

Staff Report 68

PROPOSED ACTION:

Consider supporting H.R. 1452 introduced in the 118th Congress by Representative Garamendi, legislation that would require the United States Coast Guard to release ballast water treatment system type approval data to any State, the District of Columbia, or United States Territory upon request.

BACKGROUND AND PROPOSED LEGISLATION:

The Marine Invasive Species Program (Program) is a statewide multi-agency program designed to reduce the risk of introducing nonindigenous species (i.e., nonnative species) into State waters from vessels arriving at California ports that are 300 gross tons and above and capable of carrying ballast water. The Commission administers the Program. The Legislature established the Program in 1999 and expanded it in 2003. The Program's statutory mandate is to move the State expeditiously toward elimination of the discharge of nonindigenous species into State waters based on the best available technology that is economically achievable.

Nonindigenous species are organisms that are intentionally or unintentionally transported through human activities to new habitats, such as California's marine, estuarine, and freshwater environments. Nonindigenous species risk significant peril to human health, the economy, and the environment. Once they establish in a new geographic location and begin causing impacts, nonindigenous species are considered invasive species. Because eradication efforts are exorbitant and rarely successful, managing the ways they are moved, e.g., prevention, is the most effective management approach. Ballast water and vessel biofouling are the main vectors within the shipping pathway that transport aquatic nonindigenous species. Vessel biofouling means organisms attached to a vessel's wetted surfaces. Ballast water is pumped in and out of dedicated tanks in vessels to maintain seaworthiness and balance as cargo is loaded or unloaded. Ballast water taken on in non-California ports can be contaminated with species that could become invasive if discharged in the State's waters.

Staff works closely with the other Program agencies as it implements the Marine Invasive Species Act, including, the California Department of Fish and Wildlife, the

State Water Resources Control Board, and the California Department of Tax and Fee Administration. Staff also works closely with state, federal, and foreign entities; technical advisory groups; non-governmental organizations; scientists and researchers; and the shipping industry. This collaboration, a hallmark of the Program, improves protection of California waters from nonindigenous species introductions by creating regional and international consistency and a forum to share successes and challenges. The Program is considered a cutting-edge, world-renowned program.

For years, the shipping industry advocated for enactment of uniform national standards for ballast water discharge to replace a perceived patchwork of state and federal ballast water management requirements. The legislation sought by the shipping industry became law in late 2018 when the Vessel Incidental Discharge Act (VIDA), included as Title IX within S.140, the Frank Lobiando Coast Guard Reauthorization Act of 2018, was signed into law.

VIDA designates the U.S. Environmental Protection Agency (U.S. EPA) as the lead authority to establish national performance standards for vessel discharges, including ballast water. VIDA also designates the U.S. Coast Guard (USCG) as the lead authority to implement and enforce the national standards set by the U.S. EPA.

A key element of the California Marine Invasive Species Program is to develop and implement ballast water discharge performance standards that set limits for the concentration of living organisms in discharged ballast water. California's performance standards include interim and final standards with an implementation schedule through January 2040. When fully implemented, VIDA will preempt state authority, including the Commission's to adopt or implement state-specific ballast water discharge performance standards that are more stringent than federal standards. The only enforceable standards will be the federal standards.

Certain provisions were included in VIDA that protect states from some of the impacts to their authority. These include that individual states retain authority to inspect vessels and enforce the federal ballast water management requirements, collect fees (with a cap) and collect ballast water management reports from vessels arriving at state ports. Individual states may also, through their governors, petition the U.S. EPA for stricter discharge standards.

State law is not preempted until the U.S. EPA and USCG adopt regulations to establish discharge standards and implement enforcement procedures. The combined rulemaking process, which is under way, could take years from the time VIDA was signed into law. While VIDA authorized states to petition the U.S. EPA for stricter discharge standards, the process is complicated, and it is unclear what data and information would need to be provided for a petition to be approved.

USCG holds the best available data on ballast water treatment system performance as part of the documentation associated with the current ballast water treatment system type approval process. USCG refuses to release those data to the public through the Freedom of Information Act, stating that the data include trade secrets and commercial or financial information that is exempted from release. These end-of-pipe discharge performance data, however, can be separated from proprietary information associated with the mechanics of ballast water treatment system function and are critical to identifying appropriate discharge standards.

The introduction of nonindigenous species in California waters threatens ecosystem preservation and the promotion and protection of fishing, water-related recreation, maritime commerce, and water dependent tourism. It is important to have the strongest ballast water performance standards possible. H.R. 1452 would enable the Commission to use the USCG ballast water treatment system type approval data to assess the performance of available ballast water treatment systems. This information could help inform a petition to the U.S. EPA to strengthen the federal ballast water discharge standards if the data support that conclusion. Stricter ballast water discharge standards would better protect California waters from the introduction of nonindigenous species.

The language in H.R. 1452 was developed collaboratively with Representative Garamendi's office, the USCG, and the Commission. The USCG has not expressed any concerns or objections about the bill. Staff expects other states to also support H.R. 1452.

OTHER PERTINENT INFORMATION:

1. In [June 2021](#), the Commission authorized staff to pursue amendments to VIDA that would require the USCG to release ballast water treatment system type approval to states. Representative Garamendi's staff successfully incorporated this language in the House-passed Coast Guard Authorization Act of 2022 ([H.R.6865](#)) in last year's Congress but the amendment was unsuccessful because certain Senators tried to leverage the non-controversial House provision for other unrelated VIDA amendments.

EXHIBIT:

- A. H.R. 1452

RECOMMENDED ACTION:

It is recommended that the Commission:

Support H.R. 1452, introduced in the 118th Congress by Representative Garamendi, legislation that would require the United States Coast Guard to release ballast water treatment system type approval data to any State, the District of Columbia, or United States Territory upon request.


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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Frank LoBiondo Coast Guard Authorization Act of 2018 to direct the Commandant of the Coast Guard to provide certain data related to water quality, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GARAMENDI introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Frank LoBiondo Coast Guard Authorization Act of 2018 to direct the Commandant of the Coast Guard to provide certain data related to water quality, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INFORMATION ON TYPE APPROVAL CERTIFI-**
4 **CATES.**

5 (a) IN GENERAL.—Title IX of the Frank LoBiondo
6 Coast Guard Authorization Act of 2018 (Public Law 115–
7 282) is amended by adding at the end the following:

1 **“SEC. 904. INFORMATION ON TYPE APPROVAL CERTIFI-**
2 **CATES.**

3 “The Commandant of the Coast Guard shall, upon
4 request by any State, the District of Columbia, or territory
5 of the United States, provide all data possessed by the
6 Coast Guard pertaining to challenge water quality charac-
7 teristics, challenge water biological organism concentra-
8 tions, post-treatment water quality characteristics, and
9 post-treatment biological organism concentrations data for
10 a ballast water management system with a type approval
11 certificate approved by the Coast Guard pursuant to sub-
12 part 162.060 of title 46, Code of Federal Regulations (or
13 successor Federal regulations).”.

14 (b) CLERICAL AMENDMENT.—The table of contents
15 for the Frank LoBiondo Coast Guard Authorization Act
16 of 2018 (Public Law 115–282) is amended by inserting
17 after the item relating to section 903 the following:

“904. Information on type approval certificates.”.