S. 2094 – Undermines States' Authority, Shifts Costs to Taxpayers, & Fails to Control Invasive Species

The Vessel Incidental Discharge Act of 2014, S. 2094, largely preempts efforts by States to control invasive species discharged in ballast water from ships. It completely preempts any future State programs. This bill also preempts the Clean Water Act – its treatment requirements, its permitting, its public access to information, and its enforcement provisions – and effectively maintains taxpayers' extraordinary subsidies to the shipping industry.

- **Strips States of Authority to Protect Their Waters**

States have been among the leaders of efforts to control discharges of ballast water infested with invasive species to the nation's waters. These efforts have been crucial to pushing the shipping industry to develop new technologies and to invest in installation of these technologies.

S. 2094 prohibits States from adopting or enforcing any *new* state law or program to control ship discharges. States with *existing* laws would be permitted to submit a scientifically-based petition to keep their programs to the Coast Guard within 90 days of passage of the Act. The Coast Guard could only grant the petition if it could determine, within 90 days of the petition's submission, that compliance with state limits can be achieved and detected, technologies are commercially available, and the state law is consistent with international treaties.

- **Circumvents the Clean Water Act**

S. 2094 removes time-tested Clean Water Act provisions with little or nothing to fill the gap:

- ➢ The ***CWA***'s goal is to eliminate the discharge of pollutants into the waters of the U.S. as soon as practicable. ***S. 2094*** H.R. 2830 has no stated goals for invasive species and no goals at all for chemicals and oil discharged by ships.

- ➢ The ***CWA*** requires EPA to develop and regularly revise uniform minimum treatment standards based on technology. ***S. 2094*** turns EPA into an advisor and allows the Coast Guard eight years to first review ballast water standards, every ten years after that, and limits whether revised standards can be adopted.

- ➢ The ***CWA*** requires NPDES discharge permits be renewed every five years, when States, EPA, and the public re-evaluate treatment levels, monitoring results, and compliance. ***S. 2094*** excludes States and the public from participating in most regulatory decisions and leaves final decisions to the Coast Guard, an agency lacking in water quality expertise.

- ➢ The ***CWA*** requires NPDES permits to meet state water quality standards, forcing the development of technology sufficient to protect public health and the environment. ***S. 2094*** relies on existing already-outdated technology, perhaps forever.

- ➢ The ***CWA*** allows States and EPA to issue permits, conduct inspections, obtain discharge records, and bring enforcement actions. ***S. 2094*** requires the Coast Guard to assume that installed systems are working and being used and requires no permits, inspections, and discharge records.

- **Short Term: Unprotective Standards for Eight Years**

S. 2094 requires existing Coast Guard standards to remain in place for at least eight years – until January 1, 2022 – and possibly forever. The bill even allows the Coast Guard to *lessen* existing protections. Scientific studies have demonstrated that some ships can meet these standards with nothing more than exchanging ballast water at sea, in other words no treatment whatsoever. The United States is already suffering from an explosion of aquatic invasive species that are increasing over time, with ballast water the leading source of invasions. The ecological damage from invasives is expanding, including to threatened and endangered species. The costs to fisheries, tourism, and infrastructure are, according to EPA, a "staggering" annual figure in the *billions*. We cannot afford to leave ballast water untreated.

- **Long Term: Leaves the Nation's Waters Unprotected**

After eight years, the Coast Guard's review of the standards is limited to evaluating the feasibility of revised ballast water treatment standards that are 100 times more stringent for mid-to-large-sized organisms, no change for cholera, two times more stringent for *E. coli*, and three times more stringent for intestinal enterocci. No public comment will be allowed.

Worse, S. 2094 essentially locks in the existing Coast Guard standards indefinitely by placing roadblocks in the way of using any revised standards. Section 5 requires that in order to use such revised standards, the Coast Guard must prove they will result in a "scientifically demonstrable and substantial reduction in the risk of introduction or establishment" of invasive species. The National Research Council has already concluded that it is *impossible* to meet this level of scientific certainty. In addition, the Coast Guard must evaluate the costs to the shipping industry and trade before adopting new standards. Section 6 allows ships to use existing treatment systems for an indefinite period even if the Coast Guard were to revise treatment standards.

- **Eliminates Protection Altogether for Some Key Waters**

Section 7 of the bill exempts vessels that are operating within a "geographically limited area." Under the bill's definition, this exemption could apply to some or all of the Great Lakes, exempting ships there from any ballast water treatment requirements whatsoever and allowing the transfer of existing invasive species throughout all of the lakes. And what starts in the Great Lakes does not stay there; destructive zebra and quagga mussels introduced to U.S. waters through the Great Lakes have spread throughout the country – from California to Louisiana to Massachusetts and Vermont – at an extraordinary cost to the nation's environment, infrastructure, and pocketbook.

Section 7 also exempts vessels that operate exclusively within one Captain of the Port (COTP) Zone. The isolated pristine port in Humboldt Bay, California – 300 miles north of San Francisco Bay – is within the same COTP Zone as the heavily-invaded San Francisco Bay. Under S. 2094, ballast water laden with invasive species could legally be transferred from San Francisco to Humboldt Bay without any treatment.

- **Replaces Regulation with a "Trust Us" Approach**

S. 2094 eliminates inspections and record-keeping that assures that treatment systems are being used. Instead, ships need only show they have a certificate a treatment system was installed. The bill also allows the Coast Guard to defer to certifications of equipment issued by other countries.

For More Information Contact: Elly Pepper 202-717-8193 or Rebecca Riley 312-651-7913, Natural Resources Defense Council • Marc Smith, Policy Director, National Wildlife Federation, 734-887-7116 • Nina Bell, Executive Director, Northwest Environmental Advocates 503-295-0490.