RECENT REGULATION OF THE MARITIME INDUSTRY: ENSURING U.S. JOB GROWTH WHILE IMPROVING ENVIRONMENTAL AND WORKER SAFETY

(112–84)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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April 20, 2012

MEMORANDUM

TO: Members, Subcommittee on Coast Guard and Maritime Transportation

FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation

RE: Hearing on "Recent Regulation of the Maritime Industry: Ensuring U.S. Job Growth While Improving Environmental and Worker Safety"

PURPOSE

On Thursday, April 26, 2012, at 9:00 a.m., in room 2167 of the Rayburn House Office Building, the Subcommittee on Coast Guard and Maritime Transportation will meet to review the status of regulations by the United States Coast Guard and the Environmental Protection Agency (EPA) and how such regulations impact the maritime industry.

BACKGROUND

The Rulemaking Process

The Federal Government creates or modifies rules and regulations through a rulemaking process guided by the Administrative Procedure Act (APA), codified in title 5 of the United States Code. The process involves notice in the *Federal Register* and the opportunity for public comment in a docket maintained by the regulating agency. This is a lengthy process and often requires several layers of bureaucratic review prior to the rule becoming final. In addition to complying with the APA, the Coast Guard must also promulgate regulations and rules in compliance with other statutory mandates and the Service's own rules and policies.

The Coast Guard's Regulatory Development Program begins with the identification of a possible need for new or changed regulations and culminates in the publication of final, enforceable regulations in the *Federal Register*.

After identifying the need for regulatory action, usually as the result of a public petition, internal review, casualty investigation, change in an international treaty, or an act of Congress, the Coast Guard forms a rulemaking team. The rulemaking team creates a detailed and comprehensive work plan, which summarizes and defines the rulemaking project and ensures the availability of proper resources. The rulemaking team typically drafts a Notice of Proposed Rulemaking (NPRM) for publication in the *Federal Register*. The NPRM must contain: (1) details on how the public may submit comments; (2) the basis of the proposed rule; (3) the terms or substance of the proposed rule; (4) an economic impact analysis; and (5) a response to certain comments previously received by the Coast Guard related to the rulemaking (certain circumstances warrant the use of other proposed rule documents such as an Advanced Notice of Proposed Rulemaking or Supplemental Notice of Proposed Rulemaking). Prior to publication in the *Federal Register*, the NPRM must be cleared through several internal Coast Guard offices, and externally through the Department of Homeland Security and the Office of Management and Budget (OMB).

The Coast Guard typically accepts public comments in response to an NPRM for 90 days. The rulemaking team reviews the public comments and develops responses in accordance with APA requirements. The rulemaking team posts all *Federal Register* documents and public comments (provided they do not contain classified or other restricted information) to a public docket accessible via the www.Regulations.gov website.

After considering public comments, the rulemaking team typically drafts a final rule for publication in the *Federal Register*. The final rule must contain: (1) the regulatory text; (2) a concise general statement of the rule's basis and purpose; and (3) a discussion of the public comments and Coast Guard responses (certain circumstances warrant the use of other final rule documents such as an Interim Final Rule, Direct Final Rule or Temporary Final Rule, or may warrant termination of the rulemaking project, for which withdrawal procedures exist). Prior to publication in the *Federal Register*, the final rule must be cleared in a manner similar to the clearance process described above.

The final rule includes an effective date which is typically 90 days after publication of the final rule in the *Federal Register*. The regulatory process is completed as of the effective date, however, once the rulemaking is effective, it is open to litigation by those with standing.

Major Rulemaking

A major rulemaking is defined by the Congressional Review Act (CRA) (5 U.S.C. § 804) as a rule that is likely to have an annual effect on the economy of $100 million or more; or result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or adversely affect in a significant way competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Under the Congressional Review Act, an agency must submit its major rulemakings to each house of Congress. Within 60 legislative days after Congress receives an agency's rule, a Member of Congress can introduce a resolution of disapproval that, if passed and enacted into law, can nullify the rule, even if it has already gone into effect. Congressional disapproval under the CRA also prevents the agency from promulgating a "substantially similar" rule without subsequent statutory authorization.

Currently, the Coast Guard has one rulemaking that meets the definition of "major rule": Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (RIN 1625-AA32) (see below for discussion).

Status of Coast Guard Rulemaking

Rulemaking Completed in Fiscal Year 2011:

The Coast Guard achieves progress on a rulemaking by meeting internal milestones (*e.g.* completing a draft rulemaking document, completing review, obtaining clearance, etc.) or by meeting a public milestone (*e.g.* forwarding a rulemaking document to OMB for review, publishing a rulemaking document in the Federal Register, etc.).

In fiscal year 2011, the Coast Guard advanced a cumulative total of 85 ongoing, new, and completed rulemaking projects. In doing so, the Service published 28 rulemaking documents. Of these, 14 were either final rules, interim final rules, or direct final rules. Three rulemakings were technical and conforming amendments. Another 11 published rulemaking documents were notices of intent, advance notices of proposed rulemaking, supplemental notices of proposed rulemaking, or notices of proposed rulemaking. At the end of 2011, 68 rulemakings remained to be closed out on the Coast Guard docket (see attached).

Rulemaking Planned for Fiscal Year 2012:

The Coast Guard has published eight rulemaking documents in fiscal year 2012: one final rule, one direct final rule, two interim final rules, one notice of proposed rulemaking, one supplemental notice of proposed rulemaking, and two notices of intent. The Coast Guard has set the following rulemaking objectives for the remainder of the fiscal year:

- Move forward approximately 50 top rulemaking projects, as well as other lower priority rulemaking projects.
- Publish a final rule on the Inspection of Towing Vessels. The Coast Guard Authorization Act of 2010 (CGAA) (P.L. 111-281) set a deadline for issuing a final rule by October 14, 2011.

- Achieve the CGAA rulemaking deadline of April 15, 2012, for:
    - Marine Transportation-Related Facility Response Plans for Hazardous Substances;
    - Tank Vessel Response Plans for Hazardous Substances;

- Nontank Vessel Response Plans.

- Publish an interim rule to implement CGAA section 617 for Offshore Supply Vessels (deadline October 15, 2011); a notice of proposed rulemaking for section 702 on Oil Transfers from Vessels (deadline January 12, 2012); and a final rule for section 710 on the Higher Volume Port Area in the Strait of Juan de Fuca (October 15, 2011 deadline to initiate a rulemaking was met).

Current Regulatory Program Backlog

In fiscal years 2008 and 2009, the Service received funding from Congress to substantially increase the number of personnel assigned to its regulatory program. The addition of these personnel enabled the Coast Guard to reduce its regulatory backlog by 55 percent as of the end of calendar year 2011. However, the Coast Guard still has a backlog of over 60 rulemaking projects. These rulemakings range in age from 1 to 21 years old with an average age of four years. The oldest pending rulemaking stems from a provision in the Oil Pollution Act of 1990 which requires nontank vessel owners to file oil spill response plans. The Service finally issued an NPRM to implement this 21 year old statutory requirement on August 31, 2009. A final rule is still under development.

Significant Coast Guard Final, Proposed, and Future Rulemakings

Recent Significant Final Rulemakings:

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (RIN 1625-AA32) - On March 23, 2012, The Coast Guard published its final rule for Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters. These new regulations are intended to control the introduction and spread of non-indigenous species from ships discharging ballast water in U.S. waters. The final rule would require the installation of ballast water treatment technologies on ocean going vessels. The treatment technology must be certified by the Coast Guard to ensure it would prohibit the release of ballast water containing more than 10 organisms that are greater than 10 micrometers in size per cubic meter of ballast water or certain concentrations of smaller size classes of organisms. This is the same standard proposed by the International Maritime Organization (IMO). Under the final rule, installation of ballast water treatment technology would begin with new vessels constructed after December 1, 2013, and would be phased in for existing vessels over the next five years. The Coast Guard estimates the 10-year total cost of the proposed rule on U.S. vessel owners could exceed $645 million. The Service estimates benefits could total between $989 million and $1.6 billion depending on the effectiveness of the ballast water treatment technologies in stopping the spread of invasive species.

Significant Proposed Rulemakings:

Towing Vessel Safety (RIN 1625–AB06) – The Coast Guard and Maritime Transportation Act of 2006 (P.L. 109-241), required the Coast Guard to publish a rulemaking providing for the inspection of towing vessels. The CGAA established a January 15, 2011 deadline for the NPRM

and an October 15, 2011 deadline for the issuance of a final rule. On August 11, 2011, the Coast Guard published the notice of proposed rulemaking for Inspection of Towing Vessels (76 FR 49976). The comment period closed on December 9, 2011. The Coast Guard is currently analyzing the comments and working to finalize this rulemaking. Over a 10-year period of analysis, the Coast Guard estimates the total cost of the rulemaking on industry could total $130 million, while the monetized benefits could reach $200 million.

Marine Vapor Control Systems (RIN 1999-5150) - The Coast Guard is in the process of revising existing safety regulations for facility and vessel vapor control systems (VCSs). The proposed changes would make VCS requirements more compatible with new Federal and State environmental requirements, reflect industry advancements in VCS technology, and codify the standards for the design and operation of a VCS at tank barge cleaning facilities. These changes are intended to increase the safety of operations by regulating the design, installation, and use of VCSs, but would not require anyone to install or use VCSs. The Coast Guard estimates that this proposed rule would affect 234 facilities with VCSs, 25 certifying entities, 15 tank barge cleaning facilities, 216 U.S.-flagged tank barge owners, and owners of 338 foreign-flagged tank barges. Over a 10-year period of analysis, the Coast Guard estimates the total cost of the rulemaking on industry to be between $8.8 million and $10.3 million, while the monetized benefits would total approximately $2.7 million. The NPRM was published on October 21, 2010.

Vessel Requirements for Notice of Arrival and Departure, and Automatic Identification System (RIN 1625-AA99) - The Coast Guard is proposing to expand the applicability of notice of arrival and departure (NOAD) and automatic identification system (AIS) requirements to more commercial vessels. This proposed rule would expand the applicability of notice of arrival (NOA) requirements to additional vessels, and establish a separate requirement for certain vessels to submit notices of departure (NOD). In addition, this proposed rule would expand the requirement for AIS carriage to smaller commercial vessels, as well as to other vessels transiting U.S. waters including commercial fishing vessels. The Coast Guard estimates that the 10-year total cost of the proposed rule to U.S. vessel and foreign-flagged vessel owners is between $181 million and $236 million, while the benefits in the form of reduced property damage could also total $236 million. The NPRM was issued on December 16, 2008. The final rule is in agency review.

Nontank Vessel Response Plans and Other Vessel Response Plan Requirement (RIN 1625-AA32) – As required by the Oil Pollution Act of 1990, the Coast Guard issued a NPRM to require the owners and operators of nontank vessels greater than 400 gross tons which carry oil for fuel to prepare and submit oil spill response plans. The Coast Guard estimates that the 10-year total cost of the proposed rule to U.S.- and foreign-flagged vessel owners is between $263 million and $318.4 million. The Coast Guard did not provide an estimate on monetized benefits, but did estimate the rules could prevent the discharge of as much as 2,446 barrels of oil over a ten year period. The NPRM was issued on August 31, 2009. The final rule is in agency review.

Significant Future Rulemakings:

Fishing Vessel Safety - Section 604 of the CGAA requires over 30,000 fishing vessels to undergo dockside examinations every two years to ensure compliance with certain vessel safety standards. Vessel operators are also required to keep records of equipment maintenance, and safety drills for Coast Guard examination. Vessels that do not receive their first examination prior to October 2012 will not be allowed to sail until they do so. The Coast Guard has indicated that its current workforce of approximately 60 qualified full or part time inspectors will not be sufficient to complete examinations on all vessels by the October 2012 deadline. As of April 1, 2012, 11 percent of fishing vessels were in compliance with this requirement.

Section 604 also requires the Coast Guard to issue regulations to establish a safety training program to certify fishing vessel masters and maintain such certification.

Finally, section 604 requires new commercial fishing vessels built after August 1, 2012 to be certified by the American Bureau of Shipping or other Coast Guard recognized classification societies to ensure the vessel is built to the latest marine construction standards. The Coast Guard has yet to issue a definition of "built" and only DNV has issued construction standards for fishing vessels.

Cruise Vessel Safety and Security – Section 3 of the Cruise Vessel Security and Safety Act of 2010 requires the Coast Guard to issue regulations governing the installation and maintenance of certain safety and security equipment aboard cruise vessels operating in U.S. waters, as well as procedures for the vessel operator to follow in the event of a sexual assault or other crime. The deadline for vessels to come into compliance with the new law was January 27, 2012. The Coast Guard plans to meet the statutory mandates of the Cruise Vessel Security and Safety Act of 2010 and has highlighted these rulemakings as a milestone for FY 2012.

Foreign Rebuild Determination – In 2010 a coalition of U.S.-flagged vessel operators, maritime unions and domestic shipbuilders petitioned the Coast Guard to initiate a rulemaking to clarify the extent to which a vessel can be rebuilt in a foreign shipyard and still maintain its eligibility under the Jones Act. The Jones Act requires vessels carrying merchandise or passengers between two points in the United States to be U.S.-built, U.S.-owned, U.S.-flagged, and U.S.-crewed. On March 20, 2012, the Coast Guard denied the petition for rulemaking.

Significant EPA Regulations Affecting the Maritime Industry

Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels – Pursuant to a federal court order, in December 2008, the EPA promulgated final regulations establishing a Vessel General Permit (VGP) under the Clean Water Act's National Pollution Discharge Elimination System program to govern ballast water and other discharges incidental to the normal operation of vessels. The VGP requires vessel operators to be in compliance with best management practices covering 26 types of discharges incidental to normal vessel operations, including deck runoff, air conditioner condensate, bilge water, graywater, and cooling system discharges. With respect to ballast water, the VGP incorporates the Coast Guard's previous regulation requiring mandatory ballast water exchange. The VGP also

incorporates local water quality regulatory requirements added by 26 states, two Indian tribes, and one territory that vessel operators must comply with while transiting those jurisdictions. As a result, to transit U.S. waters, vessel operators must ensure they are in compliance with Coast Guard and EPA regulations, as well as over two dozen state, territory, or tribal regulations governing 26 discharges. Approximately 45,000 vessels currently operate under the VGP.

On November 30, 2011, the EPA released a draft VGP to replace the current VGP which expires on December 18, 2013. The draft VGP would require the installation of ballast water treatment technology on certain vessels operating in U.S. waters carrying more than 8 cubic meters of ballast water. Similar to the Coast Guard ballast water rule, treatment technologies under the VGP would need to be certified by the Coast Guard to prohibit the release of ballast water containing more than 10 organisms that are greater than 10 micrometers in size per cubic meter of ballast water or certain concentrations of smaller size classes of organisms (the same as the IMO standard). In addition to regulating 26 other incidental discharges, the draft VGP also proposes to regulate effluent, including ice slurry, from fish holds on commercial fishing vessels. The EPA estimates that over 70,000 vessels will need to comply with the draft VGP at a cost of up to $20 million annually. This estimate does not include the cost to purchase and install ballast water treatment technologies on board a vessel or the cost of additional regulatory requirements which may be added by the states. The EPA anticipates there will be monetized benefits as a result of the implementation of the draft VGP, but it could not calculate them.

On November 30, 2011, the EPA also released a draft Small Vessel VGP (sVGP) to cover commercial vessels less than 79 feet in length which are currently subject to a moratorium from compliance with the VGP. The moratorium passed by Congress in July 2010 expires on December 18, 2013 (P.L. 111-215). The draft sVGP requires these vessels to comply with best management practices for the same 27 incidental discharges as the draft VGP. The EPA estimates that up to 138,000 vessels will need to comply with the draft VGP at a cost of up to $12 million annually (this estimate does not include the cost of additional regulatory requirements which may be added by the states). The EPA anticipates there will be monetized benefits as a result of the implementation of the draft sVGP, but it did not estimate them.

North American Emission Control Area – On March 26, 2010, at the request of the EPA and the Coast Guard, the U.S. and Canadian delegations to the IMO convinced the organization to amend the International Convention for the Prevention of Pollution from Ships (MARPOL) to designate specific portions of U.S. and Canadian waters as an Emission Control Area (ECA) to address exhaust emissions from vessels. Beginning on August 1, 2012, vessels operating in the North American ECA will be required to burn fuel with a lower sulfur content (1 percent) or install scrubbers in their exhaust systems to reduce emissions of sulfur oxides and nitrogen oxides. Beginning in 2015, the sulfur fuel standard will be further reduced to 0.1 percent sulfur. The EPA estimates it will cost industry approximately $3.2 billion by 2020 to comply with the North American ECA. The EPA estimates the monetized benefits to be between $47 and $110 billion by 2020.

Significant Transportation Security Regulations Affecting the Maritime Industry

Transportation Worker Identification Credential (TWIC) – Section 102 of the Maritime Transportation Security Act of 2002 (P.L. 107-295) required the Secretary of Homeland Security to prescribe regulations requiring individuals that required unescorted access to secure areas of certain vessels and maritime facilities to be issued a biometric identification, now known as a TWIC. The Security and Accountability for Every (SAFE) Port Act of 2006 (P.L. 109-347) established a deadline of July 1, 2007 for the deployment of TWIC to individuals employed at the 10 largest U.S. ports and then subsequent deadlines for the remaining U.S. ports. The Transportation Security Administration (TSA) began issuing TWICs in October 2007. Over 2.1 million individuals are currently enrolled in the TWIC program.

- *TWIC Relief for Individuals Not Needing Unescorted Access to Secure* Areas – Section 104 of the SAFE Port Act authorized the Secretary of Homeland Security to process applications for Merchant Mariner Credential (MMC) and TWICs concurrently and to issue TWICs to "other individuals as determined appropriate". The Coast Guard interpreted Section 104 to require credentialed mariners (those with MMCs) to also carry TWICs. Section 809 of the CGAA clarified that was not the intent of Congress and removed the requirement for mariners to purchase and carry a TWIC if they do not need unescorted access to secure areas of vessels or facilities. The Coast Guard and TSA are developing a regulation to implement this section. In the interim, the Coast Guard released guidance in December 2011 to provide relief to certain mariners. Under the guidance, the Coast Guard is no longer requiring mariners to purchase and carry a TWIC if they are renewing their MMC and do not need unescorted access to secure areas of vessels or facilities. However, such mariners applying for an MMC for the first time must still apply for a TWIC and pay the processing fee for a TWIC even though they are no longer required to carry a TWIC.

- *Requirement to Appear Twice* – Under current policy, individuals applying for a TWIC must appear in person at a TWIC processing center twice: once to supply their biometric information and once to receive the credential. The CGAA required the Government Accountability Office (GAO) to report on the possibility of reducing the number of required visits to one. In April 2011, the GAO reported that in order for TWIC to remain compliant with federal security standards governing identity control, reducing the number of visits is not possible.

- *TWIC Readers* – Section 104 of the SAFE Port Act required the Secretary of Homeland Security to conduct a pilot program to test technology to read TWIC and established a deadline of April 13, 2009 to issue final rules for the deployment of TWIC readers. The TSA did not complete the pilot program until February 27, 2012. Shortly thereafter, the Coast Guard began the process of developing a NPRM for the deployment of TWIC readers. The Coast Guard does not expect to publish it until the fall of 2012. The implementation of a final rule could take up to a year after the NPRM is published.

WITNESSES

Panel I

Vice Admiral Brian Salerno
Deputy Commandant for Operations
United States Coast Guard

Accompanied by:
Mr. Jeffrey Lantz
Director of Commercial Regulations and Standards
United States Coast Guard

Mr. James Hanlon
Director, Office of Wastewater Management
Office of Water
United States Environmental Protection Agency

Panel II

The Honorable Chris Koch
President & CEO
World Shipping Council

Mr. James Gutowski
Fisheries Survival Fund
Barnegat Light, NJ

Mr. Jimmy Lafont
Callais and Sons
Cut Off, LA

Mr. Don Marcus
Secretary-Treasurer
International Organization of Masters, Mates & Pilots

Mr. Paul Cozza
President
CSL International

RECENT REGULATION OF THE MARITIME INDUSTRY: ENSURING U.S. JOB GROWTH WHILE IMPROVING ENVIRONMENTAL AND WORKER SAFETY

THURSDAY, APRIL 26, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:05 a.m., in Room 2167, Rayburn House Office Building, Hon. Frank LoBiondo (Chairman of the subcommittee) presiding.

Mr. LOBIONDO. Good morning. The subcommittee will come to order.

The subcommittee is meeting today to review regulations affecting the maritime industry. We are interested in how the implementation of these regulations is impacting vessel safety, the flow of commerce through our ports, and the ability to grow jobs in the maritime sector.

The Coast Guard has broad authority to regulate maritime commerce, including establishing and enforcing rules to ensure maritime safety and vessel facility security. The Coast Guard and the EPA share extensive authority to write regulations for the protection of our environment. With such vast authority comes great responsibility to regulate industry in a fair and reasonable way. This hearing will focus on ensuring that these agencies' rulemakings are just that, fair and reasonable.

Maritime commerce is essential to the U.S. economy. While regulations must address concerns related to safety, security, and stewardship, they must also balance the importance of maintaining the free flow of maritime commerce. Domestic shipping alone is responsible for over 500,000 American jobs and $100 billion in annual economic output. In addition, 90 percent of all global trade and over 25 percent of our gross domestic product moves via the sea.

With the economy still in a fragile state and unemployment at record levels, it is imperative that the Federal Government foster an atmosphere where our maritime industry can compete and expand. To that end, I am concerned about the cost and impact of several recent and forthcoming rulemakings that will affect the maritime sector. Specifically, rules requiring fishing vessel certification and examinations, the installation of ballast water treatment systems aboard vessels, and the establishment of methods to

reduce air emissions from vessels could have tremendous impacts on our economy. If these and other rules are not written and executed in a commonsense manner, I am concerned they would make it financially impossible to operate vessels in U.S. waters.

We need to ensure the safety of commercial fishing, but we need to do so in a way that maintains the economic viability of the industry for vessel owners and operators. The Coast Guard has already said on the record that it does not have the resources to meet the looming October 15th deadline to conduct a fishing vessel safety examination. If the Service believes that it cannot meet this deadline, then we need a clear answer on what the impact will be on the industry on October 16th so we can take appropriate action to ensure that thousands of fishermen are not forced out of work.

Ballast water regulations are a major concern for this subcommittee. Currently, the Coast Guard and the EPA have developed separate regulations under two different Federal laws to govern the discharge of ballast water. And although the agencies have worked together to try to reach uniformity, these programs still differ in implementation dates, vessels covered, geographic reach, enforcement, and penalties for noncompliance. And this will only become less uniform and more confusing and burdensome for vessel owners as each individual State adds its own discharge requirements on top of the EPA's program.

Under the EPA's current program, 29 States and tribes have added their own different discharge standards. I think it is completely unreasonable to ask vessel operators to comply with 2 Federal standards and as many as 29 different, contradictory and unachievable, unattainable State and tribal standards.

This situation is out of control. Some of these States plan to enforce ballast water discharge standards in the next year for which no treatment technology has yet been invented. Nobody can explain how they are going to reach standards with technology that is not there to do it.

The Commercial Vessel Discharge Reform Act, which originated in this subcommittee and passed in the House, will correct these issues by creating a uniform national standard for ballast water. I strongly encourage our colleagues in the other body to show their understanding of the gravity of this situation by adopting the bill as soon as possible.

I am also concerned about the implementation of the North American emissions control area. Beginning August 1st, vessels transiting the U.S. EEZ will need to burn lower sulphur fuel. While I understand the critical importance of improving the air quality in our coastal regions, I am concerned the EPA and Coast Guard have yet to establish a process on how they will deal with vessels whose engines cannot burn the lower sulfur fuels or vessels that cannot acquire the new fuel because it is not widely available or vessels seeking to achieve the same air quality improvements through alternate compliance methods and foreign equivalences.

Finally, I am concerned the agencies did not properly consider the economic impact this rule will have on smaller vessels that must travel entirely within the EEZ.

It seems to me that both agencies have a lot of work to do in the next 3 months if they expect to implement the new rules in a fair manner when they are expected to be.

Finally, I am concerned over the ongoing delays in the process of merchant mariner credentials and inefficiencies in the National Maritime Center's medical certification process. The issue is especially important to me as these credentials are essentially a mariner's ticket to work, and bureaucratic delays have a direct negative impact on those who keep our economy moving at sea. I hope our witnesses can explain what steps they are taking to improve this system and knock out some of these problems.

And, Admiral Salerno, finally, we have all heard the news about the commandant, and please wish Admiral Papp a very speedy recovery. We all wish that he is back to full speed soon. Let him know that our thoughts and prayers are with him and his family and the Coast Guard family.

And, also, as this will be your last appearance in uniform before this subcommittee I want to thank you for your over 35 years of outstanding service. The commitment that you have made to our country, the sacrifices that you and your wife and your family have made for the United States of America is extraordinary. We owe you a great debt of gratitude.

Admiral SALERNO. Thank you, sir.

Mr. LOBIONDO. And with that I yield to Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman; and thank you for convening today's hearing to assess the status of Federal rulemaking activities affecting the U.S. Maritime industries.

Regulations issued by the Coast Guard and the EPA are necessary to provide certainty and stability for our domestic maritime industries, and I appreciate your commitment to this oversight task.

Before I start, I do want to just echo your kind words, Mr. Chairman, regarding Admiral Papp's recent diagnosis and his successful surgery earlier this week. I want to extend to the Admiral my admiration for his forthright manner in which he has handled his very personal matter and express to him my sincere wishes for a quick and full recovery. The Coast Guard needs him to return to the helm soon. So if you can pass it on, Admiral Salerno.

As well as to you, Admiral Salerno, thank you for your service to the Coast Guard as well. And you know the chairman said this would be your last time, but you never know with this subcommittee. And your wife as well, I understand, is here with you today.

Our domestic maritime industries generate annually over $100 billion in economic output and $11 billion in tax revenue. And while these numbers are impressive, more can be done. This explains why revitalizing and growing our maritime economy remains a very high priority for me.

Regulations the Coast Guard has issued remain pivotal in balancing competing stakeholder interests to create a level playing field across a wide variety of needs, including maritime safety, port security, efficient and reliable maritime commerce, and sensible and effective marine environmental protection.

It is a huge job for a multimission maritime military service, and I can think of no more elegant statement to convey the importance of the Coast Guard than when Admiral Papp reminds us that, quote, "the Coast Guard protects people on the sea, it protects our country from threats delivered by the sea, and even protects the sea itself."

Few Federal agencies have such an expansive regulatory scope or the ability to positively affect and enhance virtually every sector of our domestic maritime economy than does our U.S. Coast Guard. Accordingly, we have an obligation here to ensure these regulations that the Coast Guard issues are fair, are targeted, and support our maritime industries, which, by extension, will be good for job creation, good for the U.S. economy, and good for the American people.

Certainly there are some Coast Guard rules that I want to discuss this morning to better understand their practical implications. For example, implementation of the Transportation Worker Identification Credential, or TWIC, remains far behind schedule and over budget. It is my understanding the Coast Guard is presently developing a draft rule for electronic TWIC card readers. I will want to hear from Admiral Salerno when we can reasonably expect to see a draft rule published in the Federal Register.

Also, as a co-sponsor of H.R. 3173, legislation to reform the TWIC administrative processes, I would like to learn what actions the Coast Guard is considering to eliminate the requirement for mariners to make more than one visit to a TWIC enrollment center.

On a related topic, the issuance or reissuance of mariner credentials, especially the review of medical records, remains a sore point. Faulty administrative processes have increased cost, prompted delays, and created confusion in what otherwise should be a fairly routine paperwork process for seafarers, and I will want to hear an update from the Coast Guard on what the agency has done to address those deficiencies. Such inefficiencies remain unacceptable. Simply because the Coast Guard has been unable thus far to remedy existing deficiencies should not justify stranding qualified able-bodied people on the dock. We have to get this right. We need to do it now.

I also want to get an update on when the Coast Guard expects to publish a final towing vessel safety rule and whether the Coast Guard has adequate resources and whether it can remain on schedule to implement several new requirements for fishing vessels under the 2010 Authorization Act.

Regarding regulations issued by the EPA to address ballast water and other incidental discharges from vessels, I will be very interested in hearing from Mr. Hanlon on what changes the Agency is considering to address stakeholder comments submitted regarding EPA's draft vessel general permit, especially requirements for new-built vessels.

Additionally, I will also seek to be reassured by both the EPA and the Coast Guard that each agency's ballast water regulations have been scrubbed and coordinated sufficiently to avoid overlap in requirements and excessive cost to industry.

Last, I commend EPA for developing regulation to implement a North American emission control area consistent with MARPOL

Annex VI in order to reduce harmful emissions from ocean-going commercial vessels transiting through U.S. waters or entering U.S. ports.

It remains important that we continue to take action to reduce health risks linked to hazardous air emissions from vessels. We do need, however, to carefully consider and weigh options available to meet these environmental and human health goal with the economic variables facing different commercial maritime operators.

I was disappointed that we don't have a witness from EPA here to better explain the Agency's rationale for the ECA rule. Despite this gap, I look forward to hearing the recommendations from others in how this rule might be refined.

With that, Mr. Chairman, I want to thank you for scheduling this important hearing. I hope that you will schedule in the near future an oversight hearing to review the administration's plans for releasing reserves from the Strategic Petroleum Reserve and to reaffirm our shared position that oil released from the SPR be transported in full compliance with the Jones Act to benefit U.S. carriers and mariners.

Two final points. I understand as well Mr. Hanlon is retiring soon after service to our country; and I appreciate your service to our country, Mr. Hanlon.

And, finally, I would ask an unanimous consent request to enter into the record a letter from the Puget Sound Clean Air Agency that is actually in support of EPA's regulation to implement a North American emission control area.

Thank you.

Mr. LOBIONDO. Without objection, so ordered.

Mr. LARSEN. Thank you.

[The information follows:]

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Puget Sound Clean Air Agency

Working together for clean air

25 April 2012

Rep. Frank LoBiondo
Chairman, Subcommittee on Coast Guard and Maritime Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Re: Recent Regulation of the Maritime Industry: Ensuring U.S. Job Growth While Improving Environmental and Worker Safety

Dear Representative LoBiondo and members of the Subcommittee,

Thank you for the opportunity to provide written testimony for the April 26, 2012, hearing regarding "Recent Regulation of the Maritime Industry: Ensuring U.S. Job Growth While Improving Environmental and Worker Safety." As the local agency responsible for managing air quality in the Central Puget Sound Region, including the major metropolitan areas of Seattle and Tacoma, the Puget Sound Clean Air Agency is keenly interested in the successful implementation of the North American Emission Control Area (ECA) as required under the *International Convention for the Prevention of Pollution from Ships* (MARPOL Annex VI). The emission reductions and resultant health benefits that the ECA will provide to our region, as well as to other coastal and inland states, are substantial. We support the US Environmental Protection Agency's efforts to implement the ECA and reap its benefits, including the use of Annex VI's provisions that provide for flexibility in implementation.

The large commercial ships that visit the nation's ports, such as oil tankers, cruise ships and container ships, currently use fuel with very high sulfur content which, when burned, emits harmful levels of fine particle pollution that can travel hundreds of miles inland, causing severe respiratory and cardiac symptoms in children and adults. These ships, most flying the flags of other countries, make more than 57,000 calls at more than 100 U.S. ports annually, including our major commercial ports in Seattle and Tacoma. More than 30 of these ports are in metropolitan areas that fail to meet federal air quality standards. In total, nearly 127 million people currently live in areas that fail to meet U.S. air quality standards, including the 533,000 who reside in our region's nonattainment area for fine particle pollution, in and around Tacoma.

The North American ECA was adopted by the nations of the world, with the support of the global shipping industry, because it will substantially improve North Americans' health and ecosystems, within the international framework that provides a level playing field for global trade. Enforcing the stringent ECA standards will reduce sulfur content in fuel by 98 percent—slashing fine particle pollution emissions by 85 percent. As a result of the cleaner air, nearly five million people nationwide will experience relief from acute respiratory symptoms in 2020 and as many as 14,000 lives will be saved each year. EPA projects that the monetized health benefits in 2020 in the U.S. will range from $47 to $110 billion in 2006 U.S. dollars, assuming a 3 percent discount rate.

The maritime industry worldwide has been preparing for the North American ECA since its adoption in 2010, and has been aware of its likelihood since the approach was first

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agreed to by then-President Bush and Canadian Prime Minister Harper in 2006. In northern Europe, an ECA has been in place and enforced since July 2010 and vessels have been using 1% sulfur fuel within that ECA.

We support the international framework that maintains a level playing field for global trade, including its existing mechanisms enabling equivalent emissions reduction measures and providing relief when compliant fuel is unavailable. We expect that those measures, as agreed to by the nations of the world and the global shipping industry, will lead to successful and reasonable implementation of the ECA, earning our nation and our region the substantial health and ecosystem benefits. We encourage the subcommittee to allow EPA to continue its practice of implementing rules in ways that will reduce compliance costs while providing equivalent emission reductions, such as traditional emissions averaging strategies where each ton of emissions increased from one source is offset by at least a ton of emissions reduced by another source. We also strongly believe that alternative compliance approaches must not adversely affect smaller or under-represented communities such as Native American tribal nations or low-income communities adjacent to ports.

In our region, the ports and maritime industries of Tacoma, Seattle and Vancouver, Canada, have been preparing for the North American ECA since the mid-2000s. At that time, the three ports and maritime industries began developing the Northwest Ports Clean Air Strategy (NWPCAS) to set voluntary targets for emission reductions in all sectors of maritime operations. The NWPCAS was ratified by the three ports in 2007. For the ocean-going vessel sector, the strategy sought to prepare the industry for the standards in the then-to-be-proposed ECA by encouraging vessels to use low-sulfur fuel before they are required to do so by the ECA. In support of that NWPCAS goal, and in anticipation of the ECA's implementation, since 2009 our agency has administered an incentive for ocean-going vessels to use low-sulfur fuels voluntarily while at the Port of Seattle. Using grant funds from the Port of Seattle, we provide financial incentives for shipping lines and cruise lines to burn fuel with a sulfur content $\leq 0.5\%$ while calling at the port. Our At-Berth Clean Fuels (ABC Fuels) program has provided the following benefits:

- Paid $1,744,200 to eight participating shipping lines
- Paid $802,650 to four participating cruise lines
- Reduced oxides of sulfur emissions by 785.3 tons
- Participants have burned over 16,000 metric tons of low-sulfur fuel, with an average sulfur content of 0.17%

We are encouraged by the innovations some shipping lines are using to comply with the ECA's requirements. For example, one local short-sea shipping operation will convert its ocean-going barges to operate on liquid natural gas, a multi-million dollar investment that will create significant employment opportunities in our region. This line's initiative will also bring a liquid natural gas terminal to the region, which will enable additional fleets of vehicles, and perhaps vessels, to run on clean, domestic fuels and reduce our dependence on foreign oil.

The North American ECA and its resultant emission reductions are part of the federally mandated plan our state is submitting to EPA to document how the Tacoma area will return to attainment of federal clean air standards. We urge the committee to consider the importance of the ECA to local and national efforts to clean the air we breathe and reduce the financial impacts of air pollution on our citizens. Thank you.

Respectfully,

Amy E. Fowler
Manager, Clean Air Initiatives

CC: Representative Rick Larsen
Craig Kenworthy, Executive Director, Puget Sound Clean Air Agency

Mr. LOBIONDO. Thank you.

We are going to go to our first panel today; and our first witness is Coast Guard Vice Admiral Brian Salerno, the deputy commandant for operations. The admiral is being accompanied by Mr. Jeffrey Lantz, director of commercial regulations and standards for the Coast Guard. Welcome you both.

Admiral, the floor is yours.

TESTIMONY OF VICE ADMIRAL BRIAN M. SALERNO, DEPUTY COMMANDANT FOR OPERATIONS, UNITED STATES COAST GUARD, ACCOMPANIED BY JEFFREY G. LANTZ, DIRECTOR OF COMMERCIAL REGULATIONS AND STANDARDS, UNITED STATES COAST GUARD; AND JAMES A. HANLON, DIRECTOR, OFFICE OF WASTEWATER MANAGEMENT, OFFICE OF WATER, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Admiral SALERNO. Good morning, Chairman LoBiondo, Ranking Member Larsen, distinguished members of the committee.

Thank you, Mr. Chairman and Mr. Larsen, for your remarks about Admiral Papp. I will be sure to convey those to him. And thank you as well for your kind comments about me. I very much appreciate it.

I am pleased to have this opportunity to be provide you with an update and to answer any questions that you may have on the Coast Guard's regulatory development program.

The Coast Guard is very aware of our regulatory responsibilities, as well as the importance that this subcommittee places on our ability to develop regulations in a timely and efficient manner to ensure that statutory requirements are met.

We are equally aware of your concern that our procedures properly account for the effects that regulations have on commercial entities and on maritime workers.

Several years ago, the Coast Guard's regulatory process was in trouble. We had too many projects with too few people working on them, resulting in the average time to complete a project being too long. Congress made investments in 2008 and 2009 to address this situation by increasing the number of personnel dedicated to the rulemaking process by approximately 50 percent. We now have a total of 82 people dedicated to the regulatory process, who in turn work with subject matter experts on the headquarters staff to complete specific projects.

We are very grateful to the Congress for making this investment, and I assure you we have put these new resources to good use, for in conjunction with them the Coast Guard has undertaken a series of internal process improvements. These include aligning our regulatory development program with an internationally recognized quality management framework known as ISO 9001. We have also invested in information technologies to streamline our planning and managerial functions, and we have enhanced training for all personnel who participate in the regulatory development process.

As a result of these combined investments and process improvements the Coast Guard has increased the annual rate at which rules are published by nearly 50 percent. And even though new regulatory projects have been added by new legislation we have

nevertheless reduced the backlog of projects by 36 percent between fiscal years 2009 and the beginning of fiscal year 2012.

Just as importantly, we have reduced the average age of pending requirements—projects from 6.2 years to approximately 3.8 years. Our desire is to drive this down even further to 3.3 years by the end of this fiscal year to ensure that regulations are produced in an even more timely fashion.

Our goal has not only been to remove the backlog and to improve timeliness of regulations but also to validate the proposed regulations are crafted in a way that best serves the public. As such, we are committed to fully complying with Executive Order 13563 entitled Improving Regulations and Regulatory Review by ensuring in all of our rulemaking proposals that appropriate procedures are followed, that the benefits outweigh the costs, and that they are easily understood, reduce uncertainty, and they are enforceable.

In conclusion, I want to assure you that, even though we can point to significant regulatory achievements over the past few years, the Coast Guard is making every effort to further improve timeliness, effectiveness, and efficiency in our rulemaking process.

Thank you and I look forward to your questions.

Mr. LOBIONDO. OK. Now we are going to go to our second witness, Mr. James Hanlon, director of the Office of Wastewater Management at EPA.

Mr. Hanlon, you are recognized.

Mr. HANLON. Thank you, and good morning, Chairman LoBiondo, Ranking Member Larsen, and members of the subcommittee.

I am James Hanlon, director of the Office of Wastewater Management in the Office of Water at EPA. Thank you for the opportunity to discuss EPA's regulation of vessel discharges, including ballast water, under the Clean Water Act.

Today I will discuss the draft vessel permit that was published for public comment in December of 2011, highlight some of the proposed improvements that the draft would make to the existing vessel permit, and discuss the regulation of ballast water discharges by EPA's draft and the Coast Guard's final rule.

I will also provide an overview of the draft small vessel general permit, which was also published for comment in December.

The current vessel permit expires in December of 2013. The December 2011 draft vessel permit continues to cover approximately 70,000 vessels, would continue to regulate the 26 specific discharge categories that were contained in the 2008 permit, and would include conditions on the discharge of fish hold effluent from large fishing vessels.

We received approximately 5,500 comments during the public comment period that ended in February. We are reviewing and considering these comments and will make changes to the draft permit as appropriate. We plan to finalize the permit this November so that vessel owners and operators will have a full year to comply, to plan for, and implement any new permit conditions prior to the permit's effective date.

In developing the draft permit we focused on environmental protection based on sound science, ensuring vessel safety and minimizing burdens for permittees with commonsense and easy to im-

plement provisions. In developing ballast water limits for both the current vessel permit as well as the updated draft permit we considered limits on both the technology available to treat the pollutants and limits that are protective of water quality.

EPA used the results of studies conducted by EPA's Science Advisory Board and the National Academy of Sciences to inform ballast water discharge limits in the draft vessel permit which are generally consistent with those contained in both the International Maritime Organization's Ballast Water Management Convention and the final Coast Guard rule. The draft vessel permit and the Coast Guard's requirements are generally aligned, a result of the agencies' working relationship.

As EPA works to finalize the draft vessel permit we will continue to work closely with Admiral Salerno and his colleagues at the Coast Guard.

In order to fulfill the Clean Water Act requirements, the draft vessel permit proposes to apply numeric treatment limits for ballast water discharges to a broader class of vessels than the Coast Guard's final rule and proposes some provisions that would prescribe additional management and monitoring requirements. As we work to finalize the vessel permit we will consider the information in the record, including public comments received, as well as the underlying Clean Water Act requirements.

With regard to the smaller vessels, Public Law 110–299 passed in 2008 provided a 2-year moratorium on Clean Water Act permitting requirements for incidental discharges from commercial vessels less than 79 feet. This moratorium was subsequently extended to December of 2013. EPA proposed the small vessel permit to provide Clean Water Act authorization and coverage for commercial vessels less than 79 feet.

Recognizing that these small commercial vessels are substantially different in how they operate, the draft small vessel permit is shorter and simpler than the permit for larger vessels. The draft permit specifies best management practices for several broad discharge management categories that contain commonsense practices to reduce environmental impacts from these discharges, including measures to reduce the risk of spreading invasive species. As with the draft large vessel permit, we are currently in the process of considering public comments received which will inform our development of the final small vessel permit.

Once again, Chairman LoBiondo, Ranking Member Larsen, and members of the subcommittee, thank you for the opportunity to discuss EPA's proposed vessel permit.

Again, thanks for the personal comments extended to me this morning, and I look forward to answering any questions you may have.

Mr. LOBIONDO. Thank you very much, Mr. Hanlon.

Admiral Salerno, on the ballast water rulemaking the Coast Guard recently issued a final rule on ballast water essentially adopting the IMO standard for all ships operating within the waters of the United States. Why did the Coast Guard push back the implementation schedule in the final ballast water rule?

Admiral SALERNO. Sir, we pushed back the implementation schedule because of the time it took to complete that rulemaking

process. We felt we needed to give the industry sufficient time to react to the regulations and to make plans to acquire and install the necessary equipment.

And I will defer to our director of regulatory standards if he had any additional comment in that regard. Mr. Lantz.

Mr. LANTZ. Thank you, Chairman.

In addition, as Mr. Hanlon mentioned in his statement, the Coast Guard and EPA are working closely together and consulting as we did that rule, and we wanted to harmonize the implementation date with the incoming VGP final rule.

Thank you.

Mr. LOBIONDO. Admiral Salerno, on official vessel safety, now we know that the Authorization Act calls for certain standards to be met and that vessels that do not receive their first examination prior to October 15th will not be allowed to fish until they do so. There are over 30,000 fishing vessels that have to undergo this. I think we are quite a ways away from being able to implement that. So I am going to assume that the Coast Guard is going to be unable to examine all of the fishing vessels. Now is the Coast Guard going to prevent those vessels that have not been examined from fishing? I mean, if not, will the fishermen be held liable if they are caught without an exam sticker? How is this all going to work?

Admiral SALERNO. We will not prevent people from leaving the dock, Mr. Chairman. Our intention is to have aggressive outreach with the fishing vessel community, begin conducting those examinations prior to the October deadline.

But, again, it only applies to fishing vessels that operate beyond 3 miles. Many will not operate beyond 3 miles. If we detect a vessel beyond the 3-mile limit operating that does not have a decal indicating that it has been examined, we will issue a notice, what we are calling a fix-it ticket—shorthand—to obtain the necessary examination within 30 days.

Also, if we are constrained by capacity and we cannot accommodate that within the 30-day period, we will extend that timeframe.

So our intention is to work with them, not let the fishing industry suffer because of a lack of capacity within the Coast Guard. We are watching our resource needs very carefully in that regard and have added a number of additional people to our roster for the purpose of conducting those examinations.

Mr. LOBIONDO. Also, under the Coast Guard Authorization Act of 2010—and this is something I am hearing quite a bit about and getting quite a bit of pushback on—this requires new commercial fishing vessels built after August 1st of 2012 to be certified by the American Bureau of Shipping or other Coast Guard recognized classification societies. There seems to be a great deal of confusion over how the Coast Guard will interpret built after August 1st, and concerns about what could be incredibly increased additional cost has put many in the industry putting off orders for new vessels which in turn is affecting our fish yards and I think—our shipyards and I think defeating the purpose of what we intended, to get newer vessels out on the water. When will the Coast Guard issue guidance on the definition of "built"?

Admiral SALERNO. Sir, the definition of built will go out for clarity quite soon in policy but also be informed or part of a regulatory project that is currently underway.

But for clarity today, the build definition will align with the date the keel is laid for a new vessel. Essentially, this is consistent with other build date determinations in other regulations. So the date that the keel is laid or similar states of construction for novel designs, that would be the date that we would consider the build date.

Mr. LOBIONDO. I am going to turn to Mr. Hanlon for just a minute on ballast water, and this is a huge concern. I think one of the subcommittee's greatest concerns with the current situation is the lack of a single uniform national discharge standard for ballast water. And I know that the EPA and the Coast Guard have worked closely together to try to be as uniform as possible, but the draft vessel general permit and the Coast Guard rules are far from identical. The Coast Guard rules require that new vessels built after December 2013, to install treatment technologies. Why has the EPA proposed a retroactive implementation date of January 1, 2012? And I would really like to know how that is fair for a vessel owner to be retroactive that way?

Mr. HANLON. Thank you, Mr. Chairman, for that question.

First of all, with respect to the proposed Coast Guard rule back in 2009, they had the same date we did. So we were sort of on par through our proposal in November of last year.

Again, as Admiral Salerno said, because of the delays in issuing their final rule they went to a December 2013 date. We have not issued our final permit yet. We have every intention of being consistent with the date requirements that were included in the final Coast Guard rule.

Again, our permit is scheduled to be finalized in November of this year. As I said in my statement, we are working through the 5,500 comments. The final decisions on the scope and details of the permit are made by the administrator's office. But this is an item that has been in every briefing that we have had, and we fully intend to have a consistent set of requirements, as we did with the two proposals, in the final permit the EPA issues in November to be consistent with the March 2012, final Coast Guard rule.

Mr. LOBIONDO. So we understand that you are going to change the date to ensure uniformity?

Mr. HANLON. Those decisions are made above my pay grade. Basically short of assuring you that that will happen that will be an issue that will be front and center before the administrator's office as the final decisions are made, and I can't imagine we would do anything different.

Mr. LOBIONDO. Well, I mean, you used a couple of words that are I think very important to me and especially important to fishermen who are affected by all of this, and that is common sense. And somebody really scratches their head when they have got something that is almost impossible to comply with.

Rick, if you would, just a little bit more and then I will turn it over to you.

Can the EPA and the Coast Guard guarantee uniformity when you have two different Federal laws governing ballast water dis-

charge and 50 States have the ability to put their own standards in?

Mr. HANLON. With respect to coordination with the States, the last iteration, the 2008 permit, was done on a very compressed schedule, and so the time the States had to assess the draft permit and then issue their 401 certifications under the Clean Water Act was in a very short period of time.

This time around, we have given the States 6 months to sort of look at the draft permit. Their comments or their certifications are due in June of this year. We met with the States in January. We had a meeting with 15 to 20 States and have gone through their concerns with respect to ballast water management, et cetera. And that——

You know, EPA certainly doesn't have the authority to speak for the States. They are more understanding of sort of what our directions are and certainly what the directions in the final Coast Guard rule are. And we don't—we hope to avoid some of the issues we had last time as the State 401 certifications come in in June.

Mr. LOBIONDO. So do you have reason to believe that New York and California are going to conform?

Mr. HANLON. We are working very closely with those States, Mr. Chairman. I can't sit here and say—I can't speak for the Governors in those States, but they understand where we are going and what the objectives are of both the EPA vessel permit, as well as the Coast Guard rule.

Mr. LOBIONDO. The small vessel general permit proposes to regulate 27 discharges from commercial vessels less than 79 feet, including fishing vessels. Vessel owners will have to ensure they comply with best management practices to reduce or eliminate such discharges as air conditioner condensation, bilge water, rainwater runoff, ice from fish holds, and if they do not meet they could be liable for civil penalties totaling more than $36,000 per violation.

Many of the proposed management practices, in my view, and I think most of the members of the committee, are impossible to comply with, especially on fishing vessels. For example, the EPA prohibits the discharge of unused bait unless that bait has been caught in the same water body, but the water body is not defined. I mean, would this prohibit fishermen in the Gulf of Mexico from using bait mackerel or herring caught in New Jersey? I don't understand.

And the second part to this is, another proposed management practice prohibits the discharge of seawater cooling water while at port. Without constant circulation of seawater through the cooling system the catch will go bad. It will spoil before it can be offloaded at the port. How does the EPA intend to address how this is basically impossible to comply with? It is not feasible, these and some of the other management practices, which I have to tell you are starting to make our hair catch fire as we look at these things.

Mr. HANLON. Again, Mr. Chairman, thank you for that question.

With respect to the smaller class of vessels, again, this is the first time that we are including those within the scope of the permit. So, basically, we proposed a path forward in the small vessel

permit that was issued in November. Many of the 5,500 comments that we received speak to the small vessels.

The requirements for small vessels are not numeric limits, as is the case with large vessels. They are all good housekeeping best management practices, and our best estimate for the range of costs for an average small vessel ranges between $17 and $98 per year. The paperwork requirements for a small vessel is on one page. Basically, this would be sort of the documentation that a small vessel operator would have to have with them on the vessel for the full 5-year period with an update that they have sort of gone through a checklist basically on a quarterly basis. And we would be happy to submit this for the record.

The bait issue is one that we have received some comments on. And with respect to fish hold issues, approximately 30 of the 5,500 comments dealt with that. But on the other side of that issue, you know, we are aware of contaminants such as viral hemorrhagic septicemia, a viral infection that has caused adverse effects of fish populations in different ecosystems around the United States. Since 2005, it has been identified in the Great Lakes.

And so there is always a balancing issue in terms of how do you deploy common sense in terms of moving potentially contaminated—contamination from outside a watershed into a watershed through either live bait sources or boat holes, et cetera. And so that is the balancing act we are sort of in the process of doing now, and those issues will all be considered prior to our issuing the final permit in November.

Mr. LOBIONDO. Well, I sure hope so. Because while I appreciate and I think the operators appreciate the sort of reduced level of burden, so to speak, on what they are expected to do, it still appears to me that many of these best management practices are going to be impossible to meet or attain. And if that is the case, these folks are going to be subject to some pretty large fines.

And it is not a great deal of comfort to a boat operator to say that, well, you know, here the green visors folks in Washington are going to try to figure all this out and make sure it works. It has got to work out on the water.

Now, they all want to accomplish the same thing. But what they are being told has to be attainable, it has to be reasonable, and it can't put them out of business if they are going to comply here.

So there is an awful lot of work to be done. I really want to be optimistic about the Agency's ability to get this under control, but I have to tell you I am pretty skeptical at this point.

Mr. Larsen, I will turn to you.

Mr. LARSEN. Thank you, Mr. Chairman.

You asked many of the questions I had on 401 certification. So, for instance, the coordination and cooperation between the EPA and the Coast Guard with regards to vessel general permit. So I won't replow that ground, perhaps only for their clarification. But I want to move to a few other issues, if I may.

This is for Admiral Salerno with regards to fishing vessel examinations. Has the Coast Guard hired the full complement of examiners in order to conduct the examinations?

Admiral SALERNO. Well, we have a number of qualified examiners already in our workforce. We have 62 full-time examiners,

plus other marine inspectors which have the qualification to conduct fishing vessel exams, about 198 in total. The additional that are coming on this year in fiscal year 2012, an additional 23 examiners will be coming on.

Now in addition to our full-time cadre we make use of our volunteer force, the Coast Guard auxiliary, many of them who are qualified. Plus there is provision for third-party examinations of these vessels as well. So we are watching this very closely.

The full population, quite honestly, sir, is a little bit hard to nail down. There are a number of State registered vessels that we don't have complete visibility on. So we are watching this closely, and it may very well be that we come back with a need for more resources in this regard, but we are not at the point where we are ready to ask for that.

Mr. LARSEN. So you have not yet made a decision on whether you intend to shift funds from other accounts in order to maintain this examination program?

Admiral SALERNO. Well, sir, our inspection force can shift very easily from one inspection type to another. As I mentioned, we have quite a few marine inspectors in our active workforce which have this qualification. They can be moved around as needed based on the needs of the day to accommodate this need.

Now, we anticipate a surge in fishing vessel examinations. We are preparing for that. We are confident that we can get through this initial tranche, but again with the caveat that we may find that we need additional resources in the future.

I do want to reiterate we will not allow the industry to suffer if we have a shortfall in capacity. We will work with the industry to get through this. We will continue to allow them to fish and not make them suffer if we don't have enough people to do the job.

Mr. LARSEN. With regard to the TWIC reader rule, can you let us know when the Coast Guard expects to publish its draft rule for public comment?

Admiral SALERNO. Sir, I can tell you that is absolutely highest priority, not only within the Coast Guard. It has been very clear within DHS. It is high priority from the Secretary herself.

We are moving out very aggressively on this. As you know, we were obligated to wait for the results of the TSA pilot program. We received that study in February of this year, and since that time have been working very hard to get that reader rule out as quickly as possible. We are making progress. We are finalizing it now. We anticipate being able to go out with a proposed rule this summer.

Mr. LARSEN. Well, you probably heard from the Secretary. I have heard from a lot of other folks and am very concerned about this card reader rule not being ready and yet reenrollment is coming up for a lot of TWIC holders. It is a serious concern for these folks.

The other issue with regard to TWIC brought up I think H.R. 3173, the issue of going back for a second trip to the enrollment center. We are pursuing this legislation. It is sponsored by Mr. Scalise from Louisiana. Because there is a lot of concern about mariners having to make two trips. Can we get around that or work through that by having the Coast Guard and DHS as a whole move forward on it so we can avoid two trips?

Admiral SALERNO. Sir, we hear the same concern expressed multiple times. I would have to defer to TSA on that particular question. That is a process that they control.

From a Coast Guard perspective, we are obviously in the enforcement side of it. You know, do the mariners and yard workers have the required TWIC? The actual production and issuance of a TWIC is a TSA function. We work very closely with TSA in this, but I would defer to them as to whether or not they can reduce that down to one trip.

Mr. LARSEN. So, last May, I asked Admiral Cook for a status update on two provisions that were in the Coast Guard Authorization Act regarding modification to oil spill emergency response activities to expand the definition of a higher volume port area for the Straits of Juan de Fuca and the encouragement for the Coast Guard to initiate negotiations with Canada for enhanced maritime traffic management and spill response in the North Puget Sound region of Washington State. Do you have an update on those efforts to implement those provisions?

Admiral SALERNO. Yes, sir.

Regarding the high-volume port area, we did issue a notice of intent in the Federal Register to expand the definition of the high-volume port area as indicated in the Authorization Act. We had it still an active project within our rulemaking. However, we are also aware that there is a provision in Senate bill 1665 which would make that change legislatively. If that were to occur, it would obviously become effective upon enactment. If that does not become law, we will continue with that regulatory process. It does require, of course, all of the typical things you do with the rulemaking, the cost benefit analysis and so forth. So if it happens legislatively it will be much quicker.

Mr. LARSEN. I asked in my testimony with regards to towing vessel regulation. Section 701 of the Authorization Act of 2010 requires publication by the Coast Guard of a final rule for towing vessel inspection by one year after the date of the enactment. While you have published a draft rule, there is still no final rule. Can you explain to us the cause of the delay in implementing the final rule?

Admiral SALERNO. Yes, sir. We are very mindful we missed the deadline that was in the Authorization Act. But, as you point out, we did get the proposed rule on the street. We have received about 3,000 comments from the affected industry. And, again, the industry itself is very complex. It ranges from large corporations to mom and pops.

So we are very diligently going through those comments. Some of them are quite difficult to answer. It is going to require some thinking to make sure that we are fair to that full spectrum within the affected industry.

We are working on that very aggressively, and I don't have an actual timeframe. I can tell you it is very high on our priority list to get that reg out. In the meantime, we are working with the industry in our bridging program. So we are putting Coast Guard inspectors on towing vessels as part of a pre-inspection phase, if you will, to make sure that they comply with the existing requirements for uninspected vessels and bring them up to speed to ease that

transition for those vessels and to inspect its status. That is going very, very well.

Mr. LARSEN. And, finally, Mr. Chairman, one more question and then I will yield back.

A witness on the second panel, Admiral, will raise concerns the Coast Guard has adopted IMO regulatory standards for watch keeping that do not adequately account for fatigue among officers and crew, which in their testimony it says creates persistent safety liabilities. Has the Coast Guard ever used independent human factor professionals to review the work hours, workload, and fatigue aboard U.S. flight vessels and should it? And a 91-hour workweek seems excessive on a transportation mode with so much potential for damage and loss of life. What has the Coast Guard done to address the fatigue issue?

Admiral SALERNO. Sir, fatigue is of great interest to the Coast Guard. There are mandatory hours of rest within the international convention STCW.

And if you permit me, sir, I would like to ask Mr. Lantz, Director of Standards. He has been working this issue directly and I think can get into some of the details.

Mr. LARSEN. Thank you.

Mr. LANTZ. Thank you, sir.

You are correct in the workweek. But I think it is important to note that in amending STCW, which the Coast Guard did through IMO, we actually increased the numbers of mandated hours of rest on a weekly basis for our crewmembers from 70 to 77. We also ensured that they had 10 hours of rest each day. And for the Coast Guard to implement this we don't consider mealtime or short breaks as contributing to that risk. We are looking at uninterrupted rest.

Mr. LARSEN. You do not consider breaks and meals as part of that in that 10 hours?

Mr. LANTZ. No, sir.

In response to the first part of your question, yes, we have consulted professionals with regard to fatigue issues. We do have an active crew endurance management system which is a voluntary program which we are trying to leverage throughout the industry. We have had some success in the towing industry. But we do use that as a way to help the industry implement voluntary standards to reduce the impact of fatigue on their crew.

Thank you.

Mr. LARSEN. And just as a note, Mr. Chairman, although Mr. Hanlon I think in his testimony said he could be nominally available to answer questions on ECA, I understand it is not in your purview. I won't put you on the spot for that for those.

Mr. HANLON. Thank you, sir.

Mr. LARSEN. You are welcome.

Mr. LOBIONDO. The gentleman from coastal Louisiana, Mr. Landry.

Mr. LANDRY. Thank you, Mr. Chairman.

Admiral, thank you. Thank the Coast Guard for their service to this country.

The Coast Guard's reputation in my district and their approval rating is, I can promise you, better than EPA's; and I want to help

you keep that approval rating. I would like to see you all take it up a notch.

I am just curious. Do you all ever sit around and work on deregulating things or looking at regulations that maybe are not working or are over burdensome to the industry and say, do you know what, we applied this way back when and maybe it is not applicable today and we should take those things off of the books?

Or do we—and it is not just—you know, I am not pointing it at the Coast Guard, but it just seems like all our agencies do come up with ways to continue to add regulation after regulation after regulation.

Admiral SALERNO. Yes, sir. In fact, we not only do that, we are directed to do so in the Executive Order 13563, the retrospective review of regulations, and in fact have identified a number of regulations that are undergoing scrutiny to see if maybe they need to be revised or removed. So I take your point, yes, sir.

Mr. LANDRY. You know, 100 years ago, 90 percent of all of the cargo brought into the United States traveled on an American-flag vessel. Today, 95 percent of the cargo coming into this country comes in on a foreign-flag vessel. Any idea why?

Admiral SALERNO. Well, I think the reasons are quite complex. I am not sure I could give a satisfactory answer in just a few seconds. But it obviously relates to international competitiveness, competitive advantages internationally. As an American, of course I would love to see that all be on U.S. ships.

Mr. LANDRY. And I believe you. I am just wondering if the regulatory environment that we create—and again I am not just singling out the Coast Guard, but I think it starts all the way from EPA to OSHA to the impact they have in our shipbuilders and then putting that burden on the mariners themselves. If all of these mounds of regulations that other foreign-flag vessels are not subjected to, if that doesn't have anything to do with causing our maritime industry to be less competitive in the world, I mean, do you think there is any correlation?

Admiral SALERNO. Well, let me assure you, sir, we make every effort to make sure that U.S. regulations are consistent with international regulations; and for foreign ships that come into U.S. ports we are very diligent in making sure they comply with those same standards. There is not an easier path from a regulatory standpoint for a foreign ship to conduct business in the United States then for a U.S. ship. We do everything we can to level that playing field.

Mr. LANDRY. And I just want to touch on two things, and I appreciate the ranking member bringing this up.

These TWIC visits. You know, I get my passport in the mail, and I know you said it is to the Department of Homeland Security, but is it possible for you all to help us garner the support necessary? I mean, would the Coast Guard be willing to step out with other Members of Congress in supporting a position that will eliminate this second visit?

Admiral SALERNO. I am not sure I am competent to speak to that, sir. I know there are some technical reasons that TSA has cited as far as validating the biometrics on the card.

Mr. LANDRY. Well, I mean, we could come up with an excuse—they can come up with an excuse for just about anything. And I guess I am looking for an agency such as the Coast Guard which utilizes a lot more common sense than anyone else, if they could look at DHS and say I don't believe that you are using any common sense.

Admiral SALERNO. But what we have tried to do, and I think successfully, is, given the fact that TSA has their system, is make it as easy as possible for mariners who also have to receive a merchant mariner credential so that we don't add to the burden of having to go in to collect biometrics in addition to what TSA is requiring.

Mr. LANDRY. Well, what amazes me is the fact that we are going to have a constituent of mine on the second panel who TSA wouldn't even allow in an airport using his TWIC card. I mean, you know, it is amazing. Here we have a card issued by them. They make a demand to go to two different visits. We are talking about this, you know, biometric excuse. He goes up to the TSA counter to get into the airport, you know, to go through security. He hands them their card, and they say it is not a valid ID. Do you see what I am saying?

So, anyhow, I just would appreciate if you all could lend us some support on that.

In the ballast water, a little more Clorox? You know, I am serious, sir. Does it have to be that complicated? I am just——

Admiral SALERNO. Well, sir, again, we rely on the scientific input from EPA as to what works. And even as we look at ballast water management systems and different types of systems that may use chemicals, there are concerns that, OK, what do you do after you have killed all the bugs in the tank? Can you then discharge that water? Because it may in fact create other environmental damage, and I would defer to the scientific experts on that.

Mr. LANDRY. I appreciate it. Thank you.

Thank you, Mr. Chairman.

Mr. LOBIONDO. Admiral Salerno, there have been—over the past decade, there have been several incidents where vessels suffered casualties and the safety of workers on vessels and at ports was jeopardized by incorrectly declared cargo container weights. Would the Coast Guard support the proposal before the IMO to amend a SOLAS requirement, the weighing of cargo containers before they are loaded on ships which would establish kind of a regimen for this?

Admiral SALERNO. Sir, we are aware of that concern. We share that concern with the industry. It does create safety hazards.

Again, let me ask Mr. Lantz, who leads the U.S. Delegation to the IMO Maritime Safety Committee, to comment on that.

Mr. LANTZ. Thank you, Mr. Chairman.

Yes, we do support the IMO taking that issue up to ensure that containers—the weights of containers are fully declared and understood when they are loaded on ships. That is an issue that was brought forward. We supported that issue being considered at IMO.

Mr. LOBIONDO. Thank you.

Mr. Hanlon, one last question. I mentioned in my opening statements about some of the things that we are trying to work through

with these mission control areas. The United States and Canada recently petitioned the IMO for an emissions control area surrounding North America to 200 miles offshore. Can you tell us whether the EPA or how they are going to evaluate approved flag State equivalencies, what standard will be used, how this is going to start working out?

Mr. HANLON. I am not in a position to respond to that this morning. We would be happy to get back to you on the record for that.

Mr. LOBIONDO. OK. Thank you.

[Please see the response to question 2.e. on page 65 for this information.]

Mr. LOBIONDO. Mr. Larsen?

OK. Admiral Salerno, Mr. Lantz, Mr. Hanlon, thank you very much. And, once again, Admiral Salerno, thank you for your service to our country and God speed.

We will now take a brief break for the second panel to get set up.

[Recess.]

Mr. LOBIONDO. Thanks to our second panel. We will get back underway again.

For our second panel we have the Honorable Chris Koch, who is the former chairman of the Federal Maritime Commission and current president and CEO of the World Shipping Council. We have Mr. James Gutowski, a scalloper out of Barnegat Light, New Jersey, who is representing the Fisheries Survival Fund, and is here with a fellow fisherman and the mayor of Barnegat Light, Mr. Kirk Larson.

And now I would like to yield to Mr. Landry for an introduction.

Mr. LANDRY. Thank you, Mr. Chairman.

It is my pleasure to introduce Mr. Jimmy Lafont. He is a constituent of mine. And we call him "T. Jim."

You know, often, T. Jim, this chamber has said that the committee needs a translator so the Members and the stenographer know what I am saying. And I don't know where they get that. Do you understand me?

Mr. LAFONT. Fullheartedly.

Mr. LANDRY. Then I don't see what the problem is, Mr. Chairman. I guess we don't have——

Mr. LOBIONDO. I am not going to say what I am thinking.

Mr. LANDRY. Thank you, Mr. Chairman.

Mr. LOBIONDO. OK.

Our last two witnesses are Mr. Don Marcus, who is the secretary-treasurer of the International Organization of Masters, Mates, and Pilots; and Mr. Paul Cozza, who is the president of CSL International.

With that, we will get started. Mr. Koch, you are now recognized.

TESTIMONY OF THE HONORABLE CHRISTOPHER KOCH, PRESIDENT AND CEO, WORLD SHIPPING COUNCIL; JAMES GUTOWSKI, CHAIRMAN, FISHERIES SURVIVAL FUND, BARNEGAT LIGHT, NEW JERSEY; JIMMY LAFONT, CALLAIS AND SONS, CUT OFF, LOUISIANA; DON MARCUS, SECRETARY-TREASURER, INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS; AND PAUL COZZA, PRESIDENT, CSL INTERNATIONAL

Mr. KOCH. Thank you, Mr. Chairman. Thanks to you and Congressman Larsen for the subcommittee's interest in what is going on in terms of maritime environmental and safety regulations.

The written testimony I have submitted to the committee addresses four issues. The first is ballast water technology regulations; the second, dealing with emissions, is the North American ECA, which deals with NO_X, SO_X, and particulate matter emissions from ships; the third issue being the CO_2 discussions which are going on at the IMO; and, lastly, the maritime safety issue of overweight containers or those that have misdeclared container weights.

Briefly, with respect to ballast water regulations, we commend the Coast Guard and the EPA for coordinating their efforts in trying to come up with a single, uniform national standard. Our testimony points out that further effort is necessary to coordinate the two agencies' efforts. We were encouraged this morning to hear EPA indicate that they hopefully will coordinate and match the Coast Guard's approach, particularly with respect to new builds, where there is still some difficulty in the EPA draft VGP.

The industry is going to have to make a massive capital investment to comply with these regulations. And we think the proposition speaks for itself, but that massive investment should be reasonably required of the industry once. We need to be able to have the Governments come up with a standard that we can reliably use no matter what port we come into in the U.S. We hope that the schedule set up for existing vessels is workable. We think, with a tweaking on the new builds by EPA, it could be workable as well.

But when the administration talks about the industry needing some time, the only thing I would like to point out in addition is, it is the vendors, the technology vendors, that need time too. There are thousands and thousands of vessels that are going to have to install this technology, and it is expensive. They will have to ramp up to commercial production levels.

But they also have to have their technology approved by very rigorous Coast Guard standards. And that is highly appropriate, because the IMO testing methodologies have already been used by some reputable States to approve technology systems which had to be pulled from the market because they could not reliably meet the IMO treatment standard. So what the Coast Guard put in its rules about how it is going to test that technology, we think, is worthwhile and appropriate. And we are hopeful that in the end this regime can be implemented in a smooth manner.

As to the ECA, obviously the MARPOL Annex VI agreement reached at the IMO was a big step forward for how to deal with the NO_X, SO_X, and particulate matter issues. The U.S. and Canada jointly proceeded with the North American ECA, which comes into

effect August 1. So long as the 1 percent sulfur fuel is reasonably available, our members certainly intend to comply with that regime effective August 1. And then we also note, in 2015, the sulfur fuel level drops down even further to 0.1 percent sulfur in 2015.

As to CO_2 emissions, it is an ongoing issue at the IMO. My testimony provides greater detail of what the various issues are there. We would note the success of the IMO in coming up with mandatory new efficiency design index standards for new-build ships. That is a successful step forward. It means those ships will be more efficient, which means they will produce less in the way of carbon emissions.

The rest of the carbon emission agenda at the IMO is a complicated one, as our testimony talks about. And I would be happy to answer any questions you may have with respect to that.

Finally, on maritime safety, our testimony notes we have an ongoing issue that has been of concern to carriers, to the crews on the ships, and to longshore workers about containers that show up that have misdeclared container weights. Shippers are required by the Safety of Life at Sea Convention to provide an accurate container weight, but oftentimes that doesn't happen. That can produce serious operational and safety issues.

We have taken the view, along with the International Chamber of Shipping and BIMCO, that the convention should be amended to require loaded containers to be weighed before they are put on a ship. In the U.S., that is the law under OSHA regulations, but it doesn't apply to the boxes coming into the U.S. or other foreign-to-foreign commerce. So we are hopeful that initiative can gain some ground, and we do hope that the U.S. Government will be supportive of that at the IMO.

That concludes my summary, Mr. Chairman. I would be happy to answer any questions at the appropriate time.

Mr. LOBIONDO. Thank you.

Jimmy, you are recognized.

Mr. GUTOWSKI. Chairman LoBiondo, Ranking Member Larsen, members of the subcommittee, thank you for holding this important hearing and giving me the opportunity to testify.

My names is James Gutowski, and I am part-owner of a scallop vessel, *Kathy Ann*, and other vessels in Barnegat Light, New Jersey. I am accompanied here today by the town's mayor and fellow scalloper, Mr. Kirk Larson.

I am the chairman of the board of the Fisheries Survival Fund, which represents full-time Atlantic sea scallop fishermen. I am also a member of the Garden State Seafood Association, which shares the concerns discussed.

My full statement has been submitted for the record.

This hearing touches upon two important issues to fishermen: safety in our profession and the health of the marine environment on which our livelihoods depend. There is really no one more vested in these issues than we are. I appreciate the subcommittee's work to improve fishing industry safety and the support you provide commercial fishermen more generally.

I would like to discuss certain issues in the Coast Guard Authorization Act of 2010 that have the potential to seriously disrupt our businesses and actually jeopardize our fishing vessels' safe oper-

ation. I also want to address issues related to the Environmental Protection Agency's proposed Vessel General Permit, or VGP. The EPA has no particular experience or expertise about fishing vessels. That lack of knowledge shows in the proposed VGP.

H.R. 2838, the Coast Guard and Marine Transportation Act of 2011, addresses some issues. We hope the subcommittee can address our initial concerns and the Senate follows suit in recognizing the need for commonsense solutions.

Briefly on the authorization act issues, the timing requirements for mandatory vessel inspections and the particularly burdensome load-line and vessel classification requirements are not workable.

Mr. Chairman, members of the subcommittee, we appreciate your efforts to include in H.R. 2838 a provision to extend the start of the dockside inspection until 2015 and require inspection of vessels to occur every 5 years rather than every 2 years. As a practical and safety matter, these changes will make the inspection program more effective and provide the Coast Guard time to develop an implementation plan.

As to classing and load-line requirements, we strongly believe that these have never received a fair, clear-eyed review of the total economic costs. These costs could lock fishermen into older, less efficient vessels. Experts within the industry estimate these requirements will increase the price of a new scallop vessel by about 25 percent, adding $1 million to a $3 million price tag for a new scallop vessel. Those costs will put new-build out of reach for many fishermen who need them and will discourage major refits to make vessels safer and more efficient.

In short, the unintended consequences of these mandates may decrease safety and lost shipyard jobs. Our suggestion is to direct the Coast Guard to develop, in conjunction with the fishing industry, an alternative program to load-line requirements and repeal requirements to class vessels. At the very least, there needs to be a rigorous investigation of the costs and the benefits of those requirements and delay an implementation while these issues are studied.

On the VGP, my written testimony details a number of problems with the proposed permit, many of which would be resolved with the H.R. 2838. Again, Fisheries Survival Fund and the Garden State Seafood Association and I thank you for your leadership in this regard.

The proposed VGP shows that EPA is the wrong entity to regulate fishing vessels. The 79-foot dividing line splits the scallop fleet right down the middle. Some vessels would be subject to VGP requirements, while others would not. The VGP also forces fishermen to choose which regulatory requirement, those of National Marine Fisheries Service or those of the EPA, it will have to violate. The VGP would disallow seawater cooling when a vessel is in port and not underway. However, many times we must run our generator in port to provide electricity to our vessels' mandatory monitoring systems, which we run at the dock.

If the Senate does not follow suit and adopt the changes contained in H.R. 2838, our primary recommendation would be to eliminate the VGP and allow all commercial fishing vessels to operate under the terms of the proposed Small Vessel General Permit,

which more appropriately balances environment concerns and regulatory burdens. At a minimum, the dividing line should be 165 feet, which puts the vast majority of fishing vessels under a more sensible regime.

We share the concerns for a clean marine environment, but truly believe that a better balance can be struck.

Thank you for your time, and I will be happy to answer any questions you may have.

Mr. LOBIONDO. Thank you very much.

Mr. Lafont, you are recognized.

Mr. LAFONT. Good morning, Mr. Chairman, members of the subcommittee. My name is Jimmy Paul Lafont. I am appearing here today on behalf of Callais and Sons from Cut Off, Louisiana. I appreciate the opportunity to come and speak in front of the subcommittee. And I am glad you all have my statement, because if I got to read it, you all probably won't understand it.

The main issue we are here today is the regulations and the problem we are having in the merchant mariners to renew their license through the United States Coast Guard. And this is in no way any black eye against the Coast Guard, because I think they are trying to do their job. But we are getting regulated to death with the restrictions and the medical reviews.

A mariner can start 1 year before his 5 years are up. And if it his last year and they all apply and if they have any kind of medical problems, it is tough, you know. And we are talking, like, very simple problems. In a nutshell, what is happening is the Coast Guard is asking the doctors to make a square peg for a round hole, and they don't talk in the same language.

And I want to thank our Congressman, Jeff Landry, for helping us a whole lot on some of these issues. But it all boils down to regulations, and we are getting hit by them more and more, and all these medical issues. I mean, you are talking about, these are the safest mariners in the country, people that have licenses 50, 60 years. Unfortunately, they have some medical issues. And, really, the appeal process on the medical side is pretty bad.

And as you know, I want to thank everybody for letting me speak here. I will answer any questions needed. You all have my testimony in front of you all. And thank you very much.

Mr. LOBIONDO. Thank you for your testimony.

Mr. Marcus, you are now recognized.

Capt. MARCUS. Good morning, Chairman LoBiondo and Ranking Member Larsen.

Mr. LOBIONDO. Could you try to put your mike on?

Capt. MARCUS. Good morning, Mr. LoBiondo, Ranking Member Larsen, members of the subcommittee, thank you for the opportunity to speak here this morning.

My name is Donald Marcus. I am a licensed master and secretary-treasurer of Masters, Mates, and Pilots. I am speaking on behalf of our members, as well as the Marine Engineers Beneficial Association and the American Maritime Officers. Together, we represent substantially all of the licensed masters, marine engineering officers, and licensed deck officers who work aboard U.S.-flagged merchant ships in international trade.

We have chosen to focus this morning on an issue that has not received the serious attention that it deserves. That is fatigue. Fatigue is a widespread problem that puts safety at risk in an industry that operates 24/7 and that has duty assignments that extend for 4 months or more.

The problem is compounded by reduced crewing levels and ever-increasing regulatory tasks. Complying with these tasks creates more workload, and there are less personnel available than necessary to complete the tasks. The choice is often between attending to traditional duties that affect the safety of the vessel or documenting compliance with a multitude of regulations that are subject to internal and external audits. Regrettably, paperwork and perfunctory reporting requirements are often prioritized over the simple safety of the vessel.

The regulatory burden falls principally on the ship's master. In the past, staff officers, such as pursers and radio officers, assisted the master in meeting his responsibilities. These officers have been removed in the current crewing levels. Also, in order to remove a licensed deck officer, the chief officer, who was previously a non-watch-standing officer, now stands an 8-hour navigation watch in addition to his or her traditional operational and administrative duties.

While the number of crew are being reduced, the number of international, Federal, and, as we heard here today, even State regulations that must be complied with and documented have grown exponentially. To make matters worse, ships' masters, chief engineers, and other officers often face criminal liability and de facto presumption of guilt when marine incidents or casualties occur. This can, and has, led to the imprisonment of many ships' officers around the world.

The criminalization of simple professional errors, often the result of fatigue or overwork, is without justification when there is no oversight regarding the sufficiency of the personnel available to carry out shipboard responsibilities.

The drive for reduced crewing levels has been fueled by the flag-of-convenience system that dominates international shipping. Ships are registered under the flags of countries that have the least taxation and regulation. Flags-of-convenience registries compete in offering the lowest crewing levels in order to generate revenue.

The abuses of the flag-of-convenience system has led to a greater international regulation of shipping through the International Maritime Organization, IMO. Unfortunately, flag-of-convenience countries and shipowners participate in the IMO process of setting international standards. Accordingly, this has resulted in standards being set at dangerously low minimum levels.

Here in the United States, the U.S. Coast Guard routinely accepts the compromised international standards as the basis for U.S. Federal regulation. This is a matter of rulemaking convenience. When it comes to vessel crewing levels and mandatory rest requirements, there is no necessity that U.S. standards match the lowest international requirements. Rubber-stamping minimum international standards simply permits the U.S. Coast Guard to avoid an independent assessment of fatigue and crewing levels that could be complicated and contentious.

The complexity of the problem has been reduced by the, quote, "principles of minimum safe manning," unquote. This was recently adopted by the IMO. These principles outline many factors that should be used in setting, but not in enforcing, adequate crewing levels. What is needed is a mandate for an independent study by human-factors professionals on shipboard fatigue and crewing. Recommendations by independent professionals experienced in workplace fatigue should be used by the U.S. Coast Guard in setting safe manning levels.

Particular attention needs to be focused on the management-level officers whose impaired cognitive ability has the greatest potential for severe consequences to safety and the environment. A recently adopted amendment to the SOLAS, Safety of Life at Sea, Convention requires that all ships in international trade establish crewing levels in a transparent procedure.

We believe it is essential that U.S. regulations require all ships, U.S. and foreign, calling at U.S. ports to carry safe manning documentation. This documentation must record the methodology used and the procedures and conditions taken into consideration in establishing the ship's crewing level. The documentation must meet the requirement for transparency by being available to crew and port State control officers.

These issues are more fully explained in my written submission. Time constraints prevent us from addressing our concerns about the lowering of training and licensing standards for ships' officers by the U.S. Coast Guard under the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers code.

I applaud Mr. Lafont for his comments about medical issues. We also have serious concerns regarding the need to establish a more rational U.S. Coast Guard process for medical/physical fitness examinations and appeals. We would be grateful if the record could be held open for a period of time to permit us to submit written comments on these issues.

Thank you, and I will gladly answer any questions that you may have.

Mr. LOBIONDO. Thank you, Mr. Marcus.

Mr. Cozza.

Mr. COZZA. Thank you, sir.

Good morning, Chairman LoBiondo, Ranking Member Larsen, and distinguished members of the subcommittee. Thank you for inviting me here today to testify.

I am Paul Cozza, president of CSL International. We are headquartered in Massachusetts and are a subsidiary of Canada Steamship Lines, based in Montreal, concentrating on international short sea shipping routes.

CSL International specializes in the marine transportation and handling of dry bulk cargo. We own and operate the largest fleet of self-unloading vessels in the world, serving clients in industries ranking from building and construction to agriculture. Self-unloading vessels serve a special sector of the dry bulk shipping industry, with their self-contained and automated discharge equipment offering high levels of speed, efficiency, and environmental advantages.

I appreciate the opportunity to appear here today with you.

Short sea shipping is the coastal movement of cargo on the water that does not cross an ocean and could also in some instances be served by rail or truck. We are able to transport cargo more efficiently and with far lower environmental impacts than trucks or trains.

Secondly, I would like to bring to the subcommittee's attention the impact the North America Emission Control Area, or ECA, will have on our industry and offer a solution that achieves equivalent environmental goals without sacrificing the environmental benefits that short sea shipping provides.

Implemented under the International Convention to Prevent Pollution from Ships, the ECA establishes sea-going vessel air-quality standards for a 200-mile radius around the coastline of the U.S. and Canada and sets limits on the sulfur limits of fuel used within the ECA. The ECA standards are far stricter than will be imposed elsewhere in the world, both in terms of the distance the ECA extends from the shore and the level of permitted fuel sulfur content. We are concerned the 200-mile ECA is too stringent for some vessels and may not provide any appreciable environmental benefits beyond 50 miles for lower horsepower ships, such as CSLs.

On August 1st, 2012, vessels operating in the ECA must use fuel with no more than 1 percent sulfur content. We at CSL are prepared to meet and support that standard despite resulting in not-insignificant cost increases to our business, in millions of dollars. By August 1st, 2015, however, vessels operating within the ECA will be required to use an ultra-low 0.1 percent sulfur fuel, which is a marine diesel. Prices for this ultra-low-sulfur fuel, to the extent the fuel is even available, will raise their costs and, more importantly, the resulting costs to the customers that we serve.

Because we trade in routes typically not beyond 100 miles from the coast, our vessels must use the reduced-sulfur fuel for the majority of their voyage, as opposed to transocean vessels, which only need to use the fuel when transiting the ECA, which in many instances is less than 10 percent of their voyage. Outside the ECA, ships may use sulfer at 3.5 percent sulfur.

Although well-intended, flaws in current ECA regulations will jeopardize the short sea shipping sector. Based on supply issues, we are also concerned that the compliant North American marine fuel prices could nearly double in 2015 to meet this regulation. This anticipated increase in 2015 fuel costs will hamper marine competition. It could cause a modal shift from energy-efficient short sea ships to higher emitting shore-based rail and truck, with the unintended consequence of creating more landside congestion as well as increased air pollution closer to population areas.

CSL, working in concert with our customers, also forecasts that the resulting high transportation costs in 2015 will negatively affect their business. Approximately two-thirds of the cargo that we ship is in support of the construction industry in the United States. Therefore, this mandated cost increase has strong potential to negatively impact both commercial and residential development in the U.S.

CSL fully recognizes and supports the value of reducing its carbon footprint. We commissioned a study to analyze our ships' emissions using the modeling approach that the U.S. Environmental

Protection Agency itself used in their ECA developmental process. The study indicated that air quality impacts from lower horsepower ships diminished significantly as the ships moved further away from the coast, with a sharp drop in impact about 39 miles offshore.

Accordingly, we urge policymakers, namely Congress and the EPA, in consultation with the U.S. Coast Guard and the Maritime Administration, to revisit the ECA boundary and reduce the 200-mile ECA to 50 miles for 0.1 percent sulfur in 2015 for ships of 20,000 horsepower or less. This revision will move away from the current one-size-fits-all regulation and align with a scientifically based approach which achieves the same environmental protection goals.

In summary, CSL supports and endorses environmental initiatives in maritime transportation. For over 150 years, the CSL Group has pioneered technologies that make seaborne dry bulk transportation more environmentally efficient. We are investing millions of dollars in a fleet renewal program that will significantly reduce our environmental footprint.

Through scientific testing, our proposal does not have a negative impact on the coast and will not contribute to modal shift impacts or negative impacts to the building and construction industry. If you would like further information, I have left our full report and additional details in a longer written testimony.

Thank you very much today for this opportunity to make this presentation.

Mr. LOBIONDO. Thank you very much, Mr. Cozza.

Mr. Koch, I would like you to comment on, when we are talking about ballast water regulations, what would the impact be if the 401 certifications in California and New York were to be enforced? Can you talk a little bit about that?

Mr. KOCH. I believe New York has signaled, at least in the current VGP, that it recognizes the standards it has proposed are not realistic. We are having a little bit more difficult time getting California to recognize that what they have proposed is not realistic.

A ship can install one set of equipment to treat ballast water; it can't put on two. So what ship operators will be faced with is a choice of what technology they are going to install. My expectation would be that any ship operator would install what the U.S. Coast Guard says should be put on and EPA says should be put on and which meets Coast Guard and EPA testing requirements.

If it doesn't meet California requirements, then the vessel operator has various choices. It could not discharge ballast water in California, it could choose not to call California ports, or it could sit down with the California State authorities and see if it can get them to see reason. The latter is what we are certainly hoping will be the outcome and is what we are working on.

Mr. LOBIONDO. OK. Thank you.

Mr. Gutowski, can you talk a little bit about whether you believe or how the Coast Guard has been proactive in informing the fishing industry of the new vessel safety exam requirement? Have they been coming to you? Have they been proactive in talking about the need to do this?

Mr. GUTOWSKI. To be candid, I am not sure.

I can tell you that, from my perspective, the fishing industry as a whole is not really prepared for this. We have our boats inspected every 2 years voluntarily because we are mandated to carry observers. And if we do not have that sticker on our vessel, we will not be able to leave the dock. But all vessels are not. So those that are not required to carry observers, I do not think that the majority of those would understand that this is coming.

Mr. LOBIONDO. OK.

I next want to ask you about on the classing of vessels. The Coast Guard Authorization Act of 2010 mandated that all fishing vessels greater than 50 feet in length be designed, built, and maintained to specifications outlined by the classification society.

Can you talk a little bit about why this requirement is going to increase the costs? I think we were talking about something by 25 percent, construction costs. What is behind that?

Mr. GUTOWSKI. Well, depending on what that class is, Mr. Chairman—and I am sure not—I don't have the answer to that. I would like to try to get to that, if it is ABS or what type of class this is. But we consider those cost increases to be in certain types of steel, miking shafts, piping, a large range of upgrades to a normal commercial fishing vessel that will add those costs.

But more disturbing to me as a boat owner that has a vessel that has been taken care of pretty well over a 15-, 20-year period, this alternate compliance program that would begin in 2020 would make all vessels over 50 feet come up to the same standard on a refit by that time, which would be, I would think, equally as costly. And with some vessels in our industry not doing well, I think that it will literally cripple some of the larger fisheries and coastal communities.

Not to mention the infrastructure. I am not sure that our shipyards in the United States will be able to achieve all that work within that period of time.

So there are a few points. I hope I have answered your question.

Mr. LOBIONDO. Mayor Larson, you were pretty articulate about this in some private conversations. Do you want to add anything to Jimmy's comments?

Mr. LARSON. Just, Jimmy had a great comment there on—I never even thought about that—the 2020 thing, that there isn't enough shipyards to handle all the upgrades for all the boats. Because I am sure everybody would wait until the last year.

But my concerns to Mr. LoBiondo a few weeks ago was, I wanted to build a new boat, and I had just found out that I can't build a new boat after July 1st, 2012, without complying with all the new standards, what standards or what class they are going to go by. From what I understand, maybe I shouldn't say, but the Coast Guard really hasn't come up with those standards yet on what it is.

And I am in the middle here. I would love to build a new boat. We are catching a lot of scallops right now. I could probably afford it. But if I don't get my keel laid by July 1st, 2012, I probably won't do it. And there will be some jobs that were lost.

I don't know if you read the papers, but New Bedford, they just built a brand-new scalloper for a guy last winter. And they pretty much did it to make sure the town stayed employed, to make sure

the riggers all got a little bit of work putting stays together, building—the painters, you know, the small-town stuff. I mean, Fairhaven Shipyard is a fairly small—it is a fairly small town, and every little bit helps. And I am sure in Louisiana and Alabama and Florida they are all looking for the same thing, to pick up a boat or two to build. I am sure it would help.

But my concern is with the July 1st, 2012, date. I am concerned about it, and I will be putting my brain in gear here the next couple weeks after this hearing and put something together, I think. Thank you.

Mr. LOBIONDO. Sure. We want to continue to keep working on this.

Mr. Gutowski, I have one more question on the ballast water and incidental discharge standards. The EPA recently announced its new Small Vessel General Permit, which would apply to most commercial fishing vessels.

I believe you noted in your testimony that the VGP may require unsafe practices or require the master to violate fishing regulations. Could you talk a little bit about that?

Mr. GUTOWSKI. Sure.

As far as ballast water, typically our vessels don't take ballast water on and then discharge that at some point. We fuel, and we catch scallops, and typically there is a tradeoff for fuel consumption and scallop production. So the load of the vessel stays pretty constant throughout the trip.

However, water discharge—a lot of our vessels are cooling their generator systems with seawater. So that discharge, if that now becomes an issue, is a problem.

I mean, if you look at fleets, if you look at what has happened to the industry with very stringent guidelines, cut days at sea, rotational areas, we have lots of steel tied up to docks. So they are 2, 3, 4, 5, sometimes 10 deep. To get to your boat, you have to cross 10 scallopers in certain ports.

So you need to have electric. In the winter, you need to heat your boat so it doesn't freeze. But more importantly, we are required to have a vessel monitoring system. So that is the piece of equipment that speaks with our Government agency, National Marine Fisheries, 24/7. If my vessel monitoring system goes out for a period of more than 20 minutes, I get a telephone call, no matter what time of day, to get that back online or find out what the problem is.

So if we are not able to keep that electric going, I don't know how we are going to be able to keep these vessel monitoring systems going in between trips. And I think there would be violations.

Mr. LOBIONDO. OK. Thanks.

Mayor Larson, do you have anything you wanted to add to that?

Mr. LARSON. On the small vessel permit, yes, I find that all my boats, personally, are under 79 feet. And I don't believe I would be able to hold the greywater they require. I don't believe I would be able to, at this point, unload my fishing boat with a fishhold full of fish juice and not pump it overboard, at this point. I am sure, you know, in the future years that the marinas and the docks would have setups where you could flip a switch and pump into the sewer system of the town.

But there is also the issue of large volumes of ice, maybe 10, 15, 20 tons of ice, that is all used up on a boat. I don't know what we would do with that, whether we would put it in containers and let it melt and then pump it down the sewer system.

I think there are a lot of things that the EPA did not think of when they were thinking of the fishing industry. They might have needed a couple more experts in there to be, like Mr. Landry said, to be practical and—just to be practical about the whole thing. You know what I mean?

So thank you for letting me speak.

Mr. LOBIONDO. OK. Thank you.

Mr. Larsen?

Mr. LARSEN. Thanks, Mr. Chairman.

Mr. Koch, with regards to the misdeclared container weights, I agree it presents some serious safety concerns. It appears it has been a problem for many years. And while it has not gone unnoticed, it has not drawn any concerted effort by IMO, it seems, to address the problem.

So what factors have inhibited IMO from gaining any traction on pushing through a practical universal regulatory requirement?

Mr. KOCH. The complexities with the problem are that the majority of containers have correctly declared weights, or at least they are not significantly off. So what you are dealing with is a subset of the containers that are tendered to the carrier that are the problem.

And the present law—the SOLAS Convention—requires only the shipper's cargo declaration to deal with the issue, period. Our approach has been to recommend that the IMO amend SOLAS so that there is a regulatory obligation on the terminal operator handling the box to make sure that it has a verified weight before loading onto a ship.

Mr. LARSEN. So, on the outgoing.

Mr. KOCH. Yeah. That has been shown to work in the U.S. under the applicable OSHA regs. It hasn't impaired efficiency. We think that that ought to be looked at as an international rule, as well.

The terminal operator industry has some concerns about that, and we hope they can be worked out in the IMO discussions.

Mr. LARSEN. Are there discussions at IMO on this issue?

Mr. KOCH. There are lots of discussions going on with Governments, with other industries——

Mr. LARSEN. Is there any action taking place?

Mr. KOCH. Not yet.

Mr. LARSEN. OK. All right.

Mr. Marcus, talk a little bit more about watch standards. We heard from the Coast Guard with regards to the STCW Code for seafarers, that there are training requirements, there is certification, there are all these standards that are supposed to be in place to deal with watch standards, to deal with fatigue, to deal with all the issues you brought up. What is not going on?

Capt. MARCUS. Well, I think it gets down to what Chairman LoBiondo said a little earlier: common sense.

And it is one thing to establish rest requirements, where you limit, in theory, operations to a 91-hour workweek, and possibly in certain situations for up to 2 weeks allow a 98-hour workweek. But

the Coast Guard has given us no guidance on the implementation of these rules.

To say that there is a 10-hour required period of rest that is required every day and to say that it can be split into two different periods, one that must be 6 hours, and that these two periods of rest must be within 14 hours of each other, is not realistic. The problem with setting these standards is that the duties of getting a ship from A to B exceed the number of hours available to do the work, number one. And, number two, there literally are not enough responsible officers and crew who are charged with these duties and held to criminal standards to do these duties. You need enough people to do the work.

So to have rest hours and not have enough people to do the work and expect the ship to get from A to B within these rules is incongruous. It doesn't make sense.

Mr. LARSEN. So in your testimony—I believe in your testimony you have called for Congress to study this, to do a study, to bring in—how did you put it? Have an objective study be done of this issue?

Capt. MARCUS. We are looking for Congress to task the United States Coast Guard to review the manning levels on board merchant ships that come in and out of U.S. ports. Because we believe, number one, even if there are logs of hours worked, the real test of efficiency and whether the crew are getting rest is determining how many crewmembers are there.

And we think the Coast Guard needs to do the study using independent human-factor specialists, to verify and set manning levels and to audit safe manning documents on U.S. and foreign vessels that come into the States to see that, in fact, the crew can do the job within the rest periods that they say they are honoring.

Mr. LARSEN. Has anything like that been done before by the Coast Guard?

Capt. MARCUS. To my knowledge, not by the Coast Guard. There are certificates of inspections currently on the ship that set absolute minimum manning. These levels have been set for 40 years, during a period of time when regulatory tasks and duties have doubled or tripled.

Mr. LARSEN. OK.

Mr. Cozza, with regards to the recommendation to pull the ECA back to 50 miles based upon a certain size of vessel, the obvious question I have is, in your view, how many vessels or how much volume of traffic would be impacted by that?

Mr. COZZA. In our view, sir, we think it would be quite a substantial amount of volume, especially on the basis of what is going to be coastwise shipping or short sea shipping. We know for us alone, we are a small portion of it, but it would be about 40 million tons of cargo would be affected as well. And, again, this is mostly in construction-industry-type of work that we do.

Mr. LARSEN. OK. So your standard of vessel would be at 20,000 tons? No, I am sorry, the——

Mr. COZZA. Yes, sir.

Mr. LARSEN. Could you just review it for me, please?

Mr. COZZA. What we are requesting is that, for 2015, that it would be, from the distance from 50 miles to 200 miles, vessels less than 20,000 horsepower would have this modification.

As part of it, sir, is we believe that what happened is that the EPA did one-size-fits-all approach when they set the standard in place that might make sense for the total population, but when you look at smaller vessels and the emissions that we have on our ships, it does not as much apply.

Mr. LARSEN. I just reviewed the study, and I know you looked at emissions of SO_X and NO_X and CO_2. Did you look at any relationship between the diesel engine standards that are going into place, the 1 percent and the 0.1 percent, and how that plays into, you know, if it is a 0.1 percent standard, it can be 50 miles, if it is 1 percent, it can be 51 miles, or whatever it is. Did you look at that relationship at all?

Mr. COZZA. We did, sir. Actually, interesting enough, we found when you go away from the coast in even the current standard, beyond 50 miles there is really not an appreciable effect. So even taking it to more stringent on fuel, that would not change. That would not change.

Mr. LARSEN. Yeah. All right. Thanks.

That is what I have right now, Mr. Chairman. Thank you.

Mr. LANDRY. [presiding.] Thank you.

Mr. Harris, the gentleman from Maryland?

Dr. HARRIS. Thank you very much, Mr. Chairman.

Let me just follow on, Mr. Cozza, with the questions about the Emissions Control Area. Because, you know, we have seen this from the EPA before. I mean, in their testimony—I am sorry I wasn't hear for the EPA testimony, but, you know, they say you could save $270 billion if all do you is this thing. And I think they can eliminate all our healthcare costs at the EPA, actually, if you extrapolate all their figures. You know, 30,000 deaths in 2030 alone. I mean, we hear this every time from the EPA. It is usually based on pretty unscientific evidence. And I am glad that you have a study here.

There was a comment in the testimony from the EPA that various other ideas about how to work around this ECA requirement, because it is financially burdensome, might include the idea of, for instance, taking into account how close to a population area you are. Because I take it, for instance, the current recommendation is that when you are 39 miles off of New York with 15 million people in the metropolitan area, you have the same standard as 39 miles off rural South Carolina.

Mr. COZZA. Yes, sir, that is correct.

Dr. HARRIS. OK, so—which makes no scientific sense whatsoever. I mean, if there is some mile limit beyond which or within which you ought to be operating at a low-sulfur fuel, I don't understand why you wouldn't take population into account at all.

But let me just get into some of the mechanics. So I take it your vessels would have two different fuel tanks, and you would be switching from one to the other as you crossed the boundary.

Mr. COZZA. Yes, sir.

Dr. HARRIS. Give me the idea of the cost difference between the 2.6 percent sulfur now, the 1 percent, and the 0.1 percent.

Mr. COZZA. To give you an idea, Congressman, I will give you a real basis. We carry gypsum rock from Halifax down into Savannah. This is for National Gypsum. This is to go into the wallboard industry for construction. The costs for them at the 0.1 percent in 2015—and this is conservative—will increase their transportation costs, total transportation costs, by 29 percent. This is a very low-margin business. This is a very low-margin type of commodity. So it is huge.

In actual costs for the fuel itself, we are forecasting it could be about a 40 to 50 percent increase in fuel price. Again, this is on the 0.1 percent sulfur side. On the 1 percent sulfur, it is not quite as extreme.

Dr. HARRIS. And is there—because I know in vehicles the concern is that, as you go to low sulfur, there is actually an effect on the engine itself. Is that true in the engines that you are——

Mr. COZZA. There is some. We run these very low-speed diesel engines. We are doing this right now on the west coast, off the State of California. We do feel it is not onerous. We do have to make some changes, but we are ready to take that on on the basis of foreign environmental guidelines.

Dr. HARRIS. So 0.1 would be all right in terms of that.

Just to give me an idea, if we changed it to 50 miles, let's say, you know, someone at the EPA realized one size really doesn't fit all and that you really should look scientifically at what the value of that falloff is—because to say, you know, well, we saved $270 billion in health care, well, about if we changed it to 50 miles? I mean, do we save only $269 billion in health care? And, you know, that billion is the most expensive?

What percent of your company's journeys are in that 50- to 200-mile range?

Mr. COZZA. For the routes that we do right now, sir, we are about 80 to 90 percent of our journeys are within that 200-mile range.

Dr. HARRIS. But how much within 50?

Mr. COZZA. Within 50 it would be much less. It would be somewhere about 10 to 15 percent.

Dr. HARRIS. Because you are just basically getting out of port and then coming into port with it.

So, overall—and, again, getting to this population-based idea, you know—because your testimony points it out, if you discourage short sea shipping, you are going to replace it with something.

Mr. COZZA. True.

Dr. HARRIS. Trucks might be the most logical. And I can just imagine, you know, increasing truck traffic in and out of New York because you have done something to short sea shipping certainly wouldn't be good for the environment. Because this will really be a disincentive to short sea shipping if you are now at a 29 percent price differential because of the transportation costs.

Mr. COZZA. Yes. That is not a question.

Dr. HARRIS. What do you think—and I take it from your testimony, the best way to relieve this issue is go to the 50-mile differentiation.

Mr. COZZA. Well, our recommendation is, Congressman, is that it would be from the 50 to 200 miles for the 20,000-horsepower or less ships.

Dr. HARRIS. OK.

Mr. COZZA. Because that is what we see as the basis of what makes sense. And, again, on the study that we have provided is that beyond—it is actually 39 miles, there is not an appreciable benefit.

Dr. HARRIS. And why is this differentiation for the 20,000 horsepower?

Mr. COZZA. It is really the size of the engine, actually, makes this, as you can imagine, is the amount of the emissions.

Dr. HARRIS. Right. But why would that make a difference as to—you know, why should we differentiate in the size of the engine? I mean, this pollution travels or it doesn't. If you are saying it is 39 miles, just because it is a little bigger engine, you know, then it is——

Mr. COZZA. Honestly, Congressman, if it was 50 miles, we would be very fine with that. That would work, if it was in total.

Dr. HARRIS. OK.

Mr. COZZA. We were trying to present something that was a little bit of a balance with the current regulations.

Dr. HARRIS. OK. No, thank you very much.

And thank you very much, Mr. Chairman. Those are all the questions I have.

Mr. LANDRY. Thank you, Mr. Harris.

Mr. Lafont, you mentioned that Callais and Sons experienced a great deal of difficulty securing some medical credentials for two of your captains. What is the status of those applications?

Mr. LAFONT. Thank you, Mr. Landry. Thanks to you and your office, they both have their licenses now.

Mr. LANDRY. So, at the end of the day, they were declared medically fit to work in a wheelhouse.

Mr. LAFONT. About 9 months after they went to renew.

Mr. LANDRY. And so how long did it take?

Mr. LAFONT. You see, your license is good for 5 years. And your last year of your 5, after the 1 year left you can start applying. And both of those individuals started with the 1 year left. Their license expired. They lost their home, their car, all the goodies. And then they end up getting their license, fortunately, thanks to your office.

Mr. LANDRY. And so, again, the process took them how many months?

Mr. LAFONT. About 13 months.

Mr. LANDRY. And you said in your testimony that you believed that there is, I guess, a breakdown in the communication, that the doctors and the Coast Guard aren't speaking on the same language.

Mr. LAFONT. That is correct.

Mr. LANDRY. Could you just elaborate on that for us?

Mr. LAFONT. It is so bad right now that Terrebonne General, who is known to be about the second-best heart place in the country—they got a pretty good reputation—the heart doctors are refusing to write medical letters to the Coast Guard because they claim they just don't even listen to them.

Mr. LANDRY. So, in other words, we have doctors in the district—and then that would go for the rest of the country, in districts all around the country——

Mr. LAFONT. Correct.

Mr. LANDRY [continuing]. Who specialize in cardiology, and——

Mr. LAFONT. That is correct.

Mr. LANDRY [continuing]. The Coast Guard is basically not adhering to their recommendations?

Mr. LAFONT. It seems like the doctors from, I guess it is Louisiana—that is where most of my people are—are putting too many verbs in their letters. Because if they be honest—it don't look good, the letter, but in the Coast Guard's eyes, they spit them all back.

And this guy, Dr. Stagg, who I virtually almost threatened to write me a decent letter without some of these verbs, and it still didn't work. But then we end up, thanks to your office again—and I am not trying to promote you here, but you really did help us—you know, we got it done. But it is not good. It is, like, really bad.

Mr. LANDRY. Could you maybe just take a moment and explain to some of the Members that are here what you see as the overall problem? The type of burden that this particular issue is placing not only on you, but I am guessing it is affecting all of the boat owners up and down the bayou in Louisiana.

Mr. LAFONT. Well, first of all, most of your good mariners, you know, they are all on their fourth, fifth, and sixth renewal, and they all are going to have medical. Right now it is popping up color blindness. Sleep apnea, for heaven's sake, that is all over the place. Don't say you have diabetes because, you know, they are going to mark you. You know, people that never had color blindness in their life, it is coming up now.

And it is a 3-year process now to get a license to run a boat, with the time, and if you go from apprentice mate on and then all the stages. You know, the good guys, we need these, that is the safe operators, and they are just—the only, I guess, criticism I would have with the Coast Guard is on the medical side. It is bad. It ain't good.

Mr. LANDRY. So we basically have experienced mariners out there——

Mr. LAFONT. That is correct.

Mr. LANDRY [continuing]. Who are being denied for—either denied or the ability for them to renew their license is being dragged out, which takes them, our experienced mariners, out of the wheelhouse.

Mr. LAFONT. That is correct.

Mr. LANDRY. And these are good-paying jobs.

Mr. LAFONT. Yes. All our people at the wheel average a little better than $100,000 a year.

Mr. LANDRY. And you don't have to have a college degree for this job.

Mr. LAFONT. We hope you don't. We would rather have experience.

Mr. LANDRY. And I guess that is the point, is that out there we have the ability to give Americans good-paying jobs, jobs that put them in the top 25 percent of wage earners in this country. And we don't have to send them to college to guarantee them these kind of jobs. We just have to ensure that the process that has been going on—I mean, how long have you been in the business?

Mr. LAFONT. My father-in-law has owned this company 50 years.

Mr. LANDRY. OK. And so, in that timeframe, would you say that the ability to achieve a mariner certificate, to get behind the wheelhouse, has only become more complicated or less complicated?

Mr. LAFONT. Oh, Lord, like night and day difference, harder.

You know, I am not no economist, but if you listen to every one of these gentlemen at this table over here, it is all about the regs. I mean, we are getting regulated to death. I mean, you know, all I haven't seen yet is a toenail on the medical side, and that is coming. But it is, like, really unfair.

And you hear subchapter M that is coming down. That is going to be a killer for our industry. I don't want to—heaven knows what is going to come down there. But, you know, it is almost like the guy who was fishing the scallops; you know, you got to lay the keel now, because in 5 years from now you can't build nothing new no more. If you build anything new by regs, you can't go out and earn it. You are not going to pay it back, you are going to go bankrupt. The regulations are killing us.

Mr. LANDRY. One final question. What impact does that have on the ability for you to create jobs?

Mr. LAFONT. It is tough. I mean, you know, you got to go, you got to fight, you got to be there every day. And thanks to you again, you know, and your office—and, you know, there is no mariner that has a valid license that should have to go through a Congressman or a Senator to get his license back unless it is really bad.

But, you know, like this one particular mariner who had three bypasses 20 years ago and they pulled it finally this last time, and he had seen a doctor once a year, and he was on no medication for the last 5 years, and they held up his license for 13 months. It is kind of ridiculous.

Mr. LANDRY. Well, I agree with you. I want you to know that I don't think you should have to go through the congressional offices to get this process going.

I appreciate your time.

Mr. LAFONT. Thank you.

Mr. LANDRY. Mr. Larsen?

Mr. LARSEN. No more.

Mr. LANDRY. This committee hearing is now adjourned. Thank you all.

[Whereupon, at 10:58 a.m., the subcommittee was adjourned.]

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TESTIMONY OF
VICE ADMIRAL BRIAN M. SALERNO
DEPUTY COMMANDANT FOR OPERATIONS

AND

MR. JEFFREY G. LANTZ
DIRECTOR OF COMMERCIAL REGULATIONS AND STANDARDS

ON THE
COAST GUARD REGULATORY PROGRAM

BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION

APRIL 26, 2012

Introduction

Good morning Chairman LoBiondo, Ranking Member Larsen, and distinguished members of the subcommittee. It is our pleasure to be here today to discuss the Coast Guard's regulatory program.

This testimony provides an update to the testimony provided to this subcommittee in May 2011 by RADM Kevin Cook and Mr. Cal Lederer, as well as our annual report and update titled "State of Coast Guard Rulemaking Development." In that testimony, the Coast Guard described the revised processes used by the Coast Guard to improve the efficiency and effectiveness of rulemaking development, and provided a status report of progress to date. This testimony will provide an update to that status report, but will not replicate the descriptions of those processes, which are largely unchanged.

Beginning with the establishment of the Steamboat Inspection Service, the Coast Guard has been publishing regulations for more than 150 years, with a proven track record of managing maritime risk in a manner for which benefits justify the cost of regulation. The Coast Guard continues to build upon these successes, investing in the workforce, improving process transparency, streamlining processes, and scrutinizing all regulatory actions to ensure the maritime industry operates in a safe, secure, and environmentally sound manner while promoting maritime commerce. The Coast Guard's Regulatory Development Program has continued its success, earning dividends from program enhancements and a reinvigorated focus on the impacts of regulations allowing for increased emphasis on the requirements set forth in the Coast Guard Authorization Act of 2010 (CGAA 2010).

Coast Guard Regulatory Program

The Coast Guard continues to see positive results from enhanced training, and internal process streamlining and improvements in an effort to meet statutory mandates. Figure 1 shows the increase in rules that have gone into effect and published following Congress' addition of resources and the Coast Guard's initiation of major reforms (numbers throughout this report are as of April 9, 2012). These published rules include all Final Rules (FR), Interim Rules (IR), Direct Final Rules (DFR), and Technical Amendments. As shown, the Coast Guard published 17 Final Rules in FY 2011, of which two were statutorily mandated, and ten so far in FY 2012 (dark blue in the graph), of which two were statutorily mandated, with another eight projected by the end of the fiscal year (light blue), of which one is statutorily mandated. Additionally, the Coast Guard publishes approximately 20 Notice of Proposed Rulemakings (NPRM), Advance NPRM, and Supplemental NPRM per year.

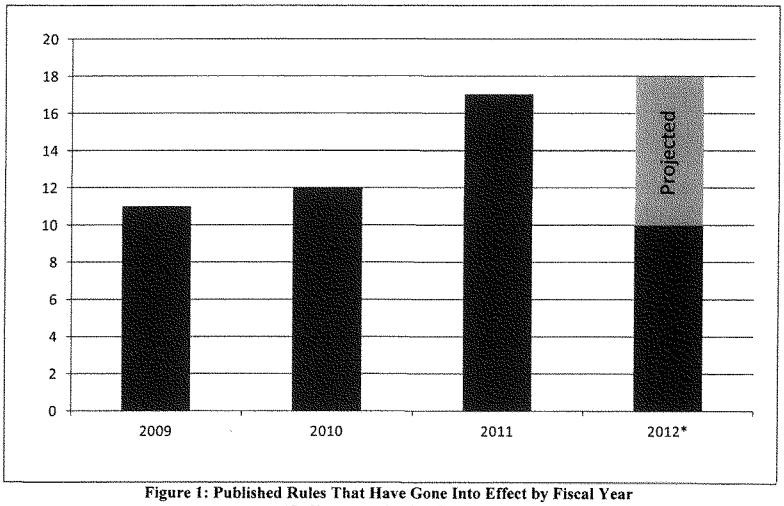

Figure 1: Published Rules That Have Gone Into Effect by Fiscal Year
***Indicates projection for 2012**

We are proud to report that we have made progress on all currently active regulatory projects in the past year.

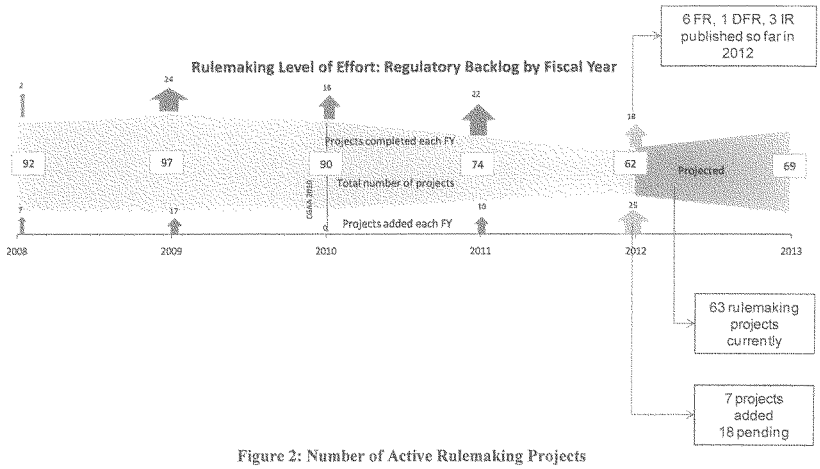

Figure 2: Number of Active Rulemaking Projects

With a significant focus on older rulemakings, the average age of rules under development has been reduced from 6.2 years at the end of FY 2009 to approximately four years at the end of FY 2011. This trend is shown in Figure 3. The Coast Guard anticipates further reductions by prioritizing the completion of older rulemaking projects—this is highlighted in the "Projected" portion of Figure 3, which projects an average age of 3.3 years by the end of FY 2012.

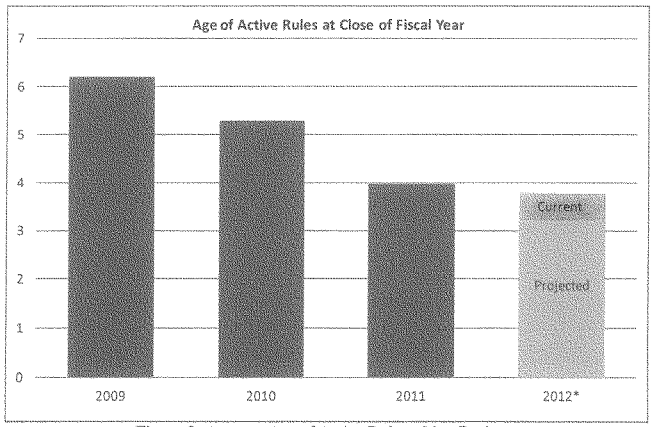

Figure 3: Average Age of Active Rulemaking Projects

In addition to working on traditional rulemaking projects, the Coast Guard is also working with DHS to implement the requirements of Executive Order 13563 ("Improving Regulation and Regulatory Review" January 18, 2011). Specifically, the Coast Guard is incorporating the requirements of the Executive Order into its economic analyses. Furthermore, the Coast Guard assisted in the development of the DHS-wide plan for the retrospective review of existing DHS regulations, and identified the four rules shown in Table 1 for detailed study. Each of these retrospective reviews consume rulemaking resources at approximately the same level as a large, significant rulemaking project.

Table 1: Regulations Undergoing Retrospective Review

Rule	Year Published
Standards of Training, Certification and Watchkeeping (STCW)	1997
Facility Security Plans (Maritime Transportation Security Act of 2002)	2004
Vessel Security Plans (Maritime Transportation Security Act of 2002)	2004
Revisions to TWIC Requirements	2007

Noteworthy Publications

The Coast Guard's annual "State of Coast Guard Rulemaking Development" and its update provide a complete list of publications and a list of highlighted projects. Of the publications made since the testimony last year, Table 2 below provides an update.

Table 2: Highlighted Publications

Fiscal Year	Rule (Date Published)	Phase
2011	STCW (August 1, 2011) • Implements revisions to international convention on training and certification of mariners	Supplemental Notice of Proposed Rulemaking
	Towing Vessel Inspection (August 11, 2011) • Creates new subchapter for towing vessel inspections to meet statutory mandate	Notice of Proposed Rulemaking
	International Anti-Fouling System Certificate (September 1, 2011) • Implements revisions to international convention and meets statutory mandate	Notice of Proposed Rulemaking
2012	International Anti-Fouling System Certificate (December 9, 2011) • Implements revisions to international convention and meets statutory mandate	Final Rule
	Ballast Water Discharge Standard (March 23, 2012) • Aligns to international ballast water convention and establishes numeric discharge standard for living organisms in ships' ballast water discharged in U.S. waters.	Final Rule
	Carbon Dioxide Fire Suppression Systems* • Allows alternatives to and safety components in carbon dioxide systems increasing ship and crew safety and enhancing competitiveness.	Final Rule
	STCW* • Implements revisions to international convention on training and certification of mariners	Final Rule
	Offshore Supply Vessels > 6,000 GT* • Creates new regulatory structure for larger offshore supply vessels to meet statutory mandate	Interim Final Rule
	Transportation Worker Identification Credential (TWIC) Readers* • Implements TWIC reader requirements and meets statutory mandate	Notice of Proposed Rulemaking
	Cruise Vessel Security and Safety Act* . • Implements CVSSA and establishes (among other things) cruise ship crime prevention practices	Notice of Proposed Rulemaking

*** Anticipated**

These highlighted rules in Table 2 are illustrative of our rulemaking program, and include Congressional mandates (e.g., International Anti-Fouling System Certificate, which was required in the CGAA 2010), compliance with international conventions (e.g., STCW), and discretionary (e.g., Carbon Dioxide Fire Suppression Systems) rulemakings. The International Anti-Fouling System Certificate rule and the STCW rule enable U.S.-flagged vessels to participate in the international marketplace, demonstrating compliance with international conventions. The Carbon Dioxide Fire Suppression Systems rule provides protection for mariners from release of carbon dioxide and subsequent asphyxiation. A current list of

active regulatory projects, for which information is publicly available, is maintained at www.reginfo.gov, and at http://www.uscg.mil/hq/cg5/cg523/projects.asp, which contains links to the Unified Agenda, dockets, and other information sources.

Progress on Statutory Mandates

Of the 81 rules under development, 38 are derived from, or incorporate, statutory mandates. This includes 25 projects either added or modified in response to the CGAA 2010. All 38 of these statutorily mandated projects are underway, cognizant of the deadlines specified by Congress in certain provisions. Eight are at either an Interim Rule or Final Rule stage, close to finalization/effective action. Table 3 lists those 23 rules published in the Fall 2011 Regulatory Agenda that have an associated statutory mandate.

Table 3: Rules with Statutory Mandate listed in the Fall 2011 Regulatory Agenda

Title	RIN	Stage
Claims Procedures Under the Oil Pollution Act of 1990 (USCG-2004-17697)	1625-AA03	PreRule
Potable Water Standards for Inspected Vessels	1625-AB51	PreRule
Tonnage Regulations Amendments	1625-AB74	PreRule
Approval of Classification Societies	1625-AB35	Long-term Action
Commercial Fishing Industry Vessels	1625-AA77	Long-term Action
Higher Volume Port Area-State of Washington	1625-AB75	Long-term Action
State Access to the Oil Spill Liability Trust Fund (USCG-2004-19123)	1625-AA06	Long-term Action
Discharge-Removal Equipment for Vessels Carrying Oil	1625-AA02	Proposed Rule
Inspection of Towing Vessels	1625-AB06	Proposed Rule
MARPOL Annex 1 Update	1625-AB57	Proposed Rule
Marine Transportation-Related Facility Response Plans for Hazardous Substances	1625-AA12	Proposed Rule
Numbering of Undocumented Barges	1625-AA14	Proposed Rule
Outer Continental Shelf Activities	1625-AA18	Proposed Rule
Tank Vessel Response Plans for Hazardous Substances	1625-AA13	Proposed Rule
Transportation Worker Identification Credential (TWIC); Card Reader Requirements	1625-AB21	Proposed Rule
Updates to Maritime Security	1625-AB38	Proposed Rule
Vessel Documentation User Fees--Annual Renewal Fee	1625-AB56	Proposed Rule
Great Lakes Pilotage Rates-2012 Annual Review and Adjustment	1625-AB70	Final Rule
Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978	1625-AA16	Final Rule
Nontank Vessel Response Plans and Other Vessel Response Plan Requirements	1625-AB27	Final Rule
Offshore Supply Vessels of at Least 6,000 GT ITC	1625-AB62	Final Rule
Revision to Transportation Worker Identification Credential (TWIC) Requirements for Mariners	1625-AB80	Final Rule
Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System	1625-AA99	Final Rule

Conclusion

The Coast Guard continues to work to refine processes and invest in other capabilities to enhance rulemaking development. Efforts continue to focus on analyzing regulatory alternatives so that the benefits of the rules put in place justifies the cost consistent with the requirements of E.O. 13563 and E.O. 12866. The Coast Guard's strong partnerships with maritime stakeholders ensures that regulatory actions are in the best possible interest of all affected parties, including leveling the playing field for U.S. flag vessel operators competing in a global industry.

Thank you for your continued support and the opportunity to testify before you today. We will be happy to answer any questions you may have.

TESTIMONY OF
James A. Hanlon
Director, Office of Wastewater Management
Office of Water
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

April 26, 2012

Good morning, Chairman LoBiondo, Ranking Member Larsen, and members of the Subcommittee. I am James A. Hanlon, the Director of the Office of Wastewater Management in the Office of Water at the U.S. Environmental Protection Agency (EPA). Thank you for the opportunity to discuss the EPA's regulation of vessel discharges under the Clean Water Act (CWA)'s National Pollutant Discharge Elimination System (NPDES) program. My testimony will provide an update on our regulation of vessel discharges, including ballast water, under the current 2008 Vessel General Permit (VGP), and implementation of that permit. I will also discuss the draft 2013 VGP that was published for public comment in December 2011, highlight some of the proposed improvements that the draft VGP would make to the existing VGP, and discuss the regulation of ballast water discharges by the draft VGP and the Coast Guard's final rule. Lastly, I will provide background and an overview of the draft small Vessel General Permit (sVGP), which was also published for comment in December.

In addition, in light of your expressed interest, my written testimony also includes a discussion, on behalf of the EPA's Office of Air and Radiation, on the Emission Control Area for the Coastal regions of the United States and Canada, which is a subject matter outside of my area of responsibility and expertise.

Vessel General Permit (VGP) Background

On March 30, 2005, the U.S. District Court for the Northern District of California (in *Northwest Environmental Advocates et al. v. EPA*) ruled that the EPA's long-standing regulatory exclusion from NPDES permitting for discharges incidental to the normal operation of a vessel exceeded the agency's authority under the CWA. While the focus of the case involved the significant impact of aquatic nuisance species (ANS) introduced by ballast water discharges from ships making transoceanic voyages, the district court vacated the vessel incidental discharge exclusion in its entirety. Section 301(a) of the CWA generally prohibits the discharge of a pollutant without an NPDES permit. So after the district court's vacatur, which ultimately went into effect on February 6, 2009, vessels would not have been able to discharge ballast water or other incidental discharges in waters of the U.S. without NPDES permit authorization. Following an unsuccessful appeal of the District Court's decision to the U.S. Court of Appeals for the Ninth Circuit, the EPA issued the current VGP in December of 2008 to regulate and authorize incidental discharges from vessels, such as ballast water.

The 2008 VGP

The current VGP authorizes discharges from approximately 70,000 domestic and foreign vessels, which are subject to the permit's requirements while in waters of the U.S., including the three mile territorial sea and inland waters, and applies to all non-military, non-recreational vessels greater than or equal to 79 feet in length. The ballast water discharge provisions also apply to any non-military, non-recreational vessels less than 79 feet in length or commercial fishing vessels of any size that discharge ballast water.

The current VGP expires on December 19, 2013. It regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation. The VGP includes general effluent limits applicable to 26 specific discharge streams; narrative water quality-based effluent limits; inspection, monitoring, recordkeeping, and reporting requirements; and additional requirements applicable to certain vessel types. The effluent limits are primarily in the form of Best Management Practices (BMPs), which were developed based upon standard industry practices that were already being performed on vessels.

With respect to ballast water, the 2008 VGP incorporated all of the Coast Guard's mandatory ballast water management and exchange requirements, and offers increased environmental protection with several additional requirements, such as requiring U.S.-bound vessels with empty ballast water tanks to conduct saltwater flushing, and mandating ballast water exchange for vessels engaged in Pacific nearshore voyages that have taken on ballast water in areas less than 50 nautical miles from shore. The VGP also includes a narrative water quality-based effluent limit that requires permittees to control discharges as necessary to meet applicable water quality standards. In addition, the permit also contains any more stringent conditions imposed by the states under the CWA section 401 certification process.

Implementation and Enforcement of the VGP

The VGP requires that vessel owners and operators assure that vessel discharges meet effluent limits and related requirements; perform a corrective action process for fixing permit violations; and includes requirements for inspections, monitoring, recordkeeping and reporting. These provisions have been successfully implemented by permittees over the past three years,

resulting in environmental improvements, and have also enabled the EPA to propose improvements in the next iteration of the VGP by refining the permit's requirements to better reflect existing vessel practices. For instance, the EPA used information received from the approximately 50,000 Notices of Intent to be covered by the VGP submitted by permittees and other sources of information in order to update permit conditions in a manner that minimizes burden on permittees.

The EPA is fortunate to have strong federal partners in mitigating the threat posed by ballast water discharges, especially the Coast Guard, with whom we carefully coordinate on a range of technical and programmatic activities related to vessel discharges. With respect to compliance monitoring, in February 2011, the EPA and the Coast Guard signed a Memorandum of Understanding (MOU) that set up a cooperative federal inspection regime for the VGP. Under the MOU, the Coast Guard has incorporated components of the EPA's VGP into its existing inspection protocols and procedures so that the United States identifies potential violations of the permit and vessel pollution in U.S. waters in an effective and efficient manner. The MOU creates a framework for improving EPA and Coast Guard collaboration on data tracking, training, compliance monitoring, enforcement and industry outreach. As a result of the MOU, there is a regular exchange of information regarding potential violations.

It is also important to note the critical role that the Saint Lawrence Seaway Development Corporation (the Seaway) has played in developing and implementing effective ballast water programs for vessels entering the Great Lakes. In 2008, the Seaway was the first US federal government entity to mandate saltwater flushing for vessels entering the Great Lakes from

outside the U.S. Exclusive Economic Zone (EEZ). Additionally, the Seaway, in partnership with the Coast Guard and our Canadian partners, implements a 100% inspection regime for all applicable vessels entering the Lakes to assure that they have conducted ballast water exchange or saltwater flushing. Finally, the Seaway continues to play a leadership role in facilitating communication between various stakeholders in the Great Lakes, including the states, to ensure effective ballast water regulation of vessels entering the Great Lakes. Based in part on these efforts, we believe that the Great Lakes have been better protected from invasive species over the last five years, and we look forward to the Seaway's continuing role in effectively implementing ballast water requirements for vessels entering the Lakes.

The Draft VGP

The recent draft VGP covers the same universe of approximately 70,000 vessels as the current permit. The permit would continue to regulate the 26 specific discharge categories that were contained in the 2008 permit and would, for the first time, impose conditions on the discharge of fish hold effluent from fishing vessels.

We received approximately 5,500 comments on the draft VGP during the 75-day public comment period that ended on February 21st of this year. We are currently in the process of reviewing and considering these comments, and will make changes to the draft permit as appropriate. Although the draft permit would have an effective date of December 19, 2013, which is the expiration date of the current VGP, we plan to finalize the permit in November of this year so that vessel owners and operators will have time to plan for and implement any new permit conditions. In developing the draft permit, we focused on increasing environmental

protection based on sound science, ensuring vessel safety and minimizing burden for permittees with common-sense and easy-to-implement provisions.

The draft permit would reduce the administrative burden for vessel owners and operators in several ways, such as eliminating duplicative reporting requirements, clarifying that electronic recordkeeping may be used instead of paper records and streamlining self-inspection requirements for vessels that are out of service for extended periods. The draft VGP also would increase environmental protection with provisions for mechanical systems that may leak lubricants into the water and for exhaust gas scrubber washwater, which would reduce the amount of oil and other pollutants that enter U.S. waters. The EPA also took comment on potentially more stringent requirements for bilgewater discharges.

Several of the state 401 certifications in the 2008 VGP created different state-specific requirements for discharges into the waters of those states. To help facilitate greater consistency, in developing the new VGP, the EPA is providing a clearinghouse of information and other tools to help track the development of each state's 401 conditions and is fostering coordination between the states.

Development of Ballast Water Provisions in the Draft VGP

In developing ballast water limits for both the current VGP and the new draft VGP, the EPA considered limits based on both the technology available to treat the pollutants (i.e., technology-based effluent limits), and limits that are protective of water quality (i.e., water quality-based effluent limits). In order to further our scientific understanding of the state of ballast water science, the EPA, with assistance from the Coast Guard, sought advice from the

EPA's Science Advisory Board (SAB) on the performance and availability of ballast water treatment technologies. The EPA, again with the Coast Guard's help, also commissioned a report from the National Academy of Sciences (NAS) to inform our understanding of the relationship between the concentration of living organisms in ballast water and the likelihood of nonindigenous organisms successfully establishing populations in U.S. waters. The EPA's primary purpose in requesting the NAS and SAB reports was to obtain expert input and advice regarding: (1) the derivation of environmentally sound numeric effluent limits for ballast water, and (2) the status and availability of ballast water treatment technologies.

The EPA used the results of these studies to inform the discharge limits in the draft VGP, which are generally consistent with those contained in both the International Maritime Organization's 2004 Ballast Water Management Convention ("IMO Convention") and the final Coast Guard ballast water rule. In proposing these limits, the EPA concluded that they would be expected to substantially reduce the risk of introduction and establishment of non-indigenous invasive species in waters of the U.S. via ballast water discharges.

The limits would apply to ballast water discharges from non-military, non-recreational vessels greater than or equal to 79 feet in length that have a ballast water capacity of at least eight cubic meters. The draft permit proposed that the limits be phased in over time during a timeframe that mirrors the IMO Convention's implementation schedule.

Ballast Water Discharge Limits: Comparing the Draft VGP and the Coast Guard's Final Rule

As I discussed in my July 2011 testimony before this Subcommittee, the Administration is deeply concerned about the environmental and economic impacts that can result from the

introduction of ANS into U.S. waters. ANS introductions contribute to the loss of aquatic biodiversity and existing ANS introductions have caused significant social, economic, and biological impacts. Economic costs from invasions of ANS range in the billions of dollars annually. To help prevent future ANS introductions and the significant impacts they cause, the Coast Guard and the EPA have worked very closely over the past several years to develop a strong federal ballast water management program that will reduce the risk of new introductions. In administering our respective authorities, the Coast Guard and the EPA have worked closely to harmonize, as appropriate, the final Coast Guard ballast water discharge standard regulations and the EPA's draft VGP. We plan to continue this collaboration as the EPA moves towards finalization of the draft VGP.

It is important to note that the Coast Guard and the EPA are implementing different laws. The Coast Guard implements the Non-indigenous Aquatic Nuisance Prevention and Control Act (NANPCA), as amended by the National Invasive Species Act (NISA), and the EPA implements the CWA. The EPA's draft VGP and the Coast Guard's requirements are generally aligned – a result of the agencies' strong working relationship. As a result of this relationship, our agencies each have a similar understanding of the technological and ecological factors associated with ballast water discharges, their treatment and their impacts. As the EPA works to finalize the draft VGP, we will continue to work closely with the Coast Guard.

As the Coast Guard noted in its final rule preamble, the draft VGP proposes to apply numeric treatment limits for ballast water discharges to a broader class of vessels than the Coast Guard's final rule. Like the current VGP, in order to fulfill the CWA's statutory mandates, the

draft VGP proposes some requirements that are broader in applicability, would prescribe additional management requirements, and would require additional monitoring or other quality control requirements beyond those in the Coast Guard's final rule. The EPA must consider the information in its draft VGP record, including public comments received, as well as the requirements of the CWA, as it finalizes the draft VGP. Therefore, it is possible that the new final VGP, like the proposed VGP, will add to the requirements found in the Coast Guard's final rule.

I'd like to highlight a couple of areas in which the draft VGP differs from the rule that was recently finalized by the Coast Guard.

The draft VGP would require non-military, non-recreational vessels with at least 8 cubic meters of ballast water capacity, including inland vessels, to meet the numeric ballast water discharge limits. The Coast Guard's final rule applies the numeric standard only to seagoing vessels that voyage outside the EEZ regardless of size, and to coastwise vessels that do not operate outside the EEZ and are greater than 1,600 Gross Register Tons.

For vessels that operate on the Great Lakes, the draft VGP would require ballast water discharges from oceangoing vessels that enter the Great Lakes to comply with the numeric ballast water limits, consistent with the Coast Guard's final rule. In addition, the draft VGP would require compliance with numeric ballast water discharge limits for vessels that engage in both trade in the Great Lakes and travel in and out of the Great Lakes via the St. Lawrence Seaway, but, which do not leave the Exclusive Economic Zone. This is because the EPA determined that technologies are available and economically achievable for use by those

vessels. Existing vessels that operate exclusively in the Great Lakes upstream of the Welland Canal (which are too large to exit the Great Lakes via the St. Lawrence Seaway and are thus confined to the upper Great Lakes) would be required to implement BMPs to control their ballast water discharges instead of meeting the numeric limits because the EPA determined that technologies are not available for such vessels. EPA continues to evaluate its preliminary determinations made in the draft permit regarding best available technology and water quality requirements based on comments received and other information before it in the record.

The EPA has also proposed in the draft VGP to continue existing ballast water exchange practices as water quality-based effluent limits for certain vessels entering the Great Lakes. In addition to meeting the numeric discharge standards in the draft permit, vessels that enter the Great Lakes after operating beyond the EEZ would be required to continue to conduct mid-ocean ballast water exchange when they have taken on ballast water from a non-Great Lakes freshwater or brackish water port in the previous month. The purpose of this proposed requirement, which is not included in the Coast Guard's final rule, would be to add another measure of protection against invasive species by reducing the compatibility of water from source and recipient regions when freshwater or brackish water is transported via ballast tanks into the Great Lakes, thus reducing the possibility that viable populations of invasive species will be introduced. Due to this environmental mismatch, in addition to removal by treatment, any remaining freshwater species being taken up in the ship's ballast in fresh or brackish waters would either be discharged into the open ocean and/or shocked by saline water during ballast water exchange before being discharged into the freshwater of the Great Lakes. The EPA proposed this additional measure for the Great Lakes, a unique and valuable resource, based on

a recognition that those water bodies have been particularly impacted by the introduction of various invasive species. EPA has requested comment and data on whether to include this provision in the final permit.

Finally, with respect to vessels that are undergoing construction (so-called "new builds"), the draft VGP proposed applying the numeric ballast water discharge limits to new builds constructed on or after January 1, 2012 as of the effective date of the permit, while the Coast Guard final rule applies the limits to new builds constructed on or after December 1, 2013. The draft VGP was published before the final Coast Guard rule, and the draft VGP new build requirements were consistent with both with the Coast Guard's 2009 proposed rule as well as the 2004 IMO ballast water treaty. We are currently reviewing comments received and are evaluating what requirements for new builds would be appropriate to include in the final VGP.

The Small Vessel General Permit (sVGP)

As you are aware, Congress passed and the President signed two laws in the summer of 2008 that narrowed the scope of the NPDES permit requirement for incidental vessel discharges. The first law, the Clean Boating Act (Public Law 110-288), exempted recreational vessels from the requirement to obtain an NPDES permit for their incidental discharges and directed the EPA and the Coast Guard to develop uniform national regulations for such discharges under Section 312 of the CWA. The second law (Public Law 110-299), generally imposed a two-year moratorium on NPDES permitting requirements for commercial vessels less than 79 feet and commercial fishing vessels regardless of size, except for their ballast water discharges. This moratorium was subsequently extended to December 18, 2013 by Public Law 111-215. In

addition, Public Law 110-299 directed the EPA to conduct a study of vessel discharges and issue a report to Congress. The EPA finalized this Report to Congress, entitled "Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet," in August 2010. The EPA proposed the sVGP to provide CWA permit authorization for commercial vessels less than 79 feet and commercial fishing vessels regardless of size when the moratorium expires next year. Section 301(a) of the CWA generally prohibits the discharge of a pollutant without an NPDES permit, and as of the December 2013 expiration date of the moratorium, the affected vessels would be prohibited from discharging in waters of the U.S. without NPDES permit coverage.

We estimate that between 118,000 and 138,000 vessels could be subject to the sVGP's requirements. In comparison, the draft VGP would cover about 2,200 commercial fishing vessels that are greater than 79 feet in length. Without coverage under the sVGP, owners/operators could face penalties for violating the CWA's prohibition against the discharge of a pollutant without a permit. Hence, the EPA proposed the draft sVGP to provide the most administratively efficient permit possible consistent with our regulations. As currently proposed, if the owner or operator of a vessel less than 79 feet believes the sVGP to be inappropriate for their vessel, they may seek coverage under the VGP or an individual NPDES permit.

This sVGP would be the first under the CWA to specifically address discharges incidental to the normal operation of commercial vessels less than 79 feet in length. Recognizing that small commercial vessels are substantially different in how they operate than their larger

counterparts, the draft sVGP is shorter and simpler than the VGP. The draft permit specifies BMPs for several broad discharge management categories including: fuel management, engine and oil control, solid and liquid maintenance, graywater management, fish hold effluent management and ballast water management. These BMPs include common sense management measures to reduce environmental impacts from these discharges, including measures to reduce the risk of spreading invasive species. Based on the types of discharges from these vessels, the draft sVGP also contains simplified paperwork requirements relative to VGP. Instead of submitting a Notice of Intent to EPA to obtain coverage, owners/operators would be required to fill out and maintain onboard a simple one-page permit authorization form. As with the draft VGP, we are currently in the process of reviewing and considering public comments received on the draft sVGP. These comments will inform our development of a final sVGP.

The Emission Control Area for the Coastal Regions of the United States and Canada

Ocean-going vessels are significant contributors to air pollution in the United States. These impacts are not limited to port cities and coastal areas. Air quality modeling performed by the EPA has shown that reducing ship emissions will benefit citizens hundreds of miles inland due to the significant quantities of air pollution emitted by vessels.

In 2007, the United States proposed amendments to the International Convention for the Prevention of Pollution from Ships at the International Maritime Organization which would enable countries to significantly reduce air pollution from vessels through the designation of an Emissions Control Area, or "ECA". These amendments were adopted by IMO after a multi-year process involving input from a wide range of stakeholders. Based on extensive air quality

modeling, the United States and Canada applied, through the International Maritime Organization, for the designation of an ECA for the coastal regions of the US and Canada. This application for a North American ECA was adopted by the IMO in 2010.

The ECA will result in large reductions in air pollution from vessels and significant improvements in public health. In 2030, emissions from ships operating in the ECA are projected to be reduced annually by 1.2 million tons for oxides of nitrogen, 143,000 tons of particulate matter, and 1.3 million tons of sulfur oxides. The overall cost of the North American ECA is estimated at $3.1 billion in 2030, however the monetized health-related benefits are estimated to be as much as $270 billion in that year, and includes the prevention of as many as 31,000 premature deaths in 2030 alone.[1]

The first step in the implementation of the ECA begins this upcoming August, when fuel sulfur levels must be reduced to 10,000 parts per million. The Coast Guard and EPA are working closely with the regulated community to ensure an orderly transition to this first step of the ECA standards. This includes the development of policy documents regarding the issue of fuel availability to provide the vessel owners with guidance in the event there are temporary fuel availability issues in specific locations.

Under the regulatory provisions for the ECA, alternative emission reduction approaches, which produce the same emission benefits as fuel meeting the sulfur standard, may be determined to be "equivalent" to utilizing lower sulfur fuel, and thus can be an alternative approach for

[1] U.S. Environmental Protection Agency, "Regulatory Impact Analysis: Control of Emissions of Air Pollution from Category 3 Marine Diesel Engines," EPA-420-R-09-019, December 2009.

demonstrating compliance with the fuel sulfur standards. EPA supports the use of alternative approaches which can produce the same emission benefits as required by the standard.

Recently some elements of the shipping industry have inquired regarding the potential for a population-weighted averaging approach as a scheme for demonstrating equivalency. We estimate that a population-weighted averaging scheme would result in a net increase in the emissions from ships operating in the ECA, and result in a disproportionate environmental burden and risk for citizens in different communities, depending on their population density. An approach trading off anticipated benefits in less populated areas raises serious environmental justice issues in that it could adversely affect under-represented communities in rural areas. The net increase in sulfur oxides, particulate matter, and air toxics emissions associated with such an approach would be detrimental to the affected ecosystems inland of the ECA because of impacts on visibility, ecosystem health, tree biomass production, acidification, and other issues.

However, the EPA does support other alternative compliance approaches which can produce equivalent emission reductions, such as the use of on-board scrubbers for reducing sulfur oxide emissions.

As we move forward with the implementation of the ECA, the EPA will continue to coordinate with shipping and cruise industry representatives regarding these potential alternative approaches.

Conclusion

The EPA and the Coast Guard will continue to work closely in the future to minimize the risk of introduction and spread of aquatic nuisance species through cooperative regulation of ballast water discharges and on implementation of the air emissions ECA for the coastal regions of the US and Canada.

Once again, Chairman LoBiondo, Ranking Member Larsen, and Members of the Subcommittee, thank you for the opportunity to discuss the EPA's VGP and sVGP. I look forward to answering any questions you may have.

EPA Responses to Questions for the Record
from the Subcommittee on Coast Guard and Maritime Transportation April 26, 2012 Hearing
"Recent Regulation of the Maritime Industry: Ensuring U.S. Job Growth While
Improving Environmental and Worker Safety"

1. **The EPA recently issued a draft Vessel General Permit (VGP) and Small Vessel General Permit (sVGP) to govern ballast water and 27 other incidental discharges *from* vessels. The permits are scheduled to take effect in December 2013.**

   a. **How many vessels will be required to comply with the draft VGP and sVGP?**

      The EPA estimates that approximately 70,000 vessels are covered by the 2008 VGP and approximately 72,000 would be eligible for coverage under the 2013 VGP. Approximately 118,000 to 138,000 vessels would be eligible for coverage under the sVGP.

   b. **The EPA was able to estimate the cost of the VGP at $20 million annually and the sVGP at $12 million annually, but was not able to estimate the benefits. Why was the EPA unable to estimate numeric benefits for the draft VGP and sVGP? What benefits will result from these general permits?**

      We estimate that the 2013 VGP will cost between $6.5 and $20.9 million per year. We estimate that the sVGP will cost between $7.0 and $12.1 million. Data on compliance costs are more readily available than information about the value of ecosystem services that will be enhanced by environmental protection. For instance, in its analyses of the sVGP, the EPA estimated the approximate compliance costs that individual vessel owners may incur ($17 to $98 per year on average) based on data it obtained, for example, from boating equipment vendors.

      There is evidence that the pollutants contained in vessel discharges (oil and grease, nutrients, metals, among others), can adversely affect the aquatic environment and that vessel discharges can contribute to the spread of aquatic nuisance species. As discussed in the EPA's VGP and sVGP Economic Analyses, the EPA expects that the VGP and sVGP would generate benefits to society in two broad categories: (1) enhanced water quality from reduced pollutant discharges and (2) reduced risk of invasive species introduction. Quantifying the benefits of reducing discharges from individual vessels is exceedingly difficult due to variability in vessel discharge characteristics, assimilative capacity of receiving waters, number of vessels operating in any given area, and other site-specific factors such as the presence of other pollutant sources or invasive species. Though the EPA did not monetize benefits, the VGP economic analysis includes a 19 page discussion and the sVGP economic analysis includes a 13 page discussion on benefits expected from the respective permits.

   c. **Why is there an additional ballast water exchange requirement for vessels entering the Great Lakes?**

The EPA notes that ballast water exchange and saltwater flushing are currently required for all vessels entering the Great Lakes not only under the current VGP, but also by the U.S. Coast Guard (for exchange) and the St. Lawrence Seaway Development Corporation (SLSDC) (for exchange and flushing). The SLSDC, partnering with the Coast Guard and our Canadian Partners, inspects all vessels entering the Great Lakes to ensure compliance with those exchange requirements. The EPA continues to work closely with both agencies to address the threat of vessel-mediated invasive species in an efficient and effective manner.

The EPA's draft VGP proposed to retain the existing ballast water exchange (BWE) practices as water quality-based effluent limits for certain vessels entering the Great Lakes after operating beyond the Exclusive Economic Zone (EEZ) when they have taken on ballast water from a freshwater or brackish water port in the previous month. Under the draft VGP, BWE would be a best management practice required in addition to meeting the numeric concentration-based effluent limits for ballast water. The purpose of this draft requirement would be to add another measure of protection against invasive species for the Great Lakes, which are unique and valuable resources that have been particularly impacted by the introduction of various invasive species. Due to an environmental mismatch, any freshwater species being taken up in the ship's ballasting of fresh or brackish waters would be shocked by saltwater during the mid-ocean exchange that would occur prior to discharging in the freshwater Great Lakes. We estimate that this requirement would apply to fewer than 200 vessels. 188 ocean going vessels reported discharging ballast water into the Great Lakes in 2009, and only a portion of these are thought to have taken on ballast water in freshwater or brackish ports in the previous month. These requirements are estimated to cost between $150,000 and $308,000 per year for all vessels combined.

As with all provisions of the draft permit, the EPA will carefully consider comments received prior to making a final decision on this draft requirement.

d. **How does the EPA intend to handle vessels on voyages to the Great Lakes which cannot conduct exchange because the treatment technologies installed onboard require the retention of ballast water for several days to ensure proper treatment?**

We are aware that some ballast water treatment technologies have a minimum holding time. However, the vessels to which this requirement would apply are engaged in multi-day journeys – for instance, a trip from Rotterdam to the Northeastern U.S. typically takes a minimum of six days. For systems that have a minimum holding time, this requirement could narrow the window when vessels could conduct exchange without necessarily precluding them from doing so. We will carefully consider the comments received on this issue as we work to finalize the new VGP.

e. **During his April 26 testimony, Mr. Hanlon acknowledged that EPA's draft of the next VGP contains requirements for newbuilds that are different from the USCG final rule and stated that EPA "has every intention of being in alignment with the USCG final rule" and that "EPA intends to have a consistent set of requirements." Please describe what steps EPA will take to ensure that the ballast water requirements in the final version of the next VGP will be in full alignment with the USCG final rule. Please also provide the Subcommittee with an estimate of when these changes**

will be made to the draft VGP and when EPA will share the changes with the USCG Office of Operating and Environmental Standards (CG-522) for their review.

The USCG final rule was issued in March 2012. The draft VGP was published for public comment in December 2011, and the schedule it contained was consistent with the schedule that was in USCG 2009 proposed rule, as well as with that in the IMO ballast water treaty. Because the draft VGP was a document issued for public comment, it does not establish final enforceable schedules. We will be looking at schedule issues as we finalize the VGP, and our goal during the development of our ballast water standards has been to avoid conflicting requirements between the two insofar as possible under the CWA, which governs the VGP, and NANPCA/NISA, which governs the USCG final rule. As Mr. Hanlon pointed out during his testimony, we are still in the process of reviewing comments and developing a final VGP, and will keep this goal in mind as we undertake that work.

We anticipate interagency review on the final permit to begin at the end of the summer, at which time the Coast Guard, as well as other federal agencies, will have an opportunity to review and comment on the permit. The EPA fully intends to continue working with the Coast Guard in developing the final VGP. These efforts will be a continuation upon many years of productive cross agency collaboration between the two agencies.

f. **Does the EPA support a single, uniform, national ballast water discharge standard?**

The EPA believes the current statutory framework for ballast water discharges can be effective in minimizing the risk of introduction and spread of aquatic nuisance species via ballast water discharges. The EPA continues its work with the Coast Guard and the States to ensure that the agencies' efforts to manage such discharges under our current authorities are as coordinated, consistent, and transparent as possible.

2. **The United States and Canada recently petitioned the IMO for an emissions control area (ECA) surrounding North America to 200 miles offshore. Large vessels transiting the ECA will be required to burn low sulfur fuel or install scrubbers on their exhaust stacks to reduce certain emissions.**

   a. **Is there a sufficient amount of I percent sulfur fuel available for vessels calling on U.S. ports? If not, what consideration will be given to vessels that do not have access to the correct fuel after the 2012 implementation deadline? What consideration will be given to vessels if 0.1 percent sulfur fuel is not available by the 2015?**

   The refining and fuel distribution systems in the United States have more than adequate blendstocks to produce ECA compliant fuels. In fact, many U.S. ports today sell ECA compliant fuels for ships that will transit to the North Sea or Baltic Sea ECAs where this fuel is already required to be used. However, the United States and the IMO recognize the possibility that, as with any fuel transition, compliant fuel may not be available in isolated situations. Thus, regulation 18.2 of MARPOL Annex VI explicitly addresses situations where there may be local non-availability of compliant fuel. Regulation 18.2 and other MARPOL Annex VI regulations have been adopted by the United States.

Under regulation 18.2, in the case of a ship using non-compliant fuel, the EPA will take into account the efforts undertaken by the ship to obtain the required fuel in determining what actions, if any, the EPA will take. A ship may present to the EPA (and/or the EPA may request) a record of all actions the ship undertook to achieve compliance, including evidence that the ship attempted to purchase compliant fuel. If a ship provides this information to the EPA, the EPA will take into account the evidence presented and all relevant circumstances in determining the appropriate action.

A ship is required to notify its flag administration and the destination port when it cannot purchase compliant fuel. Additionally, the United States is obligated to notify the IMO when a ship presents evidence of the non-availability of compliant fuel.

These provisions apply equally to the non-availability of fuel meeting the 1.0% fuel sulfur limit which will be implemented in August 2012, as well as the 0.1% fuel sulfur limit that will be implemented in 2015.

b. What consideration will be given to vessels with engines that cannot burn the appropriate fuel?

The EPA expects that ships traveling in the ECA can and will comply with the applicable fuel requirements. Ships traveling in the North Sea and Baltic Sea ECAs have had to use fuel that complies with the 1% fuel sulfur limit since July 2010. The EPA is not aware of ships with engines that will not be able to operate on ECA compliant fuel. Indeed, much of the world shipping industry supported the adoption of the IMO standards. Furthermore, ships also have the option of applying for and using alternative methods, such as scrubbers, to achieve equivalent emission reductions rather than burning ECA compliant fuel.

If compliant fuel is available at a port, but the technical specifications of such compliant fuel do not meet the operating requirements of a particular ship's engines (e.g. in terms of a fuel's viscosity or flashpoint), the EPA will determine the appropriate action on a case by case basis. If a ship provides the EPA with information indicating that compliant fuel will not meet its operating requirements, the EPA will take into account the evidence presented and all relevant circumstances in determining the appropriate action to take, if any.

As discussed above, a ship is required to notify its flag administration and the destination port when it cannot purchase compliant fuel, and the United States is obligated to notify the IMO when a ship presents evidence of the non-availability of compliant fuel oil.

c. How many coastwise trade vessels will be affected by this ECA?

The analysis the EPA performed to support the ECA includes port entrance data by vessel type but does not distinguish whether a vessel is operated in coastwise trade or trans-oceanic trade. According to MARAD, in 2009 coastwise trade accounted for about 7.5% of total U.S.

waterborne trade, or about 152.2 million metric tons of cargo.[1]

d. Did the government take into account whether this regulation will adversely impact short sea shipping?

Because the ECA fuel sulfur limits are a national requirement, the economic impact analysis we performed for the program does not estimate the impacts on any one sub-sector of the marine industry. However, we performed three separate route-based analyses to examine the impacts of the 1,000 ppm fuel sulfur limit: a container vessel operating between the United States and Singapore; a bulk carrier operating on the same route; and a cruise ship operating between Vancouver and Ketchikan. The cruise ship example is most like a coastwise vessel: all operation occurs within the North American ECA. We estimate that fuel costs would increase by about 38%. However, when this cost is spread over the number of passengers, the increase in ticket price is estimated to be between 1.7% and 6.6%. In addition, the EPA recently performed an additional economic analysis of the impacts of the 1,000 ppm fuel sulfur limit on shipping in the Great Lakes. This analysis shows that even with some increase in freight rates resulting from the fuel sulfur requirements, marine transportation is expected to remain less expensive than rail for eleven of twelve routes (the results for the remaining scenario are inconclusive).

e. How will the EPA evaluate and approve flag state equivalencies? What standard will be used?

The EPA, as a member of the U.S. Government delegation, is working with the Coast Guard and other members of the International Maritime Organization to develop guidance for the assessment and approval of equivalent methods for complying with the ECA fuel sulfur limits, as allowed in Regulation 4 of MARPOL Annex VI.

f. Why did the EPA use MARPOL as the vehicle to control NOx and SOx emissions from vessels instead of initiating a rulemaking under the Clean Air Act?

The EPA's program to control NOx, PM, and SOx emissions from ships is a coordinated strategy that consists of actions at both the national and international levels. It includes: (1) engine and fuel requirements adopted under our Clean Air Act authority; (2) revised international engine and fuel requirements contained in MARPOL Annex VI that apply to all vessels, including U.S. vessels; and (3) designation of the North American and U.S. Caribbean Sea ECAs pursuant to MARPOL Annex VI. The combination of these three elements results in a program that is very cost effective, leverages the international program adopted by IMO to ensure that all ships that operate in areas that affect U.S. air quality are required to use stringent emission control technology, and provides the lead time needed to address the engineering design work that is involved in applying after treatment emission control technology to these very large engines and in ensuring that vessels are equipped to use fuels with different sulfur limits. The coordinated

[1] U.S. Water Transportation Statistics Snapshot (February 2011), page 5. MARAD further notes that this trade is declining due to a decrease in coastwise petroleum trades.
http://www.marad.dot.gov/documents/US_Water_Transportation_Statistical_snapshot.pdf

strategy constitutes a comprehensive program that addresses the problems caused by ocean-going vessel emissions from both a near-term and long-term perspective. It does this while providing for an orderly and cost-effective implementation schedule for the vessel owners and manufacturers, and in a way that is consistent with the international requirements for these vessels.

g. Please provide a list of all US governmental departments or agencies that the EPA consulted during the preparation of the technical support document for the 200 nm North American ECA.

The following U.S. federal governmental departments and agencies were represented on the Executive Branch's inter-agency workgroup for the ECA: Department of Homeland Security/U.S. Coast Guard; Environmental Protection Agency; Department of Defense; Maritime Administration; Mineral Management Service; National Oceanic and Atmospheric Administration; and Department of State.

h. The EPA's technical analysis basis document for the ECA found that emissions from self-unloading bulk carriers for deep water (as opposed to those in the Great Lakes) are considered to be zero for every pollutant. Since the emissions from these vessels are zero in EPA's technical analyses, does EPA agree that, therefore, any impacts due to these vessels must also be zero and any emissions reductions from such vessels due to the provisions of the ECA must also be zero? If not, why not?

The EPA's technical analysis does not indicate that emissions from self-unloading bulk carriers are zero for every pollutant. Rather, emissions from this category of vessel are included in the "other bulk carrier" category in the deep sea port inventories.

i. Would EPA agree that self-unloading bulk carriers should be exempt from the requirements of the ECA? If not, why not?

Self-unloading vessels should not be exempt from the requirements of the ECA as they contribute to national particulate matter and SOx inventories.

j. Does EPA believe that as the price of fuel increases for vessels involved in short sea shipping in the ECA, traffic on short sea shipping may shift to competing land-based modes such rail and truck? If not, why not?

The EPA does not believe that compliance with the ECA fuel sulfur limits will result in a modal shift from marine transportation to land-based modes such as rail and truck. The EPA recently performed a detailed analysis of potential modal shift for the Great Lakes which suggests that transportation mode shift on the coastal waterways is not likely. Transportation mode shift is dependent on the relative freight rates of the transportation alternatives. The Great Lakes study shows that even with some increase in freight rates resulting from the fuel sulfur requirements, marine transportation is expected to remain less expensive than the least cost

alternative, rail, for eleven of twelve routes (the results for the remaining scenario are inconclusive). If the freight rates for land-based transportation alternatives for the coastal corridors are similar to those in the Great Lakes region, and there is no reason to believe they would be different since long-distance rail and truck transportation are national markets and the fuel, labor, and capital costs would not be expected to be significantly different across the country, then no modal shift would be expected for these coastal corridors.

k. **Has EPA conducted any analysis of the environmental impacts on communities (or any community) along the East and West coasts of the U.S. should there by a modal shift from short-sea shipping to rail or trucks? Please specify what level of modal shift was assumed in such a study and provide copies of same.**

Consistent with our response to 2.j above, the EPA does not believe compliance with the ECA fuel sulfur limits will result in modal shift from marine transportation to land-based modes.

l. **The EPA estimates that the total cost of implementing the new standards are around $3.2 billion by 2020. Has the cost assessment determined how the cost will be distributed across the maritime industry? How will the costs affect short sea as opposed to long distance shipping? Has the EPA determined if the distribution of costs among the industry will allow shipping to remain competitive against competing forms of transportation?**

Because this is a national rule, the EPA did not estimate the costs of the program for individual marine transportation sub-sectors. However, it is clear that a ships that spends more time in the ECA, such as a Great Lakes ship or a coastwise ship that operates primarily in the North American ECA, will see a larger relative increase in fuel operating costs, on a per-ship basis, than a ship that spends only a small portion of total operating time in the ECA. Similarly, a ship that spends most of its time in the ECA will also have a larger impact on U.S. air quality since most or all of its operations occur in the U.S. airshed. The results of the EPA's recently completed Great Lakes study suggests that even though increased fuel costs would lead to increased marine freight rates, these freight rates are expected to remain below those for the least cost alternative, rail (see response to Question 2.j, above).

3. **It has been recently reported that the European Union is interested in implementing a green house gas trading scheme for ocean going vessels similar to the program it is trying to impose on airlines.**
   a. **Does the EPA support the European Union's proposal to regulate green house gas emissions from vessels?**

We understand that the European Commission is considering proposals for an EU-only regime to reduce emissions from international shipping. The Administration has formally urged the Commission to focus on working through the International Maritime Organization (IMO) rather than through the EU-only regime.

WORLD SHIPPING COUNCIL
PARTNERS IN AMERICA'S TRADE

Statement of

Christopher Koch

President & CEO

World Shipping Council

Before the

House Committee on Transportation and Infrastructure
Subcommittee on Coast Guard and Maritime Transportation

on

"Regulation of the Maritime Industry: Ensuring U.S. Job Growth While Improving Environmental and Worker Safety"

April 26, 2012

Mr. Chairman and members of the Subcommittee, thank you for the invitation to testify before the Subcommittee today. My name is Christopher Koch. I am President and CEO of the World Shipping Council.[1] WSC members comprise an industry that has invested over $400 billion in the vessels, equipment, and marine terminals that are in worldwide operation today. Approximately 1,400 ocean-going liner vessels, mostly containerships, made more than 25,000

[1] The World Shipping Council (WSC) is a non-profit trade association whose goal is to provide a coordinated voice for the liner shipping industry in its work with policymakers and other industry groups with an interest in international transportation. Liner shipping is the sector of the maritime shipping industry that offers regular service based on fixed schedules and itineraries. WSC members carry over 90% of the United States' containerized ocean commerce, and include the full spectrum of carriers from large global lines to niche carriers, offering container, roll-on/roll-off, and car carrier service as well as a broad array of logistics services. The industry generates over one million American jobs and over $38 billion of wages annually to American workers. A complete list of WSC members and more information about the Council can be found at www.worldshipping.org.

calls at ports in the United States during 2011 -- almost 70 vessel calls a day. This industry provides American importers and exporters with door-to-door delivery service for almost any commodity to and from roughly 170 countries. In 2011, approximately 30 million TEU[2] of containerized cargo were imported into or exported from the U.S.

In addition to containerships, liner shipping offers services operated by roll-on/roll-off or "Ro-Ro" vessels that are especially designed to handle a wide variety of vehicles, including everything from passenger cars to construction equipment. In 2011, these Ro-Ro ships brought passenger vehicles and light trucks valued at $72.4 billion into the U.S. and transported units worth $32.5 billion to U.S. trading partners in other countries.

More than 50 percent of the $1.2 trillion in annual U.S. ocean-borne commerce is transported via liner shipping companies. It is clear why the international liner shipping industry is one of the elements of the nation's "critical infrastructure".

WSC and its member companies work closely with the Congress and the various responsible U.S. government regulatory agencies to try to develop and implement effective and efficient regulatory regimes. Today, my testimony will briefly describe four current, different regulatory initiatives that address environmental issues and maritime safety, namely: 1) ballast water treatment technology regulations; 2) NOx, SOx and particulate matter air emissions and the North American Emission Control Area that will become effective on August 1st; 3) carbon emissions; and 4) a maritime safety initiative to obtain verified container weights.

Ballast Water Treatment Technology Regulations

The Subcommittee is well aware of the issue of ballast water treatment technology and regulation, and the industry appreciates the efforts of the Subcommittee in House passage of Title VII of H.R. 2838, a bill which recognizes that the logical way to address this issue is for the United States to have a single, scientifically sound treatment standard for ships that operate and discharge ballast water in U.S. waters.

Ballast water treatment technology is costly. For the liner shipping sector alone, a reasonable estimate of the cost for installing treatment technology on the vessels calling U.S. ports would be in excess of $2 billion[3] – a cost that the carriers will obviously try to recoup from

[2] A TEU is a standard container measure that represents a twenty-foot container. Most containers moving in the U.S. trades are forty-foot units equal to 2 TEU. 30 million TEU equates to about 18.6 million container loads of U.S. cargo.

[3] Cost estimates will vary according to the type of technology, the vendor, and the volume of ballast water that will need to be treated, and one cannot make a reliable estimate until it is known which

the exporters and importers whose cargo they carry. The purpose of my testimony is not to complain about these substantial costs, but to state what should be evident: This is a very large capital commitment that a ship can reasonably be expected to make once. The idea that different U.S. agencies under different statutes might apply different standards, or that the various States might apply different standards, is an anathema.

The U.S. Coast Guard (USCG) and the Environmental Protection Agency (EPA) are working to address this issue under two different statutes enacted by Congress. The agencies have demonstrated their interest and commitment to coordinate their efforts and to produce a single, uniform regulatory approach from the U.S. federal government. Significant progress has been made in this regard. Further progress is needed. The agencies have conducted extensive scientific analysis and, based on sound science, agreed on what the federal ballast water treatment standard should be, and they have agreed on an implementation schedule for the existing fleet's installation of such technology. That schedule appears to be challenging, but workable, for existing vessels.

With respect to the application of ballast water treatment technology to "new-builds", the agencies are not yet fully coordinated. They clearly need to be. The Coast Guard final rule's implementation schedule for new-builds applies to vessels constructed on or after December 1, 2013, whereas the implementation schedule for new-builds under EPA's draft next Vessel General Permit applies to vessels constructed on or after January 1, 2012. EPA will need to align its definition of a "new-build" in the next VGP to be consistent with the Coast Guard final rule. It would make no sense for a vessel constructed between January 1, 2012 and December 1, 2013 to be classified a new-build by EPA (and need to have installed treatment technology upon vessel delivery on or after December 19, 2013), but the same vessel would be classified an existing vessel by the USCG Final Rule (and need to have installed treatment technology by the first dry-docking after 2016).

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systems will receive U.S. Coast Guard type approval, and which technology companies have gotten the financing to move to commercial production. Nevertheless, if one assumes an average capital cost of $1 to $1.5 million per system and $500,000 for installation on the approximately 1,400 different liner shipping vessels currently calling U.S. ports, that would equate to $2.1 to $2.8 billion in cost for the liner shipping sector alone. The total cost number for industry compliance will clearly be much higher however, because: liner shipping vessels constitute a minority percentage of the vessels calling U.S. ports; vessel operators will probably need to install the technology on ships that are not currently calling the U.S. so that they would be capable of calling here in the future; and treatment systems on tankers and bulk vessels which discharge far greater volumes of ballast water are far more expensive than systems for container vessels that discharge only limited amounts of ballast water. Further, this estimate does not include the increased vessel operating costs or the maintenance costs associated with the utilization of these technologies.

This needed alignment between the agencies in reality will create no delay in the installation of ballast water treatment technology on new ships, because such technologies will need to be "type" approved by the Coast Guard, which is a process needed to demonstrate that the technology reliably and effectively meets the defined standard, *and* they must comply with the standard based on testing conducted by an independent, third party lab in accordance with the EPA's land-based Environmental Technology Verification (ETV) protocol. It will take several years for these approval processes to be performed and completed. These approval processes are stricter than the International Maritime Organization (IMO) Convention's approval standards, but they are fully justified and warranted, as demonstrated by the fact that two different technology vendors that had received IMO type approval of their equipment without going through these approval processes have recently had to pull their products from the market because they could not reliably meet the treatment standard.

New-builds will need to be given a reasonable amount of time to install U.S. type approved treatment technologies, once a reasonable number of technologies have obtained USCG type approval and are commercially available. We note that the USCG Final Rule's new-build implementation schedule and extension provisions would allow for a new-build to seek an extension if USCG type approved technologies are not available for installation by the time the vessel is delivered, but that the EPA has not yet adopted a similar policy. The EPA's draft VGP needs to be amended so that the next VGP incorporates the same regulatory approach as the Coast Guard has adopted in order for the U.S. federal government to establish a single, predictable set of ballast water treatment installation and approval requirements. We are in discussion with both agencies about this issue and are hopeful that a common and workable resolution will be achieved.

In conclusion, we appreciate the joint efforts of the Coast Guard and EPA to coordinate the development and implementation of a single, uniform federal approach to the installation of ballast water treatment technology on ships, and we remain hopeful that these efforts will result in the next VGP being made consistent with the Coast Guard's final rule. At the same time, it is appropriate to note that it is frustrating to deal with this issue through the illogical and incoherent legal regime that currently addresses this issue – namely, two different federal agencies operating under two different federal statutes, whose final conclusions, even if and when fully coordinated, can be second guessed by 50 States being given authority to add their own different standards to the federal VGP (under the Clean Water Act's Section 401 certification process). This remains, at best, wholly illogical and, at worst, a recipe for unnecessary and unproductive conflict.[4]

[4] This is not a moot issue. Notwithstanding the very clear, coordinated decision by EPA and the Coast Guard about the appropriate federal ballast water treatment technology standard, the scientific review

Ships engaged in interstate and foreign commerce are mobile assets that by necessity visit and operate in many different jurisdictions. They require a single technology standard so that they can install compliant systems on their ships that will allow them to operate legally in whatever port they may call. We appreciate that this Committee understands this point and that the House passed H.R. 2838 that would address this problem. We thank the Committee for its continued interest in this issue, and hope that the Senate will support this Committee's efforts and approve title VII of that bill this year.

NOx, SOx and Particulate Matter Regulation: North American Emission Control Area

The WSC supported the adoption of stringent international air emission standards through the recent amendments to MARPOL Annex VI, as adopted by the IMO. The new Annex VI standards had the strong support of the federal government as well as state and local governments, including the U.S. port community. The revised Annex VI standards will result in significant improvements in air quality, particularly with respect to NOx (nitrogen oxides), SOx (sulfur oxides) and particulate matter (PM).

Pursuant to the authority provided in the Annex VI amendments, the United States and Canada have jointly established a North American Emission Control Area (ECA) that establishes a 200 nautical mile zone covering all the heavily trafficked waters adjacent to the two countries. Beginning August 1, ships entering the ECA will be required to use fuel with a maximum sulfur content of 1% or to use some alternative compliance technology, such as exhaust gas scrubbing. Under the regulation, beginning in January 2015, the permissible sulfur content in marine fuel to be used in the ECA will be further reduced to 0.1%.

At the time that EPA proposed the establishment of the ECA, the agency estimated that compliance costs in 2020 would exceed $3 billion. Of the estimated $3 billion in annual costs estimated for 2020, $2 billion is associated with the costs of using lower sulfur distillate fuels

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and support for that standard, and the appropriate technology testing protocols for such technologies, the California State Lands Commission continues to propose impractical and unproductive regulatory variations to address the ballast water discharge issue. *See, e.g.,* Comments filed with the California State Lands Commission by WSC and other industry organizations earlier this month at: http://www.worldshipping.org/public-statements/regulatory comments/CSCL_from_Shipping_Industry_Re_Compliance_Program_Final.pdf

while in the ECA.[5] We do not know whether recent price increases in the fuel market have increased the estimated compliance costs.

The industry is currently coordinating with EPA and the Coast Guard with respect to planning for the August 1 implementation of these new requirements.

CO_2 Emissions

The development of new regulatory regimes to address NOx, SOx and PM vessel air emissions, which can have direct effects on human health, are relatively clear and established. The effort to negotiate a new regime to address carbon emissions from shipping and their contribution to global climate change is an on-going effort at the IMO. We are aware of this Committee's keen interest in the European Union's regional carbon emissions regime for international aviation and in the International Civil Aviation Organization (ICAO) deliberations, and would like to provide a brief review of how the IMO is trying to address this issue for international shipping.

In July of last year, the IMO adopted mandatory vessel efficiency design standards for newly-built tankers, bulkers, and container ships. The IMO estimates that the measures it has already agreed on will reduce annual CO_2 emissions by up to 200 million tons by 2020 and that, by 2030, CO_2 emissions are estimated to be reduced between 230 and 420 million tons annually. In other words, carbon emissions will be reduced in 2020 between 10 and 17%, and by 2030 between 19 and 26% compared with business as usual. The IMO is continuing these efforts and is expected to adopt mandatory energy efficiency design standards for other classes of newly-built vessels, such as cruise ships and Ro-Ro vessels, in the near future.

These achievements are significant; they improve the energy efficiency of the industry and reduce emissions. The IMO is also continuing its discussions about what kind of additional regime might be developed, including what kind of measures might be developed for application to the existing fleet. As could be expected, this is proving extremely difficult and contentious from both a technical and a political perspective, and a thorough review of all the issues involved is probably beyond the scope of this hearing. In a nutshell, various proposals have been made, including the following:

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[5] The other $1 billion results from engine hardware on new ships and the use of urea in after-treatment systems using Selective Catalytic Reduction Systems (SCR) to control NOx.

- Establishment of an *emissions trading regime* for shipping, although in the absence of an international emissions trading agreement applicable to the global economy, this concept seems like a remote possibility, and there are few advocates for it;
- Proposals intended to focus on improving the *energy efficiency* of the existing fleet, although there is strong sentiment that it is inappropriate to apply the energy efficiency design index to existing vessels, thus making such a concept difficult;
- An international *levy* or tax on marine fuel that would raise tens of billions of dollars of revenues each year to be dedicated to an international *fund*, which would expend such revenues on various kinds of proposed uses, such as climate mitigation projects or carbon "offset" projects in lesser developed countries; and
- Opposition from various governments arguing that whatever regime may be considered, it should not be applied to the ships and goods of developing nations or those identified as non-Annex I countries as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

Any proposal to create an international carbon emissions trading regime or an international levy/fund scheme would require the IMO to agree on a new treaty, and would require that treaty to be ratified by a sufficient number of countries to come into force. That seems like a remote possibility at this time for a variety of reasons.

Such a treaty would not be self-implementing, and thus, for U.S. ratification, would need not only the advice and consent of the Senate, but also the enactment of implementing legislation by this Committee and both Houses of Congress. We trust that the Administration will keep the Congress informed of the U.S. position with respect to these negotiations at the IMO.

When considering carbon emissions, it is important to note that the international shipping industry, which produces an estimated 2.7% of the world's CO_2 emissions, is already highly focused on further improving its energy efficiency, and has every economic reason to continue to do so, regardless of what the IMO may decide. For example, a typical, modest sized 5,000 TEU container ship may have fuel tanks with a capacity to hold 6,500 tons of fuel. At today's market price of around $710 per ton, that would equate to more than $4½ million worth of fuel for a "fill up". The liner shipping industry alone is probably spending roughly $50 billion a year on fuel for vessels serving U.S. import and export commerce,[6] and these costs will increase

[6] A 7,750 TEU container vessel used in the Trans-Pacific trade, with fuel consumption of 217 tons per day, on a single 28-day round trip voyage, with fuel cost of $710 dollars/ton, would produce a round trip fuel bill of $4,313,960. This example's scenario, if extended to a *single* weekly Trans-Pacific service using five such vessels, would create an annual fuel bill of more than $280 million for that single weekly

even further over time as the global economy and demand for fuel grows, and as additional fuel cost increases come from the required use of low sulfur fuel in Emission Control Areas.

There is no reason to think that the industry is not already highly focused on doing what it can to reduce these costs. Because the cost of fuel is already by far the largest cost for liner vessel operations, the industry has significantly improved its energy efficiency and reduced its carbon emissions through a variety of measures, without the need for or encouragement of additional levies, taxes or emission trading regimes. It will continue to do so.

For example, increased vessel size has dramatically improved efficiency. The most modern container ships built by Sea-Land when I worked for them in the 1990's (the 4400 TEU "Champion" class vessels) produce 65 grams of carbon dioxide per TEU/kilometer. Today the 15,500 TEU E-class ships of Maersk are 86% more efficient and produce 35 grams of CO_2 per TEU/kilometer when they transport the same cargo container.

Another example of the liner industry's energy efficiency improvement is "slow-steaming", where container vessels operate at substantially less than their design speed. This slows the transit time of the ship, but carriers report that when speed is reduced by 20 percent, fuel consumption can be reduced by 40 percent.

Proposals for additional "levies" or taxes on fuel or emission trading allowances on ships could indeed raise many billions of dollars of revenue from maritime commerce if enacted into law, but their effect would be to raise the cost of maritime commerce – ironically the most carbon efficient form of transportation – while being ineffective at improving vessel efficiency or reducing carbon emissions from the industry. As a result, we expect such proposals are likely to face the continuation of both political and practical obstacles at the IMO.

A potential path for the IMO to consider would seem to be to assess how to improve vessel efficiency, beyond what it has already decided to do, with measures that could be adopted under MARPOL Annex VI, rather than measures that would require a new treaty. How this could be done for the existing fleet, however, presents significant challenges. For example, the IMO's Marine Environment Protection Committee recently took a decision that the Energy Efficiency Design Index should not be applied to existing vessels. While this decision was not

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service. There are approximately 80 weekly Trans-Pacific services, which probably produce a collective fuel bill in excess $20 billion per year. In addition there are liner shipping services to Africa, Australia/New Zealand, Central America, Europe, the Middle East, South America and other locations, producing a total annual fuel bill for United States ocean-borne containerized cargo that probably exceeds $50 billion.

supported by the United States or the WSC, this decision clearly makes it more difficult for the IMO to focus on further improvements within the existing fleet.

The European Union has stated that, if the IMO does not make sufficient progress on an acceptable international carbon emission regime applicable to shipping by the end of this year, it intends to proceed with the development of a regional EU carbon regime that it would apply to maritime shipping operating within and to and from the EU. We understand that for a number of reasons, including the experience with the EU international aviation regime, the European Commission will want to avoid the application of a regional European regime to shipping, so we will have to wait and see how these developments proceed.

Maritime Safety: Misdeclared Container Weights

The issue of misdeclared container weights has been a safety concern for years. Although the shipper of the goods is, by the terms of the Safety of Life at Sea Convention, legally obligated to provide an accurate weight declaration, this is not always done, and most containers are not weighed to verify their declared weight. There is no available data that reliably indicates how many containers are overweight; however, the problem arises in almost every trade. In some geographic trade lanes, the problem is common. Shipping lines have reported that in severe cases, the overweight or incorrectly declared weights reach 10% of the total cargo on board a vessel. Some carriers report that it is not uncommon for actual total cargo weight aboard ship to be 3-7% greater than the declared weight. The problems resulting from overweight containers include the following:

- Incorrect vessel stowage decisions
- Collapsed container stacks
- Containers lost overboard (both the overweights and containers that were not overweight)
- Liability claims for accidents and fines for overweights on roads
- Chassis damage
- Stability and stress risks for ships
- Risk of personal injury or death to seafarers and shoreside workers
- Impairment of service schedule integrity and supply chain service delays for shippers of properly declared containers

In short, overweight containers can present a risk to industry workers, to ships, to equipment, to operational reliability, and to shippers of accurately declared shipments. Overweight containers can lead to higher operating costs, to road safety problems, to liability claims, and to higher administrative costs.

Industry Self-Help Efforts Have Not Solved the Problem: It is general practice for all ocean carriers to instruct their shipper customers on the appropriate and permissible stuffing of containers. In response to several container vessel safety incidents involving container stowage, the World Shipping Council and the International Chamber of Shipping jointly produced a document: *"Safe Transport of Containers By Sea: Guidelines on Best Practices"*. That document was published at the end of 2008 and presented to the IMO Maritime Safety Committee in December 2008. The Guidelines specifically addressed the issue of containerized cargo weight, noting in part that:

- Under the Safety of Life at Sea Convention, the shipper or party stuffing the container is legally responsible for ensuring that "the gross mass of the container is in accordance with the gross mass given on the shipping documents;" and
- As a recommended best practice, Marine Terminal Operators should: "Verify the container weight against documentation by use of a weighbridge or weight gauge/load indicator on yard equipment or, alternatively, verify that weighing has occurred before entry and that such weighing was compliant with accepted best practice." Most container ships do not have cranes that can weigh containers and thus by necessity must rely on container weight verification to be performed on-shore.

These guidelines and recommended best practices have had little discernible effect on reducing the incidences of shippers providing incorrect container weights, or on ensuring that marine terminals verify the weight of loaded containers upon receipt/prior to loading.

A Universal Container Weighing Requirement Prior to Vessel Lading: It has been our view that containers' declared weights should be required to be verified via weighing before being loaded onto a ship for export. Weighing a box after it has sailed and been unloaded at the import port does not protect the port workers handling the container or the ship or its crew, or provide an appropriate remedy for the problem.

WSC and other industry organizations have recommended that the IMO amend the Safety of Life at Sea Convention to establish a universal international regulatory requirement that export cargo containers must be weighed before vessel loading, and that the actual container weights be made available to the vessel operator and used for vessel stowage planning. The United States, via OSHA regulation, requires the weighing of every export loaded container

before vessel loading;[7] however, these OSHA regulations apply only to U.S. marine terminal operators' export operations and do not apply in foreign countries, and thus do not apply to U.S. import containers.

We are hopeful that our recommendation will be seriously considered at the IMO and that the U.S. Coast Guard will be a strong supporter of this initiative at the IMO.

Summary

Mr. Chairman and members of the subcommittee, the above topics represent those environmental and marine safety regulatory initiatives that are most active at the present time for the liner shipping industry. We would be pleased to provide the subcommittee with whatever further information may be of interest as it proceeds with its oversight of environmental and maritime safety matters.

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[7] U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) regulations require loaded cargo containers to be weighed to obtain actual gross weight before being loaded aboard a ship for export (Title 29, Code of Federal Regulations, Section 1917.71).

Testimony of James Gutowski
Chairman, Fisheries Survival Fund
before the
Subcommittee on the Coast Guard and Maritime Transportation
House of Representatives Committee on Transportation and Infrastructure

Regulation of the Maritime Industry:
Ensuring U.S. Job Growth While Protecting the Environment and Worker Safety

April 26, 2012

Chairman LoBiondo, Ranking Member Larsen, and members of the Subcommittee, thank you for this opportunity to testify today. I am James Gutowski, a scallop fishermen and vessel owner from Barnegat Light, New Jersey. I am also Chairman of the Board of the Fisheries Survival Fund ("FSF"). I am part owner the *F/V Kathy Ann* and others which fish out of Viking Village in Barnegat Light. I am also a member of the Garden State Seafood Association ("GSSA"). GSSA contributed to and shares in my remarks today.

I. Introduction

Today, I am testifying on behalf of the FSF. I am accompanied today by Kirk Larson, a fellow scalloper, participant in the FSF, and the mayor of my town, Barnegat Light. Founded in 1998, the FSF is a non-profit organization whose participants include over 200 full-time Limited Access Atlantic scallop fishing permit holders along the New England and Mid-Atlantic coast. Since its founding, FSF has advocated on behalf of its participants in the federal fisheries management process, before Congress, and, when necessary, in court.

We take a lot of pride in the significant role FSF has played in making the Atlantic scallop fishery sustainable and the most profitable fishery in the country. FSF has worked to improve scallop fishing gear, fishing practices, and the regulatory regime to provide reasonable protections for the environment and fishermen alike.

Through participating in and funding cooperative research, we have been able to enhance the information and techniques used to manage our fishery. We have made it a priority to minimize our impact on the marine habitat and reduce interactions with non-target species, including both finfish and sea turtles.

While I always appreciate the opportunity to speak about the scallop fishery, I am here for another reason today: the new fishing vessel safety regulations contained in the Coast Guard Authorization Act of 2010 ("Authorization Act") and the application of the EPA's Vessel General Permit ("VGP") to fishing vessels. Both of these regimes would impose significant additional requirements and restrictions on our operations. Our concern is that the pace of the new regulations out-strips both the Federal Government's and the fishing industry's ability to implement these ambitious programs. We are also concerned that the Environmental Protection Agency ("EPA"), which is designing the VGP program, lacks sufficient understanding of how fishing vessels operate to develop and implement a workable program. I recognize and greatly

appreciate that this Subcommittee shares many of the same concerns and has taken positive steps to address some of the issues raised here today via H.R. 2838, the Coast Guard and Maritime Transportation Act of 2011, which passed the House last November.

II. Coast Guard Fishing Vessel Requirements

First, I must commend and thank the Coast Guard for all they do to protect fishermen throughout this country, including those of us at Viking Village. With that being said, I do have some significant concerns with some of the new Coast Guard requirements for fishing vessels. As I will explain, I believe that I share many of these concerns with the Coast Guard itself.

The 2010 Coast Guard Authorization Act enacted wide-ranging changes to the requirements fishing vessels face. Among other things, the law heightened the standard for survival craft, required ongoing training for fishing vessel captains and crews, imposed certification requirements, mandated dockside vessel safety inspections, and required certain newly constructed vessels to be classed and have load-lines, while other vessels have to meet an alternative compliance program. The industry recognizes and appreciates the need for increased safety, but there are details with the implementation of these latter requirements which need refinement.

A. Mandatory Fishing Vessel Inspections

As an initial matter, FSF would like to express its appreciation to the Coast Guard and Maritime Transportation Subcommittee for its leadership in seeking to amend Section 604 of the Authorization Act. Specifically, H.R. 2838, the Coast Guard and Maritime Transportation Act of 2011, now awaiting action in the Senate, would extend the time for the United States Coast Guard to initiate its mandatory dockside fishing vessel safety examination program. The dockside inspection program currently is scheduled to come into effect by October 2012. H.R. 2838 postpones this mandate until October 2015 and requires inspections every five years, rather than every two years. We fully support these legislative adjustments, which would put the fishing vessel inspection program on the same implementation and five-year renewal schedules as other maritime sectors.

We at the FSF are concerned that if the Senate does not act, the new biennial dockside inspection requirement will overwhelm the Coast Guard's current ability to inspect vessels in a timely manner. The universe of vessels that will be subject to the mandatory inspection and certification program will range from 30,000 to 35,000. The Coast Guard currently inspects only some 8,000 vessels per year under the current voluntary inspection program. If not granted the proper amount of time to develop the program, the Coast Guard may not be able to certify all vessels, potentially forcing vessel owners to remain tied to the dock for an indeterminate period of time. Our captains and crew are not salaried, and need to go fishing to support their families.

The Coast Guard shares our concern about workable implementation of the Authorization Act's inspection timetable. Indeed, at this Subcommittee's May 24, 2011, hearing, "Creating U.S. Maritime Industry Jobs by Reducing Regulatory Burdens," U.S. Coast Guard Rear Admiral Kevin Cook testified to likely problems his agency will have implementing the dockside

examination program for fishing vessels. Representative Guinta specifically asked whether it would be appropriate for the Subcommittee to consider an extension, to which Admiral Cook replied, "if there was an additional time, [the Coast Guard would] be able to develop a more systematic program."

The FSF very much agrees with this position and appreciates this opportunity to supplement the record to support the House's position on this important matter. Unlike the towing industry referred to by Admiral Cook in his testimony last May, no single, overarching association represents the commercial fishing industry. As a result, the Coast Guard will need to work with many different fishing associations, fishery sectors, and even individual fishermen in many, often remote coastal regions to help facilitate this program. The Admiral is thus correct when he states that it will take time for the agency to develop a "systematic" approach for devising and, more importantly, implementing the inspection and certification program.

Given the looming deadline and need for additional time for planning to implement the ambitious mandatory dockside inspection program, the industry will work to educate the Senate Committee on Commerce, Science, and Transportation's Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee on the need for this change in existing law. Our hope is that if the Senate acts to pass a version of the Coast Guard and Maritime Transportation Act, the House continues to insist on this and other important provisions discussed below, and comes to speedy resolution of these important issues.

In conclusion, we share the Subcommittee's commitment to safety for this industry. Granting the Coast Guard the time it needs to implement this complex program and modifying the examination schedule will ensure that the Authorization Act's safety goals are met in a fair and practical manner.

B. Load-Line Requirement

The Authorization Act amended section 5102 of Title 46 to require that every fishing vessel of 79-feet or greater that is built after July 1, 2012, have a load-line assigned. The Authorization Act also requires any such fishing vessel built before July 1 of this year to enter an alternative compliance program if it undergoes a substantial change to its dimension or type. Under the terms of the Authorization Act, this alternative load-line compliance requirement does not become effective until such a program is "is developed in cooperation with the commercial fishing industry and prescribed by the Secretary."

While FSF acknowledges that several fishing vessel casualties have been linked to failures related to stability, this new rule poses a significant hardship to the fishing fleet. Load-lining a vessel is an extremely expensive regulatory requirement. Because this requirement for newly-built vessels was mandated in the Authorization Act, FSF understands that the Coast Guard is taking the position that it does not need to undertake any small business economic impacts analysis under the Regulatory Flexibility Act. In fact, to date, no regulations have been issued for either the load-line or alternative compliance program requirements.

Indeed, it appears the Coast Guard is simply following in the footsteps of Congress, which itself may have failed in its statutory duty to conduct economic impact analyses before it enacted the Authorization Act. The Unfunded Mandates Reform Act of 1995 ("UFMA") requires Congress to assess the direct costs imposed on the general public by a "federal private sector mandate," such as this and the vessel classification requirement which my testimony addresses next.

Such direct costs include the aggregate estimated amounts that the public sector will be required to spend to comply with the new statutory mandates. If these costs exceed $139 million ($100 million, adjusted for inflation), the UFMA also requires, among other things, that Congress prepare qualitative and quantitative assessments of the costs and benefits of the new private sector mandate, as well as to discuss steps taken by the committee of jurisdiction to avoid such adverse economic impacts.

The 2009 House committee report for the Authorization Act states: "The aggregate costs of the mandates in the bill on private-sector entities are uncertain because many of them would depend on regulations to be developed under the bill." The Congressional Budget Office thus could not determine if the mandates set forth in the Authorization Act exceeded the $139 million threshold or not.

Just looking at my one small sector of the overall U.S. fishing industry, I can testify that the costs to load-line or class a vessel are major. Requiring load-lines and classing a new scallop vessel, as explained below, add an extra million dollars to its construction cost. Nor is the alternative load-line compliance program likely to be inexpensive. The alternative compliance program will increase costs of retrofitting "older" vessels to make them safer and more efficient. Given the compliance costs for the scallop sector alone, it is clear the economic impact of these and other new Authorization Act requirements will easily exceed the $139 million threshold for the industry nationwide. This Subcommittee should take this opportunity to take a more clear-eyed look at the mandates the Authorization Act would impose on small business fishermen, particularly in this economy. Neither this issue, nor that of classing fishing vessels and discussed below, were addressed in H.R. 2838.

FSF also encourages the Committee to require the Coast Guard to conduct a cost-benefit analysis and small business impact analysis of this rule before it is fully implemented—and in sufficient time to make any legislative changes which these analyses suggest.

C. Classing of Vessels

Related to the load-line requirement, the Authorization Act amended section 4503 of Title 46 to require that new vessels larger than 50-feet must be designed, constructed, and maintained to the standards of a classification society. The law also now requires such a vessel to enter an alternative compliance program if it is either rebuilt or repurposed, or else is simply more than 25 years in age in 2020.

To build a new scallop vessel costs approximately $4 million. After consulting with the shipyards with which we do business, we have been informed that the new requirements will add

25 percent to the cost of building a new vessel, that is, $1 million per vessel. This significant increase in cost will cancel several orders for new vessels, with the attendant loss of shore-side work.

In addition to the as-yet unevaluated economic impacts on fishing industry participants, the law of unintended regulatory consequences should be studied—a point Office of Information and Regulatory Affairs head, Dr. Cass Sunstein, has often made. As U.S. fishermen, we are required by law to build our vessels in this country, and so we already have to pay a premium price to construct new vessels. As the Coast Guard has mentioned on several occasions in testimony before this Subcommittee and elsewhere, the Nation's fishing fleets are aging. In fact, the scallop fleet is one of the few fleets in the country that is currently able to recapitalize. For most fishing fleets, however, the profit margins are way too low for any fishermen to consider building a new vessel. This new requirement, while certainly a well-intentioned one, will likely have a detrimental impact on fishing vessel safety as it will forestall the introduction of new and safer vessels into the fishing fleet.

One solution to this problem is a simple repeal of the classification requirement. If the Subcommittee is not amenable to a repeal, then FSF proposes that Congress investigate alleviating some of the cost pressures on building a new fishing vessel in the United States. Safety is clearly the goal of everyone at this hearing, and we all know that a newer vessel is inherently safer than an aging vessel. Let's have a serious conversation about how we can encourage the replacement of older vessel with new, safe fishing vessels. Under the (relatively) recently-amended Magnuson-Stevens Fishery Conservation Act's new "annual catch limit" management regime, conservation benefits can no longer be achieved by requiring fishermen to have inefficient, older fishing vessels. Congress needs to change the playing field. If safety is the goal, it should support, rather than impede, the replacement of aging, potentially unsafe fishing vessels by lowering the costs of production.

III. EPA's Vessel General Permit

First, I must preface my comments on the VGP with a general observation. It is readily apparent from the way it has approached the regulation of fishing vessels that EPA does not have the internal capability to understand and effectively regulate the fishing industry. This fact is highlighted by the EPA's cursory and, I believe, inaccurate assessment of the economic impacts of the VGP on small business fishermen. We recognize that a court order under the Clean Water Act ("CWA") is forcing EPA is deal with this issue, but that not change the fact that any regulations it develops as a result must actually be workable within the heavily regulated and complex fishing industry.

Once again, this is an area where the Subcommittee, the full Transportation and Infrastructure Committee, and the House of Representatives have taken leadership. FSF strongly supports the changes made in Section 703 of the 2011 Coast Guard and Maritime Transportation Act, which exempt commercial fishing vessels from the need for a CWA incidental discharge permit. Instead, as you know, the EPA and Coast Guard will be required, should this provision become law, to consult on cost-effective "best management practices" to reduce the impacts of incidental vessel discharges on our nation's sensitive waterways. Section 703 also, sensibly in

our view, puts the Coast Guard in charge of promulgating any new requirements. As with the proposed changes to the dockside vessel inspection program, FSF and others in the industry will work with the Senate in seeing that these changes are implemented.

The need for changes such as those in H.R. 2838 are highlighted by the EPA's Notice of Proposed Rulemaking to implement the VGP requirement for fishing vessels, issued on December 8, 2011. EPA's proposed regulations are, in many respects, counter-productive. In far more than one instance, they would mandate unsafe practices or else require a vessel to violate a fisheries regulation to comply with VGP requirements. FSF is also extremely concerned about how the CWA is applied to fishing vessels that are mobile and frequently land in multiple states within a fishing year, making them subject to widely differing state requirements under the CWA. In this respect, FSF hopes that, if adopted, the Coast Guard and Maritime Transportation Act makes clear that neither states nor tribes are free to impose additional restrictions or requirements on highly mobile fishing vessels. The fishing industry is already one of the most highly regulated industries. Introducing direct EPA regulation into the mix will only exacerbate matters.

We are concerned in particular about the following VGP mandates, most of which could be addressed if Congress were to adopt H.R. 2838. At the very least, these issues demonstrate that the Coast Guard, not EPA, should take the lead in addressing new vessel requirements.

A. Eligibility

At the most fundamental level, the EPA's decision to use a 79-foot cutoff to differentiate VGP coverage among the fishing fleet[1] bears no relationship to the operation of our fishing fleets. This arbitrary dividing line would include some FSF participants within the VGP requirements, while excluding others. This random outcome causes the type of economic imbalances within the fleet that we have been working hard to avoid. Further, no owner in his right mind would replace an aging, maybe unsafe 75-foot fishing vessel for a newer, safer 85-foot vessel if that meant he would need to comply with the VGP requirements. Accordingly, if forced to proceed under the terms of EPA's proposed permit, we recommend that the terms of the sVGP be used for all fishing vessels to ensure consistent treatment in our industry. At the very least, a more sensible dividing line would be the same greater than 165-feet overall length used for setting conditions on eligibility for fisheries endorsements.

B. Electronic Reporting

The EPA is proposing a requirement that all reporting be done electronically and that temporary waivers may be granted if justifiable. FSF believes that requiring all commercial fishing vessels over 79-feet to submit electronic reports is not technologically feasible. Many fishing vessels have limited means to report electronically and the challenges of the marine environment make electronic reporting more difficult and costly. Both paper and electronic reporting must be an option, assuming these reporting requirements are adopted.

[1] That is, fishing vessels 79-feet and over are covered by the VGP, while those under are covered by a less stringent "small vessel general permit" ("sVGP"), with much less burdensome reporting and compliance mandates.

C. Effluent Limits and Related Requirements

EPA in its proposed rule would require the use of environmentally-acceptable lubricants ("EAL") in all machinery and equipment when discharges of oil to surrounding waters are likely to occur, *unless such use is technically infeasible.* We are concerned about the cost and performance of these products, and we recommend an exemption be provided for prohibitive costs, as well as technical infeasibility. In addition, engine manufacturers may specify other lubricants in their operating manuals, and a fishing vessel's failure to adhere to those specifications because of new EPA requirements could void engine warranties.

D. Cathodic Protection

The use of sacrificial anodes is necessary to protect expensive equipment from electrolysis when it comes into contact with seawater. Sacrificial anodes are made of materials with a different electro-chemical composition from the metal they are designed to protect, allowing seawater to corrode the anode instead of the protected structure. The EPA proposes that vessel operators use the least toxic metals (such as magnesium), and document their choices in their recordkeeping. Zinc is the only effective and readily available noble metal alternative, but the EPA does not clearly articulate whether cost savings and effectiveness are acceptable reasons to use zinc as opposed to magnesium or aluminum anodes. We recommend the EPA remove the draft permit language regarding anode changes and compliance or clarify that cost savings, availability, effectiveness, and technological feasibility all be considered acceptable justifications.

E. Graywater

The EPA has proposed that all vessels minimize graywater discharges in port. If a vessel cannot store graywater, its production must be minimized while in port. These requirements are not workable for the fishing industry. First, our vessels are not equipped to store graywater, meaning there is no alternative to discharging some amount while in port. It is important for the Subcommittee to understand that crewmembers may live on vessels for some period of time when the vessel is in port, thereby complicating a requirement to minimize graywater discharge and production. Water is essential to the operations of a fishing vessel while in port. This is yet another example of EPA's basic misunderstanding of how fishing vessels operate.

F. Seawater Cooling Overboard Discharge

The EPA requirement to discharge seawater cooling water overboard only when the vessel is underway is not technologically feasible. Nor does it reflect knowledge of the equipment commonly used on board commercial fishing vessels or the regulatory requirements applicable to fishing vessels. First, refrigeration condensers are in use at all times, circulating ambient seawater as needed to maintain efficient cooling. Effective refrigeration is critical to maintaining the product quality and safety of our fish products. Although the discharge is sometimes a little warmer than the ambient water, there is no way to capture this seawater discharge, and so it should not be a requirement to do so.

Nor will scallop vessels be able to comply with scallop fishery regulations under the EPA proposal. Even when a scallop vessel is in port, it still is required by regulation to operate a

satellite tracking unit called a vessel monitoring system, or "VMS," to enable NOAA Fisheries to monitor the vessel's location. To operate the VMS unit at the dock (which a scallop vessel must very often do), the vessel must run its generator, and there will be discharges of seawater cooling. Wet exhausts and cooling water discharges cannot be captured or stored. Therefore, to comply with one federal requirement, a scalloper would have to violate another.

G. Fish Hold Effluent

The EPA's prohibition on the discharge of fish hold effluent presents concerns for many fishermen in general, and scallop fishermen in particular. First, the proposed regulations would prevent the discharge overboard of any unused bait unless the bait had been caught "in that waterbody." For ocean waters, how is "waterbody" defined? The impacts of this are potentially enormous.

For instance, New Jersey fishermen harvest a wide range of bait species, including squid, Atlantic herring, Atlantic mackerel and Atlantic menhaden. To varying degrees, these fish are frozen and shipped all over the United States for use as bait and chum (macerated fish) . Is it the intent of the EPA to prohibit chum from New Jersey entering a "waterbody" in the Gulf of Mexico? The reliance upon New Jersey bait products is essential to commercial and recreational fisheries all over the United States, not to mention to the New Jersey coastal communities that produce that bait. FSF respectfully submits the EPA has set an inappropriate standard for commercial fishing in the ocean, and it should be deleted.

The proposed EPA regulation may have unanticipated consequences for the scallop fishery, as well. Federal regulations require scallopers to shuck scallops at sea, returning the shells and viscera to the water. The shucking at-sea requirement is a crucial conservation component of the fishery management plan, in that a scallop vessel's catching power is limited by how many scallops a seven man crew can shuck on a time-limited fishing trip. Health, economic, and safety/stability considerations also counsel strongly in favor of shucking scallops at sea, rather than deck-loading them, and then shucking and disposing of the related waste on-shore If a scallop vessel moves from one area to another while its crew is shucking, are there circumstances under which they might be considered to be changing water bodies?

H. Extended Unmanned Period (EUP) Inspections

The current EPA-proposed requirement of a 13-day minimum and 2-week inspection period is overly burdensome. The full-time Limited Access scallop fishery in which I participate is strictly limited in how often we may go to sea. In a typical year, a scallop vessel is only at sea for approximately 60 days. Requiring an inspection every two weeks is unreasonable in that circumstance. FSF recommends the following, alternative EUP schedule:

- A pre-Layup inspection for a 90-day minimum period;
- If the unmanned period is greater than or equal to 90 days, we recommend a monthly inspection requirement initiated on the 90th day; and
- A post-Layup inspection before returning to service.

I. Definitions

Certain definitions in EPA's VGP proposed rule fail to understand how fishing vessels operate, and should be modified, in the following ways:

- "Deck runoff" should be modified to cover only washdowns of a vessel. Precipitation and seawater falling on weather decks is unavoidable and the consequences of heavy rain or heavy seas are unpredictable. In the weather conditions prevalent in the Atlantic Ocean, some discharge as a result of rain or wave runoff is inevitable, and prevention is futile. Actually, prevention of runoff is dangerous, as free surface water makes vessels extremely unstable.
- "In port" should be modified to include only designated anchorages or while tied to a dock or mooring buoy. Commercial fishing vessels often seek shelter from weather and sea conditions in protected bays along the coast without tying up to a dock. Their decision to obtain safe haven should not preclude them from normal operations, including cooking, maintaining personal sanitation, and preserving the quality of their catch.
- "Oil" should be modified to specifically exclude fish slime or fish residues so that the stringent requirements surrounding fuel and engine oil and lubricants do not encompass natural residue from a vessel's catch. A similar change needs to be made to "oily mixture."

J. Availability of Individual Vessel Permit Information

EPA has not clarified whether the recordkeeping information submitted by permitted vessel owners or operators will be made available to the public. We believe the information submitted to the EPA by permitted individuals should be protected to the greatest extent possible. Pursuant to the Magnuson-Stevens Act, NOAA and NMFS go to great lengths to properly protect the fishing industry from revealing crucial trade secrets, and EPA needs to do the same.

IV. Conclusion

I very much appreciate this opportunity to share these concerns with the Subcommittee and for your attention to these very important issues. I also want to thank the Subcommittee for its proactive efforts to balance the need for safety, environmental protection, and an economically sustainable commercial fishing industry. This industry faces many challenges, from increased conservation requirements to the dangers inherent in the profession. I, FSF, and the fishing industry more broadly share your interest in minimizing these dangers to the greatest extent practicable, as well as preserving the marine environment on which our livelihood depends. No one has more at stake in these matters than working fishermen.

With that in mind, I sincerely hope you give serious considerations to the above comments and recommendations. These changes, many of which have been incorporated into the Coast Guard and Maritime Transportation Act of 2011, strike a reasonable balance among safety, the environment, and the need to make a living in these difficult times. Thank you very much for your time and attention.

Testimony of Jimmy Lafont
Callais and Sons
Before the Committee on Transportation and Infrastructure
Subcommittee on Coast Guard and Maritime Transportation
United States House of Representatives
April 26, 2012

Good morning Mr. Chairman and Members of the Subcommittee. My name is Jimmy Lafont, and I am appearing today on behalf of Callais and Sons, in Cut Off, Louisiana. I appreciate the opportunity to appear before the Subcommittee today to provide testimony on issues that I and others in my industry are facing with respect to delays in the processing of Merchant Mariner Credentials by the U.S. Coast Guard.

Callais and Sons own and operates 6 vessels. Our business is specifically operating pushboats, which provide transportation for barges carrying chemicals, agricultural products and other cargo on the Gulf of Mexico Intercoastal Waterway. Callais and Sons has approximately 44 employees, with 18 licensed captains, and more than 20 licensed anchormen.

Like many businesses in my industry and the related offshore supply and towing industry in the Gulf of Mexico, we are a famly owned business, serving as an important link in the intermodal supply chain that literally fuels and feeds this country. The ability to provide safe, efficient and timely service to our customers has a significant effect on the ability of our company to operate profitably and to meet the demands of this nation.

The maritime industry is a heavily regulated industry with respect to safety, security and environmental laws. The primary federal agency that we interact with is the U.S. Coast Guard. Moreover, our industry is superior at self regulation, through various industry groups and management practices put into place by individual companies. The Coast Guard is a fine agency, and I believe it understands our industry well, and has the safety and security of mariners as a primary mission. In turn, our industry and my company also have the safety of our employees as our top priority. Particularly with a small company like ours, which is an integral part of the community, we place a premium on our employees, and ensure that they are highly trained, capable of performing their duties properly, and are able to put forth their very best efforts to carry on the proud tradition of our company.

But as with any indstry, we face roadblocks in working with the federal government, and these roadblocks impact the ability of our company to operate. Specifically, we are facing serious delays in obtaining Coast Guard approval in the renewal of mariners' liscenses, the most problematic being the renewals required for our licensed captains. One significant hurdle we face is in the approval of medical certificates for our captains.

As the Committee is aware, in 2010, the International Maritime Organization adopted a change to the time period that IMO medical certificates are valid, reducing the time from 5 years to 2 years. In turn, the Coast Guard has proposed regulations that will implement the IMO change. Prior to this most recent IMO change, the Coast Guard issued a Navigation Circular providing guidelines for Medical and Physical Evaluations, for the use by private physicians in preparing medical evaluations, and for the Coast Guard's use in reviewing these evaluations. These guidlines require extremely detailed – and confusing – requirements for both the doctors

conducting the exams as well as the Coast Guard personnel reviewing the evaluations. The combination of these actions – the reduction in time that a medical certificate is valid which now requires more frequent medical evaluations, and the overly detailed and convoluted guidelines provided by the Coast Guard, has resulted in a significant backlog in Coast Guard approval of medical evaluations. In addition to this, even mariners not subject to the IMO requirements face delays at the Coast Guard because the demands on the Coast Guard's National Maritime Center is much greater.

I can site several recent instances where mariners in my company have gone through the normal renewal process, have been denied by the Coast Guard for medical reasons, requested reconsideration, were denied, and had to appeal to the Coast Guard Headquarters. While currently these men are now thankfully back at work, resolving their issues took more than 8 months, considerable amount of paperwork and the involvement of my Congressman. In one instance, the captain's credentials had been expired for 3 months before it was renewed, which meant this man was out of work and I was without one of my captains for this period of time.

The entire renewal process and appeals, when necessary, is lengthy and cumbersome to say the least. The renewal process often times involves several follow up letters and calls from the Coast Guard to the mariner and his doctor, on sometimes minor issues, or more often, as the result of the Coast Guard and the mariner's doctors not "speaking the same language." The appeals process requires a complete medical review in which a Coast Guard's medical doctor speaks to the mariners' doctor, may require additional medical information from the mariner, and reviews all information again. There is then a legal review, and a review by various Coast Guard experts involved. Finally, all appeals are reviewed by the Admiral in charge of the Directorate of Prevention Policy. The timeframe for the this appeals process can be as long as 9 months. And this is on top of several months for the initial application and review/denial process at Coast Guard lower levels. All the while, it is difficult for the mariner to know the status of the renewal.

All of these issues go back to the very detailed and confusing guidelines adopted by the Coast Guard, and different medical interpretations by the mariners' doctors and the Coast Guard's doctors – again, not "speaking the same language." At times the mariners' medical doctors are being forced to fit a square peg into a round hole, which no doctor is willing to do. The mariners and their employers like Callias and Sons are caught in the middle. This is particularly harmful to companies like mine, which does not have an unlimited supply of boat captains. We maintain 3 captains for every vessel we operate. If we loose any one of these captains, we cannot easily fill the space. Instead, the vessel goes out of service.

In conclusion, no company, particularly a small company like mine, wants to or can afford to employ mariners who are not quialified to perform his duties, whether those qualifications are training or medically related or otherwise. I will put the safety record of my company and this industry up against any other. But neither can we afford the time delays that we are increasingly facing at the federal agency primarily involved in regulating our business – the Coast Guard.

The assistance of Congress is badly needed -- whether that be in the form of legislation or additional oversight over the Coast Guard, to require the Coast Guard to act more quickly and with greater certainty in their approval process.

I thank the Committee for its time today. I would be happy to respond to any questions that you may have.

Statement

of the

International Organization of Masters, Mates & Pilots

and

Marine Engineers Beneficial Association

and

American Maritime Officers

before the

Subcommittee on Coast Guard and Maritime Transportation

of the

House of Representatives

Committee on Transportation and Infrastructure

on

Regulation of the Maritime Industry

April 26, 2012

Chairman LoBiondo and Ranking Member Larsen,

We welcome this opportunity to comment on the regulation of the maritime industry. The organizations I am speaking for today, the Masters, Mates & Pilots (MM&P), the American Maritime Officers (AMO), and the Marine Engineers Beneficial Association (MEBA) represent substantially all the navigating and engineering officers on American ships in international trade. We have a vital interest in the safety and security regulations that protect shipping, the public and the marine environment from the consequences of maritime accidents or terrorist acts as we are the first to bear the consequences or the blame when things go wrong. We fully support efficient and effective regulation and appreciate the role of the USCG and EPA in safety and environmental regulation.

We wish to bring to your attention today our concern with fatigue and manning levels in the maritime industry and the regulations that seek to address these issues which are the root cause of many accidents. Governments and industry, both nationally and internationally, acknowledge that fatigue is a widespread problem and the NTSB has placed regulations that address the causes of fatigue on its Most Wanted List and has labeled the USCG response to the fatigue problem as

unacceptable. In its defense, the USCG has cited the complexities of the marine transportation system as an impediment to effective regulation.

In order to understand the complexities of the problem there is a need to recognize the international nature of the maritime transportation system. It is the first industry to become globalized and permit competition in an unregulated and tax free environment through the Flag of Convenience (FOC) system where no genuine link exists between the nationality of the ship owner, the ship manager, the crewing agency, the officers and crew, and the country whose flag the ship flies that is responsible for its regulation. The FOC system allows shipowners to place their ships under the flags of FOC countries that permit the operation of ship registration services as a commercial venture for profit and use lack of regulation, taxation and labor laws as inducements to gain competitive advantage. It is fully recognized within the industry that this has resulted in driving standards downward and reducing shipboard manning levels below that needed to safely operate ships.

The dominance of the FOC system with its lack of effective national regulation has lead to an ever increasing shift to international regulation of shipping through the International Maritime Organization (IMO), a United Nations organization based in London. The IMO is now the de facto regulator of international shipping with national regulation, such as the USCG requirements, conforming to the IMO provisions. Even U.S. domestic regulation of shipping is now shaped or influenced to a large extent by the IMO international standards.

While the IMO plays an important role as a forum for discussion of safety and security issues and for reaching compromises, it unfortunately has a weakness as an effective regulatory body. As a governmental organization under the United Nations its membership includes the many FOC countries that play a major role in decision making as surrogates for the FOC ship owners to escape effective regulation. In addition, the European Union (EU) enforces block voting of its 27 members and that voting block is heavily influenced by the FOC shipowners in the major European ship owning countries. There are EU member states that support more effective regulation of shipping, but are barred by EU rules from speaking in support as individual countries. The result is that many regulations are the result of compromises to gain acceptance at very low minimum standards that jeopardize safety, or if reasonably high standards are accepted they are often stripped of any effective implementation or enforcement measures.

The lack of effective international regulation impacts U.S. interests in two ways. The vast majority of large ocean going ships in international trade in U.S. ports and waterways are FOC flagged operating under competition driven manning levels set by FOC administrations with minimum rest requirements under IMO provisions. And, the international IMO minimum rest hour provisions also become the de facto U.S. standards under USCG regulations.

There is widespread recognition within the international maritime community that fatigue and manning levels have been set below that needed to safely handle the workload of usual shipboard operations. This has led to a work program at IMO to review mandatory rest hour regulations and manning levels. The regulation of rest hours and regulation of manning levels are dual approaches to deal with fatigue and the related safety issues. Rest hour regulation is a bottom up approach and manning level regulation is a top down approach. They are complementary to each other and both should be effectively addressed by regulatory authorities. The IMO, in addition to the rest hour

regulations, also reviewed guidelines on the Principles of Minimum Safe Manning in an attempt to achieve a two pronged holistic solution to the fatigue problem.

Unfortunately, in order to gain acceptance by the FOC interests at IMO, the international mandatory rest hour provisions adopted[1] still permit a 91 hour work week as a normal standard. It is anticipated this will be implemented by the USCG as the regulatory standard for U.S. ships in both international and domestic services. The rest hour provisions clearly do not adequately address the shipboard fatigue problem and should not be accepted as a goal or target under normal conditions. It should be borne in mind that typical shipboard assignments are for three or four months of continuous duty with minimum sleep under regulations that require only a minimum six hour rest period and four hour rest period of time free from work per day, and even this requirement can be waived for up to two weeks. The regulations are the result of compromises needed to gain acceptance by FOC interests rather than an analysis by human factors professionals on the effects of work/rest periods on cognitive ability and safety. It is anticipated that, following past practice, the USCG will adopt the compromised minimum international standards as our national standards although there is no reason not to adopt higher U.S. standards other than rule making convenience.

Fortunately, the IMO's top down approach to define a methodology for determining safe manning levels may prove more hopeful. Guidelines on the Principles of Minimum Safe Manning[2] were recently adopted by the IMO in November of 2011 and they contain comprehensive guidance that should be used in determining safe manning levels that take into account many of the operational requirements that affect shipboard workload. The guidelines contain a framework for assessment of workload and available crew complement to meet that workload. A recently approved amendment to the SOLAS Convention[3] requires national administrations (USCG) to take the Principles of Minimum Safe Manning into account in a transparent procedure when establishing manning levels. Present U.S. manning levels have not been set using the new IMO guidelines and there is a need to begin a review and assessment of current manning levels.

The new requirement that manning levels be established following a transparent procedure should be interpreted as requiring all ships, U.S. and foreign, in international trade calling at U.S. ports to carry onboard a copy of the methodology used and steps taken under the framework for determining manning levels in Annex 5 of the Principles of Minimum Safe Manning. This should include factors considered and determinations made on operational functions, operational factors, task capability, and workload assessments that form the basis for an administration's evaluation and issuance of a minimum safe manning document. Transparency is essential if the crew and Port State Control (PSC) are to assure the ship is actually being operated under conditions that formed the basis of their administrations evaluation. Transparency is also essential if U.S. and foreign ships in

[1] Manila Amendments to STCW Code, Section A- VIII/1, *Fitness for duty*

[2] IMO Assembly resolution, A 27/Res. 1047, adopted on 30 November, 2011

[3] Amendment to SOLAS Convention, CHAPTER V/Regulation 14 – Ships' manning

"2 For every ship to which chapter I applies, the Administration shall:

.1 establish appropriate minimum safe manning following a transparent procedure, taking into account the relevant guidance adopted by the Organization*....."

* Refer to the Principles of minimum safe manning, adopted by the Organization by resolution [A 27/Res. 1047].

U.S. ports are regulated on a level playing field with equal compliance with regulations that protect U.S. environmental interests.

While it is recognized that fatigue mitigation is an issue across the entire ship's complement, it is of greater concern when fatigue impairs the ability of the senior officers responsible for critical decision making affecting safety. International and national regulation of work/rest periods have set the same standards across the entire ship's complement from the lowest rating to the master without regard to the criticality of the position held. Although all members of the crew complement serve important safety functions in times of emergency, there is a vast difference in the potential consequences of fatigue induced cognitive impairment between that of a support level crew member and a master's impaired decision making that may produce an *Exxon Valdez*. Today's container ships and tankers are some of the largest most complex ships in the world exceeding in length and tonnage our largest aircraft carriers. Their size alone represents a significant threat to the environment in the event of an accident. A risk based assessment of potential consequences based on ship size and type, and the critical role of particular crew members in decision making affecting safety, should be a factor in setting the composition of the manning levels as well as work/rest periods.

It is generally recognized within the maritime community that past reductions in manning have shifted an excessive workload on to the master. The elimination of the staff officers, the radio operator and purser, as well as the elimination of the non-watch standing chief mate has resulted in their administrative duties being shifted to the master. The elimination of the junior third watch standing mate has removed the chief mate from a non-watch standing full time administrative and operational role to standing a navigational watch eight hours a day in addition to his many other duties. Compounding the problem, the ever increasing tasks required for remaining in regulatory compliance and its documentation falls principally on the master. It may seem counter intuitive, but the burden of ensuring and documenting regulatory compliance has become a safety issue in that it diverts substantial amounts of time away from the traditional shipboard tasks that are the basis of good seamanship and ship safety. While the burden of meeting the regulatory tasks continues to increase, so does the potential for civil and criminal liability. Ship's masters and other ships officers often face prison terms and are, in fact, imprisoned around the world for regulatory non-compliance and industrial accidents. The criminalization of simple professional errors, often the result of fatigue or excessive workload, is without justification when there is no oversight regarding the sufficiency of the personnel available to carry out shipboard responsibilities.

The obvious solution is the return of the chief mate to a non-watch standing position so time would be available to divide the necessary administrative, operational and regulatory compliance tasks between the master and chief mate. It could be argued that this is a manning issue that might be resolved through the collective bargaining process. But, in today's competitive environment within the shipping industry, management and labor that agreed to an increase in manning that was not followed by their competitors would be at an economic disadvantage. Reduced manning levels have been equated by some in the industry with efficiency and profitability. However, when the drive for efficiency and economic advantage jeopardize safety there is a need for regulatory intervention.

We are requesting that consideration be given by Congress to mandating a study to review the specific issue of manning levels and their relationship to workload, fatigue and safety on

management level officers and watch standing officers on U.S. flag ships. To assure objectivity we suggest that the study be conducted by independent human factors professionals experienced in workplace fatigue and take into account the guidelines and the framework for assessment and evaluation of workload in the IMO "Principles of Minimum Safe Manning" and the results of the extensive scientific studies available on the effects of fatigue on performance. The goal should not be meeting the minimum rest hours in a 91 hour work week, but scientifically based recommendations to the USCG on how to evaluate appropriate manning levels to avoid excessive fatigue effecting performance and safety.

In the past the USCG has side stepped the manning level issue and sought to address shipboard fatigue with guidance on Crew Endurance Management (CEM) that has been largely unsuccessful on merchant ships as the problem is not one of time management, but one of a lack of human resources. The CEM approach simply shifts the blame for unavoidable fatigue created accidents on to the management level officers rather than recognizing inadequate manning as the cause.

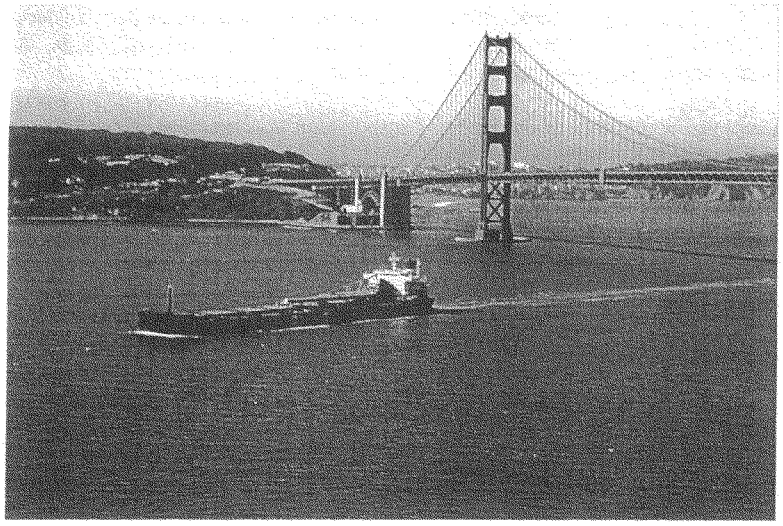
The issue of fatigue and degradation of performance leading to accidents should be treated with a similar approach and gravitas as those pertaining to oil pollution as in many cases fatigue is the root cause. Our organizations and its members extend our full cooperation and support in carrying out any study as responsible partners in furthering maritime safety.

Timothy A. Brown	Thomas J. Bethel	Michael Jewell
President	President	President
MM&P	AMO	MEBA

CSL International Testimony before the Subcommittee on the Coast Guard and Maritime Transportation

House of Representatives Committee on Transportation & Infrastructure

Revisiting the North American Emission Control Area for Coasting Vessels less than 20,000 Horsepower



April 26, 2012

Paul Cozza, President, CSL International

Testimony of Paul Cozza
President, CSL International

before the

Subcommittee on the Coast Guard and Maritime Transportation
House of Representatives Committee on Transportation and Infrastructure

Regulation of the Maritime Industry:
North American Emission Control Area Challenges to Short Sea Shipping

April 26, 2012

I. Introduction

Good morning Chairman LoBiondo, Ranking Member Larsen, and distinguished members of the Subcommittee. Thank you for inviting me to testify. I am Paul Cozza, President of CSL International. We are a U.S.-based shipping company, concentrating in Self Unloading Bulk ships on international Short Sea routes. We are headquartered in Massachusetts, and are a subsidiary of Canada Steamship Lines based in Montreal.

CSL International specializes in the marine transportation and handling of dry-bulk. We also have offices in the U.K., Norway, Singapore, Australia, Indonesia, and Canada. We own and operate the largest fleet of self-unloading vessels in the world, serving clients in industries ranging from building and construction to agriculture. Self-unloading vessels serve a special sector of the dry-bulk shipping industry, with their self-contained and automated equipment offering high levels of speed, efficiency and environmental advantages.

I appreciate the opportunity to appear before you today to make two main points:

First, I will demonstrate the economic contribution and environmental value of the Short Sea Shipping industry. In summary, Short Sea Shipping is the coastal movement of cargo on the water that does not cross an ocean and could also in some instances be served by rail or truck transportation. We are able to transport cargo more efficiently and with far lower environmental impacts than trucks or trains. For instance, while a truck can carry one ton of cargo approximately 155 miles on a gallon of diesel fuel, and a train can transport that same cargo 413 miles, an average CSL vessel can outperform both, moving the cargo an impressive 1100 miles on that same gallon of fuel. Nevertheless, CSL is presently engaged in a major effort to recapitalize our fleet to make it even "greener."

Second, I would like to bring to the Subcommittee's attention the impact the North American Emission Control Area ("ECA") will have on our industry and offer a solution that achieves equivalent environmental goals without sacrificing the environmental benefits that Short Sea Shipping provides. Implemented under Annex VI of the International Convention to Prevent Pollution from Ships ("MARPOL"), the ECA establishes sea-going vessel air quality standards for a 200-mile area around the coastline of the U.S. and Canada and sets limits on the sulfur content of fuel used within the ECA. The ECA standards are far more strict than will be imposed anywhere else in the world, both in terms of the distance the ECA extends from shore and the level of permitted fuel sulfur content. We are concerned the 200-mile ECA is too

stringent for some vessels and may not provide any appreciable environmental benefit beyond 50 miles for lower horsepower ships, such as CSL's and those of other Short Sea Shipping companies.

More specifically, by August 1, 2012, sea-going vessels operating in the ECA must use fuel with no more than a 1% sulfur content. We at CSL are prepared to meet and support that standard despite the resulting, not insignificant, increase in operating costs. The 2012 fuel price impacts, for CSL as an example, while sustainable, will still be measured in millions of dollars.

By August 1, 2015, in accordance with the aforementioned Annex VI agreement, vessels operating within the ECA will be required to use an ultra-low 0.1% sulfur fuel which is a marine diesel. Significantly, prices for this ultra-low sulfur fuel—to the extent the fuel is available—will raise our cargo rates and challenge our business and more importantly the customers we serve. Marine diesel fuel has different flash point specifications than road diesel which means we can't simply adjust to a "generic" low sulfur diesel fuel. Because we trade in near-shore routes, typically not beyond 100 miles from the coast, our vessels must use the reduced sulfur fuel nearly all the time, as opposed to trans-ocean-going vessels which only need this fuel when transiting the ECA on the way into and out of port, which in many cases only represents less than 10% of a voyage. Outside the ECA, ships may use up to 3.5% sulfur fuel.

Although well-intended, flaws in current ECA regulations will jeopardize the Short Sea Shipping sector. Indeed, based on supply issues, we are concerned that compliant North American marine fuel prices could nearly double in 2015. The anticipated increase in 2015 fuel costs using the ultra-low sulfur fuel will hamper marine competition and could cause a modal shift from energy efficient short sea ships to higher emitting shore-based rail and truck modes, with the unintended consequence of creating more congestion (in systems that, in many cases, are already stretched to their breaking points) as well as increased air pollution closer to population centers.

CSL, working in concert with our customers, also forecasts that the resulting higher transportation costs in 2015 will negatively affect their businesses. Approximately two-thirds of the cargo that we ship is in support of the construction industry in the U.S.; therefore, this regulation mandated cost increase has strong potential to negatively impact both commercial and residential economic development in the U.S.

CSL fully recognizes and supports the value of reducing its carbon footprint as well as emissions of other pollutants associated with marine transport. To better understand the self-unloading vessel's impact on air quality, we commissioned a study to analyze our ships' emissions using the emissions modeling approach (the "CALPUFF" model) that the U.S. Environmental Protection Agency ("EPA") itself used in the ECA development process. The study indicated that air quality impacts from lower horsepower ships diminished as the ships moved further away from the coast – with a sharp drop in impact at about 39 miles offshore.

Given these facts and objectives, CSL International believes efforts should be made to align the environmental goals of the ECA with the U.S. Maritime Administration's ("MarAd") 2010 Marine Highway Program. This program seeks to "use the waterways to relieve landside congestion and attain other benefits that waterborne transportation can offer in the form of reduced greenhouse gas emissions and energy savings."

As MarAd further explained, "From an environmental perspective... short sea shipping can offer air quality improvement, reduce traffic and mitigate noise pollution."[1]

Accordingly, we urge policy makers, namely Congress and the EPA in consultation with the U.S. Coast Guard and MarAd, to revisit the ECA boundary and reduce the 200 nautical mile ECA to 50 miles for 0.1% sulfur fuels (in 2015) for lower emitting ships of 20,000 horsepower and below. This revision will move away from the current "one size fits all" regulation and align with scientifically based approach which achieves the same environmental protection goals.

In summary, CSL supports and endorses environmental initiatives in marine transportation. For over 150 years, the CSL Group has pioneered technology that makes seaborne dry-bulk transportation more environmentally efficient. We are investing millions of dollars in a fleet renewal program that will significantly reduce our environmental footprint. We also firmly believe that the aforementioned ECA regulations, as presently prescribed, need to be modified as outlined. Through scientific testing, our proposal does not have a negative environmental impact on the coast and will not contribute to a modal-shift impacts or negative economic impacts to the building and construction industry.

If you would like further information, I have left our full report and additional details in a longer written testimony. Thank you very much for this opportunity. I will be pleased to answer any questions that you have.

II. CSL International

CSL International has been permanently established in Beverly, Massachusetts since 1992. CSL International owns, co-owns, or manages through a pool agreement, 41 ships, most of which operate in North America. In addition to managing the extensive North American fleet, CSL International also oversees its international operations with offices in the United Kingdom, Norway, Singapore, Indonesia, Australia and Canada. Through Short Sea Shipping routes, CSL serves major North American industrial customers such as U.S. Gypsum, National Gypsum, GP Gypsum, Martin Marietta, Vulica, Polaris Materials, and RG Steel, to name a few.

Recognizing the environmental benefit, CSL has also already started using fuels with lower sulfur well ahead of international requirements. Last year, CSL's fleet averaged fuel sulfur levels under 2.2% when the world standard was 4.5%. We are still ahead of the curve even with a recent global fuel sulfur reduction to 3.5% which started in January of 2012.

Moreover, to improve our efficiency and further reduce our environmental footprint, we are currently recapitalizing our fleet with nine new state-of-the-art "Trillium"-classed ships. They will be equipped with the latest environmental protection technology and the lowest available emission engines. Our first new vessel will start trading on the East Coast this Fall. It will be among the cleanest-operating vessels on the market. The massive new building project is relatively unprecedented, especially in our current economy, but we think the time is right to enhance the efficiency and sustainability of our fleet.

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[1] Making Connections: Short Sea Shipping in Canada; Transport Canada, 2006 page 1

III. Short Sea Shipping's Environmental and Economic Value

CSL also founded the Short Sea Shipping Coalition in 2011 to promote the environmental benefits of short sea trade. The informal coalition is comprised of industry leaders who depend on Short Sea Shipping, as well as short sea providers and non-government agencies. The coalition promotes tough, performance-based air emission standards for smaller and efficient vessels in the short sea trade. Current partners in the Short Sea Shipping Coalition include:

- CSL International
- Martin Marietta
- Polaris
- Vulica
- U.S. Gypsum
- Desgagnsé Transport

A. Short Sea Shipping's Environmental Value

Sometimes referred to in the U.S. as the "marine highway," Short Sea Shipping is the movement of people and cargo on water routes that do not cross an ocean that, in some instances, could also be served by truck or rail. Due to its coastal nature, North American Short Sea Shipping is commonly comprised of vessels Panamax size and smaller (can transit the Panama Canal (approximately 60-80,000 deadweight tons and 800+ feet in length)), typically not exceeding 20,000 propulsion horsepower. Short Sea Shipping is an important component of the global strategy to improve air quality by reducing land based congestion and subsequent air pollution from less efficient truck and rail carriers.

Policymakers have undervalued the inherent environmental value in transporting people and cargo via ship in the creation of the North American ECA. Marine transport offers three main environmental benefits: (1) increased energy efficiency, (2) decreased carbon and sulfur dioxide emissions, and (3) reduced congestion, especially in urban areas.

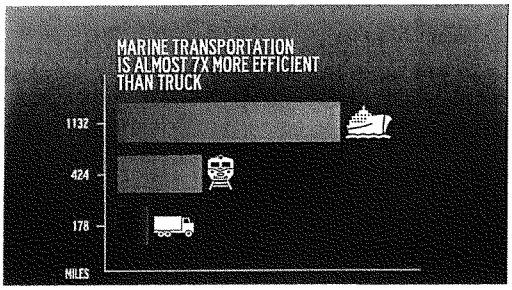
B. Modal Comparison

Regarding energy efficiency, according to Maritime Administration's 2011 Report to Congress:

- "Trucks, on average, can carry one ton of freight for approximately 155 miles on a gallon of diesel fuel (i.e., 155 ton-miles of freight per gallon - equivalent to 842 British Thermal Units (BTU) per ton-mile);
- Rail achieves 413 ton-miles of freight per gallon (i.e., 316 BTU per ton-mile); and
- A tug-and-barge operation can get as much as 576 ton-miles of freight to a gallon of fuel (227 BTU per ton-mile)."

Additionally, self-propelled oceangoing vessels, such as short sea ships, can have significant energy efficiencies over land-based modes beyond those achieved by tug and barge. Specifically, **our vessels achieve rates in excess of 1,100 ton-miles of freight per gallon .** This mode of transport is thus seven times more efficient than truck and two-and-a-half times more efficient than the rail industry.

While the aforementioned was offered in the Maritime Administration's 2011 Report to Congress, the below image represents a separate analysis by CSL which shows the same trends.



CSL Vessel Ton-miles per Gallon

Further, as "the most energy-efficient means of moving cargo between two points," marine transport "offers corresponding reductions per ton-mile in greenhouse gas (GHG) emissions." In fact, examining the range of typical CO_2 efficiencies for various loaded cargo carriers; bulk ships produce an average of 2.7 grams of CO_2 per ton-mile while trains range from 10-119 grams per ton-mile. Trucks, by comparison, are the most inefficient of the transportation options ranging from 80-181 grams of CO_2 per ton-mile (data excerpted).[2] Overall, "international shipping is currently estimated to have emitted 870 million tons of CO_2 in 2007, no more than about 2.7% of the global total of that year."

According to the Maritime Administration's report to Congress delivered in April 2011, water transportation "is available to bring significant freight congestion relief along certain corridors. A study for U.S. Department of Transportation estimated that there were a total of approximately 78.2 million trailer loads of highway and rail intermodal cargo that moved between origins and destinations 500 miles apart along the United States contiguous coasts in 2003. This long-haul coastal truck and intermodal traffic accounted for 15 percent of total 527 million trailer loads of United States intercity truck and intermodal rail traffic in 2003."

C. Short Sea Shipping's Economic Value

In addition to its environmental benefits, the short sea shipping industry is also an important contributor to the North American economy. Based on an October 18, 2011 study titled: "The Economics of the Great Lakes - St. Lawrence Seaway System."

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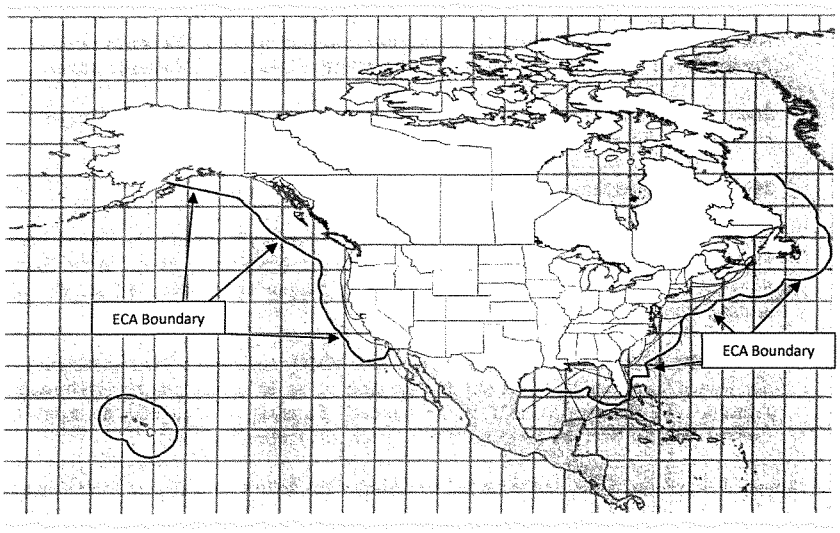
2 MEPC 59/INF.10 ANNEX; April, 2009

Short Sea Shipping on the Great Lakes alone annually contributes –

- $33.6 billion in economic activity;
- 227,000 United States and Canadian jobs; and
- $4.6 billion in United States and Canadian tax revenue

Additionally, Short Sea Shipping services many important domestic trade routes, moving a wide range of dry bulk cargo efficiently and affordably. Some of these trade routes are set forth below:



Typical North American Short Sea Routes

IV. Regulatory Background MARPOL Annex VI and the ECA

MARPOL Annex VI seeks to minimize airborne emissions from ships including Sulfur Oxides (SOx), Nitrogen Oxides (NOx), Ozone Depleting Substances, Particulate Matter (PM), and Volatile Organic Compounds.

Annex VI has been implemented along the following timeline:

1997: Annex VI (Regulations for the Prevention of Air Pollution from Ships) was added to the MARPOL Convention.

2005: The requirements of Annex VI internationally entered into force on May 19. Among the various technical and operational emission reducing measures outlined in Annex VI is the option for member states to establish ECAs in their domestic waters.

2005: Canada domestically ratified Annex VI allowing domestic enforcement and the eligibility to apply for any ECA.

2008: The United States ratified Annex VI.

2009: Annex VI entered into force domestically on January 8, making the United States eligible to domestically enforce the Annex and also to apply for an ECA. In the United States, Annex VI is applied via the Act to Prevent Pollution from Ships, 33 USC. §§ 1901 *et seq.* ("APPS").

2010: The International Maritime Organization (IMO) approved a joint application by the United States and Canada for the creation of an ECA via Marine Environment Protection Committee (MEPC) 59/6/5 entitled "Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulfur Oxides, and Particulate Matter."

As explained above, the North American ECA is designed to reduce air pollution from shipping beyond the scope required for most portions of the globe. Strict 1% sulfur in fuel requirements will take effect in the new 200 nautical mile North American ECA on August 1, 2012. Starting in 2015, however, the ECA fuel sulfur limit is mandated to be not more than 0.1 percent. By comparison, a world-wide fuel sulfur limit of 0.5% takes effect in the year 2020.

In comparison, the U.S. adopted an ECA for the Caribbean Sea area around Puerto Rico in July 2011 with a geographical area of approximately 40 x 50 nautical miles. The U.S. used very similar environmental and health statistics to justify the 50 nautical mile ECA for this region as it did when justifying the 200 nautical mile North American ECA on both coasts of the United States and Canada.

V. Independent Study

In an effort to best understand the ECA-related air quality issues, the Short Sea Shipping Coalition commissioned Drs. Ranajit Sahu and H. Andrew Gray to formally study low horsepower ships as a demographic of the larger maritime community for which the ECA was designed. (Dr. Sahu's and Dr. Gray's curriculum vitae are included in Exhibit A of the Report, and a copy has been formally submitted to the Subcommittee for the record.) The resulting report, entitled *Modeling the Air Quality Impacts of Short Sea Shipping Emissions and the Implication for the North American Emission Control Area (ECA)*, analyzes short sea ship emissions using the same CALPUFF and meteorological modeling the EPA used to justify the current 200 nautical mile ECA. Additionally, 12 ships were selected to represent the "typical" short sea shipping vessel (from a propulsion horsepower perspective and therefore emissions basis). The study analyzes the impact of "worst case" short sea shipping vessels' emissions data on shore air quality.

The study indicates that the smaller ships (with corresponding lower horsepower propulsion systems) used in short sea trades, have virtually no environmental impact on the East or West Coasts of North America beyond 50 miles. More specifically, the results indicate that ships fitted with propulsion systems of 20,000 horse power (14,913 kW) or less had no (or negligible) air quality impact on the coasts even when using fuel with a sulfur content of 2.6% (*i.e.*, with concentrations that the fuel CSL International currently uses) at 50 miles and beyond.

In addition to the greenhouse gas emissions discussed above, our sponsored study focused on sulfur dioxide (SO_2), the major pollutant whose emissions will be affected by the fuel sulfur requirements in the ECA.

A. The SO_2 Standard

As background, the U.S. EPA has promulgated various National Ambient Air Quality Standards (NAAQS)[3] and thereby defined acceptable levels of major air pollutants, including for SO_2 in the ambient air to which the public has general access. The purpose of the NAAQS is to protect the public health, including the health of "sensitive" populations such as asthmatics, children, and the elderly. The SO_2 NAAQS were recently (June 2010) modified to add a 1-hour average standard of 75 parts per billion (ppb). This corresponds to a concentration of 196 micrograms per cubic meter. It is currently the most stringent SO_2 standard in the U.S.

B. Analysis

Our analysis conservatively predicts that SO_2 concentrations are well below the numerical value of the 1-hour SO_2 NAAQS even when ships are at port. Moreover, this prediction is based on applying a fuel sulfur level of 2.6%, which, as stated above, is expected to drop to 1% fuel sulfur level in August 2012. The study also indicates that SO_2 concentrations along the coasts drop off dramatically as the distance from the ship to shore increases. Thus, based on the modeling analysis, the outward extent of the ECA could be much smaller (on the order of 50 miles or smaller), while still not adversely impacting coastal air quality.

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[3] See http://www.epa.gov/air/criteria.html

1. Eastern Domain

The largest ship (in terms of rating) used in the study for the eastern domain has an engine size of approximately 12000 kW. For a 12000 kW engine, the maximum hourly SO_2 emissions using 2.6% sulfur in fuel is 9.91 * 12000/1000 = 120.6 kg/hr. The SO_2 emission rate using 1% sulfur in fuel is 3.81 * 12000/1000 = 46.4 kg/hr.

The calculated SO_2 rates above are also conservative in that the engine load is typically 75% of its maximum power during a voyage (as opposed to 100% assumed in the study), and which is even lower as the ship approaches port. While in port, engine power may be a small fraction (20% to 40%) of its maximum power. Thus, the actual SO_2 emission rates would be 20% to 75% of the rates calculated in the study or in the range of 24 kg/hr - 95 kg/hr for a 12000 kW ship with 2.6% sulfur in fuel and in the range of 9 kg/hr - 35 kg/hr for this same 12000 kW ship with 1% sulfur in fuel.

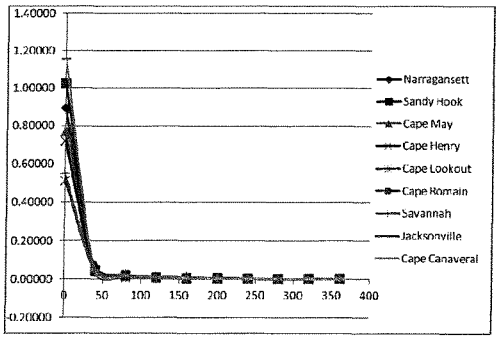
2. Western Domain

Similarly, the largest ship studied in the western domain is rated around 11500 kW. Using the same types of calculations above, the range of SO_2 emissions from a ship of this size will be 23 kg/hr - 91 kg/hr (maximum of 114 kg/hr) with 2.6 % sulfur in fuel and in the range of 8.6 kg/hr - 34 kg/hr (maximum of 44 kg/hr) with 1% sulfur in fuel.

3. Results

Using the highest expected SO_2 emission rate discussed above of 120.6 kg/hr (for the **largest** ship, at **maximum power**, emitting at exactly the meteorological conditions that would provide the **highest impact**, and assuming a fuel sulfur content of **2.6%**), the highest modeled port 1-hour SO_2 concentration would be 1.156*120.6 = 139.4 micrograms/cubic meter**: far lower than even the numerical value of the EPA SO_2 NAAQS of 196.**

The results demonstrate how insignificant the impact of these short-sea ships is on coastal air quality.



East Coast Offshore SO_2 Dispersion

VI. Creating a "Win-Win"

The anticipated significant fuel cost increase in 2015 may trigger a modal shift, causing an unintended increase in land-based congestion and emissions that far exceed current short sea emissions.

This can be avoided by reducing the 2015 ECA to 50 miles for 0.1% sulfur fuels in 2015 for smaller ships.

A reduction in the ECA boundary for the 0.1% sulfur fuels in 2015 will deliver the same environmental benefits suggested while supporting an industry which is already a greener alternative. The flexibility in fuel options will assure economic sustainability to those companies already under strain from the recent recession.

A. Maximize the Marine Highway Program

The North American ECA, as currently defined, stands as an obstacle to realizing the environmental and economic potential of the Marine Highway Program. Again, referencing MarAd's 2011 Report to Congress, "Between 1980-2003 the tons per mile moved by inter-city truck increased by 128%. Also during this period, vehicle miles in the United States have increased by 50% creating more road congestion and noise than ever before."

Considering an average long haul truck can carry 26 tons of cargo and a Handy Size (approximately less than 60,000 dead weight tons with a length of 550-650 feet) short sea vessel can carry a pay load of over 50,000 tons, the short sea trade removes 1,923 trucks from American and Canadian roads, easing congestion and the emissions they produce. Similarly, the same ship would remove 819 rail cars, assuming a capacity of about 61 tons per rail car.

Enhanced Short Sea Shipping has the potential to keep additional low efficiency trucks from the road; lessen higher emitting rail volume; and improve social benefits including reduced road congestion and noise – all while maintaining the improved marine air quality standards called for in Annex VI. Unfortunately, this potential will not be realized if the industry is forced to comply with the ECA as it currently exists.

B. Precedents for Effective Alternatives

There have been several other examples of recent practical solutions entertained by the EPA, Transport Canada and Environment Canada in achieving mutual clean air goals.

1. Steamship Exemption

Following the adoption of Annex VI and the creation of the ECA, the United States recognized, the unique challenges faced by older steamships. The older vessels' obsolete technology proved to be incompatible with using ultra low sulfur marine distillate fuels. Thus, the United States formally exempted the entire demographic of steamships from the ECA requirements until 2020.

The United States' submission[4] to the IMO was adopted at the 62nd session of the Marine Environmental Protection Committee in July of 2011.

2. Great Lakes Steamship Repower Incentive Program

Again, as the environmental and economic realities of the North American ECA continued to be assessed, the EPA recognized the environmental advantages of waiving the lower sulfur fuel requirements for Great Lakes steam ships [that were] repowered with more efficient modern diesel propulsion. In January of 2012, the EPA amended Title 40 Code of Federal Regulations Part 1043 to incentivize Great Lakes steamship owners "to repower those steamships with cleaner marine diesel engines. The simplified program will automatically permit the use of residual fuel, through December 31, 2025, in a steamship if it has been repowered with a certified Tier 2 or later marine diesel engine, provided the steamship was operated exclusively on the Great Lakes and was in service on October 30, 2009."[5]

3. Fleet Averaging

Transport Canada, in an effort to ease devastating impacts to Canadian Great Lakes ship owners, proposed a Fleet Averaging Program which provides an alternative to improving air quality. The Fleet Averaging Program requires Canadian Great Lakes vessels to gradually reduce their fuel sulfur content from 2012-2020. The program permits a company's fleet of vessels to collectively meet pre-established annual fuel sulfur targets through the use of lower sulfur fuels, exhaust gas treatment, or a combination of measures. Transport Canada will oversee and monitor the industry to assure compliance. By 2020, each ship must individually meet the ECA 0.1% fuel sulfur content standard.

C. Recommendation

As responsible carriers, CSL and the Short Sea Shipping Coalition proudly support and promote the North American ECA. If properly drawn, it can serve as a valuable tool to reduce maritime contributions to global emissions. For the reasons set forth above, we seek to align the 2015 ECA to a sustainable size while exceeding air quality goals set by the EPA and Environment Canada through a performance-based approach.

Our study indicates that vessels of 20,000 horsepower are capable of meeting and exceeding desired air quality goals when using fuel with sulfur content of 2.6% at a distance of 50 miles. Therefore, we recommend:

- a 200 nautical mile ECA for 1% sulfur fuels, effective August 1, 2012 (as currently accepted);
- a submission to the IMO Marine Environmental Protection Committee; an amendment to reduce the North American ECA to 50 miles for 0.1% sulfur fuels on vessels of less than 20,000 horsepower in 2015; and

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[4] MEPC 61/7/6; U.S., July 19, 2010

[5] Federal Register 77 FR 2472; U.S. EPA, January 18, 2012

- a mechanism to indemnify vessel owners who are unable to purchase low sulfur (0.1% sulfur) fuel due to regional unavailability.

This alternative dovetails with the Maritime Administration's 2010 Marine Highway program and will best serve the coastal environment by comprehensively improving air quality while reducing risk, hazard, and inconvenience of over-used road and rail systems.

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May 10, 2012

File Ref: W9777.290

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The Honorable Rick Larsen, Ranking Minority Member
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RE: Subcommittee on Coast Guard and Maritime Transportation Hearing, "Recent Regulation of the Maritime Industry: Ensuring U.S. Job Growth While Improving Environmental and Worker Safety"

The staff of the California State Lands Commission (Commission) appreciates the opportunity to provide a statement to be included in the record for the April 26, 2012 Hearing of the Subcommittee on Coast Guard and Maritime Transportation, "Recent Regulation of the Maritime Industry: Ensuring U.S. Job Growth While Improving Environmental and Worker Safety."

This statement is specifically targeted toward the Hearing discussion surrounding federal regulatory actions by the United States Coast Guard (USCG) and the U.S. Environmental Protection Agency for the management of ballast water. While it is of utmost importance for the federal government to regulate the management of ballast water discharges to protect federal waters, we believe it is equally important to maintain each state's rights to protect their waters from ballast water-facilitated introductions of nonindigenous species (NIS).

Since 1999, California has been and remains a national and world leader in the development of effective science-based management strategies for preventing species introductions through vessel vectors, as directed by the California Legislature. The Commission's Marine Invasive Species Program (MISP) pursues progressive strategies to limit the introduction and spread of NIS, including recently developing protective performance standards for the discharge of ballast water, which will serve to prompt the industry to implement technology-based strategies to manage NIS in ballast water discharges. The

progressive strategies pursued by the MISP have led to rapid improvements in the development, efficacy, and ability of ballast water treatment systems to reduce the risk associated with ballast water discharges, as there are increasing numbers of systems that are able to treat ballast water to comply with California's performance standards.

California's technology-forcing standards were established by the California Legislature, in part, in recognition of the severe ecological, economic and human health impacts NIS can have in recipient environments. For example, European zebra and quagga mussels (*Dreissena polymorpha and Dreissena bugensis*), introduced to the Great Lakes by ballast water discharge in the 1980s, clog municipal water systems and electric generating plants costing approximately a billion dollars a year (Pimentel et al. 2005). Their large populations have caused local extinction of native species, alteration of food webs and declines in recreationally valuable species. In 2007 and 2008, respectively, quagga and zebra mussels were discovered in California. Their impacts to waterways and water conveyance systems (e.g. the Colorado River, numerous lakes and water conveyance systems such as the Colorado River Aqueduct) are only beginning to be calculated. In San Francisco Bay, the introduced overbite clam (*Corbula amurensis)* is believed to be a major contributor to the decline of several pelagic fish species in California's Sacramento-San Joaquin River Delta, including the threatened delta smelt (Feyrer et al. 2003, Sommer et al. 2007). Vessels and ballast water have also been connected to cholera outbreaks (Takahashi et al. 2008, Ruiz et al. 2000b), the microorganisms that cause paralytic shellfish poisoning (Hallegraeff 1998), and the microbial indicators for fecal contamination (Reid et al. 2007).

Attempts to eradicate NIS after they have become established are often unsuccessful and costly (Carlton 2001). Between 2000 and 2006, over $7 million was spent to eradicate the Mediterranean green seaweed *(Caulerpa taxifolia)* from two small embayments in southern California (Woodfield 2006). As of the end of 2010, over $12 million has been spent in San Francisco Bay to control the Atlantic cordgrass (*Spartina alterniflora*) (M. Spellman, pers. comm. 2010). In addition, California has one of the largest ocean economies in the United States, ranking first in both employment and gross state product (GSP) (Kildow and Colgan 2005). Coastal recreation and tourism in California accounted for over $14 billion in GSP in 2009 (NOEP 2012a), and commercial fishing landings accounted for over $176 million in GSP in 2010 (NOEP 2012b). Given that NIS can and have impacted the ecological and economic functions of the state, it is critical that future introductions be prevented.

California's performance standards for ballast water discharge were selected following extensive consultation with a technical advisory committee composed of regulators, research scientists, industry representatives and environmental organizations. These standards were selected because they encompass several desirable characteristics, including: 1) They are a significant improvement upon ballast water exchange; 2) they are consistent with the best professional judgment of scientific experts that participated in the development of the international ballast water management convention; and 3) they move toward a protective zero discharge standard established by the California Legislature for 2020.

We believe that the USCG Phase I or the International Maritime Organization's (IMO) performance standards are not adequate, as the best available science indicates that that they do not improve significantly on ballast water exchange (current status quo). For a significant proportion of vessels discharging in the U.S., Minton et al. (2005) estimated that, for the largest

organism size class (>50 micrometer (µm)), approximately 17.2% of discharging vessels could meet the proposed Phase I standard through ballast water exchange, and 3.8 % of vessels could meet the Phase I standard for this size class without performing ballast water exchange at all. In 2003 the IMO Study Group on Ballast Water and Other Ship Vectors (SGBOSV) reviewed their collective data on organism concentrations in unexchanged ballast water and found that even tanks that did not exchange often met an equivalent to the Phase I standard for the 10 – 50 µm size class of organisms (MEPC 2003, Annex 1). The SGBOSV is composed of an international group of scientists with extensive knowledge about the biology of ship-mediated invasions.

In recognition of the varying needs and values of coastal economies in individual states, and the impact NIS can have on those economies, as well as on ecological communities and human health, Commission staff strongly urge against actions that would preempt existing state authority and rights to establish and implement ballast water discharge performance standards which are more stringent than federally established ones. Given the potential cost to California's coast from species introductions, implementing a protective standard is critical to move California expeditiously toward its legislatively declared goal of eliminating the discharge of nonindigenous species into the waters of the state.

Thank you for the opportunity to submit this statement for the record for the April 26, 2012 Hearing of the Subcommittee on Coast Guard and Maritime Transportation, "Recent Regulation of the Maritime Industry: Ensuring U.S. Job Growth While Improving Environmental and Worker Safety."

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