



Marine Invasive Species Program
Enforcement and Hearing Process

Martinez, CA | September 26, 2017

CALIFORNIA STATE LANDS COMMISSION



California State
Lands Commission



Enforcement and Hearing Regulations

Purpose

- The purpose of the Enforcement and Hearing Regulations is to establish procedures for the enforcement process.
- The Enforcement and Hearing Regulations do not establish any new ballast water or biofouling requirements.

Enforcement and Hearing Regulations

Classification of Violations

The regulations classify violations into one of three classes:

- Class 1: Ballast water
- Class 2: Recordkeeping onboard
- Class 3: Submission of forms

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Class 1 Violations: Ballast Water

Class 1 violations fit into one of four types:

- Minor
- Moderate
- Major (I)
- Major (II)

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Class 1 Violations: Ballast Water, Cont.

- Minor
 - Vessels from outside Pacific Coast Region (PCR): discharge ballast water exchanged less than 200 nm and equal to or greater than 179 nm from land.
 - Vessels from within PCR: discharge ballast water exchanged less than 50 nm and equal to or greater than 45 nm from land.

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Class 1 Violations: Ballast Water, Cont.

- Moderate
 - Vessels from outside PCR: discharge ballast water exchanged less than 180 nm and equal to or greater than 100 nm from land.
 - Vessels from within PCR: discharge ballast water exchanged less than 45 nm and equal to or greater than 25 nm from land.

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Class 1 Violations: Ballast Water, Cont.

- Major (I)
 - Vessels from outside PCR: discharge ballast water exchanged less than 100 nm from land.
 - Vessels from within PCR: discharge ballast water exchanged less than 25 nm from land.

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Class 1 Violations: Ballast Water, Cont.

- Major (II)
 - Vessels from outside PCR: failure to perform any ballast water exchange during voyage.
 - Vessels from within PCR: failure to perform any ballast water exchange during voyage.

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Class 1 Violations: Ballast Water, Cont.

- Risk-based classification
- Repeated violations within 12 months elevate to higher classification of violation

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Class 2 Violations: Recordkeeping Onboard.

Occurs when a cited party fails to properly maintain onboard the vessel:

- Ballast water management plan
- Ballast water log
- Any other information required by applicable law



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Class 3 Violations: Submission of Forms

Occurs when a party fails to submit one of the required forms.

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Maximum Penalties

- Class 1 violations table:
 - Minor Not to exceed \$5,000 per violation
 - Moderate Not to exceed \$10,000 per violation
 - Major (I) Not to exceed \$20,000 per violation
 - Major (II) Not to exceed \$27,500 per violation
- Every ballast tank involved in a violation shall be deemed a separate Class 1 violation.

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Maximum Penalties, Cont.

- For Class 2 violations, upon the first occurrence, notice of noncompliance will be sent to the cited party.
- Subsequent occurrences of the same violation shall be subject to a penalty of \$10,000 per violation.

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Maximum Penalties, Cont.

- For Class 3 violations, upon the first occurrence, notice of noncompliance will be sent to the cited party.
- Subsequent occurrences of the same violation shall be subject to a penalty of \$1,000 per violation.

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Preliminary Actions

Before initiation an enforcement action, the Commission's Executive Officer must issue to the cited party a notice of violation containing:

- A description of the violation;
- A statement that proceedings may be initiated; and
- Notification that the cited party may within 10 working days can request a preliminary meeting.

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Complaint

After taking the preliminary actions, the Executive Officer can issue a complaint. The complaint must state:

- the violation alleged;
- the amount of the civil liability;
- that the cited party has the right to a formal hearing; and
- that the cited party's right to a hearing will be deemed waived if the cited party fails to file a notice of defense within 30 days.

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Notice of Defense

- The Notice of Defense is the cited party's opportunity to defend itself against the allegations in the complaint.
- A Notice of Defense must request a hearing or the cited party waives its right to the hearing.
- If the Cited Party fails to issue a Notice of Defense, the Cited Party will be liable for the penalty amount listed in the complaint.

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Hearing

An independent hearing officer will conduct the hearing, taking into consideration:

- the nature, circumstances, extent, and gravity of the violation;
- the cited party's past and present efforts to prevent, abate, or clean up conditions posing a threat; and
- the cited party's ability to pay the proposed civil penalty.



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THANK YOU & QUESTIONS

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