



December 22, 2017

The Honorable Mitch McConnell
Majority Leader
317 Russell Senate Office Building
Washington DC 20510

The Honorable Chuck Schumer
Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

The Honorable John Thune
Chairman, Senate Committee on Commerce,
Science and Transportation
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Nelson
Ranking Member, Senate Committee on
Commerce, Science and Transportation
716 Hart Senate Office Building
Washington, DC 20510

RE: Vessel Incident Discharge Act (VIDA) Concerns

Dear Senate Majority and Minority Leaders, and Chairman and Ranking Member of the Senate Committee on Commerce, Science and Transportation -

The undersigned state organizations write to express concern with the Commercial Vessel Incidental Discharge Act, also known as the Vessel Incidental Discharge Act (VIDA), in all of its current forms (S. 168; Title VIII of S. 1129; H.R. 1154). Our members are charged with protecting water quality, flora, and fauna, and ensuring ecosystem integrity under federal and state laws. VIDA raises significant federalism issues. Therefore, this legislation should be developed in partnership with states.

You have received detailed letters raising a variety of views from several of our member states, and from other organizations to which our states belong. This letter does not supersede or alter the views or input of any state and should not be viewed as representing the perspective of any individual state.

VIDA preempts state authorities to protect state waters from harmful invasive species and water pollution discharged from vessels. As written, VIDA will erode state's ability to protect local water systems and will have adverse consequences on water quality, public drinking water sources, and sensitive aquatic resources.

VIDA would exempt up to 140,000 vessels¹, from the existing body of federal and state invasive species and water pollution laws that currently apply to 31 categories of incidental discharges, most of which predate the U.S. Environmental Protection Agency's (EPA's) 2008 and 2013 Vessel General Permits. VIDA seeks to expand this list of incidental discharges and, if enacted, will allow toxic metals, algal and biotoxins, invasive species, greywater, and other chemical pollutants to be discharged without control from vessels into our nation's waters.

In addition to the Clean Water Act exemptions contained within VIDA, the language also seeks to preempt state authority under the Nonindigenous Aquatic Nuisance Protection and Control Act of 1990 (NANPCA) (16 U.S.C. §§ 4701-4751), as amended by the National Invasive Species Act of 1996 (NISA). NANPCA recognizes that states and the federal government must work together to effectively prevent the introduction and spread of aquatic invasive species. NANPCA preserves states' rights "to adopt or enforce control measures for aquatic nuisance species." 16 U.S.C. § 4725. State regulations protected under this savings clause would be eliminated by the language found in VIDA, which seeks to preempt the authority of states to address commercial vessel pollution and expressly supersedes NANPCA.

Our organizations recognize the importance and national economic contributions of the shipping industry, and the need to ensure streamlined, clear, and effective regulations. We are interested in participating in discussions with all stakeholders and you on legislation that will improve the current federal regulatory regimes, separately overseen by the Coast Guard and EPA, for ballast water and other discharges incidental to the normal operation of a vessel while also respecting state's rights and roles to advance clean and safe water around the nation. As written, VIDA's transfer of regulatory authority would result in a large step backwards in water quality protection. Accordingly, we recommend that Senate leadership move to strike Title VIII, the Vessel Incidental Discharge Act, from S. 1129, and reject the inclusion of similar language in any other legislation moving forward until the Committee and Senate leadership more thoroughly evaluate the federalism concerns raised by this language.

We look forward to engaging with you on this important matter.

¹ U.S. Environmental Protection Agency, Office of Water, EPA 833-R-10-005, *Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet* (2010).

Sincerely,



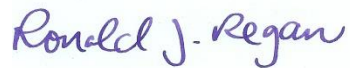
Alexandra Dunn
Executive Director & General Counsel
Environmental Council of the States



Julia Anastasio
Executive Director & General Counsel
Association of Clean Water Administrators



Jeanne Christie
Executive Director
Association of State Wetland Managers



Ron Regan
Executive Director
Association of Fish and Wildlife Agencies