

Debra Thompson

From: Mark Jensen [REDACTED]
Sent: Thursday, November 01, 2018 9:11 AM
To: Debra Thompson
Subject: Fwd: fr: Gilman
Attachments: VIDA--ROME S.140 Analysis OCT 2018 (FINAL VERSION).pdf

----- Forwarded message -----

From: Brad Gilman [REDACTED]
Date: Wed, Oct 31, 2018 at 10:49 AM
Subject: fr: Gilman
To: Stephen Giesbrecht <sgiesbrecht@petersburgak.gov>
CC: Mark Jensen [REDACTED], Rick E. Marks <[REDACTED]>, Sebastian O'Kelly [REDACTED]

Stephen: The Senate is scheduled to vote on the Coast Guard Reauthorization Act on November 13. The Vessel Incidental Discharge Act has been the sticking point for the last two years, but a compromise has freed the way for another vote. Rick Marks put together the attached analysis of the compromise. The two main points for the Alaska fishing communities on VIDA are as follows—

1. The existing EPA Rule imposing Clean Water Act discharge rules on fishing, fish processing, and fish tender vessels in the normal course of operations would be permanently terminated. We have been pursuing a final fix on these rules for over a decade.
2. The fishing industry will be exposed to ballast water discharge regulations. The extent of the regulations and their severity are unclear at this time. The regulatory process is likely to last two or more years. The definition of “ballast” is fairly broad. It could cover both refrigerated seawater and ice used in fishing holds.

So, one problem appears to be fixed and another problem replaces it. We will let you know how the vote goes and keep you informed going forward. I've copied the Mayor because he has expressed an interest in the fate of the EPA Rule to me directly the last time he was in DC.

Brad

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October 31, 2018

This is a ROMEA staff analysis of the current version of the EPA NPDES Vessel Incidental Discharge Act "VIDA" Provisions of the "Amendment in the Nature of a Substitute"
[Version October 10, 2018 Title IX of S. 140, the "Frank LoBiondo Coast Guard Authorization Act of 2018"]

This bill is currently scheduled to be considered by the full Senate on November 13, 2018 (60 votes needed for cloture...) and then on the 14th for passage. The bill is "pre-conferenced" with the House, indicating there will be no further negotiations between the two bodies. If S.140 passes the Senate, it has concurrence of the House and will become law.

Key take-home messages for ROMEA Clients: The VIDA section of S.140 ameliorates the original NGO litigation (from 2004-2006) that resulted in EPA "sVGP" & "VGP" regulatory requirements. Commercial-use vessels < 79 feet, and commercial fishing vessels regardless of size and defined as "a fishing vessel, fish processing vessel, or fish tender vessel" will not be subject to federal management of discharges incidental to normal vessel operations.

Commercial fishing vessels of any size that carry ballast water (as newly defined in S.140, see definition below...) may be subject to federal regulatory requirements regarding ballast water management practices and use of approved marine pollution control devices.

The EPA is expected to conduct a future rulemaking process to implement the applicable provisions of S.140. The commercial fishing industry must engage in that process to address any ballast water management concerns related to use of water (such as RSW & ice) that is not primarily intended for use as ballast; or an amount of ballast water that could be considered de minimis; or the ability to safely flush such types of water at sea; etc.

In addition, since there will no longer be a federal permit system in place (e.g. EPA NPDES permits) to manage incidental discharges from normal small vessel and commercial fishing vessel operations (i.e. sVGP & VGP) in federal waters, individual States cannot augment such requirements for state waters via the Clean Water Act

Section 402 Certification process. States may nonetheless have the ability to manage incidental discharges in state waters under state statutory authority.

Generally, S.140...

Exempts regulation and management under Federal law of discharges incidental to normal vessel operations for fishing vessels and small workboats
Provides for ballast water management of all vessels, including fishing industry vessels
Charges the EPA with establishing ballast water discharge standards
Charges USCG with enforcement of EPA ballast water discharge standards
Preserves the flexibility of States to administer & enforce ballast water standards

Specifically, S. 140...

Defines “Ballast Water” as any water, suspended matter, and other materials taken onboard a vessel to control or maintain trim, draught, stability, or stresses of the vessel, regardless of the means by which any such water or suspended matter is carried; or during the cleaning, maintenance, or other operation of a ballast tank or ballast water management system of the vessel.

Specifies that “Ballast Water Exchange” means replacement of water in a ballast water tank using 1 of the following methods:

- (1) Flow-through exchange, in which ballast water is flushed out by pumping in mid-ocean water through a tank continuously until 3 full volumes of water have been changed to minimize the number of original organisms remaining in the tank;
- (2) Empty and refill exchange, in which ballast water taken on in ports, estuarine waters, or territorial waters is pumped out until the pump loses suction, after which the ballast tank is refilled with mid-ocean water.

Specifies that a “Ballast Water Management System” means any marine pollution control device (including all ballast water treatment equipment, ballast tanks, pipes, pumps, and all associated control and monitoring equipment) that processes ballast water to kill, render nonviable, or remove organisms or avoid uptake or discharge of organisms.

S. 140 requirements apply to any discharge incidental to the normal operations of a vessel EXCEPT for vessels less than 79 feet in length; or a fishing vessel, fish processing vessel, or fish tender vessel (as those terms are defined in Section 2101 of U.S. C. Title 46, regardless of size.) which are exempt, EXCEPT the requirements shall apply to any discharges of ballast water from a small vessel or fishing vessel regardless of size...unless that vessel continuously takes on and discharges ballast water in a flow-through system; or that discharges ballast water consisting solely of water taken onboard from a public

or commercial source; or that carries all permanent ballast water in sealed tanks; or that only discharges ballast water into a reception facility.

The current EPA VGP for any non-exempt vessel (a.k.a. the EPA Vessel General Permit) shall remain in effect and not modified until such time that the EPA issues final standards and regulations implementing the required provisions of S.140.

The Secretary shall promulgate regulations establishing the conditions under which States may enforce the regulation established by S.140, including a mechanism for the Governor of a State to access AIS arrival data for inbound vessels to specific ports or places of destination in the State.

The operator of any vessel with a ballast water tank shall conduct a ballast water exchange as follows –

- (1) Not less than 200 nm from any shore for a voyage originating outside the U.S. or Canadian EEZ;
- (2) Not less than 50 nm from any shore for a voyage within the “Pacific Coast Region” (defined as any Federal or State water adjacent to Alaska, California, Oregon and Washington);
- (3) UNLESS the unpumpable residual waters and sediments of an empty ballast water tank are treated or sourced within the same port or place of destination, or Captain of the Port Zone, or doing so compromises vessel safety.

Not later than 2 years after the date of enactment, the EPA shall promulgate Federal performance standards for marine pollution control devices for covered discharges, such as ballast water. A vessel shall be deemed to be in compliance with a ballast water management system if it is maintained in proper working condition with a valid certificate and continues to meet the standards at the time of installation.

Any vessel subject to the ballast water requirements of this Act shall submit to the National Ballast Water Information Clearing House (NBWICH) by not later than 6 hours after the arrival at a US port or place of destination a ballast water management report form UNLESS the vessel is operating exclusively on a voyage between ports or places within a single Captain of the Port Zone. NOTE -- States may require advance reporting. Not later than 30 days after date of receipt of a report, the NBWICH shall make the report electronically available to the public.

Any discharge incidental to the normal operation of a vessel, including any ballast water discharge, shall be regulated by the Federal Water Pollution Control Act.

A State may apply to the Secretary to specify State No Discharge Zone(s) if any State makes a determination that it requires greater environmental protection for one or more discharges in S.140, whether treated or not.

The quagga mussel (of the species *Dreissena rostriformis* or *D. bugensis*) is required to be added to the prohibited species list of the Lacey Act.

S.140 establishes a “Coastal Aquatic Invasive Species Mitigation Grant Program” to be run by the National Fish & Wildlife Foundation. The program covers a range of activities associated with AIS.

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