

The Bay Institute ♦ California Coastkeeper Alliance ♦ California Sportfishing Protection Alliance ♦ Campaign to Safeguard America's Waters ♦ Center for Biological Diversity ♦ Citizens for a Clean Columbia ♦ Columbia Riverkeeper ♦ Conservation Northwest ♦ Earth Island Institute ♦ Earthjustice ♦ Environmental Integrity Project ♦ Environment California ♦ Environmental Protection Information Center ♦ Friends of the Columbia Gorge ♦ Humboldt Baykeeper ♦ Klamath Riverkeeper ♦ League of Conservation Voters ♦ Monterey Coastkeeper ♦ Northwest Environmental Advocates ♦ Natural Resources Defense Council ♦ Northwest Coalition for Alternatives to Pesticides ♦ Northwest Environmental Defense Center ♦ Ocean Conservancy ♦ Orange County Coast Keeper ♦ Oregon Toxics Alliance ♦ Oregon Trout ♦ Pacific Coast Federation of Fisherman's Association ♦ Pacific Marine Conservation Council ♦ Penobscot Bay Watch ♦ People for Puget Sound ♦ Russian Riverkeeper ♦ San Diego Coastkeeper ♦ San Francisco Baykeeper ♦ Save The Bay ♦ Seattle Audubon ♦ Sierra Club ♦ Skippers for Clean Oregon & Washington Waters ♦ Tualatin Riverkeeper ♦ Ventura Coastkeeper ♦ Wahkiakum Friends of the River ♦ Waste Action Project ♦ Waterkeeper Alliance ♦ Wild Fish Conservancy ♦ Willamette Riverkeeper

September 25, 2007

Honorable Daniel K. Inouye, Chair
Senate Commerce, Science & Transportation Committee
508 Dirksen Senate Office Building
Washington, DC 20510

Honorable Ted Stevens, Ranking Member
Commerce, Science & Transportation Committee
560 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

The Committee on Commerce, Science and Transportation is scheduled to consider S. 1578, the Ballast Water Management Act of 2007, on Thursday, September 27. If the measure is brought before the Committee without significant amendments, the undersigned organizations strongly urge you to vote against it.

We appreciate the Committee's attention to a critical problem in our Nation's aquatic ecosystems – invasive species in vessels' ballast water discharge. But, as currently drafted, the bill is unacceptable because it would eliminate two crucial tools that State officials have to control the introduction of aquatic invasive species from vessels' ballast water. The bill would preempt States from adopting discharge standards that are more stringent or take effect sooner than those in the new law. In addition, the bill would declare that it is "the sole Federal authority" to limit species' introduction by vessels, which would invalidate States' ability to use the federal Clean Water Act to restrict such discharges. Moreover, the bill's proposed standards are undermined by a provision allowing the Coast Guard to postpone repeatedly and indefinitely the date by which the standards would come into effect. Individually and in combination, the proposed provisions precluding States from taking their own actions, exempting ballast water discharges from the Clean Water Act, and curtailing the federal agencies' actions, result in a bill that we fear will perpetuate the economic and environmental harm of invasive species for many years to come.

The bill's approach is especially inappropriate in light of two court decisions establishing that pollution of water bodies with invasive species in ballast water appropriately can be controlled under State substantive law and the Clean Water Act. See *Fednav, Ltd. v. Chester*, No. 07-11116 (E.D. Mich., Aug. 15, 2007) (rejecting shipping industry challenges to Michigan ballast water law); *Northwest Environmental Advocates v. U.S. EPA*, No. 03-05760 (N.D. Cal., Sept. 18, 2006) (ordering that EPA's regulatory exclusion from Clean Water Act permitting for "discharge incidental to the normal operation of a vessel" will be vacated on September 30, 2008), *appeal pending*, Nos. 03-74795, 06-17187, 06-17188 (9th Cir.).

The bill is also inconsistent with existing law, which preserves State and Clean Water Act authority to regulate invasive species in ballast water. State authorities were expressly preserved in the Nonindigenous Aquatic Nuisance Prevention and Control Act and the National Invasive Species Act; federal law accordingly provides: "Nothing in this chapter shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife." 16 U.S.C. § 4725. In addition, S. 1578 would backtrack from longstanding provisions of law adopted by previous Congresses that expressly preserved the Clean Water Act while adopting invasive species legislation. See 16 U.S.C. § 4711(b)(2)(C) ("regulations issued under this subsection shall ... not affect or supersede any

requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act”); 16 U.S.C. § 4711(c)(2)(J) (“voluntary guidelines issued under this subsection shall...not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act”).

While S. 1578 proposes stringent discharge standards, there is no certainty these standards will ever be realized due to the bill's provisions allowing the Coast Guard to delay implementation based on a “feasibility review” that considers the availability and cost effectiveness of treatment technology. The uncertainty created by this loophole creates the risk that the applicable standards will ultimately fall short of the Clean Water Act’s technology-forcing pollution control requirements.

State law and the Clean Water Act provide essential tools for controlling water-borne invasive species coherently in the United States. We urge you not to take them away, leaving in place a weak federal program with inadequate provisions for oversight, enforcement and implementation. Please support efforts to remove provisions in S. 1578 that attack these safeguards, and please oppose the legislation if it moves forward in its present form.

Thank you for considering our views on this important issue.

Sincerely,

Karen Wayland
Legislative Director
Natural Resources Defense Council

Scott Edwards
Legal Director
Waterkeeper Alliance

Linda Sheehan
Executive Director
California Coastkeeper Alliance

Nina Bell, J.D.
Executive Director
Northwest Environmental Advocates

Martin Hayden
Vice President, Policy and Legislation
Earthjustice

Brent Foster
Executive Director
Columbia Riverkeeper

Brendan Cummings
Ocean Program Director,
Center for Biological Diversity

Greg Wingard
Executive Director
Waste Action Project

Karla Raettig
Counsel
Environmental Integrity Project

Lisa Arkin
Executive Director
Oregon Toxics Alliance

Kurt Beardslee
Executive Director
Wild Fish Conservancy

Travis Williams
Executive Director
Willamette Riverkeeper

Matt Van Ess
Executive Director
Pacific Marine Conservation Council

Ron Huber
Executive Director
Penobscot Bay Watch

Tim Eichenberg
Director Pacific Regional Office
Ocean Conservancy

Susan Evans
Convener
Citizens for a Clean Columbia

Joe S. Whitworth
Executive Director
Oregon Trout

Kathy Fletcher
Executive Director
People for Puget Sound

Scott Greacen
Public Lands Coordinator
Environmental Protection Information Center

Michael Lang
Conservation Director
Friends of the Columbia Gorge

Monica Smiley
Executive Director
Tualatin Riverkeepers

Dan Jacobsen
Executive Director
Environment California

Sejal Choksi
Program Director & Baykeeper
San Francisco Baykeeper

Debbie Sease
Director of National Campaigns
Sierra Club

Gershon Cohen Ph.D.
Project Director
Campaign to Safeguard America's Waters
Earth Island Institute

Aimee Code
Water Quality Coordinator
Northwest Coalition for
Alternatives to Pesticides

Zeke Grader
Executive Director
Pacific Coast Federation of
Fishermen’s Associations

Capt. Peter Wilcox
Skippers for Clean Oregon
& Washington Waters

Pete Nichols
Executive Director
Humboldt Baykeeper

Don McEnhill
Executive Director
Russian Riverkeeper

Bruce Reznik
Executive Director
San Diego Coastkeeper

Regina Chichizola
Riverkeeper
Klamath Riverkeeper

Mati Waiya
Executive Director
Ventura Coastkeeper

David Lewis
Executive Director
Save The Bay

Carol Carver
Wahkiakum Friends of the River

Jerry Joyce
Seattle Audubon

Garry Brown
Executive Director
Orange County Coastkeeper

Mark Riskedah
Executive Director
Northwest Environmental Defense Center

Tim Greef
Deputy Legislative Director
League of Conservation Voters

Bill Jennings
Chairman and Executive Director
California Sportfishing Protection Alliance

Marc Holmes
Manager, Bay Restoration Program
The Bay Institute

Steve Shimek
Executive Director
Monterey Coastkeeper