

# California’s ballast water exchange law

Vessels calling in the United States can still use exchanges to treat ballast water prior to their respective deadlines for installing a USCG type-approved treatment system. However, failure to properly conduct exchanges can lead to substantial penalties, especially in California.

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## California’s ballast water exchange law

California’s ballast water exchange law is found in the Marine Invasive Species Act, Cal. Pub. Res. Code §§ 71200 – 71271. California law requires vessels of 300 gross tons or more whose voyages commence outside the Pacific Coast Region (the “PCR” see Fig 1), and which use exchanges to treat their ballast water, to conduct those exchanges in water at least 2000 meters (m) deep and 200 nautical miles (nm) from “land.” Vessels whose voyages commence inside the PCR must conduct exchanges in water at least 200 m deep and 50 nm from “land.”

## Common mistakes leading to violations of California’s ballast water exchange law

California law defines “land” to include “...rock outcroppings or islands located offshore.” Ignorance of this can result in vessels violating the state’s requirements concerning how far offshore exchanges must be conducted. For example, a vessel sailing to California from Mexico may fail to account for islands off the west coast of the Mexican mainland when conducting its exchanges (see Fig 2).

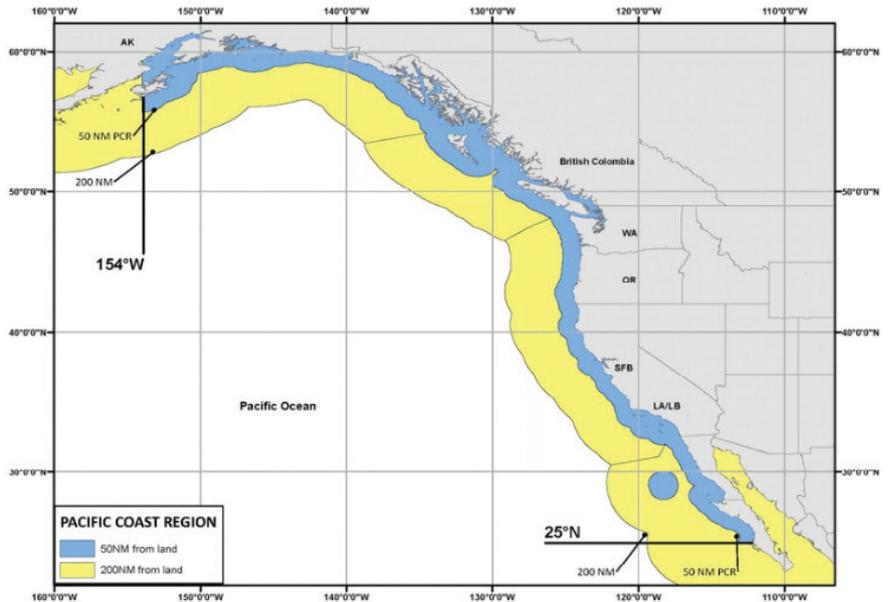


Fig 1. The Pacific Coast Region



Fig 2. Islands off the west coast of the Mexican mainland and Baja California

Consequently, although the vessel is more than 200 nm off the Mexican mainland when conducting its exchanges, it may be less than 200 nm away from one of these islands. When determining where to conduct exchanges, crews aboard vessels on such voyages should remember to account for these islands.

Similarly, crews aboard vessels taking the Great Circle Route as they sail to California from Asia should remember to account for Alaska's Aleutian Islands, the Farallon Islands off San Francisco, and the Channel Islands off Southern California, when conducting exchanges.

### Civil penalties for violations of California's ballast water exchange law

Violations of California law can result in costly civil penalties. For vessels sailing from outside the PCR, ballast water discharged in California that was exchanged between 180 – 200 nm from land is subject to a \$5,000/tank penalty. Ballast water discharged in California that was exchanged between 100 – 180 nm from land is subject to a \$10,000/tank penalty. Ballast water discharged in California that was exchanged 100 nm or less from land is subject to a \$20,000/tank penalty. Ballast water discharged in California that was not exchanged is subject to a \$27,500/tank penalty. A similar civil penalty scheme applies to vessels whose voyages commence inside the PCR.

### Mitigating civil penalties for violations of California's ballast water exchange laws

The penalties the SLC pursues are frequently six figures (USD) because they are calculated on a "per tank" basis. However, when assessing civil penalties, the SLC must consider mitigating factors such as the actual harm to the environment and the cited party's past and present efforts to prevent conditions posing a threat to public health. Therefore, even if a vessel's exchanges were conducted too close to

land, Members can argue for mitigation based upon documented evidence of a vessel engaging in other ballast water management practices, which the SLC has acknowledged as effective means for preventing invasive species introductions. The following examples of such practices comes directly from the Marine Invasive Species Act:

- Avoiding ballast water uptake:
  - In darkness, when bottom-dwelling organisms rise in the water column.
  - Near marine parks, preserves, sanctuaries, and coral reefs.
  - Near areas with known infestations of nonindigenous species.
  - Near sewage outfalls.
  - Near toxic algal blooms.
  - Near dredging operations.
- In areas with poor tidal flushing or turbid waters.
- Discharging the minimal amount of ballast water necessary for cargo operations.
- Avoiding ballast water discharges near marine parks, preserves, sanctuaries, and coral reefs.
- Regular cleaning of ballast tanks, either mid-ocean or in drydock.
- Regular cleaning of anchors, chains, hull, propellers, and other wetted surfaces.

[See Cal. Publ. Res. Code § 71204.]

### Conclusion

Members trading at Californian ports – especially with tank and bulk vessels – should review those vessels' ballast water management plans to ensure they contain written instructions:

- To account for islands and rock outcroppings when determining where to conduct exchanges of ballast water likely to be discharged in California waters; and
- To the greatest extent possible, engage in the ballast water management practices set forth in the Marine



Invasive Species Act and document compliance with those practices.

Although cover for civil penalties is subject to the Club's discretion, a Member assessed with a penalty by the SLC should nevertheless contact the Club immediately, so the Club can put Members in touch with qualified counsel who can begin protecting the Member's interests by working to develop evidence of facts warranting mitigation.

Members are also referred to ECM's Client Alert 20-2018 dated 29 August 2018 on "California Marine Invasive Species Program 'Ports & Places' for Ballast Water Management and Ballast Water Reporting" on [https://www.ukpandi.com/fileadmin/uploads/uk-pi/LP%20Documents/2018/ECM\\_client\\_alert.pdf](https://www.ukpandi.com/fileadmin/uploads/uk-pi/LP%20Documents/2018/ECM_client_alert.pdf) ■

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