

The Vessel Incidental Discharge Act

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IN PROGRESS

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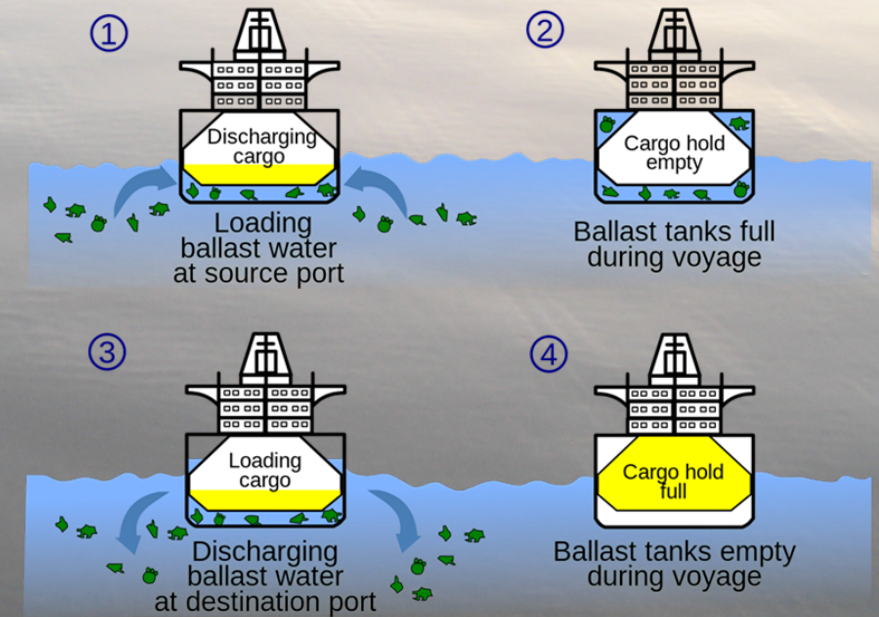
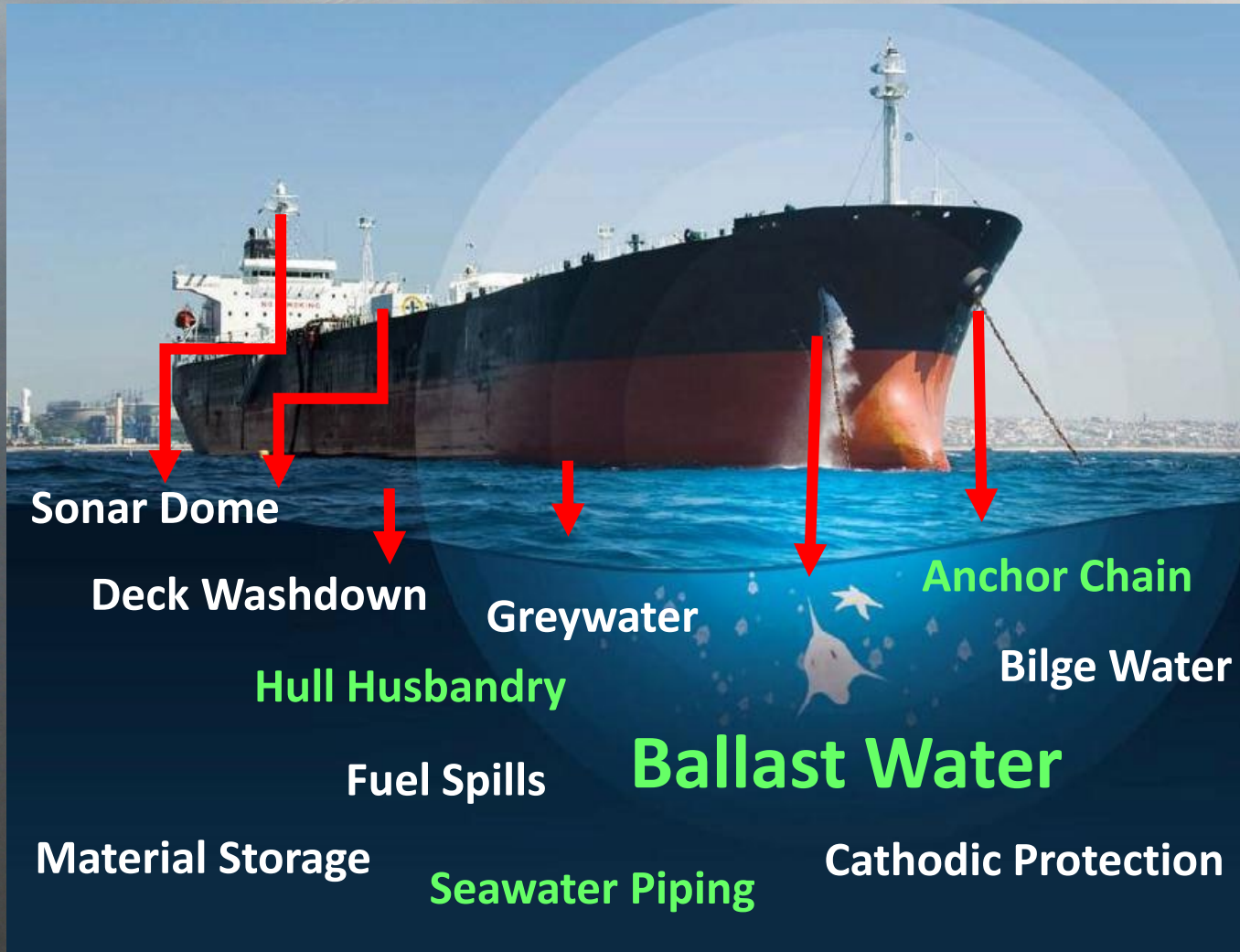


VIDA: The Players

- **States (“States”):** NR Agencies, Attorneys General, Governors, Senators, AFWA, ACWA, PSMFC...
- **Shipping Industry (“Industry”):**
 - Estimated first seaworthy boats developed 45,000 years ago
 - “Discharges incidental to the normal operation of a vessel” started same time
 - Ballast water use started with development of iron/steel hulls in mid-1800’s
 - Ballast water capacity varies by vessel size and type (zero to 60,000 m³)
 - Larger ships often have over 20 individual ballast tanks
- **Environment Protection Agency (“EPA”)**
- **United States Coast Guard (“USCG”)**
- **International Maritime Organization (“IMO”)**
- **Congress:** Senate Commerce and EPW Committees; House Transportation Committee



VIDA: DINO V Defined



Not Covered:

- Sewage
- Garbage
- Major spills/accidents



VIDA: DINOV Defined (cont.)

- **Discharges Incidental to the Normal Operation of a Vessel (“DINOV”):**
EPA lists 31 technology-based and specific discharge categories of effluent limits including:

Material storage	Toxic and hazardous materials	Fuel spills/overflows	Discharges of oil & oily mixtures	Deck washdown
Bilgewater/oily water separator	Ballast water	Anti-fouling hull coatings	Aqueous film forming foam	Boiler/economizer blowdown
Cathodic protection	Chain locker	Propeller/thruster fluid	Distillation and reverse osmosis brine	Elevator pit
Firemain systems	Freshwater layup	Gas turbine washwater	Graywater	Motor gasoline and compensating discharge
Non-oily machinery wastewater	Refrigeration and air condensate discharge	Seawater/engine/hydraulic/refrigeration cooling water	Seawater piping biofouling prevention	Boat engine wet exhaust
Sonar dome discharge	Underwater ship husbandry and fouling	Welldeck discharges	Graywater mixed with sewage	Exhaust scrubber washwater
Fish hold				

Blue cells are USCG regulatory overlap



VIDA: BWDS Defined

- **Ballast Water Discharge Standard (BWDS):** A suite of 5 minimum standards by organism size class or bacteria species and volume of ballast water –
 - **≥ 50 microns:** < 10 organisms per cubic meter
 - **≥ 10 and < 50 microns:** < 10 organisms per milliliter
 - **Toxicogenic *Vibrio cholera*:** < 1 colony forming unit per 100 milliliter
 - ***Escherichia coli*:** < 250 colony forming unit per 100 milliliter
 - **Intestinal enterococci:** < 100 colony forming unit per 100 milliliter

Same standard between EPA/USCG/IMO; unifies “viability” standard;
implementation timeline not consistent with IMO

VIDA: A Brief History of Time

Year / Authority	1970-89	1990-94	1995-99	2000-04	2005-09
IMO		1991: IMO BW and Sediment Guidelines		2004: IMO BWM Convention	
States				2000: WA, CA, HI 2001: OR	2008: VGP 401 Certification 26 States + OR, 2 Tribes; 11 BWM; 5 IMO BWDS; 3 > IMO BWDS
USCG		1993: USCG BWM GL (BWE-V)	1999: USCG BWM Nat (BWE-V)	2004: USCG BWM Nat (BWE-M)	
EPA	1973: EPA exempts DINOV from NPDES permits		1999: Petition to EPA	2003: EPA denies petition; Lawsuit filed	2008: EPA DINOV Ruling & Appeal Denied 2008: EPA VGP Issued – no BWDS/timeline
Congress	1988: Zebra Mussels in GL	1990: NANPCA 1991-92: Cholera in Gulf states	1996: NISA		2005: S.363 2007: S.1578; HR.2830



Year / Authority	2010-14	2015-19
IMO		2016: IMO BWM Convention Ratified 2017: IMO BWM Convention In Effect
States	2013: VGP 401 Certification (25 States + OR, 0 Tribes; 17 BWM; 1 > IMO BWDS)	
USCG	2013: USCG BWDS/ Timeline	2017: 1 st BWMS type-approved by USCG (now @ 14)
EPA	2013: EPA VGP reissued – incl. BWDS/ Timeline	2018: sVGP moratorium expired; VGP “Administratively Continued”
Congress	2011: HR.2840; HR 2838 2012: S.3570; S.3332 2013: H.R.3464 2014: S.2094; HR.5609 (7)	2015: S.373; HR.980 2016: HR.4990 NDAA; 7+ Amendment versions 2017: S.168; H.R. 1154; S.1129; S.140 2018: S.1129 4+ Amendment versions; EPW 3+ versions; S.140 (23+)



VIDA: Provisions

- **EPA/USCG/States:** No changes/preemption until new federal standards/requirements “final, effective, and enforceable”
- **EPA:** Federal lead in establishing water quality standards for DINOV under Sec. 312 of CWA (eliminates NPDES permit requirements)
- **USCG:** Federal lead on monitoring, inspection, and enforcement of DINOV standards
- **State Preemption:** Cannot have a more stringent standards/requirements
- **State Authorities Retained:**
 - Enforcement of federal standards/requirements
 - Pacific Coast ballast water exchange and other key regional provisions
 - Ability to issue DINOV management fees (with new cap)
 - Regulation of small commercial (<79ft) and fishing vessels (except by NPDES permit)



VIDA: Provisions (cont.)

- **State Authorities Gained:**

- Consultation required during EPA and USCG establishment of standards/requirements
- States can petition the federal agencies for higher standards/requirements
- No preemption until new federal standards/requirements “final, effective, and enforceable”
- Enforcement of federal standards/requirements
- Pacific Coast ballast water exchange and other key regional provisions
- Improved dissemination of ballast water reporting data and annual reports
- Working group formed to develop real-time ballast water data sharing

- **Quagga Mussels:** Listed as an injurious species under USFWS



VIDA: Provisions (cont.)

- **New \$5m+ Coastal AIS Mitigation Grant:**

- Administration – National Fish and Wildlife Foundation
- Subject to appropriation (25% match requirement)
- AIS in coastal zone or EEZ
- Eligibility – States, local gov't, Tribes, NGOs, academia
- Use –
 - Support ballast water and other AIS management program activities
 - Restore habitat impacted by AIS
 - Develop ballast water treatment technologies
 - Develop mitigation measures to protect natural and living cultural resources from AIS impacts
 - Develop infrastructure AIS mitigation measures



VIDA: Next Steps

“Frank LoBiondo Coast Guard Authorization Act of 2018” (S.140)

- **Passed Senate:** Nov. 14 (94-6 vote)
- **Passed House:** Nov. 27 (agreed to by voice vote w/o objection)
- **President Signs into Law:** Dec. 4
- **Implementation:**
 - EPA & USGC develop consultation/working relationship
 - EPA establishes consultation process & timeline for developing/issuing DINOV standards
 - USCG establishes consultation process & timeline for developing/issuing vessel requirements/enforcement procedures for EPA standards
 - EPA/USCG develop state petition process
 - Congress appropriates funds for Coastal AIS Mitigation Grant program



VIDA: Next Steps (cont.)

- **Implementation:**
 - A long road ahead
 - Secure the grant funding!!!

VIDA: Questions?

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