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In defense of environmental regulation

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While it may be an unpopular opinion, I support marine environmental regulation – so long as it is sensible, fair, well-researched, and structured so as to result in minimal unintended consequences. Knee-jerk regulation, on the other hand, is invariably counterproductive.

Examples illustrate these points.

The issue of whether oil tankers should be constructed with double hulls was debated within the maritime industry for years. Only a few shipowners were sufficiently intrepid to actually build such ships on an experimental basis – and they operated at a financial handicap as compared with their competitors who operated cheaper, simpler vessels. Immediately after the *Exxon Valdez* oil spill, the United States Congress enacted the Oil Pollution Act of 1990 (OPA 90), which, among other things, mandated that in order to trade to the US, new tankers had to be constructed with double hulls and single-hull tankers had to be phased out. Some in the industry proclaimed the end of the US oil trade. Instead, ship builders and naval architects got to work. OPA 90 did not define what constituted a double hull. The International Maritime Organization (IMO) had been studying the issue for some time and had developed guidelines. The various classification societies had modest experience in such work. In developing its regulations to implement OPA 90, the US Coast Guard worked with the IMO, the class societies, and the maritime industry to forge a set of standards that were acceptable to the principal players. The IMO eventually amended the MARPOL Convention in a consistent manner. Single-hull tankers are now almost all retired and the world's tanker fleet is the safest ever. If this process had been left solely to the commercial sector, the transition from single-hull to double-hull tankers might never have occurred. Once the new requirement became universal so that everyone was in the same boat, opposition to the double-hull largely (but not entirely) faded. Some (including myself) contend that the requirement should have recognized the possibility of alternative hull designs. The important factor, though, is that the requirement got the argument off top-dead-center and the tanker industry is better for it.

A recent example of regulation run amok is provided by the Environmental Protection Agency (EPA) proposal to prohibit ocean-going vessels from discharging treated sewage within the marine waters of California. While this action has met with wide approval from environmental advocacy groups and from the State of California, it does not seem sensible, fair, well-

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researched, or structured to as to minimize unintended consequences. While reducing the volume of sewage (treated or untreated) entering the marine waters of California is certainly a good concept, it is unclear how ocean-going vessels got singled out to bear this burden. These ships are not the largest source of sewage discharges into California waters. Various municipalities, residences, and facilities dump raw or partially treated sewage into these waters on a routine basis. The majority of vessels operating in California marine waters are not ocean-going. While there are a handful of cruise ships operating out of California ports that carry several thousand passengers each, the average merchant vessel has a crew of about twenty, less than many charter fishing boats. These non-ocean-going vessels will not be subject to the "No Discharge Zone" proposed by the EPA. Unlike the ballast water management regulations, the EPA sewage proposal has no exceptions for emergencies. If an ocean-going vessel is unable to discharge its processed sewage ashore before the storage tank reaches full capacity, the master will have two choices: either violate the regulation by discharging into the surrounding waters, or put the vessel and its crew at risk by overloading the sewage treatment system. If the sewage discharge prohibition is appropriate, then all should participate. It is unfair to play favorites and impose a regulatory and economic burden on one party while exempting all others. At a minimum, the EPA should analyze the situation and clearly identify the entities discharging sewage into the marine waters and the steps that can reasonably be taken to reduce or eliminate that impact.

There are numerous additional examples that can be identified on both sides of this divide. The oily water separator (OWS) is an excellent tool for reducing operational discharges of oil from ships. The IMO several years ago upgraded the standards for new OWSs to account for technological advances. Unfortunately, it failed to adopt a phase-out schedule for older OWSs. Thus, existing ships can continue to carry decrepit equipment that not only doesn't work well, but forces chief engineers to adopt practices that may violate other laws. On a different note, both Michigan and California adopted outlandish standards for ballast water discharges for which there is no existing technology. California has been forced to extend the deadlines for its standards, hoping that its requirements and reality will eventually coincide. This is not a responsible approach for lawmakers and regulators. The defenses of legal and factual impossibility come to mind.

The bottom line is that regulation can be invaluable in protecting the marine environment. It is a powerful tool which, if employed wisely, can achieve improvements otherwise unobtainable. If wielded unwisely, environmental regulations can result in wasted monies, counterproductive bureaucracies, and disrespect for the law. The major responsibility for wise environmental regulation lies with legislators and regulators, but environmental advocacy groups and the marine industry have important roles also. Environmental advocacy groups should avoid pushing for new rules that are unwise, unfair, and unattainable. The marine industry should avoid opposing every new proposal without regard to its benefits. All parties must work together to make reasonable progress in improving the marine environment.