Statement of

Thomas A. Allegretti
President & CEO
The American Waterways Operators
801 North Quincy Street, Suite 200
Arlington, VA 22203
(703) 841-9300

Maritime Transportation Safety and Stewardship Programs

Before the
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC

April 14, 2016

Good morning, Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. I am Tom Allegretti, President & CEO 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 350 member companies, thank you for the opportunity to testify at this important hearing on maritime transportation safety and stewardship programs.

Let me begin by telling you a bit about our industry. The tugboat, towboat and barge industry is the largest segment of the U.S. domestic fleet. We operate more than 5,000 towing vessels and 27,000 dry and liquid cargo barges on the commercially 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 800 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 shipdocking, tanker escort and bunkering.

This hearing comes at a critical time for our industry. According to recent estimates, freight movements across all modes of transportation are expected to grow by more than 40 percent by the year 2040, in order to support projected population and economic growth in the United States. As I scan the horizon of the year ahead, I see both opportunities and challenges, the outcomes of which will have serious implications for our industry's ability to support that growth. The Jones Act, the statutory foundation for the billions of dollars in investment AWO members have made in our industry, is under attack. We are anticipating publication this spring of the most significant new regulation our industry has ever seen, with the potential to take safety and environmental stewardship to an unprecedented level. And at the same time, the efficiency and competitiveness of our industry are being compromised by unconstitutional state attempts to infringe on federal authority over interstate commerce and a poorly devised, dysfunctional regulatory regime for ballast water and incidental vessel discharges. It is shaping up to be a highly consequential year and we will need the bipartisan leadership of this Subcommittee to confront these challenges and take maximum advantage of these opportunities.

Over the course of my testimony, I will ask for your assistance and leadership in the following areas: defense of the Jones Act; oversight of the regulatory transition to towing vessel inspection; support for federal authority over vessel operations; and establishment of a uniform federal framework for vessel discharge regulation.

I. The Jones Act

Section 27 of the Merchant Marine Act of 1920, commonly known as the Jones Act, supports a stable, high-performing and highly competitive domestic maritime industry that sustains American jobs and our country's economic security; strengthens U.S. homeland and national security; and ensures a strong and vibrant maritime industry. The Jones Act enjoys broad, strong bipartisan support for these compelling reasons, but there is a vocal minority who oppose it despite them. I would like to expand on the Jones Act's critical importance and answer the charges of its detractors directly.

Today, more than 40,000 American-owned vessels built in American shipyards move agricultural goods, petroleum, coal, natural gas, chemicals and containerized freight safely and efficiently along our coasts and throughout our river system. Driven by the Jones Act, these vessels generate almost $100 billion in annual economic output. They also support nearly 500,000 American jobs, employing American mariners in competitive-wage careers that offer great potential for economic advancement. In the tugboat, towboat and barge industry, many high school graduates have worked their way up from the deck to the wheelhouse, captaining towing vessels on our nation's waterways and making six-figure salaries that allow them to support their families. The Jones Act makes possible this ladder of genuine economic opportunity in the modern American economy.

The Jones Act is also vital to U.S. homeland security. U.S.-flagged vessels are an indispensable part of our nation's domestic defense network, helping the Coast Guard to secure our borders and guard against terrorism at no cost to the taxpayer. Without the Jones Act, and the domestic maritime industry it undergirds, U.S. vessel operators would cease to be the eyes and ears of

America's harbors, rivers and offshore sea lanes. Foreign vessel operators and their crews would have little interest in abiding by the motto of "see something, say something." A vote to repeal the Jones Act would be, in effect, a vote to massively increase funding for the Coast Guard's vessel safety inspection and law enforcement activities, as well as for U.S. Immigration and Customs Enforcement—both of which would be required by the vastly increased presence of foreign vessels and foreign workers along America's shores and in the interior bloodstream of our nation.

ADM Paul Zukunft, Commandant of the U.S. Coast Guard, recently shared with this Subcommittee his perspective on the consequences of repealing the Jones Act for America's ability to protect itself and project itself internationally. Without the Jones Act, ADM Zukunft warned, the U.S. fleet and U.S. shipyards would disappear, followed closely by American mariners. ADM Zukunft's remarks highlight the indivisibility of the three pillars of the Jones Act: U.S. owned, U.S. built and U.S. crewed. Some have suggested that the U.S. build requirement could be eliminated while maintaining the U.S. ownership and crewing requirements of the Jones Act. This would be disastrous for our country, and disastrous for the domestic maritime industry. Not only is the U.S. build requirement essential to our shipbuilding industrial base and, by extension, our national security, but it is also the basis for billions of dollars of investment by American companies. Over the last several years, we have experienced what Maritime Administrator Paul Jaenichen has described as "the biggest shipbuilding surge in almost 20 years." This massive investment by American companies in American vessels would be immediately and substantially devalued if the U.S. build requirement were eliminated.

In the current environment, Jones Act critics – some ideologically driven, others seeking to lower the cost of transportation to increase their profits – are attempting to inject the Jones Act into a number of hot-button political debates in an effort to make it appear guilty by association and effect its repeal, in whole or in part.

For example, the American Fuel & Petrochemical Manufacturers (AFPM) Association has decried the supposed influence of the Jones Act on consumer gasoline prices, despite the fact that Jones Act transportation costs contribute less than one-tenth of one cent to the nationwide

average cost of a gallon of gasoline. In fact, a recently issued report by AFPM that was intended to expose the Jones Act's culpability for high prices at the pump concluded just the opposite: that the Jones Act fleet moves America's crude oil and refined petroleum products efficiently and competitively. The refiners' complaints that they find a particular domestic trade route expensive compared to the price of foreign-flag transportation is comparing apples to oranges; foreign-flag vessels do not comply with the same U.S. tax, labor, and other regulatory standards as U.S. vessels do – and that they would likely also be required to meet if they were allowed to enter the domestic trades. Moreover, even if refiners were able to secure lower-cost foreign-flag transportation, it would have no effect on the price of gasoline at the pump, which is principally driven by the price of crude oil. Padding the profit margin of oil refiners is no reason to undermine U.S. economic, national and homeland security and decimate hundreds of thousands of American maritime jobs.

Another focal point of Jones Act opponents is the Puerto Rico economic assistance legislation currently under consideration by Congress. The rationale for repealing Jones Act requirements for the island is based on a claim that it has caused high consumer prices, which in turn have contributed to the Puerto Rico's financial woes. Heritage Action went so far as to declare that "[e]xempting Puerto Rico from the Jones Act…is the single most important step Congress can take toward enabling economic growth in Puerto Rico." This statement is absurd. The Government Accountability Office (GAO) studied the issue of the Jones Act's "cost" to Puerto Rico for more than a year and concluded that there are far too many factors that impact the price of a consumer good to determine the cost related to transportation in general, much less the Jones Act specifically. GAO also stated that the cost could not truly be estimated unless it could be determined which American laws and regulations would be applied to foreign-flag vessels if they were allowed to enter the domestic trades—a scenario that would certainly increase the cost of foreign-flag transportation.

In fact, a Jones Act exemption of any kind would do serious harm to Puerto Rico. Puerto Rico already benefits from the most reliable service and lowest shipping rates in the Caribbean because of the unique efficiencies built into the maritime and logistics network between the island and the U.S. mainland. Further, American vessel operators are making some of the largest

private sector investments currently underway in Puerto Rico, with billions of dollars in new vessels, equipment, and infrastructure in the works. These domestic vessel operators also support hundreds of well-paying Puerto Rican jobs on the island and in the U.S.-flag fleet. The facts of the matter are clear: the Jones Act is not part of Puerto Rico's economic collapse and should not be part of a Congressional package to assist the island.

Support for the Jones Act on the Transportation and Infrastructure Committee has been vocal and strong, and, on behalf of AWO's member companies and the people they employ, I would like to thank Chairman Hunter, Ranking Member Garamendi and the many Members of this Subcommittee who have not only defended the Jones Act, but have actively promoted its value with your colleagues in the House of Representatives. **We ask the Transportation and Infrastructure Committee to continue to show leadership in resisting and rejecting the inclusion of measures to weaken the Jones Act in legislation that may originate in other committees.**

II. The Transition to Towing Vessel Inspection

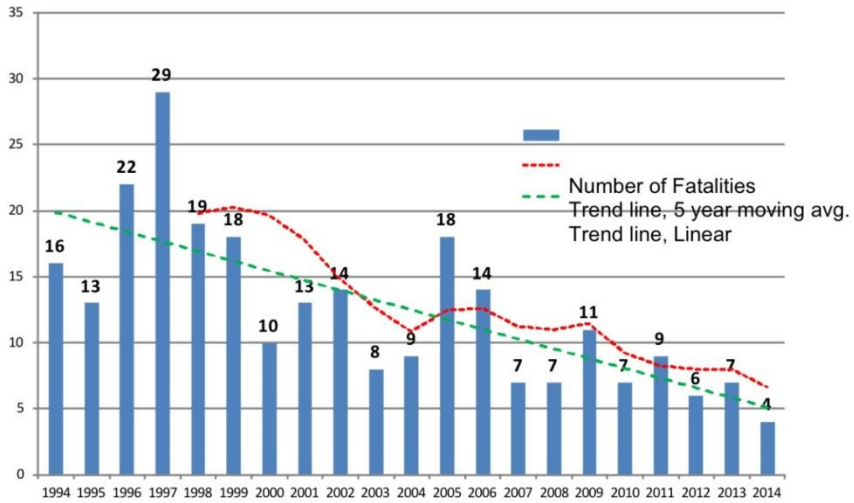
This spring, the Coast Guard will publish a long-awaited and eagerly anticipated rule that will bring towing vessels under a federal inspection regime for the first time.

The tugboat, towboat and barge industry is the safest and most efficient means of moving bulk cargo. But AWO's member companies have not been content to rest on these natural advantages; they are committed to building on this foundation and to leading the transportation industry in safety and environmental stewardship. For 25 years, this commitment has propelled our industry on a journey of continuous improvement. The Coast Guard, Congress, and our industry's shipper-customers have been active partners in that journey, rightly demanding that we strive daily to achieve the goal of zero harm to human life, to the environment, and to property as we transport the nation's waterborne commerce. The journey has been marked by private sector leadership – the AWO Responsible Carrier Program, the Coast Guard-AWO Safety Partnership, rigorous customer vetting of companies and vessels – and responsible public policymaking, from the Oil Pollution Act of 1990 to the 2004 law that gave rise to the towing vessel inspection

rulemaking. As a result, we are a better, safer industry, with a dramatically reduced environmental footprint, that is well prepared for the transition to towing vessel inspection, or Subchapter M.

Let me elaborate on this journey, and how it has led us to this point. In 1995, the Coast Guard and AWO – in recognition of our mutual goals to improve vessel and personnel safety within the tugboat, towboat and barge industry and enhance the protection of the environment along our nation's waterways – formed a first-of-its-kind public-private partnership. The Coast Guard-AWO Safety Partnership has distinguished itself over the course of its 20-year history by its cooperative, non-regulatory, results-oriented approach to advancing marine safety and environmental stewardship. This approach has led to success that is not abstract or anecdotal: Coast Guard safety statistics, which the Safety Partnership tracks annually to drive its work and measure our performance, show dramatic declines across the entire array of safety metrics, from crew fatalities and personal injuries to oil spills and vessel casualties. In 2014, the last year for which data is available, crew fatalities fell to their lowest number on record.

Chart 1: Crew Fatalities by Calendar Year (CY)

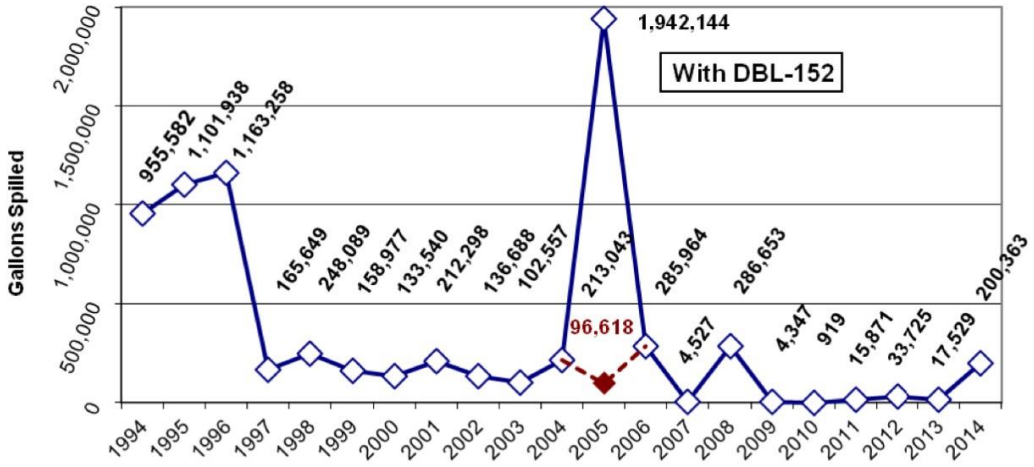


Source: U.S. Coast Guard (CG-INV)

Further, despite significant increases in the amount of oil being transported by tank barge due to increases in domestic energy production – bringing the total to an estimated 75 billion gallons – the tank barge oil spill rate for 2014 was a remarkably low 2.68 gallons per million gallons

transported. This rate has fallen 84 percent since the Safety Partnership's founding, when tank barges transported 7 billion fewer gallons of oil. Put simply, despite carrying much more oil, our industry is spilling much, much less of it.

Chart 5 – Oil Spilled from Tanks Barges by CY



Source: U.S. Coast Guard (CG-INV)

These results are a testament to the effectiveness of the Coast Guard-AWO Safety Partnership. However, 10 years after its founding, the Coast Guard and AWO recognized that safety leadership on the part of forward-looking vessel operators could not on its own achieve the goal of zero harm. In order to ensure that all vessels achieve a minimum threshold of safety to protect lives, the environment and property, we concluded that the government must act to raise the regulatory floor. In 2003, a Safety Partnership working group recommended that the Coast Guard establish a towing vessel inspection regime. The following year, AWO strongly supported the Coast Guard's request that Congress grant the agency the statutory authority to inspect towing vessels. Congress did so in the Coast Guard and Maritime Transportation Act of 2004, having the foresight to recognize that raising the bar for the entire tugboat, towboat and barge industry was the right next step to build on the safeguards that responsible companies had already put in place.

The Subchapter M rule, which will establish the towing vessel inspection regime conceived by the Safety Partnership and mandated by Congress, was approved by the Department of Homeland Security and transmitted to the Office of Management and Budget for final review in February. AWO looks forward to its publication this spring. That our members support further

regulation is a surprise to many. We have all heard complaints about regulatory agencies that do not adhere to the principles of sound regulatory decision-making. They are subject to charges that a new regulation's costs are not correctly calculated and exceed the true value of its benefits, that alternatives are not examined, and that the process is often politicized. I am pleased to tell you that none of the aforementioned is applicable to the Coast Guard and the Subchapter M rule. In fact, AWO believes that the thoughtful, inclusive and thorough process of stakeholder engagement the Coast Guard has undertaken to develop the Subchapter M rule is a model of sound, sensible rulemaking. The result is that the rule has widespread support from the industry, from the public, and from bipartisan Members of Congress.

Most importantly, Subchapter M offers our industry the opportunity to take safety and environmental stewardship to a new and historic level – and we are ready to seize it. At the same time that the Coast Guard has been developing the rule, AWO has been working with the agency through the Safety Partnership to ensure that our industry is prepared for the transition to inspection. But, we recognize that our ability to realize the promise of the Subchapter M rule will depend not only on its content and the industry's readiness; how well we work with the Coast Guard to ensure that the rule is smoothly and effectively implemented will also be critical. Once again, the Safety Partnership is serving as a forum for cooperation. The Coast Guard and AWO are developing and are confident in our ability to execute post-publication plans for industry outreach and education and industry consultation on implementation policy and guidance. However, we believe that Congress has a role to play in the implementation of Subchapter M as well, to ensure that it is proceeding consistently with Congressional intent in directing the Coast Guard to establish a towing vessel inspection regime and in accord with the recommendations of the Congressionally-authorized Towing Safety Advisory Committee. **We ask that Congress continue to exercise its oversight responsibility to ensure that the Subchapter M rule is implemented effectively without causing any interruption to the movement of commerce on our nation's waterways, and we commit to keep you apprised of any developments that may pose a risk to that shared objective.**

III. Preserving Federal Authority Over Vessel Operations

As I have said, OPA 90 and the Coast Guard and Maritime Transportation Act of 2004 that authorized the Coast Guard to inspect towing vessels are examples of responsible public policymaking, considered thoughtfully and passed with strong bipartisan support by Congress. In both instances, Congress' unambiguous direction and clear delineation of federal and state roles allowed the federal agencies charged with implementing these laws to develop comprehensive national regulatory regimes for the benefit of marine safety and the environment without imposing impracticable, contradictory requirements on the maritime industry or disrupting waterborne commerce. Clear federal statutes and regulations, consistently and uniformly applied and administered across the country, are necessary to facilitate the safe and efficient movement of interstate commerce.

The recognized primacy of federal authority over interstate commerce has been a fundamental principle of the American constitutional system of government since its founding. The U.S. Supreme Court explained in 2000 that "the authority of Congress to regulate interstate navigation, without embarrassment from intervention of the separate States and resulting difficulties with foreign nations, was cited in the Federalist Papers as one of the reasons for adopting the Constitution."[1] But no matter how clearly the federal courts assert and reassert the necessity of the explicit authority of knowledgeable federal lawmakers and regulators over interstate maritime commerce, the subject is unfortunately revisited as state and local legislators feel compelled to enter this already heavily regulated and highly technical area. When states or localities unilaterally deviate from the complex and demanding federal regulatory regime established by the Coast Guard with the oversight of Congress, the result is not only violence to the Constitution, but an increased risk to the safety of vessels and mariners and to the protection of the waters on which they operate.

[1] *INTERTANKO and the United States of America v. Locke*, 529 U.S. 89, 99 (2000).

This is not a dry, esoteric legal argument: there have been and continue to be real consequences for AWO members in Massachusetts who have been compelled to spend millions of dollars over a decade complying with unconstitutional state pilotage and escort tug requirements as legal challenges work their way through the courts, and for AWO members in Washington who must wage expensive fights each year to defeat similar state legislative proposals that are unconstitutional.

In 2013, recognizing that Congressional intent and the development of case law was apparently not sufficient to prevent states from attempting to legislate or regulate in areas in which their authority is preempted, the Coast Guard proposed to publish a clear statement of its preemption principles and detail the preemptive impact of its regulations. This effort did not seek to amend or expand this impact, but rather to ensure that the Coast Guard's existing assessment of the preemptive effect of its regulations is clearly understood. However, the Coast Guard's statement provoked a highly political backlash from certain states such as Massachusetts and Washington, which believe vessels operating in their region merit different treatment regardless of the consequences for vessel operators or for marine safety and the environment. The agency has yet to finalize its statement.

We applaud the Coast Guard for its leadership in authoring its preemption statement and asserting its authority over navigation and vessel operations, areas in which Congress and the courts have clearly and repeatedly preempted state law and regulation. **We urge Congress to support the Coast Guard's finalization and publication of its preemption statement and make clear to state and local lawmakers that, as Members of the body charged by the Constitution with regulating interstate and international commerce, you support the primacy of federal authority over navigation and vessel operations.**

IV. Vessel Discharges

The regulation of incidental vessel discharges is a mess, and we are in urgent need of Congressional action this year to fix it. I have previously described AWO's member companies' deep commitment to environmental stewardship. I state it again to emphasize that our goal in

urging Congressional action on vessel discharges legislation is not to avoid high standards. Our industry has established a strong and continuously improving environmental record, and we recognize that making responsible environmental practice a top priority is both good policy and good business.

The problem is not that vessel discharges are regulated; it is how they are regulated: through a dysfunctional regulatory regime that does not serve the economy, the environment, or the American taxpayer well. Today, two federal agencies, the Coast Guard and the Environmental Protection Agency, regulate ballast water and other vessel discharges under differing statutory authorities. And, because neither federal statute preempts state action, more than two dozen states have established state-specific requirements for those same discharges – over 150 in all. It's a confusing and costly situation for vessel owners and crewmembers in an industry that works vigorously to provide affordable, efficient and reliable transportation solutions for shippers.

Let me highlight the real-world impacts of this regulatory dysfunction. A tug-barge unit moving petroleum from a refinery in Anacortes, Washington, to a fuel distribution center in Los Angeles must traverse the waters of three states: Washington, Oregon, and California. In addition to EPA limits on ballast water and other vessel discharges found in the agency's Vessel General Permit, the tug and the barge must comply with 25 supplementary, state-specific conditions added to the permit by Washington and California. They must also comply with Coast Guard regulations to manage and discharge ballast water and hull fouling organisms. Finally, in each of the three states they transit, the vessels are subject to state laws and regulations necessitating the submission of ballast water management reports to every state in which they will discharge ballast water (in addition to the reports required by the Coast Guard) and requiring the implementation of ballast water management practices in addition to those prescribed by EPA and the Coast Guard. That is five distinct regulatory regimes, and all of their attendant requirements, that the employees onboard the tugboat must understand and comply with over the course of a single voyage. Our inland tows face an even more egregious situation, traveling through the waters of as many as seven states on a voyage from Chicago to New Orleans.

Right now, given the uncertainty caused by this regulatory patchwork, one of the riskiest decisions AWO members have to make when constructing or overhauling a vessel is investing in an onboard ballast water treatment system—a situation at odds with the industry's demonstrated commitment to protecting the waterways in which we operate. California's recent actions vividly illustrate why the stakes are so high. The state's decision in late 2015 to place a fifteen-year hold on its ballast water law was the latest extension for an unenforced "super standard" that has been delayed twice since its enactment in 2006. Despite overwhelming scientific evidence demonstrating that the federal ballast water treatment standard is the most protective that is currently achievable, California elected to set a significantly higher standard, a choice that has consistently proven infeasible because the state's own enforcement agency has concluded that commercially available ballast water treatment systems do not exist to allow vessel owners to meet state law. As a result, our members will be forced to install federally compliant treatment systems not knowing whether they will meet California law and wait in suspense to see whether California will compel them to replace their equipment or move the goalposts further downfield.

To make matters worse, last year the U.S. Court of Appeals for the Second Circuit remanded EPA's Vessel General Permit and ordered the agency to reassess the standard to which it requires vessel operators to treat ballast water, raising the possibility that EPA will produce a new permit that exacerbates the misalignment between its standards and the Coast Guard's. Let me be clear: the Second Circuit remand is a potential game-changer. An EPA ballast water treatment standard that deviates from the Coast Guard's would worsen an already untenable regulatory situation.

Now is the time for Congress to resolve this regulatory mess by enacting legislation that will enhance protections for the waterways, boost efforts to develop improved ballast water treatment technologies, and eliminate uncertainty that stymies investment. H.R. 980, the Vessel Incidental Discharge Act, is a solid, bipartisan compromise that would replace the current unworkable regulatory patchwork with one set of scientifically based, environmentally protective and technologically achievable rules. The legislation is supported by all segments of the maritime industry—U.S. and international vessel owners and operators; fishing vessel, passenger vessel and charterboat operators; labor unions; marine terminals and port authorities—and national

business organizations and industries that rely on commercial vessels to transport essential cargoes in domestic and international commerce.

Simply put, Congress has an unprecedented opportunity in 2016 to enact legislation that improves the efficiency and effectiveness of our maritime transportation system while enhancing the protection of our nation's waterways.

I would like to offer our thanks to Chairman Hunter for taking a lead role in the effort to enact H.R. 980 this year, especially in light of the fact that your home state, California, has staked out a sharply contradictory approach to the issue. I would also like to thank Mr. Cummings for partnering with Chairman Hunter to introduce this bipartisan bill and recognizing that this is one of those situations where we as a nation can and must do better. AWO also thanks the Members of the Transportation and Infrastructure Committee who have cosponsored H.R. 980, including Reps. LoBiondo, Graves of Louisiana, Graves of Missouri, and Zeldin. **I urge every member of the Committee who has not yet done so to cosponsor H.R. 980 and support its passage this year.**

Conclusion

Chairman Hunter, Ranking Member Garamendi, thank you again for the opportunity to testify today on issues of great importance to our industry, to the U.S. economy, and to the nation's marine environment. We appreciate your leadership and we look forward to your continued partnership with our industry to advance our mutual goal of a safe, secure, environmentally sound maritime transportation system that is good for America and for the Americans who work in our industry.