

## OREGON TASK FORCE on the SHIPPING TRANSPORT of AQUATIC INVASIVE SPECIES

*March 11<sup>th</sup>, 2010  
1:30 – 3:30pm*

1. **In attendance:** Mark Sytsma (chair), Rick Boatner (for Erick Rickerson - ODFW), Jim Townley, Jeff Christensen (ODEQ), Jessica Keys, Marla Harrison, Val Brenneis, Dick Vander Schaaf, Ralph Breitenstein, Rian Hooff  
**On the phone:** State Representative Arnie Roblan, Maurya Falkner, Dick Lauer, Brian Doherty (for Frank Holmes)
  
2. **Announcements (Rian)**
  - ❖ EPA Draft Report on Vessel Discharges (Fishing Vessels and Non-recreational vessels < 79 feet).
  - ❖ Rian presented the rulemaking proposal to the DEQ Executive Management Team. The issues currently identified for rule revision/development include: alignment of definitions between ORS and OAR's; revise and clarify reporting requirements; develop protocols for emergency discharge of high-risk ballast water; and potentially, develop ballast water discharge standards and implementation timelines.
  
3. **Review of Task Force Charge (including amendments from HB 2714)**
  
4. **DEQ Ballast Program Funding Challenges/Options**
  - ❖ Opening Comments (Jeff Christensen - ODEQ)
    - We recognize that this is an important and difficult topic that DEQ has given considerable attention in recent months.
    - In order to address concerns previously voiced by industry representatives, DEQ has prepared a brief fact sheet to help communicate the rationale and justification for pursuing the topic of restructuring the ballast program budget and fees. We look forward to your input to help fine tune this document, as well as the straw proposal that we have developed for today's discussion.
    - In recognition of the difficult economic times that we are in, we have attempted to craft a proposal that addresses some of the concerns that you may have, including; i) the fee structure would be modeled after the Spill Prevention Fee that DEQ currently administers., and ii) we have suggested a cost share approach toward generating the necessary funds to support activities rather than solely supported by industry fees, and iii) a phase-in approach to the fees so that they would not be implemented immediately.
    - DEQ would like to emphasize that we are not wedded to this specific proposal. We would like to use the task force as an advisory committee to help shape the proposal in a manner that is fair and reasonable. As DEQ Director Dick Pederson stated in his introduction and welcome to this force, we do not necessarily expect or need to achieve unanimous agreement on the specifics of a proposal. Rather, we hope to solicit your best advice in achieving a proposal that is as fair as possible.
    - Threshold question to consider: Can we agree the ballast program faces a funding challenge? Does it need a fix? Is it important that industry help support a funding solution?

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- Another key question: Is the proposal as fair and reasonable as possible, or are there better ways to structure a fee and/or generate program revenue?
  - The timing is such that DEQ Executive Management will be developing the agency budget request in the next 1-3 months and discussing which legislative concepts/proposals the agency will choose to recommend to the Governor's Office. What we are looking for today is some indication from the task force whether the concept of a more stable ballast program funding strategy is something that you think is necessary/worthwhile, and whether an industry fee may be a reasonable component of that solution. That said, we don't need to have agreement on the details because we still have time to adjust or fine-tune the proposal based upon further discussion.
  - The ballast program funding situation is serious, and the state budget forecast is not particularly bright. The state economist is forecasting a statewide budget deficit of approximately 2.5 billion dollars. Rather than being asked for 10% general fund reduction options from each state agency, it is likely that the Governor will request 25% reduction options. Programs that are solely funded from general fund dollars, such as the ballast water position, are most vulnerable to these cuts. Since there are not a lot of GF programs at DEQ, we have few options for where those cuts can come from.
- ❖ Comments from Rep. Roblan
- Agrees that current trends suggest that significant cuts, as much as 25%, may be necessary in order to balance the next biennium budget.
- ❖ Dick Lauer question to Rep. Roblan: How do we sell this to our customers?
- Ans: Invasive species prevention is comparable to what the shipping industry is already familiar with in regards to spending money on prevention and preparedness to be ready for a potential oil spill (even when no spills are occurring). We need to figure out how to reduce and limit the amount of money we are already spending to deal with invasive species that are already here, and one component of that is to prevent new species from arriving. It is important to find a balance between industry and public support for these types of problems that affect all of us.
- ❖ Comment from Mark Sytsma - The crux of the problem appears to be: how do we have a healthy economy that is also protective of our natural resources.
- ❖ Marla commented that it is important for us to consider the question of how much of the ballast water program activities are necessary and more specifically, to what level is protective versus what level is overkill? The question we have is identifying the sweet spot in between those two extremes. As a group that is the question that we are going to need to defend and thus any discussion of funding proposal needs to be focused on that issue.
- ❖ Mark Sytsma asked Maurya Faulkner (CSLC) to provide an overview of the California Marine Invasive Species Prevention Program.
- Since 2000 the program has been funded by vessel arrival fees. The fee has fluctuated over that time-period between \$250 per qualified vessel arrival to the current high of \$850 per arrival.
  - The revenue generated from these fees supports a much broader scope program than what is being proposed or discussed in Oregon. In addition, to vessel monitoring and inspections, the funds also support ambient monitoring, grant research, and other research/analysis activities. The CSLC program receives a majority of the resources, but three other agencies also receive funds to support specific activities related to invasive species research and monitoring (e.g. CDFG for ambient monitoring).

- 8500 qualifying voyages pay into the dedicated fund that is then appropriated to the agencies (total annual revenue of approximately \$7,225,000). Currently support approximately 12 FTE, including data entry, scientists, and inspectors. Legislatively mandated to inspect 25% of the voyages into state waters.
- Other program activities include hull-fouling research and assessment, and the development and implementation of ballast water discharge standards that are just starting to come on-line.
- Question from Mark: Where did the 25% inspection rate come from? Ans: No scientific basis, but something was required to be in statute. The 25% value is not necessarily a bad choice, just be careful with language regarding the difference between ‘collecting samples’ versus ‘inspections’ (preferred).
- ❖ Marla identified concerns that DEQ is tying its justification for ballast water program fees to the EPA Vessel General Permit and the possibility that a state issued permit is pending. Jeff Christensen and Rian clarified any misunderstanding by stating that any ballast water program fee would not be tied to a VGP permit process. Rather, as happened with the VGP 401 certification process last year and may happen in the future, having staff expertise at DEQ (ballast water program) to assess and consult with industry and the DEQ water quality division personnel is a service that is beneficial to industry and would continue to be used to help identify the most efficient and practical ways to reduce program cross-over or duplication of effort.
  - Dick Lauer voiced concern to second Marla that the administrative time required for ballast water management and for VGP is significant and costly.
- ❖ Marla noted concerns that we are heading into a political/cultural dynamic where people are pointing fingers at potential pathways or groups that could be responsible for introducing AIS and suggesting that those groups should be paying for prevention and control efforts. The Oregon shipping industry is a niche port market that is vulnerable to operators switching to alternate ports (north or south). The tipping point is fairly low compared to California or Puget Sound ports. We need to determine and be sensitive to that ‘ouch’ point in order to keep our economy vital.
  - Mark asked if the port has identified the tipping points? Ans: Marla suggested that the answer will be complex: commodity specific, and varies over time. That said, she suggested that they would be able to help with providing some indication of how close we may be to those tipping points, and whether some sectors may be more vulnerable than others.
- ❖ Marla noted that to sell any fee based proposal, she will need to make sure that we can demonstrate that we have scrubbed the program sufficiently to make sure that it is functioning as efficiently as possible and that it is at a size that is sufficient, but not too large. Also, can we demonstrate that we have exhausted finding alternative sources of funding. For example, could penalty/violations money for non-compliant actors be used to help support the program?
- ❖ Dick Vanderschaaf asked about the possibility of tapping into Port District tax/fee moneys as a source of funding for this program
  - Marla and Dick Lauer noted that many/most of the vessels call upon private port facilities (grain, lumber, etc.) and thus are not part of the port district tax base. In many regards, the majority of the ‘at-risk’ vessels do not call upon port districts that have taxation base options.
  - Mark questioned whether that would have to be a vote to the citizens of the port district?

- ❖ Mark suggested that we review the bullet list of program activities that Rian included on the Fact Sheet document and see whether we can agree that the activities are necessary and worth maintaining at current levels and/or at increased levels.
  - Monitoring and screening of vessel arrivals
    - General agreement that this needs to occur in a timely manner.
  - Review of ballast water reporting forms and related data entry/management
    - General agreement that this needs to occur in a timely manner.
  - Policy development and coordination
    - General agreement that this is important work that needs to continue at present or greater levels.
  - Vessel Inspections
    - This is one of the few program objectives that is amenable to quantifiable performance metrics. There is general agreement that the current rate of vessel inspections is probably too low, but determining how much is enough, or how much is sufficiently protective is a topic for discussion. See below for greater detail and discussion on this matter.
  - Industry education and outreach
    - General agreement that this is an important function of program activities.
  - Enforcement actions
    - It was agreed that this is a mandatory function of the program, and that a transition from outreach/education and warning letters towards the use of more formal enforcement action is justified.
  - Participation in intra- and inter-agency invasive species management activities.
    - Rian explained that he spends between 5-10% of his time on these issues, and is largely the result of DEQ participation on the Oregon Invasive Species Council and the fact that prior to the BW program, DEQ did not have anyone available to provide a technical advisory role and/or consultation/coordination on invasive species management issues that may interact with DEQ program area work or responsibilities. There was no suggestion that these activities are inappropriate for the ballast water program or Rian's time.
- ❖ Marla asked Rian/DEQ to identify which of the above program activities are deficient with current staffing levels and how much of an increase could be expected if the program had the additional resources it has requested/proposed. Ans: All program areas would benefit and become more productive if the program had additional staffing. Presently, the consequence of having an understaffed program is that Rian has spread his time thin across all the program areas. As identified in the fact sheet, the two areas that would see a quantifiable increase would be in daily real-time screening of arrivals and their ballast reports (20% increase) and vessel inspections (~20 % increase).
- ❖ Marla asked if there is any reason to believe that Oregon is more or less at-risk than other ports based on the types of ships that we see. Ans: Based on average ballast water volume discharged per vessel arrival, Rian suggested that the risk of introducing non-indigenous species is significantly greater at Columbia/Willamette and Coos Bay ports. This is due to the greater proportion of bulk carrier vessels servicing our export commodity industries (grain, wood, ash, etc.) that typically arrive fully empty of cargo and subsequently de-ballast large volumes while in port. Over 50% of our arrivals are bulk carriers, which discharge over 9,000 m3 per visit, on average. Despite having substantially fewer vessel calls than other major west coast ports, the Columbia River receives more discharged ballast than any of the other port

systems (LA/LB, SF Bay, or Puget Sound). On the other hand, Rian noted that ballast discharged dockside at freshwater ports in the Portland area is only a serious threat if the ballast had originally been sourced from another freshwater port system. Ballast sourced from marine ports, or ballast that had undergone a thorough/proper mid-ocean exchange represents a low-risk to the environments in the Columbia upriver environments.

- ❖ Mark suggested that inspection rate seems to be the crux of the issue. What rate is sufficiently protective? Ans: Determining what rate is sufficient is very difficult and depends on many variables and assumptions of what the goal of the inspection program is. How much could be saved if we inspected 10% rather than 20%? Ans: A 1.5 FTE program would suffice in bolstering multiple program activity areas and help the program achieve a 10-12% inspection rate.
- ❖ Dick Lauer commented on concerns over indirect cost to industry to comply with administrative requirements and frustrations associated with duplicative reporting to comply with state and federal requirements. Rian replied that our education/outreach is focused in encouraging vessel operators and agents to simply cc DEQ with the same email message and report attachment that they are sending to the federal NBIC center. Thus, the administrative output to comply with our state reporting requirement should be negligible.
- ❖ Maurya suggested that if we pursue a fee to consider the approach that they took in California: they described how the program was going to be structured and how much it was going to cost, and then put it to the industry to figure out the best way for them to pay for (i.e. let all the various industry representatives and stakeholders work out a fee approach that is most fair). After extensive discussion regarding various options, the end result was in favor of a flat-fee.
- ❖ Rep. Roblan offered final comment regarding Fire protection agreements that have been developed in this state and how those programs were paid for. The 50% GF and 50% industry approach has worked well and kept both sides invested and committed to the importance of maintaining a successful program. Identifying it as a partnership where the cost share is not going to change helps set appropriate expectations.
- ❖ Mark suggested that DEQ needs to sharpen its pencil on the program activity metrics (how much is necessary) and on the proposal options. He also asked why 60/40 and not 50/50 cost share. Ans: DEQ permit programs are legislatively mandated to function on a 60 fee/40 GF basis, which is where we got that number from, but that doesn't mean we are wedded to using it here.
- ❖ On the issue of how much vessel inspection effort is enough, Rick Boatner encouraged DEQ to explore or determine what the factors are that influence how much confidence we would have that we are being protective with 10% vs. 20% inspections. Dick VanderSchaaf also noted that it may be justified to start by inspecting a greater number (20%) in order to statistically be able to determine whether we could go lower to achieve goals (doesn't work the other way by ramping up).
- ❖ Lastly, Rian walked everyone through the more detailed straw proposal 1-pager to articulate the assumptions and basis for the calculations that were used:
  - General agreement that the risk-factor multipliers used to calculate a sliding scale fee structure are reasonable and legitimate.
  - Various comments seemed to lean towards a preference for going with a flat-fee, though including the sliding scale for a straw proposal to industry may still be warranted.

**Action Items for Next Meeting:**

Marla: provide some data or assessment about the economic trigger points or vulnerabilities of specific shipping sectors to this new proposed fee.

Rian: DEQ will provide couple of alternative proposals for consideration at the next meeting. Factors that DEQ needs to explore include: i) cost-share distribution options, ii) rationale or trade-offs for various levels of inspection effort, and iii) could a ½ FTE functional work to meet program needs at DEQ?

**NEXT MEETING:** Thursday April 8<sup>th</sup>, 2010 (1:30) at DEQ Headquarters