

September 9, 2005

Lt. Governor Cruz Bustamante  
California State Lands Commission  
100 Howe Ave Suite 100 South  
Sacramento, CA 95825-8202



Dear Lt. Governor Bustamante and Members of the  
Commission:

At the outset, The Ocean Conservancy would like to thank the State Lands Commission for convening this Committee, and its staff for their skillful facilitation of the Committee's activities. Although The Ocean Conservancy supports many of the Majority Report's recommendations, we write separately to highlight a few points.

(1) California Should Adopt A Rigorous, Technology-Forcing Approach.

As the Majority Report indicates, the Committee selected more-or-less fixed "interim" standards that are achievable given technologies that are available today. Simultaneously, the Committee selected an implementation schedule – one that is aligned with other federal programs – that gives the industry years before any substantive improvement must be made. During the Committee's work, TOC sought higher standards because the existence of such standards – combined with a competitive marketplace for ballast water treatment products – would motivate the rapid development of technology appropriate for meeting them.

The Clean Water Act has been termed a technology-forcing statute because of the rigorous demands placed on those who are regulated by it to achieve higher and higher levels of pollution abatement under deadlines specified in the law. The general statutory scheme is that in any given category or subcategory of industry, dischargers are to meet technology-based performance standards, based on the capability of available treatment technology. In other words, as technology develops and more effective pollution control tools become available, the requirements for dischargers are ratcheted up. Technology-based standards are the principal vehicle for setting pollution control levels, yet water quality standards were retained as a basis for assessing the need for even more stringent discharge controls where necessary to protect the uses of a stream, including human health. Accordingly, the Act specifically envisions **better** pollution control than "Best Available Technology Economically Achievable" in circumstances where water quality is impaired.

The interim standards selected by the Committee are as strong or stronger than any existing standards that we are aware of. However, they are fixed, inflexible and based on technologies available today, rather than flexible, forward-looking and adaptive. The Ocean Conservancy encourages the State Lands Commission to take the interim standards as a starting point, and to consider an approach that permits improvement of the standards – consistent with improvement in technology – over time.

(2) The Long-Term Discharge Standard of Zero Should Be Firmer.

The Ocean Conservancy supports the Majority Report's long-term standard of zero detectable discharge of living organisms because implementation of this standard is the only means of eliminating all risk of invasion. However, no date is set for achieving this standard, and the technical review conducted in 2016 will evaluate only **if** this standard can be met.

California must set a date for achieving the zero discharge standard, and establish benchmarks for reviewing the feasibility of the standard as it approaches. This approach would create incentives for developing technology as quickly as possible, without creating unmanageable compliance burdens for the industry.

(3) California Should Lead the National Battle Against Invasive Species By Adopting the Strongest Possible Standards.

California ports handle between \$200 billion and \$300 billion in cargo annually, and the estimated gross revenues of California shippers are in the range of \$14 billion a year. California is the 6<sup>th</sup> largest economy in the world. In other words, the assertion that shippers will avoid California ports if California's ballast water performance standards are too stringent is a scare tactic. Moreover, it is a scare tactic that has a long history.

California's air quality legislation predates the federal Clean Air Act, and set higher standards that persist today. California's water quality legislation predates the federal Clean Water Act, and controls pollution from a wider variety of sources even today. California's pesticide regulation predates federal insecticide controls, and even today, California's pesticide regulations are the most comprehensive in the nation. These are just a few examples of California's environmental leadership, but they are sufficient to highlight the fact that strong environmental regulation has never caused industry to flee from this state. Despite tough rules, our economy continues to grow.

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In sum, TOC encourages the State Lands Commission to continue its pattern of national leadership in addressing the threat of invasive species in United States waters. The recommendations of the Ballast Water Performance Standards Advisory Committee are strong, but could be made significantly stronger, as we outline above. Most importantly, California should not wait for the emergence of national standards that are heretofore unsettled. Instead, it should do as it has historically done: lead the way, and encourage the rest of the nation to follow.

Sincerely,



Sarah G. Newkirk  
California Water Quality Programs Manager