STATE OF WASHINGTON

November 24, 2020

Mr. Jack Faulk
Oceans and Coastal Management Branch (4504T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
faulk.jack@epa.gov

Re: Docket No. EPA-HQ-OW-2019-0482, Vessel Incidental Discharge National Standards of Performance

Dear Mr. Faulk:

Please accept these comments to the U.S. Environmental Protection Agency (EPA) on behalf of the Washington State Department of Fish and Wildlife and the Washington State Department of Ecology regarding the proposed Vessel Incidental Discharge National Standards of Performance (Docket Number EPA-HQ-OW-2019-0482).

Aquatic Nuisance Species (ANS) and water pollution are a grave threat to Washington State, disproportionately affecting small businesses, tribal cultural resources, endangered species, and low-income communities. Substandard or unenforceable national standards will result in environmental degradation, barriers to endangered species recovery, impacts to native biodiversity, and impacts to Puget Sound ecosystem recovery. Impacts from ANS and water pollution could cost our state hundreds of millions of dollars per year and significant losses in public resources. The potential scope of this impact to Washington State is immense as it can affect our freshwater resources (approximately 8,000 lakes and 70,000 miles of streams) and marine resources (approximately 3,500 miles of shoreline and 19 deep water ports) that cross multiple state, federal, international, and tribal jurisdictions.

EPA's proposed standards threaten these priceless resources, as EPA's proposed standards are significantly less protective than current state standards. It will also be nearly impossible for states and the United States Coast Guard to hold entities accountable for compliance. The proposed standards do not protect the environment, or human health, and do not meet the technology-based standards as required under the Vessel Incidental Discharge Act (VIDA). As a result, discharges from vessels under the proposed standards will spread ANS and will degrade water quality that the state has worked so hard to protect.

Additionally, EPA failed to meet its obligations for state consultation under VIDA. The consultation with the states does not satisfy the objective of Executive Order 13132 to have "an accountable

process to ensure meaningful and timely input by state and local officials" for rules with Federalism Implications. This process must be meaningful and be "early in the process of developing the proposed regulation."

EPA had two years to develop these rules in consultation with states, as Congress intended, but instead chose to eschew meaningful consultation in the creation of these regulations. EPA provided: an insufficient series of 90-minute webinars as the "consultation" venue for all 50 states, provided just a short 30-day formal comment period, rejected a national call to extend the comment period to 90 days, and issued an inadequate request for U.S. coastal states to issue a Coastal Zone Management concurrence on its national determination for the draft proposal.

Washington State shares the other states' alarm at EPA's blatant disregard for federalism consultation requirements with the Western Governors Association, the Association of Fish and Wildlife Agencies, and many, many others. However, EPA can rectify this situation. We strongly request that EPA extend the public comment period to at least 90 days; and engage in meaningful consultation with states to improve these proposed standards before final adoption.

Enclosed, please find our detailed substantive comments and redline of the proposed rules. Additionally, we have also provided comments in a separate joint letter with other Pacific region states. Please note that given the short amount of time afforded our review, we have captured only the most significant failures of the proposed national discharge standards in our comments and redlines. Failure to modify the proposed standards will result in the spread of aquatic nuisance species, significantly degrade water quality, threaten our state's and nation's environmental resources, and harm public health and the economy of Washington State.

Washington State continues to stand ready to engage in meaningful consultation on developing standards of performance that meet the environmental protections required by VIDA.

Sincerely,

Laura Watson
Director
Department of Ecology

Kelly Susewind
Director
Department of Fish & Wildlife

Attachments:
Attachment 1: Substantive Comments
Attachment 2: Washington State Redline

Attachment 1: Substantive Comments

Washington State has a number of major areas of concern regarding the proposed national standard. Topics that concern us most include:

1. Review time
2. Consultation with states
3. Standards enforceability
4. Coastal Zone Management Program
5. Protections against water pollution and ANS
6. Ballast Water
7. Chain lockers and Decks
8. Exhaust Gas Emission Control Systems
9. Greywater
10. Biofouling
11. In-Water Cleaning
12. Emergency Order
13. State No-Discharge Zone

Below we discuss each of these concerns in detail. We have also attached a redline version of the proposed standards with additional revision recommendations and comments that significantly improve protection of state waters, compliance by vessel operators, and enforcement by states and United States Coast Guard (USCG).

Review time

The complexity and importance of this rulemaking requires a minimum of 90 days for review and comment before final adoption. A formal 30-day comment period, especially in respect to failing to provide adequate consultation with states as noted below, is woefully inadequate for standards of this magnitude. We concur with other Pacific region states and national entities concerned about protecting our waters from ANS and water pollution that a minimum 90-day review period is required. We believe that EPA's November 20 decision not to extend the comment period is egregious and strongly request that you reconsider this decision.

Consultation with states

EPA's efforts to promote a robust federal/state consultation process have been grossly inadequate. VIDA requires EPA to promulgate federal standards of performance for marine pollution control devices "in consultation with interested Governors." The requirement to consult was meant to allow Governors to influence the development of the standards of performance in compensation for state preemption of being able to set higher standards.

Failure to provide a robust consultation process is directly in opposition to Congress' intent as provided in VIDA Sec. 902(4) that states, "to preserve the flexibility of States, political subdivisions, and certain regions with respect to the administration and enforcement of standards relating to the discharge of pollutants from vessels engaged in maritime commerce and

transportation." States cannot administer or enforce grossly inadequate standards and this could have been prevented with robust consultation.

Another example of grossly inadequate consultation are EPA's brief "consultation" webinars. On July 10 and 18, 2019, EPA scheduled meetings with states' Governors or their delegates. These meetings were purported to comply with EPA's obligation to consult with interested Governors. At the meetings, EPA was unwilling or unable to answer many questions about its contemplated approaches for regulating incidental discharges and, instead, referred the states to the Vessel General Permit (VGP). Following the July 10th and 18th meetings, we sent you a joint letter with the States of California, Oregon, and Hawaii detailing our concerns. We also identified important subjects that we felt consultation was needed on. In response to our letter, no draft language for review or comment was provided. Instead, EPA held a follow-up call on January 15, 2020, during which EPA staff was willing only to listen to state comments, not engage in meaningful discussion and consultation.

On November 10th, EPA held another 90-minute "consultation" webinar for all 50 states and territories with the same result. Lastly, Pacific region states (WA, CA, OR, HI, and AK) on September 15th requested EPA to provide a crosswalk of changes from the VGP to the proposed standards; EPA provided that summary on November 20 – 66 days from when requested and only five days from the end of the formal 30-day comment period.

EPA's failure to provide robust federal/state consultation is apparent in the proposed regulations. This failure by EPA, has resulted in proposed standards that are orders of magnitude below current levels which unnecessarily places our waters at substantial risk for ANS and water pollution impacts.

Coastal Zone Management Program

Washington's Coastal Zone Management Program (WCZMP) received EPA's so-called National Consistency Determination for *National Performance Standards for Discharges Incidental to the Normal Operation of a Commercial Vessel* on November 4, 2020. For the record, EPA conducted no preliminary outreach with Washington's CZMP prior to its submittal. We recognize that VIDA excludes EPA from reviewing the coastal states' enforceable policies, but EPA cannot then rely on two federal consistency regulations to justify its grossly inadequate federal consistency determination. EPA relies on the terms "national consistency determination" and "de minimus activities" in its consistency determination, yet misapplies both of those federal consistency regulations.

Both require early consultation with the coastal states, and, for national consistency determinations, they "should, at a minimum, address the common denominator of these policies, *i.e.,* the common coastal effects and management issues, and thereby address different states' policies with one discussion and determination" (CFR 930.36). EPA's consistency determination fails to meet that standard and addresses no common enforceable policies.

Additionally, for *de minimis* federal agency activities, "federal agencies are encouraged to review their activities, … to identify *de minimis* activities, and request state agency concurrence that these de minimis activities should not be subject to further state agency review. *De minimis* activities shall only be excluded from state agency review if a federal agency and state agency agree" (CFR

(930.33 (3)(i)). Aside from the fact that Washington State disagrees that the activities are *de minimis*, EPA failed to consult with the WCZMP for its agreement that the activities are, in fact, *de minimis*.

Lastly, the EPA requests states' views and concurrence on the proposal within 60 days. What "views" is the EPA seeking beyond a straight concurrence? Given the hastily compiled consistency determination, it is difficult to imagine the EPA is intending to consider the "views" of any coastal state. Ecology will provide its decision and views on EPA's consistency determination within the time-frame afforded to states within the federal consistency regulations.

Standards enforceability

The vast majority of standards of performance as proposed throughout § 139 are unenforceable in their predominant application of best management practices and using "minimizing" as their concept of setting a standard of performance over substantive numeric criteria and quantitative practices. These poorly written standards will make it impossible for states and USCG to hold entities accountable for compliance with these standards. This leaves state waters at a high risk from impacts of ANS and water pollution. One way of addressing this problem is proposed in the attached redline document under each incidental discharge section with the requirement that, "Vessel operators must document compliance in shipboard logs and plans and provide rationale if a bilge discharge could not be minimized or eliminated."

It is also not clear to us the process that EPA used, if any, to consult with the USCG on the standards to ensure that the USCG is prepared and able to enforce the standards. In the experience of Washington State, the USCG has typically not had enough personnel to provide necessary enforcement. We remain concerned that the USCG will not have the ability, training, or personnel resources necessary to enforce the proposed standards. EPA needs to coordinate and consult with the USCG to ensure that the standards can be and will be enforced by the USCG. Together, EPA and the USCG need to provide more information and assurances to the states regarding how they will achieve implementation of the proposed standards.

Protections against water pollution and ANS

The standards of performance under the majority of as proposed throughout § 139 make it clear that EPA has interpreted CWA Sec. 312(p)(4)(B)(iii) "Minimum requirements" to mean the lowest common denominator that is practicable for industry rather than the best available standards that protects state waters. Specifically, EPA did not use Vessel General Permit, Part 6 State Certification information or contact states for current standards for meeting (p)(4)(B) "Stringency" directives in determining the best available technology economically achievable (BATEA). These state standards have often been in effect for decades with demonstrated ability to meet BATEA, but there is no evidence that EPA took those into consideration during standards development.

Ballast Water

EPA's proposed elimination of ballast water best management practices under § 139.10(c) violates CWA Sec. 312(p)(4)(B)(iii) "Minimum requirements" for standards of performance. Under Section 2.2 of the Vessel General Permit, EPA requires that vessel operators implement the following management measures to minimize or avoid uptake of ballast water in the following areas and situations:

1. Areas known to have infestations or populations of harmful organisms and pathogens (e.g., toxic algal blooms).
2. Areas near sewage outfalls.
3. Areas near dredging operations.
4. Areas where tidal flushing is known to be poor or times when a tidal stream is known to be turbid.
5. In darkness, when bottom-dwelling organisms may rise up in the water column.
6. Where propellers may stir up the sediment.
7. Areas with pods of whales, convergence zones, and boundaries of major currents.

EPA abandons these critical protection measures with the false claim that these protective measures are not practical. EPA must retain these existing protective measures or develop new protective measures that are no less stringent. Vessel operators are well-documented to be capable of adjusting vessel operations to minimize or avoid environmental impacts from ballast water discharges.

EPA violated CWA Sec. 312(p)(4)(B) "Stringency" provisions that requires them to develop standards of performance under § 139.10(d) based on the best available technology (BAT) for ballast water management systems (BWMS). However, EPA's analysis failed this requirement in using limited performance data from 11 USCG-approved BWMS submitted by the Ballast Equipment Manufacture's Association. USCG as part of its BWMS approval process currently holds the best available data for BWMS. To date USCG has approved 37 BWMS and has 8 BWMS pending review. It is clear that based on the number of omitted BWMS that EPA did not perform a comprehensive analysis of BAT in proposing the current ballast water discharge standards. EPA must redo the analysis of BAT using all available data. Failure to do so would establish standards that are neither protective of U.S waters nor reflective of available BWMS technology.

EPA's exclusion of setting standards of performance under § 139.10 for monitoring ballast water treatment systems violates CWA Sec. 312(p)(4)(B)(iii) "Minimum requirements" to set standards of performance for "All requirements contained in [VGP] parts 2.1 and 2.2 (relating to effluent limits and related requirements)." Monitoring includes standards of performance within the purview of EPA that are required to ensure AMS and BWMS are in compliance including for treatment system functionality, monitoring equipment calibration, biological organism monitoring, biocide monitoring, and requirements for record keeping and reporting. In regard to reporting, EPA must continue its annual vessel reporting requirements to help in 5-year reviews and development of new standards of performance under CWA 312(4)(D)(i). Due to rapidly developing technology in this field, EPA also need to define a process for developing new standards as appropriate to be published in the Federal Register.

Chain lockers and Decks

Standards of performance as proposed for Chain lockers under §139.14 and Decks under §139.15 are so poorly written that it will result in extensive releases of ANS and water pollution to state and national waters above current protective and long-standing state levels. They are rife with inconsistencies in application to ANS and water pollution standards of performance to where vessel operators will not know how to achieve compliance and states and USCG will have no ability to enforce. Corrections are required within those sections and in the definitions section for "broom clean," "minimize" and "reception facility."

Exhaust Gas Emission Control Systems

EPA's proposed exhaust gas emission control systems standards of performance under § 139.18 will set state and national efforts back in working with industry to prevent water pollution from these substantial discharges in both volume and toxicity. Washington State is the homeport for a number of cruise lines that serve over a million passengers annually, and is home to 75 public port districts. A variety of commercial vessels use exhaust gas emission control systems. Discharges from these systems are high in volume and can carry a high potential pollutant concentration and load.

The standards proposed by EPA are absent or are set at levels not meeting our state standards for critical metals, individual PAH (Polycyclic Aromatic Hydrocarbons) parameters, pH, and aesthetics. Relying on IMO requirements without a technology assessment of discharges in U.S. waters is insufficient. EPA has not shown that it has assessed the exhaust gas control system technology capabilities or operational variations, nor the data collected under the VGP. The data should be analyzed in comparison to state water quality standards. Washington State has evaluated water discharges from exhaust gas cleaning systems from large cruise ships. Our initial review of data submitted to EPA under the VGP indicated that certain parameters were at times not consistent with Washington State Water Quality standards criteria. Washington requests that the EPA revise the proposed regulations to contain standards at least as stringent as those promulgated by the States, in compliance with the intent of the Clean Water Act. A summary presentation of our evaluation can be found at: https://www.ezview.wa.gov/Portals/_1962/Documents/CruiseShip/2018%20Annual%20Meeting%20Presentation%20EGCS%204-2-19%20updated%20data.pdf.

We urge EPA to consult with states and set limits and standards for the following additional pollutants:

Metals:

arsenic	lead	silver
cadmium	mercury	zinc
copper	nickel	

Individual PAH's parameters:

Benzo(a)anthracene	Benzo(b)fluroanthrene	Dibenzo(a,h,)anthracene
Benzo(a)pyrene	Chrysene	Indeno(1,2,3-cd)pyrene

Washington also has set an aesthetic standard. Discharge aesthetics must not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste. Discharges from exhaust gas emission control systems have been documented to include a visual effect including sheening and discoloration. EPA's proposed standards do not go far enough in meeting this aesthetic standard, instead EPA uses the undefined words "design to minimize suspended particulate…" Without a clear definition, regulated entities could consider any system as designed to minimize particulates. The USCG will not have criteria to point to for which systems meet this requirements, even if discharges clearly do not meet aesthetic standards.

EPA is proposing a four-meter dilution factor for pH discharges from exhaust gas emission control systems. Washington would like to see this removed from the proposed standards. Vessel exhaust gas emission control systems already rely on dilution via utilizing intake of seawater to wash

exhaust and then a second intake of seawater for buffering prior to discharge. This results in swapping an air pollutant for a water quality pollutant. Adding the dilution factor does not reflect the pH discharge without multiple dilutions, while pH discharges are often highly acidic and add to ocean acidification.

For the pH discharge limits, EPA proposes to allow an undefined "calculation-based methodology". This could potentially result in each vessel operator using a different methodology. This will make the pH limits hard for the USCG to enforce. Measuring and monitoring these discharges is a more scientific, accurate, and enforceable way to determine pH. Please remove this option from the proposed standards.

The proposed standards are required to be as effective at a minimum as the Vessel General Permit. Washington State recommends that EPA include Table 8: Nitrates + Nitrites Permit Limits in Exhaust Gas Scrubber Discharge from the Vessel General Permit within section 139.18 of the proposed standards. Washington believes that having the table would help vessel operators understand their expectations and limits.

EPA proposes a prohibition on discharges of bleed-off water retained onboard in a holding tank that do not meet discharge requirements. However, the proposed standards are silent on bleed-off water discharged directly. We recommend that EPA revise the standards to require bleed-off water discharged directly to also meet the requirements in section 139.18.

Greywater

EPA's proposed greywater standard of performance under § 139.21 threaten the protection of human health during recreation, shellfish health, and to prevent ocean acidification. The greywater standards as proposed would allow for the discharges that potentially contain bacteria and other significant pollutants. EPA must remove several loopholes within the proposed standards.

First, EPA's proposal allows vessels to discharge greywater if they do not have any remaining capacity. Many ships can divert greywater, blackwater, or exhaust gas emission control system water into ballast tanks. However, EPA does not define the term capacity and does not require vessels to use all tanks available for storage capacity. Therefore ships will be allowed to discharge regardless of if they actually maximized their capacity or not, and the USCG will be unable to enforce this standard.

Secondly, EPA should require all vessels to meet the requirements outlined in § 139.21(f) regardless of size. The requirements in § 139.21(f) should be based on the holding capacity of the vessel and not the size or distance travelled by the vessel from shore. Currently, the proposal has requirements for vessels that travel beyond three nautical miles from shore but is silent on vessels that are within one nautical mile from shore and do not go beyond that one mile. EPA needs to close these loopholes.

Washington has established Water Quality Standards for fecal coliform and enterococci. EPA's standards as proposed for greywater discharges are higher than Washington's currently established standards for these parameters. The table below compares EPA's proposal versus Washington's standards.

Parameter	EPA's Proposed Standards	Washington's Surface Water Quality Standards
Fecal Coliform	The 30-day geometric mean must not exceed 20 cfu/100 mL (colony forming units/milliliter). Greater than 90% of samples must not exceed 40 cfu/100 mL.	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained within an averaging period exceeding 43 CFU or MPN per 100 mL.
Enterococci	Nothing proposed	Enterococci organism levels within an averaging period must not exceed a geometric mean value of 30 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample values exist) obtained within the averaging period exceeding 110 CFU or MPN per 100 mL.
pH	Must be maintained between 6.0 and 9.0.	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.2 units.

It is clear from the proposal that EPA did not take into account the Water Quality Standards put in place by Washington State when developing the proposal. EPA must update their standards to be at least as protective as Washington State. It is critical that EPA does this in order to continue ensuring the protection of human health during recreation, shellfish health, and to prevent ocean acidification.

In addition, the geographic standards using the term voyage is unclear. It is defined in the regulation as "any transit by a vessel traveling from or destined for any United States port or place." However, in terms of determining if a vessel "voyages" three nautical miles (nm) or one nm, it is unclear how a voyage applies. If a vessel is sitting in port for a few weeks or months, and may not know when their next voyage will occur, how does this apply?

Biofouling

EPA proposed standards of performance under § 139.5 and 139.22 exceed its authority under VIDA by asserting that biofouling is an incidental discharge. In doing so, EPA is effectively preempting our state from regulating biofouling as reserved by Congress. As such, it is important that EPA accurately defines this term to avoid the preemption of state authority for activities that were intended to be undisturbed by VIDA. Congress added VIDA to an existing statute, which already included a definition for discharge incidental to the normal operation of a vessel (33 U.S.C., section 1322). Biofouling does not fit within Subparagraph (A), and the closest language refers to chemical

discharge from hull rather than a discharge from organisms on the hull itself. It is clear from the definition that biofouling is not a discharge incidental to the normal operation of a vessel under VIDA.

Furthermore, the definition of *discharge* in VIDA states that it "includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping." The natural accumulation of organisms on a vessel hull does not fit in any of these examples, which require human action. Both the attachment and detachment of organisms to vessels happens independently of vessel operators and does not require any of the actions listed in the definition. Thus, biofouling is not a *discharge* as defined by Congress in VIDA.

Finally, in VIDA's legislative history the topic of biofouling is absent. Senate report (S. Rep. No. 115–89 (2019)), does not discuss the subject of biofouling, nor does it include the words *biofouling* or *fouling* anywhere in the document. In order to interpret that the intention of VIDA was to cover biofouling, a reader would have to conclude that Congress: (1) identified biofouling as a discharge incidental to the normal operation of a vessel; but (2) failed to adequately define it as such under the definition provided in VIDA; (3) failed to discuss biofouling as a significant threat during the bills development; and (4) failed to discuss this threat in the bill's purpose language. The only reasonable conclusion is that the presence of biofouling was not viewed by Congress as a discharge incidental to the normal operation of a vessel and language suggesting this should be removed from VIDA.

In-Water Cleaning

EPA's proposed standards of performance under § 139.22(c) for in-water cleaning will set state protections for ANS and water pollution back decades. The proposed regulation allows for in-water cleaning without capture even when macrofouling is present and on vessels that use anti-fouling paints that contain biocides. In these scenarios, the risk of introducing ANS substantial amounts of biocides from antifouling coating is high. VIDA does not include thresholds for acceptable biocide release during this type of cleaning event. We propose to significantly increase protections by requiring in-water cleaning without capture be conducted on vessels only at the microfouling level and only if the vessel is biocide free or if there is sufficient data that cleaning releases biocides can be accomplished below an appropriate threshold.

EPA proposed standards of performance under § 139.22(c)(4)(ii) for in-water cleaning and capture (IWCC) system discharges exceeds VIDA's incidental discharge authority. IWCC system discharges do not align with VIDA's definition of discharges incidental to the normal operation of vessels. VIDA defines discharges incidental to the normal operation of a vessel as discharges that include "(i) graywater, bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective, preservative, or absorptive application to the hull of the vessel; and (ii) a discharge in connection with the testing, maintenance, and repair of a system described in clause (i) whenever the vessel is waterborne;" as well as "[a]ny discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes[.]" (33 U.S.C. § 1322(p)(a)(12); 40 C.F.R. § 122.3(a).)

IWCC system discharges are the result of the use and operation of systems that are designed to "capture coatings and biofouling organisms, filter biofouling organisms from the effluent, and minimize the release of biocides." (85 Fed.Reg. 67868). During the operation of IWCC system effluent and debris is carried to a separate facility (typically on a barge or land), for treatment and

discharge. The waste stream that results from filtration and treatment is now an industrial discharge and is no longer the responsibility of the vessel owner or operator. As such, discharges from IWCC cleaning does not meet the scope of incidental discharge as defined in VIDA, and should not be included in the proposed standard. These discharges should be regulated through the appropriate NPDES permitting authorities, either NPDES delegated states or USEPA, not under VIDA.

Section 139.22(c)(4)(i) of the proposed regulation prohibits the in-water cleaning of biofouling that exceeds a fouling rating of FR-20 unless "(i) *The biofouling is local in origin and cleaning does not result in a plume or cloud of Paint.*" (85 Fed.Reg. 67889.) The "local in origin" standard is not measurable or enforceable and will result in the sanctioned discharge of invasive species. We suggest removing this exception from the regulation. Furthermore, the U.S. Navy FR scale was developed, and is used to estimate the drag imposed on vessel efficiency by varying degrees of biofouling in order to determine the appropriateness of in-water cleaning. The FR scale uses height of biofouling from vessel surface to score a vessel, but does not take into account the extent to which fouling may be present across the underwater surface. A vessel with "hard" fouling such as barnacles or tubeworms can have a score of FR-40 to FR-70 regardless of the Percentage of covered area. Organisms that may pose a clear NIS risk, but are considered "soft" fouling due to their composition and low profile on a vessel would be scored as only FR-30. The FR scale is inappropriate for the proposed regulations and is inadequate at reducing the risk of introducing NIS. We strongly suggest removing the FR scale from the proposed regulations. We suggest that in its place EPA defines and uses the terms "microfouling" and "macrofouling," and differentiate between the two using the size threshold of > 0.5 cm for macrofouling found in Morrisey et al., 2015.

Finally, a standard for paint discharge that simply requires that no plume or cloud of paint result from the cleaning neither satisfies the technology-based standards applicable to VIDA nor protects water quality.

Emergency Order

EPA's proposed process for Governor's to petition for emergency orders under § 139.50 that allows a 180 days review period provides no assurance that emergencies will be addressed in an expedited manner. Congress included this provision as another avenue to address the significant compromise the states accepted in preempting our ability to set higher standards or rapidly address new ANS or water pollution threats that are geographically specific and require a timely response to prevent or limit harm.

No one would reasonably expect it would take 180 days to respond to an oil or chemical spill, so why would EPA allow impediments to rapidly addressing similar significant biological and pollution threats? An emergency order needs to be expedited to issuance within days, not weeks or months.

To remedy this concern, we propose that EPA (and USCG as required for seeking concurrence) delegate these orders to the region that covers the geographic area under which the emergency order is based and that they apply an expedited process. In addition, we recommend that EPA develop, in consultation with states, a form and emergency protocol that supports an expedited process.

No-Discharge Zone

The required elements of the application for State No Discharge Zones is cumbersome and unclear. Many of the application requirements are routed in the recent Puget Sound Sewage No Discharge

Zone, yet EPA did not reach out to Washington State in consultation or to obtain input on the development of these application requirements.

Section 139.52(c)(3) requires a table identifying the types and numbers of vessels operating in the waterbody and those subject to the prohibition. The value should be allowed to be an estimate as this is literally a moving target.

Section 139.52(c)(4) requires a detailed table of pumpout facility information. For mobile pumpout facilities and trucks, the locations and draught requirements will vary. The requirement should allow for a description of the coverage area and ranges.

Section 139.52(c)(5) requires a map indicating the location of each facility. For mobile pumpout facilities and pumper trucks, a narrative description of coverage areas should be sufficient.

Section 139.52(c)(7) requires a detailed analysis of the impacts of vessels subject to the prohibition including feasibility to collect and store, retrofitting extent, costs, and safety implications. This requirement is vague and cumbersome. These requirements are inconsistent with and go beyond the VIDA requirements to assess the adequacy of facilities for safe and sanitary removal and treatment of the discharge being reasonably available. Section 139.52(c)(7)(d) adds costs to the list which is not included or required by VIDA. In addition, a ratio of pumpout facilities should only be considered for vessels that actually require the use of the pumpout to comply with the no discharge zone. Many vessels have the holding capacity and operational practice of discharging outside the NDZ or outside U.S. waters. A ratio threshold should be defined.