



The American Waterways Operators

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August 15, 2014

Mr. Chris Scianni
Senior Environmental Scientist
Marine Invasive Species Program
California State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, CA 95825

Re: Biofouling Management to
Minimize the Transfer of
Nonindigenous Species from
Vessels Operating in California
Waters

Dear Mr. Scianni,

On behalf of the American Waterways Operators, the national trade association for the tugboat, towboat, and barge industry, thank you for the opportunity to participate in the Technical Advisory Group and for the opportunity to comment on the California State Lands Commission's draft biofouling management regulations that were circulated to the TAG on July 25, 2014.

The U.S. tugboat, towboat, and barge industry is a vital segment of America's transportation system. The industry safely and efficiently moves over 800 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources such as coal and petroleum, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of more than 4,000 tugboats and towboats, and over 27,000 barges of all types. These vessels transit 25,000 miles of inland and intracoastal waterways, the Great Lakes, and the Atlantic, Pacific, and Gulf coasts. Tugboats also provide essential harbor services in ports and harbors around the country. The tugboat, towboat, and barge industry provides the nation with a safe, secure, low-cost, environmentally friendly means of transportation for America's domestic commerce.

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Nine AWO member companies are headquartered in California, and many more operate tugboats, tank barges, and deck barges in California waters. These vessels help to move tens of millions of tons of freight every year on California waterways, reducing congestion on the state's highways and railroads while producing fewer pollutants than trucks and trains. In addition, harbor and ship assist tugboats perform shipdocking, tanker escort, and bunkering services in California's harbors and ports.

In the past, AWO has expressed concern that the Commission's proposed biofouling performance standards and inspection schedule have been operationally and economically infeasible and inconsistent with the Commission's statutory mandate. In contrast, we believe that the latest proposal, which emphasizes the development of biofouling management plans consistent with International Maritime Organization guidelines, is a technically feasible approach that will provide effective management while minimizing legal and practical conflicts with requirements in other jurisdictions. We applaud the Commission for this improved common sensical and technically feasible approach.

Additionally, AWO praises the Commission's decision to eliminate the five percent biofouling percentage cover performance standard for vessel operators that use an antifouling paint. The vessels operated in California waters by AWO members all employ antifouling coatings that are registered with the U.S. Environmental Protection Agency and are manufactured, applied, maintained, and removed in compliance with federal regulations including volatile organic compounds limitations, the Federal Insecticide, Fungicide and Rodenticide Act, the Organotin Antifouling Paint Control Act, and the National Emissions Standards for Hazardous Air Pollutants, as well as applicable class society requirements and manufacturers' instructions. We thank the Commission for recognizing the efficacy of antifouling coatings and paints in preventing the accumulation of marine growth.

However, we are concerned that the Commission has included a provision in section 2298.6(c) stating that any vessel arriving with biofouling in excess of 15 percent of the wetted surface under investigation is "in violation of this article." Based on the language in this section, a vessel operator would be in violation of this proposed rule even if they had taken all available actions to prevent biofouling before calling at a port or place in California. Further, even if a vessel undertakes the measures described in subsection (2)(A) before returning to California waters, that vessel may nevertheless incur a second violation if those measures do not bring fouling below the "obviously excessive biofouling" standards before that next California visit.

AWO urges the Commission not to pass regulations that have the effect of penalizing those operators who have taken all available measures to minimize biofouling on their vessels. We echo the recommendation of the World Shipping Council that the Commission revise the language the section 2298.6(c) to include the bolded text:

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"If upon inspection utilizing the biofouling compliance assessment protocols, Commission staff detects obviously excessive biofouling, the master, owner, operator, or person in charge of a vessel shall be:

- 1) In violation of this article, *unless the master, owner, operator, or person in charge of such vessel:*
 - i. *has, prior to arriving at the California port or place where Commission staff conducts its investigation, complied with subsections 2298.6(a) and (b), and*
 - ii. *before its next arrival at a California port or place, has managed such obviously excessive biofouling using the following approaches:*
[subsection (2) combined with (1) as drafted above and existing (A) and (B) to remain as drafted].

Similarly, AWO is concerned that section 2298.7, "Requirements for Vessels with Extended Residency Periods," does not appear to make any distinction between extended residency periods at out of state ports versus those that were held in California ports. Under section 2298.7, a towing vessel that has finished an extended residency period of 45 days or more in a California port and is transiting to another California port would still be accountable to the five percent standard regardless of their antifouling systems or their adherence to a biofouling management plan. AWO urges the Commission to amend section 2298.7 to presume compliance for antifouling coatings for vessels holding extended residency periods at California ports.

AWO appreciates the Commission's efforts to further revise its proposed regulations for biofouling management. We believe that the draft regulations on the whole contain a number of positive changes from prior proposals, most importantly the focus on the development of vessel management plans and the decision to provide greater latitude in defining the types of fouling deemed to be acceptable under the rule. We believe that by addressing the remaining issues outlined in this letter, the Commission can further enhance the practicability of the proposed rule for California operators while protecting the waterways. Thank you for the opportunity to comment.

Sincerely,



Charles P. Costanzo