

**STATEMENT FOR
THE OCEAN POLICY STUDY SUBCOMMITTEE
OF THE
SENATE COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION**

ON

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AT

9:30 A.M. IN SR-253

PREPARED BY

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**ON BEHALF OF THE SHIPPING INDUSTRY
BALLAST WATER COALITION**

Mr. Chairman, we appreciate the opportunity to testify before you today on the subject of invasive species management and specifically the provisions of Senate Bill 363, the Ballast Water Management Act of 2005 as introduced by Senator Inouye on behalf of himself and Senators Akaka, Cantwell, Lautenberg, Sarbanes and Stevens.

The Shipping Industry Ballast Water Coalition (the "Coalition") is an informal organization of maritime trade associations and companies that own, operate or charter commercial vessels of all types engaged in both domestic and international trade and represents over 90% of the vessels calling in US ports. The types of vessels owned and operated by coalition members include oceangoing and coastwise containerships, tankers, roll-on/roll-off vessels, bulk carriers, and passenger vessels as well as tug/barge units which operate in oceangoing, coastwise and inland waters. While the testimony we provide today highlights points of agreement by the vast majority of the Coalition, individual members of the coalition would respectfully reserve their right to provide written comments to this record to provide additional information as they deem necessary.

The Coalition was formed over four years ago by a number of entities that believed resolution of this complex issue required the coordinated efforts of all stakeholders. Since that time, the Coalition has provided testimony or comments to both legislative and regulatory initiatives regarding ballast water management both at the international and domestic level.

GENERAL COMMENTS

The Coalition congratulates Senator Inouye and his colleagues for drafting the proposed legislation as it is, to date, the legislation which most closely mirrors the management structure as contained in the recently agreed upon International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 ("the IMO Convention") by the member states of the International Maritime Organization. The Coalition has always and continues to support the prompt enactment of domestic legislation which will establish a national ballast water management program and that reflects, to the maximum extent possible, the substantive provisions and regulatory framework of the IMO Convention. In this regard, the Coalition supports the provisions of S 363 with a few specific changes as noted below.

THE BALLAST WATER MANAGEMENT PERFORMANCE STANDARD

The Coalition supports changing the performance standard as currently included in S 363 to reflect the standard contained in the IMO Convention. As currently drafted, S 363 contains a performance standard that is one hundred times more stringent than that contained in the IMO Convention. It is important to note that at this point in time, there is no published peer-reviewed data that suggests the existence of technology which can achieve the IMO standard, although we are hopeful that this technology will emerge from testing programs which are underway around the world and on a variety of ships. It is this data, once published and peer-reviewed, that will become part of the pre-review process conducted at IMO, and under the pre-review process as contained in S 363 as introduced. What is critical here is that the first standard be achievable, recognizing

future adjustment of the standard during the periodic review process which will reflect the capabilities of emerging technology to provide even more efficient treatment results.

The Coalition also strongly supports including a quantitative performance standard in the legislation itself and not leaving the establishment of the performance standard to the regulatory process. For a number of years, members of our coalition have had discussions with technology developers and reviewed various ballast water treatment technologies. I can unequivocally state that it was only when the fixed quantitative standard was established by IMO, that shipowners and technology developers alike were in a position to commit vast sums of financial and human resources to finding a solution to this perplexing problem. Once this quantitative standard was established, shipowners and technology developers alike had a “hard target” at which to aim. While the concept of “best available technology” is a viable one, it has no place in establishing initial performance standards for ballast water treatment systems. It will more appropriately, by default, become the general criteria for later adjustments of the standard to reflect developing technology.

REVIEW OF STANDARDS AND FEASIBILITY REVIEW

Section 3(f) of S 363, entitled Ballast Water Treatment Requirements, contains provisions for a periodic review of standards (3(f)(4)) and an initial feasibility review (3(f)(6)). These are key provisions in ensuring that appropriate technologies are available to achieve the initial standard and provide for periodic reviews of the established standard in light of new technologies that provide even more effective treatment results. While the Coalition strongly supports inclusion of both of these provisions, we believe that more detail is necessary in the legislation to guide the regulatory program which will implement these provisions. Specifically, the Coalition believes that the legislation should explicitly include five specific criteria on which these reviews will be based. The five criteria are considerations of safety, environmental acceptability, practicability, cost effectiveness and biological effectiveness. By including these specific criteria, Congress will more clearly outline the charge to the agencies which will be responsible for implementing these review programs.

URGENT NEED FOR A COORINDATED FEDERAL PROGRAM WHICH MAY BE IMPLEMENTED BY THE STATES

Shipping is international and the regulation of shipping should be, too. While this is not always possible, the Coalition believes that regulation of shipping through international requirements as established by IMO is the correct way to comprehensively regulate the industry in a clear manner. However, there are cases where domestic legislation has been enacted which varies with international requirements. Not without some pain, the industry has adjusted to these US requirements. However, in the case of ballast water management, the industry has, over the past several years, been exposed to state requirements that, in some cases, have varied from the federal requirements. We fear this trend will continue without the inclusion of appropriate language in S 363. Continuing this patchwork-quilt approach would be catastrophic for the environment and the industry and undermine the progress that we can make on this issue by the establishment of a strong, uniform federal program. Therefore, the Coalition strongly advocates the modification of the current preemption language found at Section 3(q) to

reflect the recognition that the program as established under this legislation is the sole program established in the United States for the management and control of ballast water discharges. With the implementation of this strong federal program, there should be no need for state, regional or local implementation of additional or conflicting ballast water management requirements and thus the inclusion of strong preemption language is appropriate.

S 363 AS THE EXCLUSIVE FEDERAL PROGRAM WHICH REGULATES BALLAST WATER MANAGEMENT AND DISCHARGES IN US WATERS

The Coalition strongly believes that enacted ballast water legislation should be the exclusive federal program which regulates ballast water management and discharges in US waters. As a result of a recent US District Court decision, there is some question as to whether Congress intended to include ballast water discharges under provisions of the Clean Water Act and specifically the National Pollutant Discharge Elimination System permitting program. The coalition strongly supports congressional action to clear up this confusion and recommends the inclusion of appropriate text to clearly manifest Congress's intent to regulate ballast water management under the provisions of ballast water-specific legislation such as S 363.

NEED FOR A SPECIFIC EXEMPTION FROM BALLAST WATER EXCHANGE REQUIREMENTS FOR TUG/BARGE OPERATIONS

A vast majority of the Coalition believes that an express provision should be included in S 363 which exempts tug and barge operations from the ballast water exchange requirements. The basis for this specific exemption relates to the inherently unsafe nature of maneuvering a tug alongside a barge and then place a human life at risk by requiring a crew member to scale what is essentially a 20 to 30 foot vertical steel wall, in order to allow exchange to be conducted on the barge at sea. While the existing safety exemption would arguably cover such an operation, it would be more appropriate to clearly manifest the intent of Congress that such an operation would not be condoned by including specific language exempting tug/barge operations from the ballast water exchange requirements. In fact, Washington and Oregon have exempted tug and barge operations from state requirements to conduct ballast water exchange. These states have acknowledged the inherent risks in requiring barges to conduct ballast water exchange. It is important to note that this exemption would not apply to the integration of ballast water treatment systems as they become available, provided that the system would enable treatment of ballast while the vessel was berthed and thus obviate the need to conduct an unsafe operation at sea.

We appreciate the opportunity to provide testimony to your subcommittee and would be please to answer any questions you may have.