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AB-1312 Ballast water management. (2015-2016)

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Assembly Bill No. 1312

CHAPTER 644

An act to amend Sections 71200, 71204.3, 71204.7, 71205, 71205.3, 71206, and 71207 of, and to repeal Sections 71204.2 and 71210.5 of, the Public Resources Code, relating to ballast water management.

[Approved by Governor October 08, 2015. Filed with Secretary of State October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1312, O'Donnell. Ballast water management.

The Marine Invasive Species Act, which generally 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, imposes specified requirements on the master, owner, operator, or person in charge of one those vessels to minimize the uptake and release of nonindigenous species. The act requires the State Lands Commission to adopt regulations governing ballast water management practices for vessels arriving at a California port from a port outside of the Pacific Coast Region, as defined.

This bill would define the term "port" for purposes of the act to mean any port or place in which a vessel was, is, or will be anchored or moored, or where a vessel will transfer cargo.

The act requires the master, owner, operator, agent, or person in charge of a vessel carrying, or capable of carrying, ballast water, that visits a California port, to provide specified information in electronic or written form to the commission upon the vessel's departure from each California port of call.

This bill would instead require that the above information be provided to the commission at least 24 hours before the vessel arrives at that California port or, if a vessel's voyage is less than 24 hours in total duration, prior to departing the port of departure.

The act requires the commission to adopt specified regulations, on or before January 1, 2008, that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement an interim performance standard, as prescribed, for specified periods and the final performance standard for the discharge of ballast water of zero detectable for all organism size classes by 2020. The act specifies that if an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application on or before January 1, 2016, the commission shall deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed 5 years from the date that the specified interim performance standards would apply to that vessel.

This bill would instead require the commission to adopt regulations that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with that interim performance standard either upon first arrival at a California port for new vessels constructed on or after January 1, 2020, or as of the first scheduled drydocking on or after January 1, 2020, for all other vessels, as applicable, and to meet the final performance standard for the

discharge of ballast water of zero detectable living organisms for all organism size classes by January 1, 2030. This bill would also extend to January 1, 2020, the operation of those provisions governing the compliance of experimental ballast water treatment systems with those specified interim performance standards.

The act requires the commission, in coordination with the United States Coast Guard, to take samples of ballast water and sediment from at least 25% of the arriving vessels subject to the act.

This bill would instead require the commission, in coordination with the United States Coast Guard, to take samples of ballast water, sediment, and biofouling from and inspect at least 25% of the arriving vessels subject to the act.

The act requires the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and a specified technical advisory group, to prepare and submit to the Legislature, on or before January 1, 2006, a specified report on the release of nonindigenous species from vessels.

This bill would delete that obsolete reporting requirement, and make various other changes relating to implementation of the act.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 71200 of the Public Resources Code is amended to read:

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) "Ballast tank" means a tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) "Ballast water" means water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) "Biofouling" means the attachment or association of marine organisms to the wetted portion of a vessel or its appurtenances, including, but not limited to, sea chests, propellers, anchors, and associated chains.

(d) "Board" means the State Water Resources Control Board.

(e) "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.

(f) "Commission" means the State Lands Commission.

(g) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.

(h) "Exchange" means to replace the water in a ballast tank using either of the following methods:

(1) "Flow through exchange," which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.

(2) "Empty/refill exchange," which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(i) "Mid-ocean waters" means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(j) "Nonindigenous species" means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range, including any of those organisms transferred from one country into another.

(k) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. The commission may modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described herein.

(l) "Person" means an individual, trust, firm, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. "Person" also means a city, county, city and county, district, commission, the state, or a department, agency, or political subdivision of the state, an interstate body, or the United States and its agencies and instrumentalities, to the extent permitted by law.

(m) "Port" means any port or place in which a vessel was, is, or will be anchored or moored, or where a vessel will transfer cargo.

(n) "Sediments" means matter settled out of ballast water within a vessel.

(o) "Waters of the state" means surface waters, including saline waters, that are within the boundaries of the state.

(p) "Wetted portion of a vessel" means all parts of a vessel's hull and structures that are either submerged in water when the vessel is loaded to the deepest permissible legal draft or associated with internal piping structures in contact with water taken onboard.

(q) "Vessel" means a vessel of 300 gross registered tons or more.

(r) "Voyage" means any transit by a vessel destined for a California port from a port outside of the coastal waters of the state.

SEC. 2. Section 71204.2 of the Public Resources Code is repealed.

SEC. 3. Section 71204.3 of the Public Resources Code is amended to read:

71204.3. (a) The commission shall adopt regulations governing ballast water management practices for vessels arriving at a California port from a port outside of the Pacific Coast Region. The commission shall consider vessel design and voyage duration in developing these regulations. The regulations shall be based on the best available technology economically achievable, and shall be designed to protect the waters of the state. The regulations shall include, as appropriate, restrictions or prohibitions on discharge of ballast water containing nonindigenous species into areas in and outside estuaries and into ocean areas shown to have a capacity to retain organisms.

(b) Subject to Section 71203, the master, operator, or person in charge of a vessel arriving at a California port from a port outside of the Pacific Coast Region shall comply with these regulations.

(c) Prior to and until the date of implementation of the regulations described in subdivision (a), and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port from a port outside of the Pacific Coast Region shall employ at least one of the following ballast water management practices:

(1) Exchange the vessel's ballast water in mid-ocean waters, before entering the coastal waters of the state.

(2) Retain all ballast water on board the vessel.

(3) (A) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.

(B) For purposes of this paragraph, "same location" means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port, at which the ballast water to be discharged was loaded.

(4) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

(5) Discharge the ballast water to a reception facility approved by the commission.

(6) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

SEC. 4. Section 71204.7 of the Public Resources Code is amended to read:

71204.7. (a) On or before July 1, 2005, the commission, in consultation with the United States Coast Guard, shall adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems.

(b) The regulations shall include criteria for the development of a formal application package to use those systems.

(c) (1) If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application on or before January 1, 2020, the commission shall deem the system to be in compliance with any

future treatment standard adopted, for a period not to exceed five years from the date that the interim performance standards adopted pursuant to paragraphs (1) and (2) of subdivision (a) of Section 71205.3 would apply to that vessel.

(2) The commission may rescind its approval of the system at any time if the commission, in consultation with the board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in performance, human safety, or environmental soundness relative to anticipated performance, or that the applicant has failed to provide the commission with required test results and evaluations.

(d) The commission shall not approve an experimental ballast water treatment system unless the owner or operator demonstrates that the system has significant potential to improve upon the ability of existing systems to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

(e) The commission shall disseminate to the public the test results and evaluations regarding experimental ballast water treatment systems described in this section.

SEC. 5. Section 71205 of the Public Resources Code is amended to read:

71205. (a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying, or capable of carrying, ballast water, that visits a California port, shall provide the information described in subdivision (c) in electronic or written form to the commission at least 24 hours before the vessel arrives at that California port. If a vessel's voyage is less than 24 hours in total duration, the vessel shall report the required information prior to departing the port of departure.

(2) The information described in subdivision (c) shall be submitted using a form developed by the United States Coast Guard.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the commission upon the vessel's departure from each port of call in California.

(c) (1) The master, owner, operator, or person in charge of the vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water on board, total number of ballast water tanks, capacity of each ballast water tank, and total number of ballast water tanks in ballast, using measurements in metric tons (MT) and cubic meters (m3).

(D) Ballast water management information, including all of the following:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(iv) Whether the master, operator, or person in charge of the vessel has claimed a safety exemption pursuant to paragraph (1) of subdivision (b) of Section 71203 for the vessel voyage, and the reason for asserting the applicability of that paragraph.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange is conducted, of ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, that shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

(d) The master, owner, operator, or person in charge of a vessel subject to this division shall retain for two years a separate ballast water log outlining ballast water management activities for each ballast water tank on board the vessel and shall make the separate ballast water log available to the commission for inspection and review.

(e) (1) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall provide the information described in subdivision (f) in electronic or written form to the commission annually upon request of the commission. The master, owner, operator, agent, or person in charge of the vessel shall submit that information within 60 days of receiving a written or electronic request from the commission. For purposes of this paragraph, the reporting shall begin on January 1, 2008, and continue until the date that the regulations described in Section 71204.6 are adopted.

(2) (A) The information described in subdivision (f) shall be submitted using a form developed by the commission.

(B) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a copy of the form submitted pursuant to this subdivision on board the vessel for two years.

(f) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall maintain, in written or electronic form, records that include the following information:

(1) (A) Date and location of drydocking events.

(B) Whether the vessel in general, and the wetted portion of the vessel, sea chests, anchors, and associated chains in particular, were cleaned during a drydocking event.

(2) Date and geographic location of all inwater cleaning of the wetted portion of the vessel.

(3) (A) Date and geographic location of all antifouling paint applications to the vessel.

(B) The manufacturer and brand name of the antifouling paint applied to the vessel.

(4) Any additional information required by the commission by rule or regulation.

(g) (1) The master, owner, operator, agent, or person in charge of a vessel subject to this division that has a ballast water treatment system installed on board shall provide to the commission based on a schedule to be developed by the commission, by rule or regulation, in consultation with the advisory panel established in Section 71204.9 and the United States Coast Guard, the following information in electronic or written form:

(A) The manufacturer and product name of the ballast water treatment system on board the vessel.

(B) If applicable, the name and organization that has approved the ballast water treatment system and the approval or certification number of the ballast water treatment system technology.

(C) The number of tanks and the volume of each tank that is managed using the ballast water treatment system and that was discharged in waters of the state.

(D) Any additional information required by the commission by rule or regulation.

(2) The information required by paragraph (1) shall be provided on a form developed by the commission.

(h) The master, owner, operator, agent, or person in charge of a vessel subject to this division that has a ballast water treatment system installed on board shall maintain on board the vessel, in written or electronic form, records, including, but not limited to, all of the following information:

(1) Copies of all reports and forms described in subdivision (g), submitted to the commission.

(2) Material safety data sheets for all chemicals utilized in conjunction with the ballast water treatment system.

(3) System manufacturer's technical guides, publications, and manuals.

(4) Ballast water treatment system performance information, which may be incorporated into the ballast water log described in subdivision (d), and includes, at a minimum, all of the following information:

(A) The date, time, and location of the starting and stopping of the system for the purpose of treating ballast water.

(B) System malfunctions or unexpected situations, including problem resolution.

(C) Both scheduled and unscheduled maintenance of the system.

(D) All relevant measures of performance recorded during system operation.

(E) Any additional information required by the commission by rule or regulation.

SEC. 6. Section 71205.3 of the Public Resources Code is amended to read:

71205.3. (a) The commission shall adopt regulations that do all of the following:

(1) Except as provided in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006.

(2) Except as provided in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with the interim performance standards by the applicable following date:

(A) Upon first arrival at a California port for new vessels constructed on or after January 1, 2020.

(B) As of the first scheduled drydocking on or after January 1, 2020, for all other vessels.

(3) Notwithstanding Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final performance standard for the discharge of ballast water of zero detectable living organisms for all organism size classes by January 1, 2030.

(b) (1) Not less than 18 months prior to January 1, 2020, and January 1, 2030, the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and the advisory panel described in subdivision (b) of Section 71204.9, shall prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. If technologies to meet the performance standards are determined in a review to be unavailable, the commission shall include in that review an assessment of why the technologies are unavailable.

(2) (A) The requirement for submitting a report imposed under this subdivision is inoperative on January 1, 2024, for the interim performance standards, and January 1, 2034, for the final performance standard, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 7. Section 71206 of the Public Resources Code is amended to read:

71206. (a) The commission, in coordination with the United States Coast Guard, shall take samples of ballast water, sediment, and biofouling from and inspect at least 25 percent of the arriving vessels subject to this division, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division. The commission shall provide to the board copies of all sampling results.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the commission, upon request of that commission, the records required to be maintained by this division.

(c) The commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

SEC. 8. Section 71207 of the Public Resources Code is amended to read:

71207. (a) Nothing in this division restricts a state or local agency, board, commission, or department, or a subdivision of one of those entities, from enforcing this division, if the total fines imposed by those entities do not exceed the amount of the fines set forth in Section 71216.

(b) A person who violates this division is subject to civil and criminal liability in accordance with Chapter 5 (commencing with Section 71216).

(c) The commission may require a vessel operating in violation of this division to depart the waters of the state and exchange, treat, or otherwise manage the ballast water or biofouling, or both, at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers.

SEC. 9. Section 71210.5 of the Public Resources Code is repealed.