



**The American Waterways Operators**

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August 17, 2015

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

Re: AWO Comments on Proposed  
Modifications to Article 4.8 –  
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 again comment on the California State Lands Commission's proposed regulations for the management of biofouling for vessels operating in California waters under Article 4.8 in Title 2, Division 3, Chapter 1 of the California Code of Regulations. The following comments are a substantive re-articulation of our comments of June 16, 2015 as the concerns articulated in that letter have not been adequately addressed by the proposed modifications.

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 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, cost effective, and environmentally friendly means of transportation for America's domestic commerce.

Nine AWO member companies are headquartered in California, and many more operate tugboats and 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 significantly fewer pollutants than trucks and trains. In addition, AWO member companies perform shipdocking, tanker escort, and bunkering services in California's harbors and ports, as well as marine construction services.

AWO has been an active participant in the constructive and fruitful four-year dialogue on biofouling between marine industry stakeholders and CSLC staff. This submission marks the fourth occasion AWO has submitted written comments relating to proposed standards for biofouling and hull husbandry in California. While some of our original concerns remain, AWO is pleased to see that many critical concerns have been addressed through iterative rulemakings and technical advisory group discussion. AWO commends the CSLC staff for its diligence in developing good public policy with its consistent attention to balancing legitimate environmental and commercial concerns.

AWO's remaining concerns with the proposed rulemaking break down into three categories:

1. The practical operation of Section 2298.7 creates excessive operational costs for barges in coastwise trade.

AWO continues to have serious concerns that section 2298.7, "Requirements for Vessels with Extended Residency Periods," disfavors U.S. companies that operate barges in coastwise trade. Since most barges are in excess of 300 GRT, the number of potentially impacted vessels is in the hundreds. Under section 2298.7, a barge that has finished an extended residency period of 45 days or more in a U.S. port and transits to a California port would need to comply with the five percent standard regardless of the effectiveness of the antifouling coatings or biofouling management plan. This regulation would severely disrupt an operator's ability to freely transfer equipment to and from California and greatly increase costs for typical barge operations in California.

This provision essentially mandates a costly dive check or hull cleaning every time that an operator seeks to transfer equipment that has been working in a given port for more than 45 days. Residence periods of greater than 45-day are rare occurrences for trans-oceanic vessels, but are quite common for domestic barges in ordinary operation. This provision serves to severely limit these highly typical operations regardless of the operator's biofouling management efforts. Unlike a typical deep-draft vessel operator, the barge operator receives no presumption of compliance and is essentially held to a separate, higher performance standard, not because of a demonstrated higher risk profile, but because of the operational profile of the vessel. To date, CSLC staff has not demonstrated that the operational profiles of these domestic vessels pose a greater risk for the introduction of nonindigenous species to California waters. Absent such empirical evidence, it is unfair to essentially compel barge operators and their customers to incur dive and cleaning costs despite all good-faith efforts to

manage biofouling, and without consideration of the relative effectiveness of those biofouling management efforts.

For example, if a crane barge working on a marine construction project in San Francisco Bay remains in that area for a period in excess of 45 days, then the operator would not be able to use that barge to perform work in Los Angeles without first ensuring that the barge complies with the five percent coverage standard, as determined by Commission staff using the biofouling compliance assessment protocols.

To address this concern, AWO recommends the following amendment of definition Section 2298.2 (i):

“Extended residency period” means remaining in one port or place consecutively without conducting ordinary operation for forty-five days or longer.

2. Vessel operators can provide the requested biofouling management information without the duplicative or extraneous record keeping requirements of Section 2298.4.

AWO recommends that the provisions of Section 2298.4 regarding the maintenance of a “Biofouling Record Book” be amended to reduce duplicative or extraneous recordkeeping requirements for vessel operators and crews. Under this section as written, every domestic barge that could *ever* arrive at a California port or place would be well advised to maintain a Biofouling Record Book pursuant to the proposed regulation. This is not conducive to the efficient operation of marine commerce. Furthermore, vessel operators and crews already have extensive paperwork and documentation requirements and vessel crew members must abide by work/rest regulations. Duplicative or extraneous documentation and reporting requirements could interfere with crew scheduling or rest requirements.

The minimum requirements for the Biofouling Record Book outlined in Section 2298.4(b) are generally contained in the required hull husbandry reporting form, ship’s log, and other customarily-kept onboard and shoreside records. Since all of the information sought under Section 2298.4 is information that is generally included in some combination of these records, vessel operators should be granted flexibility to provide the required information through a range of other accepted methods.

To address this concern, AWO recommends the following amendments to Section 2298.4 (b):

“The master, owner, operator, or person in charge of a vessel that operates in the waters of the State shall maintain records containing details of all inspections and biofouling management measures undertaken on the vessel since the beginning of the most recent scheduled out-of-water maintenance or since delivery as a newly constructed vessel if no out-of-water maintenance has yet occurred. These records shall be made available upon request of Commission staff and at a minimum, these records shall:”

3. Biofouling compliance assessment protocols should be developed through the collaborative work of the Technical Advisory Group and a formal rulemaking process.

The current absence and prospective development of biofouling compliance assessment protocols imbue this rulemaking and comment solicitation with a degree of uncertainty. While AWO understands the interests of Commission staff in careful and deliberate development of these protocols, the specific nature of these protocols could substantively affect the meaning and application of these proposed regulations. AWO therefore requests that the biofouling compliance assessment protocols described in Section 2298.2(e) be developed through the collaborative work of the Technical Advisory Group and a formal rulemaking process.

Once again, AWO is deeply appreciative of the opportunity for open dialogue during this complicated rulemaking. We look forward to continuing to work with Commission staff and other stakeholders as the proposed rule moves toward finalization. Thank you for the opportunity to comment.

Sincerely,



Charles P. Costanzo