

# Vessel Incidental Discharge Act

Presented to the Aquatic Nuisance Species Task Force  
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# Vessel Incidental Discharge Act: VIDA

## **“Frank LoBiondo Coast Guard Authorization Act of 2018” (S.140, Title IX)**

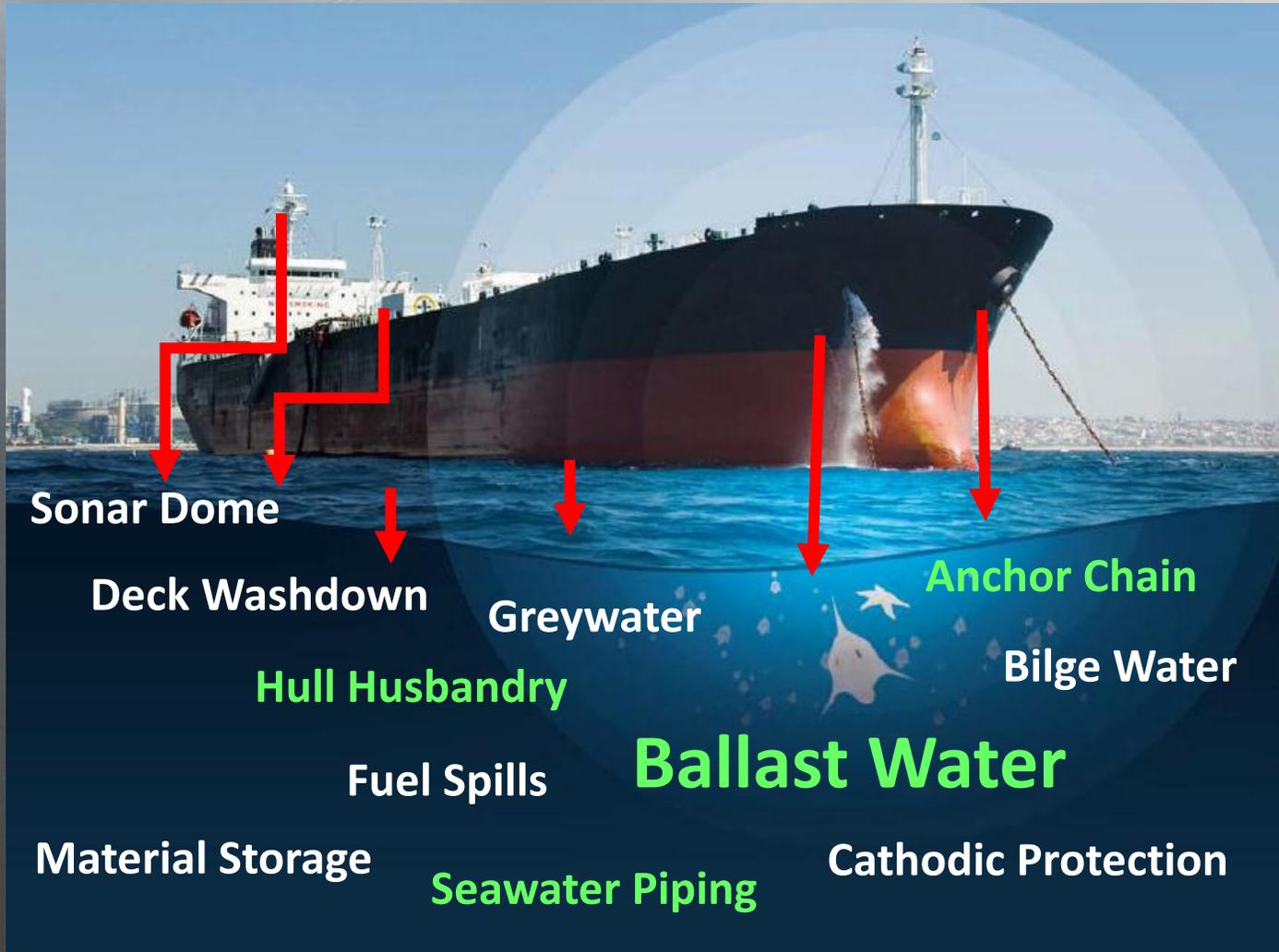
- **Passed Senate:** Nov. 14, 2018 (94-6 vote)
- **Passed House:** Nov. 27, 2018 (agreed to by voice vote w/o objection)
- **President Signed into Law:** Dec. 4, 2018

# Vessel Incidental Discharge Act: VIDA

## A review:

- What are Discharges Incidental to the Normal Operation of a Vessel (DINOV)?
- A brief history of ballast water and DINOV
- Key provisions of VIDA
- Next steps: Implementation

# VIDA: DINOVA Defined



## Not Covered:

- Sewage
- Garbage
- Major spills/accidents

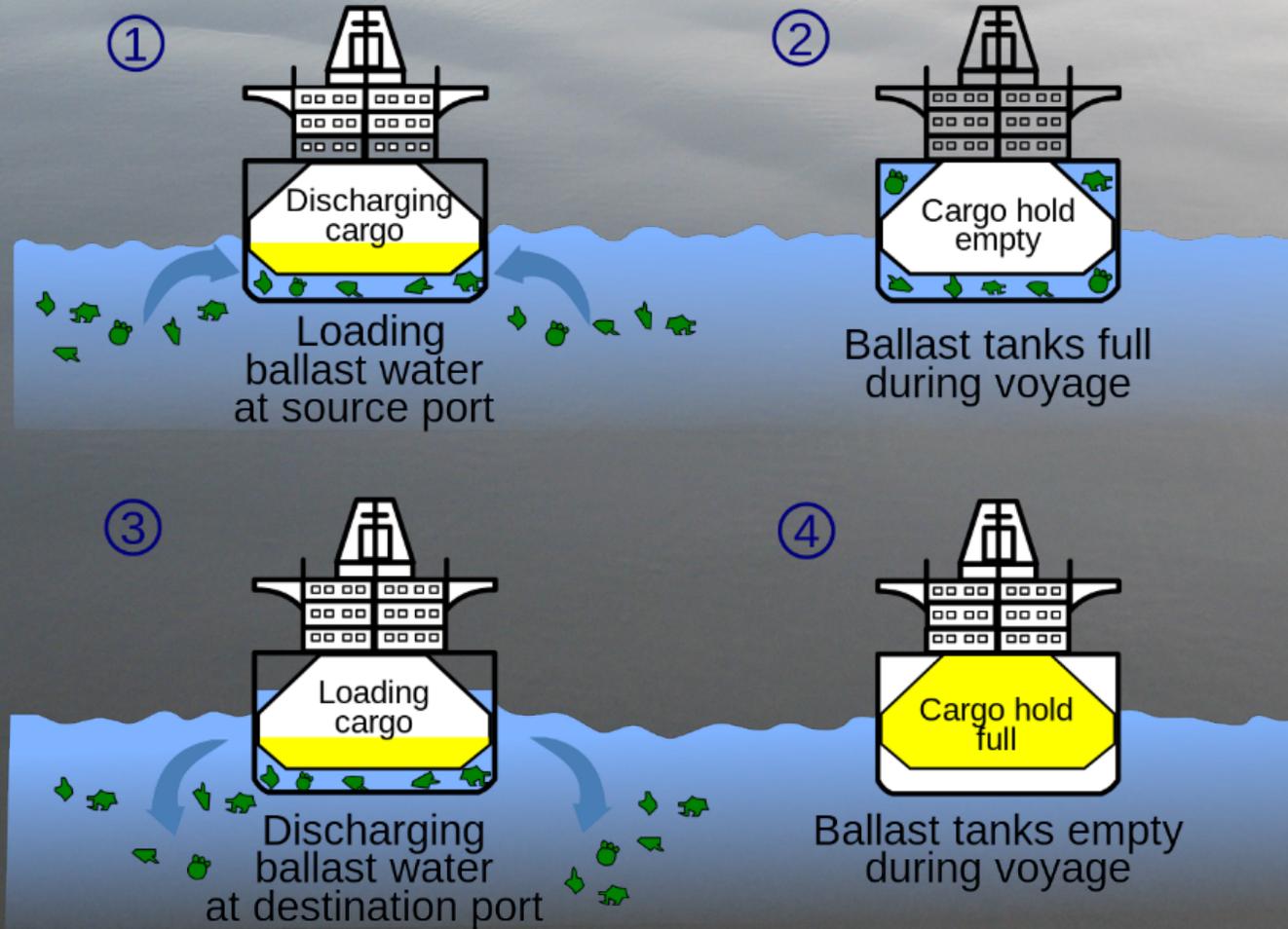
# VIDA: DINO V Defined (cont.)

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	<b>Ballast water</b>	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

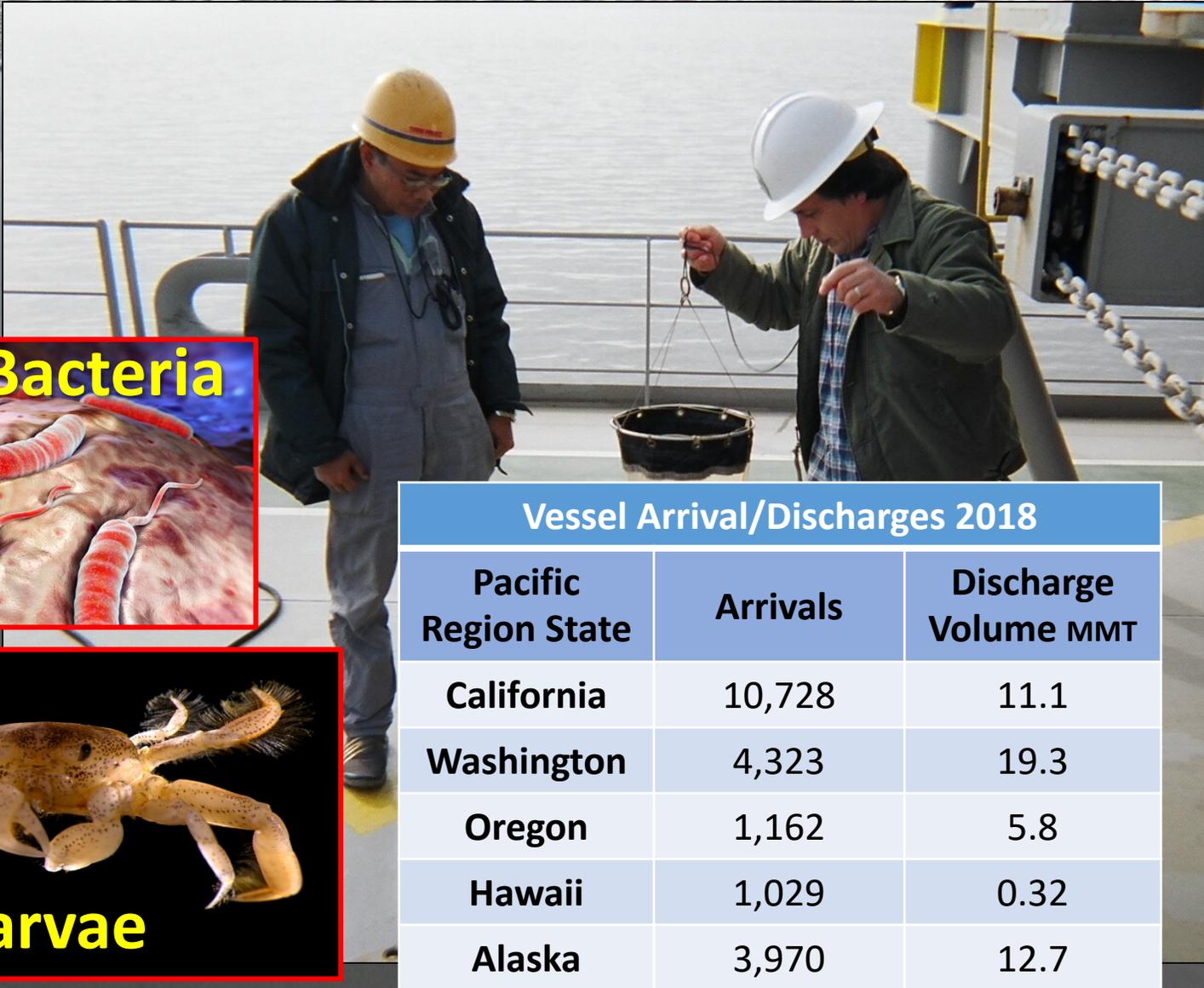
# VIDA: DINOV Defined



## Ballast Water Management:

- Open Sea Exchange
- Treatment

# VIDA: Ballast Water Pathway Risks



Vessel Arrival/Discharges 2018		
Pacific Region State	Arrivals	Discharge Volume MMT
California	10,728	11.1
Washington	4,323	19.3
Oregon	1,162	5.8
Hawaii	1,029	0.32
Alaska	3,970	12.7



# VIDA: A Brief History of Time

Key Ballast water management (BWM) and exchange (BWE) milestones only

Year / Authority	1970-89	1990-94	1995-99	2000-04	2005-09
<b>IMO</b>		<b>1991:</b> IMO BW and sediment guidelines		<b>2004:</b> IMO BWM Convention adopted	
<b>States</b>				<b>2000:</b> WA, CA, HI BWM programs <b>2001:</b> OR BWM program	<b>2008:</b> VGP 401 Certification 26 States, 2 Tribes; 11 w/BWM provisions; 3 > IMO BWDS
<b>USCG</b>		<b>1993:</b> BWE Great Lakes <b>1994:</b> BWE Hudson R (voluntary)		<b>2001:</b> BWE National (voluntary) <b>2004:</b> BWE National (mandatory)	<b>2005:</b> Great Lakes Policy for No Ballast On Board
<b>EPA</b>	<b>1973:</b> DINOVA exempted from NPDES permits		<b>1999:</b> Incidental discharge petition to EPA	<b>2003:</b> Petition denied; Lawsuit filed	<b>2008:</b> DINOVA Ruling & Appeal Denied <b>2008:</b> VGP Issued – <b>no BWDS/timeline</b>
<b>Congress</b>	<b>1988:</b> Zebra Mussels in GL	<b>1990:</b> NANPCA <b>1991-92:</b> Cholera in Gulf states	<b>1996:</b> NISA		<b>2005:</b> S.363 <b>2007:</b> S.1578; HR.2830

# VIDA: A Brief History of Time

**BMDS: Ballast water discharge standard**  
**BWMS: Ballast water management system**

Year / Authority	2010-14	2015-19
<b>IMO</b>	<b>2011:</b> Biofouling Guidelines Adopted	<b>2016:</b> IMO BWM Convention Ratified <b>2017:</b> IMO BWM Convention In Effect
<b>States</b>	<b>2013:</b> VGP 401 Certification (25 States, 0 Tribes; 17 w/BWM provisions; 1 > IMO BWDS)	
<b>USCG</b>	<b>2012:</b> National BWDS/Timeline/Type Approval process implemented	<b>2016 (Dec):</b> First 3 BWMS type-approved by USCG (now @ 22)
<b>EPA</b>	<b>2013:</b> EPA VGP reissued – including BWDS/ Timeline	<b>2018:</b> sVGP moratorium expired; VGP “Administratively Continued”; sVGP repealed
<b>Congress</b>	<b>2011:</b> HR.2840; HR 2838 <b>2012:</b> S.3570; S.3332 <b>2013:</b> H.R.3464 <b>2014:</b> S.2094; HR.5609 (7)	<b>2015:</b> S.373; HR.980 <b>2016:</b> HR.4990 NDAA; 7+ Amendment versions <b>2017:</b> S.168; H.R. 1154; S.1129; S.140 <b>2018:</b> S.1129 4+ Amendment versions; EPW 3+ versions; <b>S.140 Passed</b> (23+)

# VIDA: Provisions

- **EPA/USCG/States:** No DINOV changes/preemption until new federal standards/requirements “final, effective, and enforceable” EXCEPT
  - Paragraphs 6(B) *Empty Ballast Tanks*, 10(C) *Min. Pacific Region Req.*, and 10(D) *Low Salinity Ballast Tanks*
  - *Differences in legal interpretation*
- **EPA:** Federal lead in establishing water quality standards under Sec. 312 of CWA (eliminates NPDES permit requirements)
- **USCG:** Federal lead on monitoring, inspection, and enforcement of standards
- **State Preemption:** Cannot have a more stringent standards/requirements

# VIDA: Provisions (cont.)

- **State Authorities Retained:**

- Enforcement of federal standards/requirements
- Pacific Coast ballast water exchange and other key regional provisions
- Ability to collect management fees (with new cap)
- Regulation of small commercial (<79ft) and fishing vessels (except by NPDES permit)

- **State Authorities Gained:**

- Consultation required during EPA and USCG establishment of standards/requirements
- State petition for higher federal standards/requirements
- Improved dissemination of NBIC ballast water reporting data and annual reports
- Working group formed to develop real-time ballast water data sharing

# VIDA: Provisions (cont.)

- **Coastal AIS Mitigation Grant:**

- Administration – National Fish and Wildlife Foundation
- \$5M Subject to appropriation (25% match requirement)
- \$? Sec. 312(p) (VIDA) penalties
- 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

## **Short-Term Implementation** (Federal consultation with States):

- EPA & USCG develop consultation/working relationship
- EPA & States establish consultation process & timeline for developing/issuing DINOV standards
- USCG & States establish consultation process & timeline for developing vessel requirements/enforcement procedures
- EPA/USCG/States develop state petition process
- Congress appropriates funds for Coastal AIS Mitigation Grant program

# VIDA: Next Steps (cont.)

## **Short-Term Implementation** ([Federal consultation with States](#)):

- EPA/State consultation on “[ANS] Emergencies and Further Protection of Water Quality” provision
- Assess purpose/need to participate in development of “Intergovernmental Response Framework”
- State/NBIC “Work Group” consultation on real-time dissemination of vessel ballast water management reports to States
  - NBIC met with USCG in April to discuss, but no timeline yet

# VIDA: Next Steps (cont.)

## **Timeline** (what we know):

- Webinars on May 7 and May 15 (co-hosted by EPA and USCG)
- Listening session in Kings Point, NY on May 29-30 (co-hosted by EPA and USCG)
- EPA: “Initiate Federalism Consultation process over the summer – ideally June or July.” (per Katherine Weiler – co-lead with Jack Faulk on VIDA rule writing process)
  - EPA working with Office of Congressional and Intergovernmental Relations
  - May reach out to National Governors Association

# VIDA: Next Steps (cont.)

## **California State** (in consultation with CSLC Technical Advisory Group):

- AB 912 – authorize state enforcement of federal discharge standards
- CSLC conduct rulemaking to adopt compliance assessment protocols
- Update CSLC/USCG MOU
- Listening session with Technical Advisory Group

# VIDA: Next Steps (cont.)

## **Washington State** (in consultation with WDFW Ballast Water Work Group):

- 2019-20: WDFW conduct rulemaking to be consistent with VIDA provisions now in effect (incl. paragraphs 6(B) *Empty Ballast Tanks*, 10(C) *Min. Pacific Region Req.*, and 10(D) *Low Salinity Ballast Tanks*)
- 2021-23: WDFW/Ecology propose state legislation and rulemaking to align with evolving federal requirements (as necessary during estimated 4 year full-VIDA implementation interim including setting BWDS and timeline)
- 2019-20?: WDFW/Ecology/USCG develop MOA for cooperative enforcement

# VIDA: Next Steps (cont.)

## **ANS Task Force -**

*We respectfully request:*

- The EPA and the USCG coordinate with the States to implement VIDA in a timely manner;
- EPA, USCG and the ANS Task Force provide clarity to the States on the intent and timeline for the Intergovernmental Response Framework provision; and
- Encourage, in coordination with States, a speedy process for development, full \$5 million appropriation as requested, and implementation of the AIS Coastal Mitigation Grant Program and Mitigation Fund.

# VIDA: Next Steps (cont.)

## **ANS Task Force -**

*We also respectfully request:*

- The Task Force encourage the USCG to make public the biological efficacy discharge data for type approved ballast water management systems.

# VIDA: Questions?

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