

STATEMENT OF
JENNIFER A. CARPENTER
EXECUTIVE VICE PRESIDENT & COO
THE AMERICAN WATERWAYS OPERATORS
BEFORE THE
HOUSE SUBCOMMITTEE ON COAST GUARD
AND MARITIME TRANSPORTATION

MARCH 6, 2019

Good morning, Chairman Maloney, Ranking Member Gibbs and Members of the Subcommittee. I am Jennifer Carpenter, Executive Vice President & Chief Operating Officer 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 300 member companies, thank you for the opportunity to testify at this important hearing on strategies to improve regulation, economic opportunities, and competitiveness in the U.S. maritime and shipbuilding industries.

I'm very pleased to be part of this panel alongside my colleagues from other sectors of the American maritime industry. We are truly all in this together and we deeply appreciate your leadership and support. To place the sector I represent in context, the tugboat, towboat and barge industry is the largest segment of our nation's domestic maritime fleet. We operate more than 5,500 towing vessels and 31,000 dry and liquid cargo barges on the 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 760 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 ship-docking, tanker escort and bunkering.

Each one of you hails from a state with a proud maritime tradition, and you know how the work that tugboat, towboat and barge operators do contributes to the economy, environment and quality of life in New York, Ohio, and around the country. Our industry's work also has a vital impact nationwide. Today, I'd like to discuss the four pillars that, taken together, comprise the foundation our industry's health and viability. Those four pillars are the Jones Act, federal preemption, waterways infrastructure, and marine safety.

I would also like to emphasize the critical role that Congress, and especially this Subcommittee, play in preserving the strength of that foundation. The sound state of our industry, and the strength and resilience of our members to persevere through the ups and downs of the commercial market, are directly reliant on the certainty that those four public policy pillars provide. Were those pillars to erode, the vitality and viability of our industry would be threatened. Let me say a few words about each of them.

I. The Jones Act

The Jones Act is the statutory foundation of the tugboat, towboat and barge industry. It is the basis for every dollar American companies invest in American-built vessels and every job they provide to American men and women. The Jones Act allows our industry segment alone to provide family-wage jobs and ladders of career opportunity for more than 50,000 Americans—including nearly 39,000 positions as mariners on board our vessels—and support more than 300,000 jobs in related industries across the nation. As Mr. Roberts has explained, the domestic maritime industry in total supports nearly 650,000 jobs and \$155 billion in economic output nationwide.

There is also a vitally important human dimension behind the statistics. In the tugboat, towboat and barge industry, many high school graduates and veterans of the U.S. Armed Forces have worked their way up from the deck to the wheelhouse, becoming captains on towing vessels and making six-figure salaries that allow them to provide for their families. Those salaries result in purchasing power that supports local economies

in the communities where mariners live. And, our industry is a rarity in that many of our member companies, like Crowley Maritime, are owned by the third, fourth or even fifth generations of the same families that have deep roots in their communities. This is a testimony to the enduring strength of our members and the work they do. It is also something we see very rarely in our country today and is a really special and powerful thing.

The Transportation and Infrastructure Committee, and especially this Subcommittee, has long been a deep reservoir of bipartisan support for the Jones Act, a fact demonstrated most recently by the powerful letter sent by Chairmen DeFazio and Maloney and Ranking Members Graves and Gibbs to Homeland Security Secretary Nielsen opposing a ten-year Jones Act waiver for LNG shipments to Puerto Rico. The men and women who own, operate, crew and build American vessels are deeply grateful for your support. Mr. Chairman, Mr. Ranking Member, Members of the Subcommittee, if you seek a single reason why the Jones Act remains critical to America as the law approaches its centennial, look no further than the tugboat, towboat and barge operators in your states. Their valuable work bears daily witness to the wisdom of a law that has sustained a vibrant industry – past, present, and future. Please continue vigorously supporting the Jones Act. It is essential to our industry and it is very important to our country.

II. Federal Preemption

An efficient marine transportation system is essential to a healthy American economy. American farmers, energy producers, and manufacturers depend on the tugboat, towboat and barge industry to safely, securely and efficiently move their products to market and to carry the inputs and raw materials on which they rely. In turn, this economic powerhouse relies on a nationally consistent regulatory regime administered by the federal government.

Like other modes of transportation, the tugboat, towboat and barge industry operates nationwide: AWO member vessels can pass through the waters of a dozen states in the course of a single voyage. The smooth and uninterrupted interstate movement of cargo between U.S. ports is a centerpiece of our members' value proposition to their customers. As such, a coherent and consistent regulatory regime that is administered and enforced by knowledgeable federal agencies—including the U.S. Coast Guard and the Environmental Protection Agency—is vital to the efficiency and the viability of our industry. Federal primacy in the regulation of maritime transport allows federal agencies to take input from all stakeholders, including states and the public, to establish rules based on vessel operational experience that have been analyzed from a national perspective.

Federal primacy is not a new concept. It is settled law that served as a foundation for the U.S. Constitution and has consistently been applied to interstate commerce for more than 200 years. The Constitutional Convention of 1787 unanimously adopted the Supremacy Clause, cementing the federal government's position as the supreme law of the land when regulating interstate commerce.

Key to that supremacy is Congress' power to regulate commerce under Article I of the Constitution. The Federalist Papers cite this authority and the ability to regulate interstate navigation without intervention from individual states as one of the reasons for adopting the Constitution. Likewise, in 1824 the Supreme Court ruled that the power to regulate commerce undoubtedly included the power to regulate interstate navigation.

Today, federal primacy over navigation remains just as important to commerce as it was at the founding of our country. I would like to highlight two examples in which Congress worked in a bipartisan way to establish a nationally consistent federal regulatory regime beneficial to both the maritime industry and the American public.

The first is the Oil Pollution Act of 1990, landmark, bipartisan legislation that enabled vessel owners to plan for and make multi-billion-dollar investments in state-of-the-art, environmentally friendly tank barges and tankers to carry the nation's vital energy cargoes. The phaseout of single-hulled vessels and transition to an all-double-hull fleet, combined with a comprehensive federal regulatory regime for oil spill prevention, response and liability and the adoption by vessel owners of safety management systems, vendor vetting programs and other safety measures, has produced dramatic, positive results for the American public. Oil spills from tank barges have plummeted by 99.6 percent since enactment of OPA 90. This outstanding safety record is all the more relevant today given the nation's energy renaissance and the vastly increased need for marine transportation of crude oil and petroleum products.

Second is the Vessel Incidental Discharge Act of 2018, or VIDA, passed last year by the 115th Congress as part of the Frank A. LoBiondo Coast Guard Authorization Act with the leadership and support of this Subcommittee. VIDA is another landmark bipartisan measure that will bring uniformity and certainty to the regulation of ballast water and other incidental discharges for vessels engaged in interstate commerce. While the law at its core is preemptive in nature, it is also notable for balancing the role of the states in the standard-setting and implementation process. VIDA represents both a win for the maritime industry, which needed the national uniformity that only federal regulations can guarantee, and for the marine environment, which will benefit as the highest standards economically achievable are implemented nationwide. We hope that when history looks back on VIDA, as it has with OPA 90, it will see a success story that has benefited both the American economy and our precious marine environment.

OPA 90 and VIDA have and will promote safety, protect the environment, and preserve the efficiency of barges and towing vessels engaged in interstate commerce. This should be the goal of federal regulation of interstate commerce. As such, it is critical that federal primacy be maintained. We urge the Committee to ensure the primacy of federal laws governing the operation of towing vessels and barges and hold Executive Branch

agencies accountable for actively defending and preserving federal authority over vessel operations.

III. Infrastructure

The third pillar, waterways infrastructure, is equally essential to the towing industry. It is a key component of the nation's intermodal transportation network that helps to make America competitive in world markets. However, that infrastructure is in urgent need of modernization and repair. For example, more than half of the 238 locks on our inland waterways system are over fifty years old and have exceeded their design lifespan. Critical failures, and significant unscheduled temporary closures, have occurred at locks across the system. If left untended, these problems will compound, increasing the cost of marine transportation and calling its very reliability into question. That would be devastating not only for the tugboat, towboat and barge industry, but for the shippers who rely on it and for air quality and highway congestion as well. Each barge that is pulled off the waterways adds 16 bulk rail cars to our railways or 70 tractor-trailers to our highways, with a resulting increase in greenhouse gases of more than 20 percent and 150 percent, respectively.

Fortunately, the ongoing revitalization of waterways infrastructure has shown Congress at its bipartisan best. For the past six years, lawmakers have worked across the aisle to secure long-sought improvements for our nation's coastal and inland waterways. The resulting authorization and appropriations bills have ensured that America's waterways will continue to remain vital to the safe, reliable and efficient movement of cargo.

Congress can continue to support the pillar of infrastructure by doing two things. First, we urge you to keep the Water Resources Development Act (WRDA) on a two-year reauthorization cycle. WRDA is a crucial part of a cooperative effort that involves the Inland Waterways Users Board, the U.S. Army Corps of Engineers, and the key committees of jurisdiction in Congress. As we have seen in the past, failure to enact

WRDA bills on a regular basis causes backlogs in much-needed modernization and maintenance that result in costly navigation stoppages on the inland waterways system.

Second, we urge Congress to oppose any additional taxation, tolling, lockage fees, or other charges placed upon the users of the inland waterway system. Our industry has already stepped up to the plate there. In 2014, Congress, at the industry's request, enacted a 45% increase in the diesel fuel tax our member companies pay into the Inland Waterways Trust Fund (IWTF), a longstanding public-private partnership that yields positive results for our industry and the U.S. economy. We already pay our fair share.

IV. Marine Safety

The fourth pillar is marine safety, which is our industry's franchise to operate. Unlike the other pillars, this responsibility falls primarily on us, and we know and welcome that. Congress also has an important role to play. For more than 25 years, our members have demonstrated their commitment to safety leadership through industry-led initiatives and partnerships with government to safeguard human life and protect the marine environment. AWO's top priority is to lead and support members in continuously improving safety, security, and environmental protection.

A quarter century ago, AWO developed the Responsible Carrier Program (RCP) as a code of best practices for member companies. Companies use the program to develop safety management systems that meet or exceed applicable laws and regulations and are tailored to reflect their unique operational needs. We subsequently instituted a third-party external audit mechanism to enhance the integrity of our safety management system. Building on these industry-led initiatives, AWO worked with this Subcommittee to pass legislation giving the Coast Guard the authority to develop comprehensive towing vessel safety and inspection regulations, and worked closely with the agency for more than a decade to produce those regulations, which took full effect last July. These regulations, known as Subchapter M, will ensure that each of the 5,000 affected U.S.-flag towing vessels meet minimum standards of safety to protect

lives, the environment and property, while recognizing and incentivizing operators who exceed minimum standards. The regulations also leverage safety management systems and third-party organizations to help the Coast Guard focus its limited resources where they're needed most.

It is important to emphasize that, even while Subchapter M is now in effect, AWO members remain committed to getting safer every day. Our goal is not simply to comply with the regulations, but to institute a genuine culture of safety industry-wide. Last October, AWO's Board of Directors unanimously approved Safety Leadership 3.0, a vision to guide how AWO will lead and support members in continuously improving safety, security and environmental stewardship in the post-Subchapter M landscape. As we move forward with this initiative, we look forward to working with Congress, and especially this Subcommittee of jurisdiction, to build a safer marine transportation industry. Please hold us accountable for the commitments we make.

In addition, please help the Coast Guard to incentivize a culture of safety, and not simply a culture of compliance. This includes ensuring that the agency's regulations and policy do not disincentivize the use of safety management systems, which are the foundation of every effective safety culture. We ask that you press the Coast Guard to establish towing vessel inspection user fees that are lower for vessels that have implemented a safety management system – in recognition of their reduced demand on agency resources, because of the Coast Guard's ability to leverage approved third parties to supplement their oversight. We thank the Subcommittee for directing the Coast Guard in the Frank LoBiondo Coast Guard Authorization Act to compare the costs to government of towing vessel inspections performed by the Coast Guard and those performed by a third party in order to more accurately assess inspection user fees.

There are also other ways that Congress can help the industry and the agency stay focused on that which will truly improve safety, including eliminating regulations that pose implementation challenges for towing vessel operators, but offer little positive impact on personnel or vessel safety or environmental protection. Congressional

assistance to resolve these low-risk compliance challenges will enable the Coast Guard and the industry to focus our attention on the regulatory requirements that will make a real difference in protecting people, the environment and property.

V. Conclusion

AWO's member companies are committed to a culture of continuous improvement – to making our domestic maritime industry ever safer, more efficient, and more environmentally sustainable. The vibrancy of the towing industry is a direct result of the ingenuity, resourcefulness, and work ethic of the men and women who comprise it. The sound state of our industry is also a direct result of the bipartisan support that it enjoys in this Subcommittee specifically and in the Congress generally. The statutory and regulatory certainty that you provide is foundational to our survival and success.

I would again like to thank the Subcommittee for its demonstrated record of support for our industry, and ask for your continued support for the four pillars that undergird our industry and enable us to do what we do for our customers and for our country. It is no exaggeration to say that you are the guarantor of the certainty that will ensure the towing industry's continued success in the years ahead.

Thank you for this opportunity to testify, and I look forward to answering your questions.