

Statement of

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Maritime Transportation Regulations:
Impacts on Safety, Security, Jobs and the Environment, Part I

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Committee on Transportation and Infrastructure
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Good morning, Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. Thank you for the opportunity to testify today. I am Tom Allegretti, President & CEO of The American Waterways Operators, the national trade association for the tugboat, towboat and barge industry. AWO's 350 member companies own and operate barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,000 towing vessels and 27,000 barges comprise the largest segment of the U.S.-flag fleet, providing family-wage jobs and meaningful career opportunities for tens of thousands of American mariners. Each year, our industry safely, securely and efficiently moves more than 800 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates, and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

AWO very much appreciates your holding this hearing on maritime transportation regulations and their impacts on safety, security, jobs and the environment – and I assure you, AWO members have much to say on this subject! But, the message I bring to you on their behalf today focuses on just one of the scores of regulations promulgated by the Coast Guard and other federal agencies that affect our industry. We are here today to emphasize the need for prompt publication, either later this year or early next year, of a Coast Guard rule on towing vessel inspection (or “Subchapter M”) that is consistent with the intent of Congress and with the recommendations of the congressionally authorized Towing Safety Advisory Committee. Said differently, we need to get the towing vessel inspection rule done, and done right, right away.

Doing so will advance our shared goals of improving safety, security and environmental stewardship in a way that supports and sustains high-quality American jobs.

As you know, Congress directed the Coast Guard to undertake this rulemaking more than nine years ago, in the Coast Guard and Maritime Transportation Act of 2004. Three years ago, the 2010 Coast Guard and Maritime Transportation Act established a statutory deadline of October 15, 2011, for issuance of a final rule – a deadline that is now nearly two years in arrears. Those facts alone create a cause for immediate action.

But, the dry language of dates and deadlines does not tell the whole story, a story of opportunity, vulnerability, and widespread public support that only makes the cause for action more compelling. Simply put, the towing vessel inspection rulemaking offers a historic opportunity to take safety in the tugboat, towboat and barge industry to a new level, akin to the transformation of the oil transportation industry after the Oil Pollution Act of 1990. We collectively – the Administration, Congress, and our industry – have real vulnerability and will face hard questions from the American public if this long-overdue rulemaking is not finalized soon and, God forbid, a serious accident occurs. Moreover, there is widespread – indeed, overwhelming – industry and public support for moving forward with this rule; rather remarkably for a regulatory undertaking of this significance, AWO is aware of no organized constituency arguing against it. Taken together, these facts underscore that the way forward is clear and the time to act is now.

Let me elaborate a bit on each of these points, starting with the opportunity that we have, and that we fail to seize, each day that this rulemaking continues on its slow course through the

federal bureaucracy. For more than 20 years, the tugboat, towboat and barge industry has been engaged on a journey of continuous improvement. (We have tried to capture graphically the highlights of this journey on the attachment to this testimony.) The Coast Guard, Congress, and our industry's shipper-customers have been active partners in that journey, encouraging and 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 OPA 90 to the 2004 law that gave rise to this rulemaking to the inclusive and thoughtful process by which the Coast Guard has engaged stakeholders throughout the development of the proposed Subchapter M.

That journey has produced meaningful results; a 2012 Coast Guard Report to Congress credited the combination of these private and public sector initiatives with producing a dramatic decline in oil spills from tank barges over the past two decades. But, we have not yet achieved our goal of zero harm, and we believe the most important step that we can take – a critical missing link in the safety chain – is publication of the towing vessel inspection rule. This rule will raise safety standards throughout the tugboat, towboat and barge industry, incorporating and building on the safeguards that quality companies have already put in place and ensuring that all vessels achieve a minimum threshold of safety that is necessary to protect lives, the environment and property.

The flip side of opportunity is vulnerability, and I submit that we face real vulnerability if these important regulations are not promulgated soon. Thirteen years ago, the National Transportation

Safety Board published a report on the 1998 accident involving the ramming of the Eads Bridge in St. Louis Harbor by barges in tow of the *M/V Ann Holly*, and the subsequent ramming and near breakaway of the *President Casino on the Admiral*, with 2,000 passengers aboard. The NTSB recommended that the Coast Guard seek the statutory authority to require domestic towing companies to develop and implement safety management systems, writing that “the lack of a safety management system requirement for all U.S. towing industry companies represents a threat to waterway safety.” Use of a safety management system to ensure continuous oversight of the operation and maintenance of a company’s towing vessels is a key component of the Subchapter M rulemaking that has been strongly and repeatedly endorsed by TSAC. AWO has also voiced our strong support for the inclusion of a safety management system requirement in the forthcoming rule.

Five years ago, after another serious accident – the 2008 *Mel Oliver/Tintomara* collision in which more than 282,000 gallons of oil was spilled into the Lower Mississippi River – I testified before this subcommittee on actions needed to prevent such incidents. Two of the three actions I recommended have been implemented – changes to the AWO procedure for notifying members when a company has failed a Responsible Carrier Program audit, and a targeted Coast Guard enforcement program to focus governmental attention on companies with marginal operating practices and poor safety records. My third recommendation focused on the need for prompt publication of the towing vessel inspection rulemaking. I said then, and I believe today, that had the Subchapter M regulations been in place, including the safety management system requirement recommended by TSAC, the *Mel Oliver/Tintomara* collision might have been prevented. Non-compliance with a safety management system is a leading indicator of casualties,

and the Coast Guard would have been notified when the operator of the *Mel Oliver* failed a safety management system audit prior to the casualty. This would have forced the company to improve its procedures or risk losing its license to operate – its vessels' Certificate of Inspection.

Mr. Chairman, Ranking Member Garamendi, AWO understands that the federal rulemaking process takes time. We know that there are procedural requirements that must be met and economic impact studies that must be conducted. We recognize that these requirements are meant to protect industry and the public by ensuring that federal regulations are well thought out and not unduly burdensome. But, we are very frustrated that this congressionally mandated rulemaking has taken so long, and that there is no clear end in sight. We are especially frustrated because the benefits of action are so great, the consequences of inaction are so severe, and our industry is asking to be regulated! (Yes, you heard that right.) The fact is that while there are a myriad of technical details to get right, this rulemaking is not particularly controversial. There is widespread support from industry, from the public, and from bipartisan Members of Congress for moving forward with the central tenets of this rulemaking. There is a nine-year history of TSAC recommendations that offer a clear roadmap for finalizing the proposed rule. And, there is a very strong public docket that contains all the information needed to refine the notice of proposed rulemaking and get the regulation right.

AWO is especially concerned about the potential for delays given the transition at the Department of Homeland Security and the recent departure of Secretary Napolitano. We are very concerned that the Coast Guard will finish its work on the Subchapter M rulemaking, only to have it languish at the department. This is not a hypothetical concern; the notice of proposed

rulemaking on towing vessel inspection was sent to DHS in early 2009 and was not published in the *Federal Register* until August 2011 – more than two years later! We cannot afford a delay of that magnitude again.

In conclusion, here is what we recommend:

- First, we urge the Coast Guard to commit to finalizing the towing vessel inspection rule and sending it to DHS for review this fall. Recognizing the importance of getting the rule right as well as getting it done fast, we urge the agency to carefully review the TSAC recommendations – and in particular, the committee’s 2011 report on the notice of proposed rulemaking – and use those recommendations to perfect the proposed rule. Given the numerous technical details involved in a rule of this scope, we also urge that the regulations be published as an interim final rule with request for public comment. This procedural mechanism will allow the Coast Guard to identify any final technical changes needed before the regulations take full effect.
- Second, we urge the Coast Guard to work with DHS to develop a mechanism for prompt review of the towing vessel inspection rulemaking when it is sent to the department. We urge the department to complete its review process this year, so that the rule can be published next spring following final review by the Office of Management and Budget, during this Commandant’s watch.
- Third, we urge Congress to continue to exercise its oversight mission and ensure that the towing vessel inspection rule is published without further delay. Today’s hearing is a

useful step in that oversight process, and we urge you to encourage the Coast Guard and the Department of Homeland Security to publish an interim final rule early next year.

Chairman Hunter, Ranking Member Garamendi, thank you again for the opportunity to testify today on a matter of utmost concern to our industry, and more importantly, an issue of utmost importance to marine safety. We appreciate your leadership and we look forward to your continued partnership with the Coast Guard and with our industry to advance our mutual goal of a safe, secure, environmentally sound marine transportation system that is good for America and for the Americans who work in our industry.



TWO DECADES OF PROGRESS IN THE Towing Industry's Safety Journey

1990

Oil Pollution Act of 1990 enacted

New equipment and licensing regulations for towing vessels take effect

AWO launches Responsible Carrier Program

Coast Guard-AWO Safety Partnership established

Responsible Carrier Program third party audit begins

Audited compliance with RCP becomes a condition of AWO membership

Shippers establish vetting programs for carriers

2000

NTSB recommends safety management systems for all towing vessels

Coast Guard & Maritime Transportation Act of 2004 requires inspection of towing vessels

2010

Towing Vessel Bridging Program begins

AWO delivers Future of Safety Leadership Task Force report

NTSB places safety management systems on "most wanted" list

Coast Guard issues proposed rule on towing vessel inspection



**MISSING
LINK**

Final Rule on Towing Vessel Inspection

GREATER SAFETY

in the Tugboat, Towboat and Barge Industry



GREATER SAFETY

