

DECLARATION OF JOHN JAMIAN

I, John Jamian, declare that the following statements are true and correct to the best of my knowledge, information and belief, and are based on my personal knowledge and information supplied to me by employees of the Maritime Administration, a component of the United States Department of Transportation, under my supervision.

INTRODUCTION

1. I am John Jamian, Deputy United States Maritime Administrator for the Maritime Administration (MARAD). The President appointed me to be Deputy Administrator for in May 2003. I served as Acting Maritime Administrator from February 14, 2005 until September 9, 2005. I oversee the daily operations of MARAD, its 900 employees, and 276 vessel assets under MARAD jurisdiction. The Congressionally appropriated annual budget for fiscal year 2005 was \$234 million.

2. Prior to my current position, I was elected to the Michigan Legislature in 1991 where I served as the Chairman of the House Committee on Port and Maritime Affairs from 1992 to 1994. From 1998 through 2001, I served as the Executive Director of the Detroit/Wayne County Port Authority. I also have served as Chairman of the American Great Lakes Ports and as a member of the Board of Directors of the American Association of Port Authorities and the Michigan District Export Trade Council.

3. MARAD's statutory mandate is to develop and maintain an adequate, well-balanced U.S. merchant marine, sufficient to carry the nation's domestic waterborne commerce and a substantial portion of its waterborne foreign commerce, and capable of service as a naval and military auxiliary in time of war or national emergency, MARAD's role is to ensure that the United States maintains adequate shipbuilding and repair services, efficient ports, effective

intermodal water and land transportation systems. One of MARAD's objectives is the promotion of maritime and intermodal transportation solutions that enhance environmental stewardship.

4. MARAD is a member of the Aquatic Nuisance Species Task Force ("ANS Task Force") established under the Nonindigenous Aquatic Nuisance Prevention and Control Act. Through MARAD's participation in the ANS Task Force, I have gained additional information that has sensitized me to the need for systematic and credible action to develop ballast water treatment technology.

5. I am familiar with the Court's Order of March 30, 2005, in Northwest Environmental Advocates, et al. v. EPA, C 03-05730 SI (N.D. Ca.), and I have discussed the Order with counsel for the United States and MARAD environmental program experts. I understand that, in the remedial stage of the litigation, this Court is considering options that might result in vacatur of a Clean Water Act regulation that excludes ballast water from Clean Water Act permit requirements and/or order EPA to repeal the exclusion applicable to ballast water on an abbreviated schedule. For the reasons set out in this Declaration, I believe that premature vacatur or repeal of that regulatory exclusion would preclude many vessel owners and operators from moving cargo in full compliance with the Clean Water Act. I believe that, if and when vessel owners and operators are faced with that choice, there will likely be significant disruption to and adverse impact on the national economy.

RELATIONSHIP BETWEEN THE MARITIME INDUSTRY AND THE HEALTH OF THE NATIONAL ECONOMY

6. The health of the national economy relies on a functioning maritime industry. The marine transportation system moves more than 90 percent by volume of goods and commodities around the world. In 2003, over two-thirds (68 percent) of the value of U.S. international

merchandise trade passing through U.S. freight gateways was to and from countries other than Canada and Mexico. Since 1990, the value of this U.S. overseas trade has more than doubled, rising at an average annual rate of 6 percent per year. Maritime trade accounted for about 60 percent of this trade.

7. The value of maritime trade passing through domestic seaports rose from \$434 billion in 1990 to \$811 billion in 2003 at about a 5 percent annual rate. Over 1.2 billion short tons of international maritime cargo were transported through U.S. seaports in 2003, with exports accounting for 30 percent and imports accounting for 70 percent of that tonnage. Associated jobs, tax revenue, and domestic manufacturing add considerably to the total value of this trade to the U.S. economy.

8. In 2003, 6,157 cargo vessels of various types, accounting for 44% of the active world fleet, made a total of 56,759 port calls in the United States, representing 10% of all port calls world wide. In addition, there are tens of thousands more vessels operating in U.S. waters – tugboats, towboats, barges, offshore supply vessels, ferries, cruise ships, and a variety of other water transportation craft – that use ballast tanks or other void spaces for ballasting.

9. The U.S.-flag fleet in the Great Lakes approaches 200 million tons a year and predominately consists of dry bulk commodities of iron ore, coal, stone and grain. The functioning of Great Lakes maritime transport system is integrally related to the health of the North American economy. The system itself generates more than \$3 billion of economic activity and 150,000 jobs on the U.S. side and an additional \$3 billion and almost 17,000 jobs in Canada and 44,000 directly related jobs. This major component in the bi-national intermodal transportation system also supports the primary focus of the iron and steel industry in North America, with the region accounting for about half of total U.S. production. Other important

manufacturing industries supported by the system include chemicals, paper, food products, machinery, transportation equipment, and fabricated metals. In addition, the iron ore, limestone, and coal mining industries, petroleum industry, and the major agricultural and forest product industries use Great Lakes waterways for domestic transport and international export.

AVAILABLE MEASURES TO ADDRESS BALLAST WATER THREATS

10. In the course of discharging my statutory duties with respect to fostering the development and encouraging the maintenance of a United States merchant marine, I have gained the understanding and belief that currently there are no widely available and credibly demonstrated commercial treatment technologies that would eliminate the release of viable aquatic species in ballast water. The only existing and widely available management practice to reduce the identified environmental risks posed by ballast water is mid-ocean ballast water exchange, which is less than 100% effective in destroying the live content of ballast water tanks. Although MARAD and other Federal agencies are working to encourage public-private technology based partnerships regarding reduction and eventual elimination of such ballast water threats, it appears unlikely that these efforts could enable the implementation of any technologies that could significantly and verifiably reduce, much less eliminate, live species in ballast water within the proposed time frames for the wide variety of existing vessel types and operating conditions.

NATURE OF THE RISK OF AN ADVERSE EFFECT ON THE NATIONAL ECONOMY IF MARITIME CARGO OPERATIONS ARE DISRUPTED

11. Recent history provides a stark example of the significant risk to the national economy when shipping is disrupted, even on a short-term, localized basis. In 2002, a labor-management dispute resulted in a 10-day closure of the Ports of Los Angeles and Long Beach in

California. That 10-day closure and the resulting 23-day backlog disrupted trade valued at \$6.28 billion in the Los Angeles basin alone. With MARAD assistance, the Ports estimated that the disruption caused an adverse direct or indirect effect on the livelihoods of approximately 65,000 working people. MARAD further estimated that the disruption caused a loss of \$525 million in state and local tax revenues nationwide. Taking this to the national level, even a short-term prohibition or severe restriction on ballast water discharges likely would have a devastating economic impact on the movement of goods in domestic commerce, and thus the economic health of the Nation.

PREMATURE VACATUR OR REPEAL OF THE CLEAN WATER ACT EXCLUSION WOULD DISRUPT SHIPPING

12. Premature repeal of the Clean Water Act regulatory exclusion for ballast water would leave the owners and operators of such vessels with two choices: (1) discharge ballast water in domestic ports without authorization in violation of the Clean Water Act; or (2) comply with the Clean Water Act by conducting no domestic de-ballasting operations, thereby causing certain danger to the vessel, crew, and cargo.

13. Clean Water Act non-compliance would create disruptive economic uncertainties for vessel owners and operators, i.e., carriers, as well as shippers, i.e., cargo owners that contracts for the carriage and shipment of goods. Carriers and shippers would face significant uncertainty relating to liability for innocent non-compliance with federal law and be forced to rely on the discretion of Clean Water Act enforcement entities not to initiate enforcement. That legal uncertainty would translate into economic uncertainty, which would increase the direct and indirect costs (including but not limited to legal and insurance costs) associated with the carriage and shipment of goods.

14. If carriers elected instead to comply with the Clean Water Act prohibition against unpermitted discharge (without permits), they would be required to: (1) find a shore based de-ballasting facility; (2) without de-ballasting, load only the amount of cargo possible to maintain safe operation; or (3) divert cargo by not loading cargo domestically. The first option is not possible because, except for dedicated facilities for oil tankers, no shore based de-ballasting facilities exist. The second option is irrational; the very small amount of cargo that could be loaded would not be economically viable to transport. The third and final option would cause immediate and significant adverse harm to the national economy.

15. If carriers and shippers were to choose to comply with the Clean Water Act, i.e., comply with a prohibition against unpermitted discharges when permits are not available, the most likely result would be diversion of shipping to other nations. The diversion of cargo to foreign ports would cause significant harm to the national economy. For example, the Canadian deep water ports of Montreal and Halifax both have sufficient capacity to accommodate the cargo currently moving through United States' Great Lakes ports. This diversion would in turn increase the need for trans-shipment, adding demands to the Nation's already overburdened rail and road systems. Trans-shipment also would increase the overall time and cost of inter-regional shipments and diversion of intra-regional cargo could reduce the overall efficiency of import/export shipping to the United States. For example, the estimated amount of cargo that transits the Great Lakes waterways system in a typical year would require approximately 18,000 trains with 100 cars per train (i.e., 1.8 million train cars) if hauled by rail.

16. For the foregoing reasons, I believe that premature vacatur or repeal of that regulatory exclusion would preclude many vessel owners and operators from moving cargo in full compliance with the Clean Water Act. I believe that, if and when carriers and shippers are

faced with that choice, premature vacatur or repeal will likely cause significant adverse national economic impacts.

SIGNATURE PAGE FOLLOWS

CONCLUSION

I declare under the penalty of perjury that the foregoing is true and correct, based on my personal knowledge and on information provided to me by employees of the United States Department of Transportation, Maritime Administration.

Executed on 10/20/2005



John Jamian