



EPA's Proposed Vessel General Permits: Background and Issues

Claudia Copeland

Specialist in Resources and Environmental Policy

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Summary

In November 2011 the Environmental Protection Agency (EPA) proposed two Clean Water Act (CWA) permits to regulate certain types of discharges from vessels into U.S. waters. The proposed permits would replace a single Vessel General Permit (VGP) issued in 2008 that is due to expire in December 2013. As proposed, the permits would apply to approximately 71,000 large domestic and foreign vessels and perhaps as many as 138,000 small vessels. This universe of regulated entities is diverse as well as large, consisting of tankers, freighters, barges, cruise ships and other passenger vessels, and commercial fishing vessels. Their regulated discharges are similarly diverse, including among other pollutants aquatic nuisance species (ANS), nutrients, pathogens, oil and grease, metals, and toxic chemical compounds that can have a broad array of effects on aquatic species and human health, many of which can be harmful.

EPA has proposed two draft permits, one for large vessels to replace the 2008 VGP (draft VGP), and one for smaller vessels that currently are covered by a congressionally enacted temporary moratorium (draft sVGP). Public comments on the draft permits were to be submitted by February 21, 2012. EPA expects to take final action by November 2012. By proposing them well in advance of the VGP's expiration, EPA intends to provide ample time for the regulated community to prepare for the application of new requirements.

The CWA requires that all regulated discharges must meet effluent limitations representing applicable levels of technology-based control. The draft permits largely retain the current permit's approach of relying on best management practices to control most discharges, because EPA concluded that it is infeasible to develop numeric effluent limits for most controlled discharges. However, the draft VGP for larger vessels includes for the first time numeric ballast water discharge limits, which are consistent with standards in a March 2012 Coast Guard rule and an international convention.

The principal benefits of the permits will be reduced risk of introducing ANS into U.S. waters and enhanced environmental quality resulting from reduced pollutant discharges, but the magnitude of benefits is not calculable, according to EPA. The agency acknowledged significant uncertainty about several assumptions affecting estimated costs of the permits, including the types and extent of discharge control practices currently implemented and the number of vessels expected to implement new practices.

EPA's proposal raises two key issues. One concerns inclusion of specific numeric ballast water discharge limits in the draft VGP. At issue has been whether EPA would propose more stringent numeric limits, as some environmental groups have favored and a few states have already adopted. A second issue concerns the role of states in regulating vessel discharges.

Congressional interest in this topic has been evident for some time, as reflected in two bills enacted in 2008 to exempt certain vessels from a CWA permit requirement, thus restricting the population of vessels subject to the current VGP. Similar interest is evident in the 112th Congress. A Coast Guard reauthorization bill passed by the House in November 2011 (H.R. 2838) includes provisions to establish a uniform national standard for ballast water discharges, which would supersede EPA and Coast Guard ballast water management requirements, void the VGP, and supersede existing state standards or permits for any discharge incidental to the normal operation of a commercial vessel. Counterpart Senate legislation (S. 1665) has no similar provisions.

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Developing and administering a regulatory program covering sources so numerous and different from one another is more complicated than for other currently regulated sources. Because the sources themselves are mobile and move between jurisdictions, the regular mechanism of regulating through state-issued permits is problematic. Many regulated vessels are small entities; thus, the economic impacts of regulatory requirements are an important consideration. Identifying technology-based treatment systems and management practices that can control vessel discharges effectively and economically presents many challenges.

This report is an overview of the proposed permits and two key issues: inclusion of numeric performance standards to limit ballast water discharges from vessels, and controversies about the role of states in regulating vessel discharges. Congress's interest in these issues as reflected in legislation in the 112th Congress is reviewed.

Background: Clean Water Act Requirements

The Clean Water Act (CWA) prohibits the discharge of pollutants from a point source into the navigable waters of the United States without a permit. Vessels are defined in the statute as point sources. In 1973, EPA promulgated a regulation that excluded discharges incidental to the normal operation of vessels (including ballast water, but not including vessel sewage discharges, which are regulated under CWA section 312) from CWA permitting requirements. This long-standing regulation was challenged in federal district court by environmental advocacy groups who wanted EPA to address ballast water as a source of ANS in U.S. waters. In 2005 the court found that Congress had directly expressed its intention that discharges from vessels be regulated under the CWA, and that the 1973 regulation contradicted that intention. In September 2006 the court issued a final order vacating (revoking) the regulatory exclusion as of September 30, 2008, and remanding the ruling to EPA for further proceedings. The Ninth Circuit U.S. Court of Appeals upheld the district court's ruling on July 23, 2008.¹ On June 17, 2008, EPA proposed two CWA general permits in response to the court's 2006 order, one applicable to commercial vessels and one applicable to small recreational vessels.²

CWA permits are either individual permits issued to specific facilities or general permits. Either type of permit is issued for a specific period of time (not to exceed five years), after which it

¹ Northwest Environmental Advocates v. U.S. Environmental Protection Agency, 537 F.3d 1006 (9th Cir. 2008).

² U.S. Environmental Protection Agency, "Draft National Pollutant Discharge Elimination System (NPDES) General Permits for Discharges Incidental to the Normal Operation of Vessels," 73 *Federal Register* 34296-34304, June 17, 2008.

expires. A general permit covers multiple facilities within a specific category having common elements, such as similar types of operations that discharge the same types of wastes. Because of the large number of potential sources of vessels,³ EPA believed that it made administrative sense to use general permits, rather than individual permits. In August 2008, the federal district court agreed to EPA's request to delay vacating the regulatory exemption for three months, to ensure that permits could be issued before the exemption was eliminated. EPA finalized a Vessel General Permit for vessels subject to a permit requirement on December 18, 2008. The permit became effective on December 19, 2008. However, on the same day, the federal district court granted an EPA motion to delay vacating the existing regulatory exclusion until February 6, 2009. Thus, the effective date remained December 19, but regulated sources were not required to comply with terms of the permit until February 6, 2009.

Requirements of the 2008 Vessel General Permit

In July 2008, Congress enacted two bills to exempt discharges incidental to the normal operation of certain types of vessels from CWA permitting, thus restricting the population of vessels subject to EPA regulation. The first measure, P.L. 110-288, the Clean Boating Act of 2008, exempted discharges incidental to the normal operation of recreational vessels from CWA permitting requirements. The legislation directed EPA and the Coast Guard to create a regulatory regime under new CWA section 312(o); EPA is currently developing regulations for recreational vessels, as required by the legislation.⁴

The second measure, P.L. 110-299, provided a two-year moratorium on CWA permitting for certain discharges from commercial fishing vessels of all sizes and non-recreational vessels less than 79 feet in length. This moratorium was subsequently extended to December 18, 2013, by P.L. 111-215. During the moratorium, EPA was directed to study the discharges from these vessels and submit a report to Congress.⁵ However, this legislative action did not exempt or provide a permitting moratorium for all discharges from all types of vessels. The Vessel General Permit (VGP) finalized by EPA in December 2008 gives permit coverage to an estimated 69,000 commercial vessels and large recreational vessels that were not affected by the moratorium in P.L. 110-299, including tankers, freighters, barges, and cruise ships, and it also applied to ballast water discharges from vessels covered by the moratorium.⁶ It applies to pollutant discharges, including ballast water, that are incidental to the normal operation from non-recreational vessels that are 79 feet or more in length, and to ballast water discharges from commercial vessels of less than 79 feet and commercial fishing vessels of any length. Geographically, it applies to discharges into waters of the United States in all states and territories, extending to three miles from the baseline (i.e., shoreline).

³ EPA estimated that the universe of vessels potentially affected by the court's order and proposed permits could include over 13 million recreational boats and 98,000 commercial fishing, passenger, cargo and other vessels operating in U.S. waters.

⁴ See <http://water.epa.gov/lawsregs/lawsguidance/cwa/vessel/CBA/about.cfm>.

⁵ U.S. Environmental Protection Agency, Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet, August 2010, <http://cfpub.epa.gov/npdes/vessels/reportcongress.cfm>.

⁶ U.S. Environmental Protection Agency, "Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel," 73 *Federal Register* 79473-79481, December 29, 2008.

In the final permit, EPA identified 26 types of waste streams or discharge types from the normal operation of covered vessels (some are not applicable to all vessel types). The types of pollutant discharges subject to the permit include ANS (also known as invasive species), nutrients, pathogens, oil and grease, metals, and pollutants with toxic effects.

The CWA requires that all point source discharges must meet effluent limitations representing applicable levels of technology-based control. Under the 2008 VGP, EPA concluded that, based on available information, it is not practicable to derive numeric effluent limits to achieve technology-based controls for many of the discharge types regulated under the permit. Thus, most discharges covered by the 2008 VGP are controlled by specific best management practices (BMPs), many of which were already in use.⁷ Some vessel categories, such as cruise ships, were subject to more detailed requirements for discharges such as graywater (water from showers, baths, sinks, and laundry facilities) and pool and spa water. Monitoring, recordkeeping, and reporting requirements apply, as well.

Procedurally, vessels larger than 79 feet or more than 300 gross tons (an estimated 50,000 domestic and foreign vessels) were required to submit a Notice of Intent (NOI) by September 19, 2009, to be covered by the permit. Smaller regulated vessels (approximately 19,000) were automatically covered. There were no permit fees. Projected industry compliance costs (including paperwork requirements) ranged from a low of \$8.9 million to \$23.0 million annually; they varied based on assumptions of vessel populations affected and the number of instances in which incremental costs would be incurred.

2011 Draft Vessel General Permits

The 2008 VGP will expire on December 18, 2013, as will the statutory permitting moratorium for commercial fishing vessels and non-recreational vessels less than 79 feet. Anticipating these changes, on November 30, 2011, EPA proposed two draft Vessel General Permits, one for large vessels to replace the current 2008 VGP (draft VGP), and one for smaller vessels to authorize discharges from vessels that are currently covered by the congressionally enacted temporary moratorium (draft sVGP). EPA expects to take final action on the draft permits by November 30, 2012. By proposing them well in advance of December 2013, EPA intends to provide ample time for the regulated community to prepare for the application of new requirements.⁸

Both draft permits would regulate discharges from 26 types of waste streams (as does the 2008 VGP), plus an additional waste stream category, fish hold effluent. Pollutants in such discharges can include ANS, nutrients, pathogens, oil and grease, metals, and toxic chemical compounds that can have a broad array of effects on aquatic species and human health, many of which can be harmful. Both draft permits largely retain the current permit's approach of relying on specific behaviors or BMP techniques to control most regulated discharges, as EPA has again concluded that it is infeasible to develop numeric effluent limits for most controlled discharges covered by

⁷ BMPs include practices that generally are preventative in nature, such as vessel maintenance techniques or training personnel in use of on-board equipment to minimize pollutant discharges.

⁸ U.S. Environmental Protection Agency, "Draft National Pollutant Discharge Elimination System (NPDES) General Permits for Discharges Incidental to the Normal Operation of a Vessel; Notice of draft permit issuances and notice of public hearing," 76 *Federal Register* 76716-76725, December 8, 2011. Full text of the two draft permits and accompanying permit fact sheets and economic analysis documents are available at <http://www.epa.gov/npdes/vessels/vgpermit.cfm>. Public comments were to be submitted by February 21, 2012.

the permit. The draft VGP for larger vessels contains several changes that are discussed below—notably, including for the first time numeric ballast water discharge limits, more stringent effluent limits for oil-to-sea interfaces and exhaust gas scrubber washwater, as well as specifications to manage fish hold effluent. Both draft permits include streamlined recordkeeping and reporting requirements, which modify aspects of the 2008 VGP, such as allowing electronic recordkeeping and requiring an annual report in lieu of a one-time report and annual noncompliance report.

The following sections of the report provide an overview of EPA's two draft permits, discuss two issues of particular interest—requirements concerning ballast water management, and federal and state roles—and discuss recent congressional interest.

The Draft VGP for Large Vessels

The draft VGP would apply to seven categories of vessels operating in a capacity of transportation that have discharges incidental to their normal operations into waters subject to the permit: commercial fishing including fish processing, freight barge, freight ship, passenger vessel, tank barge, tank ship, and utility vessel. Freight barges (such as open and covered dry cargo barges, 68% of total), tank barges (e.g., liquid cargo barges, 12%), and utility vessels (such as research vessels and tug vessels, 11%) account for the majority of the 58,600 domestic vessels eligible for coverage under the draft VGP. Of the 12,430 foreign vessels eligible for coverage, freight ships (e.g., container ships) account for 66%, and tank ships (such as oil tankers) account for 28% of the total. Like the 2008 VGP, “waters subject to the permit” means “waters of the United States,” including the territorial seas as defined in the CWA and extending to three miles from the baseline.

EPA has concluded that requiring all covered vessels to submit an NOI indicating coverage under the replacement VGP would be administratively impracticable, so the draft permit would not require operators of vessels smaller than 300 gross tons and with capacity to carry less than 8 cubic meters of ballast water to submit NOIs. Consequently, more than 10,000 vessels would be automatically covered by the permit without submitting an NOI. This is essentially the same approach used in the 2008 VGP. However, all covered vessels are subject to the permit's requirements and must complete a Permit Authorization and Record of Inspection form and maintain that form on board at all times. The purpose of the form, according to EPA, is to confirm that vessels owners and operators have read the terms of the VGP and understand their obligation to comply.

As noted above, CWA permits normally are issued for a specific period of time, not to exceed five years. EPA is proposing a four-year permit term for the draft VGP, as a way to ensure that the permit keeps pace with developing technologies, especially for ballast water treatment.⁹

The draft permit's principal ballast water and non-ballast modifications of the 2008 VGP are discussed next, along with EPA's economic and benefits analysis.

⁹ U.S. Environmental Protection Agency, *2011 Proposed Issuance of National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels*, Draft Fact Sheet, November 30, 2011, p. 8. Hereinafter, Draft VGP Fact Sheet.

Ballast Water Requirements

Ballast water discharge has been identified as a major pathway for the introduction of ANS. Ships use large amounts of ballast water for stability during transport. Ballast water is often taken on in the coastal waters in one region after ships discharge wastewater or unload cargo, and then discharged at the next port of call, wherever more cargo is loaded, which reduces the need for compensating ballast. Thus, the practice of taking on and discharging ballast water is essential to the proper functioning of ships, because the water that is taken in or discharged compensates for changes in the ship's weight as cargo is loaded or unloaded, and as fuel and supplies are consumed. However, ballast water discharge typically contains a variety of biological materials, including non-native ANS that can alter aquatic ecosystems. Concern about harmful impacts of ballast water discharge was the core of the legal challenge by environmental groups to EPA's 1973 regulations, which ultimately led to issuance of the 2008 VGP.

The ballast water requirements of the 2008 VGP are minimal, largely requiring what current Coast Guard rules require—primarily use of ballast water exchange, or BWE.¹⁰ The 2008 permit mandates mid-ocean BWE for ships traveling outside the 200-nautical-mile exclusive economic zone (EEZ) of the United States. This requirement already applies under a 2004 Coast Guard rule (codified at 33 CFR Part 151). EPA's VGP also requires BWE at least 50 nautical miles from shore for vessels engaged in Pacific nearshore voyages, which are not covered by the Coast Guard's mandatory exchange procedures. Further, the 2008 VGP requires vessels that declare they have "no ballast on board" either to seal the ballast tanks to prevent any discharge or to carry out saltwater flushing. The 2008 permit requires vessel operators to maintain a log book and records of ballast water management and submit reports of noncompliance to EPA annually.

The 2008 VGP does not include numeric limits on living organisms or pathogenic discharges, which some environmental groups have advocated that EPA issue. EPA explained this position in a fact sheet accompanying the 2008 permit.¹¹

EPA is not requiring any numeric treatment standards for the discharge of living organisms as part of this permit issuance and is instead requiring management practices (e.g. ballast water exchange) that decrease the risk of ANS introduction. EPA is proposing this approach because treatment technologies that effectively reduce viable living organisms in a manner that is safe, reliable, and demonstrated to work onboard vessels are not yet commercially available ... [R]equiring a numeric effluent limit for the discharge of living organisms is not practicable, achievable, or available at this time.... EPA will consider establishing treatment requirements in the next generation of permits that will provide for compliance with treatment standards that will be expressed as units of living or viable organisms per unit of volume in ballast water discharge.

While the 2011 draft VGP contains a number of ballast water BMP and recordkeeping requirements similar to the 2008 permit, the draft replacement permit departs from the 2008 permit by proposing specific ballast water numeric discharge limits. By replacing the non-numeric limitation for ballast water in the 2008 VGP with numeric limits, EPA expects that the

¹⁰ For more information, see CRS Report RL32344, *Ballast Water Management to Combat Invasive Species*, by Eugene H. Buck. Additional information on impacts of ANS on aquatic ecosystems can be found in EPA documents accompanying the 2011 proposed VGPs (see *infra* footnote 8).

¹¹ U.S. Environmental Protection Agency, *2008 Final Issuance of National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels Fact Sheet*, December 2008, pp. 62-63.

changes will achieve significant reductions in the number of living organisms discharged via ballast water into waters subject to the permit. The draft VGP sets the numeric effluent limits for ballast water in terms of maximum acceptable concentration of living organisms per cubic meter discharged, as shown in the text box below. As discussed further below (see “Ballast Water Standards”), EPA now concludes that treatment technologies are available to meet limits in the draft VGP, and the requirements are economically practicable and economically achievable.

The numeric limits in the draft VGP are identical to performance standards specified in the International Maritime Organization’s (IMO’s) 2004 International Convention for the Control and Management of Ships’ Ballast Water and Sediment.¹² They also are the same as standards finalized by the Coast Guard in March 2012 under 33 CFR Part 151 and 46 CFR Part 162.¹³

Ballast Water Numeric Discharge Limits in the 2011 Draft VGP

1. For organisms greater than or equal to 50 micrometers in minimum dimension: discharge must include fewer than 10 living organisms per cubic meter of ballast water.
2. For organisms less than 50 micrometers and greater than or equal to 10 micrometers: discharge must include fewer than 10 living organisms per milliliter (mL) of ballast water.
3. Indicator microorganisms must not exceed:
 - For Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): a concentration of less than 1 colony forming unit (cfu) per 100 mL.
 - For *Escherichia coli*: a concentration of fewer than 250 cfu per 100 mL.
 - For intestinal enterococci: a concentration of fewer than 100 cfu per 100 mL.

Many ballast water treatment systems produce or use biocides as a disinfection agent to reduce living organisms present in the ballast water tank, but discharges of such substances may cause or contribute to violation of applicable water quality standards. Thus, the draft VGP also includes biocide effluent limitations to protect aquatic life. The permit sets limits of 200 micrograms per liter ($\mu\text{g/l}$) of chlorine dioxide, 500 $\mu\text{g/l}$ of peracetic acid, and 1,000 $\mu\text{g/l}$ of hydrogen peroxide.

Vessels may comply with the concentration-based numeric treatment limits in one of four ways: (1) discharge treated ballast water meeting the applicable numeric limits (i.e., by using treatment technology); (2) transfer the ship’s ballast water to a third party; (3) use treated municipal/potable water as ballast water; or (4) by not discharging ballast water. EPA estimates that approximately

¹² The IMO, a body of the United Nations, sets international maritime vessel safety and marine pollution standards. Numeric discharge limits in the IMO ballast water convention, referred to as the D-2 standards, will enter into force 12 months after ratification by 30 nations, representing 35% of the world merchant shipping tonnage. As of May 31, 2012, this convention had been ratified by 35 nations, representing 28% of the world merchant shipping tonnage. The United States has not ratified the convention.

¹³ U.S. Department of Homeland Security, Coast Guard, “Standards for Living Organisms in Ships’ Ballast Water Discharged in U.S. Waters; Final rule,” 77 *Federal Register* 17254-17320, March 23, 2012. This rule, as proposed in 2009, would have provided standards in two phases. Under the proposal, if a practicability review shows it is feasible, more stringent Phase 2 standards would apply by January 1, 2016, to new vessels constructed after that date and existing vessels that have not installed a ballast water management system by that date. The Phase 2 standards would set concentration limits 1,000 times more stringent than Phase 1 standards for the smallest viable organisms and also would set limits on the discharge concentration for bacteria and viruses. However, the final rule promulgated in March 2012 defers the Phase 2 standard, pending assessment of additional data on available technology and development of a subsequent rule with an economic and environmental analysis to support a Phase 2 standard. The Coast Guard’s authority for these rules is the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended by the National Invasive Species Act (16 USC 4701 et seq.).

2,880 domestic and 5,270 foreign vessels are potentially subject to the ballast water standards because they operate with on-board ballast water tanks, and the agency anticipates that about 40% of covered vessels will comply by installing a ballast water treatment system. EPA has concluded that several treatment technologies capable of meeting the draft permit's numeric limits are commercially and economically available now for shipboard installation.

Under the draft VGP, new vessels constructed after January 1, 2012, must comply with the permit's numeric limits upon delivery. Existing vessels, constructed before that date, must comply under a staggered schedule.

- Existing vessels with ballast water capacity of less than 1,500 cubic meters must comply by the time of their first scheduled drydocking after January 1, 2016.
- Existing vessels with ballast water capacity of more than 1,500 and less than 5,000 cubic meters must comply by the time of their first scheduled drydocking after January 1, 2014.
- Existing vessels with ballast water capacity greater than 5,000 cubic meters must comply by the time of their first scheduled drydocking after January 1, 2016.

This implementation schedule for existing vessels is the same as in the Coast Guard's March 2012 rules, described above. Under the Coast Guard rule, new vessels are those constructed after December 1, 2013. The IMO D-2 standard includes a phased schedule for similar ballast water capacity sizes of vessels, but with slightly different implementation dates.

Certain vessel classes would not be subject to the ballast water numeric limits in the draft VGP. These include vessels engaged in short-distance voyages (e.g., they travel no more than 10 nautical miles), unmanned and unpowered barges, and existing bulk carrier vessels built before January 1, 2009, that operate solely within the Great Lakes (commonly known as Lakers). In general, according to EPA, these vessels face a number of challenges for managing ballast water, and in the case of existing Lakers there currently are no available treatment systems. Thus EPA has concluded that it is more appropriate to require these vessels to use BMPs such as avoiding discharge of ballast water in environmentally sensitive areas, but not require compliance with numeric limits. However, if treatment technologies for Lakers become available during the permit term, EPA will "promptly exercise the permit reopener to modify the permit" sooner than the proposed four-year limit to modify these requirements accordingly.¹⁴

Non-Ballast Water Requirements

The draft VGP proposes several more stringent effluent limits/BMPs than in the 2008 VGP for certain vessel discharges. First, it would require all powered vessels constructed after December 19, 2013, to use "environmentally acceptable lubricants" on mechanical and other equipment that operate at the sea interface, such as wire rope or cables. Vessel operators often use lubricants to maintain the functionality of such equipment, which can release quantities of oil or grease to water. The permit also requires maintenance BMPs to prevent leaks that could lead to oil discharges.

¹⁴ Draft VGP Fact Sheet, pp. 111-112.

Second, the draft permit prescribes BMPs to reduce discharges of fish hold effluent, which was not covered by the 2008 VGP. Commercial fishing vessels use various methods to store seafood after it is caught. Fish hold effluent is composed of seawater, melted ice, or ice slurry that is collected inside fish hold tanks. It contains pollutants such as biological wastes and nutrients which result from seafood catch. In addition, because holding tanks often are cleaned or disinfected between catches, the resulting effluent can contain organic material, oils, nutrients, and bacteria and viruses. BMPs specified in the permit are intended to minimize the discharge of fish hold water and ice while vessels are stationary at a pier.

Third, the draft VGP includes numeric limits to control discharge to water of harmful exhaust emissions from engines that power ocean going vessels. The permit would set numeric limits and monitoring requirements for pH, turbidity, polycyclic aromatic hydrocarbons (PAHs), and nitrates plus nitrites. The limits are consistent with guidelines established by the IMO to implement engine and fuel standards in Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).¹⁵

The draft permit also includes certain administrative modifications of the 2008 VGP, which requires owners/operators to self-inspect their vessels routinely as well as annually in more detail and keep written records. The 2008 permit allowed use of electronic recordkeeping systems, and the draft permit includes provisions clarifying how such systems are to be maintained in forms as readable and legally dependable as a paper equivalent. The draft VGP modifies the earlier permit's reporting requirements by consolidating requirements for an annual noncompliance report as part of an annual report, instead of calling for separate reports.

Additional Requirements for Certain Vessel Classes

Under the 2008 VGP, cruise ships are subject to more detailed requirements for certain discharges, such as graywater and pool and spa water, and additional monitoring and reporting. These additional requirements recognize that cruise ships generate considerably more graywater discharges than a container or cargo ship, and onboard amenities such as photo developing and dry cleaning produce chemicals that are toxic to the aquatic environment and, thus, are not authorized by the permit.¹⁶ The 2008 VGP includes BMPs as well as numeric effluent limits for fecal coliform and residual chlorine in cruise ship discharges of graywater that are based on U.S. Coast Guard rules for discharge of treated sewage or graywater in Alaska. It also includes operational limits on cruise ship graywater discharges in nutrient-impaired waters, such as Chesapeake Bay or Puget Sound. The 2011 draft VGP retains the same numeric limits for graywater discharges, but tightens operational limits: cruise ships are prohibited from discharging graywater within three nautical miles of shore (rather than one nautical mile from shore under the 2008 VGP) unless it has been treated to the standards specified in the permit. In general, the draft permit includes the same requirements for large (more than 500 passengers) and medium cruise ships (carrying 100 to 499 passengers), but with some flexibility for the latter category because of differences in graywater holding capacity and operation.

¹⁵ MARPOL is an international treaty that regulates discharges from vessels. It includes several annexes that regulate specific types of vessel pollution, such as oil, garbage, and plastic. In the United States, MARPOL is primarily implemented by the Act to Prevent Pollution from Ships (33 USC 1901). The Coast Guard is the lead agency for implementing this statute.

¹⁶ For background information, see CRS Report RL32450, *Cruise Ship Pollution: Background, Laws and Regulations, and Key Issues*, by Claudia Copeland.

The draft VGP also includes additional requirements for large ferries (to minimize potential spills, drips, and leaks associated with carrying vehicles), barges (to prevent contamination of condensation with oily or toxic materials), oil and petroleum tankers (to protect against environmentally harmful discharges of oil during cargo loading and unloading), research vessels (to authorize only discharges for the purpose of conducting research on the aquatic environment or its natural resources), and emergency vessels (specifically to allow discharges incidental to the public safety responsibilities of firefighting and similar boats).

Economic Impacts, Benefits, and Uncertainties

EPA estimates that the total annual costs of implementing the draft VGP will range from \$6.5 million to \$20.9 million for domestic vessels.¹⁷ For vessels covered by this permit, these would be incremental costs, in addition to previous costs for compliance with the 2008 VGP, described above. About 90% of the costs of the draft permit are associated with requirements mandating the use of environmentally acceptable lubricants, followed by those for ballast water. However, EPA's estimates of compliance costs do not include the capital costs of installing, operating and maintaining ballast water treatment systems, as these costs were previously estimated by the Coast Guard in its 2009 regulatory proposal to be approximately \$168 million per year. EPA assumes that implementation of the draft VGP will not result in incremental costs, because either the Coast Guard's rule or the comparable IMO ballast water convention will be effective before the replacement VGP, in December 2013, thus including them as costs of the draft VGP would be double counting.

Per vessel compliance costs range between \$0 and about \$8,400, depending on the number of applicable discharge categories, but costs for most vessels are estimated to range between \$26 and \$3,933. By vessel class, EPA estimates that freight barges and freight ships, a total of about 41,000 or 69% of domestic vessels covered by the permit, will incur 35%-38% of total compliance costs, followed by utility vessels, a total of about 6,260 or 11% of domestic vessels covered by the permit, which are expected to incur 33%-35% of total compliance costs.

The principal benefits of the VGP will be reduced risk of ANS introduction and enhanced environmental quality from reduced pollutants, according to EPA. EPA concludes that the permit's ballast water management practices—including discharge standards, monitoring, and reporting—should reduce the number of ANS invasions, thus preventing significant future damages to fisheries, water-based recreation and tourism, biodiversity and ecosystems, threatened and endangered species, human health, and infrastructure. However, the agency cannot quantify these benefits.

[T]he complexity of analyzing the probability of ANS introduction and spread, the wide range and varied nature of impacts ANS invasions can cause, and the great breadth of the scope of this Permit prohibit EPA from developing a quantified estimate of these benefits.¹⁸

Likewise, EPA concludes that the permit's controls on specific discharges, as well as its general housekeeping requirements, can be expected to generate both monetized benefits—such as preventing fishery closures and adverse human health impacts and increasing recreation

¹⁷ EPA did not estimate compliance costs for foreign vessels subject to the draft VGP.

¹⁸ U.S. Environmental Protection Agency, *Economic and Benefits Analysis of the Proposed 2013 Vessel General Permit (VGP)*, October 30, 2011, p. 137. Hereafter, VGP Economic Analysis.

opportunities—and nonmonetized benefits—such as preventing further stress on biodiversity and ecosystems. The magnitude of benefits is not calculable, according to EPA.¹⁹

EPA acknowledged significant uncertainty about several assumptions affecting estimated costs of the VGP, including uncertainty regarding discharge control practices currently implemented and the number of vessels expected to implement new practices. There also is uncertainty, EPA said, about costs of certain treatment systems, such as for bilge water, and practices such as use of environmentally acceptable lubricants, because of limited data and unknowns about applicability to different vessels. As a result, EPA concluded that its estimates should be interpreted as illustrative of a range of incremental costs, not as a precise account of costs that a vessel owner may incur for any specific vessel.²⁰

The Draft sVGP for Small Vessels

The draft sVGP applies to non-military, non-recreational vessels operating in a capacity of transportation that are less than 79 feet in length. EPA estimates that approximately 115,000 to 138,000 domestic and 112 foreign vessels are potentially subject to the sVGP. These vessels were excluded from the 2008 VGP by the moratorium in P.L. 110-299. They include various types of commercial fishing vessels, tugs and towing vessels, water taxis and small ferries, tour boats, and various other types of vessels used for non-recreational purposes. As many as 68,000 commercial fishing vessels, comprising the largest category, includes vessels involved in fish catching, fish processing, and charter fishing. The second largest category is “unspecified” vessels (totaling 27,000), followed by passenger vessels (21,000), such as harbor cruise vessels.

The draft sVGP regulates several categories of discharges, including fuel management, engine and oil control, solid and liquid waste management, vessel hull maintenance, graywater, fish hold effluent, and ballast water. It prescribes BMPs such as preventive maintenance of engines and fuel tanks to minimize the occurrence of leaks and spills that could release fuel or oil to receiving waters, and the minimization of graywater discharges that may contain soaps and detergents or nutrients into sensitive water bodies and confined waters. Most of the practices are already widely implemented by vessels subject to the sVGP, according to EPA.

In general, EPA has concluded that few vessels covered by the sVGP are affected by ballast water management requirements, because vessels less than 100 feet long typically do not load and discharge ballast. However, for small vessels (less than 79 feet long) that do use ballast as a stability enhancer but with ballast water capacity less than 8 cubic meters, the draft sVGP prescribes BMPs. EPA is prescribing BMPs because no existing treatment systems are believed to have been developed for vessels with these small amounts of ballast water. Appropriate ballast water management BMPs include avoiding or minimizing ballast water uptake in areas with a high potential to contain harmful organisms and only discharging the minimal amounts of ballast water necessary in U.S. coastal and inland waters.

The sVGP would not authorize the discharge of ballast water from small vessels with a ballast water capacity of 8 or more cubic meters, as installation of a treatment system is believed to be practicable and economically achievable, according to EPA. These vessels would need to be

¹⁹ Ibid., p. 145.

²⁰ Ibid., p. 114.

authorized by the VGP, discussed above, not the sVGP, and would be subject to the VGP's specific requirements. Finally, vessels that have 8 or more cubic meters of ballast water capacity but that do not discharge (e.g., they use permanent ballast water or other methods to avoid any discharge to waters covered by the permit) may be covered by the sVGP.

Because of the large universe of vessels covered by the sVGP, EPA determined that requiring all of these vessels to submit an NOI would be "an extremely large administrative burden."²¹ However, like the draft VGP, EPA will require all vessel operators covered by the permit to comply with its requirements, including signing a sVGP Permit Authorization and Record of Inspection form and maintaining that form onboard at all times.

The terms of the sVGP will expire five years after the permit's effective date. (As described above, EPA proposes that the VGP for large vessels have a four-year permit term.)

Overall, EPA estimates that the sVGP requirements could result in total annual costs for domestic vessels ranging between \$7.0 million and \$12.1 million, in the aggregate.²² Approximately 35% of these costs are associated with vessel hull maintenance, 25% with recordkeeping and inspection, and 25% with engine and oil control BMPs. The average cost per vessel is estimated to range from \$17 per year (for vessels that already implement control practices) to \$98 per year. For vessels that don't already implement control practices, these would be new costs, because small vessels currently are not subject to terms of the 2008 VGP.

EPA lacks data to quantify the environmental benefits of the sVGP, but qualitatively, the agency expects that reducing discharges incidental to the operation of small non-recreational vessels will have two broad categories of benefits, similar to benefits of the draft VGP: enhanced environmental quality from reduced loads of pollutants, and reduced risk of introducing and spreading invasive species. As with the draft permit for larger vessels, EPA is unable to quantify these benefits.

As it did with the draft VGP, EPA acknowledged uncertainties about impacts of the draft sVGP, largely due to limitations of data regarding financial and operational characteristics of affected firms and compliance costs that firms may incur. Particularly for the smaller vessels covered by the sVGP, EPA said that uncertainty exists for the revenue data for firms and also on the number of firms that have vessels that could incur cost impact. For example, EPA assumed the same range of cost per vessel for all industry sectors, based on the best and worse case scenarios, but the agency recognizes that this simplifying assumption may be inaccurate, because some vessels may already be implementing discharge control practices and would therefore not incur additional costs. Despite uncertainties, EPA concluded that compliance with the sVGP is "unlikely to result in a significant number of firms in the commercial fishing industry incurring material economic impacts as a result of complying" with the permit.²³

²¹ U.S. Environmental Protection Agency, *National Pollutant Discharge Eliminations System (NPDES) Small Vessel General Permit (sVGP) for Discharges Incidental to the Normal Operation of Vessels Less than 79 Feet Fact Sheet*, November 30, 2011, p. 14.

²² EPA did not estimate the compliance costs for foreign vessels, because their costs are not expected to have a direct impact on U.S. firms. U.S. Environmental Protection Agency, *Economic and Benefits Analysis of the Proposed Small Vessel General Permit (sVGP)*, November 30, 2011, p. 8.

²³ *Ibid.*, pp. 71-72.

Issues

Two prominent issues raised by EPA's proposal are: questions about inclusion of specific numeric ballast water discharge limits in the draft VGP, and controversies about the role of states in regulating vessel discharges.

Ballast Water Standards

Many observers expected EPA to propose numeric limits in the next iteration of the VGP, in view of the forthcoming IMO and proposed Coast Guard performance standards. At issue has been whether EPA would propose more stringent numeric limits, as some environmental advocacy groups have favored and a few states have already adopted.

Anticipating expiration of the 2008 VGP, in 2010 EPA requested two reports to advise the agency on possible changes to the permit's ballast water management requirements. First, EPA and the Coast Guard jointly asked the National Research Council (NRC) of the National Academy of Sciences to evaluate the state of the science to support a quantitative approach to setting ballast water discharge standards, that is, specific numeric limits. The two agencies sought advice to better understand the relationship between concentrations of living organisms in ballast water discharges and the probability of ANS successfully establishing populations in U.S. waters, that is, whether setting maximum permissible limits on live organisms in ballast effluent can adequately protect against establishment of ANS in aquatic systems. The resulting NRC report concluded that the density of organisms released in a ballast discharge is "but one of scores of variables that can and do influence invasion outcome."²⁴ The NRC concluded that, while a benchmark discharge standard that reduces the concentration of organisms below levels achieved by open-sea BWE is an important first step, additional research is needed in order to focus on the relationship between the quantity, quality, and frequency of release and the risk of successful invasion by ANS.

Second, EPA asked its Science Advisory Board (SAB) to provide advice on technologies and systems to minimize the impacts of ANS in vessel ballast water discharge. EPA requested the SAB to assess whether existing shipboard treatment technologies can reach specified concentrations of organisms in vessel ballast water, how these technologies might be improved in the future, and how to overcome limitations in existing data. The SAB's overarching recommendation in its report²⁵ is that, rather than relying solely on numeric standards, the agency should adopt a risk-based approach to minimize impacts of invasive species in vessel ballast water discharge, including methods to reduce invasion events, process and environmental monitoring, containment, and eradication. The SAB found that several existing technologies have been demonstrated that are capable of meeting the IMO D-2/Coast Guard standards, but that none is yet capable of meeting more stringent standards, such as the Phase 2 standard included in the

²⁴ National Research Council, Committee on Assessing Numeric Limits for Living Organisms in Ballast Water, *Assessing the Relationship Between Propagule Pressure and Invasion Risk in Ballast Water*, June 2011, p. 5, http://www.nap.edu/catalog.php?record_id=13184.

²⁵ U.S. Environmental Protection Agency Science Advisory Board, *Efficacy of Ballast Water Treatment Systems: A Report by the EPA Science Advisory Board*, EPA-SAB-11-009, July 12, 2011.

2009 Coast Guard proposal²⁶ or those adopted by California and New York.²⁷ Reaching a more stringent standard would require wholly new treatment systems that have not been developed and tested in order to determine their practicality and cost, according to the SAB.

These reports clearly influenced EPA's development of the 2011 draft VGP, which proposes to harmonize the permit's requirements for controlling ANS in ballast water discharge with the numeric limits in the IMO D-2 standards/Coast Guard rule, plus continued use of BMPs. EPA referenced both reports in explaining its conclusion that a more rapid implementation schedule than in the IMO D-2 standard is not economically achievable at this time, nor are more stringent numeric discharge limits practicable at this time. In particular, EPA concludes that data cited by the California State Lands Commission to justify that state's more stringent discharge limits "are not adequate to determine whether any of the treatment systems can meet a significantly more stringent limit than that proposed for this permit term."²⁸

Nevertheless, EPA recognizes that some will urge the agency to require numeric limits more stringent than the IMO D-2/Coast Guard standards. Many environmental groups and some states argue, for example, that setting a higher standard will better protect water quality from ANS invasion while also serving as incentive to industry to develop technology that meets the standard. Thus, EPA is seeking public comment on the appropriateness of the proposed ballast water controls in the draft VGP and whether to adopt alternative treatment limits in the VGP (such as the California standards), as well as whether additional management measures discussed in the NRC or SAB reports (such as managing ballast uptake or reducing ballast water discharge volumes) should be incorporated in the permit.²⁹

Federal Preemption and State Role

Preemption of state regulatory programs with a uniform national standard has been a key issue in dispute concerning efforts to regulate discharges from vessels, including ballast water discharges.

The CWA permits EPA to authorize qualified states to administer the act's principal permitting program under section 402, and EPA has done so for 46 states. Pursuant to CWA section 402(c)(1), after such authorization, EPA suspends issuance of permits in lieu of the state. In other situations when EPA has issued a CWA general permit covering a similar category of

²⁶ As described previously, the March 2012 final Coast Guard rule does not include Phase 2 standards. See *infra* footnote 13.

²⁷ California Public Resources Code section 71200, enacted in 2006. In response to the law, the California State Lands Commission promulgated standards 1,000 times more stringent than the IMO D-2/Coast Guard proposed Phase 1 standards and requiring compliance beginning January 1, 2009. California's rules also prohibit discharge of detectable living organisms for the largest size classes of organisms (greater than 50 micrometers in size). However, the SAB found that it is not reasonable to assume that current ballast water management systems are able to reliably meet or closely approach a "no detectable living organism" standard. In 2008 the New York Department of Environmental Conservation (DEC) promulgated rules requiring existing vessels to treat ballast waters to a level 100 times more stringent than the IMO D-2 standard in January 2013. Vessels built after that date must include technology to treat ballast water to the same level as California's standards. However, in February 2012, the DEC announced that it would delay the effective date of these more stringent standards until December 19, 2013 (the day after expiration of the 2008 VGP).

²⁸ Draft VGP Fact Sheet, p. 83.

²⁹ 76 *Federal Register* 76722-76723.

dischargers,³⁰ the EPA general permit only applies in non-delegated states where EPA retains permitting authority.³¹ In the authorized states, the EPA general permit typically is the model for a state-issued general permit, which must be at least as stringent as the EPA permit, but can be more stringent. Further, CWA section 510 allows states to adopt standards, discharge limitations, or other requirements more stringent than federal rules, meaning that if a state were to assume the responsibility to issue vessel permits under the CWA, it could do so with alternative requirements no less stringent than the federal requirements. States often want the flexibility to require standards more stringent than federal, and this general authority in the statute gives states the ability to tailor and strengthen their implementation of federal water quality programs to address local conditions and circumstances.

However, because vessels are mobile and frequently travel between jurisdictions, allowing individual states to issue CWA permits to vessels would be administratively more complex than issuing a permit to a factory or other stationary source. Thus, the 2008 VGP and EPA's 2011 draft general permits uniquely apply to vessel discharges into U.S. waters in all states and territories, regardless of whether a state is authorized to administer other aspects of CWA permitting. By preempting states from issuing CWA permits for discharges incidental to the normal operation of vessels, the possibility of vessels being subject to potentially conflicting conditions as they move between the waters of different states is theoretically precluded.

However, even without issuing CWA permits, a number of states are effectively requiring vessels to meet their own discharge requirements beyond the 2008 VGP through a procedure called 401 certification. Under CWA section 401, an applicant for a federal license or permit to conduct any activity that may result in a discharge to waters of the United States must provide the federal agency with a section 401 certification. The certification, made by the state in which the discharge originates, declares that the discharge will comply with applicable provisions of the CWA, including water quality standards. Section 401 provides states with two distinct powers: one, the power indirectly to deny federal permits or licenses by withholding certification; and two, the power to impose conditions upon federal permits by placing limitations on certification. Where states impose conditions on a federal permit—such as the VGP—the permittee must meet the additional state limitations as conditions of the federal permit. Prior to issuance of the 2008 VGP, 25 states, two Indian Tribes, and one territory certified the permit with approximately 100 additional permit conditions covering one or more of the 26 effluent streams. Of the 25 states, 10 certified the 2008 permit with conditions applicable to ballast water discharges. Of the 10, seven states certified the permit with specific numeric discharge standards,³² and three certified it with more general language prohibiting nuisance conditions or other conditions to protect state waters.³³

A group of commercial shipping operators challenged the state certifications under the 2008 federal permit, contending that the shipping industry is thus placed in the difficult regulatory position of being subject to a single federal permit with multiple state requirements. In federal

³⁰ For example, EPA's Multisector General Permit (MGSP) covers stormwater discharges from approximately 4,100 industrial facilities in 29 sectors. EPA's Pesticide General Permit (PGP), issued in October 2011, authorizes point source discharges from the application of pesticides to U.S. waters; this permit will regulate discharges from about 365,000 pesticide applicators.

³¹ Idaho, Massachusetts, New Hampshire, and New Mexico, plus the District of Columbia and most of the U.S. territories.

³² California, Illinois, Indiana, Minnesota, New York, Ohio, and Pennsylvania.

³³ Connecticut, Iowa, and Michigan.

court, the vessel operators argued that EPA should have provided notice and opportunity for comment before promulgating the final permit, which included the state certifications. They also argued that EPA erred by failing to consider possible effects and costs of compliance with state conditions. In July 2011, a federal court rejected the challenge, stating in its ruling that under the CWA, EPA does not have the power to amend or reject state certifications, which must be attached to the permit. The court wrote that petitioners do have recourse, including a challenge in state court to certification conditions imposed by a particular state, a challenge in federal or state court if they believe that a particular state's law imposes an unconstitutional burden on interstate commerce, or seeking modification of the CWA.³⁴

States also have used their authority to issue state permits. Both the commercial shipping industry and environmental groups have challenged these state actions, on differing grounds, but courts have generally upheld the permits. For example, a Minnesota appellate court upheld the state's permit despite a challenge from an environmental group alleging that the state did not perform an adequate water quality impact review before issuing the permit. Additionally, Michigan's permitting program and New York's 401 certification of the federal permit have been upheld after challenges by shipping industry groups.³⁵

How states will evaluate the draft VGP and sVGP is unknown for now—especially whether many will choose to augment the federal permits with state-specific 401 conditions—but the role of states in implementing the federal permit is likely to remain an issue. EPA plans to provide a clearinghouse of information and other tools to track development of each state's 401 conditions.

Congressional Interest

Congressional interest in this topic has been evident for some time—as reflected in the bills enacted in 2008 to exempt certain vessels from a CWA permit requirement, P.L. 110-288 and P.L. 110-299, and again in the 112th Congress. Two subcommittees of the House Transportation and Infrastructure Committee held a hearing in July 2011 that focused on how best to address problems caused by introduction of invasive species into U.S. waters. Some witnesses and members of the committee discussed apparent conflicts between separate ballast water regulations issued by the Coast Guard and EPA under different statutory authorities, in addition to state-specific standards, and the potential confusion created by multiple, potentially overlapping requirements for vessel owners and operators.

Following that hearing, in October the House Transportation Committee approved legislation to establish a single nationwide standard for discharges of ballast water based on the IMO D-2 ballast water discharge standards (H.R. 2840, the Commercial Vessel Discharges Reform Act of 2011). The bill, which would be codified as a new section of the CWA, was incorporated as title VII of H.R. 2838, the Coast Guard and Maritime Transportation Act of 2011, which the House passed on November 15.³⁶ The legislation would apply to commercial vessels used as a means of

³⁴ *Lake Carriers' Association v. EPA*, D.C. Cir., No. 09-1001, July 22, 2011, slip opin. at 16.

³⁵ Mariel Yarbrough, "Ballast Water Permits Survive Challenges," *SandBar*, a publication of The National Sea Grant Law Center, vol. 8, no. 3 (2009), pp. 9-12.

³⁶ Another expression of congressional interest is reflected in H.R. 2584, a bill to provide FY2012 appropriations to EPA and a number of other departments and agencies. As approved by the House Appropriations Committee, it included a provision that would have denied any EPA funds to a Great Lakes state having a 401 certification or state permit requirement for ship ballast water discharge more stringent than current Coast Guard rules or existing IMO (continued...)

transportation on water, unless the vessel uses sealed ballast tanks, does not discharge ANS into navigable waters, discharges ballast water drawn from a municipal or commercial source of treated water, or is less than three years from the end of its useful life. U.S. military vessels would be exempt from the bill's requirements.

Proponents argued for a uniform, national standard for ballast water discharges to harmonize requirements for ship owners and facilitate the interstate and international nature of waterborne commerce. Thus, the legislation would establish a single federal ballast water management standard (i.e., the IMO D-2/Coast Guard standard described previously). The Coast Guard would be responsible for certifying technologies that meet the performance standard. EPA in consultation with the Coast Guard would be directed to review the standard every 10 years for revision based on technological advances.

The legislation would supersede existing state standards or permits for any discharge incidental to the normal operation of a commercial vessel, although states could develop a ballast water inspection and enforcement program. It also would supersede EPA's ballast water management requirements under the CWA. Permits would not be required. Vessels could be subject to specified fines for failure to comply with the standard. The Coast Guard would have the primary role for enforcing the ballast water performance standard.

Upon enactment of the legislation, state 401 certifications for ballast water discharge in the 2008 VGP would expire. For commercial vessels covered by the standard in the legislation, EPA's ballast water requirements in the 2008 VGP would expire when a certified technology or alternative method of compliance is implemented, or the vessel discharges ballast water to an approved onshore or offshore facility. The Coast Guard would be directed to develop BMPs for non-ballast water discharges incidental to the normal operation of a commercial vessel, but EPA's requirements in the 2008 VGP regarding such discharges would remain in effect, although not subject to a federal permit.

The issue of allowing states flexibility to set their own standards was considered in connection with the legislation, but it was rejected by the House. Under H.R. 2838, states could petition EPA to review the federal ballast water performance standard, based on significant new information, but they would not be allowed to set their own standards. During debate on the bill the House defeated an amendment to allow states to protect important state resource waters by imposing operational limitations on ballast water discharges, such as establishment of "no discharge zones"; additional technological requirements would not have been allowed.³⁷ Proponents argued that the amendment was necessary to balance federal and state roles in protecting water quality from harmful vessel discharges, while opponents said that the amendment would undermine the concept of uniform national standards in the legislation. The House also rejected an amendment to strike title VII in its entirety from the bill.

The Obama Administration opposed passage of H.R. 2838 based on concerns with other provisions of the bill;³⁸ the Administration's views on title VII of the bill are unknown.

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standards. The House considered H.R. 2584 in mid-2011, but it took no final action on the bill. The FY2012 appropriations bill for EPA, in P.L. 112-74, contains no similar provision.

³⁷ A similar amendment was offered then withdrawn during markup of H.R. 2840.

³⁸ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy on H.R.* (continued...)

Counterpart Coast Guard reauthorization legislation approved by the Senate Commerce, Science and Transportation Committee, S. 1665, contains no similar provisions. The same committee also has approved separate legislation, S. 1430, which would authorize a “green ships program” to identify and improve new marine technologies that could reduce emissions, control ANS, and boost fuel economy.

Author Contact Information

Claudia Copeland
Specialist in Resources and Environmental Policy
ccopeland@crs.loc.gov, 7-7227

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2838, http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr2838_20111103.pdf.