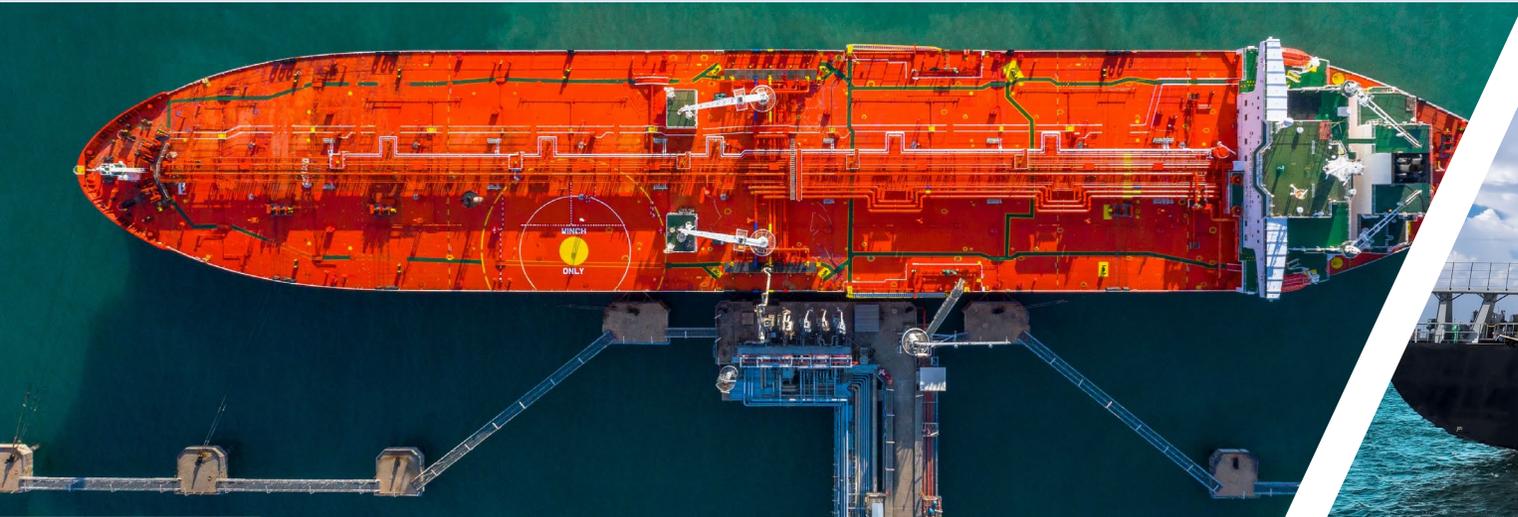




Vessel Incidental Discharge National Standards of Performance Supplemental Notice of Proposed Rulemaking

Virtual Public Meetings – November 2023



Welcome



Katherine Weiler
Chief, Ocean and Coastal
Management Branch



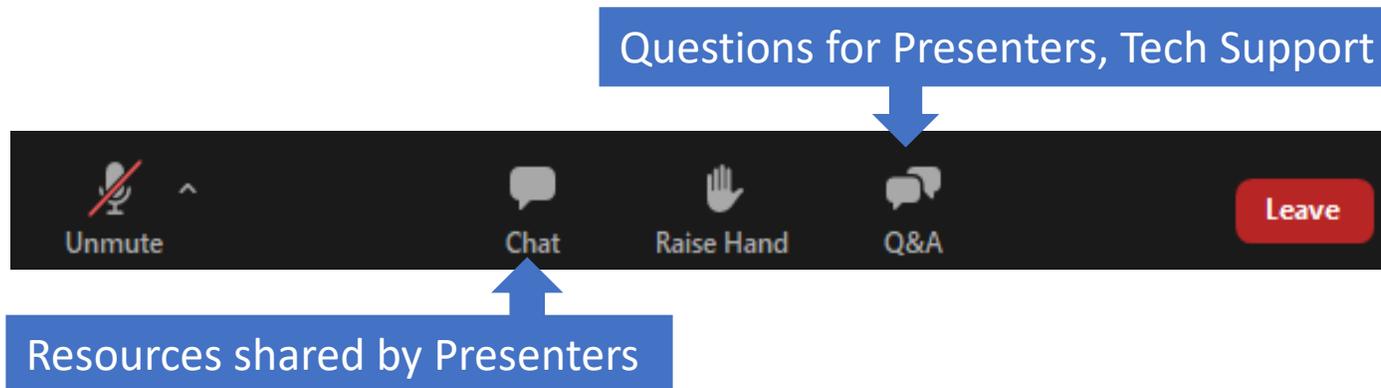
Jack Faulk
Rule Co-Lead



Holly Galavotti
Rule Co-Lead

Meeting Logistics

- **Technical difficulties:** Send a message through the Q&A box or email Kyra.Hall@erg.com
- **To ask a question:** Type your question in the Q&A box. We will take questions after a brief presentation on the Supplemental Notice.
- **Slides:** A PDF of these slides are available in the Chat.



DISCLAIMER

The following EPA presentation is solely intended to provide information to the public on the Supplemental Notice to the Vessel Incidental Discharge National Standards of Performance.

This presentation does not represent final agency decisions and does not create any rights or obligations.

Purpose



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Help the public understand the contents of the Supplemental Notice and provide information on submitting comments

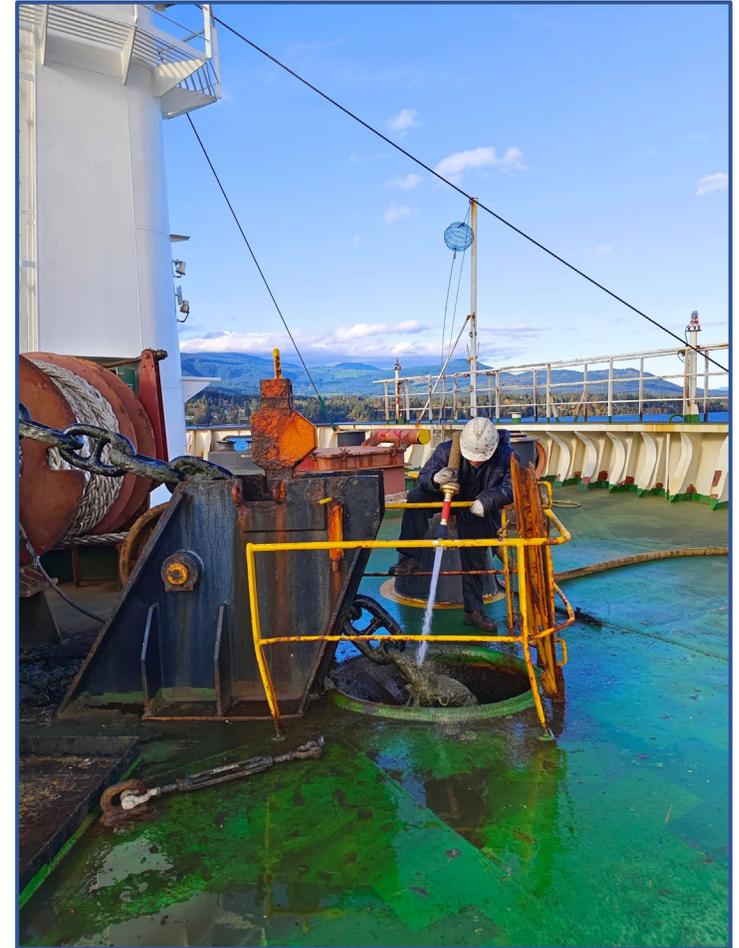


Reminders

- EPA is accepting public comment only on the topics/issues raised in the Supplemental Notice
- This meeting is not a platform to submit comments, but to aid understanding to assist you to comment
- EPA will address clarifying and/or procedural questions but will not be expanding on rationale or decision-making described in the Supplemental Notice

Agenda

- 2018 Vessel Incidental Discharge Act (VIDA)
- EPA's 2020 Proposed National Standards of Performance
- Supplemental Notice of Proposed Rulemaking
 - Analysis of newly acquired ballast water data
 - Additional regulatory options:
 - Ballast water (uptake best management practice and New Lakers)
 - Hulls and associated niche areas
 - Graywater systems
 - Regulatory Impact Analysis
- Stakeholder Engagement
 - Virtual public meetings
 - Submitting comments
- Questions



2018 Vessel Incidental Discharge Act (VIDA)

EPA

Promulgate technology-based **national standards of performance** that are at least as stringent as the VGP, with limited exceptions

USCG

Develop regulations to **ensure, monitor, and enforce compliance** with EPA's standards and USCG requirements

Interim Requirements

Requirements from 2013 VGP, USCG ballast water regulations, and state/local government apply to:

- **Large commercial vessels (≥ 79 feet in length)**
- **Small vessels (<79 feet in length) and fishing vessels of any size - Ballast water only**

States

Once EPA and USCG regulations are final, effective, and enforceable, states are **preempted** from **adopting or enforcing more stringent requirements** except through one of several petition options established in the VIDA

EPA's 2020 Proposed Rule

General Standards

Applicable to all discharges

- General operation and maintenance
- Biofouling management
- Oil Management

Specific Standards

- **Ballast tanks***
- Bilges
- Boilers
- Cathodic protection
- Chain lockers
- Decks
- Desalination and purification systems
- Elevator pits
- Exhaust gas emission control systems
- Fire protection equipment
- Gas turbines
- **Graywater systems***
- **Hulls and associated niche areas***
- Inert gas systems
- Motor gasoline and compensating systems
- Non-oily machinery
- Pools and spas
- Refrigeration and air conditioning
- Seawater piping
- Sonar domes

**Addressed in Supplemental Notice*

EPA's 2020 Proposed Rule (continued)

Applies to:

~83,000 domestic and international vessels generally that are 79 ft in length or greater

Does NOT apply to:

Vessels of the Armed Forces; fishing vessels without ballast tanks; recreational vessels; discharges other than ballast water from vessels less than 79 feet in length; sewage discharges (regulated separately)

- Similar requirements to the VGP for 15 discharges (clarity/consistency), with more substantive changes for ballast tanks, exhaust gas cleaning systems, graywater systems, hulls and associated niche areas, and seawater piping.
- Procedures for states to petition EPA to:
 - Issue an emergency order;
 - Review any standard of performance, regulation, or policy;
 - Request additional requirements in the Great Lakes; or,
 - Designate a no-discharge zone for one or more discharges into specified state waters.

Post-Proposal Engagement

Jun-Nov 2021

EPA met with States to discuss comments and concerns raised on a variety of topics

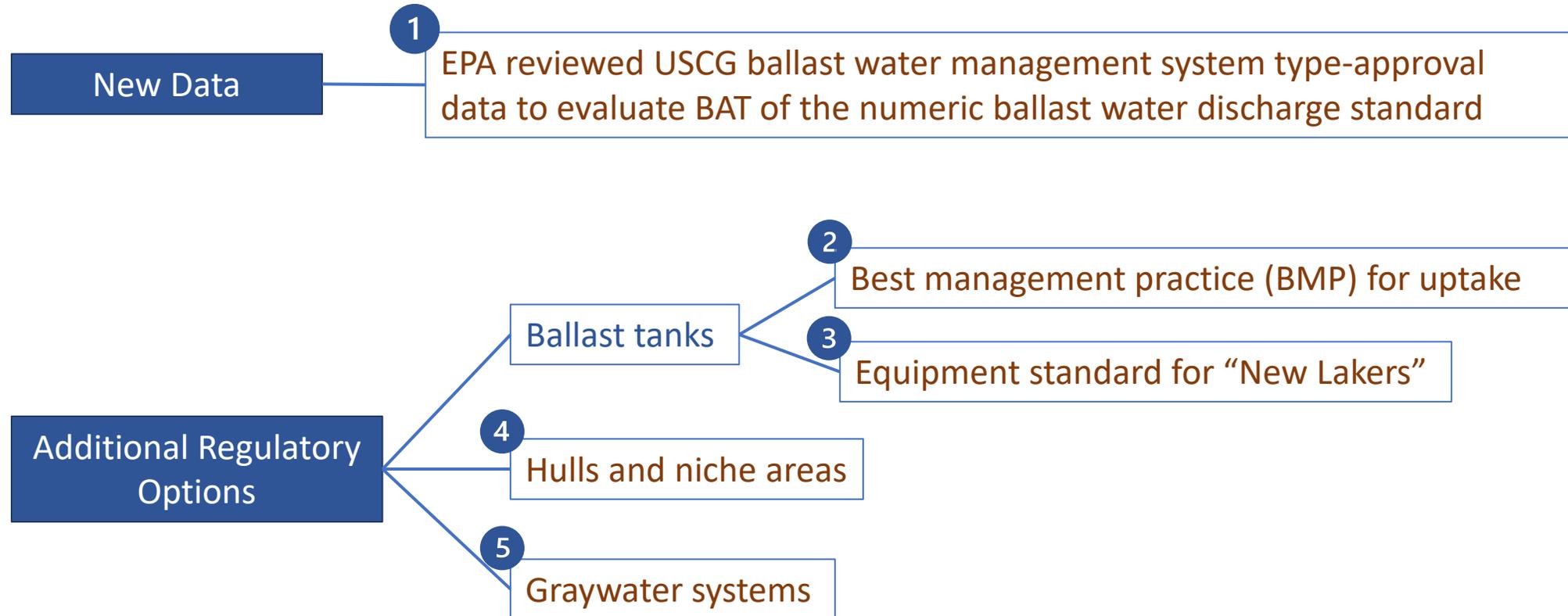
Sept-Oct 2021

Additional consultations held with interested tribes
(Gun Lake Tribe and the Chippewa Ottawa Resource Authority)

Oct-Nov 2021

Conducted listening sessions with interested stakeholders from the regulated community and environmental organizations

Supplemental Notice



1

New Data: Numeric Ballast Water Discharge Standard BAT Analysis

2020 Proposed Rule: Continue existing numeric discharge standards.

Public Comments/Certain Governors' Objections: EPA failed to evaluate whether any type-approved ballast water management systems (BWMSs) can achieve a lower numeric discharge standard.

Data Collection (USCG):

- Requested significant amount of BWMS type-approval data from the USCG.
- Type-approval process requires independent laboratories to perform land-based and shipboard testing to demonstrate capability of meeting numeric discharge standard and other design/construction requirements (46 CFR 162.060). Portions of type-approval data/process are proprietary/business confidential.

1 New Data: Numeric Ballast Water Discharge Standard BAT Analysis (continued)

Data Analysis (EPA):

- Validated and performed statistical analysis, and a sensitivity analysis, of data to determine whether a more stringent discharge standard represents BAT.
- Record indicates proposed numeric discharge standard is appropriate.
 - Test results: within same order of magnitude as current standard; fall within measurement methods' margin of error considering the high variability in characteristics of ballast water and challenges associated with monitoring, analyzing, and enumerating organisms in the different size classes.
 - Key data limitations: uncertainty of minimum detection limits (MDLs); purpose of type-approval process is to demonstrate compliance with existing standard only; lack of information linking data to technologies.
 - Variability among vessels and their operations requires multiple BWMS options.

“Ballast Water BAT Data Analysis”
EPA-HQ-OW-2019-0482-0850

2 Additional Regulatory Option: BMP for Ballast Water Uptake

2020 Proposed Rule: Rejected uptake BMPs as not practical to implement and enforce because the specified conditions (e.g., dredging, darkness) are usually beyond the control of the vessel operator.

Public Comments/Certain Governors' Objections: Several states and NGOs commented that the BMPs are protective practices and not overly burdensome because vessel operators can adjust operations to minimize or avoid environmental impacts. Industry supported removal of the BMPs.

Supplemental Notice: Would require vessel operators to describe uptake practices as part of their ballast water management plan.

Justification: Provides environmental protection while affording vessel operators the necessary flexibility to minimize ballast water uptake of harmful organisms. Consistent with the IMO Ballast Water Convention.

3 Additional Regulatory Option: Equipment Standard for “New Lakers”

2020 Proposed Rule: Exempted all Lakers from the numeric ballast water discharge standard.

Public Comments/Governors' Objections:

- Great Lakes states, tribes, and environmental groups - Opposed the exemption and stated it was less stringent than the VGP.
 - Some urged EPA to consider Canada’s equipment standard or just require components (e.g., filtration) of a full system
 - Others argued that the small market for Laker BWMSs hinders vendors’ interest in developing solutions and suggested that EPA and the USCG need to create an incentive for additional systems and testing.
- Vessel industry groups - Supported the exemption based on concern that the USCG type-approved BWMSs do not meet the operational needs/profiles of Lakers.

3 Additional Regulatory Option: Equipment Standard for “New Lakers” (continued)

Supplemental Notice: Would require a *New Laker* to install, operate, and maintain a USCG type-approved BWMS.

Justification:

- New Lakers can be designed to overcome BWMS operational and technical challenges (corrosion, flow rate capacity, space, and power).
- Reduces discharges of organisms, even if numeric discharge standard cannot be met.
- Economically achievable based on annualized capital and operation cost of a BWMS (~1% for a New Laker; ~4% for a Laker that undergoes a major conversion).
- An incremental step towards the goal of eliminating the discharge of untreated ballast water in the Great Lakes.
- Promotes experience among Lakers operating BWMS and encourages continued development/deployment of new treatment technologies for use in the Great Lakes.
- A step toward binational consistency with Canada’s ballast water regulation.

New Laker

A vessel that is 3,000 gross tonnage and above that operates exclusively on the Great Lakes and western portions of the St. Lawrence River and is constructed after the effective date of USCG’s VIDA regulations

3 Additional Regulatory Option: Equipment Standard for “New Lakers” (continued)

Justification to exempt existing Lakers at this time:

- Technical and operational challenges and expensive retrofit costs for existing vessels, particularly for U.S. Lakers regulated under the Jones Act.
- Under VIDA’s Great Lakes and Lake Champlain Invasive Species Program (GLLCISP), EPA has initiated a research and development plan with the goal of addressing the challenges of ballast water management for Lakers.
- VIDA’s “period of use” provision allows continued use of a BWMS for the life of that system. If an equipment standard were applied to existing Lakers, EPA would not be able to require the deployment of new/improved technology on these vessels.
- VIDA provides authority under CWA section 312(p)(10)(B) for Great Lakes states to work together to develop enhanced Great Lakes requirements.

4

Additional Regulatory Option: Hulls and Associated Niche Areas

2020 Proposed Rule: Specific in-water hull and niche cleaning actions; in-water cleaning with capture (IWCC) and in-water cleaning without capture

Comments: Several states questioned EPA's legal authority to regulate the passive discharge of biofouling and asserted that in-water cleaning discharges that are captured and treated should be permitted under CWA section 402. States commented that in-water cleaning discharges that are not captured should be prohibited except for discharges resulting from the cleaning of microfouling on biocide-free and non-ablative anti-fouling coatings.

Supplemental Notice:

- EPA clarifies that the Agency interprets “discharge incidental to the normal operation of a vessel” to include *any* incidental discharge of biofouling organisms (active and passive) from vessel equipment/systems, consistent with the VGP and Uniform National Discharge Standards.
- Management to minimize macrofouling; cleaning must minimize damage to the anti-fouling coating, minimize release of biocides, and follow coating manufacturers' instructions and applicable Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements.
- Discharges from in-water cleaning *without* capture of macrofouling would be prohibited.
- Discharges from in-water cleaning *with* capture would be excluded from VIDA regulations.

Justification:

- Excluding captured effluent is analogous to VIDA's exclusion of ballast water discharges from shoreside reception facilities.
- Statutory language supports regulation of passive biofouling under the VIDA.

5 Additional Regulatory Option: Graywater Systems

2020 Proposed Rule: Any graywater discharge from certain vessels, including any new vessel of 400 gross tonnage and above, would be prohibited unless the discharge meets the numeric discharge standard.

Public Comment: Several industry stakeholders requested exemption of vessels with a maximum crew capacity and overnight accommodations for fewer than 15 persons. Commenters noted that these vessels produce small volumes of graywater and pollution reductions would be negligible to justify costs of treatment.

Supplemental Notice: Changes the applicability of the requirement for graywater discharges to meet the numeric discharge standard from any new vessel of 400 gross tonnage and above to only those that are certificated to carry 15 or more persons and provide overnight accommodations to those persons.

Justification:

- Appropriately sized graywater treatment systems capable of handling small volumes may be unavailable.
- Graywater storage includes operational and logistical challenges such as vessel stability with storage tanks, inadequate space, and lack of suitable facilities for offloading wastewater.
- Cost to install holding tanks and pumpout could be unreasonable.

Regulatory Impact Analysis

The additional regulatory options are not expected to significantly change the Regulatory Impact Analysis prepared for the 2020 Proposed Rule.

-  **BMP for Ballast Water Uptake** – No change.
-  **Equipment standard for New Lakers** – Costs increase; expected to impact about nine vessels over the 25-year analysis period. Economic analysis can be found in the docket.
-  **Hulls and Associated Niche Areas** – No change.
-  **Graywater Systems** – Decrease; cost savings to certain regulated vessels.

Tips for Preparing Comments

- Include the docket ID number (**EPA-HQ-OW-2019-0482**)
- Explain why you agree or disagree with specific aspects of the Supplemental Notice
- Include any scientific, technical, or economic data to support your comment
- Suggest alternative language and/or provide examples
- More tips at: <https://www.epa.gov/dockets/commenting-epa-dockets>

REMINDER

EPA is only soliciting comments on the topics identified in the Supplemental Notice.

Please do not resubmit comments from the 2020 Proposed Rule or submit additional input on topics not specifically addressed in this Supplemental Notice. EPA's final rule will consider all comments received on both the Proposed Rule and Supplemental Notice.



Questions



Stakeholder Engagement



Public Meeting Dates:

- Nov. 8, 2023 (4:00 – 5:00pm EST)
- Nov. 16, 2023 (9:00 – 10:00am EST)



Submitting Public Comments:

- Comments due no later than **December 18, 2023**
- Visit <https://www.regulations.gov> for access and instructions
- Docket ID: **EPA-HQ-OW-2019-0482**



More information on EPA's Vessels, Marinas, and Ports website:

<https://www.epa.gov/vessels-marinas-and-ports/commercial-vessel-discharge-standards>