the Legislature. The record should show it's unanimous by
the Commission.

And thank you for the report and thank you for the
work, it's very well done.

EXECUTIVE OFFICER THAYER: Thank you.

CHAIRPERSON BUSTAMANTE: I think that's the last
item we have on the agenda. And so we'll just call this --
is there any comment?

ACTING COMMISSIONER TAKASHIMA: One thing, and
sorry I was late coming here, I would like at some point
that this Commission, and I know the staff has already been
talking to Mr. Vinson, George Vinson. I'd like to have a
discussion by the Commissioners on the strategy of what is happening at the ports.

I would like to invite the different port representatives and Mr. Vinson and my staff together to discuss Mr. Bustamante's legislation and how we can implement that really now, and try to find -- I would like to volunteer our staff at Finance to find money to look at that and to have some kind of plan, because I'm very concerned that we need to deal with it today. And I don't know what we can do, I want to explore that and pursue all basis available.

CHAIRPERSON BUSTAMANTE: Thank you. I will take you up on that offer, especially the money part.

(Laughter.)

CHAIRPERSON BUSTAMANTE: We also on March 17th have a tour, and that's planned to go to the Port of Oakland. It's basically an educational opportunity for legislators and people who are interested to go and look at the port as a symbol of all the ports of California. It's an educational opportunity for legislators to have visuals, to have some general understanding, and whether we're talking about Oakland or San Diego or Long Beach or LA or wherever in the state of California, hopefully we'll be able to educate members more about this very important infrastructure that we have here in California and the need
to pay attention to this type of infrastructure. It's in their own best interest and if they know a little about it, hopefully we'll have an opportunity to give them more information.

The Chairman of the Select Committee, Alan Oswald, has already agreed to be there and is going to be encouraging several of the Members. If there's somebody from staff who would like to attend, I think that could probably be arranged. If the Commissioners would like to attend that, I think that can also be arranged. Anybody in the audience who might be interested, we'd recommend -- who'd be the person to call?

MS. GONZALEZ: Call our office.

CHAIRPERSON BUSTAMANTE: You?

MS. GONZALEZ: No.

(Laughter.)

CHAIRPERSON BUSTAMANTE: The phone number at our office, the person who is putting together the tour is Adrianna Ochoa, and her phone number is (916) 445-8994, if there's any interest.

It will start around 2:00 o'clock in the afternoon, and after the brief tour of the port and a working dinner in San Francisco, we should be back around 10:00, 10:30 in the evening.

Okay. Otherwise, all done, all through?
EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: All right. Meeting adjourned.

(Thereupon the meeting of the State Lands Commission was concluded at 11:45 a.m. on February 21, 2003.)
CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said State Lands Commission proceedings, or in any way interested in the outcome of said State Lands Commission proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March 2003.

Michael J. Mac Iver
Shorthand Reporter