

INITIAL STATEMENT OF REASONS

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.9. MARINE INVASIVE SPECIES ACT ENFORCEMENT AND HEARING PROCESS

GENERAL PURPOSE OF THE REGULATION

The purpose of this proposed regulatory action is to amend the administrative enforcement process for violations of the Marine Invasive Species Act (Act; Public Resources Code section 71200 et seq.). Article 4.9 contains policies and procedures staff of the California State Lands Commission (Commission) shall undertake in assessing administrative civil penalties as allowed by section 71216 of the Public Resources Code.

Although compliance with the Act and associated regulations by the regulated community is high, every noncompliant vessel poses the threat of introducing nonindigenous species (NIS) and risks harming California's coastal environment, coastal economy, and public health. The Commission's existing transparent and consistent process for assessing penalties in Article 4.9 has enhanced compliance. Amending Article 4.9 to include noncompliance with biofouling management requirements and ballast water performance standards within the existing transparent and consistent process will further improve compliance with the provisions of Title 2 of the California Code of Regulations section 2298.1 et seq. (Article 4.8), and section 2291 et seq. (Article 4.7). Reducing violations of biofouling management requirements and ballast water performance standards will help protect the waters of the state from NIS introductions and associated impacts.

The objectives of this rulemaking are to:

- 1) establish the penalties for noncompliance with vessel biofouling management requirements and ballast water performance standards and deter violations; and
- 2) apply an administrative civil penalty process in a consistent way, allowing parties to forecast each step.

PROBLEM STATEMENT

Public Resources Code section 71201, subdivision (d) declares that the purpose of the Act is to “move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the State or into waters that may impact the waters of the State.” NIS are organisms that have been transported by humans to locations where they do not naturally or historically occur. Once established, NIS can have adverse economic, ecological, and public health consequences. The Act established the Marine Invasive Species Program in an effort to reduce NIS introductions by regulating operational and reporting requirements for oceangoing vessels arriving at the state's ports.

To implement the Act, Public Resources Code section 71201.7 provides authority for the Commission to adopt regulations. To that end, the Commission has adopted Articles 4.5 (Title 2 of the California Code of Regulations, section 2270 et seq.), 4.6 (Title 2 of the California Code of Regulations, section 2280 et seq.), 4.7 (Title 2 of the California Code of Regulations, section 2291 et seq.), 4.8 (Title 2 of the California Code of Regulations, section 2298.1 et seq.) and 4.9 (Title 2 of the California Code of Regulations, section 2299.01 et seq.). These regulations represent a comprehensive set of requirements, both operational (ballast water and biofouling management) and administrative (reporting and recordkeeping), to help prevent vessel-borne introductions of NIS into the waters of the State.

If a vessel is deemed to be noncompliant with any biofouling management or ballast water management provisions of the Act or associated regulations (Article 4.8 and Article 4.7), Public Resources Code section 71216 authorizes the Commission to assess administrative civil penalties in an amount that shall not exceed twenty-seven thousand five hundred dollars (\$27,500) for each violation. Although the Commission has an existing transparent and consistent process for assessing penalties for violations of ballast water exchange and recordkeeping requirements, there are currently no regulations clearly defining the process by which penalties are assessed for violations of biofouling management requirements (Article 4.8) and ballast water discharge performance standards (Article 4.7). Without consequences to deter biofouling and performance standards violations, some parties may ignore existing law and consequently increase the risk of NIS introductions and associated impacts.

Amendment of Article 4.9, therefore, is necessary to codify the procedures to assess administrative civil penalties for noncompliance with biofouling management requirements and ballast water performance standards.

SPECIFIC PURPOSE OF AMENDMENTS AND NECESSITY

Section 2299.01 Purpose and Applicability

Proposed amendments to Section 2299.01, subdivision (a)

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.9 of the California Code of Regulations is to establish policies and procedures ~~the Executive Officer~~ staff of the California State Lands Commission shall undertake in assessing and commencing administrative enforcement actions pursuant to California Public Resources Code section 71216.

Specific Purpose:

The purpose of the amendment is to align regulations concerning the Commission's enforcement process with Public Resources Code section 71216. The statute does not specifically require the Executive Officer to process violations, and these are usually sent to cited parties by Commission staff.

Necessity:

The amendment to remove the phrase "the Executive Officer" and replace it with "staff" is necessary to ensure the regulation is consistent with the practice, as assessment and commencement of administrative enforcement actions are processed by Commission staff and not typically by the Executive Officer.

Proposed amendments to Section 2299.01, subdivision (b)

- (b) This article shall govern the enforcement and procedures related to violations of any of the provisions of Division 36 of the Public Resources Code and Title 2, Division 3, Chapter 1, Articles ~~4.5~~, 4.6, 4.7, and 4.8 of the California Code of Regulations.

Specific Purpose:

The purpose of this amendment is to remove reference to Article 4.5.

Necessity:

The removal of Article 4.5 from the list of affected regulatory packages is necessary for clarity because violations of Article 4.5 are not currently subject to enforcement via these regulations, nor does the Commission intend to apply the Article 4.9 enforcement process to violations of the provisions of Article 4.5 through this rulemaking process.

Section 2299.02 Definitions

Proposed amendment to Section 2299.02, subdivision (a)

~~(a) “CCR” means the California Code of Regulations.~~

Specific Purpose:

The purpose of this non-substantive amendment is to delete this abbreviation from the regulatory text. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having “CCR” spelled out in each instance instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.02, subdivision (b)

~~(b)~~(a) “Cited Party” means the master, owner, operator, agent, or person in charge of a vessel that has violated a provision or provisions of the California Marine Invasive Species Act (codified as ~~Cal.~~California Pub. Resources Code § 71200 et seq.) or title 2, California Code of Regulations, Articles ~~4.5, 4.6, 4.7, and 4.8.~~

Specific Purpose:

The purpose of this amendment is to delete the abbreviation and spell out the Public Resources Code, which improves the clarity of the regulatory text. This amendment is non-substantive because it is a revision of syntax.

In addition, the amendment removes reference to Article 4.5.

Necessity:

The removal of Article 4.5 from the list of affected regulatory packages is necessary for clarity because violations of Article 4.5 are not currently subject to enforcement via these regulations, nor does the Commission intend to apply the Article 4.9 enforcement process to violations of the provisions of Article 4.5 through this rulemaking process.

Proposed amendment to Section 2299.02, subdivision (c)

~~(e)~~(b) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep and rivers, lakes, or other water bodies navigably connected to the ocean.

Specific Purpose:

The purpose of this amendment is to renumber or change the letter of this subdivision to ensure consistent numbering with the addition of amendments.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of subdivision numbering/lettering.

Proposed amendment to Section 2299.02, subdivision (d)

~~(d)~~(c) "Commission" means the California State Lands Commission.

Specific Purpose:

The purpose of this amendment is to renumber or change the letter of this subdivision to ensure consistent numbering with the addition of amendments.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of subdivision numbering/lettering.

Proposed amendment to Section 2299.02, subdivision (e)

~~(e)~~(d) "Exchange" means to replace the water in a ballast tank using, ~~and strictly complying with,~~ either of the methods described in Division 36, Chapter 1, of the California Public Resources Code section 71200, subdivision (h).

Specific Purpose:

The purpose of this amendment is to remove the phrase "and strictly complying with" from the text.

Necessity:

The amendment is necessary to improve the clarity of the regulatory text by removing words that potentially create confusion. The allowable "methods" of ballast water exchange are clearly defined in Public Resources Code section 71200, subdivision (h). The phrase "strictly complying with" does not add meaning to the definition, as the water replacement methods are either complied with or not.

Proposed amendment to Section 2299.02, subdivision (f)

~~(f)~~(e) "Executive Officer" means the Executive Officer of the California State Lands Commission.

Specific Purpose:

The purpose of this amendment is to renumber or change the letter of this subdivision to ensure consistent numbering with the addition of amendments.

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of subdivision numbering/lettering.

Proposed amendment to Section 2299.02, subdivision (g)

~~(g)~~(f) “~~Incorrect-Incomplete~~ exchange” means an exchange that is not performed in full compliance with using either of the methods described in ~~Division 36, Chapter 1 of the California~~ Public Resources Code section 71200, subdivision (h).

Specific Purpose:

This amendment deletes part of the citation for Public Resources Code section 71200, subdivision (h), which is a non-substantive change. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation because it is a revision of syntax, and the cited statute remains unchanged.

The remaining purpose of this amendment is to: (1) change the term “incorrect exchange” to “incomplete exchange”; and (2) remove the phrase “in full compliance” from the text.

Necessity:

The amendment is necessary to improve the clarity of the regulatory text. The term “incomplete exchange” is clearer than the term “incorrect exchange” because it describes more specifically how an exchange is not compliant with statutory requirements. The allowable “methods” of ballast water exchange are clearly defined in Public Resources Code section 71200, subdivision (h). Deleting the phrase “in full compliance with” removes words that potentially create confusion. The phrase does not add meaning to the definition, as the water replacement methods are either complied with or not.

Proposed amendment to Section 2299.02, subdivision (h)

~~(h)~~(g) “Land” means the material of the earth, whether soil, rock, or other substances that sit landward of, or at an elevation higher than the ocean’s mean high-tide line. Land includes rock outcroppings or islands located offshore.

Specific Purpose:

The purpose of this amendment is to renumber or change the letter of this subdivision to ensure consistent numbering with the addition of amendments.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of subdivision numbering/lettering.

Section 2299.02, subdivision (i)

Proposed amendment:

(i) ~~“PRC” means Public Resources Code.~~

Specific Purpose:

The purpose of this non-substantive amendment is to delete this abbreviation from the regulatory text. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having “PRC” spelled out in each instance instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation, as it is a revision of syntax.

Section 2299.03 Classification of Violations

Proposed amendment to Section 2299.03

A violation of any provision within Division 36, Chapter 2 (comprising sections 71203 through 71207), of the Public Resources Code ~~PRC~~ or Title 2, Division 3, Chapter 1, Articles 4.6, 4.7, and 4.8 of the ~~CCR~~ California Code of Regulations shall be considered within one of three classes:

Specific Purpose:

The purpose of this non-substantive amendment is to delete these abbreviations from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible

to the public by having "PRC" and "CCR" spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)

- (a) Class 1 (management violations): Class 1 violations shall be issued to a cited party when a vessel fails to comply with applicable ballast water or biofouling management requirements. ~~discharges ballast water in the coastal waters of the state without first complying with the appropriate ballast management practices identified in section 71204.3 of the PRC or 2 CCR, section 2284.~~

Specific Purpose:

The purpose of these amendments is to establish a name for the type of violation and clarify the general types of practices that will be classified as Class 1 violations.

Necessity:

Establishing a name for the type of violation is necessary to improve the clarity of the regulatory text and improve the public's understanding of the applicability of the regulations. Providing a summary of the types of practices that will be classified as Class 1 violations will also improve the clarity and readability of the regulatory text. These amendments will make the text more accessible to the public.

Proposed amendment to Section 2299.03, subdivision (a)(1)(A)(1)

- (1) if a vessel subject to section 71204.3, subdivision (c) of the Public Resources Code ~~PRC~~, prior to discharging ballast water into the coastal waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 200 nautical miles and equal to or greater than 180 nautical miles from land; or

Specific Purpose:

The purpose of this amendment is to repeal the abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability. The amendment also repeals an unnecessary descriptor for "exchange."

Necessity:

This amendment is necessary to improve the clarity of the regulatory text. Having many abbreviations or unnecessary descriptions decreases readability. Deleting the term "incorrect" improves readability by removing an unnecessary descriptor. This amendment will make the text more accessible to the public. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(A)(2)

- (2) if a vessel subject to ~~2-California Code of Regulations, title 2, CCR~~ section 2284, prior to discharging ballast water into the coastal waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 50 nautical miles and equal to or greater than 45 nautical miles from land.

Specific Purpose:

The purpose of this amendment is to repeal the abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "CCR" spelled out instead of abbreviated. Having many abbreviations decreases readability. The amendment also repeals an unnecessary descriptor for "exchange."

Necessity:

This amendment is necessary to improve the clarity of the regulatory text. Having many abbreviations or unnecessary descriptions decreases readability. Deleting the term "incorrect" improves readability by removing an unnecessary

descriptor. This amendment will make the text more accessible to the public. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(B)(1)

- (1) if a vessel subject to section 71204.3, subdivision (c) of the ~~PRC~~ Public Resources Code, prior to discharging ballast water into the coastal waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 180 nautical miles and equal to or greater than 100 nautical miles from land;

Specific Purpose:

The purpose of this amendment is to repeal the abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability. The amendment also repeals an unnecessary descriptor for "exchange."

Necessity:

This amendment is necessary to improve the clarity of the regulatory text. Having many abbreviations or unnecessary descriptions decreases readability. Deleting the term "incorrect" improves readability by removing an unnecessary descriptor. This amendment will make the text more accessible to the public. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(B)(2)

- (2) if a vessel subject to ~~2-California Code of Regulations, title 2, CCR~~ section 2284, prior to discharging ballast water into the coastal waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 45 nautical miles and equal to or greater than 25 nautical miles from land; or

Specific Purpose:

The purpose of this amendment is to repeal the abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "CCR" spelled out instead of abbreviated. Having many abbreviations decreases readability. The amendment also repeals an unnecessary descriptor for "exchange."

Necessity:

This amendment is necessary to improve the clarity of the regulatory text. Having many abbreviations or unnecessary descriptions decreases readability. Deleting the term "incorrect" improves readability by removing an unnecessary descriptor. This amendment will make the text more accessible to the public. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(B)(3)

- (3) if any additional Class 1 Minor violations are committed on a subsequent voyage committed within twelve (12) months of a preceding Class 1 Minor violation shall be considered a Class 1 Moderate violation.

Specific Purpose:

The purpose of this non-substantive amendment is to remove the word "committed" and the phrase "shall be considered a Class 1 Moderate violation" as both are redundant and to rephrase the text to improve readability. This subdivision is already listed under the headers for "Class 1" and "Moderate" violations in the regulatory text, therefore spelling the same violation type here is redundant.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(C)(1)

- (1) if a vessel subject to section 71204.3, subdivision (c) of the Public Resources Code-PRC, prior to discharging ballast water into the coastal waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 100 nautical miles from land;

Specific Purpose:

The purpose of this amendment is to repeal the abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability. The amendment also repeals an unnecessary descriptor for "exchange."

Necessity:

This amendment is necessary to improve the clarity of the regulatory text. Having many abbreviations or unnecessary descriptions decreases readability. Deleting the term "incorrect" improves readability by removing an unnecessary descriptor. This amendment will make the text more accessible to the public. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(C)(2)

- (2) if a vessel subject to ~~2~~California Code of Regulations, title 2, CCR-section 2284, prior to discharging ballast water into the coastal waters of the state, performs an ~~incorrect~~ exchange of ballast water in an area less than 25 nautical miles from land; ~~or~~

Specific Purpose:

The purpose of this amendment is to repeal the abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "CCR" spelled out instead of abbreviated. Having many abbreviations decreases readability. The amendment also repeals an unnecessary descriptor for "exchange."

Necessity:

This amendment is necessary to improve the clarity of the regulatory text. Having many abbreviations or unnecessary descriptions decreases readability. Deleting the term "incorrect" improves readability by removing an unnecessary descriptor. This amendment will make the text more accessible to the public. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(C)

- (3) if a vessel subject to section 71204.3 of the Public Resources Code, discharges ballast water into the coastal waters of the state after conducting an incomplete exchange;

Specific Purpose:

The purpose of this amendment is to classify the discharge of ballast water that is not completely exchanged, as required by Public Resources Code section 71200, subdivision (h), as a violation.

Necessity:

This amendment is necessary because discharging ballast water that has not been completely exchanged presents a high risk of introducing NIS into the waters of the State. Conducting an incomplete exchange means that less than the required volume of the original ballast water is exchanged, therefore an unacceptable amount of organisms from the original source will remain in the incompletely exchanged ballast water and will be released into state waters during discharge.

Proposed amendment to Section 2299.03, subdivision (a)(1)(C)

- (4) if a vessel violates California Code of Regulations, title 2, section 2293, subdivision (a);

Specific Purpose:

The purpose of this amendment is to classify violations of the referenced California Code of Regulations, title 2, section 2293, subdivision (a) as Major I violations under Article 4.9.

Necessity:

This amendment is necessary because a violation of the performance standards for ballast water discharge represents under-management of ballast water and will result in the discharge of an unacceptably high concentration of organisms into California waters. These types of under-managed discharges present a high risk of NIS introductions.

Proposed amendment to Section 2299.03, subdivision (a)(1)(C)

(5) if a vessel violates California Code of Regulations, title 2, section 2295, subdivisions (a), (b), or (c);

Specific Purpose:

The purpose of this amendment is to classify violations of the referenced California Code of Regulations, title 2, section 2295, subdivisions (a), (b), and (c) as Major I violations under Article 4.9.

Necessity:

This amendment is necessary because vessels that use a U.S. Coast Guard type-approved ballast water management system (also known as ballast water treatment system) or a system designated by the U.S. Coast Guard as an alternative management system and fail to operate that system in accordance with the System Design Limitations are not using the system in a manner that it is designed, tested, and intended to be used, resulting in likely under-management and unacceptable risk of NIS introduction. Likewise, ballast water management systems that are not maintained or calibrated to the manufacturer's specifications are likely to result in undertreatment and unacceptable risk.

Proposed amendment to Section 2299.03, subdivision (a)(1)(C)

- (6) if a vessel fails to notify the Commission, as soon as practicable, that the vessel's ballast water treatment system has stopped operating properly, as required by section 71205.3, subdivision (b)(1) of the Public Resources Code, and discharges ballast water into the coastal waters of the state or fails to employ an alternative identified by the Commission in consultation with the United States Coast Guard pursuant to section 71205.3, subdivision (b)(3) of the Public Resources Code; or

Specific Purpose:

The purpose of this amendment is to classify failure to *notify the Commission, as soon as practicable, that the vessel's ballast water treatment system has stopped operating properly, as required by section 71205.3, subdivision (b)(1) of the Public Resources Code, and discharges ballast water or failure to employ an alternative identified by the Commission in consultation with the United States Coast Guard pursuant to section 71205.3, subdivision (b)(3) of the Public Resources Code* as a Major I violation. Note that this is distinct from the proposed Class 3 violation discussed below for section 2299.03, subdivision (c)(4). Whereas subdivision (c)(4) would apply when a vessel fails to report to the Commission that its ballast water management system has stopped operating properly *without* discharging ballast water, proposed subdivision (a)(1)(C)(6) would apply when a vessel fails to report and discharges ballast water.

Vessels could violate subdivision (a)(1)(C)(6) in one of two ways. First, if a vessel discharged ballast water without employing the alternative management method identified by the Commission, it would be in violation. Second, if a vessel discharged ballast water without reporting to the Commission that their ballast water management systems stopped operating properly, thereby preventing the Commission from identifying an alternative management method, it would be in violation.

Necessity:

This amendment is necessary to deter regulated parties from failing to seek and employ alternatives, as required by Public Resources Code section 71205.3, subdivision (b). If a vessel discharges ballast water when its ballast water management system has stopped operating properly, it creates a greater risk of NIS introductions. Classifying this violation as a Major I violation, subject to a penalty of up to \$20,000, will deter vessels from failing to notify the Commission

of treatment systems not operating properly and failing to employ identified alternative methods of ballast water management.

Proposed amendment to Section 2299.03, subdivision (a)(1)(C)(3)

~~(3)(7)~~ if any additional Class 1 Moderate violations are committed on a subsequent voyage ~~committed~~ within twelve (12) months of a preceding Class 1 Moderate violation ~~shall be considered a Class 1 Major (I) violation.~~

Specific Purpose:

The purpose of this non-substantive amendment is to remove the word "committed" and the phrase "shall be considered a Class 1 Major (I) violation" as both are redundant and to rephrase the text to improve readability. This subdivision is already listed under the headers for "Class 1" and "Major (I)" violations in the regulatory text, therefore spelling the same violation type here is redundant.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (a)(1)(D)

(1) if a vessel, subject to section 71204.3, subdivision (c) of the Public Resources Code ~~PRC~~ or 2~~California Code of Regulations, title 2, CCR~~ section 2284, prior to discharging ballast water into the coastal waters of the state, fails to perform a ~~any~~ ballast water exchange during its voyage;

Specific Purpose:

The purpose of this amendment is to repeal these abbreviations from the regulatory text.

Necessity:

Deleting the abbreviations of “Public Resources Code” and “California Code of Regulations” and spelling out these terms is a non-substantive revision of syntax. Having many abbreviations decreases readability. This amendment will make the text more accessible to the public.

Proposed amendment to Section 2299.03, subdivision (a)(1)(D)

- (2) if a vessel subject to California Code of Regulations, title 2, section 2298.6 fails to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.6, subdivision (b);

Specific Purpose:

The purpose of this amendment is to classify *failure to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.6, subdivision (b)* as a Major II violation.

Necessity:

The amendment is necessary for two reasons. First, failure to manage biofouling on the wetted surfaces of a vessel creates significant risk of NIS introductions. Failure to manage biofouling presents a similar risk as failure to manage ballast water (i.e., a violation of section 71204.3, subdivision (c) of the Public Resources Code or California Code of Regulations, Title 2, section 2284), which is already classified as a Major II violation. Second, the failure to document biofouling management creates uncertainty as to whether any management occurred. Without documentation of management, the Commission will have no credible evidence that a vessel conducted any management. Vessels could assert that they performed management but failed to keep record of it, effectively creating a loophole due to the Commission's inability to verify such statements. Consequently, the mere failure to document management must also be a Major II violation. In the event that management was undocumented yet alternative evidence of management exists, such alternative evidence would be relevant in penalty assessment pursuant to Public Resources Code section 71216, subdivision (e).

Proposed amendment to Section 2299.03, subdivision (a)(1)(D)

- (3) if a vessel subject to California Code of Regulations, title 2, section 2298.6 fails to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.6, subdivision (c):

Specific Purpose:

The purpose of this amendment is to classify *failure to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.6, subdivision (c)* as a Major II violation.

Necessity:

The amendment is necessary for two reasons. First, failure to manage biofouling on a vessel's niche areas creates significant risk of NIS introductions. Failure to manage biofouling presents a similar risk as failure to manage ballast water (i.e., a violation of section 71204.3, subdivision (c) of the Public Resources Code or California Code of Regulations, Title 2, section 2284), which is already classified as a Major II violation. Second, the failure to document biofouling management creates uncertainty as to whether any management occurred. Without documentation of management, the Commission will have no credible evidence that a vessel conducted any management. Vessels could assert that they performed management but failed to keep record of it, effectively creating a loophole due to the Commission's inability to verify such statements. Consequently, the mere failure to document management must also be a Major II violation. In the event that management was undocumented yet alternative evidence of management exists, such alternative evidence would be relevant in penalty assessment pursuant to Public Resources Code section 71216, subdivision (e).

Proposed amendment to Section 2299.03, subdivision (a)(1)(D)

- (4) if a vessel subject to California Code of Regulations, title 2, section 2298.7 fails to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.7, subdivision (c):

Specific Purpose:

The purpose of this amendment is to classify failure to manage or document management of biofouling as required under California Code of Regulations, title 2, section 2298.7, subdivision (c) as a Major II violation.

Necessity:

The amendment is necessary for two reasons. First, failure to manage biofouling creates significant risk of NIS introductions. Failure to manage biofouling presents a similar risk as failure to manage ballast water (i.e., a violation of section 71204.3, subdivision (c) of the Public Resources Code or California Code of Regulations, Title 2, section 2284), which is already classified as a Major II violation. Second, the failure to document biofouling management creates uncertainty as to whether any management occurred. Without documentation of management, the Commission will have no credible evidence that a vessel conducted any management. Vessels could assert that they performed management but failed to keep record of it, effectively creating a loophole due to the Commission's inability to verify such statements. Consequently, the mere failure to document management must also be a Major II violation. In the event that management was undocumented yet alternative evidence exists, such alternative evidence would be relevant in penalty assessment pursuant to Public Resources Code section 71216, subdivision (e).

Proposed amendment to Section 2299.03, subdivision (a)(1)(D)

(5) if a person knowingly and with intent to deceive the Commission falsifies any ballast water or biofouling records, reporting forms, or information; or

Specific Purpose:

The purpose of this amendment is to classify falsification of ballast water and biofouling records, reporting forms, or information as a Major (II) violation.

Necessity:

Knowingly deceiving, or providing falsified records to, the Commission is a serious violation that undermines staff's ability to understand if management actions were performed for a vessel to minimize the spread of NIS. Categorizing these actions as Major (II) violations is necessary to provide a strong deterrent against deception and to encourage submission of accurate information.

Proposed amendment to Section 2299.03, subdivision (a)(1)(D)

- (6) if a vessel restricts the Commission's access to any sampling ports for compliance assessment sample collection, as required in California Code of Regulations, title 2, section 2294, subdivision (a).

Specific Purpose:

The purpose of this amendment is to classify restriction of the Commission's access to any sampling ports for compliance assessment sample collection, as required in California Code of Regulations, title 2, section 2294, subdivision (a) as a Major (II) violation.

Necessity:

This amendment is necessary because restricting Commission staff's access to a vessel's sampling ports will inhibit the ability of staff to assess vessel compliance. If a vessel that plans to discharge unmanaged ballast water restricts access to their sampling ports, then Commission staff cannot sample the ballast water to assess compliance, thus creating a loophole for noncompliance. Categorizing this type of violation as a Major (II) violation is necessary to provide a strong deterrent against vessels utilizing this loophole. Please note that if access is restricted due to safety concerns, as per California Code of Regulations, title 2, section 2294, subdivision (b), that will not be considered a violation of this subdivision.

Proposed amendment to Section 2299.03, subdivision (b)

- (b) Class 2 (recordkeeping violations): Class 2 violations shall be issued to a cited party when a vessel fails to properly maintain on board the vessel, as required:

Specific Purpose:

The purpose of this amendment is to establish a name for the type of violation.

Necessity:

Establishing a name for the type of violation is necessary to improve the clarity of the regulatory text and improve the understanding of the regulations.

Proposed amendment to Section 2299.03, subdivision (b)(1)

- (1) a ballast water management plan pursuant to section 71204, subdivisions (h) ~~and (i)~~ of the Public Resources Code ~~PRC~~;

Specific Purpose:

The purpose of this amendment is to (1) repeal the reference to section 71204, subdivision (i) and (2) delete the abbreviation from the regulatory text and replace it with the full set of terms.

Necessity:

The amendment to remove the reference to Public Resources Code section 71204 subdivision (i) is necessary because that provision, which relates to crew training on ballast water management and treatment procedures, is not applicable to this type of violation. Removing the abbreviations is a non-substantive revision that does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (b)(2)

- (2) a ballast water log pursuant to section 71205, subdivision (d) of the Public Resources Code ~~PRC~~; ~~or~~

Specific Purpose:

The purpose of this non-substantive amendment is to delete this abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having “PRC” spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (b)(3)

- (3) any other information that is required to be carried or maintained on board a vessel pursuant to sections 71204 and 71205 of the Public Resources Code-PRC;

Specific Purpose:

The purpose of this amendment is to (1) classify failure to maintain required information pursuant to Public Resources Code section 71204 as a Class 2 violation and (2) delete this abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is necessary to clarify that information required to be carried or maintained on board of the vessel is required by both Public Resources Code sections 71204 and 71205, and failure to maintain any of the required information on board a vessel is a Class 2 violation.

This amendment is also necessary to improve the clarity of the regulatory text. Deleting the abbreviation of "Public Resources Code" and spelling out this term is a non-substantive revision of syntax that will improve readability and make the text more accessible to the public. Having many abbreviations decreases readability.

Proposed amendment to Section 2299.03, subdivision (b)

- (4) documentation of ballast water treatment system functionality monitoring as required under California Code of Regulations, title 2, section 2297;

Specific Purpose:

The purpose of this amendment is to classify failure to maintain *documentation of ballast water treatment system functionality as required under California Code of Regulations, title 2, section 2297*, as a Class 2 violation.

Necessity:

This amendment is necessary because failure to maintain documentation of ballast water treatment system functionality monitoring on board the vessel will inhibit the ability of Commission staff to assess the compliance of the vessel with ballast water management requirements.

Proposed amendment to Section 2299.03, subdivision (b)

- (5) a biofouling management plan pursuant to California Code of Regulations, title 2, section 2298.3; or

Specific Purpose:

The purpose of this amendment is to classify failure to maintain a *biofouling management plan pursuant to California Code of Regulations, title 2, section 2298.3* as a Class 2 violation.

Necessity:

This amendment is necessary because failure to maintain a biofouling management plan on board the vessel will inhibit the ability of Commission staff to assess the compliance of the vessel with biofouling management requirements.

Proposed amendment to Section 2299.03, subdivision (b)

- (6) documentation of biofouling management as required under California Code of Regulations, title 2, section 2298.7, subdivision (d).

Specific Purpose:

The purpose of this amendment is to classify failure to maintain *documentation of biofouling management as required under California Code of Regulations,*

title 2, section 2298.7, subdivision (d) as a Class 2 violation.

Necessity:

This amendment is necessary because failure to maintain documentation of the biofouling management that was conducted will inhibit the ability of Commission staff to assess compliance with the biofouling management strategies outlined in the vessel's biofouling management plan.

Proposed amendment to Section 2299.03, subdivision (c)

- (c) Class 3 (reporting violations): Class 3 violations shall be issued when a cited party fails to submit the following information to the Commission, as required:

Specific Purpose:

The purpose of this amendment is to establish a name for the type of violation.

Necessity:

Establishing a name for the type of violation is necessary to improve the clarity of the regulatory text and improve the understanding of the regulations.

Proposed amendment to Section 2299.03, subdivision (c)(1)

- (1) the ballast water reporting information required by section 71205, subdivision (c) of the Public Resources Code ~~PRC~~;

Specific Purpose:

The purpose of this non-substantive amendment is to delete this abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (c)(2)

~~(2) the “Ballast Water Treatment Supplemental Reporting Form” as required by 2 CCR section 2297.1, subdivision (b);~~

Specific Purpose:

The purpose of this amendment is to repeal the reference to the “Ballast Water Treatment Supplemental Reporting Form,” as this reporting form was repealed in 2017 pursuant to California Code of Regulations, title 2, section 2297.1.

Necessity:

This amendment is necessary because the Ballast Water Treatment Supplemental Form is no longer required, therefore failure to submit the form is not a violation, and there should not be an associated penalty.

Proposed amendment to Section 2299.03, subdivision (c)(3)

~~(3) the “Hull Husbandry Reporting Form” as required by 2 CCR section 2298;~~

Specific Purpose:

The purpose of this amendment is to repeal the reference to the “Hull Husbandry Reporting Form,” as this form was repealed in 2017 pursuant to California Code of Regulations, title 2, section 2298.

Necessity:

This amendment is necessary because the Hull Husbandry Reporting Form is no longer required, therefore failure to submit the form is not a violation, and there should not be an associated penalty.

Proposed amendment to Section 2299.03, subdivision (c)(4)

~~(4) the "Ballast Water Treatment Technology Annual Reporting Form" as required by 2 CCR section 2297.1, subdivision (a); or~~

Specific Purpose:

The purpose of this amendment is to repeal the reference to the "Ballast Water Treatment Technology Annual Reporting Form," as this reporting form was repealed in 2017 pursuant to California Code of Regulations, title 2, section 2297.1.

Necessity:

This amendment is necessary because the Ballast Water Treatment Technology Annual Reporting Form is no longer required, therefore failure to submit the form is not a violation, and there should not be an associated penalty.

Proposed amendment to Section 2299.03, subdivision (c)

(2) the "Marine Invasive Species Program Annual Vessel Reporting Form (SLC 600.12)" as required by California Code of Regulations, title 2, section 2298.5;

Specific Purpose:

The purpose of this amendment is to classify failure to submit the "Marine Invasive Species Program Annual Vessel Reporting Form," *as required by California Code of Regulations, title 2, section 2298.5*, as a Class 3 violation.

Necessity:

This amendment is necessary because failure to submit the Marine Invasive Species Program Annual Vessel Reporting Form will inhibit the ability of Commission staff to assess the compliance of the vessel with both biofouling and ballast water treatment system management requirements. Failure to submit the Annual Vessel Reporting Form will also inhibit the ability of Commission staff to use reported information to prioritize vessels for inspection.

Proposed amendment to Section 2299.03, subdivision (c)(5)

~~(5)(3)~~ any other forms required pursuant to section 71205 of the Public Resources Code-PRC; or

Specific Purpose:

The purpose of this non-substantive amendment is to delete this abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.03, subdivision (c)

(4) notification, as soon as practicable, that the vessel's ballast water treatment system has stopped operating properly, as required by section 71205.3, subdivision (b)(1) of the Public Resources Code.

Specific Purpose:

The purpose of this amendment is to classify failure to report that a vessel's *ballast water treatment system has stopped operating properly, as required by section 71205.3, subdivision (b)(1) of the Public Resources Code*, as a Class 3 violation.

Necessity:

This amendment is necessary because if a vessel's ballast water treatment system is not operable, the ballast water intended for discharge will not be treated appropriately. Notifying the Commission of an inoperable ballast water treatment system as soon as practicable is necessary to allow sufficient time for Commission staff to consult with the United States Coast Guard about potential alternative management solutions to minimize the risk of NIS introduction.

Section 2299.03, Authority Cited

Proposed amendment:

Authority Cited: Sections 71203, 71204, 71204.3, 71205, 71205.3, 71206 and 71201.7, Public Resources Code.

Specific Purpose:

The purpose of this amendment is to add Section 71205.3 to the citations of authority.

Necessity:

This amendment is necessary because section 71205.3 is referenced in the regulatory text, and it needs to be reflected in the "Authority Cited" at the end of the section. This amendment is non-substantive because it is adding an "authority" citation for a regulation.

Section 2299.04 Penalties

Proposed amendment to Section 2299.04, subdivision (a)

- (3) Violations of California Code of Regulations, title 2, section 2298.6 or 2298.7 shall be subject to penalties only after completion of the 60-day grace period described in California Code of Regulations, title 2, sections 2298.3, subdivision (c) and 2298.4, subdivision (c).

Specific Purpose:

The purpose of this amendment is to clarify that the penalties for the violations listed in this subdivision will only be applicable after the completion of the 60-day grace period.

Necessity:

This amendment is necessary to provide clarity about when a penalty will be assessed on these violations.

Proposed amendment to Section 2299.04, subdivision (b)(1)

- (1) Ballast water recordkeeping

Specific Purpose:

The purpose of this amendment is to establish a name for the penalty category.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation, as it is a revision of structure.

Proposed amendment to Section 2299.04, subdivision (b)(1)

~~(1)~~(A) Upon the first occurrence of a Class 2 violation of section 71204 or 71205 of the Public Resources Code or California Code of Regulations, title 2, section 2297 by a vessel, in lieu of a penalty, a letter of noncompliance shall be sent to the cited party explaining the violation.

Specific Purpose:

The purpose of this amendment is to clarify that violations related to ballast water recordkeeping (as opposed to biofouling recordkeeping) are Class 2 violations. The existing regulations provide for a letter of noncompliance in the event of Class 2 ballast water recordkeeping violations, and the proposed amendment continues and clarifies that intent.

Necessity:

This amendment is necessary to improve the clarity of the regulatory text by specifying the applicable code sections.

Proposed amendment to Section 2299.04, subdivision (b)(2)

~~(2)~~(B) Subsequent occurrences by a vessel of the same type of Class 2 violation within a period of 2 (two) years after the letter of noncompliance issuance date shall be subject to a penalty ~~of not to exceed~~ \$10,000 per violation.

Specific Purpose:

The purpose of these amendments is to establish a time period of two years for a violation to be considered a “subsequent occurrence” and to modify the penalty amount for a subsequent occurrence from \$10,000 per violation to an amount that will not exceed \$10,000.

Necessity:

The amendment to establish a time period is necessary because the existing regulation does not define how to determine a subsequent occurrence of the same type of violation. The lack of an established time period means that if a violation occurred long in the past (e.g., 10 years), a current violation of the same type would still be considered a subsequent occurrence and subject to penalization as such. The Commission understands there are many factors that may have changed between a violation from long ago and now. Establishing a time period will provide a clear and fair window for the regulations' applicability.

The amendment to modify the penalty amount is necessary because it provides greater flexibility to the Commission to establish a penalty amount based on the severity of the infraction.

Proposed amendment to Section 2299.04, subdivision (b)(2)

(2) Biofouling recordkeeping

Specific Purpose:

The purpose of this amendment is to establish a name for the penalty category.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California regulation, as it is a revision of structure.

Proposed amendment to Section 2299.04, subdivision (b)(2)

(A) Any Class 2 violation of California Code of Regulations, title 2, section 2298.3 by a vessel after the expiration of the 60-day grace period shall be subject to a penalty not to exceed \$20,000 per violation.

Specific Purpose:

The purpose of this amendment is to (1) create a classification for violations of California Code of Regulations, title 2, section 2298.3 (after the expiration of the 60-day grace period) and (2) establish a maximum penalty amount, not to exceed \$20,000, per violation.

Necessity:

This amendment is necessary because the requirements set out in California Code of Regulations, title 2, section 2298.3 form the foundation of the biofouling management actions that are required under California Code of Regulations, title 2, sections 2298.6 and 2298.7. Specifically, California Code of Regulations, title 2, section 2298.3 requires that planned biofouling management actions be included in the Biofouling Management Plan. Evidence of those actions being conducted is required in the Biofouling Record Book. Without a complete Biofouling Management Plan, as required by California Code of Regulations, title 2, section 2298.3, that details the management actions to be taken on a vessel's niche areas and other wetted surfaces, there is nothing for the Commission to review to determine if compliant biofouling management has occurred. The proposed maximum penalty is necessary to avoid incentivizing a vessel to keep an incomplete Biofouling Management Plan rather than risk a higher penalty for failure to manage or document management of biofouling (i.e., a violation of California Code of Regulations, title 2, sections 2298.6 or 2298.7, which carries a penalty not to exceed \$20,000).

Proposed amendment to Section 2299.04, subdivision (b)(2)

(B) A Class 2 violation of California Code of Regulations, title 2, section 2298.7, subdivision (d) by a vessel after the expiration of the 60-day grace period shall be subject to a penalty not to exceed \$10,000 per violation.

Specific Purpose:

The purpose of this amendment is to (1) create a classification for violations of California Code of Regulations, title 2, section 2298.7, subdivision (d) (after the expiration of the 60-day grace period) and (2) establish a maximum penalty amount, not to exceed \$10,000, per violation.

Necessity:

This amendment is necessary because (1) failure to record the activities listed in California Code of Regulations, title 2, section 2298.7, subdivision (d) in the Biofouling Record Book will prevent the Commission from determining compliance with the biofouling management strategies outlined in the vessel's biofouling management plan, and (2) the penalty amount of "not to exceed \$10,000" is necessary to establish a maximum penalty amount per violation.

Proposed amendment to Section 2299.04, subdivision (c)(2)

- (2) Subsequent occurrences of the same type of Class 3 violation within a period of 2 (two) years after the letter of noncompliance issuance date shall be assessed a penalty of ~~\$1,000~~\$2,000 per violation. Every thirty (30) day period that a required form or forms remain unsubmitted after the letter of noncompliance issuance date ~~original period for submission identified in section 2299.03(c) of this Division~~ shall be deemed a separate violation.

Specific Purpose:

The purpose of these amendments is to establish a time period of two years for a violation to be considered a subsequent occurrence, increase the penalty amount by \$1,000, and clarify what date will be considered when determining violations for unsubmitted forms.

Necessity:

The amendment to establish a time period is necessary because the existing regulation does not define how to determine a subsequent occurrence of the same type of violation. The lack of an established time period means that if a violation occurred long in the past (e.g., 10 years), a current violation of the same type would still be considered a subsequent occurrence and subject to penalization as such. The Commission understands there are many factors that may have changed between a violation from long ago and now. Establishing a time period will provide a clear window for the regulations' applicability.

The amendment to increase the penalty by \$1,000, resulting in a penalty of \$2,000, is necessary to account for inflation since 2017 when the \$1,000 penalty was established. Additionally, the cost to the Commission to issue and enforce

this type of penalty is greater than the current penalty of \$1,000 making it fiscally inefficient to pursue violations of this type.

The amendment that the letter issuance date will be used as the basis to determine when subsequent violations may be issued for failure to submit a required reporting form provides clarity for all parties involved regarding when the first and subsequent 30-day periods shall begin.

Section 2299.05 Preliminary Actions

Proposed amendment to Section 2299.05, subdivision (a)(1)

- (1) ~~The Executive Officer~~ Commission staff shall provide a written notice of a violation to the cited party containing the following:

Specific Purpose:

The purpose of the amendment is to align the regulations concerning the Commission's enforcement process with Public Resources Code section 71216.

Necessity:

Statute does not require the Executive Officer to provide written notice of violations, and these are usually sent to cited parties by Commission staff. This amendment is necessary to clarify the process and align with statute, because such notice need not be sent by the Executive Officer.

Proposed amendment to Section 2299.05, subdivision (a)(1)(C)

- (C) notification that the cited party may, within ~~ten (10)~~ thirty (30) ~~working calendar~~ days after receipt of the notice, submit a request in writing to ~~the Executive Officer~~ Commission staff for a preliminary meeting.

Specific Purpose:

The purpose of the amendment is to extend the time period for cited parties to request a preliminary meeting from 10 to 30 days and to replace the term "Executive Officer" with "Commission staff."

Necessity:

The extension of time is necessary because it can take some time for written correspondence to reach international parties, and most of the vessel owners and operators that call on California ports are based internationally. Replacing "Executive Officer" with "Commission staff" is necessary to clarify that meetings are coordinated and conducted at the staff level and not typically by or with the Executive Officer.

Proposed amendment to Section 2299.05, subdivision (a)(2)

- (2) If the cited party requests a preliminary meeting with ~~the Executive Officer~~ Commission staff, that meeting shall be held prior to any further enforcement actions and may include any discussions relating to the violations in question, including, but not limited to, whether a violation had in fact occurred, what evidence exists for the violation, and what classification should apply for each violation.

Specific Purpose:

The purpose of the amendment is to replace "Executive Officer" with "Commission staff" to better align the regulations concerning the Commission's enforcement process with current practices and Public Resources Code section 71216. When cited parties request a preliminary meeting regarding a violation, those meetings are offered by and held with staff.

Necessity:

This amendment is necessary to clarify that meetings are coordinated and conducted at the staff level and not typically by or with the Executive Officer. Such requests to the Executive Office would result in significant delay in the enforcement process due to the Executive Officer's scheduling constraints. This amendment would allow cited parties to maintain the option to request a preliminary meeting while reducing a burden on the Commission's Executive Office.

Proposed amendment to Section 2299.05, subdivision (a)(4)

- (4) The preliminary meeting ~~shall be scheduled at the Executive Officer's discretion, but~~ shall in no event be scheduled more than ~~thirty (30)~~forty-five (45) calendar days after the request for the meeting is received by ~~the Executive Officer~~ Commission staff.

Specific Purpose:

The purpose of the amendment is to align the regulation with current practices and provide for a longer period of time in which to schedule the preliminary meeting with a cited party.

Necessity:

The amendments to remove the reference to scheduling at the Executive Officer's discretion and change "Executive Officer" to "Commission" are necessary to clarify that meetings are coordinated at the staff level and not typically by or with the Executive Officer. Extending the period of time within which to schedule the preliminary meeting from 30 to 45 days is necessary to ensure sufficient time to adequately investigate violations committed by cited parties and to communicate and coordinate meeting times with cited parties due to different time zones and country holidays.

Proposed amendment to Section 2299.05, subdivision (a)(5)

- ~~(5) Within ten (10) working days after the preliminary meeting, the Executive Officer shall provide written notice to the cited party of the decision as to whether enforcement action is to proceed.~~

Specific Purpose:

This regulation is repealed to better align the enforcement regulations with statute.

Necessity:

This amendment is necessary to remove a requirement that is redundant under the Marine Invasive Species Act (Act). Public Resources Code section 71216 provides for a process in which the Executive Officer may issue, and in such case must serve, a complaint to a person on whom civil liability may be imposed for violations of the Act. In the event a party is cited for such violations, the complaint serves the purpose of providing notice to the party that a formal

enforcement action is to proceed.

Proposed amendment to Section 2299.05, subdivision (b)(1)

- (1) initiate proceedings pursuant to section 71216 of the Public Resources Code and the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code ~~PRC~~ against the cited party to administratively impose civil penalties;

Specific Purpose:

The purpose of this amendment is to add the reference to the relevant Government code in Chapter 5 and delete "PRC" from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

Adding the citation to the Government Code is necessary to make clear the type of proceeding that may be initiated against a cited party. For such proceedings, Public Resources Code section 71216 references Chapter 5 in the Government Code, which relates to formal administrative hearings and is distinct from Chapter 4.5, which relates to informal administrative hearings and other procedures.

Proposed amendment to Section 2299.05, subdivision (b)(3)

- (3) notify the appropriate federal agency of any violation which may also constitute a violation of federal law or regulation; or

Specific Purpose:

The purpose of this amendment is to add the word "a" in this subdivision. This amendment is a non-substantive correction of grammar.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.05, subdivision (b)(4)

- (4) refer the violation to the local district attorney for prosecution pursuant to section 71217 of the Public Resources Code~~PRC~~.

Specific Purpose:

The purpose of this non-substantive amendment is to delete this abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.05, subdivision (c)

- (c) It is unnecessary for the Executive Officer to comply with the procedures of this section when issuing an order for a vessel to depart the waters of the state pursuant to section 71207, subdivision (d) of the Public Resources Code~~PRC~~.

Specific Purpose:

The purpose of this non-substantive amendment is to delete this abbreviation from the regulatory text and replace it with the full set of terms. The amendment will improve the clarity of the regulatory text and make the text more accessible to the public by having "PRC" spelled out instead of abbreviated. Having many abbreviations decreases readability.

Necessity:

This amendment is non-substantive. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Section 2299.06 Hearing Procedures

Proposed amendment to Section 2299.06

Section 2299.06 ~~Hearing Procedures~~ Imposition of penalties

Specific Purpose:

The purpose of this amendment is to update the name of Section 2299.06.

Necessity:

This amendment is necessary because the current name of Section 2299.06, "Hearing Procedures," does not correspond with the information covered in this section. The appropriate name for this section is "Imposition of penalties." Providing appropriate naming for the section will improve the clarity of the regulatory text. This amendment will make the text more accessible to the public.

Proposed amendment to Section 2299.06, subdivision (b)

- (b) ~~Except as otherwise specified in this article, the~~ The process to impose civil penalties shall be conducted in accordance with the Administrative Procedure Act, as provided under Chapter 5 located within Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and section 71216 of the Public Resources Code ~~PRC. The Executive Officer and the cited party may agree to settle the violation before, during, or after the commencement of proceedings to impose civil penalties.~~

Specific Purpose:

These amendments make non-substantive changes, including deleting "except as otherwise specified in this article" and rephrasing existing citations. The final sentence is also removed. A substantially similar sentence is placed in a new

subparagraph (d).

Necessity:

This amendment contains several non-substantive changes that are necessary to improve clarity. The non-substantive changes include:

(1) Deleting “except as otherwise specified in this article” – this eliminates an unnecessary phrase. The change is non-substantive because no other portions of the article, in either the existing or proposed regulations, contradict this citation.

(2) Rephrasing the existing citation – this places the pertinent chapter at the beginning of the citation. Chapter 5, which relates to formal administrative hearings, is distinct from chapter 4.5, for example, which relates to informal administrative hearings and other procedures. The change is non-substantive because the statutory sections cited remain the same.

(3) Spelling out “Public Resources Code” rather than abbreviating it - this is a non-substantive change. It does not alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California regulation, as it is a revision of syntax.

Proposed amendment to Section 2299.06

(c) A civil penalty shall be determined by Commission staff based upon the following factors:

- (1) the nature, circumstances, extent, and gravity of the violation, taking into account the harm to the environment and ecology;
- (2) the cited party's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment; and
- (3) the cited party's ability to pay the proposed civil penalty.

Specific Purpose:

The purpose of this amendment is to incorporate in regulation the factors that apply to each cited party in setting penalty amounts.

Necessity:

This amendment is necessary to incorporate in regulation the standard that applies to each cited party in assessing civil penalties. These factors are the same as those required by Public Resources Code 71216 to be considered at an administrative hearing in the event an enforcement action proceeds to a hearing.

Proposed amendments to Section 2299.06

- (d) Nothing in this Article shall limit the ability of the Executive Officer and a cited party from entering into a settlement agreement to resolve any assessed violations before, during, or after the commencement of proceedings to impose civil penalties.

Specific Purpose:

The purpose of this amendment is to create a new subsection using regulatory language from Section 2299.06, subdivision (b) to increase clarity to cited parties.

Necessity:

This amendment retains the original meaning of the provision, originally part of Section 2299.06, subdivision (b), that the Executive Officer may agree to settle violations at any time before, during, or after commencement of proceedings to impose civil penalties, while clarifying that nothing in the Article (in either the existing or proposed regulations) limits such ability.

Section 2299.07 Complaint

Proposed amendment to Section 2299.07, subdivision (a)

- (a) After following the preliminary actions described in section 2299.05 of this article, the Executive Officer may commence proceedings to impose civil penalties by issuing and serving a complaint to the cited party.

Specific Purpose:

These amendments make a non-substantive change that better aligns the regulation with statute and increases clarity of the regulatory text.

The amendment to add “and serving” is non-substantive because the added language is prescribed by statute. Public Resources Code section 71216 requires that the complaint, if issued to a party, be served upon that party.

Necessity:

The amendment to add “to the cited party” is necessary to clarify that a complaint, if issued, is issued to a party cited for a violation of the Marine Invasive Species Act.

Proposed amendment to Section 2299.07, subdivision (b)(3)

- (3) a statement that the cited party has the right to request a formal hearing, ~~upon request~~, at which they may be represented by counsel; and

Specific Purpose:

The purpose of this amendment is to improve the concision of the regulation text in this subdivision.

Necessity:

This amendment is a non-substantive revision of syntax to make the sentence in subdivision (b)(3) concise and improve the clarity of the regulatory text.

Proposed amendment to Section 2299.07, subdivision (b)(4)

- (4) a statement that the cited party's right to a hearing will be deemed waived if the cited party fails to file a notice of defense with the Executive Officer within thirty (30) days from the date the complaint was served on the cited party, or their agent for service. A notice of defense is deemed to be filed within the 30-day period if it is postmarked within the 30-day period.

Specific Purpose:

This non-substantive amendment incorporates in regulation a notice of defense filing requirement from the Marine Invasive Species Act to provide additional notice to the regulated industry of the requirement.

Necessity:

This change is non-substantive because it incorporates existing statutory text without modification of the text.

Section 2299.08 Notice of Defense

Proposed amendment to Section 2299.08, subdivision (a)

- (a) The cited party may, no later than thirty (30) days after service of the complaint, ~~submit~~ file a notice of defense ~~to the Executive Officer~~ at the principal office address identified in section 1901 of this Division.

Specific Purpose:

This amendment makes a non-substantive change to align the regulation with statute and removes a reference to the Executive Officer.

The amendment to delete “submit” and add “file” is non-substantive because it adopts the terminology used in Public Resources Code section 71216(d), which states the process to request a hearing.

Necessity:

The amendment to remove the phrase “to the Executive Officer” is necessary to ensure the regulation is consistent with the practice that such notices are received and processed by Commission staff and not typically by the Executive Officer.

Proposed amendment to Section 2299.08, subdivision (c)

- (c) If, within the notice of defense, the cited party requests a hearing on the merits, such a hearing shall commence within thirty (30) days after the Executive Officer receives the notice of defense. The Executive Officer

and the cited party may stipulate to commence the hearing date later than thirty (30) days.

Specific Purpose:

The purpose of this amendment is to add a comma after the phrase “within the notice of defense.”

Necessity:

This amendment is a non-substantive correction of punctuation. Proper punctuation improves the clarity of the regulatory text.

Proposed amendment to Section 2299.08 Reference

Reference: Section 71216, Public Resources Code; Section 11506, Government Code

Specific Purpose:

The purpose of this amendment is to add Government Code section 11506 to the Reference section.

Necessity:

This amendment is necessary to include a statutory reference that is being implemented by Section 2299.08, which requires that a notice of defense has the form and content described in section 11506 of the Government Code.

Section 2299.09 Hearing

Proposed amendment to Section 2299.09, subdivision (a)

- (a) The process to initiate formal proceedings and conduct a A-hearing shall be conducted by an independent hearing officer in accordance with section 71216 of the Public Resources Code and the Administrative Procedure Act, as provided under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code
procedures specified in Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of the Government Code, except as otherwise

~~specified in this section.~~ In making a determination, the hearing officer shall take the following into consideration:

Specific Purpose:

These amendments make non-substantive and clarifying changes.

Rephrasing the existing citation to the Government Code places the pertinent chapter at the beginning of the citation. Chapter 5, which relates to formal administrative hearings, is distinct from chapter 4.5, for example, which relates to informal administrative hearings and other procedures. This is a non-substantive change as the statutes cited remain the same.

Necessity:

The amendment to include “the process to initiate formal proceedings and conduct a [hearing]” clarifies that both the hearing and process to initiate a hearing are conducted in accordance with the enumerated statutes, as required by Public Resources Code section 71216.

The reference to an “independent hearing officer” is deleted to ensure consistency with the cited provisions of the Government Code, which do not use that term to refer to a hearing officer.

The reference to Public Resources Code section 71216 is added because the hearing and process to initiate a hearing adhere to this statute, in addition to the formal hearing provisions of the Government Code.

ECONOMIC IMPACT ASSESSMENT

The proposed amendments establish penalties for noncompliance with vessel biofouling management requirements and ballast water performance standards to deter such behavior. Commission staff has determined that the proposed regulations will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Evidence Supporting No Significant Adverse Economic Impact On Business

The majority of owners of vessels that operate in California are international companies and not California businesses. The affected industry will consist mainly of non-California based international businesses. These regulatory amendments will not affect the ability of California businesses to compete with other states and will not make it more costly for California businesses to produce goods and services here.

The overall economic impact of this regulation is estimated to be a maximum of approximately \$340,500 in penalties per year for the entire shipping industry that calls at California ports (see Worksheet for STD.399 Calculations contained within the rulemaking record). Penalties will only apply to vessel owners that have vessels in violation. This cost is insignificant compared to the current costs of operation in California ports. For example, a partial estimate of the average cost of a container vessel calling at the Port of Los Angeles in 2023, including dockage and pilotage fees, was about \$58,061.¹² The average cost is likely much higher, as there are other fees associated with the total costs of a port call, but Commission staff could not obtain reliable values and they are not included in this estimate.

Potential cost impacts on representative persons or businesses are summarized below and are categorized by the major provisions of the proposed regulations.

(A) The creation or elimination of jobs within the State of California

Analysis: Businesses would only incur costs if noncompliance occurs. Associated penalties may impact the jobs that businesses provide. However, staff expects that any impacts will be minimal and unlikely to create or eliminate jobs.

Conclusion:

- The proposed regulation will have no impact on the creation or elimination of jobs within the State of California.

¹ This estimate includes an average port call length of 4.5 days for a container vessel about 150,000 gross registered tons in size.

² The numbers used for the cost calculations were obtained from the Pacific Merchant Shipping Association in June 2023.

(B) The creation of new businesses or the elimination of existing businesses within the State of California

Analysis: These regulation amendments do not impose any new requirements, and therefore staff does not expect the regulations to create or eliminate any businesses. Most shipping businesses that operate within the State of California are international corporations that are not based in California. As discussed above, the potential costs of the proposed regulations remain low in comparison to typical costs of doing business in the maritime shipping industry.

Conclusion:

- The proposed regulation will have no impact on the creation of new businesses within the State of California.
- The proposed regulation will have no impact on the elimination of businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California

Analysis: These regulation amendments do not impose any new requirements, and therefore staff does not expect the regulations to affect the expansion of businesses currently doing business within the State of California. As discussed above, the potential costs of the proposed regulations remain low in comparison to typical costs of doing business in the maritime shipping industry.

Conclusion:

- The proposed regulations will have no impact on the expansion of businesses currently conducting businesses within the State of California.

(D) Benefits of the regulations to the health and welfare of California residents, worker safety, and the State's environment

Analysis: The proposed regulation amendments do not make changes to existing worker safety requirements and therefore should not have a significant positive or negative impact on worker safety within the State of California.

The proposed regulations are expected to benefit both the state's environment and the health and welfare of California residents. NIS and invasive species have impacted California's economy, human health, and environment. NIS and invasive species threaten the coastal tourism and recreation industries. In 2020, these industries represented nearly \$18.5 billion (NOEP 2024) of California's Gross State Product. Additionally, in the United States, invasive species are believed to be responsible for approximately \$120 billion in losses and damages each year (Pimentel et al. 2005; see below for full citation).

Of the more than 250 established NIS in California's coastal waters, up to 81% are believed to have been introduced through the discharge of ballast water and from vessel biofouling (Ruiz et al. 2011). In recognition of the substantial threat to the State's economy, environment, and human health, California enacted the Marine Invasive Species Act (2003). Amendments to the Marine Invasive Species Act in 2007 established a requirement for vessels to also manage biofouling to reduce NIS introductions into California's coastal waters.

By establishing a process for the enforcement of violations related to vessel biofouling management and ballast water performance standards, the proposed regulation amendments are expected to increase vessel compliance resulting in a reduction in the likelihood of introducing NIS into California waters. Vessels already complying with vessel biofouling management requirements and ballast water performance standards will be unaffected by the proposed regulation amendments.

These regulation amendments satisfy the purpose of the Marine Invasive Species Act, which is (Public Resources Code section 71201(d)) "to move the State expeditiously toward elimination of the discharge of nonindigenous species into the waters of the State."

Conclusions:

- The proposed regulations will have no impact upon worker safety within the State of California.
- By increasing compliance with pre-existing law, Commission staff has determined that the proposed regulations will significantly benefit:
 - The health and welfare of California residents; and
 - The State's environment.

Small Business Impacts

The Commission finds that the adoption of these regulation amendments will not have a significant adverse economic impact on small businesses. The majority of the businesses that own vessels that operate in California are large international companies. In addition, small businesses and individuals will not incur any cost to comply with the proposed regulation amendments because the proposed regulation amendments do not establish new standards. Instead, the proposed regulation amendments implement an enforcement scheme for existing standards.

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BENEFITS

The proposed amendments will promote greater protection of California's waters by strongly discouraging violations of the Marine Invasive Species Act and in turn will likely increase compliance. Although compliance by the regulated community is high, every noncompliant vessel threatens to introduce NIS that may harm human health, the economy, or the coastal environment. Accordingly, further deterrence to violations of the Act will result in fewer introductions of invasive species in California's waters. Also, the collection of penalties for violations will result in increased revenue for the Marine Invasive Species Control Fund (MISCF). All funds in the MISCF are used by the state's Marine Invasive Species Program to prevent and reduce the risk of NIS introductions to California State waters.

REASONABLE ALTERNATIVES

The Commission considered two reasonable alternatives to the proposed amendments. However, both alternatives were determined to be less effective in carrying out the purpose of the proposed regulation amendments.

The first alternative (Alternative 1) the Commission considered was to reduce the proposed penalties for all violations in this amendment by half. This alternative was considered to determine if it would be less financially burdensome to the affected industry while being equally effective in achieving the purpose of the proposed amendments. The Commission's review determined that Alternative 1 would not be effective in deterring noncompliance because it does not provide enough of a financial deterrent. In consideration of the costs the regulated industry incurs to be compliant, the penalties for violations in Alternative 1 would be too low. A violation penalty amount that is lower than the cost of initial compliance would provide a potential loophole where the regulated community may prefer to receive a violation penalty rather than incur the higher cost of compliance. This alternative would not be effective in carrying out the purpose of the proposed regulation actions and the purpose of the Act.

The second alternative (Alternative 2) the Commission considered was to increase the proposed penalties for all violations in the amendment by doubling them or increasing them to the maximum of \$27,500, whichever is lower. The Commission's review determined that Alternative 2 would not be viable, because the penalty for several of the violations would be too high compared to the risk they present. Imposing penalties that are too high would create an unnecessary burden to the regulated industry.

SPECIFIC TECHNOLOGY OR EQUIPMENT

The proposed regulation does not mandate the use of specific technology or equipment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

There are no comparable federal regulations, so no duplication or conflict with federal regulations is expected. These proposed amendments would apply only to enforcement of existing State provisions, not federal law.