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October 20, 2011

File Ref: W9777.234

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Ms. Townsend:

The Marine Invasive Species Program (MISP) staff of the California State Lands Commission (Commission) appreciates the opportunity to provide comments on the "Proposed Amendments to the California Ocean Plan Regarding Model Monitoring, Control of Commercial Vessel Discharges and Invasive Species, and Non-Substantive Administrative Changes and the Draft Substitute Environmental Documentation."

Based on the MISP's experience with the management and regulation of aquatic invasive species discharges from vessel vectors, Staff offers the following comments on the proposed amendments to the California Ocean Plan and the draft substitute environmental documentation.

All page numbers and specific comments are in reference to the draft substitute environmental document.

Pgs 31 – 53, Section 3.1, Issue 1: Model Monitoring – This section addresses monitoring and reporting requirements for three types of discharges: point source, storm water point source, and non-point source discharges. There is no indication in the text whether or not the Water Board intends to apply this model for monitoring to vessel discharges. Vessel discharges are a unique type of discharge. While vessels are legally a point source, they are functionally a mobile point source. Many of the questions and monitoring methods proposed in the plan may not be appropriate for a mobile discharger due to a number of reasons including: 1) safety issues encountered while a vessel is underway or during cargo operations, 2) the inability to enter confined spaces or access subsurface discharge pipes for sampling purposes, and 3) vessels may discharge continuously while underway making it difficult to attribute improper or illegal discharges to any one vessel. Before any discharge monitoring plan is implemented for vessel discharges, we strongly encourage the Water Board to work closely with the regulated industry to better understand the nature of vessel discharges and the potential difficulties in monitoring a mobile point source.

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Pg 54, Section 3.2.2, paragraph 4 – The Marine Invasive Species Act (MISA) of 2003 revised and reauthorized the Ballast Water Management for Control of Nonindigenous Species Act (Chapter 849, Statutes of 1999). This paragraph should make reference to the relationship between the initial legislation and the currently applicable MISA.

Pg 55, Section 3.2.2.1, *The Marine Invasive Species Act* – The Public Resources Code Sections and applicability statement for the MISA are correct as listed in the draft report. However, an important component of the MISA missing from the draft substitute environment document is that the MISA defines a vessel (PRC § 71200(p)) as, “a vessel of 300 gross registered tons or more.” This is an essential component of the law as not all vessels meet this tonnage requirement and are subject to the conditions of the MISA. Therefore the following text should be added (as underlined) to the draft report (lines 1-4): “The MIS Act (Pub. Resources Code § 72100 et seq.) applies to all vessels carrying or capable of carrying ballast water into the coastal waters of the State after operating outside of the coastal waters of the State and to all ballast water and associated sediments taken on a vessel. “Vessel” is defined as a vessel of 300 gross registered tons or more.”

Pg 61, Section K. Implementation Provisions for Vessel Discharges, #1 - Vessels must comply not only with the nonindigenous species management provisions found in the Public Resources Code but also with relevant regulations. Staff recommends adding the following language (as underlined) to this item. “Vessel discharges must comply with State Lands Commission (SLC) requirements for ballast water discharges and hull fouling to control and prevent the introduction of non-indigenous species, pursuant to Public Resources Code (PRC) Section 71200 et seq. and Title 2 California Code of Regulations Section 2270 et seq.”

Pg 61, bottom of page, definition of “Oceangoing Vessels” - Staff recommends removing the word “private” from the definition of an oceangoing vessel. The Marine Invasive Species Act definition of a vessel (PRC Section (PRC § 71200(p)) makes no distinction between private and publically owned vessels (except for military vessels as defined in PRC Section 71202(a)). According to the MISA, “‘Vessel’ means a vessel of 300 gross registered tons or more.” Therefore to maintain consistency, staff recommends that the word “private” be removed from the Ocean Plan definition of “Oceangoing Vessels.”

Thank you for consideration of these comments. Do not hesitate to contact me with any questions.

Sincerely,



Lynn Takata
Marine Invasive Species Program Manager

cc: Donald Hermanson, Marine Facilities Division Chief
Kevin Mercier, Marine Facilities Division Assistant Chief