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

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 Coat 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
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  Scott Edwards  Linda Sheehan
Legislative Director  Legal Director  Executive Director
Natural Resources Defense Council  Waterkeeper Alliance  California Coastkeeper Alliance

Nina Bell, J.D.  Martin Hayden  Brent Foster
Executive Director  Vice President, Policy and Legislation  Executive Director
Northwest Environmental Advocates  Earthjustice  Columbia Riverkeeper

Brendan Cummings  Greg Wingard  Karla Raettig
Ocean Program Director,  Executive Director  Counsel
Center for Biological Diversity  Waste Action Project  Environmental Integrity Project

Lisa Arkin  Kurt Beardslee  Travis Williams
Executive Director  Executive Director  Willamette Riverkeeper
Oregon Toxics Alliance  Wild Fish Conservancy

Matt Van Ess  Ron Huber  Tim Eichenberg
Pacific Marine Conservation Council  Executive Director  Director Pacific Regional Office

Susan Evans  Joe S. Whitworth  Kathy Fletcher
Convener  Executive Director  People for Puget Sound
Citizens for a Clean Columbia  Oregon Trout

Scott Greacen  Michael Lang  Monica Smiley
Public Lands Coordinator  Conservation Director  Executive Director
Environmental Protection Information Center  Friends of the Columbia Gorge  Tualatin Riverkeepers

Dan Jacobsen  Sejal Choksi  Debbie Sease
Executive Director  Program Director & Baykeeper  Director of National Campaigns
Environment California  San Francisco Baykeeper  Sierra Club

Gershon Cohen Ph.D.  Aimee Code  Zeke Grader
Project Director  Water Quality Coordinator  Executive Director
Campaign to Safeguard America's Waters  Northwest Coalition for  Pacific Coast Federation of
Earth Island Institute  Alternatives to Pesticides  Fishermen’s Associations

Capt. Peter Wilcox  Pete Nichols  Don McEnhill
Skippers for Clean Oregon  Executive Director  Executive Director
& Washington Waters  Humboldt Baykeeper  Russian Riverkeeper
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<th>Name</th>
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<tr>
<td>Bruce Reznik</td>
<td>Executive Director, San Diego Coastkeeper</td>
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<td>Regina Chichizola</td>
<td>Riverkeeper, Riverkeeper</td>
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<td>Mati Waiya</td>
<td>Executive Director, Ventura Coastkeeper</td>
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<td>David Lewis</td>
<td>Executive Director, Save The Bay</td>
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<td>Carol Carver</td>
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<td>Jerry Joyce</td>
<td>Seattle Audubon</td>
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<td>Garry Brown</td>
<td>Executive Director, Orange County Coastkeeper</td>
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<td>Mark Riskedah</td>
<td>Executive Director, Northwest Environmental Defense Center</td>
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<td>Tim Greef</td>
<td>Deputy Legislative Director, League of Conservation Voters</td>
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<td>Bill Jennings</td>
<td>Chairman and Executive Director, California Sportfishing Protection Alliance</td>
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<td>Marc Holmes</td>
<td>Manager, Bay Restoration Program, The Bay Institute</td>
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<td>Steve Shimek</td>
<td>Executive Director, Monterey Coastkeeper</td>
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