MARITIME TRANSPORTATION REGULATIONS: IMPACTS ON

SAFETY, SECURITY, JOBS AND THE ENVIRONMENT

PART II

HEARING BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

TESTIMONY OF

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Good morning, Mister Chairman and Members of the Subcommittee. We appreciate the opportunity to provide testimony at this hearing to review the status of regulations by the US Coast Guard and Environmental Protection Agency addressing certain environmental issues and the impacts of these regulations on the maritime industry.

Mister Chairman, we respectfully request that our testimony be entered into the record for this hearing.

I am Kathy Metcalf, Director of Maritime Affairs for the Chamber of Shipping of America (CSA). Today, I am testifying on behalf of CSA, INTERTANKO, and the Cruise Lines International Association (CLIA). CSA represents 35 member companies which are U.S. based that own, operate or charter both US and non-US flag oceangoing tankers, container ships, and other merchant vessels engaged in both the domestic and international trades. INTERTANKO represents the independent tanker owners and operators of oil and chemical tankers with more than 220 members located in 41 countries worldwide, whose combined fleet comprises some 3,250 tankers totaling more than 285 million deadweight, many of which call at US ports. In addition, INTERTANKO's associate membership stands at more than 300 companies with an interest in shipping of oil and chemicals. CLIA is the world's largest cruise industry trade association with representation in North and South America, Europe, Asia and Australasia. CLIA represents the interests of cruise lines and travel agents before regulatory and legislative policy makers. CLIA's Associate Member and Executive Partner program includes the industry's leading providers of supplies and services that help cruise lines provide a safe, environmentally-friendly and enjoyable holiday vacation experience for millions of passengers every year.

Over a decade ago, the maritime industry realized that with the avalanche of new legislative and regulatory requirements impacting the maritime industry addressing a number of significant and complex issues, collaboration with other industry partners was necessary to provide, to the extent possible, overarching maritime industry input into the development of and the eventual implementation of new legislative and regulatory requirements. A fundamental tenet of our approach to these issues has always been that smart legislation and regulation is possible only with the committed interaction of legislators, regulators, the industry and environmental groups. All must understand the perspectives of the others and when the collective will is focused on the problem at hand, we believe that smart and effective legislation and regulation can be developed that meets environmental goals in an effective, economically practical and operationally feasible manner.

Aside from the challenges associated with the sheer volume of new initiatives impacting the maritime industry, the issues are further complicated by the fact that a number of executive branch agencies are involved in the development of these regulations with varying degrees of knowledge and understanding of the maritime industry. This multi-agency involvement results not only from the traditional and necessary inter-agency review process associated with regulatory program development but also from statutory mandates to these agencies under a number of statutes that do not necessarily mesh

one with the others. The requisite knowledge of the maritime industry rests with the US Coast Guard and Maritime Administration and we strongly suggest that these agencies should have the lead on issues impacting the marine industry to ensure that the unique operational nature of the industry is properly taken into account in developing legal requirements. Too many recent requirements promulgated by agencies that have broad statutory mandates to develop regulations impacting a broad spectrum of industries have been promulgated with a "one size fits all" approach that does not take into account the unique nature of specific industries most notably the maritime industry.

For example, the US approach to the regulation of greenhouse gases (GHGs) is led by the State Department at the international level while EPA is also developing domestic programs to address GHGs. The vast majority of GHG sources are stationary in nature and a program that addresses these sources is not necessarily the appropriate program to address mobile sources such as the marine industry which is global in nature. While we appreciate the need for a uniform US position on GHGs, the nature of the sources being considered must take into account the unique differences between the broad types of sources including the differences between stationary and mobile sources.

Another example of the need for better coordination among agencies is in the development of environmental assessments and economic impacts analysis of proposed regulations. Too often, the agency operating under a statutory mandate to promulgate regulations conducts these assessments in a manner which does not necessarily take into account input by other specialized agencies with the necessary technical and operational knowledge of a particular industry sector. Specifically, we would recommend that better coordination and collaboration occur between the US Coast Guard and the EPA in finalizing these assessments to assure that the unique nature of the maritime industry is taken fully into account.

Before we provide two specific examples of initiatives that have created much concern within the industry and in one case, duplicative efforts within the Executive Branch, we would like to outline the sources of the avalanche of new initiatives impacting the industry. First and most familiar to members of this subcommittee are the regulatory programs overseen by key agencies which are focused at either updating current regulatory programs or implementing new ones which are the direct result of either Congressional mandate or international agreement. One need only review the semi-annual regulatory agendas of the US Coast Guard, the EPA, NOAA and TSA to appreciate the volume and breadth of issues that are currently in the regulatory pipeline.

International agreements, generally those agreed to by the International Maritime Organization (IMO) are a significant source of new US regulatory programs in order to update US regulations with regard to existing and new convention requirements, including the usual flurry of amendments to existing conventions that occur on a regular basis. It should be noted that we fully support IMO as the preeminent international organization to regulate shipping as its activities provide the much needed global consistency to the maritime industry and thus generally support US regulatory initiatives that incorporate these provisions. The key conventions relative to the environmental

subject matter of this hearing include the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78/97) and its six annexes covering carriage of oil in bulk, noxious liquid substances in bulk, packaged goods, sewage, garbage and the newest annex addressing air emissions finalized in its current form in 2007, the Ballast Water Convention (2004), the Anti-fouling Convention (2001) and the Ship Recycling Convention (2009).

It is an understatement to suggest that the current and pending legislative and regulatory programs are a challenge to monitor, participate in their development and most importantly, implement within the maritime industry to assure compliance with these many significant and diverse requirements. We offer two specific examples where we believe smarter legislation and regulation would benefit all stakeholders and avoid the duplicative efforts within the US government as well as eliminating confusion within the regulated community. If requested, we would be happy to provide additional information on these specific examples as well as regards other major rulemakings.

First with regard to vessel discharges, including ballast water, we are in the unfortunate position of having to work with a legislatively created dilemma where two agencies acting under two different statutes are regulating the same discharges. Specifically, the US Coast Guard is regulating ballast water discharges under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) as amended by the National Invasive Species Act of 1996 (NISA) while the EPA is regulating those same discharges under the Clean Water Act's National Pollutant Discharge Elimination Program (NPDES) due to a 2005 decision in the US District Court for the Northern District of California (Northwest Environmental Advocates et al. v. EPA) that ruled the EPA regulations excluding discharges incidental to the normal operation of a vessel (which include ballast water) exceeded the EPA's authority under the Clean Water Act. While we applaud the US Coast Guard's and EPA's efforts to reconcile the two programs, the industry is still left with certain concerning provisions including the very expensive ongoing testing and monitoring requirements required even after extensive testing has been done during the type approval process. In addition, although we were hopeful that a reasonable solution would be identified, EPA's current position that they will take a USCG compliance date extension into consideration but "will not be legally bound by it" adds additional uncertainty to the compliance strategy of vessel owners. Although we applaud the efforts of the US Coast Guard and EPA to reconcile this variance, the industry is left with an inability to meet the requirements of the US Coast Guard and EPA programs ultimately requiring a US type approved ballast water treatment system, of which none have been approved to date and none are expected to be issued a US type approval under late 2014 at the absolute earliest. Also, the continued ability of individual states under the NPDES Section 401 certification program to attach state specific conditions leading to a patchwork quilt of requirements across the coastal and port states to which domestic and international shipping calls provides yet more uncertainty as to what will be required of vessels as they call in ports in different states. Finally, the US Coast Guard regulations provide discretion to sector commands to permit a vessel to call, under stipulated conditions, in a US port in the rare instance when a ballast water treatment system becomes inoperable during a vessel's

transit and the vessel is unable to repair the system without shoreside expertise; although it does not appear such discretion is authorized under the EPA's vessel general permit. We would propose that a far more efficient and clear program would be the creation of one federal program within the Clean Water Act that regulates these discharges and preempts state actions inconsistent with the federal requirements, similar to the program already in place for Armed Forces vessels under the Uniform National Discharge Standard (UNDS) program. Such a single program administered by both the US Coast Guard and EPA would avoid the current uncertainties resulting from these inconsistencies.

The second example relates to the requirements associated with the creation of the North American Emission Control Area (ECA) which now mandates the use of 1% sulfur fuel and will mandate the use of 0.1% fuel beginning in 2015 within 200 nautical miles of the US baseline, although vessels may choose to utilize scrubbers as an alternative compliance option to these provisions. While the industry has seen increases in fuel costs associated with use of the 1% fuel, implementation of the 0.1% fuel provisions in 2015 are estimated to significantly increase fuel costs even based on the assumption that the fuel will be readily available in US ports, a far from supportable assumption at this point in time based on the uncertainty as to whether refineries will adjust their production to meet this new need and marketplace or maintain their current productions with low sulfur streams being directed toward land based users with equally attractive profit margins. For a number of ships, particularly ships engaged in coastal trade, the significant increased costs associated with use of low sulfur fuel can be mitigated by the installation of exhaust gas scrubbers and continued use of higher sulfur fuels which provide emissions reductions consistent with the use of low sulfur fuels. However, the EPA's vessel general permit (VGP) which covers exhaust gas scrubber discharges prevents the use of a mixing zone to measure effluent levels where the IMO program was invited to consider permission of such use. Based on this possible variance, it is likely that scrubbers currently designed, purchased, and delivered to meet the IMO requirements could not meet the EPA VGP requirements, thus potentially eliminating a very cost effective solution to the problem associated with significantly increasing fuel costs associated with low sulfur fuels. As is the case with the variations between the USCG and EPA programs discussed above, this inconsistency can be remedied with the creation of one federal program within the Clean Water Act that regulates these discharges consistent with international requirements and preempts state actions inconsistent with the federal and international requirements.

Thank you for the opportunity to testify at his hearing. We would be happy to answer any questions or provide additional information relative to the points made in this testimony.