

**THE IMPACTS OF VESSEL DISCHARGE
REGULATIONS ON OUR SHIPPING
AND FISHING INDUSTRIES**

HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS, ATMOSPHERE,
FISHERIES, AND COAST GUARD

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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FEBRUARY 4, 2015
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ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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¹ On March 3, 2015 the Committee finalized Member assignments for its subcommittees. The list below reflects March 3, 2015 assignments. When this hearing was held, on February 4, 2015, formal assignments had not yet been made.

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**THE IMPACTS OF VESSEL DISCHARGE
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AND FISHING INDUSTRIES**

WEDNESDAY, FEBRUARY 4, 2015

U.S. SENATE,
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES,
AND COAST GUARD,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:39 p.m. in room SR-253, Russell Senate Office Building, Hon. Marco Rubio, presiding.

Present: Senators Rubio [presiding], Wicker, Ayotte, Sullivan, Johnson, Cantwell, Nelson, and Manchin.

**OPENING STATEMENT OF HON. MARCO RUBIO,
U.S. SENATOR FROM FLORIDA**

Senator RUBIO. This hearing will come to order.

I would like to welcome everybody here today to our first Subcommittee hearing of the new Congress. In particular, I would like to welcome Captain Bob Zales, who has flown up from Florida to be with us here today. And thank you all for taking the time to join us. I really appreciate it.

I wanted to briefly discuss a few housekeeping issues.

First of all, Senator Nelson will be here momentarily, my colleague from Florida, our Ranking Member. He will be here at the hearing.

For everyone's awareness, it is my understanding that our colleagues on the other side of the aisle are still working to confirm who will serve as our Ranking Member on this subcommittee. But, in the interim, the Ranking Member of the full committee, Senator Nelson, will be here in that regard.

And congratulations to him, of course. We have a great working relationship, and we look forward to working with him on these issues in the full committee, as well. We have always worked well together, especially on policies such as these that are important to Florida. So I am looking forward to both my leadership role on this subcommittee and to Senator Nelson's leadership role on the full committee as we continue to address the issues such as these that are so important for our state.

In fact, I am pleased to announce that we started this new Congress with a great bipartisan bill. As we know, today we are here to discuss vessel discharge regulations on our shipping and our

fishing industries—two very large and important industries in our state of Florida.

Last year, Chairman Thune, myself, and Senator Nelson were co-sponsors to the Vessel Incidental Discharge Act, legislation that streamlines the regulatory framework regarding incidental discharge from large commercial vessels and permanently exempts smaller commercial vessels from Federal regulation altogether.

So today we will reintroduce that same legislation—legislation that had the support of 32 bipartisan cosponsors in the last Congress.

Currently, commercial vessels are subject to EPA regulations regarding discharge incidental to their normal operations, Coast Guard regulations regarding introduction of invasive species and ballast water discharge, and, additionally, are subject to 25 different state regulations that require additional permit conditions, 14 of which relate specifically to ballast water discharges.

Thankfully, in the last Congress, we were able to secure a 3 year exemption from the EPA regulations for vessels smaller than 79 feet. And I would be remiss if I didn't thank my colleagues Senator Murkowski and Senator Vitter for their help in securing that exemption.

However, I think everyone will agree that we would like to make that exemption permanent, while also ensuring that we address the regulatory duplicity for larger vessels. So, today, myself, Chairman Thune, and Ranking Member Nelson will be reintroducing the Vessel Incidental Discharge Act to address this regulatory quagmire, and it includes a permanent exemption for the smaller commercial vessels.

Getting this legislation enacted into law is a top priority of this subcommittee, and I am thankful to both Senator Thune and Senator Nelson for their leadership roles as we work to get this legislation across the finish line this year.

And I look forward to hearing from each of our witnesses as they highlight the importance of addressing this issue.

Last, I would like just to add two things.

Senator Schatz will be stopping by shortly after we begin and has asked to say a few words regarding this issue. However, due to scheduling conflicts, Senator Schatz will only have a few minutes, so I would ask that we just pause when the Senator arrives for a few comments from him, and then we will immediately resume.

We are also expecting a roll call, one vote at 2:45. We will take a brief recess or, if the opportunity presents itself, perhaps rotate the chairmanship so all the members can go vote and then return. And either way, we either will keep this going or we will come back quickly and keep going.

So Senator Nelson has not yet arrived. I know he is on his way, so we will reserve his opening statement for his arrival. And, with that, I will recognize the witnesses for their testimony.

Mr. Farley, do you want to begin? Do you have testimony?

Mr. FARLEY. I do.

Senator RUBIO. Thank you, sir.

**STATEMENT OF JAMES F. FARLEY, PRESIDENT,
KIRBY OFFSHORE MARINE, LLC**

Mr. FARLEY. Good afternoon, Chairman Rubio and members of the Subcommittee. My name is Jim Farley, and I work for Kirby Corporation. Thank you for the opportunity to testify on behalf of our company and the American Waterway Operators, the national trade association of the U.S. tugboat, towboat, and barge industry.

Kirby is the Nation's largest operator of inland and coastal tank barges. The regulation of ballast water and other vessel discharges is a critical area in which the current regulatory regime serves neither the environment, our industry, the economy, or the American taxpayer well.

Today, the Coast Guard and EPA regulate ballast water and other vessel discharges under two differing statutory authorities. And because neither Federal law preempts state action, 25 states have established their own state-specific requirements for vessel discharges—over 150 of them in all.

This overlapping patchwork of Federal and state regulations makes compliance confusing and complicated for Kirby and all vessel operators, fishermen, and mariners. It is counterproductive to the goal of enhanced environmental protection, as companies, including my own, have delayed investment in costly treatment technologies because we lack assurance that such systems will be acceptable wherever a vessel calls.

And it has forced Federal and State agencies to duplicate efforts and expend significant time and taxpayer money on an unsuccessful effort to harmonize these requirements.

In the operational world, this regulatory patchwork is a nightmare for companies like Kirby that operate vessels in interstate commerce. Today, crewmembers on a Kirby tug barge unit moving petroleum from a refinery in Anacortes, Washington, to a fuel distribution center in Los Angeles must comply with requirements for vessel discharges established by both the Coast Guard and the EPA. They must also comply with 25 state-specific conditions added to EPA's Vessel General Permit by the states of Washington and California. In addition, they must comply with state ballast water requirements established by Washington, Oregon, and California outside the framework of the VGP. That is five distinct Federal and State regulatory regimes over the course of a single voyage.

Our inland tows face an even more egregious situation, traveling through the waters of as many as 10 states on a voyage from Minneapolis to New Orleans.

The situation is untenable, it is unnecessary, and congressional leadership is badly needed to fix it.

I hope these examples make clear why the current situation is such a problem for the Nation's maritime industry. Let me explain why it is also unnecessary.

There now exists a national scientific consensus about the capabilities of currently available ballast water treatment technology. Unfortunately, this scientific consensus does not solve the problem faced by vessel operators.

Federal and state regulators have been unable to eliminate overlap and inconsistency between their regulations because they are

accountable to different laws, which they believe limit their flexibility to act. It is not too much to say that these governmental agencies have been set up to fail by a statutory framework that does not work. This should be unacceptable to all of us.

The only way to fix this broken system is for Congress to act and act soon. You can establish a single national framework for the regulation of vessel discharges that preempt state regulation and make vessel operators such as ourselves subject to one set of scientifically based, environmentally protective, and technologically achievable vessel discharge rules.

You can pass legislation that provides us with the certainty that our multimillion-dollar investments in ballast water treatment technology will be acceptable wherever our vessels call. You can also save the American taxpayer the wasteful expense created by duplication of effort among Federal and state agencies.

Kirby and the maritime community represented by AWO is not interested in avoiding a high standard for incidental vessel discharges. We just need a single standard, a Federal standard, a standard based on the available technology.

Chairman Rubio, we know that you understand the problem and the urgent need for a solution. The news you have just announced speaks directly to that. We thank you.

[The prepared statement of Mr. Farley follows:]

PREPARED STATEMENT OF JAMES F. FARLEY, PRESIDENT,
KIRBY OFFSHORE MARINE, LLC

Good afternoon, Chairman Rubio and Members of the Subcommittee. I am Jim Farley, President of Kirby Offshore Marine, a division of Kirby Corporation, headquartered in Houston, Texas. Kirby, which has been in the maritime transportation business since 1969, is now the Nation's largest operator of inland and coastal tank barges, employing some 4,600 Americans. On behalf of Kirby and its employees, thank you for the opportunity to testify at this very important hearing.

I am also speaking on behalf of the American Waterways Operators, the national trade association for the inland and coastal tugboat, towboat, and barge industry. Kirby is one of the almost 350 companies that enjoy membership in AWO, and serves on its Board of Directors and Executive Committee.

Thank you for your leadership in holding this hearing to explore the impacts of vessel discharge regulations on the U.S. shipping and fishing industries so early in the 114th Congress. The regulation of ballast water and other vessel discharges is a critical area in which the current regulatory regime serves neither the economy, the environment, nor the American taxpayer well. Today, two Federal agencies regulate ballast water and other vessel discharges under two differing statutory authorities. And, because neither Federal statute preempts state action, more than two dozen states have established their own state-specific requirements for many of those same discharges. This overlapping patchwork of Federal and state regulations has made compliance complicated, confusing, and costly for vessel owners and mariners. It has been counterproductive to the goal of enhanced environmental protection as companies have delayed investment in costly treatment technologies because they lack assurance that such systems will be acceptable wherever a vessel calls. And, it has forced resource-constrained Federal and state agencies to duplicate efforts and expend significant time and taxpayer money in a well-intentioned but unsuccessful effort to harmonize their requirements.

Your leadership is badly needed to fix this unacceptable situation. Indeed, this Congress has an unprecedented opportunity to enact legislation that improves the efficiency and effectiveness of our maritime transportation system while enhancing the protection of our Nation's waterways. A scientific consensus now exists about the capabilities of currently available ballast water treatment technology, and there is strong bipartisan congressional support for legislation to resolve redundant and conflicting regulatory authorities in this area. The establishment of a uniform Federal framework for the regulation of vessel discharges will be good for the maritime industry and the men and women who work in it, good for shippers who rely upon

marine transportation, good for the marine environment, and good for the American taxpayer. We were pleased to see the Committee act on this issue last year when it reported out S. 2094, the Vessel Incidental Discharges Act. The leadership of the Commerce Committee will be crucial if we are to seize the opportunity to enact legislation that accomplishes these objectives in the 114th Congress.

Let me tell you a bit about our company and our industry, which will help to explain why this legislation is so critical. The tugboat, towboat, and barge industry is the largest segment of the U.S. maritime fleet. Our industry operates 4,000 towing vessels and 27,000 dry and liquid cargo barges on the commercially navigable waterways that run through America's heartland, along the Atlantic, Pacific, and Gulf coasts, on the Great Lakes, and in ports and harbors around the country. Each year, towing vessels and barges safely, securely, and efficiently move more than 800 million tons of critical cargo, including agricultural products for export, coal to electrify our homes and businesses, petroleum products to fuel our cars, chemicals for manufacturing facilities, cement and sand for construction projects, and other building blocks of the U.S. economy. Tugboats also provide essential services in our Nation's ports and harbors, including shipdocking, tanker escort, and bunkering.

For our part, Kirby operates over 1,300 vessels throughout the Mississippi river system, on the Gulf Intracoastal Waterway, along all three U.S. coasts, and in Alaska and Hawaii. Kirby transports bulk liquid products by tank barge, including petrochemicals, black oil, refined petroleum products, and agricultural chemical products, as well as dry-bulk commodities by oceangoing tug-barge units.

More than 30,000 American mariners are employed as crewmembers on towing vessels; these are good, family-wage jobs that offer great potential for career and economic advancement. I can testify to that from personal experience. Over half of Kirby's employees—some 2,500 Americans—work as crewmembers on our vessels. Their salaries range from about \$45,000 a year for a deckhand in our inland fleet to over \$130,000 a year for our captains and pilots, and our company provides them with comprehensive benefits and training and career development opportunities. Kirby can hire a high school graduate with no experience and, within a span as short as three to five years, provide him or her with the paid training and experience needed to climb our career ladder to a job paying six figures.

The current regulatory regime for ballast water and other vessel discharges places our mariners and our company in the difficult position of having to comply with overlapping and inconsistent regulations. The U.S. Environmental Protection Agency regulates ballast water and other vessel discharges under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit program; the U.S. Coast Guard regulates discharges of ballast water and hull fouling organisms under the National Invasive Species Act; and more than two dozen states have established their own requirements for various vessel discharges already covered by the EPA and Coast Guard regulations.

Since 2009, commercial vessels over 79 feet in length have been required to obtain coverage under EPA's Vessel General Permit in order to operate in U.S. waters. The VGP contains Federal requirements for 27 types of vessel discharges, including ballast water, as well as federally enforceable state- and waterbody-specific discharge conditions added to the permit by states as part of the NPDES state certification process. In addition to Federal and state VGP requirements, vessels must meet Federal standards for ballast water and hull fouling discharges established by the Coast Guard. Vessels are also required to act in accordance with the state laws and regulations for vessel discharges applicable to the waters they transit.

This regulatory patchwork is a nightmare for a vessel operating in interstate commerce. A Kirby tug-barge unit moving petroleum from a refinery in Anacortes, Washington, to a fuel distribution center in Los Angeles must traverse the waters of three states: Washington, Oregon, and California. In addition to EPA limits on ballast water and other vessel discharges found in the VGP, the tug and the barge must comply with 25 supplementary, state-specific conditions added to the permit by Washington and California. They must also comply with Coast Guard regulations to manage and discharge ballast water and hull fouling organisms. Finally, in each of the three states they transit, the vessels are subject to state laws and regulations, necessitating the submission of ballast water management reports to every state in which they will discharge ballast water (in addition to the reports required by the Coast Guard) and requiring the implementation of ballast water management practices in addition to those prescribed by EPA and the Coast Guard. That is *five* distinct regulatory regimes, and all of their attendant requirements, that the Kirby employees onboard the tugboat must be aware of and in compliance with over the course of a *single* voyage. Our inland tows face an even more egregious situation, traveling through the waters of as many as seven states on a voyage from Chicago to New Orleans. These examples, and the graphic attached to my testimony, under-

score why clear, consistent Federal rules for ballast water and other vessel discharges are desperately needed.

They also demonstrate why, as a matter of sound public policy, the NPDES permit program is the wrong framework for the regulation of discharges from vessels. The program, as EPA has acknowledged, was designed to control pollution from land-based, stationary sources, and has been largely administered and enforced by individual states—the basis of the state certification process. This process makes the program particularly ill-suited to regulate discharges from commercial vessels, which by their nature are mobile sources that operate and discharge in multiple states. For the first 35 years of the NPDES program's existence, vessel discharges were explicitly exempted by EPA regulation. EPA went to court to defend its exclusion of vessel discharges from the program, but in 2008 the Ninth Circuit Court of Appeals ordered EPA to regulate vessel discharges through the issuance of NPDES permits.

As a result, EPA proposed the VGP, a first-of-its-kind nationwide, general permit for vessel discharges to be administered and enforced by the agency and certified by individual states. The state certification process resulted in over 100 new, substantive requirements that were incorporated by EPA into its final permit, which it issued without allowing the regulated community an opportunity to comment on the state conditions and without considering the impact of the state conditions collectively. A group of maritime trade associations, including AWO, challenged EPA's management of the VGP state certification process in court. In 2011, the U.S. Court of Appeals for the D.C. Circuit ruled that EPA had no authority under the Clean Water Act to alter or reject state conditions, even if they are infeasible or in direct conflict with other Federal or state requirements. Recognizing the problem, the Court suggested that Congress must act to provide the maritime industry with a viable solution. We wholeheartedly agree.

I want to be clear that the broken regulatory regime for vessel discharges is not a problem of EPA's making. It is not a problem of the Coast Guard's making. It is a situation in which well-meaning agencies have been effectively set up to fail as they seek to harmonize regulations promulgated pursuant to different statutory authorities and, in EPA's case, to make the square peg that is the NPDES permit program fit the round hole that is mobile sources engaged in interstate and international commerce. With no relief available from the courts, it is up to Congress to lead and establish a uniform Federal framework for the regulation of ballast water and other vessel discharges. There is no better time than now for Congress to take action on this very important issue.

Several years ago, faced with overlapping Federal and state authorities and the absence of uniform national standards for the management and discharge of ballast water, the maritime industry was witnessing a competition among states to establish the most stringent ballast water treatment standards on the books. Under the logic of this competition, if the International Maritime Organization standard was good, a standard 100 or 1,000 times more stringent than the IMO standard must be better—even if those standards could not be achieved, or even measured, with existing technology. However, there is now a national consensus about the capability of current ballast water treatment technology. This consensus provides a strong scientific foundation for Congress to move forward with legislation to establish uniform national standards for vessel discharges.

In June 2011, an independent and expert panel of the EPA Science Advisory Board completed its study of the efficacy of current ballast water treatment systems and concluded that no current treatment technology can meet a standard 100 or 1,000 times more stringent than the IMO standard. The panel further concluded that wholly new treatment systems and measurement techniques would need to be developed to meet more stringent standards than IMO's.

Shortly after the EPA SAB report was published, the state of New York agreed to withdraw one of its state conditions to the VGP, which would have required vessels operating in New York waters to install ballast water treatment systems meeting a standard 100 times more stringent than the IMO standard beginning in 2013. In an October 2011 letter to the EPA Administrator, the New York Department of Environmental Conservation wrote that the state believes “a strong, uniform national standard is the best approach to our mutual goal of ensuring that vessels install and use achievable and cost-effective technology to treat ballast water discharges that will dramatically limit the introduction and spread of aquatic invasive species.” The letter continued, “A national approach to this ballast water issue is clearly preferable to a plethora of potentially conflicting state standards.”

In 2012, the Coast Guard published a final rule establishing a ballast water treatment standard equivalent to the IMO standard. Citing the EPA SAB report, the Coast Guard wrote that “[t]he numeric limitations in today's final rule represent the

most stringent standards that [ballast water treatment systems] currently safely, effectively, credibly, and reliably meet.” EPA also relied on the EPA SAB’s conclusions to develop the 2013 Vessel General Permit, in which it set a ballast water treatment standard corresponding to the IMO and Coast Guard standards.

Since the Coast Guard and EPA aligned their ballast water treatment standards, the states have quickly followed suit. None of the states that certified the 2013 VGP with conditions added a more stringent ballast water treatment standard than that established by EPA within the permit. Most notably, in 2013, the California State Lands Commission officially acknowledged that California’s statutory ballast water performance standards—which called for the implementation of a standard 1,000 times more stringent than the IMO standard beginning in 2014—could not be met with current ballast water treatment technology. Acting on the Commission’s recommendation, the California legislature acted to delay implementation of these standards. Of the states that have established or proposed to establish state-specific ballast water discharge standards, California was the last to concur with the findings of the EPA SAB.

This consensus changes not only the regulatory landscape, but the legislative landscape as well. Congress can capitalize on this accord among the scientific community, the Federal Government, and the states to improve the regulation of vessel discharges by enacting a single set of uniform national standards that preempt state regulation, with a requirement for the Federal standards to become increasingly stringent as treatment technology improves over time. Such legislation would improve the maritime industry’s ability to deliver the Nation’s waterborne commerce efficiently and effectively by providing consistency and certainty, and would enhance our Nation’s commitment to the continued protection of its waterways. It would also benefit the American taxpayer by ending the costly duplication of effort by Federal and state agencies that results from the current statutory and regulatory patchwork.

Kirby and the other member companies of AWO are partners in a shared commitment to environmental stewardship. Maritime transportation is the safest and most energy-efficient mode of freight transportation. AWO’s members are dedicated to building on these natural advantages and leading the development of higher standards of marine safety and environmental protection. Twenty years ago, AWO became the first transportation trade association to adopt a code of safe practice and environmental stewardship for member companies, the AWO Responsible Carrier Program. Since 2000, third party-audited compliance with the RCP, which exceeds Federal regulatory standards, has been a condition of membership in the association.

I share this with you to emphasize that our goal in urging congressional action is *not* to avoid high standards. Our company and our industry have established a strong and continuously improving environmental record, and we recognize that making responsible environmental practice a top priority is both good policy and good business. The problem is *not that* vessel discharges are regulated; it is *how* they are regulated. The current unclear and inconsistent regulatory system makes compliance confusing and investment decisions uncertain.

Let me emphasize again that the only way to fix this broken regulatory regime is for Congress to act, and act soon. Although the Coast Guard, EPA, and state regulators are currently in agreement about achievable *standards* for ballast water treatment, the way that they administer and enforce that standard is at best duplicative, and at worst incompatible. The strong bipartisan support for the Vessel Incidental Discharge Act introduced last Congress—which was sponsored by Chairman Rubio and cosponsored by more than one-third of the Senate, including the Chairman and Ranking Member of the Commerce Committee—demonstrates that the problem, and the urgent need for a solution, is well understood. Today’s hearing is another encouraging affirmation of the understanding of the leadership of this Subcommittee, and of your commitment to bring clarity and certainty to the regulation of vessel discharges.

On behalf of Kirby and all of the other the businesses that operate vessels that carry the cargo that drives our economy, that provide high-quality jobs for men and women across the United States, and that seek to protect the marine environment in which they operate, I respectfully urge the Committee to lead the introduction and passage of legislation in the 114th Congress that establishes a uniform, science-based, consensus-driven Federal framework for the regulation of ballast water and other vessel discharges.

Thank you again for the opportunity to testify today on a matter of great importance to our company, our industry, to the U.S. economy, and to the Nation’s marine environment. We appreciate your leadership and we look forward to working with you to advance our mutual goal of a safe, secure, environmentally sound maritime

transportation system that is good for America, for American businesses, and for the Americans who work in our industry.

ATTACHMENT

THE AMERICAN WATERWAYS OPERATORS

An Unworkable Regulatory System FOR BALLAST WATER AND OTHER VESSEL DISCHARGES

U.S. mariners and vessel operators face an extremely challenging compliance burden with two federal agencies and 25 states all regulating vessel discharges in overlapping and inconsistent ways.

- >> 2 Federal Agencies**
 - Coast Guard ballast water and hull fouling regulations under National Invasive Species Act (NISA)
 - EPA Vessel General Permit for 27 vessel discharges, including ballast water and hull fouling
- >> 25 States**
 - State-specific conditions added to the EPA VGP
 - State ballast water management and hull fouling regulations
- >> 150 Overlapping Regulations**

Congressional leadership is needed to replace this broken system with a uniform, science-based, federal framework for the regulation of ballast water and other vessel discharges.

SUPPORT A UNIFORM FEDERAL FRAMEWORK
for the regulation of ballast water and other vessel discharges.

Senator RUBIO. Thank you.

And I apologize for not introducing the witnesses beforehand. Mr. Farley is the President of Kirby Offshore Marine, headquartered in Houston, Texas.

Mr. Weakley, the President of the Lake Carriers' Association, from Rocky River, Ohio.

Welcome, sir.

**STATEMENT OF JAMES H. I. WEAKLEY, PRESIDENT,
LAKE CARRIERS' ASSOCIATION**

Mr. WEAKLEY. Thank you.

Lake Carriers' Association has represented U.S.-flag vessels operating exclusively on the Great Lakes since 1880. Last year, my members moved more than 90 million tons of cargo on the Great Lakes.

These cargos are the very foundation of America's industrial economy: Michigan and Minnesota iron ore for steel produced in Indiana, Ohio, Pennsylvania, and Michigan; Michigan limestone and cement for construction; coal from Illinois, Wisconsin, and Ohio docks for power generation; Ohio salt to de-ice our wintry roads; and Midwest grain from Wisconsin and Minnesota docks for New York flour mills.

The Army Corps of Engineers has estimated that my members annually save their customers billions of dollars compared to the next least-cost mode of transportation.

We believe in a uniform national ballast water discharge standard. It is critical to waterborne commerce.

Ships sailing the Great Lakes transit many states and Canadian waters on a single voyage. For example, iron ore mined in Minnesota and destined for a steel mill in Pennsylvania starts out in Minnesota waters, passes through Wisconsin, then Michigan, and is offloaded to a railhead in Ohio. Midwest grain loaded in Minnesota and bound for Buffalo add Pennsylvania and New York waters to that list.

While transiting the Detroit-St. Clair River on those voyages, we cross the international border 17 times, in addition to the many international crossings in the St. Marys River, which connects Lake Superior to Lake Huron.

Inflexible, inconsistent, and sometimes conflicting regulations have the ability to shut down shipping and the industries we support.

Adding to the current patchwork quilt of eight state and two Federal regulators, the government of Canada and the province of Ontario have proposed invasive species regulations.

Canada even proposes requiring vessels that only transit Canadian waters, and not discharging ballast water into Canada, to install treatment systems, which they emphatically opposed when New York proposed it in 2008. Canada's transit standard would impose a regulatory blockade preventing our vessels from calling on Canadian ports and sailing between American ports.

The U.S. regulatory process is mind-boggling. Every 5 years, the EPA and each state conduct a VGP rulemaking. Although it takes place simultaneously, the process and duration varies by state. After months of being told by one state that they would not develop

their own requirements, the Wednesday before Thanksgiving they published a proposal. That comment period ended the Monday after Thanksgiving.

Each rulemaking is also subject to years of legal challenges. In many instances, we have defended the regulatory agencies against challenges filed by environmental organizations.

The Great Lakes and St. Lawrence River are a single interconnected freshwater body, so aquatic nuisance species introduced by oceangoing vessels move freely about. Most of our vessels cannot leave the upper four Great Lakes, and even the smaller ones can't go outside the St. Lawrence River. Vessels, such as lakers, whose operations are confined to a geographically limited area should not need to treat their ballast water, as they do not introduce aquatic nuisance species from other ecosystems.

Both the EPA and the Coast Guard concluded that there are no treatment systems capable of operating on lakers. Our unique environmental challenges include wide temperature variations, very fresh water, heavy sedimentation, and strong tannins. Our engineering challenges include extremely high pumping rates, limited machinery space, short voyages, and icy conditions. It is clear that best management practices remain the most appropriate way to regulate our ballast water discharges.

LCA supports ballast water regulation. We support regulation that sets a uniform national ballast water treatment regime.

We recommend, consistent with the IMO ballast water convention, that legislation include the critically important distinction that vessels, such as lakers, that confine their operation to a geographically limited area need not treat their ballast water.

Thank you.

[The prepared statement of Mr. Weakley follows:]

LAKE CARRIERS' ASSOCIATION
Rocky River, OH, January 29, 2015

Senator JOHN THUNE,
Chairman,
Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Executive Summary

Lake Carriers' Association believes a uniform, national ballast water discharge standard is critical to waterborne commerce. Ships sailing the Great Lakes transit many States' and Canadian waters on a single voyage. Inflexible, inconsistent and sometimes conflicting regulations have the ability to shut down shipping and the industries we support. Adding to the current patchwork quilt of U.S. regulations (eight Great Lakes States and two Federal Agencies) both the Government of Canada and the Province of Ontario have proposed invasive species regulations on vessel operators. Canada has even proposed a "transit standard," which they opposed when offered by the State of New York. Canada's transit standard would put in place a regulatory embargo preventing our ships from calling on Canadian Great Lakes ports and impose a regulatory blockade preventing U.S.-flag vessels from trading between American Great Lakes ports. Vessels—such as lakers—that confine their operations to a "geographically limited area" should not need to treat their ballast water, as they do not introduce aquatic nuisance species (ANS) by moving from one ecosystem to another. The Great Lakes are a single interconnected body of freshwater; ANS introduced by oceangoing vessels move freely about. After ten years of studying the problem, both the U.S. Coast Guard and U.S. Environmental Protection Agency have concluded that there are no treatment systems capable of operating in the Great Lakes environment (wide temperature variations, very fresh, heavy sediment, strong tannins . . .), nor are there system meeting lakers' operational requirements (high flow rates, limited space, short voyages, icing conditions

. . .). Best Management Practices remain the most appropriate way to regulate lakers' ballast water discharges.

Written Testimony

I am James H.I. Weakley, President of Lake Carriers' Association (LCA), the trade association that has represented U.S.-flag vessels operating exclusively on the Great Lakes since 1880. Last year, my members moved more than 90 million tons of cargo on the Great Lakes. Those cargos are the very foundation of America's industrial economy:

- Michigan and Minnesota iron ore for steel production in Indiana, Ohio, Pennsylvania and Michigan;
- Limestone and cement for construction throughout the Great Lakes basin;
- Coal from Wisconsin and Ohio docks for power generation basin-wide;
- Salt to de-ice wintry roads throughout the region; and
- Midwest grain from Wisconsin and Minnesota docks for New York flour mills.

The vessels my members operate were built in the United States, are crewed by American mariners, and are owned by American corporations. Those are, of course, the tenants of the Jones Act, the foundation of America's domestic maritime policy since 1920. The U.S. Army Corps of Engineers has estimated that my members annually save their customers billions of dollars in freight costs compared to the next least costly mode of transportation, so clearly the Jones Act has achieved its goal of a vibrant American merchant marine.¹

Waterborne commerce, particularly that on the Great Lakes, desperately needs a uniform, Federal standard for the regulation of ballast water and other vessel discharges. No disrespect to the eight Great Lakes states is intended, but shipping cannot operate efficiently while trying to comply with inflexible, inconsistent and sometimes conflicting state regulations.

Let me give you a couple of examples. An iron ore cargo mined in Minnesota and destined for a steel mill in Pennsylvania starts out in Minnesota waters, then passes through Wisconsin, Michigan, and is offloaded to an Ohio railhead. A cargo of Midwest grain loaded in Minnesota and bound for Buffalo adds Pennsylvania and New York waters to that list. While transiting the Detroit St. Clair River on those voyages our sailors cross the international border seventeen times, in addition to many border crossings in the St. Marys River, which connects Lake Superior to Lake Huron.

Now, imagine having to comply with a different set of regulations each time the vessel enters a State's waters, not to mention all of the times we crisscross between U.S. and Canadian waters during a single voyage. Assuming the regulatory requirements were achievable, and many State regimes are not, the additional expense would surely drive cargo to our already crowded rail lines and highways, or worse, bring an end to some mining and manufacturing in the Great Lakes states.

The regulatory process is mind-boggling. Every five years, the Environmental Protection Agency (EPA) and each Great Lakes state (in addition to other states and jurisdictions delegated authority under the Clean Water Act) commence a full rulemaking process to reissue the Vessel General Permit (VGP). Although many of these rulemakings take place simultaneously, the process and duration varies for each jurisdiction. Perhaps the most frustrating process took place in Illinois. After months of being told that the state would not be conducting a VGP rulemaking process, we were informed that it was the Wednesday before Thanksgiving when the proposed rule was published that they were issuing state requirements. The comment period for the Illinois proposed rule ended the Monday after Thanksgiving.

Each VGP rulemaking, at both the state and Federal level, is also subject to legal challenges. In some cases, we have challenged state and Federal requirements. In other instances we have intervened and defended the regulatory agencies against challenges filed by environmental organizations. Currently, the Canadian Shipowners Association is simultaneously challenging the EPA on some of its VGP II requirements and has joined LCA in its defense of the EPA in a suit brought by an environmental group. After the first VGP, we defended the decisions made by the States of Wisconsin, Minnesota and Michigan. We also challenged the EPA's final rule and supported the legal challenge to the State of New York. Currently, we are defending New York's VGP II decisions after our successful defense of Minnesota's decision.

The Canadian government has further muddied the waters by proposing ballast water regulations that include vessels merely *transiting* their waters. This is puz-

¹ Great Lakes Navigation System: Economic Strength to the Nation, February 2009.

zling, as Canada vehemently opposed a “transit standard” when it was proposed by the State of New York. To New York’s credit, they have since dropped their requirement for vessels simply transiting their waters to have ballast water treatment systems installed. In Attachment C, the Canadian Transport Minister cites the Boundary Waters Treaty of 1909 in Canada’s opposition to the New York transit standard proposal and notes “that neither the Canadian nor U.S. domestic fleet is a likely vector for the introduction of invasive species.” The Canadian Foreign Minister, in Attachment D, states “further, as currently proposed, the state of New York’s amendments to the EPA’s National Pollutant Discharge Elimination System are contrary to the Canada-U.S. Boundary Waters Treaty of 1909.” He then goes on to point out that “New York’s proposed rules inappropriately classify Canadian ships operating in the St. Lawrence Seaway as foreign shippers, categorizing them with shippers operating outside of North America.”

Please keep in mind that the International Maritime Organization (IMO) has developed a ballast water *discharge* standard, as have the EPA and U.S. Coast Guard (USCG), not a transit standard. We believe Canada is the only country in the world to require vessels that have no intention of discharging ballast water in that country’s waters to require ballast water treatment systems to be installed to meet a numeric discharge standard. Knowing full well that U.S.-flag lakers don’t currently have the ability to meet the Canadian requirement, nor will our vessels in the near future, Transport Canada proposed their transit standard in a 2012 discussion paper. This would have the practical impact of denying our vessels entry into Canadian ports or waters on the Great Lakes, even for voyages when our vessels are not discharging ballast water in Canadian waters. In essence, the Canadian Government is proposing a regulatory embargo on U.S.-flag lakers sailing the Great Lakes. Since Great Lakes navigation channels straddle the international border, it is physically impossible for our vessels to make a domestic voyage without entering Canadian waters. We would not be able to deliver iron ore from Duluth to the steel mills of Indiana Harbor. We would not even be able to transport Michigan iron ore from Marquette to Detroit. Through its regulatory blockade, the Canadian government would claim the authority to control cargo movements not only between U.S. states, but also to halt commerce within a single state.

Any ballast water legislation needs to make a critically important distinction, namely that vessels—such as “lakers”—that confine their operations to a “geographically limited area” need not treat their ballast, since they do not move between ecosystems. The Great Lakes are interconnected and ANS introduced by oceangoing vessels can and do migrate *independent* of commercial navigation. For example, the ruffe, first discovered in Duluth/Superior Harbor at the western end of Lake Superior in late 1980s, is slowly migrating along Superior’s southern shore. This range expansion will continue even if no commercial vessels ever sail Lake Superior again. That’s why it’s appropriate that the USCG and EPA regulations governing lakers’ ballast water require Best Management Practices (BMPs) rather than treatment of ballast water for our vessels. LCA supports these USCG regulations.

The Great Lakes need protection from oceangoing vessels’ ballast water, not from lakers. More than half of our fleet is too large to transit from Lake Erie to Lake Ontario via the Welland Canal and all of our vessels are prohibited by the USCG from sailing beyond Anticosti Island in the Gulf of St. Lawrence. As demonstrated in Attachment B, U.S.-flag lakers trade primarily in the upper four Great Lakes (Superior, Michigan, Huron and Erie) from the port of Duluth/Superior to Indiana Harbor or Buffalo and all points in between. On occasion, the smaller LCA vessels venture into Lake Ontario and the St. Lawrence River. Canadian-flag lakers trade between the St. Lawrence River and all five Great Lakes. Oceangoing vessels or “salties” enter the St. Lawrence River and Great Lakes from the Atlantic Ocean and hail from ports throughout the world.

There has been an intensive effort worldwide to develop treatment systems that will end the introduction of ANS via vessels’ ballast water. I am proud to say that LCA was among the pioneers in such efforts. Back in the late 1990s, we partnered with the Northeast Midwest Institute to test a ballast water treatment system that employed filtration and ultraviolet (UV) light and could be installed on the oceangoing vessels that trade to and from the Great Lakes. That research helped lay the groundwork for the ballast water treatment systems that are now coming into the global market and being installed on vessels sailing the oceans.

The USCG and EPA have independently concluded, however, that if regulations were to require lakers to treat their ballast water to IMO discharge standards, our vessels would be unable to comply, and thus, waterborne commerce on the Great Lakes would cease to exist. There is no ballast water treatment system that has been proven capable of meeting U.S. lakers’ operational requirements. U.S. lakers’ ballast water must be pumped out at rates that approach 80,000 gallons per minute

when loading cargo. No ballast water treatment system is effective at that flow rate. Our vessels lack the electrical capacity to simultaneously handle cargo, operate ballast pumps and treat the ballast water. Nor do they have the machinery space necessary to install enough treatment systems and additional electrical generators to treat our ballast water.

Another obstacle is that the voyages on the Great Lakes are of very short duration compared to the ocean trades. A vessel hauling iron ore from Two Harbors, Minnesota, to Gary, Indiana, is underway for 62 hours. A vessel moving limestone from Marblehead, Ohio, to Cleveland, Ohio, is underway for 6 hours. The ballast water treatment systems that use biocides are effective on an ocean voyage that stretches for weeks or a month or more, but not on the short hauls that characterize Great Lakes shipping. There is not sufficient “contact time” for the biocide to sterilize the water and then be rendered safe with a neutralizing agent prior to discharge. Many ballast water treatment systems designed for oceangoing vessels require saltwater as a catalyst to create the biocide. Our freshwater is significantly fresher than the IMO definition, so even systems certified for use in freshwater may not work in the Great Lakes.

Other problems that would need to be solved before lakers could treat their ballast water include the frigid water temperatures and filter-destroying ice chunks at the opening and close of the shipping season and the high level of sediment suspended in the water at many Great Lakes ports. The levels of tannins in the Great Lakes impede the effectiveness of ballast water treatment systems using UV light.

The preceding comments are largely academic because the need to treat lakers’ ballast water is questionable at best. Most LCA vessels confine their operations to Lakes Superior, Michigan, Huron, and Erie. Only a few LCA vessels occasionally transit the Welland Canal and trade to a Lake Ontario port. By law, none may sail on the oceans, so their ballast water originates in the Great Lakes. Add the fact that ballast water is but one of 64 vectors identified by the U.S. Geological Survey for introduction of ANS into the Great Lakes and there is even less reason to treat lakers’ ballast water.

My members implement BMPs to lessen the risk that their ballast water might spread an ANS introduced by oceangoing vessels. In fact, LCA implemented those BMPs *before* they were required by USCG and EPA regulations.

In summary, LCA shares everyone’s desire that vessel ballast water introduction of ANS be a thing of the past. On the Great Lakes, that goal will be best met with uniform Federal regulations that recognize that lakers, operating in a “geographically defined route,” need not treat their ballast water, as it is oceangoing vessels, not lakers, which introduce ANS to the Great Lakes. We ask Congress to unravel the patchwork quilt of ballast water regulations while recognizing the technological impracticability of environmentally unnecessary laker ballast water treatment.

Very respectfully,

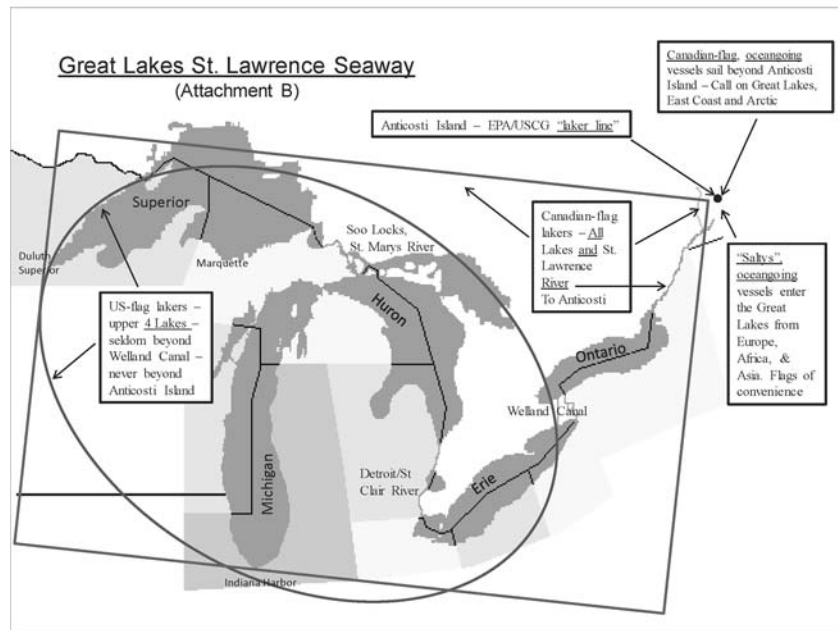
JAMES H. I. WEAKLEY,
President.

ATTACHMENT A

**U.S.-Flag Carriage on the Great Lakes: 2009–2014 and Long-Term Average
(net tons)**

Commodity	2009	2010	2011	2012	2013	2014	Average 2009-2013*
Iron Ore							
Direct Shipments	23,271,702	39,663,547	44,443,975	42,700,840	41,218,215	41,924,590	42,006,644
Transshipments	759,385	2,364,871	2,780,768	2,488,187	2,633,826	3,699,617	2,566,913
Total - Iron Ore	24,031,087	42,028,418	47,224,743	45,189,027	43,852,041	45,624,207	44,573,557
Coal							
Lake Superior	15,427,708	15,847,574	12,954,188	11,947,617	12,216,668	11,325,509	13,241,512
Lake Michigan	1,996,793	2,017,395	3,166,372	2,654,506	2,314,161	1,870,773	2,538,109
Lake Erie	3,250,387	3,674,897	4,118,767	2,977,825	3,706,811	4,576,207	3,619,575
Total - Coal	20,674,888	21,539,866	20,239,327	17,579,948	18,237,640	17,772,489	19,399,195
Limestone	17,067,232	20,410,266	21,434,839	21,794,394	22,111,494	21,459,429	21,437,748
Cement	2,865,323	2,782,259	2,817,846	3,183,388	3,129,748	3,248,033	2,978,310
Salt	1,260,901	1,391,239	1,452,134	1,020,157	1,004,837	1,400,068	1,217,092
Sand	262,805	225,593	332,172	336,316	371,279	376,456	316,340
Grain	304,507	306,872	283,200	371,406	447,653	259,461	352,283
Totals	66,466,743	88,684,513	93,784,261	89,474,636	89,154,692	90,140,143	90,274,526

* Excludes 2009.



ATTACHMENT C

MINISTER OF TRANSPORT, INFRASTRUCTURE AND COMMUNITIES
Ottawa, Canada, December 4, 2008

Mr. DAVID PATERSON,
Governor of New York,
State Capitol,
Albany, NY.

Dear Governor Paterson:

I am writing to convey the Government of Canada's serious concerns with the State of New York's proposed amendments to the ballast water provisions of the United States (US) Environmental Protection Agency's National Pollutant Discharge Elimination System. These amendments will have a damaging effect on the Great Lakes' economy, severely impeding Canada's domestic trade by the Canadian Fleet, and fail to establish a higher level of environmental protection for the Great Lakes Region.

Ongoing scientific research, statistics from the enforcement of Canada's *Ballast Water Control and Management Regulations*, and scientific advice from both Canada and the U.S. suggest that neither the Canadian nor U.S. domestic fleet is a likely vector for the introduction of invasive species. As such, Canada would like to express its concern that there is no scientific rationale for the type of measures prescribed in New York's amendments to require Canadian-flagged vessels, which operate beyond Lake Ontario, to undergo ballast water exchange.

The Great Lakes and St. Lawrence Seaway system is a strategic waterway, shared by Canada and the United States, and is an essential part of North America's transportation system. The efficient flow of goods by ship on this system is vital to the economies of both Canada and the United States, including the state of New York. The combined Canadian and U.S. fleets move goods worth approximately \$80 billion each year, including primary resources that are essential to the industrial infrastructure of both countries. In 2007, Canada purchased nearly one-fifth of New York's foreign-bound goods, making it the state's largest foreign export market. Statistics indicate that Canada-US trade supports nearly 500,000 jobs in New York State.

The Canadian domestic fleet when subject to the New York's proposed ballast water amendments will cease to be able to continue with its domestic trade between Regions of Canada and to the US. These amendments will significantly increase costs to carry cargo across the border, resulting in possible modal shifts away from the most environmentally efficient means of transport, as well as in a reduction of capacity *and* competitiveness in the Great Lakes Region. New York as well as all other Great Lakes ports and industry will suffer a major disruption to the supply of raw materials: the U.S. steel and automotive sectors, for example, would be significantly affected.

In addition, Article I of the Canada-US Boundary Waters Treaty (1909) obliges both countries to ensure that all navigable boundary waters are to be equally free and open to commercial navigation for ships from either side of the border, and both fleets are to be equally treated by laws and regulations of both countries. In addition to this agreement, the Great Lakes Water Quality Agreement calls for coordinated regulations in these shared waters.

Canada's *Ballast Water Control and Management Regulations* came into effect in June 2006. These regulations apply to all vessels entering waters under Canadian jurisdiction from outside Canada's Exclusive Economic Zone. All ships entering the Great Lakes are targeted in the current enforcement protocol. Enforcement takes place before ships enter the locks of the St. Lawrence Seaway at Montreal and is carried out by a joint enforcement team of the United States Coast Guard, the St. Lawrence Seaway Development Corporation (US), the St. Lawrence Seaway Management Corporation and Transport Canada. Boarding teams test ballast tanks to ensure a minimum salinity of 30 parts per thousand exist in each tank onboard each vessel. Further, the Canada-US Joint Ballast Water Enforcement Program operated out of Montreal, is internationally recognized as a prime example of coordination and cooperation between both countries to harmonize regulations in the interest of protecting the Great Lakes Region while promoting the efficient flow of goods by ship.

We strongly hold that the Great Lakes and the St. Lawrence Seaway are our shared waters and the best approach to protect them is through cooperation. As both our countries and your States face challenges to deal with environmental issues in our shared waters, I am pleased to see over the years cooperation between our governments and institutions has been excellent. The joint ballast water inspections in Montreal is one example, our collaboration to provide marine search and rescue, ice breaking, marine security and scientific research are a few other examples.

Building on this history of cooperation, and on sharing our waterways, the Government of Canada kindly requests that your administration exempt the Canadian domestic fleet trading in waters under Canadian jurisdiction, from New York's proposed amendments to the ballast water provisions of the United States (US) Environmental Protection Agency's National Pollutant Discharge Elimination System. This exemption will provide an opportunity for Canada and the United States to develop harmonized ballast water provisions prior to the 2009-shipping season. Canada specifically requests the exemption be granted in the interest of protecting the environment of the Great Lakes Region while promoting the efficient flow of goods by ship between both countries.

To this end, I am pleased to announce Canada is taking steps to ratify the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, under the auspices of the International Maritime Organization, as a baseline. Canada played a key role in initiating the development of this Convention, which will require ships install equipment to treat ballast water by 2016.

I thank you in advance for your ongoing efforts to support and protect our shared waterways and to continue the development of our mutually dependent economies.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

JOHN BAIRD,
P.C., M.P.

c.c.:

Dr. Stephen Johnson, Administrator of the United States Environmental Protection Agency

Admiral Thad Allan, Commandant of the United States Coast Guard

Ms. Mary E. Peters, United States Secretary of Transportation

Mr. Collister Johnson, Jr., Administrator, St Lawrence Seaway Development Corporation

The Honourable Lawrence Cannon, Minister of Foreign Affairs and International Trade

Mr. Jim Bradley, Minister of Transport for Ontario

Mme. Julie Boulet, Minister of Transport for Quebec

Mr. Richard Code, President, St Lawrence Seaway Management Corporation (Canada)

Mr. Donald Morrison, President, Canadian Shipowners Association

ATTACHMENT D

MINISTER OF FOREIGN AFFAIRS
 MINISTRE DES AFFAIRES ETRANGERES
Ottawa, Canada, December 11, 2008

Hon. CONDOLEEZZA RICE,
 Secretary of State,
 The United States of America,
 Washington, DC.

Dear Madam Secretary:

I am writing to convey the Government of Canada's serious concerns with the State of New York's proposed certification of the United States Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System. The proposed requirements for ballast water discharges will have a damaging effect on the highly integrated economy of the Great Lakes region as a whole by severely impeding the movement of Canadian ships, while failing to achieve environmental benefits.

New York's proposed rules inappropriately classify Canadian ships operating in the St. Lawrence Seaway as foreign shippers, categorizing them with shippers operating from outside North America. Under these amended requirements, Canadian domestic ships entering the Great Lakes from the Seaway, all of which must pass through New York waters, will be forced to undergo ballast water exchange in the Atlantic Ocean before each entry. This would cause illogical and untenable situations.

Of additional concern to Canada is the patchwork of ballast water regulations emerging in the Great Lakes, as each state in the region introduces differing requirements under the EPA's permit system. The Government of Canada shares the U.S. Great Lakes States' concerns regarding the impact of invasive species on our shared waters. Canada has a comprehensive national regulatory regime for ships that addresses environmental issues. This regime includes rules that ships must follow to prevent both pollution and the introduction of invasive species, consistent with global rules under the International Maritime Organization. We support the development of compatible rules in the United States and in the Great Lakes States.

The Great Lakes and St. Lawrence Seaway system is one of the world's greatest and most strategic waterways. It has always been an essential part of North America's transportation infrastructure and is critical for the economies of both Canada and the United States. It is a landmark achievement of our two countries working together. In 2007, the St. Lawrence Seaway handled an estimated 43 million tonnes of cargo, and it is particularly important for the transport of bulk commodities, such as iron ore, steel and coal. If Canadian ships were subjected to the proposed measures, it would significantly increase costs to carry cargo across the border, resulting in possible modal shifts away from the most environmentally efficient means of transport, as well as in a reduction of capacity and competitiveness in Great Lakes shipping.

Further, as currently proposed, the state of New York's amendments to the EPA's National Pollutant Discharge Elimination System are contrary to the Canada-US *Boundary Waters Treaty* (1909). Article I of the treaty obliges both countries to ensure that all navigable boundary waters are to be equally free and open to commercial navigation for ships from either side of the border, and both fleets are to be equally treated by laws and regulations of both countries. In addition, the binational Great Lakes Water Quality Agreement calls for compatible regulations in these shared waters.

The Government of Canada supports continued and enhanced cooperation with U.S. authorities to combat invasive species in our shared waters. As both our countries face challenges to deal with environmental issues in our shared waters, I am pleased to see that over the years cooperation between our governments and institu-

tions has been excellent. The Great Lakes and St. Lawrence is a shared waterway and the best approach for effective environmental management is through cooperation, not through unilateral measures, especially those which unfairly penalize one party.

Accordingly, the Government of Canada requests United States Federal engagement on this issue, to seek an exemption of Canadian domestic shippers from these regulations and to ensure that regulations compatible with international standards are adopted to the maximum extent possible in the Great Lakes. I thank you in advance for your ongoing efforts to support the Canada-U.S. relationship and to continue the development of our mutually dependent economies and the protection of our shared waterways. Please do not hesitate to contact us if you have any questions or concerns.

Sincerely,

Honourable LAWRENCE CANNON, P.C., M.P.

Senator RUBIO. Thank you.

Next is Ms. Claudia Copeland, Congressional Research Service, Washington, D.C.

Welcome.

**STATEMENT OF CLAUDIA COPELAND, SPECIALIST IN
RESOURCES AND ENVIRONMENTAL POLICY,
RESOURCES SCIENCE AND INDUSTRY DIVISION,
CONGRESSIONAL RESEARCH SERVICE**

Ms. COPELAND. Thank you.

Mr. Chairman and members of the Subcommittee, I am Claudia Copeland, a Specialist in Environmental Policy with the Congressional Research Service. Thank you for the opportunity to testify about issues concerning regulation of ballast water and other discharges from vessels.

Today there is wide agreement on the need for strong measures to manage vessel discharges that may harm marine environment, especially ballast water, but differing views on how best to do that.

As my written statement describes, two Federal agencies regulate vessel discharges. The first is the Coast Guard, which, pursuant to the National Invasive Species Act, regulates ballast water discharges from about 3,000 vessels. And the second is EPA, which, pursuant to the Clean Water Act, regulates ballast water and other discharges from about 70,000 vessels under a national permit.

My statement also describes how 25 states also regulate vessel discharges. It is the combination of Federal and state requirements that is at issue, and I would like to highlight four aspects of the topic.

The first is overlapping Federal requirements.

The Coast Guard's rule and EPA's vessel permit are similar but not identical. Both include numeric ballast water discharge standards, generally the same numeric standards, but, among the differences, the Coast Guard can grant temporary exemptions from its standards if technology isn't available, while EPA doesn't have that authority. EPA's permit regulates many types of discharges in addition to ballast water.

The maritime industry, some states, and some environmental groups favor a uniform national ballast water discharge standard out of concern that the overlapping requirements make implementation costly and confusing. Many industry groups want to centralize responsibility with the Coast Guard.

Now, centralizing with the Coast Guard might reduce confusion about ballast water, but questions would still remain. For one, what would happen to regulation of the more than two dozen non-ballast water discharges that are also covered by EPA's permit? Options could include eliminating regulation of them entirely or centralizing everything with the Coast Guard or having EPA continue to regulate non-ballast water discharges. However, if the Coast Guard regulated ballast water and EPA regulated other discharges, vessel owners and operators would still be dealing with two agencies.

Most environmental groups want EPA to continue with a role of some sort for all types of discharges, because, in their view, EPA's sole mission is protecting the environment, while the Coast Guard has multiple missions.

A second related issue is the role of states. Minnesota, Wisconsin, Michigan, and Hawaii have enacted their own ballast water permits, separate from EPA's permit. And California and New York have adopted numeric ballast water discharge standards that are more stringent than the Coast Guard's and EPA's. And, in addition, as you have heard, 25 states, including Alaska, Connecticut, Missouri, Nebraska, New Hampshire, and Washington, have adopted non-ballast water requirements that also are enforceable conditions of EPA's permit.

Industry groups object to the additional requirements that are imposed by states, which, they argue, create a patchwork of inconsistent requirements that are problematic for vessels that travel between jurisdictions. While many of them would favor Federal preemption of the states in this area, the courts so far have supported the states' actions.

Not surprisingly, the states that have adopted additional requirements strongly oppose proposals to preempt their authority, arguing that this would be contrary to Congress's intention in both the Clean Water Act and the National Invasive Species Act.

A third issue is the ballast water discharge standards themselves. The Coast Guard and EPA have adopted similar requirements, but questions do remain. First is whether the current standards are even achievable and affordable.

In addition, there is the view of some states and environmental groups that more stringent standards should be required. For example, New York argues that its uniform national standard would be desirable, as that is more stringent than the Coast Guard and EPA rule. And California continues to support its standards, which are the most stringent in the country.

The final issue concerns commercial fishing and small vessels. In 2008, Congress enacted legislation to restrict the types of vessels that are subject to EPA's permit and provided a temporary moratorium for all commercial fishing vessels and nonrecreational vessels less than 79 feet in length. That moratorium will expire in 2017.

Many believe that the discharges from these vessels don't significantly harm marine life and that they should be permanently exempted from permitting. However, others believe that even if there is a small potential risk of environmental harm, discharges from these vessels should still be regulated.

My final point is that the issues that I have discussed are complicated, and while CRS can't recommend solutions, we can help you analyze the options for them.

This concludes my remarks, and thank you for the opportunity to testify.

[The prepared statement of Ms. Copeland follows:]

PREPARED STATEMENT OF CLAUDIA COPELAND, SPECIALIST IN RESOURCES AND ENVIRONMENTAL POLICY, RESOURCES SCIENCE AND INDUSTRY DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. Chairman and Members of the Subcommittee, on behalf of the Congressional Research Service, thank you for the opportunity to appear before you. I am Claudia Copeland, Specialist in Resources and Environmental Policy. The Committee requested that CRS discuss the legislative and regulatory history of vessel discharge, the current regulatory schemes, and issues addressed in recent vessel discharge legislation. In serving the U.S. Congress on a non-partisan and objective basis, CRS takes no position on legislation.

Introduction

As part of their normal activities, vessels may discharge a wide range of wastes and contaminants into U.S. and international waters, including nutrients, pathogens, oil and grease, metals such as copper, toxic chemical compounds, and non-native aquatic nuisance, or invasive, species. The discharges can include shower and laundry facility water, deck washdown and runoff, bilgewater, motor fuel, machinery wastewater, and ballast water, among others. Contaminants in these discharges can have a broad array of effects on aquatic species and human health, many of which can be harmful.

Similarly, the universe of vessels that may release these discharges is diverse and includes commercial fishing vessels, cruise ships, ferries, barges, mobile offshore drilling units, tankers, cargo ships, container ships, research vessels, emergency response vessels such as firefighting and police vessels. Including recreational vessels, the universe of vessels is in the millions.

Ballast water discharges from vessels have been a particular concern, because invasive species entering U.S. waters cause social, recreational, and ecological disturbances and result in significant economic losses. National attention was drawn to the invasive species problem with the arrival of zebra mussels in the Great Lakes in the late 1980s. Since then, virtually all coastal and Great Lakes states have experienced ecological change and loss from aquatic nuisance species. For example, zebra mussels attach to hard surfaces such as water intake pipes that are used for cooling water and municipal water supply. When this occurs, the infestation can cause significant reduction in pumping capacity and occasionally has caused plant shut-downs.

Ballast water has been identified as a major pathway for introduction of aquatic nuisance species. Ships use large amounts of ballast water to stabilize the vessel during transport. Ballast water is often taken on in the coastal waters in one region after ships discharge wastewater or unload cargo, and then discharged at the next port of call, wherever more cargo is loaded, which reduces the need for compensating ballast. The practice of taking on and discharging ballast water is essential to the proper functioning of ships, because the water that is taken in or discharged compensates for changes in the vessel's weight as cargo is loaded or unloaded, and as fuel and supplies are consumed. However, ballast water discharge typically contains a variety of biological materials, including non-native, nuisance, exotic species. If these species are released into lakes or rivers as part of ballast water discharge, they can alter aquatic ecosystems.

Today there is wide agreement on the need for strong measures to control vessel discharges, especially ballast water discharges, but there are differing views on how to do that. Vessel discharge requirements in the United States are a result of U.S. Coast Guard regulations, U.S. Environmental Protection Agency (EPA) permits, and individual state rules, limitations, and requirements. Vessels also are subject to a number of international agreements, in particular to Conventions adopted by the International Maritime Organization (IMO),¹ which apply to vessels operating under

¹The IMO, a body of the United Nations, sets international maritime vessel safety and marine pollution standards.

flags of countries that are Parties to the Conventions. It is the combination of regulations and standards that is at issue today.

Coast Guard Regulation: Ballast Water Discharges

Federal authority to address ballast water concerns in the United States is contained in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA, P.L. 101-646), as amended by the National Invasive Species Act of 1996 (NISA, P.L. 104-332),² and is administered by the Coast Guard. Initially this authority required a program to prevent the introduction and spread of invasive species into the Great Lakes by managing vessel ballast water discharge, a program that subsequently was extended to all U.S. ports and waters. Ships that have operated outside the U.S. Exclusive Economic Zone³ were directed to undertake high seas ballast exchange before entering U.S. waters. However, ballast water exchange is believed to be only partially effective to reduce the spread of aquatic organisms and pathogens and is often not carried out due to safety consideration.⁴

In 2012 the Coast Guard promulgated a rule establishing new requirements for ballast water management.⁵ The Coast Guard amended its existing requirements to include numeric standards that establish allowable concentrations of living organisms in ballast water that is discharged in U.S. waters. The rule specifies that ballast water to be discharged must contain fewer than 10 organisms per cubic meter for organisms larger than 50 micrometers and fewer than 10 organisms per milliliter for smaller organisms, those that are between 10 and 50 micrometers in size. It also establishes numeric limits on indicator microorganisms, such as intestinal pathogens. The rule applies to all U.S. and foreign vessels that are equipped with ballast tanks and are operating in waters of the United States, unless specifically exempt, a number estimated by the Coast Guard to be 3,046 vessels over a 10-year period. Under the rule, the standards would apply to new vessels—meaning those constructed on or after December 1, 2013—on delivery and would apply to vessels constructed before December 1, 2013, according to a phased schedule beginning January 1, 2014, depending on a ship's ballast water capacity.

Under the Coast Guard rule, vessel owners and operators have several compliance options.

- They can eliminate ballast water discharge.
- They can discharge to an onshore facility or to another vessel for the purpose of treatment.
- They can use ballast water that is only drawn from a U.S. public water system.
- Or, they can install a ballast water management system that has been approved by the Coast Guard. For this option—installation of treatment technology—the rule details procedures for land-based and shipboard testing and Coast Guard approval.

The numeric standards in the Coast Guard rule overlap with standards specified in a 2004 Convention of the IMO.⁶ Like the Coast Guard rule, the IMO ballast water performance standard identifies organisms of various sizes and also identifies concentrations of indicator microbes in ballast water that management systems are required to achieve prior to discharge. And the numeric standards in the Coast Guard rule and the IMO Convention are the same.

EPA Permit for Vessel Discharges

EPA also has authority to regulate vessel discharges, including ballast water, but for many years the agency mostly chose not to do so. This authority stems from the

² 16 U.S.C. §§ 4701–4741.

³ The Exclusive Economic Zone (EEZ) means the area established by Presidential Proclamation Number 5030, dated March 10, 1983, which extends from the baseline of the territorial sea of the United States seaward 200 miles, and the equivalent zone of Canada.

⁴ Ballast water exchange involves replacing water that has been taken on in coastal areas with open-ocean water during a voyage. This process reduces the density of coastal organisms in ballast tanks, replacing them with oceanic organisms with a lower probability of survival in nearshore waters.

⁵ Department of Homeland Security, Coast Guard, “Standards for Living Organisms in Ships’ Ballast Water Discharged in U.S. Waters,” 77 *Federal Register* 17254–17320, March 23, 2012. The regulations are codified at 33 CFR Part 151 and 46 CFR Part 162.

⁶ International Maritime Organization, *International Convention for the Control and Management of Ships’ Ballast Water and Sediment*, 2004. Numeric discharge performance standards in the IMO ballast water convention, referred to as the D-2 standards, will enter into force 12 months after ratification by 30 nations representing 35 percent of the world shipping tonnage. As of January 2015, this convention has been ratified by 43 nations, representing 32.5 percent of the world merchant shipping tonnage. The United States has not ratified the convention.

Clean Water Act, which prohibits the discharge of pollutants from a point source into U.S. waters without a permit.⁷ Vessels are defined in the statute as point sources. In 1973, EPA promulgated a regulation that excluded discharges incidental to the normal operation of vessels—including ballast water (but not including vessel sewage discharges, which are regulated)—from Clean Water Act permitting requirements. EPA’s position was that, because vessels are mobile and move between jurisdictions, the traditional Clean Water Act mechanism of regulating through state-issued permits is problematic, because state requirements can vary widely.

This long-standing regulation was challenged in Federal district court by environmental advocacy groups who wanted EPA to address ballast water as a source of aquatic nuisance species in U.S. waters. The court found that the 1973 regulation contradicted Congress’ intention that discharges from vessels be regulated under the Clean Water Act, and it vacated, or revoked, the regulatory exclusion. In 2008, this ruling was upheld.⁸

EPA initially estimated that the court’s ruling could affect and would require permits for as many as 98,000 commercial fishing, passenger, cargo and other vessels, plus over 13 million recreational boats. Congress responded to that estimate by enacting two bills to restrict the population of vessels subject to regulation. The first, the Clean Boating Act of 2008, provided a permanent exemption for discharges incidental to the normal operation of *recreational vessels of all sizes* from Clean Water Act permitting requirements.⁹

The second measure provided a two-year moratorium on Clean Water permitting for certain discharges from *commercial fishing vessels of all sizes and non-recreational vessels less than 79 feet in length*.¹⁰ This moratorium has been extended three times, most recently through a three-year extension, until December 18, 2017, which was enacted in December 2014 as part of a Coast Guard reauthorization bill.¹¹

Following Congress’ actions, in 2008 EPA issued a national Clean Water Act permit called the Vessel General Permit (VGP), giving permit coverage to an estimated 72,000 vessels including tankers, freighters, barges, and cruise ships that were not exempted by the two bills. It applied to 26 types of pollutant discharge types or waste streams, including but not limited to ballast water, that result from the normal operation of covered vessels. The ballast water requirements of the 2008 VGP were minimal, largely requiring what was required by then-existing Coast Guard rules—primarily use of ballast water exchange.¹² Like Coast Guard rules that had been in effect since 2004, EPA’s permit mandated mid-ocean ballast water exchange for ships traveling outside the 200-nautical-mile exclusive economic zone (EEZ) of the United States.

Some stakeholder groups urged EPA to include numeric ballast water discharge standards in the 2008 VGP, arguing that discharge standards would encourage adoption of technology that is more effective for controlling living organisms than ballast water exchange. But EPA did not do so. Requiring a numeric effluent limit for the discharge of living organisms was not practicable, achievable, or available because adequate treatment technologies were not then commercially available, EPA said. Instead, the VGP specified ballast water best management practices, such as regular cleaning of ballast tanks in mid-ocean to remove sediment, as well as recordkeeping and monitoring requirements.

Because the VGP and other Clean Water Act permits are authorized for five-year periods and then must be renewed, in 2013 EPA re-issued the VGP. It is similar to the 2008 permit in many respects, but departs from the previous permit by specifying ballast water numeric discharge limits. Based on reports from the National Research Council and the agency’s own Science Advisory Board since issuance of the 2008 permit, EPA concluded that ballast water treatment technologies are now available to meet numeric limits in the new VGP, and that the requirements are economically practicable and achievable.

The numeric limits in the 2013 VGP are the same as the performance standards in the Coast Guard’s 2012 regulation and also the same as the standards in the IMO’s ballast water Convention. Likewise, the VGP matches the implementation time-frame in the Coast Guard rule for new and existing vessels.

⁷ Clean Water Act Section 301(a); 33 U.S.C. § 1311(a).

⁸ Northwest Environmental Advocates v. U.S. Environmental Protection Agency, 537 F.3d 1006 (9th Cir. 2008).

⁹ P.L. 110–288.

¹⁰ P.L. 110–299.

¹¹ P.L. 113–181.

¹² Infra note 4.

While they are similar in many respects, the Coast Guard rule and the EPA permit differ in several ways.

- *Number and types of vessels.* The Coast Guard rule applies to about 3,050 vessels that are equipped with ballast tanks, while the EPA permit applies to about 72,000 vessels, including many that do not discharge ballast water. The Coast Guard rule exempts crude oil tankers engaged in coastwise trade (*i.e.*, essentially referring to a voyage that begins at any point within the United States and delivers a type of commercial cargo to any other point within the United States); the EPA permit has no such exemption.
- *Covered discharges.* The Coast Guard rule focuses just on ballast water discharges. The EPA permit authorizes discharges of ballast water and 26 other waste streams incidental to the normal operation of vessels.
- *Ballast water requirements are similar but not identical.* Both adopt the ballast water discharge standards in the IMO ballast water convention, but they include somewhat different monitoring, recordkeeping and reporting requirements. For example, the EPA permit regulates discharges of biocides that vessels may use as part of ballast water management; the Coast Guard rule has no such requirements.
- *Ballast water management technology.* The Coast Guard rule requires use of approved ballast water management technology. The EPA permit requires use of “best available technology,” but does not require technology certification.
- *Exemptions.* The Coast Guard has authority to grant temporary exemptions from its ballast water management standards if technology is not available. Because no technological system has yet received Coast Guard approval, the Coast Guard has granted two-year exemptions to nearly 350 vessels. EPA does not have authority to grant exemptions from requirements of the VGP.
- *Enforcement.* Under NISA and the Clean Water Act, respectively, the Coast Guard and EPA have enforcement authority, such as civil and criminal sanctions. Only the Clean Water Act authorizes citizen suits, that is, the ability of citizens to bring a lawsuit to enforce effluent limitations in a permit.

State Regulation of Vessel Discharges

The role of states in regulating vessel discharges is a controversial issue, because, beyond Federal requirements, vessel discharges also are subject to regulation by nearly one-half of the states. The states’ authority to do so derives in part from provisions of the Clean Water Act. First, Section 510 allows states to adopt standards, discharge limitations, or other requirements no less stringent than Federal rules. States often want the flexibility to require standards more stringent than federal, and this general authority in the statute gives states the ability to tailor their implementation of Federal water quality programs by adopting requirements under state law to address local conditions and circumstances.

Several states, including Minnesota, Wisconsin, Michigan, and Hawaii, have used their authority to issue state permits independent of the VGP to regulate ballast water discharges.

Second, under Clean Water Act Section 401, an applicant for a Federal license or permit to conduct any activity that may result in a discharge to waters of the United States must provide the Federal agency with a certification that the discharge will comply with applicable provisions of the Federal law, including state-established water quality standards. Section 401 gives states two distinct powers: one, the power indirectly to deny Federal permits or licenses by withholding certification; and two, the power to impose conditions on Federal permits. Where states impose conditions on a Federal permit—such as the VGP—the permittee must meet the additional state limitations as conditions of the Federal permit.

Twenty-five states and Tribes certified the 2013 re-issued permit with additional permit conditions covering one or more of the 27 effluent streams. Of the 25, 14 states certified the permit with supplementary conditions applicable to ballast water discharges, including specific numeric discharge standards that are more stringent than those in the EPA permit (or the Coast Guard rule), state permit requirements such as Michigan’s, or with more general language prohibiting nuisance or other conditions in order to protect state waters. Some states certified with conditions for specific pollutant discharges, such as chlorine, which can harm aquatic life. States that have used their state authority to adopt more stringent ballast water standards include New York, which are 100 times more stringent than EPA’s and the Coast Guard’s, and California, which has established numeric standards 1,000 times more stringent than those in the Coast Guard rule and the EPA permit. Both New York

and California have temporarily deferred their more stringent standards, but expect to implement them when technology to do so is available.

The commercial shipping industry and environmental groups challenged several separate state permits, on differing grounds, but courts have generally upheld the permits. A Minnesota court upheld that state's permit despite challenges from an environmental group over the state's failure to impose numeric limitations on ballast water discharges. Also, Michigan's permitting program and New York's certification of the 2008 EPA permit were upheld after challenges by shipping industry groups.

Issues in the Regulation of Vessel Discharges

The combination of multiple Federal requirements, plus state requirements, presents several closely related issues, some of which have been addressed in recent legislation, including S. 2094, which this committee approved in the 113th Congress.¹³

Overlapping Federal Requirements

For some time, the maritime industry has argued for harmonization of what it views as duplicative Federal rules for vessel discharges, especially for ballast water discharges, through a single set of requirements. Shipping and other industry groups have long raised concerns that EPA's permit overlaps with mandates in the Coast Guard rule, making implementation costly and confusing for vessel owners. Many in these groups have called for centralizing responsibilities with the Coast Guard, which has long had administrative and regulatory authority over the industry.

Centralizing ballast water management with the Coast Guard might reduce confusion about ballast water, but questions would still remain. One question concerns, how would the more than two dozen non-ballast water waste streams that also are included in EPA's permit be regulated? Options could include eliminating regulation of them entirely, or centralizing everything with the Coast Guard, or having EPA continue to regulate non-ballast water discharges. If EPA were to continue regulating other discharges such as shower and laundry water, bilgewater, and machinery waste, vessels would still be subject to those portions of the VGP, and vessel owners and operators would still be dealing with two agencies. Some interest groups, especially some environmental advocacy groups, would prefer that if ballast water regulation is centralized with one Federal agency, they favor EPA. These groups prefer EPA because its sole mission is protecting public health and the environment, while for the Coast Guard, regulating pollutant discharges is one of several of its existing missions and responsibilities. The maritime industry is concerned about any continuing regulation under the Clean Water Act, because of the potential for citizen suit enforcement, which that law allows.

State Role and Federal Preemption

Shipping and other industry groups have also objected to the conditions that states attach to EPA's permit, which they argue create a patchwork of inconsistent requirements that are economically inefficient and cumbersome to implement. A group of commercial shipping operators challenged state certifications under the 2008 VGP, contending that the shipping industry is placed in the difficult regulatory position of being subject to a single Federal permit with multiple state requirements. The Federal court rejected the challenge, ruling that under the Clean Water Act, EPA does not have the power to amend or reject state certifications under Section 401, which must be attached to and become conditions of the Federal permit.¹⁴

¹³S. 2094 would have established a single Federal ballast water management standard, specifying the Coast Guard's 2012 numeric standards as the baseline. Under the legislation, these standards would supersede existing state standards or permits and also would supersede EPA's ballast water management requirements under the Clean Water Act. The Coast Guard would be directed to adopt more stringent ballast water standards within eight years, unless a feasibility review determines that the specified more stringent standards are not attainable. The Coast Guard could establish lower or higher revised performance standards with respect to classes of vessels, if appropriate. Following enactment of the bill, manufacturers of ballast water treatment technology could only sell, deliver, or import technology that has been certified by the Coast Guard as meeting criteria in the legislation. Finally, a state could enforce a more stringent ballast water performance standard if the standard is in effect on the date of enactment of the legislation and if the Coast Guard determines that compliance with the state standard is achievable and is consistent with obligations under relevant international treaties or agreements. Also in the 113th Congress, the House passed a bill with similar, but not identical, provisions (H.R. 4005).

¹⁴*Lake Carriers' Association v. EPA*, 652 F.3d 1, 10 (D.C. Cir. 2011).

Similar concerns were raised about the Coast Guard's 2012 rule. A number of commenters on the rule requested that the Coast Guard preempt all state ballast water treatment standards and requirements in favor of a uniform, national standard. Some argued that states with conflicting regulations burden interstate commerce and create confusion and would delay eliminating invasions of aquatic nuisance species. In the final rule, the Coast Guard responded that it cannot legally preempt state action to regulate discharges of ballast water within state waters, citing a provision of NANPCA, as amended by NISA, that saves to the states or their political subdivisions their authority to "adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act would] diminish or affect the jurisdiction of any State over species of fish and wildlife."¹⁵

States that have adopted additional requirements, such as their own permits or more stringent standards, strongly oppose proposals to preempt this authority, arguing that doing so would be contrary to Congress' clear intention in both the Clean Water Act and the National Invasive Species Act.

Ballast Water Discharge Standards

Previous Coast Guard rules and EPA's 2008 VGP did not include numeric standards to control ballast water discharges, largely because effective and economical technology was not available. This changed in the Coast Guard's 2012 rule and EPA's reissued permit in 2013. While the issue of numeric ballast water discharge standards would seem to have been resolved through these more recent actions, that's not necessarily the case. Both the Coast Guard and EPA believe that the standards specified in the IMO ballast water Convention, which their rules endorse, are technically and economically achievable, although some industry groups disagree. At the same time, some states and environmental advocacy groups continue to favor more stringent numeric standards in order to eliminate invasions of aquatic invasive species. For example, while New York agrees that a uniform, national standard is desirable, that state would like such a standard to match what it has adopted. Likewise, California continues to support its standards, which are the most stringent in the country.

The Coast Guard's rule calls for a review of its standard in 2016, and EPA will review its standard before the current VGP expires in 2018. Whether the agencies will see a need to adopt more stringent ballast water standards in the future is unknown for now.

Permit Moratorium for Small Vessels

A final issue is how to resolve the current temporary moratorium that Congress enacted in December on EPA permitting of commercial fishing and small vessels.¹⁶ That moratorium expires in December 2017. Many believe that discharges incidental to the normal operation of these vessels are not a significant source of harm to aquatic life in U.S. waters—compared with discharges from larger vessels—and that it would be appropriate, both administratively and environmentally, to exclude them permanently from Clean Water Act permitting. On the other hand, some may argue that, even if there is small potential risk of environmental harm from discharges from these vessels, it still warrants improved management and regulation.

That concludes my statement. Thank you again for the opportunity to testify. I would be glad to respond to questions at the appropriate time.

STATEMENT OF HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Senator SULLIVAN [presiding]. Thank you, Ms. Copeland.

Our next witness is Captain Robert Zales, President, National Association of Charterboat Operators.

Captain Zales?

¹⁵ 16 U.S.C. 4725. See 77 *Federal Register* 17279–17280, March 23, 2012.

¹⁶ Extension of the moratorium was included in The Howard Coble Coast Guard and Maritime Transportation Act of 2014 (P.L. 113–281).

**STATEMENT OF ROBERT F. ZALES II, PRESIDENT, NATIONAL
ASSOCIATION OF CHARTERBOAT OPERATORS (NACO);
OWNER, BOB ZALES CHARTERS**

Captain ZALES. Mr. Chairman and members of the Committee, my name is Robert F. Zales II, and I appear today on behalf of the National Association of Charterboat Operators and as owner of Bob Zales Charters in Panama City, Florida.

My charter fishing business is a family business started by my mother and father in 1965. My parents—father, 88; mother, 82—are still involved, and the three of us have struggled for 50 years to keep this small business viable.

I want to thank Chairman Thune, the Committee, and Senator Rubio for your invitation to present testimony on this critical issue.

The charterboat industry provides a variety of on-the-water services, from recreational charter fishing to kayak ecotours. We are grateful to Congress for extending the current exemption from the NPDES permit requirements on our industry as well as the commercial fishing industry.

I mention the commercial fishing industry because a substantial number of charter-for-hire fishing businesses hold dual permits to allow them to commercial-fish during the off-season and during recreational fishery closures in order to help their business survive.

The charterboat industry has been inundated with Federal, state, and local permitting, regulations, and requirements. The permits have monetary fees and burdensome reporting and recordkeeping requirements and provide for penalties, which include monetary fines, permit sanctions, and possible imprisonment associated with failing to properly report.

Requirements placed on our industry range from Federal fishery overly restrictive fishing seasons, bag limits and quotas, to closed areas to boating and fishing, to engine exhaust emission regulations. The U.S. Coast Guard regulates life-saving, crew licensing, medical fitness review, and drug-testing processes. We have similar state and local requirements that also include clean-water standards and anti-pollution requirements.

Clean water is paramount to the successful operation of these small family businesses. No one is more concerned about our environment and the condition of our natural marine resources than the families who make their living on the water.

Regulations and requirements to ensure our waters are clean are already in place, with the majority being enforced by the Coast Guard. Even with their expanded role due to homeland security and limited budget and personnel, the U.S. Coast Guard does a tremendous job ensuring our waters are clean.

Recreational charterboats are operated as uninspected six or less passengers and as U.S. Coast Guard-certified seven or more passenger inspected vessels. The Coast Guard COI vessels have mandatory yearly topside inspections and biyearly out-of-the-water inspections. And many uninspected vessels participate in Coast Guard voluntary inspection programs.

In all cases where Coast Guard personnel check a vessel, whether at sea, a dock, or routine inspection, one of the first things they look for is a clean bilge and pollution-free vessel.

In April 2007, the EPA Fact Sheet provided information from data from the Coast Guard that, as of 2005, there were 13 million state-registered recreational boats, 81,000 commercial fishing vessels, and 53,000 freight and tank barges operating in U.S. waters. The 13 million recreational boats have since been exempted from the permit.

The charterboat fleet consists of vessels from 15 foot center console outboards up to 120 foot triple engine headboats, and, of those, the majority are the same type vessels as the millions of recreational boats already exempt. The difference between the two is one is used for pleasure and the other used for business.

Many of the Coast Guard COI vessels are also typical recreational boats that have been modified to meet U.S. Coast Guard's COI standards. In cases where vessels are purpose-built for Coast Guard's COI standards, the normal operation of the vessels is similar to recreational boats except they are equipped with Coast Guard-required equipment and built to Coast Guard standards, which include standards for fuel and oil tanks and purpose-built pollution-prevention devices.

Few, if any, charterboats have ballast tanks, meaning any ballast water regulation is a moot point for charterboats.

The EPA permit will add a substantial regulatory and financial burden to an already overly burdened small family business. In addition, the potential liability with associated costs of fines, possible lawsuits, and possible imprisonment due to failure to comply with reporting requirements could be the final nail in the coffin to drive many small families out of business.

Here is a copy of the current 194 page VGP rules and regulations. The permit requires daily logging of discharges, with estimated amounts and condition. The VGP authorizes civil and criminal penalties for violations of the prohibition against the discharge of a pollutant without a permit and also allows for citizen suits against violators. Deck wash, including rain runoff, and fish hold effluents are among the discharges requiring a permit to discharge.

The small family charterboat owners handle all business issues from their home or vessel. They do not have a staff, large business file capacity; handle all daily paperwork and keep up with licensing and permit schedules. They try their best to keep up with current regulations while trying to provide safe and enjoyable services to the public.

You can imagine my 82 year old mother trying to stay on top of the 194 page VGP permit rule book to ensure compliance with recording how much rain runoff from the deck of our vessel occurred on any day.

Our industry is concerned, compliant, safe, and diligently works to maintain a clean environment. There is no significant difference between our type vessels and those recreational vessels already permanently exempt. We have worked since 2006 to gain a permanent exemption and greatly appreciate the help from Congress. While you just gave us 3 more years, we encourage you to approve legislation as soon as possible providing a permanent exemption for the multiple thousands of small family businesses so we are more confident in our future.

Mr. Chairman, this concludes this portion of my testimony. Again, I truly appreciate the invitation and opportunity to provide you and the Committee with this information. I am pleased to respond to any questions.

[The prepared statement of Captain Zales follows:]

PREPARED STATEMENT OF ROBERT F. ZALES II, PRESIDENT, NATIONAL ASSOCIATION OF CHARTERBOAT OPERATORS (NACO); OWNER, BOB ZALES CHARTERS

Mr. Chairman and Members of the Committee, my name is Robert F. Zales II and I am appearing today on behalf of the National Association of Charterboat Operators (NACO) and as owner of Bob Zales Charters in Panama City, Florida. My charter fishing business is a family business started by my mother and father in 1965. My parents, father 88 and mother 82, are still involved and the three of us have struggled for 50 years to keep this small business viable. I want to thank Chairman Thune, the Committee, and Senator Rubio for your kind invitation to present testimony on this critical issue.

NACO is a non-profit 501 (c) (6) association representing charter boat owners and operators across the United States including the Great Lakes. The charter boat industry in the United States consist of recreational charter fishing, diving and snorkeling tours, sailing vessels, sightseeing eco tours, dining cruises, pontoon boat and jet ski and kayak rentals, parasailing, and other on the water businesses. While we are extremely grateful to Congress for extending the current exemption from the NPDES permit requirements on our industry as well as the commercial fishing industry, we are acutely aware of the devastating impacts of the pending requirements, regulations, and potential liability issues on our small family businesses. I mention the commercial fishing industry because a substantial number of charter for hire fishing businesses hold dual permits to allow them to commercial fish during the offseason and during recreational fishery closures in order to help their business survive.

Over recent years the charter boat industry has been inundated with Federal, State, and Local government permitting, regulations, and requirements. Many of the permits have substantial monetary fees and burdensome reporting and record keeping requirements. The requirements provide for substantial penalties which include monetary fines, permit sanctions, and possible imprisonment associated with failing to properly and timely report. Examples of the substantial number of agencies and multiple requirements placed on our industry are: Federal fishery overly-restrictive fishing seasons, bag limits and quotas, closed areas to boating and fishing, fishing gear restrictions, the Endangered Species Act, Marine Mammal Protection Act, engine exhaust emission regulations, marine protected areas, U.S. Coast Guard regulations such as manning requirements, life-saving requirements, crew licensing, crew medical fitness review and drug testing processes, navigation restrictions, FCC radio licensing and requirements, State business licenses, fishing license requirements, fishing and gear restrictions, anti pollution requirements, clean water standards, Local business license requirements, anti pollution requirements, among a host of others.

Clean water is paramount to the successful operation of these small family businesses. No one is more concerned about our environment and the condition of our natural marine resources than the families who make their living on the water. Regulations and requirements to ensure our waters are clean are already in place with the majority being enforced by the United States Coast Guard. Even with their expanded role due to homeland security and limited budget and personnel the USCG does a tremendous job ensuring our waters are clean.

Recreational charter boats are operated as uninspected 6 or less passengers and as USCG Certificated 7 or more passenger Inspected vessels. While the USCG COI vessels have mandatory yearly topside inspections and biyearly out of the water inspections, many uninspected vessels participate in the USCG 5 star and other voluntary programs that provides similar inspections. In all cases where USCG personnel check a vessel whether at sea, a dock, or routine inspection one of the first things they look for is a clean bilge and pollution free vessel.

In April 2007 the EPA produced a "fact Sheet" providing information on the impacts of the U.S. District Court decision vacating the exclusion of vessel discharges. The information provided as of 2005 data from the USCG stated there were *13 million State-registered recreational boats, 81,000 commercial fishing vessels, and 53,000 freight and tank barges operating in U.S. waters.* The 13 million recreational boats have since been exempted from the NPDES permitting requirement. Since

2006 NACO has provided information to the EPA and Congress about the type boats that comprise the charter boat fleet. The vast majority of charter boats consist of vessels from 15' center console outboards up to 120' triple engine headboats and of those the majority are the same type vessels as the millions of recreational boats already exempt. The difference between the 2 is one is used for pleasure and the other used for business. Many of the USCG COI vessels are also typical recreational boats that have been modified to meet USCG COI standards. In cases where vessels are purpose built for USCG COI standards the normal operation of the vessels is similar to recreational boats except they are equipped with special wiring, piping, certified machinery, special safety equipment, and follow USCG COI standards for fuel and oil tanks, piping, bilge pumps, and purpose built pollution prevention devices. Few, if any, charter boats have ballast tanks meaning any ballast water regulation is a moot point for charter boats.

The EPA NPDES permit will add a substantial regulatory and financial burden to an already overly burdened small family business. In addition, the potential liability with associated costs of fines, possible lawsuits, and possible imprisonment due to failure to comply with reporting requirements no matter how minor could be the final nail in the coffin to drive many small families out of business.

I am presenting a copy of the current 194 page EPA VGP for discharges incidental to the normal operation of vessels (the permit rules and regulations). The permit will require daily logging of any and all discharges with estimated amounts and condition among other issues. The VGP also authorizes civil and criminal penalties for violations of the prohibition against the discharge of a pollutant without a permit, and also allows for citizen suits against violators.

Currently deck wash, including rain runoff, and fish hold effluents are among the discharges that will require a permit to allow the discharge. In the VGP permit, fire main discharges, gray water, refrigeration and air condensate discharges, seawater cooling overboard discharges (including non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water), boat engine wet exhaust, and well deck discharges all will require a permit with the required reporting regulations. Discharges of garbage and trash will not be eligible for coverage by the permit because discharges of garbage are already covered under 33 CFR Part 151, Subpart A. Currently vessel owners must provide a detailed vessel garbage plan and post it on the vessel.

The charter boats owners are small family businesses who typically handle all of the business issues from their home or vessel. They do not have a secretarial staff, do not have a large business file capacity, handle all of the day to day paper work and keep up with licensing and permit renewal schedules, and try their best to keep up with all the current regulations while trying to provide safe and enjoyable services to the public. You can imagine my 82 year old mother trying to stay on top of a 194 page VGP permit rule book to ensure compliance with recording how much rain runoff from the deck of our vessel occurred on any day.

Our industry is concerned, compliant, safe, and diligently works to maintain a clean environment. As you can see there is no significant difference between our type vessels and those recreational vessels already permanently exempt. Since 2006 our and other Associations have worked hard to gain a permanent exemption and greatly appreciate the help from Congress by continuing the temporary exemption. While you just gave us three more years we encourage you to approve legislation as soon as possible providing a permanent exemption for the multiple thousands of small family businesses so we are more confident in our future.

Mr. Chairman, this concludes this portion of my testimony. Again, I truly appreciate the invitation and opportunity to provide you and the Committee with this information. I will be pleased to respond to any questions.

Senator SULLIVAN. Thank you very much, Captain Zales.

I want to start by just following up on your testimony. I find that very powerful testimony.

Captain ZALES. Thank you.

Senator SULLIVAN. As you probably know, in Alaska we also have a concern about this issue. And one of the things that I like to remind people, somehow there is sometimes a disconnect between people who see a charterboat captain, a small commercial fishing boat, and they don't make the connection that the owner of that boat is kind of the ultimate small businessman or small businesswoman in America.

Captain ZALES. Exactly.

Senator SULLIVAN. They work hard, take risks. They provide a great service.

And one of the things—and I would welcome comments from all the panelists, but, Captain Zales, why don't we start with you—that concerns me the most is the ever-increasing regulatory burden, particularly on the small commercial fishing boats and charters.

Two questions. What do you see as the increasing costs? And I know this is kind of a tough question. Maybe we can have you kind of get back to us on that. But as the percentage of regulations has increased—and I appreciate you putting that book out, because that shows people, right? Small family business, 184 pages.

What do you see as the increase in terms of just costs to your business? And I know it is hard to quantify, but if you can give us a sense of that, I think that that is powerful testimony.

And then, second, in terms of a permanent exemption—and, again, this would be for all the panelists, all witnesses—to me, that is something that makes a lot of sense. Where is the opposition on that?

Captain ZALES. Thank you for your comments.

And I would agree with you. Clearly, fishing businesses in this country, I mean, you know, that is kind of where this country started, was from fishing, and moved on.

And, you know, as I said, my daddy is 88 years old, my mother is 82. Daddy does what he can; mother handles most of the paperwork stuff now. Mother is not computer-literate, so this 194-page book, she would have to read a page at a time, rather than getting on a computer and doing that.

The cost of the permit probably is not that great. The cost of the burden of having to keep up with the day-to-day logging of discharges that would be reported to her from things like—like I said, this thing requires you to record the amount of rain runoff I had on my deck today. I can't even give you an answer to that question on how much rain runs off my deck on any particular day. It is rainwater that would have hit the water if it hadn't hit my boat. So what is the purpose?

And, I mean, you know, it is like I said. We already comply with a host of rules and regulations. The Coast Guard, every time they come on the boat, the first thing they look for is any kind of pollutant or any kind of problem, because if they see any kind of oil, fuel, anything around there, they immediately go to try to find the source of where that came from and what happened. So we are constantly working to keep everything clean.

Senator SULLIVAN. I am going to interrupt you, and I really apologize. I have to go cast a vote real quick here, but I will certainly be looking at the transcripts of all your answers to this. This is a hugely important issue for me. I am very pleased and honored that the Committee Chair is already focusing on this issue. And I am going to be very interested in your answers.

I don't want to be rude, but I am going to go vote here. I have about a minute to get to the floor. So thank you very much. But please continue, because I think it is a really important issue.

Thank you.

Captain ZALES. And I will tell you that we have quite a number of members from Alaska that are part of our organization.

The real potential here is the liability burden that is here. I don't know if my marine insurance company is going to charge me more to cover potential liability from this permit, if it doesn't get permanently exempted, or what the cost will be.

But I do know, from reading everything that I have read about it, that there are going to be penalties and fines set up. There are going to be rewards offered to people who happen to see something.

I mean, in the fishing business, especially in Florida where we are, people use a lot of suntan oil. You drop suntan oil on the water, you immediately have a sheen on the water. It is not necessarily a spill, but it looks like a spill.

So, you know, these kind of problems and this kind of unknown future is what really is bothersome to us in trying to make it in this.

And, you know, the benefit to a permanent exemption is—like I said, we have been working on this since the court decision came out in 2005, and since 2006 we have tried to gain this permanent exemption.

And it is like I said, the vast majority of the boats that the people that I represent operate are recreational-type boats. I mean, it is the same 46 Bertram that you use for pleasure that you are just taking a charter out on. They are permanently exempted. So there is no difference, in our mind.

And we continually have kicked this can down the road, and we appreciate all the help that Congress has given, but we think it is time. Let's permanently stop it so that we can get on to other business and concentrate on the issues that affect us on a day-to-day basis—whether or not we are going to be able to catch a red snapper this year or not.

Senator RUBIO [presiding]. Well, thank you.

At this time, I am going to ask my questions. And we are going to wait for members that are coming in and out, but with these votes going on, it will be an ongoing process. Although it is just one vote, so I anticipate most of the Members that had questions will return.

Mr. Farley, given the vast amount of agricultural and manufacturing products and energy resources shipped by organizations such as yours, is it fair to say that a patchwork regulatory framework for vessel discharge increases prices for U.S. consumers dependent on these products? What is the impact that these regulations have on consumers, who ultimately at the retail level are buying the products that your members are shipping?

Mr. FARLEY. Senator, there certainly is a cost, an indirect cost if nothing else, in the sense that we have a continuing training burden to be sure that the men and women who ride our tailboats and offshore vessels are fully versed in the regulations of the various states through which we pass. We operate on all coasts of the inland river systems, Hawaii, Alaska, Gulf Coast, East Coast, West Coast.

So the very fact that there is this balkanization of rules leads us to a higher training burden. And training is not free. Eventually, that cost is borne by the shipper at some point in time.

Senator RUBIO. I particularly appreciate the point you made about upward mobility. One of the challenges we have in this country in the 21st century is the rise of the cost of living in comparison to wages that have been stagnant.

And, in particular, the challenge is we are graduating a lot of young people out of high school who—the high school diploma alone does not certify them, necessarily, to work in most industries. But yours is an industry where people who graduate from high school can go work if they are properly trained by your members or during their graduation.

How would regulatory streamlining allow you to hire more people, particularly people with this sort of background?

Mr. FARLEY. Well, it allows us to continue to build our fleets, to have more boats, more barges to move the nation's product.

An example of what you are talking about, sir, is a young person graduating from high school can come to work for Kirby Inland Marine or Inland Towboat Company, that those entry-level jobs are in the \$40,000 to \$45,000 level, and—

Senator RUBIO. I am sorry. The entry-level job is about \$40,000 to \$45,000. That would be potentially for an 18- or 19-year-old just coming in?

Mr. FARLEY. Yes.

Senator RUBIO. OK.

Mr. FARLEY. Yes, sir, they are.

And then someone who can apply themselves diligently to our training regime within 5 years can be earning six figures. And I wouldn't say that all people do that, but it is possible. We have numerous examples of that. In our offshore fleet, there is a higher licensing regime, if you will; it takes longer to do that. But the captain of an offshore vessel earns \$140,000-plus a year.

These are good family jobs. We have 2,500 mariners in our company.

Senator RUBIO. Mr. Weakley, would a uniform U.S. standard assist in our negotiations with our northern neighbors as they create their own standards for the Great Lakes?

Mr. WEAKLEY. Yes, sir, absolutely. I think that is a frustration of the Canadian industry as well as the Canadian government. There really isn't a clear mechanism for a foreign government to negotiate with an individual state, and the other way around, so most of that negotiation takes place indirectly via the courts.

I am embarrassed to tell you how much money I spend on attorneys and lobbyists in the U.S. and in Canada and in each of the eight Great Lake states. That is how complicated not just the patchwork quilt is to deal with from an operational perspective that I think Mr. Farley so eloquently described but from a cost perspective, keeping up with the compliance, going through the process every 5 years. As I said in my oral statement, it is mind-boggling.

Senator RUBIO. Does the Vessel Incidental Discharge Act that we have refiled today—have you had a chance to review it? And if so, do you think that it addresses the unique issues faced by the Great Lake carriers?

Mr. WEAKLEY. To be honest, sir, I haven't read the current bill. I read it last Congress.

We are very supportive of the geographically limited routes. If you look at the legislation that was introduced by Senator Levin several Congresses ago, it was a little more specific toward the Great Lakes. I understand and respect the broadness of the geographical limited areas. That gives the administration agencies the ability to determine where that lake or line would be.

So we are very supportive of the single national standard, sir, and we are very supportive of the bill. And we are very appreciative of your leadership on this effort to unravel the patchwork quilt.

Senator RUBIO. And, finally, Captain Zales, I think you were answering this question as I came in, so I apologize, but never take up a good opportunity to restate your case.

How important is this permanent exemption to not just your small business but others in the industry, as well?

And, by the way, I would take this opportunity of having this chairmanship to invite everyone to come to Panama City and go fishing. I think it is a—I wanted to take that opportunity to let everybody know about that great place.

Captain ZALES. We appreciate it. We invite everybody to come. Spring break is fixing to kick off here in—

Senator RUBIO. Well, not during spring break. They will probably—

Captain ZALES. But, you know, around the middle of April, from then on is really nice. But, yes, Panama City is a great place.

But, clearly, it is just a matter of being to know where our future is. Right now we know that we are exempt for 3 years. At that point in time, we don't know what is going to happen, so we don't know what we have to comply with, what we don't. We don't know if that 194 pages is going to increase in size or what the situation is going to be.

So it is a matter of having to know that you can take this issue and fix it, be done with it, and set it aside and not have to be concerned about it anymore, and only be concerned about the other regulations that are out there that we comply with every day.

Senator RUBIO. Thank you very much.

Senator Cantwell?

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

And I want to follow up on Captain Zales' last point, because in the Pacific Northwest, our economy is definitely tied to living marine resources, from salmon to crab to tourism to maritime transportation. And our recent economy—a report showed that the Washington State maritime cluster was worth \$30 billion in economic activity and 57,000 direct jobs.

So 60 percent of that relies on the fishing industry. So our commercial fishing industry is a big driver. And, as you said, they have had to deal with this incidental discharge issue, which, you know, sounds bad, but when you are referring to something as small as rain runoff of a deck, it can be very challenging.

So there is no science showing that these types of incidental discharge damage the environment. And, obviously, we were able to

do, as you said, this 3-year bill, but why not make that permanent? So I was a sponsor of 2,963, and I hope my colleagues will join in on something that makes it a more permanent bill.

But I had a question for either you or Ms. Copeland. And that is that, if I am understanding this correctly, you can have, like, two vessels targeting, say, Fraser River sockeye salmon in Puget Sound. Both of these vessels built by the same yard, both are the same size, both have the same engines, both have the same fuel. But is it accurate to say that one of these vessels is a commercial vessel and has to comply with the regulation and the other one is recreational and doesn't? So is that what we are seeing out there?

Captain ZALES. Is that to me?

Essentially, it is, in our opinion. Because it is like, you know, you have \$13 million—I don't know what the figure ended up being for the recreational vessels that are permanently exempt from this. But in most cases, the vast majority of cases in the charter business, it is the same boat. In most of the cases in the commercial fishing business, it is pretty much the same boat.

I mean, it is converted boats that people buy that have already been premanufactured for certain things and then they are modified to do things. And I don't know that there is a difference.

I mean, when I catch a red snapper and throw him in my fishbox, that fishbox has got a discharge on it to where the blood from that red snapper, what little bit is in there, filters out into the water. If you take that same red snapper and clean him, you use his head for crab bait, part of the fish went into the water. There is no permit that you have to have for that; you just put him in there.

So there is no difference there. This is a natural thing. I mean, if the red snapper dies in the water, something is going to eat him. If he dies on my boat, something is going to eat what is out there from that fish.

Senator CANTWELL. Well, I mean, I definitely see a difference between this and the ballast water debate. But I guess I am asking whether we know of any science that shows that fishing vessel regulation on this—I mean, that this is negatively impacting the environment.

Is there any science out there, Ms. Copeland?

Ms. COPELAND. Well, when Congress first passed the exemption, the temporary moratorium that is in effect now, it asked EPA to do a study about incidental discharges coming from the categories of vessels that were covered by this temporary moratorium.

And EPA produced a report in response to that, and it found that, yes, there are a number of types of waste streams that are discharged by the vessels that are covered by the moratorium. And they include pathogens and toxic substances and a number of other contaminants that can be of concern.

But what EPA also concluded was, when those wastes are discharged from these vessels in open waters, they don't appear to cause violations of water quality standards. Where they may be a concern is when the vessel is in a tight area where there are multiple vessels present in the same location, all of them discharging. Then there may be a water quality issue that arises.

Senator CANTWELL. OK.

Captain Zales, did you want to add anything to that?

Captain ZALES. And I would say that in areas where you are going to have—and I am assuming this would be, like, a dock area or marina where these vessels would come in. If there is a problem there, you probably have some type of local or state regulation in addition to Coast Guard regulation for whatever the pollutant is.

My example of rainwater, if it doesn't hit my boat, it is going to hit the water. If it is going to hit my boat and my boat has enough pollutants on it to where that is going to be a problem to clean water, my boat shouldn't be on the water.

And the Coast Guard clearly takes care of those kind of situations. Like I said, when these boats are looked at by the Coast Guard, whether it is a typical inspection at sea or a dockside inspection or a routine required inspection, the first thing they look at—and this is every case, because I am always prepared for this—every case, they look for clean bilges and a pollution-free vessel. Because if you have an issue there, they require you to fix it.

Senator CANTWELL. Speaking of which, I think Senator Murkowski and Senator Boxer are looking for a clean bill just on this subject, and I look forward to working with them on that.

Thank you.

Senator RUBIO. Thank you.

Senator Ayotte?

**STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Thank you, Chairman, for having this important hearing, and thank the Ranking Member.

I wanted to follow up, Captain Zales, because in my home state, in New Hampshire, the catch share limits, frankly, are devastating our fishermen. And, you know, it has been dramatic.

And so, as I look at this piece, I see the permanent exemption being very important, because if that is added on what they have already just really been dramatically cut, in terms of what they can catch, you know, I look at this as a burden I don't know how they—I am really worried about their ability to stay in business now.

And if you add this on top of it, for a business like yours, what kind of costs do you think would be faced if this exemption did not continue and you were required to obtain an EPA NPDES permit? Especially as I look at this, as these are really, you know, as Senator Cantwell said, things like rain runoff.

But what kind of cost are we talking about on—it is a wonderful tradition, the fishermen and what they do, certainly in New Hampshire, and I am sure it is the same in Florida as well, but I don't think it is a business where your margins are really large. So what would this do to a business like that?

Captain ZALES. No, and that is clear. And then catch shares are a problem across the country. A catch share program is intended—its primary purpose is to reduce fleet capacity. So if you have enough catch shares to where you eliminate the fleet, then you don't have much of a problem; you don't have many people on the water.

And that is something that we are very concerned with, because, clearly, it has a significant potential problem because, as you said,

you don't get rich in the charter fishing business as a small family. I mean, my parents—I am an only child. My parents and my family, we have lived for 50 years, and, you know, there has been lean times and there has been good times.

When tourism is great, the fishing business is a little better, so it is good. But in the past 15 to 20 years, the regulatory atmosphere that has come on this business has just been tremendous. I mean, it is everything from this proposed permitting problem to catch share situations to, you know, red snapper.

We had a 9-day fishing season for red snapper in the Gulf last year. You don't make very much—you can't make enough money. You know, imagine working as a Senator for the country 6 months out of the year. What would the country do for the rest of the time? So it is a significant problem.

Senator AYOTTE. Yes. We have had the same thing. With cod, for example, we had a situation where they could fish, like, 1 day a year, 2 days a year. It is like, how does anyone make a living doing that? I appreciate your comments on that.

I wanted, Mr. Farley, to follow up with you. In your testimony, you had explained that Kirby's concern is not having vessel discharges regulated—not the fact that they are regulated but the way that they are regulated. And I have heard similar concerns from towing companies in New Hampshire regarding the uncertainty surrounding the vessel discharge regulations.

Can you explain how you currently reconcile the patchwork of Federal and state regulations?

And, also, how is the legislation that you had testified about today, what you would like to see happen, different from what Congress enacted last year? What do you need us to do to make some certainty here?

Mr. FARLEY. Well, thank you about ending up with certainty. Certainty is what we need.

In other words—I will use my company as an example. We have been putting off the decision on what type of ballast water treatment system we are going to put on our offshore vessels for some time. This is going to be roughly a \$90 million decision on our part. We need a Federal standard that allows us to make the best decision that we can for the shareholders we represent.

It is a pretty good gamble for us, in a sense, to bet that we are going to make it in a system that could at any moment be changed. In other words, a vessel that I have just invested \$1.6 million, \$1.8 million in can suddenly by fiat by any of the states be changed, and now I can't go there, I can't go to New Hampshire, I can't go to Alaska, I can't go off Mississippi or off Florida.

We need certainty and we need consistency so that we can make those decisions in the correct manner.

Senator AYOTTE. And how quick do you need us to act on this?

Mr. FARLEY. As soon as you can, Senator. I mean, we are approaching a point in time where we are going to have to make those decisions, and I just want to make sure I make the right one for all of us, because it is an environmental decision as well.

Senator AYOTTE. Right. And if we are going to ask you to make a capital investment, then we want you to make sure that you

make one that complies with the regulations that the Government puts in place and there is one standard. That makes a lot of sense.

And I see, as I think about the answer that you gave, Mr. Farley, and what Captain Zales—gave a consistent theme of, let's get this done so that we can have certainty for all of your businesses to thrive and grow, whether larger or smaller. So thank you.

Senator RUBIO. Thank you.

Senator Nelson?

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Mr. Chairman, congratulations on your new chairmanship of this subcommittee.

And welcome to Bob Zales.

And the opening statement that I had I will just insert in the record.

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

First, I want to congratulate my fellow Floridian, Senator Marco Rubio, on his Chairmanship of the Oceans, Atmosphere, Fisheries, and Coast Guard subcommittee. This committee and the work they do is of vital importance to this great nation but is also essential to the great state of Florida.

I want to welcome all of our witnesses as I look forward to having a discussion with you on the important issue at hand today and I thank you for your testimony. I especially want to welcome and thank Captain Bob Zales, owner and operator of Bob Zales Fishing Charters in Panama City, Florida. Thank you for joining us today.

I want to be brief in my comments because I want to hear the testimony of our witnesses and engage in dialogue on the issue at hand.

The U.S. economy is reliant on healthy coastal and ocean resources. The U.S. maritime transportation system carries 95 percent of U.S. foreign trade equating to more than two billion tons of freight in and out of our nations ports and three million jobs.

Tourism and recreation account for 70 percent of the ocean economy's total employment and 24 percent of its GDP.

Florida is heavily reliant on its waters. Florida ranked seventh among the Nation's top exporting states in 2013 accounting for \$86 billion. Florida is the world's top travel destination with over 87 million annual visitors accounting for \$67 billion. Many of these tourists come to Florida for our beautiful and pristine waters and the aquatic life that they support.

The issue of ship ballast water regulation is important to this country, and especially Florida, for the protection of our waters while also facilitating commerce in a safe and environmentally sound manner. The protection of our environment and the facilitation of commerce are two things that this committee cares deeply about.

Ballast water from ships is the single largest source of introductions of aquatic invasive species. These invasive species can wreak havoc on local ecosystems and the local infrastructure where they are introduced. Making matters worse, these invasive species will not typically stay where they were introduced and will cause problems elsewhere causing massive amounts of ecological and monetary damage.

The current patchwork of state and Federal regulations will not help in our goal of reducing and hopefully eliminating invasive species while allowing for the facilitation of commerce. This is important to get right as our aquatic environments are at great risk from many other areas while at the same time this Nation relies on shipping for over 95 percent of our global trade.

Regardless of our views of which states are active at the state levels, the standards and requirements imposed on ships must be based on hard science. We cannot afford to ignore science when it comes to both the protection of our waters and the protection of our maritime industry.

Senator NELSON. And I wanted to ask Ms. Copeland, does the authority that state regulators feel that they have under the Clean

Water Act, do they have this authority with regard to discharges of sewage?

Ms. COPELAND. No. There is a separate provision in the Clean Water Act dealing with sewage discharges from vessels.

Senator NELSON. Right.

Ms. COPELAND. And it is not a permit program. It was a provision Congress enacted in 1972 that put EPA and the Coast Guard together to develop performance standards for what are called marine sanitation devices. And that particular provision does preempt states from having their own requirements.

Senator NELSON. Right. And that is section 312—

Ms. COPELAND. Correct.

Senator NELSON.—as opposed to the section that we have been discussing, 402.

Ms. COPELAND. Right.

Senator NELSON. Then how has the state preemption language of that section 312 impeded states from protecting their waters with regard to the discharges of sewage, if at all?

Ms. COPELAND. Well, what section 312 allows states to do is to petition EPA to establish what is called a “no-discharge zone.” Where a state Governor determines that it is necessary to protect the local environment or local public water supplies or the like, the Governor can ask EPA to do that, to establish a no-discharge zone.

But that is a no-discharge zone, and it has to be accompanied by a demonstration that there are adequate on-land facilities to handle sewage that is discharged from vessels in those locations. So there is an accompanying requirement that has to be met through that determination.

Senator NELSON. With regard to ballast water, some states have standards that are much more stringent than others. Does it make sense, both from compliance and enforcement, to have a single standard that is the most stringent scientifically and then ratchet that standard up over time as the technology improves?

Ms. COPELAND. Well, that is certainly an option that has support in a number of areas. The question really is the availability of the technology to meet a more stringent standard, either now or in the future. And as my statement indicated, there are states that have adopted more stringent standards. They have temporarily deferred them because of the very question of is there technology that can meet a more stringent standard.

Senator NELSON. In my opening statement, I was talking about, of course, the Great Lakes have a real problem on some of that ballast water that comes in from foreign ships. But we in Florida have had the same thing with regard to some of the discharges that come in from foreign ports.

Thank you all very much.

And thank you, Bob, for coming up.

Senator RUBIO. Thank you, Senator Nelson.

Senator Wicker?

**STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. Thank you.

And thank you to the panelists. We are shuttling back and forth between various committees today. For me, it is three committees. So I am sorry I missed your testimony.

Let me ask the three gentlemen, first of all, not as researchers but as actual people who are out there, what was your position, if at all, in the last Congress on the proposed legislation, S. 2094, the Vessel Incidental Discharge Act, as it was reported from this committee?

And we will start with Mr. Farley.

Mr. FARLEY. Senator, we were in total support. We seek a Federal standard, a standard based on the latest science, a regulation that we can follow from now and forward, particularly the idea that we establish the best science currently available to us, with the idea that over time, as that science increases, that we would move forward with that science. I think that is the way we need to go.

So my short answer is we were in support, sir, of that legislation.

Senator WICKER. And, Mr. Weakley, did your association take a position on that particular mark from the Commerce Committee?

Mr. WEAKEY. Senator, we were supportive of that bill. We were hopeful that there could have been some more clarity around the Great Lakes language, although we were comfortable with allowing the administrative agencies to define the geographically-defined route.

So we were supportive of that. I anticipate——

Senator WICKER. What sort of clarity would have been helpful?

Mr. WEAKEY. Define a geographically-defined route as to include the lakes of Michigan, Superior, Huron, Erie, Ontario, out to a point on the St. Lawrence River as far off as Anticosti Island.

Senator WICKER. Would there have been a different standard for that area?

Mr. WEAKEY. Yes, sir. Let me clarify. It would be the same standard that the EPA and Coast Guard have currently accepted, and that is the vessels that operate only within the defined area don't have to install ballast water treatment systems.

So that is why I say we are comfortable with letting the administrative agencies define that geographically defined route. We would be more comfortable if Congress were to define that in statute.

Senator WICKER. And Captain Zales?

Captain ZALES. We were supportive, and we were very hopeful that we were going to end up with a permanent exemption before the end of the Congress.

And I appreciate the 3 year exemption, but, as you know, coming from your state—you have a large shrimping fleet there and commercial fleet, recreational charter fleet. They were all of the same opinion to try to get this to where, you know, we could get off this page and continue looking at what other regulations are coming at us and complying with the things that are out there already.

But we were very supportive of the bill and would hope to see this thing get expedited so we can have finality soon.

Senator WICKER. Why do you think we didn't get the bill passed?

Captain ZALES. Coming from a small fishing family, unlike most of the people in this room, the organization that I represent I do on a volunteer basis. Some of my expenses are paid every now and then, some are not, but most of it is out of my pocket, and all the

times out of my pocket away from my business. Because, as a small charter business, I do it all. I build engines, I build fiberglass, I do everything. So when I am not in Panama City, nothing is getting done.

And so, had that been done, I wouldn't be sitting here now. I would be working on my boat, getting ready for spring break.

Senator WICKER. Well, Washington is a nice place to visit in February, but I do understand that you make your living elsewhere.

Captain ZALES. I prefer April when the cherry trees are in blossom. It is prettier.

Senator WICKER. Well, we will put that to a vote, and I think we will get a nice show of hands there.

What technology do you have now? And where is it OK?

Captain ZALES. Technology?

Senator WICKER. I am still on incidental discharge.

Captain ZALES. The technology that is there is just keeping our boats clean and keeping our engines clean and keeping everything discharged in a normal fashion.

Senator WICKER. OK. What about, do you have any treatment technology on your vessels?

Captain ZALES. On my vessel, I have a holding tank that whenever I get to the dock, you know, I pump into a holding tank facility. So that is for sewage discharges.

For bilge water and whatnot, it is just normal operation of the vessel. I mean, all boats typically take on a little bit of water, and, you know, if it rains, you get a little bit more. But most of your decks are watertight, so, you know, it is confined to a small amount; it is not a large amount. If I have a large volume of water coming out of my boat, I have a problem, so, you know, I am fixing that.

But other than that, rain runoff and stuff, it just washes off. Engine exhaust, cooling water, it goes right out the exhaust and cools the mufflers like they are supposed to.

Senator WICKER. Mr. Farley and Mr. Weakley, do you have ballast water treatment technology on your vessels?

Mr. FARLEY. No, Senator, not at this time, we do not. That is—

Senator WICKER. If we tell you what to do, you will do it.

Mr. FARLEY. Yes, sir. And what we would like to have told is the IMO standard, which is achievable at this time. There is technology that can achieve that standard. We would like to start there, sir.

Senator WICKER. Mr. Weakley?

Mr. WEAKLEY. Senator, both the U.S. Coast Guard and the U.S. EPA have determined that there is no ballast water treatment systems that will work on Great Lakes vessels. Our flow rates, our engineering challenges are too great.

If you combine our fleet, 57 vessels, with the Canadian-flagged, it is 200 vessels out of 70,000 unique vessels in the U.S. So—

Senator WICKER. Do you think ballast water treatment is a problem for your vessels?

Mr. WEAKLEY. No, sir. We never leave the Great Lakes. We rarely leave the upper four Great Lakes. We clearly think the problem is the oceangoing vessels that are coming from foreign destinations bringing invasive species into the heartland of the United States.

Prevention is the key. Once you prevent those—and I would say, sir, that since the no-ballast-water-on-board loophole was closed in 2006, there is no unmanaged ballast water allowed into the Great Lakes, thanks to the United States Coast Guard. Not coincidentally, since 2006, there have been no new introductions of invasive species from the ballast water vector.

So, clearly, best management practices have a place. Clearly, the toxicity of ocean water on freshwater environments, on freshwater critters, is having an impact. So prevention is working. Is that as good as the IMO D-2 discharge standard? Some would say it is not, some would say it is.

Senator WICKER. Ms. Copeland, do you want to take issue with anything or elaborate or help me out in any way?

Ms. COPELAND. No, just one other point I thought might be worth mentioning. The Coast Guard rule requires that compliance with its ballast water discharge standard be—one of the options for compliance is installing treatment technology. And the rule specifies that the Coast Guard must test and approve and certify that technology.

I understand that for a number of vessel operators and owners, they are waiting for the Coast Guard to actually go through that full certification process before they can install technologies. And the Coast Guard has found it necessary to issue temporary exemptions from its standard until there is technology that has been certified and approved.

Senator WICKER. Thank you so much.

Thank you, Mr. Chairman.

Senator RUBIO. Thank you, Senator.

Well, I want to thank all four of you for being here today. And I apologize for the chaos of running in and out. Some of you are veterans of testifying, so you know how the process is.

This is an important issue. It is an important issue for multiple states, as evidenced by the senators that came here today, a couple who briefly attended and then got pulled in to other committee meetings but who I know have an interest in this subject matter. And it is one we are going to continue to talk about. Your testimony today was incredibly valuable.

The hearing record is going to remain open for 2 weeks, and during this time, Senators are going to be asked to submit any additional questions for the record that they might have. Upon receipt, our request is that each of you agree to submit written answers to the Committee as soon as possible. It will be very helpful as we move forward on the proposed legislation before us today.

With that, I want to thank you again for appearing.

And, with that, this hearing is adjourned.

[Whereupon, at 3:38 p.m., the hearing was adjourned.]

A P P E N D I X

CANADIAN EMBASSY
February 18, 2015

Dear Senator Rubio,

I am pleased to submit this letter to the U.S. Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard in light of its February 4, 2015 hearing on the impacts of vessel discharge regulations, notably with respect to ballast water.

Canada appreciates the long history of co-operation between our two countries to reduce the risks associated with the introduction and spread of invasive species from ballast water on the Great Lakes. A compatible approach to ballast water regulations is important in order to allow Canadian, U.S. and international ships to continue to operate together in this region, where they directly support almost 100,000 jobs and over US\$33 billion in annual business revenues in our two countries.¹

In recent years, Canada has sought to maintain compatible bi-national ballast water requirements, despite challenges from an increase in the number of differing U.S. Federal and state regulations in the region. As Great Lakes shipping is a global industry, Canada's view is that a fair and feasible global approach is the best way to address the problem of invasive species there. Canada has strongly encouraged U.S. regulators to adopt standards compatible with the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (the Convention), which Canada has ratified. Canada was encouraged when many U.S. regulators did so, and when our two countries agreed through the *Great Lakes Water Quality Agreement, 2012* to take into account, as appropriate, the standards set forth in the Convention in addressing ballast water discharges on the Great Lakes.

In general, Canada welcomes the *Vessel Incidental Discharge Act*, which will greatly assist in the maintenance of a compatible regulatory regime on the Great Lakes by establishing a single U.S. regulatory regime for ballast water.

Please allow me to express one concern with the proposed act's limitations on ballast water rulemaking for enclosed geographical areas, such as in our shared Great Lakes waters. Canada has recently determined that Great Lakes ships pose a high environmental risk when compared with the low risk posed by international voyages to the Great Lakes (to which current ballast water management regulations apply).² As many damaging species (e.g., the Zebra Mussel) cannot move long distances without help, the movement of non-native species by Great Lakes ships can spread invasions (whether from ships or other sources) to new sites, multiplying economic and financial damages of a more isolated invasion. For this reason, Canada would prefer that any limitations on ballast water rulemakings be contingent on a favourable risk assessment by the appropriate U.S. Federal agency, considering both the introduction and spread of invasive species. Canada would be pleased to have the opportunity to participate in any such risk assessments involving our shared waters.

In light of written testimony provided to your sub-committee on January 29, 2015 by the U.S. Lake Carriers Association (LCA), I also want to take this opportunity to clarify Canada's position on the implementation of the Convention.

I want to reassure you and your sub-committee that Canada is committed to facilitating marine transportation on the Great Lakes-St. Lawrence Seaway system, while reducing the introduction and spread of damaging invasive species and protecting the safety of ships and crews.

The Convention will not be applicable in Canada until it enters into force and is implemented in Canadian regulations. No Canadian ballast water regulations currently apply to Great Lakes ships.

¹Martin Associates (2011) The economic impacts of the Great Lakes-St. Lawrence Seaway system.

²Fisheries and Oceans Canada (2014) Science Advice from the National Risk Assessment for Ballast Water Introductions of Aquatic Nonindigenous Species to Canada. Report 2013/064.

In preparation for the regulatory process, Transport Canada is consulting with U.S. and Canadian stakeholders, taking into account legal, scientific, technical, cost, benefit and compatibility considerations. Transport Canada has recognized that if the Convention entered into force now, technical and regional compatibility uncertainties would pose challenges for Great Lakes ships. As the Convention has not yet entered into force, Canada will continue to monitor these challenges, and is exploring options to address them if necessary.

I would like to clarify three specific issues raised by the LCA in its written testimony.

First, Canada is committed to continued cargo movements on the Great Lakes by the Canadian, U.S. and international fleets that operate there, in the context of practicable and protective ballast water requirements.

Second, the recent assessment by Canada of the environmental risk posed by Great Lakes vessels noted above does not accord with the LCA's testimony.

Third, regarding Canada's earlier opposition to New York State ballast water requirements, which applied to transiting ships, Canada objected to the application of these state-level requirements to Canadian ships because they were unilateral and unachievable, being 1000 times more stringent than the Convention's ballast water standard. Since that time, the U.S. Coast Guard and the U.S. Environmental Protection Agency have joined Canada in adopting the internationally-agreed Convention standard, which Canada and the U.S. have further agreed to take into account as appropriate under the *Great Lakes Water Quality Agreement*.

As the Convention remains at a pre-regulatory stage, Transport Canada will continue its discussions with the LCA, U.S. Federal agencies and other stakeholders toward fair, practicable and protective requirements. Canada looks forward to further co-operation between our two countries toward these ends.

Sincerely

GARY DOER,
Ambassador.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARCO RUBIO TO
JAMES F. FARLEY

Question 1. Absent Federal regulation, another potential solution to the issue would be state compacts to harmonize existing state regulations. Are you aware of any such effort among the fourteen states on the east coast? Or, alternatively, an effort amongst the states along the Mississippi river?

Answer. I am not aware of any such efforts, and I would argue that state compacts to harmonize existing state regulations would not be adequate to fix the broken system under which our company and employees are working. Kirby Corporation operates over 1,300 vessels on all three U.S. coasts, throughout the Mississippi River system, on the Gulf Intracoastal Waterway, and in Alaska and Hawaii. Even if states that share a body of water or coastline were able to eliminate overlap and inconsistency between and among their vessel discharge standards, nothing in existing law would prevent state compacts from conflicting with each other and/or with Federal regulations. We need Congressional leadership to establish a single set of nationally consistent and clear standards for vessel discharges in order to protect our investments in our vessels and preserve our flexibility to deploy those vessels where ever they are needed across the country. Only Congress can bring long-term certainty to Kirby and other vessel operators engaged in interstate commerce that the multi-million dollar treatment systems we install on our vessels will be acceptable anywhere our vessels may operate.

Question 2. Which is better for the environment—harmonized and streamlined Federal standard or a patchwork of Federal and state standards addressing vessel discharge?

Answer. Harmonized and streamlined Federal standards are better for the environment because without them, environmental protection will be delayed as companies lack assurances that their investments in ballast water treatment systems for their towing vessels and barges will be protected. To come into compliance with Federal requirements, Kirby is planning to invest over \$90 million in equipping our vessels with ballast water treatment systems. However, the arbitrary regulatory regime we are operating under has compromised our ability to make that investment decision with confidence because if any state in which we operate decides the treatment systems we have selected are not acceptable for any reason, our investment will be wasted and we will be forced to spend more money on alternative systems. As a result of this regulatory uncertainty, rational companies have delayed the installation of costly treatment systems.

Our industry's position as the most environmentally friendly mode of freight transportation attracts shippers to move their commodities by barge, and our customers rigorously vet companies and vessels, rightly demanding that they strive to achieve the goal of zero harm to the environment. Harmonized and streamlined Federal standards would advance us towards this goal by allowing us to confidently make multi-million-dollar investments in discharge treatment technology, further enhancing environmental protection.

Finally, it is important to note that establishing a uniform Federal framework for the regulation of vessel discharges does not mean depriving Americans in any state of the highest standards of environmental protection. The solution is to take the highest standard that is technologically achievable and economically practicable and make that standard the law of the land, so that the waters of every state are equally well protected.

Question 3. You mentioned that the Federal Government and the states are in fact harmonized in the regulatory standards at this time. Is there anything preventing that harmonization from changing on any given day by any given state?

Answer. No, as it currently stands, there is nothing to prevent a state from changing its standard for ballast water or any other vessel discharge and thereby create an inconsistency. Neither of the Federal statutes under which the Coast Guard and EPA have promulgated their regulations preempt state lawmaking or rulemaking in this area. Further, while the Federal Government and the states currently agree on a harmonized standard for ballast water discharges, this only occurred after several states reduced their standards after they finally accepted the broad scientific consensus that no currently existing ballast water treatment technology can achieve the more stringent ballast water standards they had promulgated.

It is important to note that ballast water is not the only vessel discharge for which there are regulatory conflicts among Federal and state authorities. Through its certification of the 2013 VGP, Connecticut became the first state to prohibit graywater discharges, and at least two states, California and Washington, have explored the establishment of costly and operationally infeasible hull inspection and cleaning programs. Inconsistencies in these areas have as much potential to impact the efficiency of our operations as contradictory ballast water discharge standards do, and further highlight the need for a uniform national approach to the regulation of all vessel discharges.

Question 4. Is this issue important to only coastal states?

Answer. As a representative of Kirby, which operates both coastal and inland vessels, I can assure you that this issue is equally important to vessel owners that operate on the major inland waterways—such as the Mississippi, the Ohio, and the Columbia-Snake River systems—and on the Great Lakes, whose vessels cross multiple jurisdictional lines in the course of a single voyage and are burdened by the same Federal and state regulatory patchwork as those engaged in the coastwise trade.

This issue is also important to the vitality of the entire U.S. economy. Vessels operating on the coasts, the inland waterways and the Great Lakes are part of an economic lifeline for the shipment of critical commodities like export grain, coal, steel, and petroleum products, and represent an investment made by our customers in the most affordable, fuel-efficient and environmentally friendly mode of transportation. If the current state of affairs persists, and regulatory burdens increase, barge transportation will become more expensive, and those costs may ultimately be passed on to consumers, or cargo may be shifted to other more expensive and less efficient modes. Establishing a single Federal framework for the regulation of vessels in interstate and international commerce is essential to ensure the efficient movement of vital commodities on which the U.S. economy depends.

In addition, this issue has real impacts for all American taxpayers. The average American taxpayer cannot afford to fund duplicative, superfluous regulatory programs, especially at a time when many are struggling economically and Federal and state budgets are facing overwhelming amounts of debt. Funding the efforts of two Federal agencies and 25 states to regulate the same vessel discharges in redundant and sometimes conflicting ways is both wasteful and inefficient.