Statement of

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Maritime Transportation Regulations:
Impacts on Safety, Security, Jobs, and the Environment, Part II

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Good morning, Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. I am Tom Allegretti, President & CEO of The American Waterways Operators. AWO is the national trade association for the inland and coastal tugboat, towboat, and barge industry. On behalf of AWO's over 350 member companies, thank you for the opportunity to testify at this very important hearing.

I am also speaking on behalf of the Shipping Industry Coalition, an alliance of maritime trade associations that together represent over 90 percent of all vessels calling at U.S. ports, in both the domestic and international trades. The Coalition is committed to working with legislators, regulators, and non-governmental organizations to develop environmentally sound and economically practicable solutions to prevent the introduction and spread of invasive species in U.S. waters.

Thank you for holding this hearing to explore the impact of maritime transportation regulations on safety, security, jobs and the environment. My testimony today will focus on one critical area – the regulation of ballast water and other vessel discharges – in which the current regulatory regime serves neither the economy, the environment, nor the American taxpayer well. Under that regime, 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.

Congressional leadership is badly needed to fix this unacceptable situation. My message to you today is that Congress has an opportunity, unprecedented in recent years, to enact legislation that improves the efficiency and effectiveness of maritime transportation while enhancing the

protection of our nation's waterways. In the three years since I last testified before this Subcommittee on the subject of vessel discharges regulation, a consensus among federal and state regulators has emerged that can provide the foundation for bipartisan congressional action 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. The bipartisan leadership of this Subcommittee will be crucial if we are to seize the unique opportunity to enact legislation that accomplishes these objectives in the 113th Congress.

Let me tell you a bit about 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. The industry operates some 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. 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.

The current regulatory regime governing ballast water and other vessel discharges places those mariners and their employers 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 some 25 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.

To take an example of what this regulatory patchwork means in practice for a vessel operating in interstate commerce, a tug-barge unit on a typical Pacific coastal voyage moving crude oil from an export facility in North Puget Sound, Washington, to a refinery at the Port of Richmond, California, 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 vessel must comply with 25 supplementary, state-specific conditions added to the permit by Washington and California. The vessel must also comply with Coast Guard regulations to manage and discharge ballast water and hull fouling organisms. Finally, in each of the three states it transits, the vessel is subject to state laws and regulations, necessitating the submission of ballast water management reports to every state in which it 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. This example underscores why clear, consistent federal rules for ballast water and other vessel discharges are desperately needed.

It also demonstrates 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 very 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 a decision that was issued just two weeks after I last testified before you on this subject, 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 agree.

Since that time, EPA has done its best to make the VGP and the state certification process as practicable as possible, and I want to be clear that my purpose today is not to criticize EPA. 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 and hard-working 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 forthcoming 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.

In my testimony before this Subcommittee during the 112th Congress, I explained how, faced with overlapping federal and state authorities and the absence of uniform national standards for the management and discharge of ballast water, we were 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. I am pleased to report to you that there has been a sea change in the states' approach. There is now a national consensus about the capability of current ballast water treatment technology that did not exist three years ago. This consensus provides a strong scientific foundation for Congress to move forward with legislation to establish uniform national standards for vessel discharges.

Just days before the subcommittee's previous hearing on this subject, 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 in June 2011, 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 early 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, last June, 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, with a requirement for the 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.

AWO, its member companies, and our colleagues in the Shipping Industry Coalition are partners in a shared commitment to environmental stewardship. Maritime transportation is the safest and

most energy-efficient mode of freight transportation. AWO is 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 with you this history and these organizational characteristics to emphasize that our goal in urging congressional action is not to avoid high standards. Our industry has 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 this important fact: 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 the appropriate standard for ballast water treatment, the way that they administer and enforce the standard is at best duplicative, and at worst incompatible. The Chamber of Shipping of America will testify to a situation that has adversely affected our colleagues in the international shipping community that illustrates the problem perfectly: a situation in which the Coast Guard and EPA, acting in good faith under different statutory authorities, have been unable to harmonize their implementation policies and provide vessel owners the certainty that treatment systems they install on their vessels will satisfy both agencies for the systems' service life.

On behalf of 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, we respectfully urge the Subcommittee to bring clarity and certainty to the regulation of vessel discharges. We ask you to lead the introduction

and passage of legislation that establishes a uniform, science-based, consensus-driven federal framework for the regulation of ballast water and other vessel discharges.

Chairman Hunter, Ranking Member Garamendi, thank you again for the opportunity to testify today on a matter of great importance to our industry, to the U.S. economy, and to the nation's marine environment. We appreciate your leadership and we look forward to your continued partnership with the Coast Guard, with EPA, and with our industry to advance our mutual goal of a safe, secure, environmentally sound maritime transportation system that is good for America and for the Americans who work in our industry.