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December 11, 2020

Ms. Christine Kluge
Department of Fish and Wildlife
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

Re: Clarification of Convention (GT ITC)
and Regulatory (GRT) Tonnage
Measurement Systems to U.S. Flag
Towing Vessels

Dear Ms. Kluge:

On behalf of The American Waterways Operators, thank you for the opportunity to respond to the OSPR's request for more information regarding vessel tonnage measurement systems. AWO members have extensive experience with regulatory application of domestic and international tonnage admeasurement as well as state and federal Certificates of Financial Responsibility (COFR). We are happy to clarify our thoughts below.

AWO understands that OSPR plans to pursue a rulemaking to increase program fees for certain vessel types and to revise the definition of how vessels' gross tonnage will be considered in calculating those fees. As you and your team understand, U.S. and foreign regulators employ two different methods, each using different formulae, to determine vessels' tonnage for domestic regulations and international conventions. Under this system, it is quite possible for the same vessel to have a Gross Registered Tons (GRT) admeasurement domestically that is very different from its Gross Tons (GT ITC) international admeasurement. Depending on the context, regulatory application of one tonnage system versus another can have serious consequences for vessel operators.

The proposed language from OSPR for tonnage application to COFR requirements reads:
“Gross tonnage,” for purposes of this subdivision, means a vessel’s volume as calculated pursuant to the *International Convention on Tonnage Measurement of Ships, 1969*. However, if a vessel’s volume is calculated using only the regulatory measurement system pursuant to Title 46 Code of Federal Regulations Part 69, that shall be the vessel’s gross tonnage value for purposes of this subdivision.

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This means that OSPR's proposal seeks to determine COFR requirements based on a vessel's GT ITC, by default, unless the vessel only has been admeasured for GRT, in which case GRT is used to determine COFR requirements. AWO believes that this calculation method invites confusion and is contrary to U.S. Coast Guard procedure under 46 U.S. Code § 14305 (a)(14) which reads:

(a) On request of the owner of a vessel measured under this chapter that is of United States registry or nationality, or a vessel operated under the authority of the United States, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

...

(14) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated;

The referenced Chapter 145 describes "Regulatory Measurement" and GRT is generally the admeasurement system used by the United States Coast Guard to determine COFR requirements under federal law. While virtually all U.S.-flagged vessels in coastwise trade, over 79 feet in length, and with a keel-laid date preceding January 1, 1986 have a GT ITC tonnage, the Coast Guard nonetheless adheres to 46 U.S. Code § 14305 (a)(14) and uses GRT to determine COFR requirements. AWO strongly suggests that California OSPR modify its proposed language to align with Coast Guard requirements and determine COFR requirements using GRT.

As discussed last week, we are happy to continue the conversation with OSPR and answer any questions you may have.

Sincerely,



Charles P. Costanzo
General Counsel & Vice President – Pacific Region