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AB-912 Marine invasive species: ballast water and biofouling management requirements. (2019-2020)

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Assembly Bill No. 912

CHAPTER 443

An act to amend Sections 71200, 71201, 71203, 71204.6, 71205.3, 71210, and 71213 of, and to repeal Sections 71204.7 and 71204.9 of, the Public Resources Code, relating to marine invasive species.

[Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 912, Muratsuchi. Marine invasive species: ballast water and biofouling management requirements.

(1) Existing law, the Marine Invasive Species Act, requires the State Lands Commission (hereafter the commission) to implement and administer laws regulating the uptake or discharge of ballast water from vessels that impact marine species in the state's waterways. The act, among other things, requires the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state to take various actions to minimize the uptake and release of nonindigenous species, including, among other things, to clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements in port or in drydock, to remove sediments and biofouling organisms, as specified, and to make available to the commission additional information, including a separate ballast water log to outline ballast water management activities for each ballast water tank on board the vessel. Existing law exempts the master, operator, or person in charge of a vessel from conducting a ballast water management practice upon a specified determination relating to safety.

This bill would, for purposes of the act, define the term "land" and would revise the coastal boundaries used to define the "Pacific Coast Region," as specified. The bill would require the master, operator, or person in charge of a vessel to include in the ballast water log book for the vessel a description of the safety reasons for a determination to not conduct a ballast water management practice, to notify the commission of this determination, and to provide the commission a copy of the related entry in the ballast water log for the vessel.

(2) The act required the commission, on or before January 1, 2012, in consultation with the State Water Resources Control Board (hereafter the board), the United States Coast Guard, and a technical advisory group consisting of specified representatives, to develop and adopt regulations governing the management of biofouling on vessels arriving at a California port or place, as provided. The act required the commission, in consultation with the United States Coast Guard, on or before July 1, 2005, to adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems. The act also required the commission, in consultation with the board and in consideration of specified advisory panel recommendations, on or before January 31, 2006, to submit to the Legislature and make available to the public a specified report that recommends standards for the discharge of ballast waters into the waters of the state.

This bill would repeal those provisions relating to shipboard experimental ballast water treatment systems and to ballast water standards.

This bill would require those adopted regulations relating to the management of biofouling on vessels arriving at a California port or place to be regularly reviewed and revised as appropriate.

(3) The act requires the commission to adopt regulations that impose specified requirements on an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement certain interim performance standards for the discharge of ballast water recommended in accordance with a specified report approved by the commission, as described, in consultation with the board, the United States Coast Guard, and an advisory panel, 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, instead, require the commission to adopt regulations that would require an owner or operator of a vessel, as defined, carrying, or capable of carrying, ballast water that operates in the waters of the state to implement specified federal standards regulating ballast water discharges and to comply with certain federal performance standards for implementing approved ballast water management methods. The bill would also require that those regulations set a date no later than January 1, 2040, by which the final performance standard for the discharge of ballast water of zero detectable living organisms for all size classes would be required to be met, and would revise certain requirements for the submission of that report regarding ballast water discharges, as prescribed.

This bill would also require the advisory panel to make recommendations regarding the content and issuance of the report and implementation of the performance standards to the commission. The bill would require that the advisory panel's meetings be open to the public. The bill would require the commission to provide notice of the advisory panel's meetings to any person who requests that notice in writing, as well as on the commission's internet website and to provide that notice at least 10 days before an advisory panel meeting and to include the meeting's agenda and the name, address, and telephone number of a person who can provide additional information before the meeting.

(4) The act requires the commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of specified representatives who are interested persons, to sponsor pilot programs for the purpose of evaluating alternatives for treating and otherwise managing ballast water and biofouling, with the goal of this effort to reduce or eliminate the discharge of nonindigenous species into the coastal waters of the state.

This bill would additionally require the commission to consult with the United States Environmental Protection Agency regarding the sponsorship of those pilot programs and would also require that the meaningful participation of the State of California in federal rulemaking actions be included as one of the goals of those efforts.

(5) The act requires the commission, the board, and the Department of Fish and Wildlife, in consultation with interested stakeholders, to identify and conduct any other research determined necessary to carry out the requirements of the act.

This bill would authorize the commission to also take samples of ballast water, sediment, and biofouling from arriving vessels subject to the act for research purposes.

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) "Land" means the material of the earth, whether soil, rock, or other substances, that sits landward of, or at an elevation higher than, the mean high-tide line of the ocean, including any rock outcroppings or islands located offshore.

(j) "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.

(k) "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.

(l) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 20 degrees N latitude, inclusive, of the Gulf of California.

(m) "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.

(n) "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.

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

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

(q) "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.

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

(s) "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 71201 of the Public Resources Code is amended to read:

71201. (a) This division applies to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel, and to all biofouling.

(c) This division may be known, and may be cited, as the "Marine Invasive Species Act."

(d) The Legislature finds and declares all of the following:

(1) The purpose of this division 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, based on the best available technology economically achievable. This division shall be implemented in accordance with this intent, except as expressly provided by this division.

(2) The federal Vessel Incidental Discharge Act, which was enacted on December 4, 2018, preserves the rights of states to petition the federal government to review any standard of performance, regulation, or policy if new information exists that could result in a change to that standard, regulation, or policy.

(3) Nothing restricts the authority of California to respond to an aquatic invasive species emergency in its waters using California's police powers.

(4) The Legislature strongly and unequivocally objects to any loss of state authority to regulate vessel discharges in California waters.

SEC. 3. Section 71203 of the Public Resources Code is amended to read:

71203. (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) (1) The master, operator, or person in charge of a vessel is not required by this division to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in paragraph (1) is made, the master, operator, or person in charge of the vessel shall do all of the following:

(A) Take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact waters of the state.

(B) Include in the ballast water log for the vessel a description of how conducting a ballast water management practice would have risked the safety of the vessel, its crew, or its passengers consistent with the determination made pursuant to paragraph (1).

(C) Notify the commission of the determination at the earliest practicable time.

(D) Provide a copy of the description included in the ballast water log referenced in subparagraph (B) to the commission upon request.

(c) Nothing in this division relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

SEC. 4. Section 71204.6 of the Public Resources Code is amended to read:

71204.6. On or before January 1, 2012, the commission, in consultation with the board, the United States Coast Guard, and a technical advisory group consisting of interested persons, including, but not limited to, shipping, port, and environmental conservation representatives, shall develop and adopt regulations governing the management of biofouling on vessels arriving at a California port or place. The commission shall consider vessel design and voyage duration in developing the regulations. The regulations shall be based on the best available technology economically achievable, regularly reviewed and revised as appropriate, and shall be designed to protect the waters of the state.

SEC. 5. Section 71204.7 of the Public Resources Code is repealed.

SEC. 6. Section 71204.9 of the Public Resources Code is repealed.

SEC. 7. 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) 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 ballast water discharge performance standards set forth in Section 151.2030(a) of Title 33 of the Code of Federal Regulations, or as that regulation may be amended.

(2) 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 performance standards set forth in Section 151.2035(b) of Title 33 of the Code of Federal Regulations or as that regulation may be amended, except as prescribed in Section 151.2036 of Title 33 of the Code of Federal Regulations, or as that regulation may be amended.

(3) 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, by January 1, 2030.

(4) 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 no later than January 1, 2040. If, based on a review of ballast water treatment technologies submitted in a report to the Legislature in conformance with provisions of subdivision (b), achievement of the final performance standard becomes practicable sooner than January 1, 2040, the commission shall establish an earlier effective date in regulation.

(b) (1) Not less than 18 months before January 1, 2030, and January 1, 2040, the commission, in consultation with the board, the United States Coast Guard, and an advisory panel described in paragraph (3), shall prepare, or update, and submit to the Legislature a report on 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) The advisory panel described in paragraph (3) shall make recommendations regarding the content and issuance of the report and implementation of the performance standards to the commission.

(3) (A) The advisory panel shall include, but not be limited to, representatives from one or more state regional water quality control boards, the Department of Fish and Wildlife, the United States Coast Guard, the United States Environmental Protection Agency, and other persons representing shipping, port, conservation, fishing, aquaculture, agriculture, and public water agency interests. The commission shall ensure that the advisory panel meets in a manner that facilitates the effective participation of both the public and private members. The advisory panel's meetings shall be open to the public.

(B) The commission shall provide notice of the advisory panel's meetings to any person who requests that notice in writing, as well as on the commission's internet website. The commission shall provide that notice at least 10 days before an advisory panel meeting and shall include the meeting's agenda and the name, address, and telephone number of a person who can provide additional information before the meeting.

(4) (A) The requirement for submitting a report imposed under this subdivision is inoperative on January 1, 2034, for the interim performance standard, and January 1, 2044, for the final performance standard, pursuant to Section 10231.5 of the Government Code.

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

SEC. 8. Section 71210 of the Public Resources Code is amended to read:

71210. (a) The commission, in consultation with the board, the United States Coast Guard, the United States Environmental Protection Agency, and a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives, shall sponsor pilot programs for the purpose of evaluating alternatives for treating and otherwise managing ballast water and biofouling. The goal of this effort shall be the meaningful participation of the State of California in federal rulemaking actions and the reduction or elimination of the discharge of nonindigenous species into the coastal waters of the state or into waters that may impact coastal waters of the state. Whenever possible, the pilot programs shall include funding from federal grants and appropriations, vendor funding, and state bond funds, including, but not limited to, bond funds from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. Priority shall be given to projects to test and evaluate treatment technologies that can be used to prevent the introduction and spread of nonindigenous aquatic species into coastal waters of the state by ship-mediated vectors.

(b) (1) The commission shall provide biennial summaries to the Legislature and the public, beginning on or before January 31, 2005, of the results of the pilot programs conducted pursuant to this section. These summary reports shall include, but not be limited to, a description of the projects, the relative effectiveness of the technologies examined in minimizing the discharge of nonindigenous species, and the costs of implementing the technologies.

(2) The summary reports required by this subdivision shall be in compliance with Section 9795 of the Government Code.

SEC. 9. Section 71213 of the Public Resources Code is amended to read:

71213. (a) The commission, the board, and the Department of Fish and Wildlife, in consultation with interested stakeholders, shall identify and conduct any other research determined necessary to carry out the requirements of this division. The research may relate to the transport and release of nonindigenous species by vessels, the methods of sampling and monitoring of the nonindigenous species transported or released by vessels, the rate or risk of release or establishment of nonindigenous species in the waters of the state and resulting impacts, and the means by which to reduce or eliminate a release or establishment. The research shall focus on assessing or developing methodologies for treating or otherwise managing ballast water and biofouling to reduce or eliminate the discharge or establishment of nonindigenous species.

(b) The commission may also take samples of ballast water, sediment, and biofouling from arriving vessels subject to this division for research purposes.