

Vessel Incidental Discharge Act

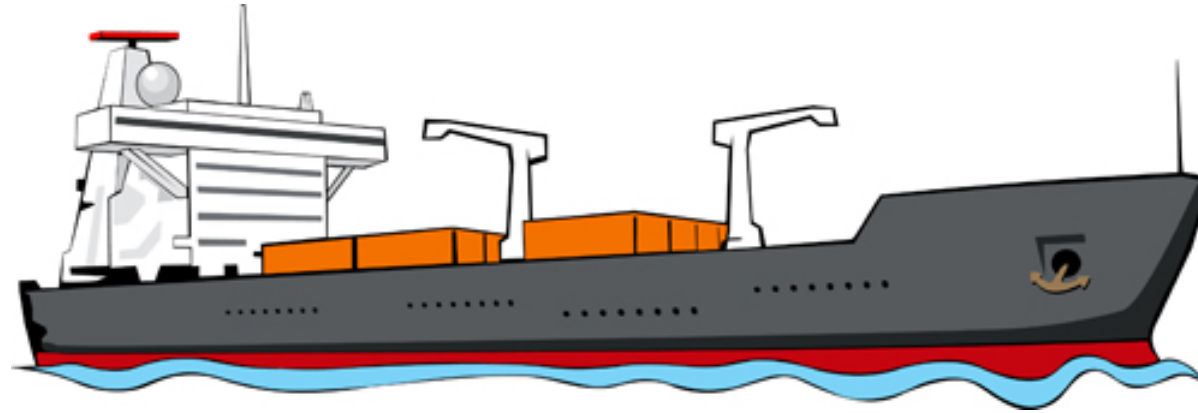


Presented by Christy Martin, CGAPS, using two slide deck sources: Hawaii DAR / CGAPS and the Western Regional Panel of the Aquatic Nuisance Species Task Force. Mahalo to Andrew Porter, CGAPS Legal Fellow, and Chris Scianni, CA State Lands Commission & WRP Chair



**Pacific Ballast
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Examples of “Incidental Discharges” (discharges incidental to the normal operations of a vessel)



- **Ballast water**
- **Hull husbandry effluent** (the effluent from in-water cleaning of vessel hulls—current regs do not include this major category of incidental discharge)
- Anti-fouling leachate (from hull coatings)
- Chain locker effluent
- Deck washdown
- Bilgewater
- Elevator pit effluent
- Cathodic protection
- Fish hold effluent
- Graywater (except sewage)

What is VIDA?

- VIDA was a big change to the Clean Water Act. It added a new section and moved “discharges incidental to the normal operations of a vessel” to that section.
- Signed into law on December 4, 2018 with the aim of creating **national standards** for incidental discharges.
- Directs EPA to adopt regulations setting national standards of performance for the operation of marine pollution control devices for discharges incidental to the normal operation of a vessel (e.g. ballast water management systems, biofouling/hull cleaning technologies, etc.)
- Once EPA regulations are finalized, the U.S. Coast Guard (USCG) has up to two years to develop and adopt enforcing regulations. Once fully enacted, will preempt state regulations. However, VIDA expressly allows states to enforce or co-enforce the federal regulations.
- VIDA prohibits states from assessing a fee relating to any incidental discharge unless that state had in place such a fee prior to December 4, 2018.

Scope of VIDA



Exempt: All commercial fishing vessels regardless of size, for all incidental discharges *except ballast water*



Exempt: Commercial vessels less than 79 feet

1/29/23 from Nick Rosenau, U.S. EPA: *Marshall Islands, Palau, and the Federated States of Micronesia are now "Freely Associated States" with their own membership in the United Nations (not part of the United States) VIDA would not be applicable to them.*



Not covered under VIDA: Recreational vessels of any length (states retain authority to regulate)



Does not apply to DOD vessels: [DOD has their own regs](#)

EPA Discharge Standards (Section 4)

- The EPA was given 2 years to develop standards of performance for marine pollution control devices for each type of incidental discharge. Once adopted, the USCG was given 2 years to develop regulations to enforce.
- Anti-backsliding -The developed standards must be at least as stringent as the current VGP (however, note that the current VGP does not include discharge standards for hulls and niche areas)
- Standards are to be reviewed every 5 years.
- EPA published [draft standards for public comment in October 2020](#). On October 18, 2023, EPA published a [supplemental notice](#) of rulemaking including new proposed standards for marine pollution control devices for ballast water, hulls, and niche areas.

USCG Data Management & Federal-State Enforcement

- The USCG is required to coordinate with states in developing a state enforcement and co-enforcement strategy for incidental discharges.
- A state may bring an enforcement action in Federal District Court for any regulation promulgated under VIDA. However, if a state mirrors federal regulations, administrative action or state court proceedings may be available. Generally, state and federal regulators work together to identify the best course of action.
- There is no limit on state inspection authority to monitor compliance of Federal standards or identical state standard (e.g. a state may take ballast water samples, inspect a hull, etc.)
- VIDA provided immediate access for States to the National Ballast Information Center; USCG initiated State consultation for data management (email: vida@uscg.mil to request notifications)

EPA Discharge Standards: Next Steps

- Comments due no later than **December 18, 2023**
- Docket ID: **EPA–HQ–OW–2019–0482**
- More information on EPA's website: www.epa.gov/vessels-marinas-and-ports/commercial-vessel-discharge-standards
- There are procedures for states to petition EPA to:
 - Issue an emergency order;
 - Review any standard of performance, regulation, or policy;
 - Designate a no-discharge zone for one or more discharges into specified state waters.

Questions?



Note that Nick Rosenau from EPA and Lt. Thomas Ashley from USCG will be presenting on Wednesday morning



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