

**Statement of Frederick J. Kenney,
U.S. Department of State before
The U.S. Commission on Ocean Policy
September 25, 2002**

Mr. Chairman, Distinguished Commissioners. I'm Fred Kenney, Coast Guard Liaison Officer to the Office of Oceans Affairs at the U.S. Department of State. I'm also a member of the U.S. Delegation to the IMO's Marine Environment Protection Committee and its Ballast Water Working Group.

The purpose of my statement today is to provide some amplifying and updated information on the status of the ballast water negotiations at IMO, to clarify the responses to a question posed by Commissioner Koch this morning.

Since 1997 IMO has been actively engaged in the development of a globally applicable instrument to control the spread of aquatic nuisance species from discharges of ships ballast water and sediments. A diplomatic conference to conclude this treaty is tentatively scheduled for November 2003. The IMO has only "tentatively" scheduled the diplomatic conference in recognition that there are still significant issues to be resolved before such a Conference can be successfully concluded. That said, progress has been made.

A largely complete convention text has been drafted, using a base text developed by the United States. A number of issues have already been resolved. However, the two key issues central to finalization of the instrument are still being negotiated. Very briefly, the draft treaty has two substantive mechanisms to control ballast water and sediment discharges. These are commonly known at IMO as "Tier 1" and "Tier 2."

Tier 1 includes mandatory requirements for all ships to which the convention applies. These requirements apply at all times in all locations, with some exceptions for emergencies and the like. Included in Tier 1 are the standards alluded to by Dr. Carlton and Mr. Harkins this morning. At the Marine Environment Protection Committee meeting held in March 2002, the Ballast Water Working Group identified and collated all proposed standards that had been discussed at both Globallast and IMO, coming up with a total of 14. Included in this total were 4 standards put forward by the U.S. Coast Guard in a March 2002 advance notice of proposed rule making published in the Federal Register.

Between March and July of this year, an IMO Correspondence Group chaired by the U.S. worked to further narrow the number of options under consideration. The group succeeded in paring that number down to 5.

Standards will be discussed at IMO beginning next week, at an intersessional meeting of the Ballast Water Working Group, to be immediately followed by a full

session of the Marine Environment Protection Committee. Yesterday, I had a conversation with the chairman of the IMO Ballast Water Working Group, a gentleman from the U.K., and he indicated that his goal was to further narrow the choices, hopefully down to 2. This would allow either the MEPC or the Diplomatic Conference to make a choice. The U.S. has submitted a paper to IMO advocating one particular standard and an implementing regime, and it is our intention to work to have that standard included in the final cut.

Tier 2 of the convention is currently structured to allow countries facing situations where the standards and requirements in Tier 1 are insufficient to meet the threat of invasion in certain areas to adopt additional measures to meet those threats. Tier 2 has seen a number of proposed formulations over the last 2 years. Many of these proposals raised significant international law and maritime policy concerns. To provide a way forward, the U.S. submitted a paper to IMO that will be discussed over the next 2 weeks. We believe our proposal avoids the difficult issues raised in previous iterations. We have received preliminary indications from a number of countries that our proposal will be supported, thus we are hopeful that the Tier 2 issue can be resolved.

In sum, it's fair to say that the U.S. delegation is more optimistic that the ballast water instrument can be brought to a Diplomatic Conference next Fall than we were just a few months ago. Certainly, IMO seems better positioned for success. However, ours is a cautious optimism, complicated by a number of factors. First, there are a number of smaller issues requiring resolution. Second, Brazil has proposed a radically different concept for ballast water management that will need to be considered and addressed over the next two weeks. If Brazil's proposal were adopted, it would require a major rework of the convention, which would cause delay. Third, and most importantly, because of IMO scheduling and procedural rules, all this work, or most of it, needs to be completed in the next two weeks in order for the conference to occur. In the U.S. view, this all *could* happen. To that end, we are committed to giving our best efforts so we get the right results. The bottom line is that we will have a much better idea of where we stand by mid-October. The State Department will be happy to provide you with a written update after the IMO meetings conclude. Thank you.