



# BALLAST WATER POLICY AND REGULATION UPDATE: OVERVIEW

Great Lakes ANS Panel Meeting  
Cleveland, Ohio | May 14-15, 2019

# Pre-VIDA BW Policy Framework

- International Maritime Organization
- Transport Canada
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- Great Lakes-St. Lawrence Seaway
- Illinois Environmental Protection Agency  
(Clean Water Act 401 Certification)
- Indiana Dept. of Environmental Management  
(Clean Water Act 401 Certification)
- **Michigan Dept. of Environment, Great Lakes, and Energy**  
(Clean Water Act 401 Certification & State Permit)
- **Minnesota Pollution Control Agency**  
(Clean Water Act 401 Certification & State Permit)
- New York Dept. of Environmental Conservation  
(Clean Water Act 401 Certification)
- Ohio Environmental Protection Agency  
(Clean Water Act 401 Certification)
- **Wisconsin Dept. of Natural Resources**  
(Clean Water Act 401 Certification & State Permit)

# BW/VIDA: A Brief History of Time

Year / Authority	1970-89	1990-94	1995-99	2000-04	2005-09
IMO		<b>1991:</b> IMO BW and sediment guidelines		<b>2004:</b> IMO BWM Convention adopted	
States					<b>2005:</b> MI BW Permit <b>2008:</b> MN BW Program <b>2008:</b> VGP 401 Certification 26 States, 2 Tribes; 11 w/BWM provisions; 3 > IMO BWDS
USCG		<b>1993:</b> BWE Great Lakes <b>1994:</b> BWE Hudson R (voluntary)		<b>2001:</b> BWE National (voluntary) <b>2004:</b> BWE National ( <b>mandatory</b> )	<b>2005:</b> Great Lakes Policy for No Ballast On Board
EPA	<b>1973:</b> DINO V exempted from NPDES permits		<b>1999:</b> Incidental discharge petition to EPA	<b>2003:</b> Petition denied; Lawsuit filed	<b>2008:</b> DINO V Ruling & Appeal Denied <b>2008:</b> VGP Issued – <b>no BWDS/timeline</b>
Congress	<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

# BW/VIDA: A Brief History of Time

Year / Authority	2010-14	2015-19
IMO	2011: Biofouling Guidelines Adopted	2016: IMO BWM Convention Ratified 2017: IMO BWM Convention In Effect
States	2013: VGP 401 Certification (25 States, 0 Tribes; 17 w/BWM provisions; 1 > IMO BWDS)	
USCG	2012: National BWDS/Timeline/Type Approval process implemented	2016 (Dec): First 3 BWMS type-approved by USCG (now @ 22)
EPA	2013: EPA VGP reissued – including BWDS/ Timeline	2018: sVGP moratorium expired; VGP “Administratively Continued”; sVGP repealed
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; <b>S.140 Passed</b> (23+)

# 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*

# 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*
- *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*
- *Governor 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: Great Lakes Provisions

((10) Additional Regional Requirements)

- Ballast water exchange/saltwater flushing for vessels entering the Seaway
- “(B) ENHANCED GREAT LAKES SYSTEM REQUIREMENTS.—
  - “(i) *PETITIONS BY GOVERNORS FOR PROPOSED ENHANCED STANDARDS AND REQUIREMENTS.—*
    - “(I) IN GENERAL.—The Governor of a Great Lakes State (or a State employee designee) may submit a petition in accordance with subclause (II) to propose that other Governors of Great Lakes States endorse an enhanced standard of performance or other requirement with respect to any discharge that—
      - “(aa) *is subject to regulation under this subsection; and “(bb) occurs within the Great Lakes System.”*
  - *Petitions submitted to: GLC, other GL Governors, GLNPO*
  - *Preliminary assessment by GLC “acting through the **Great Lakes Panel on Aquatic Nuisance Species**, to the maximum extent practicable”*

# VIDA: Great Lakes Provisions

((10) Additional Regional Requirements)

- Petitions submitted to: GLC, other GL Governors, GLNPO
- Preliminary assessment by GLC “acting through the **Great Lakes Panel on Aquatic Nuisance Species**, to the maximum extent practicable”
- Petition, assessment published in FR for public comment
- Development of proposed standard or requirement
  - *“any interested Governor of a Great Lakes State may work in coordination with the Great Lakes Commission to develop a proposed standard of performance or other requirement applicable to a discharge referred to in the petition.”*
  - *In consultation with Canada (Federal and provincial)*
  - *Endorsed in writing by*
    - Each Great Lakes Governor if requires additional equipment on vessels
    - minimum 5 Great Lakes Governors if no additional equipment on vessel is required
- Submit proposed standard/requirement to EPA and USCG for review and approval
  - *Provides for withdraw of endorsement or dissenting opinions from GL Governors*
- \$5M authorization for GLC

# VIDA: Great Lakes Provisions

- Great Lakes and Lake Champlain Invasive Species Program:
  - *Administration – EPA GLNPO collaborating with:*
    - USFWS, NOAA, USGS, USCG, GLANSIS, GLERL
    - Federal, State, local and Tribal agencies; and other “research entities or stakeholders” as appropriate
  - *\$50M authorization*
  - *Purpose:*
    - to monitor for the introduction and spread of AIS
    - to detect newly introduced AIS
    - to inform, and assist with, management and response actions to prevent or stop the establishment or spread;
    - to establish a watch list of candidate AIS that may be introduced or spread, and that may survive and establish
    - to monitor vectors likely to be contributing to the introduction or spread of AIS, including ballast water operations;
    - to work collaboratively with the Federal, State, local, and Tribal agencies to develop criteria for prioritizing and distributing monitoring efforts;
    - to develop, achieve type approval for, and pilot shipboard or land-based ballast water management systems installed on, or available for use by, commercial vessels operating solely within the Great Lakes and Lake Champlain Systems to prevent the spread of AIS; and
    - to facilitate meaningful Federal and State implementation of the regulatory framework in this subsection, including monitoring, shipboard education, inspection, and compliance conducted by States.

# Past GLP BW Recommendations

- 2001: Policy Statement on Ballast Water Management
  - *Objective: To eliminate ballast associated ANS introductions into waters of the Great Lakes-St. Lawrence system, and reduce ANS dispersal between the lakes through regional development and application of a timely, effective, scientifically based, environmentally sound and economically viable binational ballast water management program.*
  - *Revisit periodically to review and evaluate recommended actions as technologies and the status of ANS distributions change over time.*
- 2008: Ballast Water Regulation
  - *Supported federal legislation regulating ballast water discharges*
- 2009: Ballast Water Regulation
  - *Urges a strong federal (uniform) approach that would be protective of GL resources*
- 2010: National Ballast Water Discharge Standard
  - *Identifies priorities that should be pursued in the process of establishing a national ballast water discharge standard*
  - *Responding to USCG proposed regulations*

# Western Regional ANS Panel: Recommendations to 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.
- The Task Force encourage the USCG to make public the biological efficacy discharge data for type approved ballast water management systems.