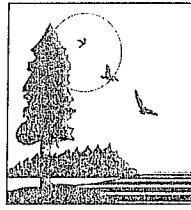


**CALIFORNIA STATE
LANDS COMMISSION**

JOHN GARAMENDI, *Lieutenant Governor*
JOHN CHIANG, *Controller*
MICHAEL C. GENEST, *Director of Finance*



EXECUTIVE OFFICE
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SENT VIA FACSIMILE AND U.S. MAIL
(415) 956-6701

November 21, 2007

The Honorable Barbara Boxer
United States Senator
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

The California State Lands Commission (CSLC) staff thanks you for the opportunity to comment on the Ballast Water Management Act of 2007 (S. 1578). Since 1999, CSLC has been responsible for regulating the prevention and control of nonindigenous species (NIS) in California. We are worried that as currently drafted, S. 1578 will essentially halt the advancements being made through California's well-developed NIS standards and program. As such, we can only support S. 1578 if it is amended to protect or strengthen California's NIS standards and program.

On November 14, 2007, we sent you the attached letter proposing an approach to S. 1578, inspired by the Clean Air Act, allowing California to maintain its NIS standards and program by obtaining a waiver from the federal government. CSLC still supports this approach, however, as an alternative, we would also support S. 1578 if it was modified to: (1) codify California's current NIS standards, which are more stringent than what is currently being proposed in S. 1578, and (2) ensure that CSLC can regulate all other aspects of ballast water management, including reporting, research and development, enforcement, and the imposition of fees. I have attached to this letter proposed bill language that would accomplish both of these goals.

Additionally, while we think it is very important that federal legislation adopt California's progressive NIS standards and allow CSLC to continue to operate its program, we also understand how critical it is that other states have sufficient protection from NIS. Therefore, we strongly urge you to consider bill language that will place more accountability on the Coast Guard, which would assure (1) sufficient funding for the bill's purposes, (2) proper and effective implementation, and (3) a strong mechanism by which to enforce S. 1578's performance standards.

The Honorable Barbara Boxer
November 21, 2007
Page 2

Thank you for your consideration in this matter. Please feel free to contact me or Mario De Bernardo if you have any questions on this matter or the suggested language that is attached.

Sincerely,

A handwritten signature in black ink that reads "Paul D. Thayer". The signature is written in a cursive style with a large initial "P".

PAUL D. THAYER
Executive Officer

Attachment

cc: Honorable U.S. Senator Dianne Feinstein
Honorable California Senator Joe Simitian

Proposed Bill Language to S. 1578 to Codify California Standards

Rewrite paragraph (f)(1)(A)-(D) to read:

(1) PERFORMANCE STANDARDS -- A vessel to which this section applies shall conduct ballast water treatment in accordance with the requirements of this subsection before discharging ballast water so that the ballast water discharge will contain---

- (A) No detectable living organisms that are greater than 50 micrometers in minimum dimension;
- (B) Less than 0.01 living organisms per milliliter that are less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;
- (C) For living organisms that are less than 10 micrometers in minimum dimension:
 - (i) less than 1,000 bacteria per 100 milliliter;
 - (ii) less than 10,000 viruses per 100 milliliter;
 - (iii) concentrations of microbes that are less than:
 - (I) 126 colony forming units per 100 milliliters of *Escherichia coli*;
 - (II) 33 colony forming units per 100 milliliters of *Intestinal enterococci* ; and
 - (III) 1 colony forming unit per 100 milliliters or 1 colony forming unit per gram of wet weight of zoological samples of Toxicogenic *Vibrio cholerae* (serotypes 01 and 0139).

Proposed Bill Language to S. 1578 to Protect California's NIS Program

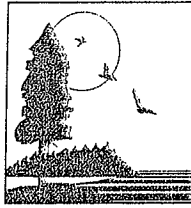
Rewrite Savings Clause (1) to read:

(1) IN GENERAL—Nothing in this section shall preempt any State or local law related to aquatic nuisance species from vessel ballast water or sediment, including, but not limited to, ballast water management reporting, research and development, enforcement, and the imposition of fees, that--

- (A) does not require exchange or treatment requirements substantively different from those required under subsection (e) and (f);
- (B) does not conflict with the requirements of this section; and
- (C) does not pose an undue burden on interstate commerce.

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November 14, 2007

The Honorable Barbara Boxer
United States Senator
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

The California State Lands Commission (CSLC) staff appreciates your interest and involvement in addressing the destructive impacts associated with harmful nonindigenous species (NIS) transferred by marine vessels. We share with you the common goal of preventing the serious environmental, economic, and public health and safety effects caused by NIS. With that being said, CSLC is concerned that the **Ballast Water Management Act of 2007 S. 1578**, in its current form or with your previously proposed Clean Water Act amendment, will essentially halt the advancements being made through California's progressive NIS prevention and control standards and program. As such, staff respectfully requests that you take a position on S. 1578 that allows CSLC to maintain: (1) California's progressive NIS standards, and (2) California's well-known, experienced NIS program.

With regard to California's NIS standards, the State prohibits the presence of any living organisms of a size greater than or equal to 50 micrometers and require that discharged ballast water contain less than 0.001 viable organisms of a size between 10 and 50 micrometers per milliliter of water. However, S. 1578 only requires that discharged ballast water contain less than 0.1 viable organisms of a size greater than or equal to 50 micrometers per cubic meter of water and less than 0.1 viable organisms of a size between 10 and 50 micrometers per milliliter of water. By forcing California to adopt these less stringent standards, S. 1578 makes California more vulnerable to environmental, economic and public health harm than it otherwise would be under its current standards. Furthermore, if the Clean Water Act governs NIS, it is questionable that California can achieve its stringent standards if the State is forced to implement a National Pollutant Discharge Elimination System (NPDES) permit program.

Since 1999, the State has been utilizing a comprehensive, multi-pronged approach that includes ballast water management tracking, compliance, and

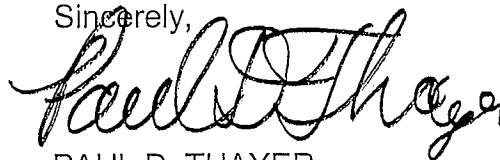
The Honorable Barbara Boxer
November 14, 2007
Page 2

enforcement; sound policy development in consultation with a wide array of experts and stakeholders; applied research that advances the strategies for NIS prevention; and outreach and education to bridge the knowledge gaps between scientists, legislators, and stakeholders, including the shipping industry. Additionally, Governor Schwarzenegger recently signed a bill into law requiring CSLC to study and adopt regulations that will manage NIS associated with hull fouling. However, if S. 1578 or the Clean Water Act governs NIS, CSLC will lose its legal authority to continue its experienced, world-renowned NIS program. California will lose years of experience in the field of NIS, existing staff expertise, as well as millions of dollars invested in the CSLC program.

A possible solution to our concerns would be to require states to develop a NIS program pursuant to S. 1578 or the Clean Water Act, while also allowing states, like California, to maintain their stronger standards and programs. I have attached two proposed amendments to S. 1578 that would accomplish this. The first proposed amendment would work with S. 1578 as currently drafted. The second proposed amendment would work with S. 1578 as modified to reflect your previously proposed Clean Water Act amendment to the Savings Clause.

CSLC staff would be more than happy to work with your office to develop other alternative solutions to ensure a responsible national NIS program that does not preempt California's standards or program. Thank you for the opportunity to comment on Senate Bill 1578.

Sincerely,



PAUL D. THAYER
Executive Officer

Enclosure

cc: Honorable John Garamendi, Lt. Governor and California State Lands Commissioner
Honorable John Chiang, State Controller and California State Lands Commissioner
Honorable Michael C. Genest, Director of Finance and California State Lands Commissioner
Honorable U.S. Senator Dianne Feinstein
Honorable California Senator Joseph Simitian

SUGGESTED CHANGE TO S. 1578 AS CURRENTLY DRAFTED

- Waiver.

(1) The Secretary shall, after notice and opportunity for public hearing, waive application of this Act to any State which has adopted standards for the control of aquatic nuisance species from vessels described in section 1101(a), if the State determines that the State's standards will be, in the aggregate, at least as protective of the environment, public health, and economy as applicable Federal standards. The Secretary shall grant such waiver unless he/she finds that the determination of the State is arbitrary and capricious.

(2) The Secretary shall grant or deny waiver within one year after the application for waiver has been submitted to the Secretary for review.

(3) Notwithstanding paragraph (1), a State may adopt and enforce standards for the control of aquatic nuisance species from vessels described in section 1101(a) if such standards are identical to the California standards for which waiver has been granted.

(4) If a State is granted waiver under this section, the State may adopt or continue its own program to implement the State's standards for the control of aquatic nuisance species.

SUGGESTED CHANGE TO S. 1578 IF SENATOR BOXER'S AMENDMENT NO. 2 IS ADOPTED

- Waiver.

(1) The Secretary shall, after notice and opportunity for public hearing, waive application of this Act to any State which has adopted standards for the control of aquatic nuisance species from vessels described in section 1101(a), if the State determines that the its standards will be, in the aggregate, at least as protective of the environment, public health, and economy as applicable Federal standards. The Secretary shall grant such waiver unless he/she finds that the determination of the State is arbitrary and capricious.

(2) The Secretary shall grant or deny waiver within one year after the application for waiver has been submitted to the Administrator for review.

(3) Notwithstanding paragraph (1), a State may adopt and enforce standards for the control of aquatic nuisance species from vessels described in section 1101(a) if such standards are identical to the California standards for which waiver has been granted.

(4) If a State is granted waiver under this section the State may adopt or continue its own program to implement the State's standards for the control of aquatic nuisance species.

- SAVINGS CLAUSE

(1) Except as expressly provided in this Act, nothing in this Act may be construed to affect or supersede any requirement or prohibition pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(2) The Administrator of the Environmental Protection Agency shall waive application of the Federal Water Pollution Control Act, as it relates to ballast water discharge, to any State if the State determines that its ballast water discharge standards will be, in the aggregate, at least as protective of the environment, public health, and economy as applicable Federal standards. The Administrator shall use the procedures specified in Section [insert section # of the above waiver section in this bill] to determine if a waiver shall be granted.