



**AMERICAN ASSOCIATION OF PORT AUTHORITIES**

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**Testimony of Richard Steinke**

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**Before a Joint Hearing of the  
House Transportation and Infrastructure Subcommittees on  
Coast Guard and Maritime Transportation and  
Water Resources and the Environment**

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**Introduction**

Good morning. I am Richard Steinke, Executive Director of the Port of Long Beach and Chairman of the American Association of Port Authorities (AAPA). Founded in 1912, AAPA represents virtually every major U.S. public port agency, as well as the port agencies in Canada, Latin America and the Caribbean. Our Association members are public entities mandated by law to serve public purposes — primarily the facilitation of waterborne commerce and the generation of local and regional economic growth in an environmentally sustainable manner. My testimony today reflects the views of AAPA's 85 United States public port members.

Chairmen Duncan and LoBiondo, AAPA commends you for calling this hearing on the implementation of the National Invasive Species Act of 1996 (NISA). We appreciate the opportunity to present the views of the nation's public port industry. I would also like to express my appreciation to all of the witnesses testifying today. We have worked very closely with all of the witnesses over the last three

years. We have been impressed by the dedication and sincere effort these organizations and many others have made to assist in the development of a comprehensive and effective national and international ballast water management program. In particular, we believe the work of the Shipping Industry Ballast Water Coalition, which includes AAPA, the Chamber of Shipping of America, and the Lake Carriers Association, has been extremely valuable in educating all segments of the maritime industry — ports, vessel owners, and maritime labor — about this issue and in helping the industry reach consensus on needed action.

Almost 95 percent of U.S. overseas trade (by weight) is moved by ship, and over 80 million tons of ballast water are discharged into U.S. waters each year. There are thousands of marine species that may be carried in ships' ballast water. This includes anything that is small enough to pass through a ship's ballast water intake ports and pumps, such as small fish, invertebrates, and the eggs, cysts and larvae of various species, as well as bacteria and other microbes. The introduction of aquatic nuisance species can result in substantial ecological and economic damage throughout the U.S. For example, over 40 percent of U.S. inland waterways are infested with the European zebra mussel; efforts to control zebra mussels have cost over \$1 billion since 1989. San Francisco Bay is now home to more than 234 non-native species; scientists estimate that one new exotic species establishes itself there every 14 weeks through a variety of pathways.

Since at least 1990, the study and regulation of invasive species has been — and continues to be — the subject of legislative, regulatory, and legal action at local, state, national and international levels. Despite the best intentions of all involved, little progress has been made in establishing a comprehensive and effective national or international ballast water management regulatory regime. Only with a strong national and international regulatory regime can we reduce the risk from the introduction of aquatic nuisance species and ensure that the nation's waterborne commerce is not adversely affected by inconsistent or duplicative regulatory requirements.

This morning, I will describe AAPA's position on ballast water management, which contains three basic elements:

- Mandatory Ballast Water Management;
- Certification of Ballast Water Management Technologies and Practices; and,
- Federal Preemption of State Regulation.

In discussing each element of our position, I will summarize the legislative and regulatory background of the issue, the challenges to addressing the issue, and the steps the port industry believes are necessary to address the issue.

### **Mandatory Ballast Water Management**

*The U.S. should strengthen its ballast water management initiatives to establish a mandatory national ballast water management program. The U.S. should continue to work closely with the International Maritime Organization (IMO) member nations to ensure that its program is consistent with the direction of the ongoing international negotiations. The elements of a mandatory ballast water management program should include requiring all ships to maintain a ballast water management plan and recordkeeping system and, subject to safety considerations, directing all ships to perform some method of ballast water management before discharging ballast water into waters of the U.S.*

AAPA believes the most effective approach to prevent the introduction of aquatic nuisance species is through an international regulatory framework. In 1997, the member countries of the IMO adopted voluntary ballast water management guidelines to minimize the risk of spreading aquatic nuisance species. The guidelines recommend that vessels exchange ballast water collected in coastal waters with mid-ocean water, which contains fewer organisms that can survive in coastal environments. Shortly after adopting the voluntary guidelines, the member countries of the IMO began negotiating a binding international agreement for mandatory ballast water management. Unfortunately, progress has been slow and adoption of an agreement by member countries is not expected until late 2003, at the earliest. Implementation will occur only after enough countries ratify the agreement, which would likely take several more years after adoption.

In 1990, Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA), which, among other things, directed the Coast Guard to establish mandatory regulations for ballast water entering the Great Lakes. The Great Lakes' regulations took effect in 1993, and have been revised several times since then to expand the geographical extent of coverage, improve the effectiveness of ballast water exchange, and to incorporate the use of best management practices. The NANPCA also established the Aquatic Nuisance Species Task Force to coordinate and direct the Federal government's efforts to prevent the introduction of aquatic nuisance species; to monitor, control and study such species; to provide guidance to the Coast Guard regarding its regulatory program; to conduct a ballast water management demonstration program; and, to disseminate related information.

In 1996, Congress amended NANPCA with passage of the National Invasive Species Act, which directed the Coast Guard to establish a national ballast water management program. On July 1, 1999, Coast Guard regulations establishing a voluntary national ballast water management program became effective. The regulations require all ships entering U.S. waters from outside the Exclusive Economic Zone (EEZ) to file ballast water management reports with the Coast Guard so the agency can determine the level of participation in the voluntary program. As was directed by NISA, if the rate of compliance is found to be inadequate, or if vessel operators fail to submit mandatory ballast water reports to the Coast Guard, the voluntary guidelines will become mandatory and will carry civil and criminal penalties.

The issues involved in developing a comprehensive and effective national and international ballast water management regime are complex, and AAPA has been active in assisting the Federal agencies in this effort. Captain Ray Skelton, Environmental and Government Affairs Director at the Duluth Seaway Port Authority, is a member of the Ballast Water and Shipping Subcommittee of the Aquatic Nuisance Species Task Force. Mr. Tom Kornegay, Executive Director of the Port of Houston Authority, is a technical advisor to the U.S. delegation to the IMO's Marine Environmental Protection Committee, which has responsibility within the IMO for developing the international agreement on ballast water management. Dr. Robert Kanter, Director of Planning and Environmental Affairs at the Port of Long Beach, is a member of the National Invasive Species Advisory Committee. And, as I mentioned earlier,

AAPA participates in the Shipping Industry Ballast Water Coalition to help ensure that ports, vessels owners, and maritime labor are all educated and involved in shaping a comprehensive and effective ballast water management program. We also have been active in working with technology developers and other interested groups, such as the Northeast-Midwest Institute, to help shape ballast water management policy.

AAPA believes the Coast Guard should promulgate regulations as soon as possible to make the current voluntary program mandatory. AAPA supports continued application of a safety exemption for vessels that are unable to perform ballast water exchange when the master of a vessel, acting in good faith, determines that the exchange of ballast water will threaten the safety or stability of the vessel, its crew, or its passengers.

AAPA recognizes that ballast water exchange is only an interim measure to reduce the risk of introduction of nuisance species. Ballast exchange is: (1) known to be of limited effectiveness for certain types of organisms; (2) limited to vessels on fairly long voyages that travel more than 200 miles offshore; (3) expensive due to increased fuel consumption, pump wear, and labor costs; and, (4) potentially dangerous to the operation of some ships. Thus, there is a great need to develop more effective and efficient approaches to ballast water management on ships. However, due consideration must be given to the availability of technologies, the environmental consequences of treatment, and cost effectiveness of alternatives to ballast water exchange. In addition, before any decision is made to phase out ballast water exchange, consideration must be given to investments made in existing vessels, particularly in recently built vessels that have incorporated specially designed systems for ballast water exchange.

### **Certification of Ballast Water Management Technologies and Practices**

*The U.S. should establish a focused ballast water management technologies and practices certification program within the Coast Guard. This program should encourage public-private partnerships to evaluate and verify the effectiveness of ballast water management technologies*

*and practices using standardized procedures and criteria. The program should receive sufficient funding and provide sufficient incentives to technology developers and vessel owners to expedite the evaluation and approval of ballast water management technologies and practices.*

NISA provides that a vessel may use environmentally sound alternative ballast water management methods, if the Secretary of Transportation determines that such alternative methods are at least as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species.

However, the law provides no further authority or guidance to the Coast Guard to encourage the development of alternatives or to formalize a process to approve alternatives. To the contrary, Congress has vested the authority for conducting a ballast water management demonstration program with the Departments of the Interior and Commerce.

AAPA members have been very active in sponsoring or assisting in ballast water educational programs as well as treatment demonstration projects. The following summarizes five active initiatives with substantial port involvement:

- The Duluth Seaway Port Authority has been providing facilities, utilities and in-kind services for several years to a ballast water treatment demonstration led by the Lake Carriers' Association and the Northeast-Midwest Institute. This project has tested several types of filters, a hydrocyclonic separator, and two classes of ultraviolet generators. The Port Authority successfully sponsored an application to the Minnesota Legislative Commission on Minnesota Resources (LCMR). The LCMR added \$250,000 to the initial \$1,000,000 grant from the Great Lakes Protection Fund.
- The Maryland Port Administration is funding a ballast water treatment study through the University of Maryland with additional funding from the Sea Grant. The study is a full scale evaluation of a separator/filtration system operating in-line with the ballast pumps of the vessel, and is being conducted aboard the U. S. Maritime Administration vessel

*Cape May.* The use of UV and two different chemical biocide dosing systems operating as a second stage of treatment is also being evaluated. In addition to participation by the Maritime Administration, the U. S. Coast Guard is participating in and monitoring the study. The study was scheduled from September 2001 through June 2002, and may be extended through July 2003. The Maryland Port Administration is funding just over 50 percent of the study, at \$367,000, which could increase if the study is extended to July 2003.

- The Port of Oakland granted \$150,000 to the California State Lands Commission (SLC) to expand their existing on-board pilot treatment program for ballast water to include installation of an experimental treatment unit on a containership. Trials of the system are now underway. The port is also funding a \$200,000 research program by the Smithsonian Environmental Research Center to address: (1) the biological effectiveness of ocean exchange of ballast water; (2) the identification of the organisms present in ballast water after ocean exchange that might impact threatened/endangered species; and, (3) the examination of hull fouling. The port also managed a study on behalf of the California Association of Port Authorities (CAPA) to investigate the feasibility of on-shore treatment of ballast water and is an active participant in a program sponsored by the California Sea Grant Program to conduct workshops and provide educational materials to the shipping community regarding measures to reduce the introduction of aquatic nuisance species.
- The Port of Long Beach, in collaboration with the Sea Grant Program and environmental groups, developed education and outreach materials to inform vessel operators about aquatic invasive species and methods to control introductions. The Long Beach program included personal presentations of the educational materials to vessel masters and crews of over 300 ships calling at the Port.
- The Port of Portland (OR) has joined with the Port of Astoria, Portland State University, the Columbia River Steamship Operators Association, and Oregon Senator Ron Wyden to form the Columbia River Aquatic Nuisance Species Initiative (CRANSI). This initiative promotes research

and other collaborative efforts to protect the Columbia River against the spread of invasive species. Senator Wyden and CRANSI have so far secured \$775,000 in Federal funds to study various aspects of the invasive species problem in the Columbia River.

In addition to the demonstration projects mentioned above, there are a significant number of other demonstration projects being undertaken in the public and private sectors, employing different experimental procedures. Unfortunately, the Coast Guard has not been able to approve any technologies as equivalent to ballast water exchange because it does not have procedures for evaluating the quality and adequacy of the demonstration project results. As a result, private companies are frustrated in their efforts to develop and market technologies, and vessel owners are unwilling to install new technologies without some assurance that the technology meets the regulatory requirements now and for the reasonably foreseeable future.

The Coast Guard has recognized the need to establish a formal program to evaluate and approve ballast water management alternatives. Initially, the Coast Guard sought the guidance of the Ballast Water and Shipping Subcommittee of the Aquatic Nuisance Species Task Force in developing key elements of alternatives program. While that effort helped to scope the range of issues to be addressed in an alternatives certification program, it failed to provide specific recommendations for the structure and function of a program. More recently, the Coast Guard has sought public comments on individual elements of program, including the establishment of a ballast water management standard and incentives for shipboard installation of experimental treatment systems. It is our understanding that the Coast Guard is also drafting a proposal for standardized procedures for testing and evaluating potential ballast water treatment systems.

In our comments with the Shipping Industry Ballast Water Coalition to the Coast Guard's three requests for comments over the last year, we have urged the agency to expedite the development of a ballast water management technology and practices certification program. AAPA recognizes that the issues related to establishing a certification program are complex, but we believe the Coast Guard should find ways to simplify these complexities to allow some progress to be made as soon as possible in evaluating

technologies under standardized procedures on working vessels. Rather than promulgating each element of a certification program separately (e.g., effectiveness standards, evaluation procedures, incentives for experimental installations), we suggest that the Coast Guard propose the certification program as a comprehensive rulemaking so the interrelationship among the elements can be fully understood and considered. Only then will vendors and vessel owners have enough information to confidently make investments in demonstrating ballast water management technologies and practices in an operational setting — that is, on working vessels.

### **Federal Preemption of State Regulation**

*The Congress should explicitly preempt state regulation of ballast water discharges from vessels. In addition, the Congress should remove the uncertainty regarding application of the permitting requirements of the Clean Water Act by establishing the Coast Guard’s regulatory program as the sole mechanism for regulating ballast water discharges from ships.*

The lack of a comprehensive and effective national or international ballast water management regime has led several states and local governments to adopt ballast water management programs. Table 1 lists the states that have enacted or have considered state ballast water programs.

In response to local concerns about the effects of ballast water discharges, several ports have undertaken or advocated local or state ballast water programs. The following are three examples:

- The Port of Oakland implemented an ordinance requiring all vessels calling at port facilities to conduct ballast water exchange at sea to reduce the risk of discharging potentially invasive species into San

<p><b>Table 1.</b></p> <p><b>States with Ballast Water Laws</b></p> <p>California</p> <p>Hawaii</p> <p>Maryland</p> <p>Michigan</p> <p>Oregon</p> <p>Virginia</p> <p>Washington</p> <p><b>States that Considered Ballast Water Laws</b></p> <p>Illinois</p>
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Francisco Bay in 1999. Subsequently, this requirement was superseded by a California state law, which mandated exchange at sea for all vessels entering a port in the state from outside the U.S. Exclusive Economic Zone (EEZ). (The Port continues to collect information on discharge of ballast water originating within the West Coast EEZ, which is not regulated or tracked by the State or Federal Program.)

- At the initiative of the Port of Portland, the Oregon state legislature passed a new state law in 2001 that requires, with certain exceptions, cargo vessels to exchange their ballast water in mid-ocean before calling on Oregon ports. The Oregon law requires coastal exchange for vessels entering an Oregon port from any North American port south of 40 degrees north latitude (Cape Mendocino) and north of 50 degrees north latitude (Vancouver Island).
- The Duluth Seaway Port Authority and the Lake Carriers' Association initiated the Great Lakes Maritime Industry Voluntary Ballast Water Management Plan for the Control of Ruffe in Lake Superior Ports. This program will celebrate 10 years of success next March.

There have also been two lawsuits filed against Federal agencies related to invasive species in ballast water. First, a lawsuit was filed last year challenging the Oakland Harbor Deepening Project and the Berths 55-58 Project. The suit was filed by the Center for Marine Conservation (now called Ocean Conservancy) and the San Francisco Bay Keeper, and alleges that the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service did not sufficiently address the possibility that the projects might allow non-native species to enter San Francisco Bay through ballast water discharges. The projects are moving forward pending a ruling by the Court.

The second lawsuit was filed by a coalition of environmental organizations that petitioned the U.S. Environmental Protection Agency to repeal an exemption for vessel discharges from the Clean Water Act permitting requirements. While the suit seeks to compel EPA to formally respond to the petition, repeal of the exclusion for vessels would result in another layer of regulation of vessel ballast water

discharges. Requiring vessels to receive individual discharge permits under the National Pollutant Discharge Elimination System (NPDES) could severely restrict the ability of vessels to enter into, or move between, U.S. ports.

AAPA is very concerned that the proliferation of state and local regulation of vessels involved in international or interstate trade can adversely affect the competitiveness of the U.S. port industry and create complicated compliance requirements for the commercial shipping industry. Introduction of vessel permitting under the Clean Water Act will make this problem exponentially worse. As discussed above, AAPA supports and is committed to working towards a comprehensive and effective national and international ballast water management program that will reduce the risk of aquatic nuisance species introductions into U.S. waters. We urge Congress to establish the Coast Guard's program as the preeminent ballast water management regulatory regime in the U.S. by preempting the ability of states to regulate ballast water and by clarifying that the Clean Water Act should not be used to regulate ballast water discharges.

## **Conclusion**

Chairmen Duncan and LoBiondo, thank you again for calling this hearing on the implementation of the National Invasive Species Act of 1996. We appreciate the opportunity to present the views of the nation's public port industry. We are committed to working with you, the Coast Guard, and all stakeholders in the development of a comprehensive and effective ballast water management program. We believe the Coast Guard has a good understanding of the problem and is moving in the right direction. We hope that our suggestions and those from groups like the Shipping Industry Ballast Water Coalition and other stakeholders will help the Coast Guard move forward expeditiously in establishing a strong national and international ballast water management program.

While we believe the Coast Guard has sufficient authority to establish a comprehensive and effective ballast water management program, AAPA also believes that the reauthorization of NISA provides an opportunity to give the Coast Guard clear authority to establish a Ballast

Water Management Technology and Practices Certification Program and to provide regulatory incentives for the voluntary demonstration of experimental treatment systems onboard working vessels. In addition, AAPA urges Congress to establish the Coast Guard's program as the preeminent ballast water management regulatory regime in the U.S. by preempting the ability of states to regulate ballast water and by clarifying that the Clean Water Act should not be used to regulate ballast water discharges.

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