MINUTE ITEM
This Calendar Item No. C87 was approved as Minute Item No. 87 by the California State Lands Commission by a vote of 3 to 0 at its 8-19-03 meeting.

CALENDAR ITEM
C87

A: Statewide

S: Statewide

08/19/03
W 9777.234
G. Gregory
M. Meier

CONSIDER DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER WITH RESPECT TO BALLAST WATER MANAGEMENT PRACTICES FOR CONTROL OF NONINDIGENOUS SPECIES

PROPOSAL:
The Commission's Staff proposes that the Commission delegate to the Executive Officer the authority to approve certain alternative ballast water management practices and exchange zones, treatment technology and emergency discharges and to take other actions requiring Commission approval under Division 36 of the Public Resources Code (P.R.C.), entitled "Ballast Water Management for Control of Nonindigenous Species" (The Ballast Water Act). Staff further proposes that the Commission authorize the Executive Officer to redelegate that authority to other designated Staff.

BACKGROUND:
The Ballast Water Act establishes a program for the management and control of ballast water carried into the State. Its purpose is to curtail the introduction of nonindigenous species into California waters through the discharge of ballast water taken on board vessels in other parts of the world. Among its provisions are direct controls on the discharge of ballast water.

In many instances, the Ballast Water Act requires approval from the Commission before a discharge may take place. However, under most circumstances, approval by the Commission itself cannot be obtained in a timely fashion.

Under P.R.C. Section 71204(a), the master, operator or person in charge of a vessel must employ one of several specified management practices for ballast water carried into the waters of the state from areas outside the United States Exclusive Economic Zone (the EEZ). The five specified practices include the following:

1. Exchange ballast water outside the EEZ, from an area not less than 200 nautical miles from any shore, and in waters more than 2000 meters deep, before entering the waters of the state;

2. Retain the ballast water on board the vessel;

3. Use an alternative environmentally sound method of ballast water management that has been approved by the Commission before the vessel begins the voyage, and that is at least as effective as ballast water exchange in removing or killing nonindigenous species.

4. Discharge ballast water to an approved reception facility;

5. Under extraordinary conditions, conduct a ballast water exchange within an area agreed to by the Commission at the time of the request.

At least two, and possibly three, of the specified alternatives would require approval by the Commission. However, under many circumstances, timely consideration of an alternative management practice or exchange zone by the Commission would be impossible. The unusual circumstances that would justify an alternative exchange zone frequently arise while a voyage is underway. The degree to which ocean currents and marine ecosystems are understood is limited, is always evolving and frequently changes even during or shortly before a voyage is underway. Similarly, the development of ballast water management practices and technologies for control of nonindigenous species has been an ongoing endeavor for only a few years, and modifications to practices now used must frequently be made. With respect to an a ballast water reception facility, while it is not clear whether the approval of the Commission is required, it may nevertheless be requested by the operator of a vessel to ensure compliance with the Act. If that vessel were already approaching the port where the reception facility is located, then, again, timely Commission action would not be possible.

Given the possibility of emergencies, equipment malfunctions or extraordinary conditions, and the occasional need to take action of a short-term nature where immediate response is necessary, Staff proposes that the Commission delegate to the Executive Officer the authority to consider and issue any approval requested under P.R.C. Section 71204 under those circumstances. Staff also recommends that the delegation extend to approvals regarding experimental treatment technologies evaluated as alternative methods of ballast water management.

Staff further proposes that the Commission authorize the Executive Officer to redelegate this same authority to the Chief of the Marine Facilities Division (MFD). The Chief of MFD works with the ballast water program on a daily basis and is thereby more fully aware of ongoing developments and issues. Furthermore, a request for approval of an alternative may need to be addressed immediately, and the Executive Officer, having many other responsibilities on behalf of the Commission, may not be in a position to provide timely action.

Another area where delegation from the Commission appears appropriate concerns orders given under P.R.C. Section 71207(e), which provides as follows:

> The State Lands Commission may require any vessel operating in violation of this division to depart the waters of the state and exchange, treat or otherwise manage the ballast water 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 because of adverse weather, vessel architecture design, equipment failure, or any other extraordinary condition.

Decisions required under this provision would need to be made quickly. Delay until the Commission has an opportunity to meet would not be practicable. For that reason, immediate action by the Executive Officer would be the only way to carry out this provision effectively.

Finally, Staff proposes that this delegation remain in effect in the event that successor statutes to the Ballast Water Act are enacted. The current Act will be repealed by its own terms at the end of 2003; but legislation is currently under consideration that would extend the program, with some modifications, beyond that date.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code Section 6103
B. Public Resources Code, Division 36, (Sections 71200 *et seq.*)

PERMIT STREAMLINING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21084 and 14 California Code of Regulations Section 15300.

EXHIBITS:

A. Delegation of Authority to the Executive Officer

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE14, CALIFORNIA CODE OF REGULATIONS, §15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE §21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, §15378.

2. AUTHORIZE DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER AS SET FORTH IN EXHIBIT A.

EXHIBIT A
DELEGATION OF AUTHORITY
TO EXECUTIVE OFFICER TO APPROVE ALTERNATIVE BALLAST WATER MANAGEMENT PRACTICES AND EXCHANGE ZONES

(1) The Executive Officer of the California State Lands Commission shall have the authority, acting on behalf of the Commission, to issue any approval, authorization or permit that would otherwise require action by the Commission with respect to Section 71204 of the Public Resources Code and any similar successor statutes concerning management and control of ballast water in the following circumstances:

(a) Vessel emergencies, equipment malfunction or other extraordinary conditions.

(b) Extraordinary circumstances or conditions of a short-term nature requiring an immediate response.

(c) Alterations to experimental technologies previously approved by the Commission as alternative methods of ballast water management.

(2) The Executive Officer of the California State Lands Commission shall also have the authority, acting on behalf of the Commission, to issue any order or take any action that the Commission is authorized to make under Section 71207(e) of the Public Resources Code and any similar successor statutes.

(3) The Executive Officer may redelegate the authority provided under Paragraph 1 of this Delegation to the Chief of the Marine Facilities Division.

(4) At any time, the Chair of the Commission may direct that, this delegation notwithstanding, one or more specific requests for approval, authorization or permit, as described under Paragraph 1, be submitted directly to the Commission for consideration and that no action upon that request be taken by the Executive Officer or Chief of the Marine Facilities Division pursuant to this delegation.

(5) Any approval, authorization, permit, order or any other action taken pursuant to this delegation shall be reported to the Commission at the earliest Commission meeting for which legal notice can be provided. Notice of any action taken pursuant to this delegation shall be forwarded to any person or entity that has requested it.