

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

DIVISION 3. STATE PROPERTY OPERATIONS

CHAPTER 1. STATE LANDS COMMISSION

ARTICLE 4.9. MARINE INVASIVE SPECIES ACT ENFORCEMENT AND HEARING PROCESS

The California State Lands Commission (Commission) will consider whether to amend Marine Invasive Species Act enforcement regulations, described below, after considering all comments, objections, or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes on July 21, 2025. Submit written comments to:

Raya Nedelcheva
Senior Environmental Scientist
California State Lands Commission
Division of Environmental Science, Planning, and Management
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825

Written comments may also be submitted by email to cslc.regulations@slc.ca.gov. Please include “**Article 4.9 Comments**” in the subject line of the email.

PUBLIC HEARING

Commission staff has not scheduled a public hearing for this proposed action. However, the Commission will hold a public hearing, pursuant to Government Code section 11346.8, if it receives a written request for a public hearing from any interested person, or authorized representative, no later than 15 days prior to the close of the written comment period.

AUTHORITY AND REFERENCE

Authority: Public Resources Code sections 71201, 71201.7, 71203, 71204, 71204.3, 71205, 71205.3, 71206, 71207, and 71216 provide the Commission with the authority to adopt regulations as necessary to implement the Marine Invasive Species Act.

Reference: Public Resources Code sections 71200, 71201, 71207, 71216, 71217, and Section 11506, Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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.).

Summary of Existing Laws and Effect of the Proposed Action

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 (NIS) into the waters of the State or into waters that may impact the waters of the State. Public Resources Code section 71201.7 provides authority for the Commission to adopt regulations. Pursuant to this authority, the Commission 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, particularly Articles 4.6 through 4.8, 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 state waters. Article 4.9 (Title 2 of the California Code of Regulations, section 2299.01 et seq.) provides for enforcement of these requirements, including procedures the Commission shall undertake in assessing administrative civil penalties as allowed by Public Resources Code section 71216.

Article 4.8, "Biofouling Management to Minimize the Transfer of Nonindigenous Species from Vessels Arriving at California Ports" (Title 2 of the California Code of

Regulations, section 2298.1 et seq.), took effect on October 1, 2017. These regulations require both operational (i.e., biofouling management) and administrative (i.e., reporting and recordkeeping) management of vessel biofouling to reduce the risk of NIS introduction into state waters. Amendments to Article 4.7, "Performance Standards and Compliance Assessment for the Discharge of Ballast Water for Vessels Operating in California Waters" (Title 2 of the California Code of Regulations, section 2291 et seq.), took effect on January 1, 2022. These regulations require vessels to comply with federal ballast water discharge performance standards and to monitor the functionality of ballast water treatment systems.

The effect of the proposed amendments will be to codify transparent enforcement procedures and to assess administrative civil penalties for violations of biofouling and ballast water management requirements.

Objectives and Anticipated Benefits of the Proposed Action

If a person intentionally or negligently fails to comply with any of the regulations in Title 2 of the California Code of Regulations, section 2280 et seq. (Article 4.6), section 2291 et seq. (Article 4.7), section 2298.1 et seq. (Article 4.8), or any requirements under Public Resources Code section 71200 et seq., Public Resources Code section 71216 authorizes the Commission to assess administrative civil penalties in an amount not exceeding twenty-seven thousand five hundred dollars (\$27,500) per violation per day. The proposed amendments to Article 4.9 would implement policies and procedures for assessing these penalties and make specific the provisions of Public Resources Code section 71216 with regard to Title 2 of the California Code of Regulations, section 2298.1 et seq., section 2291 et seq., and Public Resources Code section 71200 et seq. The proposed amendments to Article 4.9 will help the State achieve the purpose of the Act by deterring violations of biofouling management and ballast water performance standards provisions using an administrative civil penalty mechanism.

Although compliance with the Act and associated regulations by the regulated community is high, every noncompliant vessel poses a threat of introducing NIS and risks harming California's coastal environment, coastal economy, and public health. Commission staff has determined that a transparent and consistent process for assessing penalties will reduce violations of the Act by providing tools to enforce the provisions of Title 2 of the California Code of

Regulations, section 2298.1 et seq., section 2291 et seq., and Public Resources Code section 71200 et seq. 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.

To achieve the first objective, these proposed amendments place violations of Title 2 of the California Code of Regulations, section 2298.1 et seq. and section 2291 et seq. into the previously identified classes of violations, established by the original adoption of Article 4.9 in 2017, and tied to specific vessel operational and administrative requirements.

The proposed amendments achieve the second objective by revising the Commission's process before and after initiating an enforcement action and the procedures all parties must follow. The proposed amendments identify the type of notification for different violations and the pre-enforcement process between the Commission and the cited party followed by enforcement proceedings under the Administrative Procedure Act. These procedures will help ensure that administrative civil penalties, when sought, are pursued in accordance with steps codified and referenced in this proposed action.

The proposed amendments also repeal references to reporting forms that were previously required but are now repealed and replace the repealed forms with references to currently required forms.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. As part of the development of the proposed amendments, Commission staff evaluated whether there were any other regulations concerning the process for assessing administrative penalties for violations of the Act. The regulations already established in Article 4.9 address some ballast water violations under Title 2 of the California Code of Regulations, section 2280 et

seq., but not biofouling and ballast water performance standards requirements under Title 2 of the California Code of Regulations, section 2298.1 et seq and section 2291 et seq., respectively. Ballast water and biofouling management each have distinct legal requirements under the Act and associated regulations. The proposed amendments to Article 4.9 are therefore necessary to add procedures to existing law to address biofouling management, ballast water performance standards, and reporting/recordkeeping violations. No other state regulations provide for such procedures.

DETERMINATION ON MAJOR REGULATION DESIGNATION

Commission staff has determined that the proposed regulatory action is not a major regulation, as defined by Government Code section 11342.548. This proposed action establishes a specific process for assessing administrative penalties and enforcing violations under the Act. The costs associated with implementation of the proposed regulations would be in the form of penalties assessed on cited parties due to violations of existing law and the additional staff time needed to conduct enforcement actions. The estimated cost to industry for the implementation of the proposed regulations is a maximum of \$340,500 per year.

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 regulation 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.

DIFFERENCES FROM FEDERAL REGULATIONS

This proposed action is promulgated pursuant to Public Resources Code section 71216. Although the federal government regulates vessel-mediated introductions of NIS, Commission staff proposes these regulations under separate state authority granted by the California Legislature. This proposed action will implement an administrative civil penalty procedure to assist in enforcing existing state laws and regulations. Because this proposed action applies to the function of state law, no duplication or conflict with federal regulations is expected.

DISCLOSURES REGARDING THE PROPOSED ACTION

Commission staff, acting on behalf of the Commission, has made the following determinations:

LOCAL MANDATE

Commission staff has determined that this proposed amendment does not impose any mandates on local agencies or school districts.

FISCAL IMPACTS

Commission staff has determined that the proposed regulatory action imposes no mandates or costs requiring state reimbursement to any local agency or school district pursuant to Government Code section 17500 et seq. No other non-discretionary costs or savings imposed on local agencies are anticipated.

Commission staff has determined that the proposed action will have no impact on costs or savings to any state agency.

Commission staff has determined that the proposed action will have no impact on costs or savings in federal funding to the State.

HOUSING COSTS

Commission staff has determined that this proposed action will have no impact on housing costs.

STATEMENT REGARDING ADVERSE ECONOMIC IMPACTS DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE

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.

COST IMPACTS ON REPRESENTATIVE PERSONS OR BUSINESSES

Any costs associated with the proposed regulations stem from existing law. The regulated community has been obligated to comply with the statutes and regulations of the Act for several years. The proposed regulations merely

establish provisions to assess penalties for violations of standards already implemented.

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.

SMALL BUSINESS DETERMINATION

The Commission staff finds that the adoption of this proposed action will not have a significant adverse economic impact on small businesses. Any costs stem from violations of existing provisions of the Act and associated regulations. The proposed regulations outline the processes and procedures for enforcing violations and assessing administrative penalties under the Act and its associated regulations. Continued compliance with the Act and regulations will add no economic burden to small businesses.

BUSINESS REPORTING REQUIREMENT

It is necessary for the health, safety, or welfare of the people of this state that this regulation, which requires a report, apply to businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Through the Economic Impact Assessment, Commission staff has determined that the proposed regulations:

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.

- (1) will have no impact upon the creation or elimination of jobs within the State of California;
- (2) will have no impact upon the creation of new businesses or elimination of existing businesses within the State of California;
- (3) will have no impact upon the expansion of businesses currently doing business within the State of California; and
- (4) will have no impact upon worker safety within the State of California.

Commission staff has determined that the proposed regulations will benefit:

- (1) the state's environment by:
 - increasing compliance with pre-existing law, thereby reducing the risk of NIS introductions into California waters;
 - reducing the likelihood of future environmental, human health, and economic impacts resulting from the introduction and establishment of new NIS.

The proposed regulations meet the purpose of the Act (Public Resources Code section 71201, subdivision (d)): "...to move the State expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state..."

- (2) the health and welfare of California residents by ensuring that vessels operating within California waters comply with the provision of the Act. This will reduce the risk of vessel-mediated introductions of:
 - pathogens and parasites; and
 - harmful and invasive nonindigenous species (e.g., harmful algal blooms and toxic diatoms)

The health and welfare of California residents will benefit significantly from the adoption and implementation of the proposed regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Commission invites interested persons to submit comments on potential alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Direct inquiries concerning the substance of the proposed regulation to:

Raya Nedelcheva
Senior Environmental Scientist
California State Lands Commission
Division of Environmental Science, Planning, and Management
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-2568
Facsimile: (916) 574-1950
Email: cslc.regulations@slc.ca.gov

or: Nina Tantraphol
Staff Attorney
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-0452
Facsimile: (916) 574-1855
Email: cslc.regulations@slc.ca.gov

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

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Division of Environmental Science, Planning, and Management
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AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

Commission staff will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Sacramento office listed above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, including the economic impact assessment, and relevant sources of information upon which the proposed rulemaking is based. Interested parties may obtain copies of any of the aforementioned files by contacting Raya Nedelcheva as listed above, or by visiting the website listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT OF ORIGINALLY PROPOSED REGULATIONS

After considering all timely and relevant comments, the Commission may adopt the proposed regulations substantially as described in this notice. If Commission staff makes any substantial and sufficiently related modifications to the proposed text, the modified text with changes clearly indicated will be available to the public for at least fifteen days prior to the date that the Commission considers adopting the regulations. Interested parties shall send requests for copies of any modified regulations to the attention of Raya

Nedelcheva at the address indicated above. The Commission will accept written comments on the modified regulations for fifteen days after the date that they are available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, interested parties may obtain a copy of the Final Statement of Reasons by contacting Raya Nedelcheva at the address, telephone number, or email address listed above or by accessing the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice of proposed rulemaking, the initial statement of reasons, the proposed text of regulations, the economic impact assessment, relevant documents, and any future changes or modifications to the proposed text can be accessed through our website at: <http://www.slc.ca.gov/>