

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

ELIHU M. HARRIS STATE BUILDING
1515 CLAY STREET
AUDITORIUM
OAKLAND, CALIFORNIA

MONDAY, JUNE 20, 2005
10:30 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

APPEARANCES

BOARD MEMBERS

Mr. Cruz M. Bustamante, Lieutenant Governor, Chairperson,
also represented by Ms. Lorena Gonzalez

Mr. Steve Westly, State Controller, represented by
Ms. Cindy Aronberg

Mr. Tom Campbell, Director of Finance, represented by
Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Ms. Maurya Falkner, Environmental Program Manager

Ms. Kimberly Lunetta, Executive Assistant

Mr. Mark Meier, Senior Staff Counsel

ALSO PRESENT

Mr. Jeff Browning, Sause Brothers Ocean Towing

Mr. Abe Doherty, Coastal Conservancy

Mr. Jason Lewis, The American Waterways Operators

Ms. Karen Reyna, National Marine Sanctuary

Ms. Linda Sheehan, California Coast Keepers Alliance

Ms. Erin Simmons, The Ocean Conservancy

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1 ACTING COMMISSIONER GONZALEZ: Okay. You already
2 made the motion, so let's show that it was unanimously
3 adopted.

4 The next order of business is the Executive
5 Officer's report.

6 Mr. Thayer.

7 EXECUTIVE OFFICER THAYER: Thank you, Madam
8 Chair. I have only two items to report on. And, I'm
9 sorry, I don't have the names of these.

10 But you'll recall that at our last meeting there
11 were two gentlemen who spoke to the Commission about
12 issues here in the Bay Area actually where they were
13 asking for assistance from the State Lands Commission.

14 The first was a gentleman who was concerned about
15 a section of wetland on I believe the Napa River which was
16 part -- it wasn't even State Lands Commission ownership,
17 but was immediate adjacent to a fill, a dump, and was
18 seeking our assistance in getting funding and getting that
19 area restored.

20 We've been in further discussions with the
21 gentleman. He is appreciative of our assistance. He may
22 be seeking a coastal conservancy grant to provide the
23 funding for this. And we've assured him that we would
24 write a letter in support. He's not moved on that yet.
25 But there'll be further discussions with him to ensure

1 that we're giving whatever assistance we can give him to
2 move that project along. This is the wetland that the
3 gentleman at the last meeting came up during the public
4 comment period and asked for our assistance in getting
5 that restored in the north bay.

6 The second public commenter that the Commission
7 heard from was a gentleman who operated a sailing school
8 in the south bay and he was close to the South Bay Yacht
9 Club. And he had some concerns about how the South Bay
10 Yacht Club was run.

11 As we investigated this, we found that in fact
12 there are a variety of disputes there, some involving the
13 yacht club, some involving the gentleman who spoke with
14 you, as well as several different public agencies. We've
15 discussed the matter with all of them. And there will be
16 a meeting involving all the principals later this month, I
17 believe to the 27th. Although that might be postponed for
18 a week because of some people's inability to make that
19 meeting.

20 But at that meeting will be both of those land
21 owners as well as the Bay Conservation Development
22 Commission, who has jurisdiction over that area, and then
23 the local water district, who does both flood control and
24 water supply. So between all of those actors, we're
25 hoping to straighten out the situation that had been

1 brought to the Commission's attention at that public
2 comment period. I wanted to let you know of our progress
3 on that and that we're working on that.

4 And that concludes the Executive Officer's
5 report.

6 CHAIRPERSON BUSTAMANTE: Any questions?

7 We can go to the consent calendar.

8 Are there any items that have been pulled off of
9 the consent calendar, off the regular list that's been
10 given?

11 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. There
12 are three items that we pulled off:

13 Item 16, which has to do with an overhead power
14 transmission line. We received late word, I think on
15 Friday, from Fish & Game that they have some concerns
16 about that project. So we'll review those concerns with
17 Fish & Game and probably bring back this matter at the
18 August meeting before the Commission.

19 And then Items 39 and 51 have to do with the
20 assignment from Plains to DCOR of some offshore leases.
21 And we'll be having some additional conversations with the
22 assignor and the assignee before we'll bring that back to
23 the Commission.

24 CHAIRPERSON BUSTAMANTE: What about the South
25 River Parkway?

1 EXECUTIVE OFFICER THAYER: I believe that's in
2 closed session, the -- a potential settlement of that,
3 yes.

4 CHAIRPERSON BUSTAMANTE: I see.

5 Okay. Is there a motion?

6 ACTING COMMISSIONER ARONBERG: Move the consent
7 calendar.

8 ACTING COMMISSIONER SHEEHAN: Second.

9 CHAIRPERSON BUSTAMANTE: Motion's been made and
10 seconded.

11 Let the record show that it's been passed
12 unanimously.

13 The regular calendar.

14 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

15 The one remaining item on the regular calendar is
16 the proposal for the Commission to adopt ballast water
17 regulations. We already have some regulations in place.
18 However, the reauthorization of the Commission's ballast
19 water program included the new requirement that the
20 Commission adopt regulations with respect to voyages that
21 began and ended along the West Coast. That's within
22 California or up to Oregon and Washington.

23 Maurya Falkner, who is in charge of this program
24 for the State Lands Commission, will make the presentation
25 on this.

1 CHAIRPERSON BUSTAMANTE: Also, has there been any
2 kind of correspondence at all from any industry groups or
3 environmental groups?

4 EXECUTIVE OFFICER THAYER: Maurya, do you have
5 any -- we have some support letters, one from the ocean
6 conservancy. And I think Maurya would -- who has that,
7 might have.

8 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Yes, we
9 received support letters from the main sanctuaries here in
10 the state, the Blue Water Network. And I guess we have
11 some speakers today that will be speaking in support as
12 well of the proposed regulation.

13 I have had four meetings with industry
14 representatives since our last Commission meeting, trying
15 to iron out some details. And I can go into that in a
16 little bit more detail if you'd like.

17 CHAIRPERSON BUSTAMANTE: Please.

18 ENVIRONMENTAL PROGRAM MANAGER FALKNER: And good
19 morning.

20 (Thereupon an overhead presentation was
21 Presented as follows.)

22 ENVIRONMENTAL PROGRAM MANAGER FALKNER: As Mr.
23 Thayer's already mentioned, we're here to ask for your
24 approval to adopt proposed regulations that would govern
25 coast-wise traffic for ballast water that they carry.

1 --o0o--

2 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Under the
3 Marine Basic Species Act that was passed in 2003, PRC
4 Section 71204.5 mandates the Commission to adopt
5 regulations that would govern the management of ballast
6 water for vessels that operate within the Pacific Coast
7 region.

8 --o0o--

9 ENVIRONMENTAL PROGRAM MANAGER FALKNER: This here
10 is kind of a rough figure that represents the Pacific
11 Coast region. It basically extends its coastal waters, so
12 less than 200 nautical miles from shore from Cooks Inlet
13 in Alaska down about three-quarters of the way down the
14 Baja coast excludes the Gulf of California. This location
15 was identified in the laws in the region that we need to
16 be working with.

17 --o0o--

18 ENVIRONMENTAL PROGRAM MANAGER FALKNER: And the
19 Invasive Species Act specifically requires us to adopt
20 regulations for vessels operating along the Pacific Coast
21 region. We were mandated to consider vessel design and
22 voyage duration. We were also mandated to look at best
23 available technologies that were economically achievable.

24 Finally, the regulations required us to, as
25 appropriate, impose restrictions or prohibition on

1 discharge into areas or estuaries that were considered
2 sensitive.

3 --o0o--

4 ENVIRONMENTAL PROGRAM MANAGER FALKNER: As I
5 mentioned at our last Commission meeting, we've had
6 several meetings in preparation for these rules. And they
7 started way beyond the reauthorization of the bill. We
8 had a meeting in March of 2002 with oceanographers. And
9 they helped us identify areas that we -- at the very least
10 we should not allow exchanges or ballast water discharges
11 to occur. And those are the report summary there as to
12 avoid discharges in 50 nautical miles around exclusion
13 zones. And that graphic there represents, not to scale of
14 course, but the exclusion zones that we're talking about
15 specifically on the West Coast of North America. Those
16 are primarily the great sanctuaries.

17 They also recommended restricting discharges
18 within 15 nautical miles of estuaries. And, if possible,
19 have discharges occur in waters that are deeper than a
20 thousand meters, which would put the waters off of the
21 continental shelf.

22 --o0o--

23 ENVIRONMENTAL PROGRAM MANAGER FALKNER: We took
24 this information forward to a group in January of 2003,
25 included everybody from Alaska, British Columbia, down

1 through California, and both state, federal,
2 international, the regulated community and NGOs.

3 Came out of that workshop with surprising high
4 level of consensus. First off, everybody agreed that
5 ballast water transport is a significant threat. They
6 wanted us to move forward with the data that were
7 available and create ideally a regional uniform program
8 that considered safety exemptions and costs and, finally,
9 not to allow exchange to occur in waters that are less
10 than 200 meters in depth.

11 --o0o--

12 ENVIRONMENTAL PROGRAM MANAGER FALKNER: We had
13 additional meetings and put forward some draft regulations
14 with the stakeholders. Again, the general consensus was
15 we wanted to be consistent with the other West Coast
16 states and still be protective of California waters.

17 The industry asked us to consider a shared waters
18 designation and a process by which to address emergencies
19 that may come up.

20 We had a meeting with the technical advisory
21 group in December of 2004, presented our draft
22 regulations. And the TAG came back with some
23 recommendations for us to clearly state the safety
24 exemption within the regulation. It is already in the
25 law, but they wanted it explicitly placed in the

1 regulation as well. They also wanted us to clarify our
2 shared waters designation and to include a process by
3 which we could address or deal with petitions for
4 alternatives that weren't clearly stated within the
5 regulation.

6 Again, the first and last of the exemption and
7 the alternative section were already identified in the
8 law. So we just restated that again in the regulation.

9 We had another meeting here with you in April.
10 At that meeting there was some concerns raised by the
11 industry regarding the safety exemption provision and
12 limited delegation of authority provision, as well as a
13 petition for alternatives.

14 --o0o--

15 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Two
16 public hearings were held, both in June, earlier this
17 month. And then I've had additional meetings with
18 industry and Assembly Member Joe Nations, a staffer as
19 well on this issue, on this regulation.

20 --o0o--

21 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Just to
22 give you a brief overview of what the rest of the world is
23 doing, the IMO has adopted a convention, which is a set of
24 guidelines that requires at a minimum ballast water to be
25 conducted at 50 nautical miles from shore and in 200

1 nautical miles if they're going to continue exchanging, or
2 shut off.

3 And so in order for it to be as easy for the
4 industry as possible, 50 nautical mile works well on the
5 West Coast. It may not work real well in the rest of the
6 country. But here, because the continental shelf drops
7 off quickly, because of the currents and tides, the 50
8 nautical mile we believe is going to work well here in
9 California and here on the West Coast.

10 CHAIRPERSON BUSTAMANTE: Is that -- does the
11 water temperature, is that -- because of the science of it
12 or --

13 ENVIRONMENTAL PROGRAM MANAGER FALKNER: It's the
14 combination of --

15 CHAIRPERSON BUSTAMANTE: -- has an impact on
16 different species that are contained in ballast water?

17 ENVIRONMENTAL PROGRAM MANAGER FALKNER: We hope
18 so. We're going to be doing some research starting up
19 here this month that will be looking at differences
20 between coastal water, 50 nautical mile, and further out.
21 But the recommendations from the oceanographers were
22 the -- because of the drop-off in the continental shelf
23 you have -- more likely waters are going to be uplifting
24 and moving things out instead of in to shore. The closer
25 you're into shore, the more likely the organisms can be

1 blown into shore and survive. So it's a combination of
2 that distance and then the water differences in depth and
3 everything else. Is that okay?

4 Does that answer your question, I should say?

5 CHAIRPERSON BUSTAMANTE: Well, it answers the
6 question.

7 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Okay. So
8 at the last Commission meeting and in the comment letters
9 that we've received, there have been three primary areas
10 of concern that the industry has brought up to us. One is
11 regarding the safety provision. And this is especially
12 important with the tow barges, and in particular the
13 barges -- there are three different types of barges.
14 There's the articulated tug barge, the integrated tug
15 barge, and then there's the tow barge.

16 And the tow barges in particular, they are
17 unmanned vessels. They are, you know, literally to get
18 tugged. And somebody's got a long tow line and they're
19 towing this big thing.

20 In order for those vessels to conduct an exchange
21 a person has to go from the vessel and climb up probably a
22 J ladder up the side of a barge, get on board to do the
23 exchange. And there's extreme concerns about safety
24 there. But the regulation includes a safety exemption
25 that we believe will apply to those circumstances right

1 there; that those vessels because of safety condition
2 situations can't do an exchange can utilize that safety
3 exemption. They still fall under the confines of the law
4 and the regulation. They still need to minimize ballast
5 water discharges and file reports and be in communication
6 with State Lands Commission.

7 CHAIRPERSON BUSTAMANTE: Is it a small hole or is
8 it a big hole?

9 ENVIRONMENTAL PROGRAM MANAGER FALKNER: A small
10 hole?

11 CHAIRPERSON BUSTAMANTE: Or exemption.

12 ENVIRONMENTAL PROGRAM MANAGER FALKNER: It's a
13 small hole.

14 CHAIRPERSON BUSTAMANTE: And the exemption --
15 when you talk about safety, under what specific parameters
16 are they able to ask for an exemption? Is it just weather
17 or is it --

18 ENVIRONMENTAL PROGRAM MANAGER FALKNER: No, I
19 think in this case, especially with these tow barges, that
20 they would be able to come forward. I don't think it's --
21 it's never been the intent of the staff nor I believe the
22 Commission to put -- or of the legislation to put these --
23 to put regulations or legislation in place that would
24 jeopardize the safety of the crew. And that's why that
25 safety provision is in there.

1 And so to get a human being, even in calm
2 weather, from a small boat on to a barge, it is
3 exceedingly dangerous and it's not our intent for those
4 vessels to try to comply and lose crew members. That's
5 not our intention.

6 CHAIRPERSON BUSTAMANTE: So those folks would
7 have permanent exemptions? There wouldn't be a request?
8 That would be a constant exemption that that particular
9 barge would have in any use?

10 ENVIRONMENTAL PROGRAM MANAGER FALKNER: We could
11 go about it that way. There are several different avenues
12 that we can go -- that we could just --

13 CHAIRPERSON BUSTAMANTE: Well, an exemption isn't
14 something that's regular practice. An exemption is
15 something that takes place outside of regular practice.

16 ENVIRONMENTAL PROGRAM MANAGER FALKNER:
17 Correct.

18 CHAIRPERSON BUSTAMANTE: So you're giving them a
19 permanent exemption?

20 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Again, I
21 think that we can pursue this in several different ways.
22 We can either -- on a case-by-case basis. Because some of
23 the barges can do exchanges, some can't. Some, they don't
24 even have pumps onboard, so there's not even an
25 opportunity for them to say, "There's a safety exemption.

1 We don't have a pump onboard, you know. We can't do
2 anything till we get alongside doing an exchange." So I
3 think there is a case-by-case scenario.

4 But there's also the opportunity to come back to
5 you with a list. We have six months before these rules
6 will go into effect. Sit down with the vessel owners --
7 there's only 28 barges that are operating in California
8 waters, at least in the last 18 months. Sit down with you
9 and get a blanket, "This is what you will do," you know.
10 "You are not required to do a near-coast exchange because
11 of safety concerns. However, you need to continue to file
12 your forms and your fee and all of that." So we could go
13 that route as well. It's really what the comfort level is
14 between the industry and the Commission.

15 EXECUTIVE OFFICER THAYER: But to supplement
16 that, as Maurya's pointed out, there is a requirement that
17 they use best available technologies. And my
18 understanding of ballast water management in general is
19 that it's sort of a frontier sort of program and that
20 there's a lot of new technology being developed. In fact,
21 the Commission had approved grants to work on some of
22 those for other than barges at the last meeting.

23 And so what's true today with respect to what's
24 safe and is the best that a barge can do might not be true
25 tomorrow. And these regs are written in a way that if the

1 technology is developed and it is feasible and safe, that
2 they would be required to carry that out. And that
3 flexibility is contained in there.

4 ENVIRONMENTAL PROGRAM MANAGER FALKNER:

5 Exactly. Things are moving forward and there
6 are -- and I think it's important that -- the legislation
7 spent a great deal of time during 2003 reauthorizing this
8 act, and part of that process was to remove the exemptions
9 that had been in the law. And so right now the only
10 exemption is for true gray hulls, military vessels, and
11 vessels in innocent passage. And They removed the other
12 exemptions in there for the reasons that Mr. Thayer just
13 mentioned, that technology is advancing, and rather than
14 set these guys aside on remaining, you know, biological
15 reason for it, let's work within the confines of the
16 technology that we have at hand.

17 Another issue that came up is -- don't relate to
18 safety concerns but relates to hardship issues. And,
19 again, I think that within the regulation we have included
20 a process by which shipowner/operators can come to us and
21 then we can come to you to act to request alternatives to
22 the prescribed management guideline -- management options
23 that are listed in the regulation. And that's the way,
24 again, to avoid doing the exemption and dealing with that
25 scenario. Rather, sit down with the industry over the

1 next several months and figure out the best way that they
2 can, if not meet the letter of the law, meet the intent of
3 the law and the regulation.

4 CHAIRPERSON BUSTAMANTE: And the basic process
5 for asking for exemption is what?

6 ENVIRONMENTAL PROGRAM MANAGER FALKNER: They
7 would come to either Mr. Thayer or Mr. Gregory or me with
8 a letter requesting that we consider an alternative
9 management practice. You would work with that industry in
10 developing basically a calendar item on the staff report
11 on the applicability of the -- of what they're requesting.
12 And if it at least meets the intent of the law, then it
13 would come to you at a Commission meeting and request for
14 approval of an alternative action.

15 That's under the scenario of somebody who knows.
16 I do this voyage and 75 percent of the time I know I can
17 do it; 25 percent of the time I'm not sure I can do it or
18 I'm pretty sure I can't. This is what I'm proposing for
19 that 25 percent of the time. Then we could come to you
20 with that request.

21 The alternative is we do have, as you may recall,
22 some limited delegation of authority to deal with those
23 timely requests, somebody's coming down from Seattle, it's
24 been horrible weather and they can't do an exchange in --
25 you know, in a certain location; can they do something

1 else? And we have the authority -- Mr. Thayer has the
2 authority to grant those timely types of requests.

3 CHAIRPERSON BUSTAMANTE: I was just concerned
4 that the process would be such that you would have to come
5 through us and then it would take a very long time to get
6 authorization to be able to do that. Where it should be
7 probably vested more in the staff to be able to do that on
8 a regular basis, so that when things take place or the
9 request comes in, you're not going to be holding back
10 somebody from doing something when it's going to be
11 necessary. So --

12 ENVIRONMENTAL PROGRAM MANAGER FALKNER: I'm
13 hoping -- keep my fingers crossed. We have six months
14 from the time the regulation is signed until it's
15 implemented. And that was --

16 ACTING COMMISSIONER SHEEHAN: Yeah, my only issue
17 is as long as there is a process that somebody isn't
18 sitting offshore waiting for the Commission to have their
19 next meeting.

20 (Laughter.)

21 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Sorry,
22 we're not meeting again until August.

23 No, that's not going to happen.

24 (Laughter.)

25 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Again,

1 that's the thing. You do have the delegation of authority
2 to deal with those kind of timely issues. And then other
3 issues where -- let's say, this law doesn't go into effect
4 probably until in January 2006, we have at least two more
5 Commission meetings. I'm hoping, you know -- I'm hoping
6 that that will be the case, once it gets through here, to
7 get it into the Office of Administrative Law and signed.
8 So at least six months before --

9 ACTING COMMISSIONER SHEEHAN: And you would begin
10 the process for them to petition the Commission and the
11 staff in how you would handle that to come up to be
12 presented to the Commission at one of those meetings --

13 ENVIRONMENTAL PROGRAM MANAGER FALKNER: That's
14 correct. That allows you to exert your authority and also
15 allows it to be in a public forum so that any interested
16 parties can be involved as well.

17 --oOo--

18 ENVIRONMENTAL PROGRAM MANAGER FALKNER: The other
19 issue that came up and has come up repeatedly is our
20 shared waters designation. And we pulled together data
21 that are available on species -- nonindigenous species
22 occurrences within -- there were two issues that came up:
23 The San Diego to Los Angeles route and then the San
24 Francisco to Eureka route. These are granted short
25 duration voyages. But in looking at the data and talking

1 to the scientific experts, the scientific experts strongly
2 recommend us not allowing port-to-port transfers between
3 these two -- those two pairs of ports. And one of the
4 reasons is -- this table that I've presented up here,
5 these data were collected by the Department of Fish & Game
6 during the first phase of the ballast water program in
7 2001, and it's complemented by data that have been
8 collected by experts in the Bay Area. And what we did is
9 we looked at the degree of overlap between those port
10 complexes, how many species were unique to L.A. --
11 nonindigenous species unique to L.A. that weren't found in
12 San Diego and vice versa, and San Francisco versus Eureka.
13 And it's a pretty frightening number of lack of overlap.
14 And so you have 142 species that are found in L.A. that
15 aren't found in San Diego and a huge number of -- 315
16 species that are found in San Francisco and not in Eureka.
17 And this suggests that allowing port-to-port transfers is
18 going to just expand those numbers. It's going to
19 decrease the differences between those ports and
20 potentially the expansion of those species beyond those
21 ports as well.

22 So, again, for those vessels where a short
23 duration in conducting an exchange is going to be a severe
24 hardship, we do have a process involved again petitioning
25 for alternatives that we can address those situations.

1 So the other issue that came up was the IMO
2 resolution that was passed in February of 2004. And some
3 of the federal legislation includes language that
4 basically says if a vessel is going to have an undue delay
5 or a deviation in their voyage, they don't have to comply.
6 And staff is very opposed to including that kind of
7 language in these regulations for the reasons that I've
8 listed there and are listed in the staff report. We
9 believe it's insufficient language for a regulation. It
10 maybe okay for an IMO resolution, which is a guideline;
11 but that it's inadequate at the regulatory level.

12 It has no definition or boundaries to it. So
13 conceivably somebody could say, "Hey, it's going to cost
14 me, you know, another half hour of voyage time" or "I'm
15 going to have to deviate two miles from my intended
16 voyage, and so, you know, I'm not going to comply."

17 And, finally, you know, according to our legal
18 counsel, they do not believe -- he does not believe that
19 it's going to meet the clarity standard within the Office
20 of Administration Procedures Act.

21 So, again, we would rather not -- we don't want
22 that language included for those reasons.

23 --o0o--

24 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Finally,
25 they have -- the industry has requested that we review the

1 regulations. They had originally wanted us to put
2 language in the regulation that would require us to review
3 the impacts after 6 to 12 months. We're opposed to
4 putting that kind of language in the regulation. But we
5 have asked that the Commission direct staff for us to
6 review those regs after they're implemented, and we can
7 report back to the Commission as well as to the
8 Legislature in our biennial report that's due in January
9 of 2007.

10 --o0o--

11 ENVIRONMENTAL PROGRAM MANAGER FALKNER: So, in
12 conclusion, the regulations that we've developed, we
13 believe they recognize operational realities in operating
14 in California; they recognize sensitive resource areas,
15 the need for simplicity, which will hopefully encourage
16 and ensure compliance. We address the shared waters
17 issue, making L.A. and Long Beach shared waters and then
18 San Francisco Bay/Delta ports shared waters. They address
19 the safety concerns. The safety issue is clearly listed
20 in the regulation. Mechanisms by which alternatives can
21 be applied for and time until the rule actually goes into
22 effect. So this just restates that.

23 --o0o--

24 ENVIRONMENTAL PROGRAM MANAGER FALKNER: I'd be
25 more than welcome to answer any other questions that you

1 may have.

2 CHAIRPERSON BUSTAMANTE: Any questions from the
3 members?

4 ACTING COMMISSIONER ARONBERG: Can we just hear
5 from the speakers?

6 CHAIRPERSON BUSTAMANTE: We have speakers. I
7 believe we have five. The first is Erin Simmons, and then
8 Jeff Browning, and then Linda Sheehan, Abe Doherty, and
9 Karen Reyna.

10 MS. SIMMONS: Good morning, Lieutenant Governor
11 Bustamante.

12 CHAIRPERSON BUSTAMANTE: Give your name for the
13 record please.

14 MS. SIMMONS: I'm sorry. Erin Simmons with the
15 Ocean Conservancy.

16 The following comments are submitted on behalf of
17 my co-workers -- of the Ocean Conservancy. And I believe
18 you have a copy of our comment letter of support.

19 We have more information than ever of the
20 damaging effects of invasive species entered -- in ballast
21 water. The costs associated with invasive species, both
22 ecological and economic, are staggering and far outweigh
23 the costs of complying with these regulations.

24 Ballast water is the number one source of marine
25 invasions, and experts have reported that invasion

1 resulted intercoastal traffic is a very serious problem.

2 California is the first state in the nation to
3 pass a law mandating controls on ballast water discharges
4 into state waters. But we are behind the times because of
5 our failure to regulate coastal traffic, which Washington
6 and Oregon have been doing since 2000 and 2002
7 respectively.

8 Today you're hearing from the shipping industry
9 that they should not have to exchange ballast water when
10 it's inconvenient for them to do so. We strongly oppose
11 any amendments that would permit a shipper to avoid
12 ballast water exchange because of undue delay or
13 deviation. Such an exemption would be tantamount to
14 declining to regulate at all.

15 The regulations that you have in front of you
16 were developed with the assistance of a technical Advisory
17 group in which the shipping industry was adequately
18 represented and heard.

19 The proposed regulations are protective and will
20 permit the defense of California waters against new and
21 costly invasions by -- alien organisms. They contain
22 reasonable emergency exemptions and provisions for
23 protecting the safety of the ship and its crew. The
24 regulations are flexible and include a range of options
25 for compliance, a range that will only grow as the

1 Commission and Coast Guard approve additional ballast
2 water management methods.

3 In sum, we strongly urge you to adopt the
4 regulations as proposed. The Ocean Conservancy thanks
5 staff and the technical advisory group for their hard work
6 in the development of the proposed regulations. And
7 thanks to the Commission for hearing these remarks.

8 CHAIRPERSON BUSTAMANTE: Any questions?

9 Jeff Browning.

10 Thank you.

11 MS. SIMMONS: Thank you.

12 MR. BROWNING: Good morning. Good morning,
13 Commission, Mr. Chair. I'm Jeff Browning. I'm
14 representing the American Waterways Operators, Inland
15 Boatmen's Union, and the Sause Brothers Ocean Towing
16 Company. I believe you have the comments from AWO and the
17 Sause Brothers on file. I'm not sure if you have the
18 Inland Boatmen's Union.

19 So I'd like to read that in a bit.

20 Our concern as industry and an operator is the
21 safety of the crew. Maurya did point that out. We would
22 like though an exemption that takes unmanned barges, towed
23 unmanned barges and have them exempt. There is no time
24 that we can put people on board at sea. It's -- calm
25 waters, rough waters, it's unsafe.

1 There's a second issue that hasn't been
2 addressed. These barges do have ballast systems on them.
3 But they do not under a loaded situation allow for ballast
4 water exchange. If we were to fill the tanks up -- the
5 ballast tanks up at the same time as the cargo, the barges
6 would sink. They can't do it. They don't have the
7 capacity to do it.

8 And that's our entire fleet. Sause Brothers
9 represents probably 50 percent of the barges that Maurya
10 pointed out.

11 Third, now we have an environmental issue if we
12 do do this ballast water exchange, because we have tanker
13 fleets, oil barges and cargo barges, and that would be a
14 pollution issue.

15 At this point I'd like to read the Inland
16 Boatmen's Union letter in support of the opposition -- not
17 opposition, but giving the unmanned tow barges an
18 exemption.

19 It was addressed to Maurya Falkner.

20 "Dear Ms. Falkner: Inland Boatmen Union
21 represents many crew members, including tug and barge
22 operations running West Coast routes from Alaska to
23 California, including Hawaii.

24 "The proposed legislation regarding ballast water
25 treatment that California State Lands is considering will

1 expose tug owners to extremely dangerous conditions. To
2 port unmanned barges in an open ocean on a regular basis
3 poses serious safety concerns for crew members as well as
4 the tug and barges. It's extremely dangerous even in calm
5 waters to transfer crew members from tugs to barges.
6 Trying to go alongside a barge in open ocean when you do
7 not have to is going to get us a crew member killed.

8 "We request that you consider tug and barge
9 operations exempt from legislation regarding ballast water
10 treatment."

11 So, in closing, we are requesting that the regs
12 be modified to give an exemption for unmanned tow barges.

13 CHAIRPERSON BUSTAMANTE: Okay. How does that
14 impact the regulations that you're proposing right now,
15 staff?

16 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Well,
17 again, I think that, you know, we are opposed to any
18 blanket exemptions. But we recognize the safety issue and
19 that we're more than willing to work within the confines
20 of that safety issue and provide them with -- I guess
21 maybe exemption is the wrong word. We want them to still
22 minimize the ballast water discharges, practice good
23 housekeeping, submit the ballast water report forms like
24 they're doing now, submit the fee like they're doing now.
25 And if we can't because of technology insufficiencies at

1 this point have them conduct in exchange for a discharge
2 to a shoreside treatment facility or some other option,
3 then because of those safety issues they will be granted
4 that, okay. You don't have to do a near-coast exchange.
5 Still have to comply will all the rest of the components
6 of the law.

7 An exemption to me says you're out, you don't
8 have to do anything, the law doesn't apply to you any
9 longer; which is actually a step back for us, because
10 we're already getting forms -- we're already, you know,
11 working with these individuals on a regular basis. So it
12 wouldn't change much from what they're doing right now if
13 we utilized our process within the proposed regulation.

14 CHAIRPERSON BUSTAMANTE: They would be required?

15 ENVIRONMENTAL PROGRAM MANAGER FALKNER: They
16 would not be required to do the near coastal exchange due
17 to the extreme safety concerns. However, I think we would
18 definitely want to be sitting down with them and looking
19 at exploring other options. And it may not -- we may not
20 have any other options right now or in the next year. But
21 there are potential shoreside treatment. It's up in the
22 air. There's nothing available right now. But that's an
23 option. There are technologies that are coming down that
24 are being looked at now. But those are potential options.

25 So rather than exempt them from the whole

1 program, ask them to work within this. You know, we
2 recognize -- we don't want them trying to put people from
3 a boat to a barge and having somebody get killed. That's
4 not the intent of this.

5 CHAIRPERSON BUSTAMANTE: What is the basic
6 difference in operations that you see in reading the
7 regulations as proposed and what you're currently doing?

8 MR. BROWNING: Well, the difference would require
9 us to do a ballast water exchange at sea. I agree with
10 Maurya, we agree with Maurya that we will continue to have
11 best practices on the ballast that we do carry. That
12 would minimize that. We'll continue to do the reporting
13 and the fee.

14 Our exemption is purely for the ballast water
15 exchange at sea. That's where the safety issue comes in.
16 On safety exemption, it's regular business for us. And
17 unmanned towed barges should be looked at as something
18 that cannot do that.

19 CHAIRPERSON BUSTAMANTE: Well, according to
20 staff, you heard what the response was, is that this
21 regulation would not require you -- in the event that you
22 believe there was safety and you were able to present that
23 to the staff, that there would be an exemption for all
24 safety.

25 SO does it really have an impact on what you're

1 currently doing?

2 MR. BROWNING: We would be more comfortable if it
3 was in the reg that the barges -- unmanned towed barges
4 were named in there as something that did not have to do
5 that.

6 CHAIRPERSON BUSTAMANTE: But in terms of your
7 operations, in terms of what you're actually doing, would
8 these regulations as proposed have any effect at all in
9 terms of your operations?

10 MR. BROWNING: If we were able to use the safety
11 exemption each time, we could run the way we're running
12 right now.

13 CHAIRPERSON BUSTAMANTE: Okay. Please.

14 ACTING COMMISSIONER SHEEHAN: Along the same
15 lines of what the Lieutenant Governor said. Is it a
16 presumption issue, that you were presumed to be required
17 to do this unless you get an exemption, whereas right now
18 you are not presumed to be required to do this? Is this a
19 legal issue or is it more just an operational issue?

20 MR. BROWNING: I'm not sure I can answer that.
21 It could be both. Our -- we -- the safety exemption is a
22 simple process. We can write it into our plan as a safety
23 exemption. But we would like the Commission to recognize
24 that we're unique in how we operate.

25 ACTING COMMISSIONER SHEEHAN: Okay.

1 EXECUTIVE OFFICER THAYER: I think -- at a staff
2 level one thing we talked about doing to make this issue
3 clear, crystal clear, is write them a letter which
4 basically says, you know, under existing law, under our
5 regulations and with the existing state of technology, we
6 believe that the safety exemption allows you to conduct
7 operations without conducting mid-ocean -- or whatever it
8 is -- near-ocean ballast water exchanges.

9 The letter would probably go on and say, however,
10 your voyages are subject, as everybody else is, to the
11 requirement of looking for feasible measures and also
12 providing the reports so that we have the data on what's
13 happening out there. And, you know, as a means to provide
14 some comfort, to make it clear that we as a commission
15 don't intend to come after them if they're using the
16 safety exemption under the present situation.

17 CHAIRPERSON BUSTAMANTE: I think what the
18 Commissioner is saying it's not a matter of comfort. I
19 think she's suggesting perhaps -- maybe I should let you
20 go ahead and speak -- but it sounds like legal matters,
21 whether there's a legal presumption could mean it could
22 have an impact on insurance, it could have an impact on
23 the broader things, and is there a way of being able to
24 resolve the legal issue --

25 ACTING COMMISSIONER SHEEHAN: I see lots of

1 pointing fingers.

2 EXECUTIVE OFFICER THAYER: I think everyone's
3 looking for Mark Meier, who is the attorney who's
4 worked --

5 ACTING COMMISSIONER SHEEHAN: Can I just --

6 MR. BROWNING: Yes.

7 ACTING COMMISSIONER SHEEHAN: That is what --
8 maybe I'm reading this incorrectly -- but that is sort of
9 the issue I see. Because from an operational perspective
10 nothing would change. But the way the regulations, it
11 is -- you are now required to do this unless you get the
12 exemption. And so there was a presumption that you will
13 comply unless you somehow get the exemption. And so my
14 question is trying to deal with the operational. It
15 doesn't sound like it would change really the operations,
16 because until there's some other technology that would
17 allow the industry to do this, you will continue to
18 operate like you are now. And the issue would be:
19 Notwithstanding that fact, are we creating a new legal
20 burden for them or someone who could go after them, even
21 though everybody agreed they can't do it now? I think
22 that -- that's what I see as sort of the sort of the
23 splitting of hairs the issue here. And so how could we
24 address that issue so that operationally you're still
25 doing the same, but re haven't somehow created --

1 CHAIRPERSON BUSTAMANTE: Paul, I think not only a
2 letter from the regulatory agency, but perhaps a letter
3 from the Attorney General's office would help clarify
4 legal matters rather than thinking of this as an issue of
5 comfort. I know you used the word -- but it's a -- it
6 could be --

7 EXECUTIVE OFFICER THAYER: No, we don't intend to
8 have that effect at all. And I don't know whether Mark
9 has -- Mark's the attorney -- Mark Meier with the State
10 Lands Commission who's worked on this.

11 SENIOR STAFF COUNSEL MEIER: Yeah, Mark Meier,
12 Senior Staff Counsel for the Commission.

13 There are several different ways you could do it.
14 You could draft an exemption from the exchange
15 requirements, specifically narrowly focused on the need
16 that -- if an exchange required the transfer of personnel
17 from a tug to a barge, then you could say that for safety
18 considerations you were exempt from the exchange
19 requirement. That would be a blanket exemption.

20 It could be -- I think we could probably draft it
21 as narrowly as possible. It would require us to go out
22 and do a -- I believe a 15-day recirculation of the
23 regulations.

24 CHAIRPERSON BUSTAMANTE: I don't think that's
25 the -- where we're headed.

1 SENIOR STAFF COUNSEL MEIER: But the point is
2 that from a legal presumption standpoint, it seems to me
3 to be a better way to go -- what I'm trying to say is
4 the -- I think the exemption already exists legally under
5 the proposed regulations, the safety exemption. The
6 question is whether or not there's sufficient clarity
7 that this safety exemption covers the transfer of
8 personnel from the tug to the barge. And so if you had a
9 letter directed to the ship operator saying, "You are
10 exempt from" -- "this particular barge from this
11 particular activity," then it seems to me you've met all
12 your presumptions there. And in a way it's more narrowly
13 defined, narrowed focused on this particular company and
14 this particular activity, as opposed to a blanket
15 exemption where you still have to go through a legal
16 interpretation whether this applies to you or not.

17 CHAIRPERSON BUSTAMANTE: Any thoughts about, you
18 know, an AG opinion or --

19 ASSISTANT ATTORNEY GENERAL HAGER: Well, you
20 don't want to --

21 CHAIRPERSON BUSTAMANTE: I'm not trying to put
22 anybody on the hook here. I'm just trying to figure out
23 how to resolve it.

24 ASSISTANT ATTORNEY GENERAL HAGER: No, no.

25 I will agree with Mark. I think the point of --

1 the difference is: Is that what triggers the exemption?
2 Is it an action by staff or is it the regulation itself?
3 And I think the staff is saying it should be an action by
4 staff, and that should create the same result. But it
5 leaves the discretion -- or the action, I should say, with
6 the staff.

7 SENIOR STAFF COUNSEL MEIER: The regulatory
8 exemption already exists. It's the safety exemption.
9 What we're doing is interpreting that exemption as it
10 applies to this particular case. And it seems to -- it's
11 my feeling that, from a legal standpoint and from a
12 comfort standpoint, if I had a letter saying, the Sause
13 Brothers, that these barges are exempt from exchanges
14 insofar as they require need to transfer personnel from
15 the tug to the barge, that's clearer than having a blanket
16 exemption that you still have to go through the legal
17 interpretation of deciding whether or not it applies to --

18 CHAIRPERSON BUSTAMANTE: Not being an attorney,
19 I'd like to see the three attorneys not their heads in
20 some kind of consensus.

21 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

22 CHAIRPERSON BUSTAMANTE: Okay?

23 Let the record show that the three attorneys all
24 nodded in consensus.

25 UNKNOWN SPEAKER: In the affirmative.

1 CHAIRPERSON BUSTAMANTE: In the affirmative.

2 Thank you. Another attorney.

3 (Laughter.)

4 SENIOR STAFF COUNSEL MEIER: I think that one of
5 the things that helps us in this case is that there are a
6 defined number of barges that we're talking about. We can
7 write letters that address specific barges. We don't
8 need -- we're not talking about 150, 200 barges here.

9 CHAIRPERSON BUSTAMANTE: Okay. Thank you.

10 Is there any other comments or --

11 MR. BROWNING: I do have a question.

12 I do agree with the letter concept or the
13 regulation because they both will work.

14 My question is: If we do get a letter naming the
15 operation and the safety hazards, you know, that's fine.
16 But will this letter -- you know, we've been doing this
17 business and this trade for 50 some years and intend to
18 for that far out in the future. Will this letter stand
19 for that long of a time?

20 CHAIRPERSON BUSTAMANTE: Do you mean in the
21 future?

22 MR. BROWNING: Yes.

23 CHAIRPERSON BUSTAMANTE: I don't think so.

24 MR. BROWNING: For that reason, that's why I
25 would like to see something put in the regulations that

1 specifically names, you know, these barges -- unmanned
2 towed barges, so, you know, we don't have to go to another
3 letter to the next Commission.

4 CHAIRPERSON BUSTAMANTE: I understand.

5 ENVIRONMENTAL PROGRAM MANAGER FALKNER: The law
6 sunsets in 2010. So, you know, for all we know, there
7 won't be a reauthorization. And so we -- because of the
8 question of the future.

9 MR. BROWNING: I understand that. But it would
10 give the industry a comfort, you know, if we could get,
11 you know, just that narrowed down to just the ballast
12 water exchange for unmanned tow barges.

13 SENIOR STAFF COUNSEL MEIER: If the letter is
14 issued by the Commission staff pursuant to a delegation,
15 then it carries the same authority as the Commission. If
16 the Commission itself directly authorizes this particular
17 letter or signs the letter itself or if staff signs the
18 letter -- if Paul signs the letter on behalf of the
19 Commission, it's an action of the Commission. It carries
20 from Commission to Commission. So that's -- the letter
21 would remain in effect until it canceled.

22 CHAIRPERSON BUSTAMANTE: That doesn't mean he has
23 an exemption for 50 years, is what he's looking for.

24 SENIOR STAFF COUNSEL MEIER: It would depend on
25 how the letter is written.

1 ACTING COMMISSIONER SHEEHAN: Well, but the --

2 SENIOR STAFF COUNSEL MEIER: And he would never
3 have an exemption for longer than four years because
4 the --

5 ACTING COMMISSIONER SHEEHAN: Right. I mean the
6 authority for the letter is the statute that caused these
7 regulations to be developed.

8 SENIOR STAFF COUNSEL MEIER: Right.

9 ACTING COMMISSIONER SHEEHAN: And if the statute
10 expires in 2010 --

11 SENIOR STAFF COUNSEL MEIER: But it would depend
12 on what the legislative action -- what legislative
13 action --

14 EXECUTIVE OFFICER THAYER: But it has to be a
15 legislative action if these regulations go away in four
16 years.

17 ACTING COMMISSIONER SHEEHAN: The statute goes
18 away. Now, what would happen, my guess would be, the
19 Legislature would come back to figure out, you know, "All
20 right, have we learned anything new, new technology? Are
21 we going to extend it? Are we going to change?" you know;
22 which at that point then we would have to revisit the
23 issue.

24 SENIOR STAFF COUNSEL MEIER: That's the purpose
25 of the sunset provision, to revisit this issue to --

1 ACTING COMMISSIONER SHEEHAN: Correct. Exactly,
2 to come back and see, okay, what has changed?

3 So the letter would go, at least I would read it,
4 as long as the statute and regulations implementing that
5 statute are in effect. And then the issue would have to
6 be revisited at that point in time.

7 CHAIRPERSON BUSTAMANTE: Okay?

8 Thank you, sir.

9 MR. BROWNING: Thank you.

10 CHAIRPERSON BUSTAMANTE: Linda.

11 Please give your name for the record.

12 MS. SHEEHAN: Good morning, Chair Bustamante,
13 members of the Commission. I'm Linda Sheehan. I'm the
14 Executive Director of the California Coast Keeper
15 Alliance.

16 The Coast Keeper Alliance represents ten
17 individual water keepers from Humboldt Bay down to San
18 Diego, and so we represent every port in the state, and
19 members have great interest in these proceedings.

20 In my prior position with Ocean Conservancy I was
21 quite active for eight years on the invasive species
22 issues, including acting sponsor of AB 703 and AB 433, the
23 enacting legislation that produced the regulations before
24 you today. And I did attend to workshops that were put on
25 by staff to help draft these proposed regulations. And I

1 can attest that staff did an excellent job in conducting
2 outreach and communication with members of the regulated
3 community, not only in California but up and down the
4 coast, the entire Pacific Coast to try to gain the type of
5 consistency that is so important in making sure that these
6 work in the long term.

7 I do want to address the point of the -- the
8 point that's been discussed here today, a little bit about
9 the exemption.

10 I have some concerns about blanket exemptions in
11 general, because the way that the law and regulations are
12 drafted is with a focus on best available technology
13 economically feasible. And that is -- it's in the
14 statute. And, as Mr. Thayer said earlier, it's a changing
15 dynamic. It could change from, you know, week to week.
16 Who knows when the next new silver bullet's going to come
17 out to address this problem. And so it is something that
18 needs to be periodically evaluated. So I would certainly
19 oppose any type of blanket exemption.

20 And one way to address sort of an ongoing safety
21 exemption might be to go through the alternatives process,
22 a petition for alternative action, which is detailed in
23 the regulations and which allows for the Commission and
24 the public to appropriately weigh in on what the best
25 available technology economically feasible is and whether

1 the action in light of safety or other concerns is
2 appropriate. And I think that that is an excellent
3 system, and it could address pretty much any concern that
4 comes up. And so I would encourage you to adopt the
5 regulations for that purpose.

6 If you have any questions, I'd be more than happy
7 to answer them.

8 CHAIRPERSON BUSTAMANTE: Thank you.

9 MS. SHEEHAN: Thank you.

10 CHAIRPERSON BUSTAMANTE: Abe Doherty.

11 MR. DOHERTY: Good morning. My name is Abe
12 Doherty, and I'm a project manager of the California
13 Coastal Conservancy. I'm here today to speak in favor of
14 the proposed regulations as proposed by staff.

15 As you know, Mr. Chair, last week I brought
16 projects to the California -- Protection Council for
17 restoration of hill grass and native oysters in San
18 Francisco Bay.

19 The Coastal Conservancy is currently spending
20 millions of dollars to restore important habitat in the
21 estuaries and the coastal areas of California. And
22 invasive species really threatened these restoration
23 projects. So whatever we can do to limit the introduction
24 and spread of invasives in the state, we really encourage
25 that to happen.

1 And the Coastal Conservancy is also spending
2 millions of dollars to manage invasive species. And
3 prevention of these invasives in the first place is the
4 most cost effective, in some cases the only, way to manage
5 these species.

6 So, in conclusion, these invasives threaten the
7 significant investment the state is currently making to
8 restore habitat and to actually manage the species that
9 have already been introduced. So I'm hear to speak in
10 favor of passing the proposed regulations as proposed by
11 staff.

12 Thank you.

13 CHAIRPERSON BUSTAMANTE: Thank you.

14 Karen.

15 MS. REYNA: Hello. For the record, my name is
16 Karen Reyna, a resource protection specialist for the Gulf
17 of the Farallones National Marine Sanctuary.

18 The National Marine Sanctuary Program is a
19 program of NOAA federal program. And there are four
20 sanctuaries in California: Channel Islands, Monterey Bay,
21 Gulf of the Farallones, and Cordell Bank. Our areas
22 include surrounding the Channel Islands and all areas
23 between Cambria and Bodega Bay.

24 And we also sent a letter, which I hope you
25 received. We support the staff recommendation for the

1 proposed regulations. And we actually work with the
2 Coastal Conservancy on eradicating and preventing invasive
3 species. We manage Tomales Bay. And that's one of the
4 areas that we've had problems. And then we're right off
5 the Golden Gate. So this is an issue of concern for us.

6 This is also a timely decision for you and for
7 us, because it complements a proposed regulation that we
8 have, by all California sanctuaries in our management plan
9 and review process. And that regulation is to prohibit
10 the discharge of non-indigenous species. So this
11 complements it quite well.

12 And that's pretty much it. Thank you.

13 I can answer any questions.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 The last speaker we have is Jason Lewis.

16 MR. LEWIS: Good morning. For the record, I'm
17 Jason Lewis, Vice President of the American Waterways
18 operators for the Pacific Region.

19 Actually I just want to -- I'll be very brief. I
20 want to echo the support for Mr. Browning's statements
21 earlier.

22 A few points that I've heard involve consistency,
23 for one. And when we look at Washington, Oregon and
24 California, with consistency we're talking about
25 Washington's self-propelled vessels. And this captures

1 your unmanned tank barges because they're not
2 self-propelled, because we're including everything that
3 floats. We're putting it in there.

4 The other thing is about the exemption. When we
5 look at this, we're looking at something that the staff at
6 this time can decide that it's unsafe to do this.
7 Tomorrow the staff can say, "Well, you know, really we've
8 had a new innovation in the boats that are used for
9 opening the tug to the barge. And because of that I
10 really think it's safe." Or "Now we've developed a
11 \$50,000 ionization process that you should be able to
12 effect on your barge, and you shouldn't be exempt from
13 this. We're going to rescind our letter." Because the
14 letter's really dependent upon the staff who are issuing
15 it and upon the Commission.

16 And I think this is a very important issue. And
17 I consider ourselves out on the frontier of this, and
18 that's why we're so aware of it. Right now there's
19 nothing going on.

20 I've also heard that it expires in 2010, in four
21 years, and that we shouldn't write anything in exemption
22 list because it would be too far reaching. Well, I
23 personally don't see any technology coming down the pipe
24 in the next four years that's going to allow us to do this
25 safely.

1 So if we have the commitment that you're willing
2 to say, "Okay, look, we trust that you're actually doing
3 the work to go out and look at the technology, maybe we
4 should revisit this in a year or two and look at" -- maybe
5 our exemption isn't warranted because there's something
6 out there that allows us to do it. But to go the other
7 way, we kind of have to be at the -- really at the mercy
8 of the staff saying, "Okay. It's safe" or "unsafe and
9 we're going to rescind the letter" or -- I know dealing
10 with other states, I've dealt with that on other issues.
11 And I just -- I would hate to see someone get hurt because
12 of that. I mean those decisions really need to be made
13 with taking safety into account.

14 And that's all I have.

15 CHAIRPERSON BUSTAMANTE: Is there a -- I thought
16 I heard earlier. Wasn't there a set period in which we're
17 going to review these regulations by the Commission?

18 EXECUTIVE OFFICER THAYER: The Commission in the
19 staff recommendation will be directing staff to come back
20 in 12 months and report to the Commission at an open
21 hearing such as this, where people from the industry can
22 testify as to the effect.

23 The other thing I'd like to point out is that --

24 CHAIRPERSON BUSTAMANTE: So we'll be reviewing in
25 one year?

1 EXECUTIVE OFFICER THAYER: Yes.

2 And the other thing I'd like to point out is that
3 no matter what staff does with this letter, two things are
4 true: First, the regulations are worded in a way that
5 this -- the safety exemption is not something that's
6 decided upon by staff. They don't apply to us for a
7 safety exemption. The master of the vessel can claim that
8 safety exemption. If staff disagrees, ultimately we have
9 to file some sort of litigation. And we could not do that
10 without coming back to the Commission for approval.

11 So staff does not have the unilateral authority
12 to enforce this in a way absent Commission input on this.

13 ENVIRONMENTAL PROGRAM MANAGER FALKNER: Also, I
14 think the -- the regulation and the law is very clear, is
15 the responsibility for the vessel, the crew, and the cargo
16 rests with the captain. So it really is your members'
17 responsibilities to determine, if this is a safety issue,
18 they better not do it, because they're not absolved of
19 that responsibility. We're not taking that
20 responsibility. It's the responsibility of the captain
21 and the crew to determine that.

22 And as Paul said, if you claim a safety exemption
23 and we disagree with you, we'll come back to you. But
24 that is your -- that's a captain's exemption to take.
25 It's not our decision. It's not their decision.

1 CHAIRPERSON BUSTAMANTE: So the presumption I
2 guess here is that you're making the call on safety and
3 you make that determination. And if we -- as was said
4 here twice now, if we disagree, there will be some type of
5 legal action that will have to come through us. You'll
6 have a chance to be able to come back here and talk about
7 that as we consider legal action. In the meantime, we
8 will have a one-year period in which to review this matter
9 so that you'll be able to come back and talk about exactly
10 what the experiences are with your industry and this
11 regulation.

12 MR. LEWIS: Thank you.

13 CHAIRPERSON BUSTAMANTE: All right, sir.

14 ACTING COMMISSIONER ARONBERG: I'd like to make a
15 motion to adopt staff's recommendation, with the caveat
16 that a letter as discussed will be provided, and then we
17 show that that letter is satisfactory to Ms. Sheehan and
18 the other folks who spoke on that before the letter goes
19 out.

20 ACTING COMMISSIONER SHEEHAN: I'll second.

21 CHAIRPERSON BUSTAMANTE: The motion's been made
22 and seconded.

23 And so let the record show that the vote is
24 unanimous.

25 And you will be running those letters by us

1 before they go out?

2 EXECUTIVE OFFICER THAYER: Yes, sir.

3 CHAIRPERSON BUSTAMANTE: Okay. Very good.

4 I think that ends our regular calendar; is that
5 correct?

6 EXECUTIVE OFFICER THAYER: As long as there's no
7 public comment.

8 CHAIRPERSON BUSTAMANTE: Public comment. Okay.

9 Is there any public comment on any particular
10 issue that you'd like to bring before the State Lands
11 Commission?

12 Seeing none, that ends our regular calendar.

13 And we will be going into closed calendar. So
14 those of you who are not a part of this closed session,
15 would you please begin to exit.

16 (Thereupon the California State Lands
17 Commission open session meeting adjourned
18 at 11:30 a.m.)

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