Written Statement of James Roussos
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Subcommittee on Coast Guard and Maritime Transportation

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Mr. Chairman, Ranking Member Garamendi and Members of the Subcommittee, my name is James Roussos and I serve as the Vessel General Permit ("VGP") Coordinator at Lamonica Fine Foods and Oceanside Marine in Millville, NJ. We have been harvesting and processing clams in the U.S. for 92 years, producing fresh, frozen and canned products from wild surf clams and ocean quahogs that our boats harvest and bring to the dock.

Our clam fleet consists of five boats ranging in size from 85 feet to 110 feet in length. All our fishing boats are subject to the new VGP regulations issued by the EPA on March 28, 2013. These regulations cover 27 discharge categories incidental to normal operation of vessels greater than or equal to 79 feet in length. The permit also covers ballast discharge requirements for some of our vessels and for those vessels that we do not own that also deliver product to our plant.

While we support common-sense environmental protection we are very concerned about the negative impacts of the VGP for what we believe constitutes little environmental benefit. The permit requirements are incredibly complicated and not written for fishermen. It is also very extensive -- the Final 2013 VGP is 194 pages in length and the Final 2013 VGP "Fact Sheet" is 198 pages long. Indisputably, the burden to the industry is not commensurate with the almost non-existent environmental "benefit".

Also, we wish to point out that all commercial fishing vessels and charter fishing boats in the U.S. that are < 79 feet in length will be subject to the small boat permit ("sVGP") starting in December 2014. Many of the points we raise here today will cross pollinate with the owner/operators of these vessels as well. These fishermen, with smaller boats and operations, will not have the resources to understand the permit, much less comply. It is in fact, discriminatory to impose big government, big business requirements on these small businesses. And the crushing effect upon this segment of the industry, is even less comprehensible, when the near-zero effect of the permit is calculated.

We detail some of our concerns below regarding compliance, uncertainty, reporting and record keeping requirements and some details on problematic issues. In closing we offer recommendations for consideration.

Permit Compliance

The new VGP authorizes the owner/operator of a vessel to discharge ballast and incidental discharges in accordance with permit regulations and in compliance with the Clean Water Act (CWA). The permits carry very harsh fines that could cripple a small business.

For example, any noncompliance with the requirements of this permit constitutes a violation of the Clean Water Act (CWA) that may result in monetary fines. Further, any knowing violation of these requirements is punishable by a fine of not more than $10,000, or by imprisonment for not more than 2 years for a first offense (or both); and for a second offense the fine is $20,000 and 4 years in prison (or both).

Furthermore, each day a violation continues is considered a separate violation of the permit and carries further punishment for each day of the violation. What is the precedent or justification for this? Isn't a violation a violation? This permit, while accomplishing precious little, is menacingly overzealous in extracting payment for non-compliance. The permit is not written in a way to engage industry and to partner with industry to solve problems. It is an uncompromising, one-size-fits-all, for anything that floats with unreasonable retribution and punishments.

Further, where requirements and schedules for taking corrective actions are included in the permit requirements, the time intervals provided are not grace periods but schedules considered reasonable for making repairs and improvements. A vessel must be returned to compliance as promptly as is possible but no later than the time period specified in the regulations.

Finally, if a discovered problem constitutes a violation of the permit, conducting the required assessment and correcting the problem does not absolve the owner/operator from liability for the original violation. A failure to comply with the assessment and correction constitute additional permit violations. EPA has also indicated it may impose additional requirements and schedules of compliance that are more stringent than specified in this permit which will supersede the original requirements of the Final 2013 VGP.

In the limits specified for this permit the EPA has defined the term *"minimize"* to mean to reduce and/or eliminate to the extent achievable. While this seems innocuous language enough, practically speaking it will be extremely hard for fishermen and deck hands to recognize what constitutes an actual reportable violation.

Business Uncertainty

We understand several members of the environmental community (i.e. NWF, NRDC, and Northwest Environmental Advocates) recently (June 2013) filed a second legal challenge against the EPA and the new NPDES requirements. This means the new VGP regulations

may be subject to change at the same time we are coming into compliance. How does enforcing this requirement on small businesses make sense if it is subject to change from outside pressures?

This situation contributes to business uncertainty and complication since coverage under the VGP requirements for commercial fishing vessels that possess ballast water tanks begins December 19, 2013. We do not expect the case to be resolved before the permit requirements are to be enforced so companies that take action now may be required to change course which could come at some cost to those businesses.

Extensive Inspection, Monitoring, Reporting and Compliance Record Keeping

The following is an accounting of the inspections, monitoring, reporting, recordkeeping and compliance schedules and requirements for all VGP-covered commercial fishing and charter fishing boats. These requirements are excessive and burdensome on small fishing operations. Independent fishermen who do not have the regular services of someone to help them with their permits and reporting or who do not read the Federal Register on a regular basis will be on their own to understand and comply with these requirements or risk monetary fines and worse.

I believe that industry-wide, we will be forced to hire consultants to decipher the permit and to create action plans and training devices. And most will have to continue paying consultants to maintain compliance going forward. Those that do not hire outside help may just ignore the requirements and fight a battle that they are destined to lose. And to what end? This permit, as applied to fishing vessels, has teeth but no meat. It will not improve the conditions of the waterways and it will not prevent invasive species migration because our behaviors do not contribute to any problems that the permit attempts to solve.

Here is a sampling of new permit requirements --

Routine Vessel Inspections must be conducted at least once per week or per voyage, whichever is more frequent. Findings must be documented in the official ship's log or as a component of the permit recordkeeping and must be signed by the person in charge.

Extended Unmanned Period Inspections (EUP) must be conducted if a vessel is unmanned for a period of 13 days or greater. This will require a three-part inspection process before the vessel goes in EUP status to include (1) a pre- lay-up inspection; (2) a periodic external observation of the vessel and surrounding waters every 2 weeks; and (3) a post lay-up routine visual inspection.

Comprehensive Annual Vessel Inspections must be conducted at least once every 12 months. These can be done by the master, owner, or trained marine engineer or class society representative.

Dry Dock Inspection Reports must be prepared and provided to the EPA, upon request. A report must be prepared each time a vessel is in drydock.

Additional Recordkeeping also requires that all owner/operators must retain records onboard (either paper or electronically) that include a detailed 11-point inspection program. The vessel owner/operator must also retain copies of all reports, certifications, records, monitoring data, violations, and other information required by this permit and records of all data used to complete the Notice of Intent Form (NOI) and Permit Authorization and Record of Inspection (PARI) for a period of at least 3 years from the date that your coverage under this permit expires or is terminated. All information must be made available to EPA upon request. Fishing vessels have no offices or clerks on the boats. For the fisheries to face fines and imprisonment, for lapses in record keeping, or errors and omissions is unjustifiable.

Additional Ballast Recordkeeping also require that all owner/operators of vessels equipped with ballast water tanks must keep on board additional written records detailing all ballast water activities.

Regarding Annual Reporting all owner/operators must submit an Annual Report for each year they have active permit coverage. Annual Reports must be completed each year and submitted by February 28 of the following year.

Regarding Training: all owners/operators must ensure that the master, operator, person in charge, crew members who are involved in discharge management are adequately trained in implementing the VGP permit. Training need not be formal or via an accredited course but it is the owner/operators responsibility to ensure that employees are given the necessary information to conduct proper procedures.

Regarding Reporting for Corrective Actions: if any of the following problems are identified a vessel owner/operator must take action to ensure the problem is eliminated and will not be repeated:

- You violate one or more effluent limits or any other requirement of this permit or the EPA makes that determination during an inspection;

- You become aware or EPA determines that your measures do not control discharges as required; or

- You find (or EPA determines) that your pollution control measures are not being properly operated and maintained or are not having the intended effect.

Following identification of any of the above problems you must conduct a corrective action assessment into the nature, cause, and potential options for eliminating these problems. This assessment must include the following --

- A description of the problem(s), including date, time, and locations on the vessel where it occurred, types of impacts observed, and the name, title and signature of the person who identified the problems and also of the person who recorded the problem.

- An explanation of the cause of the problem(s); if known. If unknown at the time of the assessment, provide an indication of what steps will be taken to determine the cause.

- A description of the corrective action taken to eliminate the problem and a schedule of activities for completing such actions within the EPA's specified deadlines.

- An indication if drydock is necessary to address the problem and when it will be scheduled.

- Once the corrective action is implemented, record the date and time of the action, a description of the corrective action implemented, and the name, title and signature of the person recording this information.

You must retain the findings of your corrective action assessment in your recordkeeping documentation in accordance with all the requirements of this permit.

Regarding the Scheduled Deadlines for Eliminating Problems – The EPA has indicated that simple corrective actions with respect to many permit requirements can be accomplished immediately. These requirements include, but are not limited to housekeeping and certain operation and maintenance requirements. In these situations, you must return to compliance immediately.

Restoring compliance with some permit requirements may require additional time for the owner/operator to reasonably correct the problem. For minor problems requiring simple adjustments the EPA has set a 2 week schedule for repair. Actions that require new parts or equipment to be ordered are allowed 3 months. Large and more complex actions that require drydock repairs must be fixed at the next scheduled drydock.

Some Specific VGP Areas of Concern

There are some specific elements of the VGP that remain problematic to the commercial fishing industry. These include but are not limited to the following.

Bilgewater Water --
The EPA requires that all vessels minimize the discharge of bilgewater into waters subject to this permit. This can be done by reducing production of bilgewater, disposing of onshore, or discharging outside 3 nm (recognizing the latter must be consistent with MARPOL requirements).

This provision, and what constitutes an actual violation, is unclear to our fishermen since bilge pumps are automatically triggered while the vessel is underway or tied to the dock

to prevent the accumulation of water in the bilge. This precaution keeps boats from sinking. Are fishermen required to turn off their bilge pumps or collect bilgewater for shore-side disposal while in permitted waters?

Ballast Water --
While our fishing vessels are operated in such a way that they are not likely vectors of aquatic invasive species, certain discharges of ballast water must comply with the requirements of the VGP. All owner/operators of vessels equipped with ballast tanks covered by the VGP must train all crew involved in ballast water discharge/treatment. As part of a Ballast Water Management Plan (BWMP), owner/operators must maintain a written training plan. The BWMP must be developed specifically for each vessel and be available to the EPA upon request.

According to the EPA, vessels with ballast water tanks subject to the VGP may use one of the following 4 management methods to meet permit requirements.

(1) Ballast Water Treatment System (BWTS)
Must be a system shown to be effective by testing in accordance with the EPA-ETV protocol for verification by an independent third party. Use of a BWTS carries substantial and comprehensive monitoring, testing, calibration, effluent monitoring parameters, biocide limitations, record keeping & reporting.

(2) Onshore Treatment of Ballast Water
If a compatible onshore treatment system is available, an owner/operator may safely transfer ballast water provided all piping and connections are leak free.

(3) Use of Public Water Supply (PWS)
Vessels using water from a PWS (US & Canada) must maintain records, including receipts indicating the originating system. Vessels using PWS water as ballast must have previously cleaned the ballast tanks and never introduced ambient water to those tanks and supply lines. If untreated water is introduced to the tanks at any time, they must be cleaned before the vessel can return to using PWS.

(4) Zero Discharge of Ballast Water
Vessels may also meet the requirements of this permit by not discharging any ballast water into waters subject to this permit.

While some fishing vessels may be able to operate using the least onerous alternatives outlined above, they must still comply with all other associated requirements (i.e. training, planning, and reporting) even if they pose a minimal threat from ballast water discharges.

And lastly on this issue, some elements of the VGP still remain unclear to our industry even while we had to be in compliance in December 2013. For example, some fishing vessels in our region and elsewhere utilize fish holds filled with ambient seawater as "temporary" ballast tanks to improve trim and vessel handling while traversing to the

fishing grounds. Once fishing activities occur, the catch is added to the fish hold and help provides stability.

We have tried to understand the specific requirements to ensure compliance but the EPA has not been able to address our questions. We believe this supports our request for regulatory relief.

Anchor and Chain Locker Effluent

The EPA is requiring that anchors and chains be carefully and thoroughly washed as it is being hauled out of the water each time to remove sediment and marine organisms. This is not a reasonable requirement. First, the anchor is deployed into the ambient seawater and seabed and typically not for extended periods of time. It simply does not make sense to have to carefully and thoroughly wash the anchor chain each time it is retrieved since risk of contamination is miniscule. Second, most if any sediment that may be attached to the anchor's flukes will be effectively washed by ambient seawater action once the anchor is retrieved, stored and the vessel in underway. Third, there is the potential for safety to be compromised with this requirement. Despite our protestations, this requirement remains subject to VGP requirements.

Graywater

The EPA requires that all owner/operators minimize graywater discharges while "in port". The term "in port" is defined as anchored, moored, or otherwise secured while located in any waters subject to this permit which are inside the baseline of the U.S. territorial sea.

If an owner/operator cannot store graywater on the vessel, one must minimize production of it while in port. If graywater is to be discharged in waters subject to this permit, the introduction of kitchen oils to the graywater system must be minimized. When cleaning dishes, one must remove as much food and oil residue as practical before rinsing dishes. Excess oils, including animal fats and vegetable oils, used during cooking must not be added to the graywater system.

This is problematic for several reasons. First, our vessels and most others are not equipped to store graywater so there is no alternative to discharging some amount while in port. Additionally, some crewmembers may live on vessels for some period of time when the vessel is in port thereby complicating the requirement to minimize graywater discharge and production.

Seawater Cooling Discharge

The EPA is requiring limiting the discharge of seawater cooling water overboard only when the vessel is underway. This is technologically infeasible and does not reflect knowledge of the equipment commonly used on board commercial fishing vessels. First, refrigeration condensers are in use at all times, circulating ambient seawater as needed to maintain efficient cooling, which is critical to maintaining product quality. There is no way to capture this seawater discharge so it should not be a requirement to do so. When vessels are in port, particularly when they are waiting to discharge their product, there is

no alternative to running refrigeration condensers and auxiliary generators to maintain power and keep seawater at appropriately low temperatures. Vessels must also access auxiliary engines for power generation. Wet exhausts, cooling water discharges and condensation cannot be captured or stored.

Fish Hold Effluent

All reasonable steps must be taken to prevent the discharge of excess fish hold water and ice while the vessel is stationary at the pier. If large solid pieces of fish waste are contained in the fish hold effluent (e.g. fish heads, internal organs) the fish hold effluent may not be discharged while the vessel is pier-side and stationary, unless a physical separation method is used (e.g. ½ inch coarse screens or smaller, a screened hose having a ½ inch screen opening or smaller, filters, other methods to remove large solids).

For commercial fishing vessel owners/operators that are unloading catch at a shore-based seafood processor or other pier they must, if possible and economically achievable, discharge the fish hold effluent (incl. dirty ice) to that shore-based facility instead of discharging to surrounding waters.

Availability of Individual Vessel Permit Information

The EPA has not clarified whether the recordkeeping information submitted by permitted vessel owner/operators will be made available to the public. We are concerned the information may not be adequately protected and could lead to potential problems under the citizen lawsuit provision of the Clean Water Act.

If violations are publicized it will allow anyone to seek compensation for a portion of fines to be levied. We do not want to create a cottage industry of litigators who peruse EPA enforcement data bases, file suits, and recover costs from the fishing industry. We believe that VGP violations should be exempt from the citizen suit recovery provisions. At a minimum, we believe that confidentiality should be provided so fishing vessel operators don't have to spend their time and money in court rather than pursuing their livelihoods.

General Summary

The VGP has no stated goals. It exists as a disjointed collection of ideas that have coalesced into a suite of Federal regulations. It is confusing, unnecessarily cumbersome, decidedly not user-unfriendly, and in some cases irrational. It is a blunt instrument that carries severe penalties for those who violate its law, including possible fines and imprisonment for a first offense!

It appears that this permit is trying to prevent ocean and waterway pollution originating from the vessels that travel them. A worthy goal, however, it is misguided for anyone to endeavor to construct one set of criteria for all of the different types of vessels that exist. That is the main fallacy of this document. There are aircraft carrier sized super tankers

and 24 foot skiffs and everything in between. How could it be possible for one pollution permit to apply to all? Such is the dilemma that the fishing industry faces.

First it is an issue of application. To say that the permit will reduce ocean and waterway pollution as justification to apply it to all vessels in the oceans and waterways is to not understand the nature of the different vessels that exist. For example, central to the permit is the regulation of ballast water discharges. Why is this? It is because ballast water has been known to carry foreign invasive species, and other microscopic organisms that are not wanted in this country.

This problem should not apply to the commercial fishing industry of this country. Our fishing vessels typically stay in one small area off the U.S. and normally return to the same dock from which it departed. When we do use ballast water, and probably most do not, it is either temporary- taking in seawater and releasing it back in the same water, or it is seawater that will be held for some time and then released into the same water from whence it came, or it is fresh potable water. All risk free, yet this permit would create enormous volumes of paperwork and on-going documentation, to say what was just said in one sentence. This permit, if applied to fishing vessels, will not make the waterways cleaner. It just does not apply to the fishing industry.

Second, the permit is designed more as a penal document than a constructive attempt to reduce pollution. Is it likely that a captain will report his vessel when he sees too much vegetable oil in the sink? What violation would one really expect a captain to report? So what we have here is a document, with rigorous demands and overly harsh penalties that will most likely only come into play AFTER a serious environmental event, in the form of punishment. The fishing industry does not need more punishment, it needs more education.

For example: the permit requires that the permit holder must justify and report which cathodic protection he chooses to put on the bottom of his boat. Forever, up until now, everyone including the U.S. Navy used zinc anodes to protect the hull from electrical current. These zincs are designed to sacrifice themselves to absorb electrical charges that would otherwise eat at the steel boats. They must be changed periodically as they are consumed.

The State of Maryland has (or is about to) ban zinc anodes in favor of aluminum alloy, which is less environmentally toxic. Doesn't it seem odd that a state is ahead of the federal government on this issue? It would seem that all the expense it took to write and present this permit, with its total lack of effectiveness, could have been directed to education. With increased education this could be made much simpler.

After some research, we at LaMonica Fine Foods determined aluminum anodes to be a suitable substitute for zinc. To our knowledge, we are the first to install them on a fishing vessel and we did it without the threat of the Federal Government or extensive reporting requirements.This permit will make every fishing concern research aluminum anodes independently, where all of that information could be provided by a friendly government

interface with the industry. Starting a user friendly web site or send out mailings or hire some fishermen to go out and talk to other fishermen to spread the word would be more welcome than a violation notice. Almost every applicable point in the VGP would be better handled in this manner. As an industry, we recognize the need to keep our waterways clean. Give us the tools to help contribute to that end.

Recommendations

Based on our concerns that the VGP is extremely complicated, carries risk of heavy fines and exposure to citizen suits under the Clean Water Act, is overly burdensome in terms of reporting/monitoring/compliance, is already the target of repeated litigation by the environmental community, and is disproportionate in scope to any actual environmental benefits -- we recommend the following:

(1) Reinstate the longstanding NPDES exemption for discharges incidental to the normal operations for commercial fishing vessels and charter boats, regardless of size;

(2) We support addressing critical ballast water management issues to prevent the spread of aquatic invasive species on vessels and activities that actually pose a serious threat to the introduction and spread of AIS.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to discuss our concerns with the NPDES VGP requirements.