



April 23, 2021

Honorable Eleni Kounalakis
Lt. Governor – State of California

Honorable Betty T. Yee
Controller – State of California

Ms. Keely Bosler
Director – California State Department of Finance

California State Lands Commission
Sacramento, California 95825-8202

Public comment on proposed amendments to Article 4.7, Performance Standards for the Discharge of Ballast Water for Vessels Operating in California Waters – Agenda Item 42.

Dear California State Lands Commissioners:

We submit these comments on behalf of the members of the Pacific Merchant Shipping Association (PMSA), World Shipping Council (WSC) and the Chamber of Shipping of America (CSA) in response to the proposed amendments to the above referenced rulemaking set for hearing at the Commission's April 27, 2021 meeting. The members of our organizations are ocean carriers serving the state and nation's international trade demands through California's commercial public ports.

We would like to express our gratitude to the Commission in its outreach to the maritime industry over the years, and consideration of concerns we have raised in the past over similar regulatory concepts. It appears that many of those concerns and suggestions have been considered by the Commission in this proposed rule.

We have two sections we feel still need amendment in the proposed rule, which are as follows:

1. Section 2293 (b) and (c) – California Interim and Final Discharge Standards

Pursuant to California state law, the Commission has presented to the Legislature a report on the efficacy, availability and environmental impacts of currently available technologies for ballast water treatment systems approximately 18 months prior to the effective date of each pending discharge standard. The Commission's report of 2018, for example, found, among other things, that there were no available technologies to meet California's interim and final discharge standards and therefore recommended to the Legislature that the implementation dates for those standards be changed to the dates enacted into California law in AB 912. While the Commission notes in the Initial Statement of Reasons that the U.S. Vessel Incidental Discharge Act (VIDA) regulations are likely to become final and effective before

California’s interim or final discharge standards take effect, the 2030 and 2040 California discharge standards may enter into force, and the process laid out in statute for moving forward with those standards should be referenced here. Because many in the regulated community refer to regulation for guidance rather than researching back to the implementing statutes, we think it is important for the Commission to mirror the language from AB 912 in these implementing regulations, that it will prepare and present to the Legislature a report pursuant to the following requirement in CA PRC Section 71205.1 (b)(1):

Not less than 18 months before January 1, 2030, and January 1, 2040, the commission, in consultation with the board, the United States Coast Guard, and an advisory panel described in paragraph (3), shall prepare, or update, and submit to the Legislature a report on 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.

2. Section 2294 (a)(2) – Collection and Analysis of Ballast Water and Sediment Samples

We appreciate the Commission’s acknowledgement that collection of samples for Research Purposes should be carried out “when feasible.” We do not understand, however, why the Commission has not proposed the use of that same standard for collection of samples for Compliance Assessment. The language in (a)(2) recognizes only “safety concerns” as a potential reason not to collect samples for compliance assessment. While safety concerns should indeed be a reason not to collect samples, there are also many other operational situations during which it would be inappropriate or impracticable for the Commission to conduct sampling onboard vessels. These situations could include vessels getting ready to depart berth to meet a tide or traffic window, during certain cargo handling operations where active ballasting or deballasting is occurring, immediately after the vessel arrives when shore connections are being made, during certain bunkering operations, and others. For example, if a vessel is preparing for a scheduled departure, having to delay or cancel that departure for a last-minute request for sampling could impose significant burdens on the vessel, other vessels entering or leaving the port complex, the terminal at which the vessel is berthed, and the pilots, tug operators, line handlers and other service providers that have been arranged to support the vessel’s departure.

To ensure that Commission sampling can be done during a time that is both safe and will not result in operational delays or otherwise impacts the vessel, port, terminal, labor, pilots and other parties supporting the vessel’s visit, we recommend that sub-section (a)(2) be replaced with the following:

“To facilitate the Commission’s collection of ballast water samples for compliance assessment, the Commission must be given access to ballast water tanks and sampling ports when feasible and unless access is restricted due to safety concerns.”

We also recommend that the section governing collection of samples for Research Purposes (which should be re-numbered as sub-section (b)) be amended so the safety concerns are also listed as a possible reason to not collect samples. To make this change, we recommend adding “and unless access is restricted due to safety concerns,” to the sentence in (b)(2) after the words “when feasible”.

Finally, in regards to the methods used for analysis of ballast water discharges stated in 2294 (4), once SLC embarks on enforcement regulations for compliance assessment, those methods should be made public.

We ask that the Commission accept these proposed changes to the draft rule as conditions of approval.

Thank you for the opportunity to provide public comment. Please feel free to contact us if you have any questions.

Sincerely,



John Berge
Vice President
Pacific Merchant Shipping Association



Kathy Metcalf
President
Chamber of Shipping of America



Doug Schneider
Vice President
World Shipping Council

26 April 2021

California State Lands Commission
Sacramento, California 95825-8202

Commissioners:

Honorable Eleni Kounalakis, Lt. Governor – State of California

Honorable Betty T. Yee, Controller – State of California

Ms. Keely Bosler, Director – California State Department of Finance

Re: California State Lands Commission Public Hearing, 27 April 2021 / Agenda Item 42: Marine Environmental Protection Division of the California State Lands Commission - Article 4.7 of Title 2, Division 3, Chapter 1 of the California Code of Regulations.

California State Lands Commissioners:

On behalf of Crowley Maritime Corporation (“Crowley”), we thank you for the opportunity to offer public comment on Agenda Item 42 of the 27 April 2021 State Lands Commission (CSLC) meeting; " Consider approval of proposed amendments to sections 2291, 2292, 2293, 2294, 2295, 2296, and 2297 of the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.7"

As the largest operator of tankers and large petroleum articulated tug barges (“ATBs”) in the United States as well as various other container, general cargo and harbor craft whose vessels operate regularly in California ports, Crowley is directly affected by the proposed amendments.

Crowley supports the stated goal of the CSLC Marine Environmental Protection Division (MEPD) and Marine Invasive Species Program (MISP) to reduce the risk of aquatic nonindigenous species introduction into California’s waters. We thank MEPD personnel for their continuing outreach to and partnership with the maritime industry on ballast water management and invasive species policy issues, for their thoughtful consideration of comments submitted by the industry technical advisory group in June of 2020 as well as their response to industry comments submitted during the public comment period which ended on 19 January 2021. Crowley respectfully offers the following brief comments to the Commission on the this proposed regulatory action.

Section 2294. Collection and Analysis of Ballast Water and Sediment Samples

Crowley thanks CSLC MEPD personnel for their recognition in the Staff Report in the *Summary of Responses to Public Comments* that onboard tank access for sampling for research purposes raises significant safety concerns and for their acknowledgement that in section 2294, subdivision (b)(2) the included language, “when feasible,” includes such safety concerns as well as operational and other practical concerns. However, the inclusion in the

Summary of Responses to Public Comments that potential delay to vessel operations to accommodate research sampling is concerning.

Crowley respectfully submits that there are operational situations during which it would be inappropriate or impracticable for the Commission to conduct onboard sampling. These situations include but are not limited to immediately after the vessel arrives when preparing for cargo operations, during certain higher risk, manpower intensive cargo handling operations such as stripping or topping off tanks and lifting or replacing of cargo hatches, during bunkering operations, or when the vessel is preparing to get underway. Ballasting and de-ballasting operations may need to be started or stopped within narrow timeframes during certain cargo operations to accommodate trim and stability concerns. In these instances, the safe operation of the vessel by onboard personnel must take priority.

Vessels subject to ballast water sampling must maintain security requirements developed in compliance with the Maritime Transportation Security Act (MTSA), 33 CFR 101 – 104 and/or International Ship and Port Facility Security (ISPS) Code. Vessel personnel must also remain in compliance with national and international requirements for work/rest hours as a matter of safety of people, property, and the environment. The security requirements include (but are not limited to) measures for monitoring, access control to the vessel, and enhanced requirements for restricted areas. Ballast water sampling on a vessel by California State Lands Commission personnel or contractors would necessitate access to restricted areas of the vessel. Access to restricted areas of the vessel by such persons requires escort by vessel personnel at all times. Vessel personnel would not be able to dedicate escort duties to facilitate such access where it creates a conflict with already assigned duties for the safe operation of the ship, for pollution prevention under ISM Code, or the ability to maintain compliance with work/rest requirements.

We would request that CSLC MISP personnel commit to working with onboard personnel and vessel owner / operators to schedule sampling attendance (particularly research sampling attendance) as far in advance as practicable to ensure that vessel personnel can support sampling evolutions without undue impact to onboard personnel work hour management processes or vessel operations and to ensure minimal impact to interstate commerce caused by vessel delays.

In closing, we greatly appreciate the industry outreach efforts of the California State Lands Commission Marine Invasive Species Program personnel as well as their consideration of previously submitted comments. We are available to respond to any questions that the Commission or Board may have and look forward to working with CSLC staff through future public engagement opportunities.

Yours respectfully,

CROWLEY MARITIME CORPORATION

/s/

Art Mead

Vice President & Chief Counsel

Government and Regulatory

E-mail: cslc.commissionmeetings@slc.ca.gov, please include "04/27/2021: Agenda Item 42" in the subject line of the e-mail