OIL SPILL IN NEW ORLEANS IN JULY 2008 AND SAFETY ON THE INLAND RIVER SYSTEM

(110–167)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

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TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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September 15, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on Oil Spill in New Orleans in July 2008 and Safety on the Inland River System

PURPOSE OF HEARING

The Subcommittee on Coast Guard and Maritime Transportation will meet on September 16, 2008, to examine the circumstances surrounding the spill of 282,828 gallons of oil into the Mississippi River near New Orleans, Louisiana, that occurred on July 23, 2008, when a barge being pushed by a towing vessel crossed in front of a tanker ship and was severely damaged by the tanker.

The Subcommittee will also look more broadly at safety in the towing industry, including the status of the Coast Guard's effort to complete a rulemaking needed to begin the process of inspecting all towing vessels, as required by the *Coast Guard and Maritime Transportation Act of 2004* (P.L. 108-293).

BACKGROUND

Overview of the Towing Industry

Towing vessels (also known as tug boats) can be divided into several distinct categories based on where they operate and how they move other vessels. There are two categories of inland towing vessels – harbor tugs and river tugs, which are often referred to as towboats or pushboats. Harbor tugs have a round bow and are often used to move other vessels around berths in harbors. River tugs or pushboats have flat or squared-off bows and are frequently outfitted with "kneeling knees" used to push barges along coastal areas or on inland rivers.

Oceangoing tug boats also come in several configurations. The conventional oceangoing tug looks like a larger version of a harbor tug with a rounded bow. Such tugs frequently tow their payloads using what is known as a hawser made of steel cable or synthetic fiber rope, but such tugs can also push a load from alongside. Another type of oceangoing tug boat is a boat that is designed to push a barge outfitted with a notch in its stern (back) that fits the towing vessel with which it is paired. The tug is secured in the notch and pushes the barge, but the towing hawser remains attached in the event sea conditions require towing from the stern of the tug. In addition, there are also articulated tug and barge units (ATB) and integrated tug and barge units (ITB), both of which use specially designed equipment to "marry" the tug and barge together into a single unit. In many instances the barge being moved is inspected by the Coast Guard if it is carrying petroleum or other hazardous cargo), but the towing vessel is not. A similar sized tank vessel is required to be inspected by the Coast Guard and manned by a fully licensed and certificated crew as set forth on the Certification of Inspection (COI) issued to the vessel by the Coast Guard.

Whether it is a tugboat, a pushboat, a notch tug, an ATB, or an ITB, all such vessels can be known as "towing vessels" and can range in size from 30 feet to several hundred feet. The Coast Guard reports that as of August 20, 2008, there were 6,956 documented towing vessels in the U.S. larger than 5 net tons and an unknown number of smaller, state numbered towing vessels.

The sizes of the crews working on towing vessels can vary depending on the size of each vessel and the length of its voyage.

According to the American Waterways Operators (AWO), the industry trade association for the towing industry, the top five tow/barge companies based on the amount of equipment owned (including towing vessels and barges) are:

1. Ingram Barge Company;
2. American Commercial Lines;
3. Kirby Corporation;
4. AEP River Operations; and,
5. American River Transportation Company.

Overview of Accident on the Mississippi River on July 23, 2008

At approximately 1:30 a.m., CDT, on the morning of July 23, 2008, the tug *Mel Oliver* pushing the fuel barge DM 932 crossed in front of the *M/T (Motor Tank Vessel) Tintomara*, a double-hulled tanker flagged in Liberia, at mile marker 96 on the Mississippi River near New Orleans, Louisiana. The resulting collision between the barge and the *Tintomara* severely damaged barge DM 932. The barge DM 932 is owned by American Commercial Lines LLC (a wholly-owned subsidiary of American Commercial Lines, Inc. [ACL]). According to documents provided to the Subcommittee by ACL, the *Mel Oliver* was owned by ACL but chartered under a bareboat charter to DRD Towing (DRD) and then chartered back by ACL under a fully found charter, a type of time charter (the term "fully found" means that a vessel is seaworthy for its intended voyage and that DRD, in this case, is responsible for hiring the crew engaged on the vessel). The barge was not chartered to DRD but was under its control at the time of the accident.

The Coast Guard reports that the watchstanders in the Vessel Traffic Service (VTS) in New Orleans were the first personnel within Sector New Orleans to become aware of the collision. The

VTS watch supervisor notified the Coast Guard Command Center at Sector New Orleans about the accident at 1:41 a.m. The Coast Guard closed the lower Mississippi River between mile marker 98 and mile marker 99 at 1:44 a.m. The River closures were subsequently extended.

At approximately 1:45 a.m., the Coast Guard's Incident Management Division was notified of the collision. The Coast Guard indicates that it was informed at 2:01 a.m. by U.S. Environmental Services (USES), an Oil Spill Response Organization (OSRO) hired by ACL, that USES was preparing to respond to the collision. Personnel from the Coast Guard's Incident Management Division reached the Delta Queen terminal at 3:00 a.m., and at 3:20 a.m., the Incident Management Division notified Sector New Orleans that they had confirmed that a potential oil spill had occurred.

ACL has indicated that it received notification of the collision between the barge DM 932 and the *Tintomara* from the manager of the Stone Oil terminal (the terminal where the barge was loaded) within minutes of the collision; that individual also indicated that a spill may have occurred. ACL indicates it then activated its primary OSRO.

ACL indicates that several local, independent towing vessels that were in close proximity to the accident site responded to a request from the Coast Guard for assistance and worked to secure the damaged barge. At first light, these tugs were joined by an ACL towboat and later in the morning of July 23, ACL hired two of the independent tow boats that had responded to the accident.

The Coast Guard indicates that personnel from its Command Center at Sector New Orleans and from its Incident Management Division notified the Louisiana State Police Hazardous Materials Hotline that a spill may have resulted from the collision at some time prior to 4:20 a.m.; however, the exact time that notification was provided is not known. The Waterways Warning Network was notified at 4:00 a.m. The Incident Management Division also notified the Louisiana Oil Spill Coordinator's Office and the Louisiana Department of Environmental Quality. Sector New Orleans indicates that it exchanged information with the Gretna Police Department, New Orleans Harbor Police, Jefferson Parish Police, and Plaquemines Parish officials throughout the early morning of July 23 following the collision. The Coast Guard reports it began assessing the impacts of the spill at 5:30 a.m. (first light).

In the days following the accident, there were varying reports about how much oil was actually spilled. Both the Coast Guard and the National Oceanic Atmospheric Administration (NOAA) initially reported that all or nearly all of the oil in the barge had been spilled into the Mississippi River shortly after the collision. The Coast Guard now indicates that there were 419,286 gallons of number 6 fuel oil on the barge DM 932 at the time of the accident, of which 282,828 gallons were discharged during the event. Additionally, 3,249 barrels (136,458 gallons) of oil were removed from the barge during salvage operations. As of August 28, 2008, 187,782 gallons of oil had been recovered from the water through skimming operations and through clean-up of the shoreline. As of that date, there was no longer any free floating oil in the River or its environs – but 17,850 gallons were estimated to remain in the environment.

By 6:30 a.m. on July 23, the crewmembers on the *Mel Oliver* and the *Tintomara* – as well as the watchstanders in the VTS center – had undergone drug and alcohol testing. The Coast Guard reports that all drug and alcohol tests on all personnel on the *Tintomara* were negative, as were the tests on the pilot on board the *Tintomara*. The tests on the apprentice steersman operating the *Mel*

Oliver were negative, as were tests on one of the two deckhands on board the *Mel Oliver*. However, a second deckhand on the *Mel Oliver* tested positive for the presence of illegal drugs.

In a press release issued at 1:00 p.m. EDT on July 23, NOAA reported that "the leading edge of the oil slick was already 16 miles downriver" by 7:30 a.m., local time as observed by a Coast Guard helicopter overflight. On July 23, the Coast Guard imposed a safety zone on the lower Mississippi River. From July 24-29, the zone extended from mile marker 98 (above Head of Passes) to the Southwest Pass Sea Buoy, a total of 120 statute miles. Between July 26 and August 4, 788 vessels experienced delays in transiting the Lower Mississippi River due to the safety zone.

The National Transportation Safety Board (NTSB) also announced on July 23 that it was dispatching a team of investigators to participate in the examination of this accident.

In a press release issued at 5:13 p.m. CST on July 23, the Coast Guard wrote "Representatives from the tug boat, *Mel Oliver* [italics added], report that there were no properly licensed individuals on the vessel during the time that the incident occurred."

On July 26, the Unified Command announced sites had been established to decontaminate vessels allowed to transit the areas of the River affected by the oil spill by removing oil from the hulls of vessels after they completed their transits. The Lower Mississippi River re-opened to regular traffic transits on July 30, but the vessel cleaning stations remained open until August 13. The Coast Guard reports that 1,190 vessels were cleaned at cleaning stations.

On July 27, the Coast Guard reported that five OSROs were on scene with more than 600 personnel and that approximately 150,000 feet of boom had been deployed. The Coast Guard also reported that the Port Authority of New Orleans had indicated that the spill was costing the local economy $275 million per day. By July 28, the Coast Guard reported that the five OSROs had a combined total of more than 1,300 employees on-scene.

In a press release issued on July 28, the Coast Guard reported that the crew member that had been piloting the tug *Mel Oliver* at the time of its collision with the *Tintomara* held an apprentice mate's license – which meant that he was authorized to operate a towing vessel only under the direct supervision of a licensed master. Per 46 USC 8904, towing vessels longer than 26 feet must be operated by a licensed master; the *Mel Oliver* is 61.2 feet in length.

On August 2, the Coast Guard released a set of preliminary findings regarding the collision between the barge DM 932 and the *Tintomara*. The findings are presented below (italics are added):

- There were no mechanical or electrical issues with the *Tintomara*.
- There were no crew competency issues with the *Tintomara*.
- There were no competency issues with the pilot aboard the *Tintomara*.
- The *Tintomara* did call out via radio to the *Mel Oliver* prior to the collision.
- The captain of the *Mel Oliver* was not aboard the vessel at the time of the collision.
- *Mel Oliver* had an assigned crew of a Captain, Steersman apprentice, and two deck hands.
- The steersman apprentice was operating the *Mel Oliver* at the time of the collision. He was licensed but his license did not authorize him to operate the vessel without the captain's presence in the wheelhouse.

- The *Mel Oliver* did not return the radio call outs from the *Tintomara* prior to the collision.
- Vessel traffic service did call out to the *Mel Oliver* prior to the collision.
- The *Mel Oliver* did not answer the vessel traffic service prior to the collision.
- The *Mel Oliver* was moving the barge DM 932.
- As the *Mel Oliver* was pushing against the bow of barge DM 392 [sic.], the *Tintomara* made contact with the port side of barge DM 392 [sic.].
- Drug and alcohol testing was done on the bridge and watch crew of the *Tintomara* and the *Mel Oliver*.
- An independent survey relating to the mechanical and electrical system was conducted on the *Mel Oliver* and it has been moved to dry dock to be inspected, reports on the survey and the inspection are pending [sic.].
- The formal hearing has been scheduled for Aug. 12, 2008.
- The pilot of the *Tintomara*, the *Tintomara*, the steersman of the *Mel Oliver*, the Captain of the *Mel Oliver*, DRD towing, American Commercial Lines, and the *Mel Oliver* have been named as parties of interest, official letters were sent out Aug. 1, 2008 [sic.].

The Coast Guard indicates that no suspension and revocation proceedings have been initiated against any personnel associated with the *Mel Oliver* pending the completion of on-going investigations. The steersman who was on board the vessel at the time of the collision made a good faith deposit of his license the week of August 18. Such a deposit ensures that the individual will not operate under the authority of his license while it is deposited. However, the license can be restored based on the outcome of the investigation into the collision.

Between August 1-9, the Unified Command reported that efforts to salvage the barge DM 932 continued. The salvage operations concluded on August 10, when the aft section of the barge was lifted from the River.

The Coast Guard reports that between July 24 and August 20, 43 oiled animals were captured alive; 37 of these animals were cleaned, of which 32 were eventually released back into the wild, while 6 of the captured animals died during the cleaning/rehabilitation process. The captured animals included a variety of birds as well as alligators, turtles, snakes, and a raccoon. Additionally, from July 24 through August 20, private citizens or members of organizations that worked to assist wildlife reported observing an additional 884 oiled animals, of which 845 were birds (including more than 500 egrets).

Coast Guard Hearing on the July 23 Accident

The Coast Guard and NTSB conducted a two-day hearing in mid-August, 2008, to take testimony from the crew of the *Tintomara*. The master of the that vessel – Jan Stefan Bjarve – testified that there were no mechanical problems on the vessel and that the weather at the time of the accident was calm and river traffic was light. Bjarve stated that the *Mel Oliver* turned, without warning, into the path of his vessel. Recordings of the radio communications played at the hearing revealed calls made by crew members on *Tintomara* as the collision occurred.

The hearing revealed that the *Mel Oliver* was being operated at the time of the accident by John Bavaret, an apprentice mate (sometimes called a steersman) who was only qualified to operate

the vessel under the direct supervision of a licensed master. The licensed master, Terry Carver, was not on board at the time of the accident.

Two additional individuals who were on board the *Tintomara* at the time of its collision with barge DM 932 – the lookout and the chief engineer – also testified during the August hearing. The lookout, Gilberto Guevarra, confirmed the *Mel Oliver* made an abrupt turn in front of the *Tintomara*. Guevarra recalled that the *Tintomara* was sounding emergency signals even before he called the bridge to notify the master that the *Mel Oliver* was cutting in front of them. The chief engineer, Henrik Olsson, testified that the engines and all other mechanical equipment were in 'top shape' before and during the collision.

The hearings recessed to an undetermined date, but it is expected that the Coast Guard will take testimony from Mr. Bavaret and Mr. Carver as well as other witnesses when the hearings resume.

American Commercial Lines (ACL)

In its current form, ACL was incorporated in December 2004 in the State of Delaware following its emergence from bankruptcy. According to documents filed by ACL with the Securities and Exchange Commission (SEC), the majority of its revenues arises from the movement of bulk products, liquids, grains, coal, and steel on barges. It states that it is the "third largest provider of dry cargo barge transportation and second largest provider of liquid tank barge transportation on the United States Inland Waterways."[1] Specifically, ACL reported that it accounts for "13.5% of the total inland dry cargo barge fleet and 12.9% of the total inland liquid cargo barge fleet."[2] Citing Informa, ACL further reported that "the top five carriers (by fleet size) of dry and liquid barges comprise over 62% of the industry fleet in each sector."[3]

ACL reported that as of the end of the second quarter of 2008, it operated 2,722 barges, of which 2,338 were designed for dry cargoes and 384 were tank barges.[4] ACL further reported that as of June 30, 2008, it owned 137 boats with an average age of 32.5 years.[5] The firm reports that from January through June 2008, revenues in its transportation division derived from the following sources: 30% liquid, 32% bulk, 17% grain, 11% coal, and 10% steel.[6]

According to the quarterly report filed by ALC with the SEC for the quarterly period ended June 30, 2008, ACL had total revenues of $593 million in the six-month period ended June 30, 2008 – compared to total revenues of $489 million in the six-month period ended June 30, 2007. The firm's net income from continuing operations was $5.7 million for the six-month period ended June 30, 2008 – compared to $4.8 million for the six-month period ended June 30, 2007.

In its annual report to the SEC for the year ended December 31, 2007, ACL reported that it "invested $37.4 million in new barges built by the manufacturing segment, $36.0 million in

[1] American Commercial Lines, Form 10-Q, as filed with the Securities and Exchange Commission for the quarterly period ended June 30, 2008, pages 21-22.
[2] Ibid, page 22.
[3] Ibid, page 22.
[4] Ibid, page 27.
[5] Ibid.
[6] Ibid, page 31.

improvements to the existing boat and barge fleet, $7.2 million in improvements to our shipyard, $24.1 million in improvements to our facilities including our marine services facilities along the Inland Waterways."[7]

In its filing for the quarterly period ended June 30, 2008, ACL reported the collision of a tank barge owned by its subsidiary, American Commercial Lines LLC, with the tank vessel *Tintomara* and indicated that the Coast Guard had sent a letter to the firm "designating it as the owner of the source of the discharge, barge DM932, and stating that ACL LLC may be liable for removal costs and damages under the Oil Pollution Act of 1990".[8] ACL notes that it denies responsibility but will comply with the requirements of the *Oil Spill Pollution Act* of 1990. ACL also reported that several class action law suits had been filed against it as a result of the collision alleging "adverse health and psychological damages" and "destruction and loss of use of natural resources."[9] ACL has responded by filing an action seeking exoneration from or limitation of liability.

DRD Towing Company

DRD Towing LLC, is a limited liability company registered in the state of Louisiana; its registered members are Daniel W. Dantin, Jr., Randall William Dantin, and Carol Dantin.

On July 13, 2008, the towing vessel *Ruby E*, operated by DRD, collided with the tow being pushed by another towing vessel and subsequently sank. The Coast Guard stated in a press release issued on July 28 that a preliminary investigation associated with the *Mel Oliver* accident had found that DRD Towing had been operating the tug boat *Ruby E* on July 13, 2008, with a crewmember who held only an apprentice mate's license. In response to these findings, the Coast Guard reported that it "identified 18 DRD Towing-owned vessels operating throughout the Western Gulf region, including 12 in New Orleans" and that it visited each of the 12 vessels operating in New Orleans on July 23 and found that all were "properly manned with adequately licensed personnel."

According to the Coast Guard, in 2007, the service assessed a civil penalty against DRD Towing when one of its towing vessels was operated by a licensed master who did not have a towing endorsement on his license.

The Coast Guard further confirms that in 2004, DRD was cited for manning a vessel without a properly licensed master. Media reports indicate that this citation arose from an incident in which the tow that was being pushed by the towing vessel DRD was operating experienced a collision with another vessel.

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[7] American Commercial Lines, Form 10-K, as filed with the Securities and Exchange Commission for the year ended December 31, 2007, page 36.
[8] American Commercial Lines, Form 10-Q, as filed with the Securities and Exchange Commission for the quarterly period ended June 30, 2008, page 19.
[9] Ibid, page 20.

Relationship Between ACL and DRD Towing

According to ACL's filing with the SEC made for the quarterly period ended June 30, 2008, at the time of the accident between barge DM 932 and the tanker *Tintomara*, the barge involved in the accident was "in the exclusive care, custody and control of DRD Towing."[10]

According to information provided to the Subcommittee by ACL, DRD Towing had been a provider of services to ACL for 10 years. At the time of the accident, ACL indicates that the *Mel Oliver* was operated and crewed by DRD Towing under long-term bareboat charter and fully found charter agreements. ACL further indicates that it had a total of three boats chartered to DRD Towing and fully found chartered back to ACL at the time of the collision of the *Mel Oliver* with the *Tintomara*. The three chartered boats were the *Pam D*, *Regina Ann*, and *Celeste McKinney*; however, on June 19, 2008, the *Pam D* was replaced by the *Mel Oliver* while repairs on the *Pam* D were being completed. ACL reports that it bareboat charters and fully found charters 27 of its towboats to other operating companies.

Under the bareboat charter, DRD chartered the three towing vessels from ACL at the rate of $1 per day per vessel. Under the terms of the charter agreement, DRD agreed to maintain the vessels and to operate the vessels entirely at its own expense, including employing all crew members working on the vessels.

ACL hired the vessels it had bareboat chartered to DRD under fully found charters. Beginning January 1, 2008, the daily rates were set at $2,915 for the *Pam D* and $3,500 for the *Regina Ann*. The rate for the *Celeste McKinney* was set at $3,500 in the fully found charter agreement signed on August 6, 2007.

Safety in the Towing Vessel Industry

According to data provided by the Coast Guard, between 2000 and September 3, 2008, 149 people have died or have gone missing aboard towing vessels (excluding individuals who died as a result of assault, misconduct, attempted suicide, existing medical conditions, or SCUBA-related accidents). The table below shows deaths in the industry by year.

Deaths in the Towing Vessel Industry

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL
Number of Deaths or Missing Individuals	16	24	15	11	17	22	24	15	5	149

Source: United States Coast Guard

[10] American Commercial Lines, Form 10-Q, as filed with the Securities and Exchange Commission for the quarterly period ended June 30, 2008, page 19.

While it is difficult to create a comprehensive picture of safety in the towing industry due to the limitations in existing information, presented below are casualty statistics for the two largest towing/barge industry firms, Ingram Barge Company and ACL.

According to the Coast Guard, Ingram Barge Company has been involved in 306 marine casualties between 2003 and 2007. These casualties are listed in the table below.

Casualties Involving Ingram Barge Company Between 2003 and 2007

Type of Incident	2003	2004	2005	2006	2007	Total
Allision	7	14	4	10	14	36
Collision		4	2		1	7
Fire	3	2	1			6
Explosion			1			1
Flooding				1	1	2
Fouling (hindered or impaired rudder or accumulation of unwanted material on solid surfaces)					4	4
Grounding	11	7	7	15	12	52
Loss of Electrical Power	2	4	2		3	11
Loss of Stability					1	1
Material Failure	23	23	27	34	32	139
Set Adrift		1		2		3
Vessel Maneuverability	12	11	9	8	4	44
TOTAL	58	53	53	70	72	306

Source: United States Coast Guard

According to the Coast Guard, ACL has been involved in 395 marine casualties between 2003 and 2007. These casualties are listed in the table below.

Casualties Involving ACL Between 2003 and 2007

Type of Incident	2003	2004	2005	2006	2007	Total
Allision	23	10	4	12	15	64
Collision	2	1		1	3	7
Fire		1	4		3	8
Flooding				1	2	3
Fouling					1	1
Grounding	34	13	17	17	23	104
Loss of Electrical Power	8	1	3	3	2	17
Material Failure	18	34	18	23	43	136
Sinking		1				1
Vessel Maneuverability	16	23	5	5	5	54
TOTAL	101	84	51	62	97	395

Source: United States Coast Guard

Between 2000 and 2008, ACL was the managing owner of equipment on which a total of 8 people died or went missing – more than on equipment under the control of any managing owner in the towing or barge industry aside from the cumulative total of instances (9) in which the managing owner was not specified in Coast Guard records and the number of deaths (8) arising from a single incident involving Brown Water Towing I. Inc, in 2001. By comparison, only one person was killed on equipment of which Ingram Barge Company was listed by the Coast Guard as the managing owner.

In August 2006, ABSG Consulting Inc. issued a report entitled "Uninspected Towing Vessel Industry Analysis Project," which it had completed under contract to the Coast Guard (Task Order: USAED GS-10F-0242L, Deliverable Number: 6; Report Number: 469-05). The report was intended to "support the ongoing development of a proposed regulation to require the inspection of towing vessels" (see below for additional details on this rulemaking) by indentifying "the risks of the towing industry, both those faced by towing vessels and crews and those posed by towing vessels to other maritime infrastructure (e.g., bridges, locks)" (page iii).

As part of their work, ABSG Consulting sought to assemble basic data on the number of towing vessels and to develop a profile of the towing industry. ABSG consulted the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database as well as data maintained by the United States Army Corps of Engineers, which operates the locks and dams on the inland river system. Analysis of both databases revealed that the Coast Guard database was often incomplete. ABSG further noted that "because of the quality of the data and the lack of consistently common data fields, it was not practical to make a reliable one-to-one comparison of the vessels" in each of the Coast Guard's and the Army Corps of Engineers' databases (page 2-2). ABSG concluded, however, that the Coast Guard could "consider 5,100 to 5,200 as a reasonable estimate of the active towing vessel population" (page 2-2).

The lack of complete and comprehensive information on the towing industry that impeded ABSG's establishment of an accurate count of active towing vessels also affected the development of a detailed industry profile; however, ABSG presented the data that were available. Thus, ABSG stated that data from the Army Corps of Engineers showed that 3,659 of the 5,172 tow boats in its database were more than 25 years old and another 822 boats were between 16 and 25 years of age. Only 157 of the tow boats in the Army Corps of Engineers' database were 5 or fewer years old. The analysis also concluded that more than half of all the towing vessels thought to be in service were under 79 feet in length and under 100 gross tons. After analyzing the data sets available from both the Army Corps of Engineers and the Coast Guard, ABSG developed a trend analysis that suggested that the towing industry is both "relatively stable" and "aging" (page 3-12).

To assess safety trends in the towing industry, ABSG analyzed records of incidents involving towing vessels from the Coast Guard's MISLE database. ABSG's review of Coast Guard incident case files found that towing vessels were involved in more than 19,000 incidents from 1994 through 2003. ABSG then reviewed a selection of individual casualty reports (including those that were judged to be the most high consequence as well as a selection of other incidents that were not judged to be among the most high consequence incidents). From its analysis of the incident case files it studied, ABSG concluded that "human factors are the cause of incidents the majority of the time (58 to 63%), with lack of situational awareness and helmsman errors making up the dominant

subfactors in this group" (page 4-20). ABSG also noted that equipment failures were estimated by it to account for up to 40 percent of accidents involving towing vessels.

ABSG Consulting also analyzed two previous studies of accidents, including a report issued by the Coast Guard-American Waterways Operators (AWO) Bridge Allision Working Group in 2003.

The Coast Guard-AWO Bridge Allision Working Group was created by AWO and the Coast Guard under the terms of their existing Coast Guard-AWO Safety Partnership Initiative (described below). The Bridge Allision Working Group was assembled specifically to examine the causes of – and possible ways to reduce the incidence of – towing vessel allisions with bridges. The Working Group issued its report on May 23, 2003.

The Bridge Allision Working Group examined allisions occurring between 1992 and 2001 and found that there were 2,692 bridge allisions involving a U.S.-flagged towing vessel (with or without a tow) during that time period. The report argues it is important to view this number within the context of the total number of towing vessel transits. Using data from the U.S. Army Corps of Engineers, the Group concluded that there were approximately six allisions for every 10,000 towing vessel trips.

The Bridge Allision Working Group categorized the towing vessel-bridge allisions it examined into four categories. Sixty-one of these allisions were classed as the most significant cases because they involved either damage exceeding $500,000 in value; a pollution incident; or a death, injury or missing person (of the 61 cases, three involved fatalities). The next most severe category was designated for allisions resulting in damage between $100,001 and $500,000 in value; there were 99 allisions in this category. The next category was designated for allisions resulting in damage between $25,001 and $100,000; 220 allisions were placed in this category. There were 610 allisions that resulted in damage totaling less than $25,000, while 1,702 allisions resulted in either no damage or no recorded damage.

The Bridge Allision Working Group report found that "The information contained in the Coast Guard casualty reports posed a significant challenge to the Work Group" because "Coast Guard standards for gathering casualty facts and information, especially human factors information, were incompatible with the intent of the Work Group to conduct a detailed analysis." The report continues that "In many cases, the detail necessary to determine precisely the causal factors of an allision was not available."

Nonetheless, the Working Group examined a sample of 459 allisions, which included all of the cases from the two categories of casualties classed as the most severe as well as a sample of cases from other classes of severity. Even with the limitations noted on available data (which the report identifies as a "significant caveat"), "the Group concluded that 90% of the cases were related to human performance (78% to pilot error and 12% to other operational errors)." Five percent of the remaining allisions were attributed to mechanical problems and for the remaining five percent of cases, the cause could not be determined.

Licensing of Towing Vessel Operators

Section 8904 of Title 46 requires that every towing vessel "that is at least 26 feet in length measured from end to end over the deck (excluding sheer) shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations."

The current regulations governing the types of licenses required of towing vessel operators were adopted on May 21, 2001, and came into full effect on May 21, 2006. These regulations were developed following an accident in September 1993 in which the towing vessel *Mauvilla* and its barges allided with a bridge near Mobile, Alabama. The bridge girder was damaged in the accident – and the bridge subsequently collapsed when an Amtrak train passed over the bridge minutes after the allision (killing 47 people). The NTSB determined that the operator of the towing vessel *Mauvilla* did not have adequate training to operate towing vessels safely and recommended the development of higher licensing standards for towing vessel operators.

Per 46 CFR 15.610(a), every towing vessel at least 26 feet in length must be in the control of a person holding a master's license in any of a variety of permissible classifications, including master of towing vessels (unlimited or limited); master of inspected, self-propelled vessels (now to read "steam or motor vessels" per final rule issued by the Coast Guard on September 11, 2008) within the restrictions specified by the license; or mate or first-class pilot of steam or motor vessels with a license for service in vessels exceeding 200 gross register tons (individuals holding this license must also have 30 days of training and observation on towing vessels and must have a complete Towing Officer's Assessment Record or have completed an approved towing vessel operator's training course). Additionally, any towing vessel operating for more than 12 hours must have a second person on board holding either (1) one of the master's or mate's licenses listed above or (2) a license as mate (pilot) of towing vessels.

The licensing system established in 2001 also creates the license of apprentice mate (also known as a "steersman"); however, individuals holding this license are authorized to operate towing vessels only under the direct supervision of an individual holding a master's or mate's license for a towing vessel.

Per 46 CFR 10.465, individuals who began service in the towing industry after May 21, 2001, must fulfill the following requirements to obtain a license as a mate (pilot) of towing vessels:

- Complete 30 months of total service on towing vessels.
  - 12 of the total 30 months of service must be completed as an apprentice mate (steersman).
  - 3 of the total 30 months of service must be completed on the route (oceans, near coastal, Great Lakes/inland, Western Rivers) for which an endorsement is sought.
- Complete a Towing Officers Assessment Record or a course of study approved by the Coast Guard.

To obtain the license of master of towing vessels, an individual must have 48 total months of service on towing vessels, including 18 months of service as a mate (pilot) of towing vessels, only

six months of which can be on a harbor assist towing vessel and three months of which must be on the route for which the master's license is sought.

Additional requirements may apply depending on the route for which the master's license is sought; for example, special training requirements apply to individuals operating towing vessels moving tank barges carrying hazardous materials.

As noted above, there are classes of licenses other than the mate or master of towing vessels that authorize an individual to operate a towing vessel, including master of inspected, self-propelled vessels (now to read "steam or motor vessels") or mate of an inspected, self-propelled vessel with a license for service in vessels of greater than 200 gross register tons. The requirements for the operation of towing vessels under these licenses are similar (but not identical) to the requirements that must be completed to obtain a license as mate and subsequently master of towing vessels.

Drawing on data provided by the Coast Guard, the table below indicates the number of individuals who hold the specified types of licenses for the operation of towing vessels.

Individuals Licensed to Operate Towing Vessels

Type of License	Total
Master Towing Unlimited	18,111
Master Towing Limited	507
Mate (Pilot) Unlimited	1,096
Mate (Pilot) Limited	7
Apprentice Mate (Steersman) Unlimited	2,214
Apprentice Mate (Steersman) Limited	23
Total	21,958

Source: United States Coast Guard

Operation of a towing vessel greater than 26 feet in length without the properly licensed crew members is subject to a civil penalty of not more than $25,000 (Section 8906 of Title 46). The Coast Guard indicates that in the past three years, it has imposed 85 civil penalties against firms operating towing vessels without properly licensed personnel; these penalties are presented by Coast Guard District in the table below. No penalties have been assessed against ACL in the past three years for operating a towing vessel without properly licensed personnel, but one such penalty has been assessed against DRD Towing.

Civil Penalties Imposed For Operation of Towing Vessels Without Properly Licensed Personnel
(By Year and Coast Guard District)

CG District	2005	2006	2007	TOTAL
D1 (New England)	1	0	1	2
D5 (Mid-Atlantic)	1	0	0	1
D7 (Southeast)	2	3	5	10
D8 (Gulf Coast and Inland Rivers)	14	25	20	59
D9 (Great Lakes)	2	1	1	4
D11 (California)	2	2	2	6
D13 (Pacific Northwest)	0	1	0	1
D14 (Hawaii)	0	0	2	2
Total	22	32	31	85

Source: United States Coast Guard

On September 5, 2008, the Coast Guard issued Marine Safety Alert 4-08 in which the Coast Guard "strongly reminds the towing industry of its responsibility to properly man their vessels with adequate numbers of qualified and licensed crewmembers."

Changes to Current Licensing Requirements

On September 17, 2007, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Training and Service Requirements for Merchant Marine Officers" that proposed to alter the licensing requirements for towing vessel operators. The Coast Guard received 14 comments on this rulemaking by the close of the comment period. The Coast Guard subsequently published a final rule on September 11, 2008; the rule will take effect on October 14, 2008. The regulatory changes made by the final rule are described below.

On January 4, 2006, Kirby Towing Co. submitted a petition requesting that Coast Guard-approved training courses be counted toward the months of service required of applicants for the license of mate of towing vessels; this petition was supported by the "Report of the Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC)" dated October 3, 2005. The Coast Guard stated in its notice that because time spent in a training course is time that could otherwise be spent completing the months of service on a towing vessel required of license applicants, this creates a disincentive preventing those seeking towing vessel licenses from enrolling in training courses. The final rule revises service requirements to allow time spent in approved training programs to count toward the fulfillment of the service requirements for a mate (pilot) of towing vessels license.

On February 11, 2005, Delta Towing Co. requested the establishment of an alternate path that individuals could follow to obtain a license as mate (pilot) of towing vessels; this petition was also supported by the "Report of the Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC)" dated October 3, 2005. The final rule allows individuals who hold a license as master of steam or motor vessels of not more than 200 gross tons (except for limited masters' licenses as provided for in 46 CFR 10.429) to obtain a license as mate of towing vessels after completing (1) three years of service as a master of steam or motor vessels less than 200

gross register tons, (2) the exam required to obtain an apprentice mate's license, (3) the Towing Officers Assessment Record, and (4) a minimum of 30 days of training and observation on a towing vessel on the route for which the license is being sought (through individuals wanting to work on the Western Rivers would still need 90 days of experience on the Western Rivers to receive an endorsement for that route). The types of vessels that would qualify as steam or motor vessels not exceeding 200 gross register tons would include small passenger vessels and utility/supply boats. Regulations in place prior to the adoption of this new rule required individuals licensed to operate these vessels who wanted to obtain a mate's license for a towing vessel to complete 12 months of service as an apprentice mate on a towing vessel.

According to the Coast Guard, among the comments received by it regarding this proposed rule change, the TSAC and other proponents "laud" this change "as a streamlined mechanism for experienced masters from other segments of the industry to operate towing vessels" that is "expected to help alleviate the shortage of towing vessel officers while maintaining high standards of maritime safety." The Coast Guard also stated that "the proponents view the alternate progression as a 'win' for the towing industry." By contrast, the four comments submitted in opposition to this proposal were all submitted by currently licensed towing vessel masters. The Coast Guard indicated that the four opponents were "concerned that the alternate progression 'lowers the bar for training' on towing vessels and negatively impacts safety." The Coast Guard argued that the training requirements under the alternate progression scheme actually exceeded the training requirements currently required of applicants for the license of mate (pilot) of towing vessels because under current rules, mate candidates need 30 months of sea service, 24 of which must be on a towing vessel and only 12 of which must have been as an apprentice mate (the other 12 could have been in any capacity), while those who will apply for the mate license under the alternate progression will have a minimum of 36 months' experience as a master of steam or motor vessels less than 200 gross register tons.

Accelerated Licensing Programs

According to a legal case filed by ACL against the Northeast Maritime Institute (NMI), ACL and NMI entered an agreement on March 9, 2006 under which "NMI agreed to develop and deliver to ACL various courses and teaching programs relating to the training and credentialing of ACL's river pilots."[11] In January 2007, the agreement was supplemented by a Modification Agreement under which ACL agreed to pay $292,630 for the training program. ACL terminated its relationship with NMI in 2008 and ACL and the NMI are now engaged in legal proceedings regarding their contractual relationships. The Coast Guard indicated that ACL has discussed with the Coast Guard the possibility of creating an in-house training program but has not formally applied for approval of such a program from the National Maritime Center.

The Coast Guard approved an accelerated pre-steersman training program for personnel from ACL and their contract companies at the NMI on October 1, 2006; the approval is valid through October 31, 2008. The program is approved to last for a 15-month period. The Coast Guard indicated that as part of this program, 45 percent of sea time that would normally be required for the apprentice mate's license is to be acquired through classroom and simulator time. The Coast Guard further indicated that this arrangement was approved because in the classroom and in

[11] American Commercial Lines LLC, vs. Northeast Maritime Institute, Inc., 4:08-cv-0096 (S.D. Indiana 2008), page 3.

simulator settings, issues and conditions can be presented that may not always be encountered during actual service on a towing vessel.

The Coast Guard reports that it licensed 3 of the 4 individuals who completed the accelerated licensing program at Northeast Maritime Institute. One individual received an apprentice mate's (steersman) license for the inland waters and the Western Rivers. One individual received a master's license for the operation of steam or motor vessels not more than 100 gross register tons on inland waters, a license as a mate of steam or motor vessels not more than 200 gross register tons operating on inland waters, and an apprentice mate's (steersman) license for inland waters and the Western Rivers. One individual received a master's license for the operation of steam or motor vessels not more than 100 gross register tons on inland waters and the Western Rivers, a license as a mate of steam or motor vessels not more than 200 gross tons operating on inland waters or the Western Rivers, and a license as an apprentice mate (steersman) on inland waters and the Western Rivers. One individual who graduated from the Northeast Maritime Institute program provided insufficient information to the Coast Guard to receive a license.

The Coast Guard further reports it has approved one other accelerated training program for individuals seeking a license as a mate of towing vessels. The program is operated by Kirby Inland Marine for the purpose of training its own personnel.

Hours of Service on Towing Vessels

Licensed officers and crewmembers on towing vessels operating in locations other than the Great Lakes typically work on a two-watch system, under which they serve six hours on-duty and then are off-duty for six hours. The two-watch system is permissible under the limitations of Section 8104 of Title 46, which states that on a towing vessel "on a voyage of less than 600 miles, the licensed individuals and crew members (except the coal passers, firemen, oilers, and watch tenders) may be divided, when at sea, into at least 2 watches." Section 8104(h) of Title 46 continues by stating "an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period expect in an emergency." Violations of the 12-hour rule are punishable by a civil penalty of $10,000.

Section 81049(c) imposes different hours-of-service restrictions for those working on towing vessels on the Great Lakes, harbors of the Great Lakes and connecting or tributary waterways (except for such vessels engaged in fishing or salvage operations). In these areas, "a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered." The hours-of-service prescribed under these regulations effectively constitute a three-watch system.

Section 409 of the *Coast Guard and Maritime Transportation Act of 2004* (P.L. 108-293) authorized the Coast Guard to prescribe hours-of-service on towing vessels that are at least 26 feet in length. Section 409 required the Coast Guard to conduct a demonstration project involving the implementation of Crew Endurance Management Systems (CEMS) on towing vessels prior to issuing the hours-of-service regulations for the towing industry. This statute was adopted following the issuance in 1999 by the NTSB of recommendation M-99-1, which called for the Coast Guard to "Establish within 2 years scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human

sleep and rest requirements" for domestic vessel operators. This recommendation is now on the NTSB's "Most Wanted Transportation Safety Improvements" list.

In a report dated December 2005, the Coast Guard presented the results of its CEMS demonstration project. To conduct this project, the Coast Guard worked with AWO to assess how "feasible, effective, and sustainable" CEMS are on towing vessels. In the project, the CEMS were demonstrated over a 6-month period on a total of 59 vessels drawn from the inland, coastal, and harbor towing vessel industries.

The Coast Guard reports that the demonstration project showed that "CEMS is effective in addressing known risks and factors that contribute to fatigue or endurance-related incidents" – albeit the "degree of effectiveness depends upon the adherence to the process and principles of CEMS." The project also found that CEMS is "feasible to practice" and "sustainable."

Having completed the CEMS demonstration project, the Coast Guard can now prescribe hours-of-service regulations for towing vessels. However, the Coast Guard has not yet moved to develop hours-of-service regulations and has not issued a notice of proposed rulemaking (NPRM) that would establish hours of service on towing vessels. The Coast Guard indicated in its report on the CEMS demonstration project that the use of CEMS is being "considered as a potential requirement" of the inspection regulations it develops for towing vessels.

On March 21, 2008, the Coast Guard issued Navigation and Vessel Circular (NVIC) No. 02-08 on "Criteria for Evaluating the Effectiveness of Crew Endurance Management System (CEMS) Implementation." NVICs are not formal rules – and this NVIC on CEMS indicates that it merely "represents the Coast Guard's current thinking" on the topic of CEMS. Specifically, the Coast Guard indicates in the NVIC that the document "provides guidelines for use by vessel owners, operators, third-party auditors, Coast Guard Officers in Charge, Marine Inspection (OCMI), marine casualty investigators, and others to aid in their assessment of the veracity and effectiveness of a company's or vessel's CEMS program."

NVIC 02-08 notes that "The causes for the vast majority of marine-related casualties are rooted in human factors. A large number of casualties have been specifically attributed to the human factor of crew fatigue." The NVIC lays out in detail how CEMS can be implemented to address "the full range of environmental, physiological, operational, and psychological risk factors affecting performance and safety in normal maritime operations."

The NVIC emphasizes that there is no one-size-fits-all approach to developing and implementing a CEMS – and that each CEMS must be tailored to the specific context and risks on a given vessel. However, the NVIC emphasizes that an effective CEMS will likely be characterized by the creation within a towing vessel company of a Crew Endurance Working Group incorporating members of the towing company's employees (such as company officers, department heads, vessel captains etc.). The Working Group's primary task is to identify the risk factors that can contribute to fatigue, prioritize these factors, and then identify strategies to mitigate these factors. The implementation of the CEMS then progresses to the development and implementation of the Crew Endurance Plan, which the NVIC indicates should organize watch schedules, napping schedules, light management, and shipboard policies to promote rest among crew members. Implementation of a CEMS is best guided by a CEMS Coach – and the NVIC indicates that "A company should

have at least one trained coach or an acceptable alternative onboard each vessel to help initiate and oversee its CEMS implementation effort."

Inspection Requirement for Towing Vessels

Prior to enactment of the *Coast Guard and Maritime Transportation Act of 2004* (P.L. 108-293), towing vessels powered by diesel engines were exempt from inspection by the Coast Guard. Section 415 of that Act added towing vessels to the list of vessels required to be inspected by the Coast Guard. The Section also authorized the Secretary to "establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels."

The conference report accompanying the *Coast Guard and Maritime Transportation Act of 2004* (108-617) states that, "Safety management systems allow the Coast Guard to oversee the maintenance and repair of vessel equipment and ship systems subject to inspection through an approved safety management plan that includes maintenance schedules and system tests. The Coast Guard may enforce the plan through audits of the vessel's logs and vessel operator's records rather than having to directly oversee the repair or maintenance work conducted on a particular piece of equipment or ship system."

Title 46 defines the scope of vessel inspections that must be performed by the Coast Guard on those vessels subject to inspection. Specifically, Section 3305 of Title 46 requires that inspections conducted by the Coast Guard must ensure that a vessel:

(1) is of a structure suitable for the service in which it is to be employed;
(2) is equipped with proper appliances for lifesaving, fire prevention, and firefighting;
(3) has suitable accommodations for the crew, sailing school instructors, and sailing school students, and for passengers on the vessel if authorized to carry passengers;
(4) is in a condition to be operated with safety to life and property; and
(5) complies with applicable marine safety laws and regulations.

Section 3306 of Title 46 expands on these requirements by authorizing the Coast Guard to issue regulations for inspected vessels regarding "the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew"

Additionally, Section 8101 of Title 46 requires that the Coast Guard must specify on the certificate of inspection issued to inspected vessels "the complement of licensed individuals and crew (including lifeboatmen) considered ... to be necessary for safe operation" of the vessel. Thus, as part of the inspection process for towing vessels, the Coast Guard will be required to identify the number and qualifications of crew members required to operate the vessels.

It is estimated that there are more than 7,000 documented towing vessels (and an unknown number of state numbered towing vessels) that will be subject to inspection by the Coast Guard once the final regulations for these inspections are issued. Among other considerations, as vessels are brought under the inspection process, it will be necessary for the Coast Guard to assess the extent to which existing vessels will have to be retrofitted to comply with inspection standards.

The Coast Guard reports that it has begun the process of writing regulations to implement the inspection regime for towing vessels. In December 2004, the Coast Guard published a "request for comments" regarding several questions pertaining to the inspection of towing vessels. Since that date, however, the Coast Guard has not published a notice of proposed rulemaking. This rulemaking effort is among approximately 100 rulemaking efforts pending in the Coast Guard.

Safety Boardings on Towing Vessels

Under Section 89 of Title 14, the Coast Guard may "make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States." Using this authority, the Coast Guard conducts safety boardings of vessels in U.S. waters, including towing vessels. During such boardings on towing vessels, the Coast Guard typically ensures that the vessel is properly documented, that properly licensed personnel are on board the vessel (46 CFR 78.61-1 requires that licenses must be "conspicuously displayed"), that required safety equipment is present and functioning, and that pollution control measures are present and functioning. The table below indicates the number of safety boardings the Coast Guard has conducted on towing vessels by Coast Guard District.

Safety Boardings on Towing Vessels

CG District	2003	2004	2005	2006	2007	TOTAL
D1	17	59	54	260	49	439
D5	73	27	26	135	47	308
D7	65	129	136	179	84	593
D8	147	609	1,040	2,407	1,045	5,248
D9	8	31	155	219	132	545
D11	9	23	66	127	104	329
D13	30	52	70	111	34	297
D14	14	31	31	44	20	140
D17	5	12	11	51	59	138
TOTAL	368	973	1,589	3,533	1,547	8,037

Towing Safety Advisory Committee

In 1980, Congress created the Towing Safety Advisory Committee (TSAC), which is tasked with advising, consulting with, and making recommendations to the Secretary on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.
According to 33 USC §1231a, the Committee is to consist of 16 members, including:

- 7 members from the barge and towing industry, reflecting a regional geographic balance;

- One member from the offshore mineral and oil supply vessel industry; and,
- 2 members from each of the following:
  - Port districts, authorities, or terminal operators;
  - Maritime labor;
  - Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); and,
  - The general public.

The members of the TSAC are appointed by the Secretary of the Department in which the Coast Guard is operating; the Secretary is also tasked with designating the Chairman and Vice Chairman of the TSAC. The current Chairman of the TSAC is Mr. Mario Muñoz, who is also the Vice President of Vessel Operations for American Commercial Lines. The Vice Chairman of the TSAC is Mr. Rex H. Woodward, Senior Director, Safety and Logistics at Pennsylvania Safety and Security Institutes.

According to the Coast Guard, there are three members of the TSAC who are active mariners; two of these individuals work full-time under their licenses while the third individual works occasionally under his license.

The members of the TSAC are not entitled to payment for their service. They "may be allowed travel expenses, including per diem in lieu of subsistence;" however, no funding has been provided in 2008 or 2007 to pay member reimbursements.

The TSAC met two times in 2007 (April 24-25, 2007, in Easton, Maryland; and September 18-19, 2007 in Laurel, Maryland) and has met once in 2008 (April 1-2, 2008, in Jeffersonville, Indiana). The TSAC held a teleconference in July 2007.

In 2007 and 2008, the TSAC made the recommendations to the Coast Guard outlined in the table below.

Recommendations Made to the Coast Guard by the TSAC

Recommendation	Date Recommendation was Made
Model Training Program for Apprentice Mate (Steersman) to Mate (pilot) of Towing Vessels (with Recommendation #134a Model Course Packet)	April 2007
Towing Vessel Inspection Text Redline	May 2007
TWIC-Two; Card Readers	July 2007
Towing Vessel Inspection Working Group Report	March 2008
Medical NVIC Working Group Final Report	April 2008

Source: United States Coast Guard

The TSAC is currently scheduled to terminate on September 30, 2010.

American Waterways Operators (AWO)

AWO is the trade association of the towing vessel, tug boat, and barge industry. It was created in 1944 and, according to its website, now has more than 400 member companies.

AWO formally established a "Responsible Carrier Program" on December 7, 1994, for the stated purpose of improving "marine safety and environmental protection in the tugboat, towboat, and barge industry." The Program is intended to accomplish these objectives by "establishing preferred industry operating principles and practices as voluntary standards of conduct for tugboat and towboat companies." The Program addresses three issues: management and administration, equipment and inspection, and human factors. Participation in the Responsible Carrier Program is now a condition for membership in AWO.

To implement the Responsible Carrier Program, AWO subjects its member firms to audits to ensure that they are in compliance with the requirements of the Program. AWO's Responsible Carrier Accreditation Program certifies auditors that conduct the audits, which are to be conducted every three years. Materials issued by AWO on the Responsible Carrier Program indicate that firms are notified 180 days prior to the date on which their audit is due. Only 10 percent of a company's fleet is to be subjected to a vessel audit – and AWO states that the auditor should select the boats to be audited.

Companies found during their audit to be in non-compliance with any part of the requirements of the Responsible Carrier Program have 90 days to come into compliance and complete their audit. Companies that cannot pass their audit when it is required "due to their inability to present sufficient evidence of ongoing compliance with the documentary requirements of the program, may in lieu of having their membership terminated, immediately apply in writing to the Responsible Carrier Program Accreditation Board for probationary status." If such status is granted, AWO will issue a valid Responsible Carrier Program certificate. Further, according to AWO's materials, "A company in 'probationary status' will receive all rights and privileges accorded to AWO member companies in full RCP-compliant status, such as publishing the company name on a list of valid third-party audited RCP-compliant companies." To obtain probationary status, the firm must produce a letter from their AWO-certified auditor certifying that the firm has all policies and procedures required by the Program in place and must submit a letter from the head of the firm stating that the company will submit to an annual audit for those requirements in which it was found to be deficient. Probationary status will be withdrawn from a company that fails to complete a required audit within three months of the date when it is due.

According to AWO, DRD Towing underwent its last audit on or about May 17, 2008. DRD failed the audit because it did not have adequate documentary evidence to prove ongoing compliance with the requirements of the Responsible Carrier Program (although AWO indicates that the auditor that assessed DRD found that the firm did have all required policies and procedures in place at the time of the audit). On May 21, DRD applied for probationary status – but the application was incomplete. AWO indicates that DRD was informed by email on June 6 and by phone call on July 30 of the additional information that it was required to submit to apply for probationary status. DRD failed to provide the additional information and its membership in AWO was terminated on August 5.

AWO indicates that ACL underwent its last audit on March 3, 2008 – and passed the audit.

On September 19, 1995, AWO and the Coast Guard established a safety partnership when they signed an "Outline of Quality Partnership for Marine Safety and Environmental Protection." The stated purpose of this partnership was to "strengthen the communication and working relationship between the Coast Guard and the barge and towing industry." The agreement, which states that it is intended to complement other government and industry functions (such as the TSAC), indicates that it will provide a "flexible mechanism for joint Coast Guard-industry action in a results-oriented, non-regulatory environment." Among other activities, the partnership provides for the creation of "Quality Action Teams," which are to be assembled to analyze problems or process improvements that are needed, analyze the problems, and identify solutions based on the available data. One such Quality Action Team created under the AWO-Coast Guard partnership was the Bridge Allision Working Group (discussed previously).

PREVIOUS COMMITTEE ACTION

On August 2, 2007, the Subcommittee on Coast Guard and Maritime Transportation convened to examine "Challenges Facing the Coast Guard's Marine Safety Program." During this hearing, the Subcommittee heard from the Coast Guard and maritime industry representatives about the state of the Coast Guard's Marine Safety Program, which in the opinion of several witnesses from industry is challenged by a lack of continuity in the assignment of personnel and a loss of technical expertise, particularly among inspectors and investigators.

On October 17, 2007, the Subcommittee on Coast Guard and Maritime Transportation convened to examine "Mariner Education and the Workforce." This hearing examined the degree to which the maritime industry was experiencing worker shortages as well as the nature and extent of training opportunities available to attract new individuals to the industry and to prepare them for industry-related careers.

On May 20, 2008, the Subcommittee on Coast Guard and Maritime Transportation convened to examine the "Coast Guard and National Transportation Safety Board Casualty Investigation Program." During that hearing, the Subcommittee reviewed the results of a report issued by the Department of Homeland Security's (DHS) Office of the Inspector General (OIG) on the Coast Guard's investigation of marine causalities. The OIG found that many of the Coast Guard's casualty investigations were not conducted at the level of scope (formal, informal, data collection) that was appropriate to the circumstances of the casualty under the Coast Guard's own policies. The report identified more than 1,200 casualties that should have been investigated at a higher level than the level at which they were investigated. Further, the OIG found that a significant number of individuals who were not qualified under Coast Guard standards as casualty investigators had nonetheless been assigned to such positions. Finally, the report noted that there was a significant backlog of casualty investigations that had not been reviewed or closed and a number of instances in which data collected on an accident were incorrectly entered into the Coast Guard MISLE database.

WITNESSES

Panel I

Rear Admiral James Watson, IV
Director of Prevention Policy for Marine Safety, Security and Stewardship
United States Coast Guard

Mr. David Westerholm
Director, Office of Response and Restoration
National Oceanic and Atmospheric Administration

Panel II

Mr. Mario Muñoz
Vice President of Vessel Operations
American Commercial Lines

Mr. Eric Dawicki
President
Northeast Maritime Institute

Mr. Richard A. Block
Secretary
National Mariner's Association

Mr. Augustin Tellez
Executive Vice President
Seafarers International Union

Mr. Thomas A. Allegretti
President and CEO
American Waterways Operators

HEARING ON OIL SPILL IN NEW ORLEANS IN JULY 2008 AND THE SAFETY ON THE INLAND RIVER SYSTEM,

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Tuesday, September 16, 2008,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Elijah E. Cummings [Chairman of the Subcommittee] presiding.

Mr. CUMMINGS. This hearing is called to order. It is my understanding that Mr. LaTourette is on his way. We are going to get started because we have a vote coming up fairly soon.

The Subcommittee will come to order. Before we begin this morning, we commend the United States Coast Guard for the work they are undertaking, even now, to aid those who have been so terribly affected by Hurricane Ike. It is in these times of national emergency that we see the dedication that our thin blue line at sea, the Coast Guard, brings to its work aiding those in peril, and we thank them for their heroic efforts.

The Subcommittee convenes today to examine the circumstances surrounding the spill of nearly 300,000 gallons of Number 6 fuel oil into the Mississippi River near New Orleans on July the 23rd. We will also take a broader look at the significant safety issues in the towing industry highlighted by the accident that caused the spill.

The July 23rd spill occurred when a towing vessel pushed a tank barge into the path of an oncoming tanker. The towing vessel involved in the casualty, the Mel Oliver, was not being operated at the time of the collision by a properly licensed master. Instead, it was being operated by a person holding only an apprentice mate's license, who was not authorized to operate a towing vessel without the presence of a licensed master in the wheelhouse.

DRD Towing, the firm operating the Mel Oliver, has a history of operating vessels without properly licensed personnel. Less than two weeks before the accident involving the Mel Oliver, DRD was apparently illegally operating the towing vessel Ruby E with a person holding only the apprentice mate's license when the vessel sank.

DRD Towing has also been cited by the Coast Guard for operating towing vessels without properly licensed personnel in several

previous occasions. DRD was a member of the American Waterways Operators, the industry trade association for the tug and barge industry, at the time of the collision between the barge being pushed by Mel Oliver and the tank vessel, and at the time of the sinking of the Ruby E. However, in May, the firm failed the safety audit that AWO requires as a condition of membership in its association. The audit is the cornerstone of the program AWO terms the Responsible Carrier Program, which it argues is designed to ensure safety in the towing industry.

Only after the accident between the Mel Oliver and the tank vessel did the Coast Guard systematically check other DRD-operated towing vessels in the New Orleans area to ensure that they were operated by fully licensed personnel. However, the fact that this firm could sink one towing vessel and then, less than two weeks later, cause a major collision with another towing vessel, when neither was being operated with properly licensed personnel, and that too, after having been cited on previous occasions for such violations suggests to me that either this firm was truly negligent or that its managers felt that there was little risk of being caught while operating without properly licensed personnel.

One of the deck hands on the Mel Oliver tested positive for the use of illegal drugs. This is likely an incidental finding. However, to be frank, there are widespread claims among those who work in the towing industry that the operation of the towing vessels without properly licensed personnel is common and that drug use is prevalent in the industry, and I must say that that is a very, very, very, very troubling and very sad commentary.

Similar claims that violations of the rule that forbids licensed personnel from working more than 12 hours in a 24-hour period are also common. Simple mathematics would suggest that it would be very difficult for licensed individuals to comply with this limitation when there are only two such personnel on a towing vessel.

At the time of the accident, on July 23rd, the towing vessel, Mel Oliver, was chartered by its owner, American Commercial License, to DRD under a bareboat charter and then hired back by ACL on a fully found charter. This arrangement does not appear to have been designed to generate revenues for ACL. Rather, it appears to have been designed to enable ACL to operate its vessel at the cheapest possible cost, by shifting maintenance responsibilities and, more importantly, the hiring of crew members into DRD, a firm that was obviously ill prepared to meet these responsibilities, but with which ACL had nonetheless done business for a decade.

According to statistics provided by the Coast Guard, between 2000 and 2008, ACL, which is currently the second largest firm in the towing industry, has had eight deaths or missing persons on vessels for which it was the managing owner, more than on vessels under any other managing owner in the towing industry save for fatalities arising from a single accident involving another firm in 2001.

We have before us today a very troubling portrait of an industry that is essential to commerce in our Nation. However, unlike in many instances in which problems are prevalent within a given industry, the Coast Guard appears to have all the authority it needs to deal with many of these issues. The Coast Guard has had the

authority since 2004 to set hours of service limits on towing vessels but has not chosen to exercise this authority, despite widespread agreement that human factors, and particularly fatigue, are among the most prevalent of all causes of casualties on towing vessels.

Similarly, Congress passed a law in 2004 finally bringing towing vessels under inspection requirements, requirements from which vessels currently in operation had been exempt for decades simply because they were powered by diesel engines rather than steam engines.

As part of the inspection process, the Coast Guard will be required to set manning levels. However, now four years later, the Coast Guard has not even published notice of proposed rulemaking to initiate the effort to complete the rules needed to create the inspection process. This rulemaking is one of more than 100 pending within the service.

A major part of effective leadership is having a sense of urgency and acting on that urgency, and because of the failure to act on that urgency, I think that that is why we are here today discussing the problem that we have today, in part.

Today, we will examine these issues in more detail and identify the steps that need to be taken to ensure that the towing industry is as safe as it can possibly be. We look forward to hearing from representatives of the Coast Guard and NOAA, as well as the American Commercial Lines, the American Waterways Operators, the Northeast Maritime Institute, the Seafarers International Union, and the National Mariners Association.

I note that we invited DRD to attend this hearing. DRD's owner, Daniel Danton, responded to the Subcommittee's request for him to appear through counsel, stating the following: "Although the Department of Justice has given Mr. Danton no indication that he is a target or subject of any investigation, given the ongoing United States Coast Guard formal hearing and the United States Justice Department's involvement in this matter, Mr. Danton would, if subpoenaed to the congressional hearing, refuse to testify and invoke the Fifth Amendment privilege against self-incrimination."

Having received that letter, I decided that we would not subpoena him in today because I think the letter speaks for itself and, from a very practical standpoint, it makes more sense for us not to waste our time.

I ask that DRD's full letter to the Subcommittee be included in the hearing record and, without objection, it is so ordered.

With that, I recognize our distinguished Ranking Member, Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman, and thank you for holding this hearing.

On July the 26th of this year, two vessels collided in the middle of the night, resulting in the release of nearly 300,000 gallons of fuel oil into the lower Mississippi River near New Orleans. The Coast Guard has completed a preliminary investigation into the cause of the collision and a more detailed investigation is ongoing.

While the circumstances leading to the collision raise several questions for the Subcommittee to examine this morning, I would be remiss if I did not recognize the comprehensive and successful

response efforts by the Coast Guard, NOAA's Office of Response and Restoration, and the State and industry officials.

The recent spill in New Orleans was more than five times larger than last year's spill in the San Francisco Bay. The spill did cause significant economic damages due to the closure of the Mississippi River and the subsequent impact on local and upriver industries and agriculture. Yet, through the combined efforts of Federal, State, and industry stakeholders, damages to the local environment were kept to a minimal level.

The incident that resulted in the oil spill involve a towing vessel which is currently not a class of vessels that are inspected by the Coast Guard. Congress has directed the Coast Guard to establish a safety management system for towing vessels nearly four years ago; however, no system has been developed to date. I hope that the witnesses will give the Subcommittee an update on the status of this rulemaking and the ongoing discussions between the service industry officials and mariner groups. It is important to note, however, that no inspection regime would prevent individuals determined to operate vessels in violation of the law, which appears to be the case in this incident.

In previous hearings before this Subcommittee, witnesses have discussed the difficulties in maintaining sufficient number of maritime workers in the inland barge industry. I am curious to hear from the witnesses today whether those workforce pressures contributed to this or other incidents, and whether the looming implementation of the TWIC card will exacerbate any workforce shortage.

The Subcommittee has also been concerned for some time about the solvency of the Oil Spill Liability Trust Fund. On several occasions, the Subcommittee has required the Coast Guard to study issues that might have a negative impact on the Fund. One such impact may be the unprocessed claims for damages that resulted from Hurricane Katrina and those that may be forthcoming from this year's storms.

The recent oil spill in New Orleans underscores the importance of planning and preparation on the part of government officials and vessel operators to respond to oil spills and their effect in the future. I want to thank the witnesses and the organizations that they represent for their continued work to prevent future oil spills and to minimize the impacts that happen when those occur.

Mr. Chairman, I do want to express my concern, as I have expressed in a couple of other hearings. It makes me nervous when we have subpoenaed witnesses, people that are involved in active litigation against other witnesses or other people who are not witnesses, and again that appears to be the case. The majority has, my understanding, subpoenaed NMI, which is in an active legal dispute with American Commercial Lines. I know that the Chairman is more than fair and he recognizes that these forums are not to be used to give one side a leg up, if you will, in litigation, and I would hope that you continue that record of fairness today, and I yield back my time.

Mr. CUMMINGS. I want to thank the gentleman for his statement.

One of the things, as you and I, as attorneys, and trial attorneys, at that, know—I am very, very sensitive to those kinds of issues

that you just raised, and one of the things that I try to do is try to make sure that we are fair to the witnesses, just like you just said, but at the same time without prejudicing them, bringing prejudice upon them, that we still do our job. So it is kind of a tricky balance but, that being said, we will proceed very carefully. I want to thank you.

It is interesting. Every morning I read, as part of my sort of daily devotions, you might call them, little passages, and it just so happens, as I was listening to Mr. LaTourette, I couldn't help but think about something that I read this morning. It says accept the fact that you can make excuses and you can make money, but you can't do both.

I think what I am concerned about, to the Ranking Member, is that, as I listened to your statement, I just want to make sure that we are doing everything in our power to make sure these things don't happen again. You have heard me say many times that I worry about this Country and how, in so many areas, we have fallen into a culture of mediocrity. I think Katrina showed us how bad it can get when the rubber meets the road, and then when the rubber meets the road you discover there is no road. I think we see it in what is happening here today in our financial world, and we can go down the line. I am not blaming anybody, I am just saying we can do better.

And I say this at this juncture not knocking my good friend, it is just that I believe that I want our witnesses to come forth with suggestions as to how we can solve these problems. We cannot have oil spilled all over our waterways, I am sorry. We can do better than that. And we can make excuse after excuse after excuse, but we have to put in the kind of rules. We must have a sense of urgency. We must do the things that we need to do to ensure that these things don't happen. Yes, there are going to always be mistakes. There is always going to be human error, I got that. But this is our watch. This is our watch. We are watching our environment; we are watching our Coast Guard. It is our watch. I want to make sure that those who come forward come forward with suggestions as to how we can address these issues.

With that, Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

I want to thank our witnesses for being here. Although, at times, I am probably the hardest guy in the room on the Coast Guard, I also want to let you know that I have the most empathy for you, and I realize that Congress and the Administration, on a regular basis, give you more jobs to do and the budget increases often don't match that.

A couple things I would like you to mention in your testimony, though, Admiral and Captain, is what are the fines and/or penalties for operating a vessel without a licensed captain and/or without the proper tonnage of that captain, the reason being that I suspect—I certainly don't know—that there are companies out there who are saving money by operating vessels without a licensed captain or with someone with a smaller license than the vessel requires, which in turn gives them an economic advantage, and we end up punishing the people who are living by the rules and we

end up, by lack of enforcement, giving people who don't live by the rules a leg up.

The second thing I would hope you would address, in going back to that, I really do empathize with your challenges, but I do remember from the old days that the Coast Guard used to conduct twice daily harbor patrols in New Orleans; at least one during the day, at least one at night. Part of that was to look for load line violations, oil spills, but also part of it, on a regular basis, was simply stopping vessels to check and see if the person in the wheelhouse was licensed. I am just curious, given the demands on your time with all the new missions and also the high price of fuel, and my memory that during certain portions of the year the boat crews were told, hey, don't get underway unless it is an absolute emergency. Is that a contributing factor to what might be a lack of enforcement in this area that might have been a contributing factor to this accident?

Again, I am not looking for the Coast Guard to beat up on themselves, but if it is a financial problem that is resulting in a lower exposure out on the river due to funding, then it is something the Congress certainly needs to be aware of and hopefully we can address in the next budget.

So, again, I want to thank our witnesses for being here.

Mr. Chairman, I want to thank you for calling this hearing.

Mr. CUMMINGS. Ms. Richardson.

Ms. RICHARDSON. Yes. Good morning. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank you and Ranking Member LaTourette for holding this hearing on the Mississippi River oil spill which took place at 1:30 a.m. on Wednesday, July 23rd, 2008, near the city of New Orleans. I, like many of my colleagues here today, view the maritime industry as an economic lifeline to my congressional district and to many districts throughout this Country.

While this accident may have occurred in one place, what was evident to me when I was attending this Committee's field hearing last year on the COSCO BUSAN is that the tragic maritime accidents not only put our environment and our human health in jeopardy, but it also has the ability to devastate our national economy as well.

Given the serious nature of maritime accidents, all must be done to hold those responsible in accordance with the law and actively review the Coast Guard's response after the accident took place. It is my hope today that the lessons learned from the COSCO BUSAN disaster are being applied, and I want to hear in the testimony today what was learned, what did you apply that hopefully helped us respond better in this particular situation.

Today's witnesses' testimony will provide, hopefully, an accurate assessment of what exactly transpired on the morning of July 23rd on the Mississippi. I would like to remind those giving testimony that you sit here today not just in front of this Committee, but in front of the entire American people who are really, this is one accident after another accident after another accident.

So I concur with my colleagues that I really would like to hear an honest answer. If there is something that we need to do in terms of financially providing an adequate budget for you to do

your job effectively, you need to tell us, because this Committee stands willing and ready and able to address this issue, but we can only do it if there is no fear from the Administration, there is no golden cows out there. We need to know from you honestly do you have the resources and do you have the capability to do this job effectively, because we have had one too many accidents.

Thank you, Mr. Chairman.

Mr. CUMMINGS. I want to just take a moment to echo what Mr. Taylor and Ms. Richardson just said, and I am sure Mr. LaTourette joins with me in this. We want the Coast Guard to be the very, very best that it can be, and I am really, really curious about this rulemaking, I am curious about the things that Mr. Taylor raised, and we will fight for the resources the Coast Guard needs.

But I want to be clear that I realize that resources are not just the answer. See, if resources were the answer, a whole lot of things in our world would be resolved. You must couple resources with motivation. So whatever it takes for us to get there, we want to get there. So you need to let us know, because we will fight for those resources because we know that the Coast Guard will use them effectively and efficiently, and then we will hold you to a high standard. But we have got to know what you need.

So, with that, we will call on Rear Admiral Watson, James Watson, IV, who is the Director of Prevention Policy for Marine Safety, Security and Stewardship, with the United States Coast Guard, and Mr. David Westerholm, who is the Director of the Office of Response and Restoration with the National Oceanic and Atmospheric Administration. We welcome your testimony.

I understand, Captain Stroh, you are standing by just in case there are questions that you may have to answer. Is that right?

Captain STROH. I have an opening statement.

Mr. CUMMINGS. You have an open statement?

Captain STROH. Yes, sir.

Mr. CUMMINGS. Fine. We will hear from you. Why don't we start with you? We will start with you, since I didn't know you had one.

Captain STROH. Yes, sir.

Mr. CUMMINGS. All right.

TESTIMONY OF CAPTAIN LINCOLN D. STROH, SECTOR COMMANDER, CAPTAIN OF THE PORT, SECTOR NEW ORLEANS, UNITED STATES COAST GUARD; REAR ADMIRAL JAMES WATSON, IV, UNITED STATES COAST GUARD, DIRECTOR OF PREVENTION POLICY FOR MARINE SAFETY, SECURITY AND STEWARDSHIP; DAVID WESTERHOLM, DIRECTOR, OFFICE OF RESPONSE AND RESTORATION; NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Captain STROH. Good morning, Chairman Cummings, Ranking Member LaTourette, and other Members of the Subcommittee. Rear Admiral Whitehead of the Eighth Coast Guard District sends his respects. He was unable to attend today's proceedings as he responds with Sector Houston to the aftermath of Hurricane Ike.

As the Coast Guard's local commander for Sector New Orleans, I am the Federal On-Scene Coordinator, FOSC, for oil spills in the Southeast Louisiana coastal zone, including the Mississippi River. As FOSC, I coordinate Federal Government's response to spills,

work closely with State and parish governments, and lead a unified command of responders, including the responsible party, to mitigate the effects of spills, clean the environment of hazardous substances, and re-establish the marine transportation system.

The DM 932 oil spill was a challenging spill in a complex river environment, affecting a critical waterway vital to this Nation's economy. Federal, State, and parish agencies came together with the responsible party to quickly marshal over 2,000 oil spill responders to clean over 100 miles of river, over 1190 vessels, and salvage a leaking, mangled barge in 80 feet of water, all while beginning to move ship traffic on day five, with ship traffic back to normal in day seven.

The Coast Guard's new sector organization served this incident well. As sector commander, I had all the authorities and all the Coast Guard resources at my disposal, and I used them: the Vessel Traffic Center to manage traffic, the Command Center to close the port, the small boat station to enforce the safety zone, and the air station to overfly the spill zone, the pollution responders to respond, the casualty investigators to investigate, the marine inspectors to oversee the salvage, the safety staff to oversee safety, Coast Guard cutters for on-scene presence, the planners to create action plans, the logistics personnel for unified command support, the auxiliarists to support the supporters, and reservists to backfill the active duty.

My authorities as Federal On-Scene Coordinator, Search and Rescue Mission Coordinator, Officer in Charge Marine Inspections, and Captain of the Port were all used in a complimentary fashion as this event unfolded. Mission execution was enhanced through this organization and its single repository for authorities.

Though the salvage and spill response could be called a success, the reason for this spill must be investigated and a cause determined. My investigators, in collaboration with the Eighth Coast Guard District's formal investigation, are working with the National Transportation Safety Board to find that cause and learn from it.

Thank you for the opportunity to appear here today, and I am happy to answer any questions after the other Members give their opening remarks.

Mr. CUMMINGS. Thank you, Captain Stroh.

Rear Admiral James Watson.

Admiral WATSON. Good morning, Chairman Cummings, Ranking Member LaTourette, and other Members of the Subcommittee. As the Coast Guard's Director of Prevention Policy, my first reaction to the news from New Orleans on the morning of July 23rd was to ask how such an accident could happen. My next reaction was to ask appropriate people from both the Government and the industry to make sure it doesn't happen again.

After speaking to the NTSB and the Eighth Coast Guard District, I endorsed doing a district formal marine board of investigation. Coast Guard investigators, joined by NTSB investigators, began collecting evidence, designating parties, and preparing for the public hearing. The chairman of the NTSB and the Eighth Coast Guard District commander held a press conference on the afternoon of July 23rd to assure the public that appropriate inves-

tigation actions were being taken. Follow-up press releases were disseminated on July 28th and August 2nd, with initial findings and release of the VTS radio coms with Mel Oliver and Tintomara, the ship that was involved.

In the meantime, Coast Guard marine safety officers systematically visited each of the 18 other DRD vessels to ensure they were properly manned with appropriate licensed personnel and crew.

The Marine Board hearing began on August 12th and recessed on August 14th after interviewing four witnesses and entering 62 documents into evidence. Successive hurricanes have intervened since then. The hearing is scheduled to resume on October 9th and expects as many as 32 witnesses and many more documents.

On September 5th, following two meetings we had with the American Waterways Operators, we released the Unlicensed to Drive Safety Alert. This is a strong reminder disseminated to the towing industry about proper manning and licensing. Admiral Allen has directed Coast Guard operations planners to prepare a targeted safety enforcement campaign for licensing, manning, navigation, and safety equipment. We have currently been boarding about 1500 towing vessels annually.

Thursday of this week, I will meet with the Towing Safety Advisory Committee, TSAC, to review the actions taken so far and hear their recommendations for other potential actions.

My experience is that accidents like the collision that occurred in New Orleans on the 23rd don't just happen. Numerous interventions or safety factors could have prevented the accident. It wasn't a natural disaster, it was manmade. Things like oversight, leadership, professionalism, standards, and even work hours and conditions can make a difference.

This Subcommittee has provided good oversight in recent legislation. First, the United State Coast Guard is authorized to require licenses for every towing vessel at least 26 feet in length. In 2001, we overhauled the towing vessel operators licenses. We phased out the old operator of uninspected towing vessel, OUTV, license and created a master of towing vessel license that requires a progression from apprentice to mate and a minimum of four years experience. We continue to improve upon these regulations, and just this month we published an amendment to give credit for approved training courses and experience as a master of inspected vessels.

Second, the Coast Guard is authorized to proscribe hours of service aboard towing vessels in accordance with Section 409 of the Coast Guard and Marine Transportation Act of 2004. The Coast Guard has provided crew endurance management training for over 2500 mariners and has published a Navigation and Inspection Circular. This is a risk-based service hour management program and is part of a safety management system for a company. The Circular is a stepping stone for towing vessel industry management to be prepared for the regulations anticipated in accordance with Section 409.

Third, the Coast Guard is authorized to inspect and certify towing vessels in accordance with Section 415 of the CG&MT Act of 2004. This massive undertaking requires a new subchapter in the Code of Federal Regulations and additional manpower in nearly

every Coast Guard sector to enforce it. It is comparable in scale to the small passenger vessel inspection rulemaking of 1956.

The Coast Guard has been working very closely with the Towing Safety Advisory Committee (TSAC) and expects to publish the notice of proposed rulemaking in 2009. The rule will require each company to have a safety management system, including crew endurance management. It will allow for third-party reports, documents, and records to be used during the certification process in addition to periodic vessel inspections by Coast Guard officers.

Mr. Chairman and Members of the Subcommittee, thank you very much for this hearing. I look forward to answering your questions.

Mr. CUMMINGS. Thank you very much.

Mr. David Westerholm.

Mr. WESTERHOLM. Thank you, Mr. Chairman and Members of the Subcommittee for the opportunity to testify on the National Oceanic and Atmospheric Administration's role in the response to the July 23rd, 2008 oil spill on the lower Mississippi River.

I am Dave Westerholm, NOAA's Director of the Office of Response and Restoration within the Department of Commerce. I appreciate this opportunity to highlight the critical contributions provided by NOAA during spills.

When oil spills into our coastal and inland waters, it can harm people and the environment, and cause widespread economic effects. The best remedy is to prevent oil spills. But when a spill does occur, we must act quickly and effectively to mitigate any harmful effects and restore injured resources. An effective response based on solid science and smart decision-making reduces environment, social, and economic impacts, as well as clean-up costs. To ensure a quick and effective response, we must remain prepared for spills by maintaining adequate response capacity and capabilities.

NOAA provides scientific support coordinators who lead a team of NOAA specialists to assist the United States Coast Guard in its role as Federal On-Scene Coordinator. This scientific coordination is critical, and through experience, expertise, and state-of-the-art technology, NOAA forecasts the movement and behavior of spilled oil, evaluates the risk to resources, and recommends protection priorities and appropriate cleanup actions.

I would also like to mention and thank the incident meteorologists, our colleagues at NOAA's National Weather Service, who provide on-site weather support throughout spill events.

With respect to the July spill, my office was notified shortly after the collision and we provided our first spill forecast predictions to the unified command within two and a half hours of the event. Over the following month, we provided 24x7 scientific support, which included daily or twice daily trajectories of the spilled oil, information management, overflight observations, weather and river flow forecasts, and shoreline assessment. Over 200 miles of river shoreline were surveyed to support cleanup activities and we quickly mobilized our damage assessment and restoration teams to begin collecting data and a variety of environmental samples to initiate restoration planning as a natural resource trustee.

In addition to harming wildlife, wetlands, and other coastal habitats, this incident resulted in significant economic disruption, in-

cluding extensive waterway closures, closure of municipal and industrial water intakes, and interference with critical channel dredging operations. The NOAA scientific support team helped minimize these disruptions and coordinated many of these environmental issues for the unified command, including technical issues associated with the fate of and behavior of the oil, shoreline and ship cleanup strategies, protection of water intakes, and contamination of dredge spoils.

NOAA will continue to assist as needed until shoreline cleanup is completed and the response is demobilized. But while the operation response phase is winding down, NOAA's role as a natural resource trustee under the Oil Pollution Act will continue to ensure that the natural resources harmed by this spill are restored. To do this, NOAA is working with other Federal and State resource agencies and with representatives of the responsible party in a cooperative process to develop a restoration plan.

The collision of a chemical tanker and a fuel barge in one of the Nation's most critical waterways is a reminder that accidents will undoubtedly continue to occur, despite the many safeguards and improvements that have been put in place since the passage of the Oil Pollution Act. In the past six weeks since this incident, NOAA has responded to two dozen other spills around the Country. Although the best remedy is to prevent oil spills, despite our prevention efforts, the huge volumes of oil moving through our waterways makes spills a statistical certainty.

Once oil is released into the marine environment, the best that we can do is quickly and effectively mitigate and restore any harmful effects. Therefore, responders must be equipped with sufficient capacity and capabilities to address this challenge. Continuous training, exercises, and investments in high-priority response-related research and development will ensure that the Nation's response to these incidents remains effective.

In conclusion, I want to thank you for the opportunity to discuss NOAA's important role in oil spill preparedness, response, and restoration. NOAA's suite of scientific products and services and expertise of our personnel are critical in mitigating harm, providing information for the allocation of response assets, restoring adverse effects on natural resources, and informing overall response decision-making.

At this time, I would be happy to answer any questions that you may have.

Mr. CUMMINGS. I want to thank all of you for your testimony. I am just going to have a few questions.

Rear Admiral Watson, I want you to, if you can, explain to me how a firm that sank a boat that was not operated by a properly licensed master could then be operating another boat less than two weeks later without a properly licensed master on board, and that, too, with a history of operating vessels without properly licensed personnel.

Does this situation suggest to you that this firm and its personnel didn't think that there was much risk in operating without properly licensed personnel, as they were unlikely to be caught? I mean, what did you take of that? You made some very strong statements in your opening about how these things just don't happen,

and I am just wondering what your view is on that and how do you see the Coast Guard being able to affect that utter disregard for not only the rules, but for the safety of people who are using our waterways.

Admiral WATSON. Yes, sir. A couple of thoughts come to mind. First of all, we are investigating both incidents at this time. With only a two-week separation, the two incidents are going to be analyzed together, and we are asking the same questions. In the interim, we are going to be initiating a targeted enforcement program that will assume that perhaps there is some need for particular enforcement on these vessels for licensing.

At the time, after the first incident involving DRD, we didn't have that kind of an operation in effect. Rather, we did more like random law enforcement, random boardings. We do about 1500 of those a year. This targeting thing would be focused on the results of performance by various companies, by perhaps various specific captains from time to time, and the casualty data that we get to see if there are trends that need to be particularly attended to in terms of enforcement.

Mr. CUMMINGS. In other words, you are saying that if you see some type of history developing—and I guess history could be one incident—that those folks may come under a little more scrutiny than they might normally come under, is that right? Is that what you are saying? Is that part of what this initiative is about?

Admiral WATSON. Yes, sir. We have had great success in our foreign vessel boarding program, our port State control program, in which we actually target foreign flag vessels that come into our ports based on the information that we have, their history, any information we can use that is available from the private sector—we use that quite often—obviously, past casualty experience, and even some targeting based on the last ports of call and so on. So we have not applied that kind of a targeting system on the inland rivers, but we have got a track record of finding success for that and plan to do it in this case.

Mr. CUMMINGS. Now, you said some things in particular that really concern me, and I want to see if the Committee can get some clarity on this. Section 3307 of Title 46 states that "Each vessel subject to inspection under this part shall undergo an initial inspection for certification before being put into service. After being put into service, any other vessel shall be inspected at least once every five years." Therefore, a towing vessel must be inspected by the Coast Guard or personnel classification society personnel under Section 3316 at least once every five years.

Your statement appears to indicate that the Coast Guard or class society personnel—and this is where I am going—do not need to physically board and inspect a vessel if the owner of the vessel has passed a safety management audit. That position does not seem to conform with the statute. And one thing we have learned from this accident is that the Coast Guard personnel need to be on every towing vessel more often, not less. So my question is this: does the Coast Guard agree that the law requires that the Coast Guard or class society personnel board a towing vessel to conduct an initial inspection and an additional inspection every five years to ensure

it is in compliance with all statutory and regulatory requirements pertaining to the inspection of that vehicle?

Admiral WATSON. Sir, the regulations, when they are promulgated, will comply with the law. The concept of using third parties is going to be incorporated into those regulations, and we anticipate that there will be examinations and audits much more often on these inspected vessels than every five years, but the Coast Guard will be attending to those vessels at least once every five years.

Mr. CUMMINGS. Now, does that include boarding?

Admiral WATSON. We separate law enforcement boardings from compliance inspections and exams, so our compliance activities are done by a qualified marine inspector who is actually comparing the material conditions and the operating information that is available to them on board to our regulations in a periodic exam. These are scheduled inspections.

The boarding officers which Congressman Taylor referred to, they are typically on our small boats; they are coming at odd times, unexpected. They are going to be picking and choosing which vessels they board based on their experience and, in the case of a targeted boarding program, on intelligence, if you will, that we will provide them from our command center.

Mr. CUMMINGS. Let me just ask you about this rulemaking. The Coast Guard has been administering the International Safety Management System for over a decade. Is it difficult for the Coast Guard to develop a safety management system for towing vessels and, if so, what makes it so difficult?

Admiral WATSON. Yes, sir. That has been a challenge. We are dealing with a population which is tremendously diverse, from very small business owners to very large companies like ACL and Kirby and Ingram, and there is a lot of variation on how you would implement a safety management system which applies to a company when you look across that diversity. So it has been a challenging thing. We have gotten a lot of support and assistance from our Towing Safety Advisory Council, but it has taken some time and I know that everyone wants to get these regs out. But that has been a big issue for us, sir.

Mr. CUMMINGS. So the question becomes will we or others be sitting in this Committee five years from now having this same discussion about getting out regulations, and the question is, while it may be difficult, is there anything that the Congress can do to push this process along? There are a lot of difficult circumstances that happen every day. I mean, if you are telling me that the difficulty leads to the impossibility of these issues being resolved in a short period of time, I need to understand that. Anything short of that, I would like to know what it is that we can do to move the process, because I am so afraid that we will—it is like there was an old song that said you got me going in circles, around and around we go. It is like a merry-go-round and we just keep going around and around, and in the meantime things do happen, accidents do happen.

So I am just trying to figure out—and I am not trying to beat up on you, I am just trying to have a very practical answer to my question, because, again, this is our watch, yours and ours, and we

want to do what we can to resolve the issue. Other than that, we will be here 10 years from now. Well, we may not be here, but other people will be here discussing this and, sadly, by then, several other accidents may have happened. So what can we do?

Admiral WATSON. Yes, sir. I would like to go back to your opening statement, where you talked about motivation. I don't think any group of people could be more motivated to implement prevention type regulations and to have periodic inspections and all those things that we do that prevent marine casualties from occurring than the Coast Guard. We have to clean up these messes. Sometimes there are people that are killed, sometimes injured; we have to notify people of lost ones. We are motivated to get these things done if they are going to improve safety. So there is no doubt that you are dealing with motivated people.

Now, one of the things that you can do is what you are doing right now, and that is having a hearing and bringing attention to a particular segment that we are working on, and certainly that provides additional motivation. Not that we haven't been working on this, but we will redouble our efforts and try to get these regulations out as soon as possible.

A significant factor, of course, is manpower for the enforcement. The budget request for 2009 has those personnel built into that budget. We are hopeful that the Congress will see fit to pass that budget and include those personnel that we need to get trained up so that, when these regulations hit the street, we will have the qualified personnel out there to implement them.

Mr. CUMMINGS. Now, that was a great answer, but you left off one piece I think you won't find not one single person, Member of this Subcommittee, and probably the Full Committee, that would not be for the resources that you talked about. Keep in mind, I talked about resources and motivation, and I did not want to imply that I did not think that the Coast Guard did not have the motivation. But I also talked about resources, and the resources now I am asking about is do we need more resources to get the regulations done so that we will even need the personnel to enforce the regulations? Because I think you are going to hear some testimony coming up later that there are question marks as to whether the Coast Guard is able to enforce policies that make our waterways safe. And if we don't get the regulations, we can't get to the enforcement, and I think that is the key and that is what I am asking about. What do we need to get the regulations done? You follow me?

Admiral WATSON. Yes, sir. You are probably familiar, we have a big backlog of regulations projects. We still have regulations that haven't been completed that were authorized in OPA 90, and that has snowballed because more and more authorities have been granted the Coast Guard to do different things. This project, towing vessel safety regulations, has definitely risen to the top of the heap, and last year, in our appropriation for 2008, we were authorized 31 new positions to work in our Standards Division to write regulations. We have had some challenges hiring the economists that are necessary to do all of that background work that needs to be done to satisfy the Administrative Procedures Act, which you have to do in order to push through regulations. But I think that that problem

is behind us now. We have got those positions, we have hired those people. We have done a lot of the technical work that was necessary to do in conjunction with the TSAC. The economic work is now in full swing and we hope to get these regulations—we will get these regulations out in 2009.

Mr. CUMMINGS. Thank you very much. Now, I want you to say that sentence one more time. Say that sentence one more time, because I want to make sure it is on the record. Say that again, the last sentence. You didn't say we might, you said we will what?

Admiral WATSON. Let me clarify. We will get out the notice of proposed rulemaking in 2009.

Mr. CUMMINGS. Mr. LaTourette.

Mr. LATOURETTE. Thank you very much, Mr. Chairman. Just to my good friend, the Chairman, just so my opening statement wasn't misunderstood, my view is we can have the best regulations in the world, the safest ships in the world, the best inspections in the world, just like we can with cars and traffic safety, but when a 13-year-old decides to get behind the wheel of the car, there is not much we can do about it, and that, at the end of the day, is what occurred in this situation. He wasn't 13, but he didn't have a license.

Admiral, as a result of the Coast Guard's ongoing investigation, do you expect that there will be referrals to the Department of Justice as a result of the conduct of some in this spill?

Admiral WATSON. Well, I really don't like to speculate on that. What I will assure you is that this will be a thorough investigation. That is why there is a formal Marine Board of Investigation. That also provides transparency to the collection of witness testimony and so on. At the end of that process, the Board of Investigation will not only make a conclusion as to the cause of the casualty, but they will make a recommendation to the District Commander on any further actions, and that could include administrative procedures against a licensed personnel or multiple licensed personnel, or it could include, if there is evidence of a crime, a referral to the Justice Department, the U.S. Attorney.

Mr. LATOURETTE. But let me ask you this, because I am kind of a simple guy. Is driving a boat without a licensed captain and without the proper credentials, is it a crime today? The Chairman is asking you what we need to do. If we haven't made it a crime, do we need to make it a crime?

Admiral WATSON. Well, it is a violation of 46 C.F.R., which requires the company to ensure that you have a licensed master, and if you have gone beyond the limits of your license, you will be taken to a hearing with an administrative law judge to see if you should still hold that license as a responsible merchant marine. But I don't know about the crime part, sir, I really don't.

Mr. LATOURETTE. I got that you can have bad things happen in your life, but can you go to jail? You don't think so, is that what you said?

Admiral WATSON. Sir, I don't know specifically what the criminal cite would be for that.

Mr. LATOURETTE. Okay. Well, maybe, Chairman, we need to make it a crime. The drunk driver who causes an accident goes to jail. The guy who drives a boat and creates an oil spill should prob-

ably go to jail if they are not properly licensed and they have broken some regulation.

We had a hearing a little while ago, Admiral, where the National Transportation Safety Board came before the Subcommittee and, I thought in one of the biggest power grabs in the world, attempted to tell us that they had legislation that would give NTSB primacy in Federal regulation of a maritime incident, and that was in the aftermath of the San Francisco spill that Ms. Richardson was talking about. Did NTSB decline to conduct an investigation into this spill?

Admiral WATSON. No, sir, not at all. Actually, NTSB would have been quite willing to investigate this casualty. As it turned out, we had initiated the formal Marine Board of Investigation before the NTSB board member, who was the chairman that day, arrived in New Orleans, so he worked it out with the District Commander and it was decided to go ahead with the Coast Guard's process.

Now, one of the things coming out of the last hearing on that is that we should work out a new Memorandum of Understanding between us and this is, I think, going to be characteristic of how this MOU is going to be written. We are going to try to combine the best of both organizations' methods and experience, and even technologies for each marine casualty. We found that there are good things about NTSB's processes and procedures that can occur right up front in collecting evidence from onboard the vessels and so on, but that the Coast Guard Marine Board hearing, which also is a good thing in this kind of a case, is actually not part of an NTSB process, but provides a way for public hearings right in the beginning of a marine casualty to collect evidence from witnesses. And then both agencies can go and do their independent analysis and produce separate reports at the end, and that is how we plan to proceed with this particular casualty.

Mr. LATOURETTE. So at the end of that rather lengthy answer, the fact of the matter is the system we have in place, subject to a new MOU, is working pretty well, would that be right?

Admiral WATSON. Yes, sir. I think that this case demonstrates that.

Mr. LATOURETTE. Perfect. Last thing that I want to talk to you about, Admiral, is under the Oil Pollution Act of 1990, liability for removal costs and damages resulting from a release of oil rests with the responsible party, and the responsible party is defined, in the case of a vessel, any person owning, operating, or demise chartering a vessel. My question is, under the terms of a demise charter, does any or all liability remain with the vessel owner, as opposed to the entity that takes operational control of the vessel?

What I am concerned about is that the way I read the Oil Pollution Act of 1990, it is both the owner and the operator that are responsible, and I am concerned that this demise charter is somehow a loophole that would relieve the owner of the vessel from participating in the liability. That ties into my whole set of concerns about the solvency of the Trust Fund.

Admiral WATSON. OPA 90 made it very clear to us and the responders who the responsible party is, and in this case it was ACL because they owned the barge and were in control of the oil. After all of the investigations and deliberations with the National Pollu-

tion Fund Center, there could be some shared liability between the owner and the operator, but I really can't comment on how those cases come out or specifically what OPA 90 directs in that area because it is sort of an after-the-face, behind-the-scenes issue as far as the Coast Guard is concerned, except for our National Pollution Fund Center.

Mr. LATOURETTE. Could you just have somebody—but not today—take a look at that? My concern is that that demise charter technique is a way to offload somebody's responsibility. I am a big believer that everybody should be involved that is involved, but if there is some technique through this demise charter process that relieves somebody that should be participating in the cleanup, I would just like whatever the service's response to that is.

[Coast Guard insert follows:]

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No. The Oil Pollution Act of 1990 broadly defines the liable Responsible Party for a vessel to mean any person owning, operating or demise chartering the vessel. In circumstances where the vessel is demise chartered, both the owner and the demise charterer are responsible parties. Each Responsible Party for a vessel is liable for removal costs and damages that result from a discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines of the exclusive economic zone.

Mr. LATOURETTE. Mr. Westerholm, just so you don't feel ignored, your office, Response and Restoration, did you receive a reduced level of appropriations in this fiscal year than you had the year before?

Mr. WESTERHOLM. Yes, sir, we did. Since fiscal year 2004, we have had about a 30 percent reduction, and specifically in 2008 we had a base budget of $11.5 million, which was approximately $5.3 million below the fiscal year 2008 requested level.

Mr. LATOURETTE. And has that had an impact in terms of the preparedness and response capability that that office has?

Mr. WESTERHOLM. It has. I think both the San Francisco spill and this most recent spill illustrated some of that and, briefly, it comes down to both capacity and capabilities that I mentioned earlier. The capacity is the number of people that we can bring to a spill or the number of simultaneous events that we can do at one time. In this case, we notice we did not have the capability to respond to two simultaneous major oil spills, and in the capability piece our modeling for subsurface oil, in particular in New Orleans, we had a great two-dimensional modeling for the surface oil which was going down the currents, but being a heavier oil, some of that was subsurface and we had not been able to beef up that capability.

Mr. LATOURETTE. If this Congress is unable to complete its appropriations work in the next 14 days and there is a continuing resolution, you will be frozen at $11.5 million and those same limitations, you would expect, would apply?

Mr. WESTERHOLM. Yes, sir.

Mr. LATOURETTE. Thank you.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

I should have guessed that you would have prepared statements, so I am going to have to restate my questions again.

What is the fine for operating a vessel of this size without a licensed operator?

Second, I am curious whether or not the Coast Guard still conducts daily and nightly harbor patrols at Port New Orleans.

I am curious whether or not the high price of fuel—because my memory is that fuel was peaking about then—did the high price of fuel cause the Coast Guard to curtail its operations around this time?

Lastly, I am aware that there is a vessel traffic service in the New Orleans area. I am curious if your vessel traffic operator had issued any warnings to that vessel in the hours before this or even the days before that. Was there a pattern of reckless behavior by that vessel immediately before this that might have triggered someone's suspicions that an unlicensed person was operating it?

Lastly, going back to Mr. LaTourette's question, I am aware that there is something called a Certificate of Financial Responsibility that tracks that cargo. Should that cargo end up in the water, you have got a paper trail as to who is going to pay the fine. Does the Certificate of Financial Responsibility also say who is going to put a licensed person on that vessel? Who is responsible for either supplying or, in this case, not supplying a licensed person on that ves-

sel? And who pays the fine for that, would it be ACL, would it be the operator, would both be responsible?

Admiral WATSON. Yes, sir. I will those questions for you. I will start with your question about penalties. There is a civil penalty associated with the unlicensed being at the helm; it is a minimum of $2,000 per day, up to a maximum of $10,000. We also can issue and start suspension and revocation proceedings against that mariner to take away his license.

Mr. TAYLOR. How about the firm that allowed this to happen?

Admiral WATSON. Likewise as well.

Mr. TAYLOR. Who pays the fine, the firm, the operator, both?

Admiral WATSON. Both, sir.

Mr. TAYLOR. Okay.

Admiral WATSON. That is the penalty side.

As far as harbor patrols, we conduct weekly harbor patrols, so we don't do the daily ones as we had before. Fuel is not an issue on those; we have plenty of——

Mr. TAYLOR. Admiral, the reason I say that is I just happen to have witnessed a football game the other day that maybe you guys wouldn't want to remember. It happened at Kings Point, New York. But I did notice that the Kings Pointer has been tied up for some time because of the high cost of fuel. So I have got to believe that that is not unique to that institution. But you tell me that was not a factor in Coast Guard inspections?

Admiral WATSON. No, sir.

Mr. TAYLOR. Okay.

Admiral WATSON. Next question about the Vessel Traffic Center, hours before the incident, there were no unusual maneuvering by the vessel; it was being loaded with fuel. It left the dock, proceeded across the river, headed upbound on the Mississippi River. Just moments before the collision was the unusual activity, and the Vessel Traffic Center was engaged, was putting out, trying to hail the vessel, unresponsive, and were very active in trying to advise and essentially tell that vessel what to do. They were also talking with the tank ship all the time, as well, as the collision unfolded.

Mr. TAYLOR. Okay.

Admiral WATSON. And then the last question about the Certificate of Financial Responsibility, that particular towing vessel, that size, is not required to have one, and there is not tied to the manning issue at all.

Mr. TAYLOR. Let's back up to that issue. I realize some of these questions are going to be geared towards the owner of the vessel, but going back to Mr. LaTourette's questions, it sure strikes me as strange that someone would rent at least a million dollar vessel for a dollar a day, then turn it back and pay that person to operate it for them. And we all learn from things that have happened and mistakes that have happened. Is the Coast Guard looking into the possibility that there is an unintended loophole in the law that encourages some firms to engage in this sort of behavior to either save money on insurance, on crewing costs? There has got to be something that would cause a company to do this transaction, and I am curious as to what you think it is and if you have made any recommendations to this Committee or to anyone in Congress as to try to close that loophole.

Admiral WATSON. Sir, the formal Marine Board of Investigation is set up to do those kinds of analyses and interview many, many more witnesses than we normally do for a marine casualty. This is an issue that is being asked; it is going to be investigated in connection with this particular casualty, and if it appears that this is a loophole, that report will be acted on up in Coast Guard Headquarters by policy makers there to commence whatever is necessary to fill that loophole.

Mr. TAYLOR. Mr. Chairman, just one quick follow-up. I am curious, on the Certificate of Financial Responsibility, I am guessing that the barge had one, but the tow boat did not. Is that correct? You said that that vessel was not required by law to have one.

Admiral WATSON. Yes, the barge would have had a COFR, but the tow boat would not. It was over 300 tons.

Mr. TAYLOR. Okay, so what size vessel, self-propelled vessel, would be required to have a Certificate of Financial Responsibility?

Admiral WATSON. It would be a 300 ton vessel is the minimum size to need a COFR, a Certificate of Financial Responsibility.

Mr. TAYLOR. And as a matter of curiosity, does a Certificate of Financial Responsibility—I realize it covers this is who you are going to call and this is who you are going to fine if there is a spill. Does it also include crewing of the vessel with a properly licensed crew?

Admiral WATSON. No. A Certificate of Financial Responsibility is just a document that proves that the company that operates a vessel over 300 gross tons has insurance.

Mr. TAYLOR. Okay.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Mr. Chairman, as oft-times the case, I am between Judiciary and Transportation, and today is no exception. I am sorry for my belated arrival.

Admiral,—good to have you all with us, by the way—are the licensing problems discovered aboard the Mel Oliver an isolated incident or is it a common problem industry-wide?

Admiral WATSON. We looked at our numbers for the last five years and we found that there have been years where we have had as many as seven people discovered during random boardings who were operating a vessel with the wrong license. In the last year there were three. We have also looked at our casualty data and discovered that there have been licensing issues discovered in investigations of marine casualties, and I think the numbers there are on the order of one or two.

So it is a concern and we haven't done any specific targeted investigations for this particular issue. We plan to, but the numbers haven't stuck out at us in the last five years.

Mr. COBLE. Thank you, sir. Walk us through, Admiral, if you will, the process of the inspection of towing vessel rulemaking has taken, A. I have been told that there has been a collaborative effort with industry, but I would like to ascertain the level of involvement and input.

Admiral WATSON. The industry has been very involved. We have got a committee, a workgroup that is subordinate to the Towing

Safety Advisory Committee that has had over 100 different participants from across the industry, including labor and management and other government agencies, just a whole variety, and we have really made a strong effort to be inclusive in the process of drafting these regulations. Part of what we hope will be the benefit of that is when the proposed rule comes out, we hope that there won't be a huge number of comments that say we should rewrite those proposed rules; we hope we can go quickly to the final rule.

Mr. COBLE. I got you. How would the proposed transfer of primacy to NTSB impact the Coast Guard's capabilities to carry out investigations and to, therefore, enforce U.S. laws?

Admiral WATSON. Well, quite frankly, I haven't spent a lot of time considering that outcome, but I think it would have a dramatic effect. It would undermine our regulatory program because we wouldn't have our investigators working directly hand-in-hand with the inspectors and with the captain of the port. So I think it would significantly degrade our program.

Mr. COBLE. I am inclined to agree with that. Thank you, Admiral, Captain.

I yield back, Mr. Chairman.

Mr. CUMMINGS. Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman, for holding this hearing on an extremely important subject matter that captivated the national attention. The underlying issues associated with this tragedy are also the subject matter of previous hearings of this Committee and action in reporting on our Coast Guard authorization bill. Had we been able to come to closure with the Senate in a conference on that legislation, perhaps we would be on the way to resolving some of these underlying problems of licensing and inspection and certification and supervision.

In this case, the towing vessel operator was not properly licensed, was not authorized to operate a towing vessel without a licensed master in the wheelhouse, and without that supervision tragedy occurred.

The Coast Guard has 100 notices of proposed rulemaking backlogged, in various stages of consideration, and the ones on towing vessels have been in the works for four years, in some cases. What is the problem? Is it a lack of personnel to process? Is it a lack of funding to carry forward with the rulemaking process? Are there glitches in the rulemaking process that have slowed this down? You have got over 5,000 towing vessels to inspect, at the same time putting a drain on the personnel resources of the Coast Guard. Our legislation would provide a significant increase in staffing standards for the Coast Guard, so that is not the Coast Guard's problem, it is our congressional problem, the Senate's problem. If we can't resolve that matter in this Congress, it will be one of the very first issues we do in the next Congress, but something we just need to do.

Then the particular case here, the complexity of the operating circumstances, the several levels of chartering, bareboat charter, this and that, wet lease, dry lease. I make a comparison with aviation. When an airline contracts out its maintenance, the FAA regulations require that that maintenance—say, if it is Northwest Airlines contracting out to United Airlines or to a third party MRO

supplier, that maintenance provider must conduct the work according to the airline's—in the examine case it would be Northwest's—maintenance manual, performed exactly to the standards imposed. And Northwest, in the end, is responsible for whatever shortcomings or failures of the maintenance provider. What are the rules in maritime, when craft are chartered out in the manner of this very complex case?

Admiral WATSON. Sir, the rules for maritime is if there is a bareboat charter, only the vessel is transferred and the new company, the company receiving that vessel is responsible for manning and operating and maintaining the vessel in accordance with whatever the contract requirements are. In a case like this, typically there is an on-charter and then an off-charter survey that is done to assure the two companies that there weren't any damages and that sort of thing. The Coast Guard would hold the operator of the vessel responsible for all of the requirements of the Code of Federal Regulations.

Mr. OBERSTAR. So in that situation, then, the owner of the vessel is ultimately responsible for any failure that occurred, as example in this case?

Admiral WATSON. Well, in this case, the vessel was owned by ACL and it was being operated by DRD. DRD, as the operator, is going to be responsible for the master and all of the systems that are required to be on that vessel.

Mr. OBERSTAR. So ACL—and I have witnessed the legal maneuvering—is attempting to divest itself of any responsibility for DRD, is that correct, under the Oil Spill Liability Act and under existing Coast Guard regulations?

Admiral WATSON. Well, there are really two different systems going on here. Under the Oil Pollution Act of 1990, ACL is still the responsible party. But under the 46 C.F.R. rules for safe operation of a vessel, DRD is responsible because they are the operator.

Mr. OBERSTAR. So if you are a shipper, how do you know who is going to be responsible for your product on board a vessel? How can you assure that your goods are going to be delivered safely to the marketplace and who are you going to hold responsible? And you, as the Coast Guard, how can you enforce such under such conflicting circumstances?

Admiral WATSON. Well, the Coast Guard has been doing this for many years. We don't really have a problem determining who is responsible for the vessel and its safe operation. Similarly, when the oil is in the water, OPA 90 has made that very simple for us to determine who is going to be responsible for cleaning up that oil, and that seems to be working pretty well. For the owner's cargo——

Mr. OBERSTAR. So in the circumstance of the New Orleans spill, ACL should then be responsible for DRD not having a properly licensed operator in the wheelhouse, correct?

Admiral WATSON. Yes, sir. What we have found since OPA 90 is that this situation has caused cargo owners and vessel charterers to have systems called vetting systems, where they have inspectors that work for their company or their association that very carefully vet these operators, and quite often they will change their mind before they enter into a business agreement based on these vetting

inspections. That is pretty much the norm in the larger tanker industry these days.

Mr. OBERSTAR. Well, we have in our possession—the reason I am pursuing all this is we have in our possession a letter from American Commercial Lines (ACL) to the Director of National Pollution Fund Center. It says "Please be advised that the sinking of the barge 932 and any pollution which may have occurred as a result thereof occurred as a result of the sole act or omission and fault of one or more third parties for whom ACL is neither responsible nor liable so ACL denies your designation of it, ACL, as the responsible party." How can they do that? How can they wash their hands of this?

Admiral WATSON. I can't comment on what the outcome of that request to the National Pollution Fund Center is going to be, I don't know how they will handle that letter, sir.

Mr. OBERSTAR. I am getting at there shouldn't be an escape hatch for these operators; they should be responsible for the entity to whom they charter. Right?

Admiral WATSON. Sir, that would go a little beyond my knowledge of the details of OPA 90, sir.

Mr. TAYLOR. Mr. Chairman, would you yield?

Mr. OBERSTAR. I yield to the gentleman.

Mr. TAYLOR. Thank you very much, Mr. Chairman.

Admiral, I understand that, at the end of the day, a court will make this determination. I think what the Chairman is asking you, though, is since you are representing the Coast Guard today, what is the Coast Guard's interpretation of this law. After all, you have to have a basic understanding of the law to enforce it. So how does the Coast Guard view this, keeping in mind that, at the end of the day, a judge is going to make the final call?

Mr. OBERSTAR. I thank the gentleman for reframing my question. You did it very well.

Admiral WATSON. Our interpretation is ACL is the responsible party. We held them responsible, in accordance with OPA 90, to clean up all the oil, and there was no question as to their responsibility to do that. If they had refused, we would have opened the Fund wide open and done the cleanup ourselves, and they would have had to deal with potentially three times the cost of that spill. That is what OPA 90 says.

How this gets sorted out, another defense to liability is an act of God. There are always people that are faced with big cleanup costs that are going to try to find ways to reduce that liability, and we don't worry about that at this stage in the game, sir.

Mr. OBERSTAR. But this industry is attempting to police itself and working diligently at it, and there are bad actors in a great many sectors of our economy, and I know of at least one, maybe two—maybe three, now that I think it—notices sent out by vessel operators that they will not charter to—first, one says we will not charter out. Your goods are shipped on our lines and we are going to be responsible for them, we are not going to contract out. Others have said we will subcontract only where we have a certificated operator that the master in the wheelhouse is qualified, is licensed, is certified, and we will take responsibility for that.

But maybe we need to reinforce what the industry or some elements of the industry are attempting to do with change in the law, strengthen that responsibility so that we have something more in line with what I described in the aviation sector. Do you see any impediment to that?

Admiral WATSON. I don't see any impediment, sir.

Mr. OBERSTAR. Thank you. How is it possible that a master could be away from a towing vessel for such an extended period of time without the firm who is responsible for operation of the vessel knowing the situation and making a good faith effort to manage its vessels? How can that be? What can be done in the ordinary course of operation to assure that the master of the vessel is not abandoning his post?

Admiral WATSON. Well, the purpose of our formal Board of Investigation is to ask that same question and get an answer to it. I am sure that, once they have an answer, they will provide a conclusion and a recommendation, and we will try to act on that up in the policy-making section of Coast Guard Headquarters. I don't have anything in mind to answer your question right now, sir. It is going to be a challenge for us to have that kind of visibility of the inner workings of any particular company.

Mr. OBERSTAR. I have held for many years the principle that safety begins in the corporate boardroom, it doesn't begin in the Coast Guard or the FAA or the Federal Railroad Administration or the National Transportation Safety Board. Those agencies are there to protect the public interest, and when the private sector fails in its responsibility, that is, to live up to its own standards, or fails to measure up to the standards set by government safety agencies, then the government has to take action. Perhaps we have to await your board of inquiry to understand more about the complexities of this situation, but in these complex chartering arrangements, it occurs to me that we need to strengthen Coast Guard law and have cleaner, straighter lines of authority and oversight of these operations.

Perhaps you can come back and answer my earlier question about the number of rulemakings that are in the pipeline and when you think you will be able to proceed on those.

Admiral WATSON. Sir, I promised Chairman Cummings that we will have the Notice of Proposed Rulemaking out for towing vessel safety regs in 2009.

Mr. OBERSTAR. When?

Admiral WATSON. Before the end of the year, sir, but I am shooting for the spring.

Mr. OBERSTAR. Spring is a long time. Before the shipping season?

Admiral WATSON. Yes, sir.

Mr. OBERSTAR. All right.

Mr. Chairman, I will withhold. I have other questions. I have to attend to another transportation meeting and I will return to the hearing.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Ms. Richardson.

Ms. RICHARDSON. Yes, thank you, Mr. Chairman.

Did I understand you correctly to say that the towing vessels are only inspected approximately every three years or every five years? Which one is it?

Admiral WATSON. The Authorization Act of 2004 established a five-year Coast Guard presence inspection. These vessels are not actually inspected yet because we haven't promulgated the regulations.

Ms. RICHARDSON. Do you think that is sufficient?

Admiral WATSON. In combination with the safe management system and third-party inspections, I believe this will be the right mechanism to ensure safety on towing vessels.

Ms. RICHARDSON. If that is the case, why is it that the American Waterways—which it is my understanding is a trade association of towing vessels, tugboats, and barge industry—that according to the AWO, DRD Towing underwent its last audit on or about May 17, 2008. DRD failed the audit because it did not have adequate documents to prove ongoing compliance with the requirements of the responsible carrier program. Although AWO indicates that the auditor that assessed DRD found that the firm met the required policies and procedures in place at the time of the audit, they still were inadequate in some of the other areas. Finally, it says DRD failed to provide the additional information and its membership in AWO was terminated.

To what degree do you work with AWO?

Admiral WATSON. We have a partnership with the American Waterways Operators; we have been working with them for many, many years. They were our original partnership and that led to the establishment of the Responsible Carriers Program.

Ms. RICHARDSON. So if AWO, back on May 17th, found that they failed the audit, did you have any process in place to work with your partners to then follow up and see what was happening, especially since this accident happened less than 90 days later?

Admiral WATSON. No.

Ms. RICHARDSON. Okay, what are you going to do to do that?

Admiral WATSON. We have been in discussions since this Mel Oliver case on the 23rd of July, and we hope to use information flow from the RCP program, potentially, in our targeting efforts to do law enforcement.

Ms. RICHARDSON. Okay, potentially or we are? Because, according to my notes, a civil fine that could be applied in this case of $25,000 for a violation, it cost the local economy—which Mr. Taylor represents, $275 million per day. So are we potentially or are we going to do? Because this is costing us a lot here.

Admiral WATSON. I understand. The information from Responsible Carriers Program is owned by the American Waterways Operators and the companies involved there. That would be up to those companies and the American Waterways Operators association to share that information with the Coast Guard.

Ms. RICHARDSON. Okay, but you just said to me that they were one of your originating partners. So if they are one of your originating partners, do you have the full intention of sitting down with them and maybe establishing a process where you can share information so we can avoid situations like this?

Admiral WATSON. Yes.

Ms. RICHARDSON. Okay. My second question is there were 85 violations of having unlicensed operators. Are there any companies that had more than one, such as DRD?

Admiral WATSON. I will have to get back to you on that one. I don't know.

[Information follows:]

Enter on Page 63, following Line 1460

Of the referenced 85 improper manning (unlicensed operators) violations which occurred from 2005 through 2007, two companies had multiple violations. The table below lists those companies, the date of the violation, and unit which detected it.

Party Name - Organization	Date	Unit Detecting Violation
FLORIDA MARINE TRANSPORTERS, INC	December 28, 2006	MSU BATON ROUGE-on the UTV CAPT DEAN
	December 28, 2006	MSU BATON ROUGE-on the UTV HOWARD BLANK
JAMES BROTHERS INC	October 6, 2006	MSU HOUMA
	September 24, 2007	MSU PORT ARTHUR
	December 10, 2007	CG MSSO PORT LAVACA

This record reflects completed enforcement activities.

Ms. RICHARDSON. And getting back to what some of my colleagues asked, have you thought about having a zero tolerance policy? In California, where I represent, if a kid brings a knife or a gun to school, and if they do that once, it is called zero tolerance. It means, if you do it once, you don't come back to that school again.

Have you thought about having a zero tolerance policy that if a company, given the severity of what we are talking about, $275 million a day that it is costing us? Some of the questions you have heard from my colleagues is, is the process sufficient; should the laws be changed. Mr. LaTourette said should a person go to jail, which I think that they should.

So what recommendations have you put in place for this Committee or for the appropriate body to implement some sort of zero tolerance or some other policy that would avoid this situation from happening in the future?

Admiral WATSON. We don't have that recommendation to offer at this point. Our process would start with the marine casualty investigation itself, which would determine the facts, and the investigating team would make conclusions and then they typically would offer recommendations, which may include such a recommendation, which we will then act on.

Ms. RICHARDSON. My time has now expired. Are you willing to work with this Committee to give us recommendations or advise us on how we could implement stronger punishment, I guess is the way to put it? Mr. LaTourette suggested, potentially, if a person is driving a vehicle. In my opinion, how is this any different than if a person is driving a car, they do a DUI and they kill somebody? This is killing our environment. We need your recommendations in conjunction with this Committee so we can implement something that will really, in fact, deter companies from having someone drive a vessel and cause this type of damage.

Admiral WATSON. Yes, absolutely. We work with this Committee. I think we have a long history of sharing these recommendations with the Committee, as well as NTSB providing recommendations, and we would hope that the Committee would continue to work with us on these recommendations where it is appropriate for the Committee to act.

Ms. RICHARDSON. Thank you, Mr. Chairman, for giving me another 10 seconds.

I heard Mr. LaTourette ask very specifically the question about are the violations or the punishment, or whatever is in place, is it sufficient; how do we need to change it, etc. Are you prepared to come back and give this Committee specific examples of recommendations of what we could do, either us recommending to another body or us doing through legislation? Are you prepared to assist us with giving us those recommendations, yes or no?

Admiral WATSON. Yes.

Ms. RICHARDSON. Thank you very much.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Just two quick questions. As part of the inspection process, the Coast Guard will be required to set manning levels for inspected vessels. Currently, on voyages lasting longer than

12 hours, a towing vessel must have two licensed individuals onboard, is that correct?

Admiral WATSON. Yes, sir.

Mr. CUMMINGS. However, neither individual is allowed to work more than 12 hours, is that correct?

Admiral WATSON. Yes, sir.

Mr. CUMMINGS. So if they work any overlapping time, one is violating the law, is that not the case?

Admiral WATSON. Yes, sir.

Mr. CUMMINGS. Okay. Is that an ideal working situation, do you think, Rear Admiral?

Admiral WATSON. Well, that has been a topic that we have been looking at since 2004. We have done some pilot programs. We are going to address that in the proposed rulemaking in response to the authorization that requires us to look at watch standing and service time on board a vessel. There are a lot of different factors involved with the ultimate safety question, and I can't speculate as to what the conclusion is going to be as far as what is going to be in the regulations on that, sir.

Mr. CUMMINGS. Additionally, if a boat is in 24 hour operation, at least one of the licensed individuals must be on watch at all times in the wheelhouse, is that correct?

Admiral WATSON. Yes.

Mr. CUMMINGS. And neither can work more than 12 hours, is that correct?

Admiral WATSON. That is correct.

Mr. CUMMINGS. Are there any other duties that either licensed individual would have to attend to besides piloting the vessel?

Admiral WATSON. Well, they would typically have some administrative duties, and quite often those duties can be done in the pilot house.

Mr. CUMMINGS. If so, how can either individual attend to them without either leaving the wheelhouse or violating the 12 hour rule? Based on what you just said.

Admiral WATSON. Well, we know that some administrative duties can be done during the 12 hour watch, so that when they are finished that watch, there are no other duties that need to be done. But we are continuing to look at that and we need to provide some guidance, I think, through our regulatory process on how to keep this violation of the law from occurring.

Mr. CUMMINGS. As I was listening to Mr. Taylor's questions and Ms. Richardson's and Mr. LaTourette's, I thought about the many discussions that I have had with the Coast Guard with regard to drug seizures, and I asked the question, well, how do these guys—they purchase these boats, the ones that they operate under the water and they do all kinds of things to get around the Coast Guard, and one of the things that has been said to me over and over again by the Coast Guard—and, by the way, the Coast Guard has done a great job with regard to drug seizures. I understand we just had a major seizure just recently. Congratulations on that.

But they said, well, these guys look at this as a tax. In other words, they realize that they are going to try to get as much drugs in the United States as they can, and they know, if you are going

to get caught and they are going to spend this money, but it is part of doing business.

As I listened to the questions, I am wondering whether there are some folks that go out there saying, what the hell, this is just part of the process. If we get caught, we get caught, no big deal. And I hate to say that, but when you think about it, the fact that you put somebody out there in the water who is not properly licensed—and I am going back to what Mr. LaTourette was talking about with regard to these prison sentences—you have to really wonder what they are thinking. They must see some advantage—now going to Mr. Taylor's question—some advantage to doing things the wrong way.

Then I look at a situation like ballast water. With ballast water, we have got almost the entire industry, everybody, everybody saying we need to do something about this because we are all concerned about our waterways; we are concerned about these species invading our waterways. But I don't necessarily feel the same kind of enthusiasm about this kind of thing, which is just, to me, as significant, and I am just wondering, as we close out, because it sounds like there has been a call for some stricter rules, some stricter enforcement. I just want to know your opinion of all this, what your feelings are.

Admiral WATSON. First of all, I believe we are dealing with professionals here, and my approach is to start with using that appeal to our advantage. People have to go through a lot of study and effort, and they are going to sea, really, in the service of all the rest of us to provide this means of transportation. They should be paid well for that and they should feel that it is just not worth it to take a shortcut, because they would lose their future earnings and they would be losing profession.

I think that is the answer to this. We have to hold these mariners to a high standard and we have to show them a lot of respect for what they do, and we have to encourage the companies to show that similar respect and support their needs when they are doing their duty as professional mariners.

Mr. CUMMINGS. Now, in fairness, in fairness, I must say that, in my discussions with Mr. Allegretti of AWO, I get the impression that we may just have a few bad apples and a whole bunch of people who are really trying to do it right. But, at the same time, the few bad apples can cause millions of dollars worth of damage and can tarnish the reputation of the folks that Mr. Allegretti deals with on a daily basis who are trying to do it right.

It is interesting that AWO did an audit and these folks failed the audit. Interesting. Then the question becomes when they go to a professional organization and fail the audit, and they are still out there, then it seems to be some kind of gap that we need to close, because the professionals—the kind of people that you just talked about—who have earned this great reputation, this is what they do every day. They give it their best. They want to see everything go right. They don't want people out there on the water that are failing to do what they are supposed to do.

So they set up the mechanisms to check these folks out, they fail, but they are not an enforcement agency. So then the Coast Guard

comes in and says we have got to—I think if there are holes, we have got to fill those holes. Do you follow me?

Admiral WATSON. Yes, sir. I think the two ways to fill the holes is perhaps some more information sharing between the industry and the Coast Guard when there is indications that there are weaknesses there through the processes that they have in place and then, secondarily, getting these rules out, turning these vessels into inspected, certificated vessels, where we will have much more of a presence.

Mr. CUMMINGS. Thank you.

Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman. I will try to be brief.

Captain Stroh, I found, I think, in the code the fines that you were talking about. I will just ask you if you have an opinion, either you or the Admiral. Title 46, Section 2302, subparagraph (b) indicates that a person operating a vessel in a grossly negligent manner—that then goes on to do other things—commits a Class A misdemeanor, for which I assume you can go to jail. Does the service have an opinion as to whether or not operating a vessel without a license meets the threshold of gross negligence? That act alone.

Captain STROH. Well, my comments would follow Admiral Watson's comments, that part of the investigation, if the investigation shows that there was perhaps some gross negligence, then that recommendation would go to Admiral Whitehead and he could act on it.

Mr. LATOURETTE. No, I got that. I think my question is more specific than that. Gross negligence means you are drunk, you are driving the boat and not paying any attention. But if all the evidence is that this person operated the boat when he wasn't supposed to because he didn't have the proper license, do you have an opinion as to whether or not that rises to the level of gross negligence?

Captain STROH. I care not to share that opinion until policy comes out that helps clarify that.

Mr. LATOURETTE. All right, I got you.

Mr. Chairman, just on that, as we are always looking for things to do, I would maybe ask that we consider an amendment to Title 46, Section 2302, subparagraph (b) to indicate in there that operating without a license is in fact gross negligence. And to go to Mr. Oberstar, the Chairman's point, because sometimes you are going to find a mariner who has been forced to do it. He says, I am not doing it, I don't have a license. Okay, you like your job? You drive the boat. That the Chairman considers language that says a person operating a boat without a license is considered to be grossly negligent, and a person authorizing or ordering the person as well. A Class A misdemeanor, I think, is six months in jail, maybe $1,000 fine.

My personal view is to prevent—if this is the proximate cause of this collision, that you had a guy not knowing what he was doing and he wasn't properly licensed, I think six months in jail for he and the person that ordered him to do it is not an unreasonable penalty.

But, anyway, I would ask you to consider that and thank you for the time, and I yield back my time.

Mr. CUMMINGS. First of all, I don't think what you just said—I have to look at it a little more carefully, but I don't think that is unreasonable. As I said from the very beginning, we have to figure out how—we can't just make excuses, we have to try to address these issues as best we can. At the same time, you and I have had many discussions about overkill, and I don't think that this is overkill, by the way. I just think that we have got to look at these matters very carefully and try to figure out, okay, does this work. Based upon everything that is on my mind right now, I am in total agreement with you.

I think we have got to also look at the master who leaves the boat. We might want to take a look at that, too.

And I would urge the witnesses who are going to be coming up next to comment on what Mr. LaTourette has said. You may have your own opinions on that and we would love to hear what they might be.

If any of you all have an opinion on what he just said, we welcome what you might want to say. I am not asking you to, but, if you do, we would like to hear it.

Admiral WATSON. Sir, harping back to my point about the profession, you know, attorneys are professionals, doctors are professionals, and somewhere you have got to find the line between the system that holds the person accountable for their profession and the criminal justice system. I think you want to be very careful and deliberate if you choose to move that line and the signal that that might send. I am an advocate of doing things that will enhance the profession, because I think that that is a good thing for all of us in the maritime community.

But under certain circumstances—and we already have a line there: if a person is drunk, if they are taking drugs, even there is criminality in killing wildlife with oil that you spill when you have an accident. So there are plenty of statutes for finding people in violation that causes them to serve in violation of a crime.

I think we have one for extremely gross negligence, and we ought to just take a real close look at the existing law before we make changes.

Mr. LATOURETTE. Would the Chairman yield to me?

Mr. CUMMINGS. I will yield.

Mr. LATOURETTE. Thank you.

Admiral, I agree with you, I don't think we should make up new crimes. Before this job I was a county prosecuting attorney, and in Ohio it is against the law to drive drunk, it is against the law to drive with a suspended license, and it is against the law to drive without a license, and you go to jail for it.

It is not putting somebody in a stock. It is not putting them in prison for years and years and years. We are talking about a slight deterrent of maybe six months and a $1,000 fine to keep them from spilling 300,000 gallons of oil when maybe, mercifully, in my mind, there shouldn't be a difference between the guy that kills a duck with oil and the guy that doesn't kill a duck with oil. I mean, if the oil is spilled, it shouldn't be dependent upon where that oil went as to whether or not this person goes to jail.

I thank the Chairman.

Mr. CUMMINGS. I would think, too, that a judge would have certain discretion if there are some mitigating circumstances. But I have got to tell you that I agree with Mr. LaTourette.

In my other life, I used to represent lawyers who got in trouble, and he could be the greatest lawyer in the world, but if he went out there and really screwed up and did something that was really, really bad, he had a problem.

I would think that the industry—and the reason why I drew the comparison with the way the industry deals with ballast water is because I get the impression that everybody thinks that this is the thing that is best for the industry. If somebody goes out there who is not licensed, the question, first of all, becomes if we are going to have a licensing process, why have it if people are just going to be able to go out there without a license and do their thing? There is a purpose for that licensing process, and the purpose is to make sure that folks who get out on our waterways are operating vessels safely and are not putting others in danger, and in this case not polluting our waterways. I could go on and on.

So it just seems to me that this is not an unreasonable solution to a problem. Again, I think we have to be very careful, but we don't want to have these holes, these gaps. Obviously, there are some bad apples in this bunch that see the gap, and they are going through it, I mean, big time. One of the things that I say to my staff when I see an error in a memo or whatever, you know what I say to them? I say, look, I see this error. And they say, well, gee, Congressman, you shouldn't be upset with us about just one error. I say, what I worry about is what I don't see. That is what I worry about.

So what I am saying to you is there is probably a lot going on that we don't even know about, but certainly Mr. LaTourette's suggestion, putting it out there that, look, if you want to play that kind of game, well, then, this is what you may face. And I would think that others out on our waterways would want the same kinds of things.

Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Captain Stroh, I have some small idea of your huge responsibilities, and I do appreciate those huge responsibilities. All of us very much appreciate the phenomenal job the Coast Guard after Katrina, just remarkable. But I want to get to a conversation I had, interestingly, over a weekend. A guy who sells electronically controlled valves to the oil patch was ribbing me that he has to have a TWIC card. So here is a guy who probably will never go out on the water, but does go to waterfront facilities, has to get a TWIC card, and it didn't bother him much because his employer paid for it.

But, on the flip side, we have got people who are pushing barges full of fuel through a body of water that regularly has tankers with benzene, styrene, some of the most dangerous chemicals around that, if they were to rupture these tanks, would kill hundreds, if not thousands, of people that live near the water or might be on a cruise ship that is tied up at the river. So this accident really did have the potential to have killed hundreds, if not thousands, of peo-

ple under a slightly different scenario. And I am not trying to be alarmist about this, I am just visualizing what could have happened.

The Coast Guard is, again, enforcing TWIC laws. The Coast Guard is out there enforcing fisheries. The Coast Guard is enforcing a lot of things. When you tell me, though, that you are only conducting one patrol of Port New Orleans once a week, I have got to tell you that someone out there says I have a very small chance of getting caught with an unlicensed operator. My constituents instinctively know where the speed traps are and instinctively start slowing down when they get close to them. It is just human nature.

But if someone is only going to see a boat out there once a week, they know that I can get by with paying less money to an unlicensed operator, and I have got a very small chance of getting caught. In fact, if this accident hadn't have happened, this guy wouldn't have been caught.

So the question is does that come down to a question of resources? Has Congress or the Administration—it could be either or both of us—given you too many responsibilities and have you tried to do too many things with your limited funds? I do know that that is a degradation. There used to be a daytime patrol and there used to be a nighttime patrol, and they would intentionally move the hours around so that those high visibility patrols, people didn't know when they were coming. So how does this happen, Captain, and, above all, how do we correct this?

Captain STROH. Sir, I probably wasn't as clear as I should have been. My answer was in response to your question about downtown New Orleans, the central business district. In my AOR, we probably have patrols done daily in the lower part of the river, in the upper part of the river. So resources is not the issue; we have plenty of money for gas. At minimum, we are downtown in the central business district weekly, but we have vessels out everyday in a different part of my AOR doing the good work. So I am sorry if I misled you on that.

To reiterate, we have plenty of boats, plenty of resources.

Mr. TAYLOR. Captain, if I may. You didn't get to be a captain—you got there because you are a smart man. Obviously, we have a problem. How would you address this problem? Because the things that jump out at me would be, number one, increase the fine, just like we did on the Oil Pollution Act of 1990, to make the offense so expensive that people will take the steps so that the offense doesn't happen. That is the way I looked at OPA 90 and I think it has worked.

So do we increase the fines for people who knowingly have an unlicensed mariner out there? Do we change the requirements on the Certificate of Financial Responsibility and lower the tonnage of the vessel that has to have one and include the fact that they have to have a licensed operator on board? I am asking for your recommendations. We obviously have a problem. So what would your recommendation be to solve this problem, or would it just be more enforcement of existing laws?

Captain STROH. I think through the Marine Safety Plan that Admiral Watson is working on, it is going to bring more capacity to my unit, and that will be a very good increase and help to the situ-

ation at hand. Also, with the inspection towing vessels here in the near future, that will create a greater presence on that type of vessel. Those two are two big steps in the right direction

Mr. TAYLOR. Should we increase the fines for violators?

Captain STROH. I do know——

Mr. TAYLOR. Just roughly. I would hope that the gentleman from AMO will address this, American Waterways Operators. There has got to be a pretty good difference in the cost of paying a deck hand and a licensed operator. And if you can get by for a week or two with that savings, you have already covered the cost of that $2,000 fine, I have got to believe. So, is one way of addressing this—I am asking would there be any value to increasing the fine for someone who knowingly does this, or in something other than an emergency scenario?

Captain STROH. I see that as something we definitely need to look at. I know a lot of companies out there fear the lawsuits that come from an investigation more so than the civil penalties that come from our investigations.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. CUMMINGS. All right, I want to thank all of you for your testimony. We have a vote. We are going to recess for a short period to do a vote, and I expect we will be back here somewhere between quarter after and 12:30.

Thank you.

[Recess.]

Mr. CUMMINGS. We will now hear from Mr. Mario Munoz, who is the Vice President of Vessel Operations, with American Commercial Lines; Mr. Eric Dawicki, President of the Northeast Maritime Institute; Mr. Richard A. Block, Secretary of the National Mariner's Association; Mr. Augustin Tellez, Executive Vice President of the Seafarer's International Union; and Mr. Thomas A. Allegretti, President and CEO of the American Waterways Operators.

They tell me we are going to have another vote soon. So that you all aren't here until tonight, you might, if you feel like there are some things that you don't need to say, don't say them. Use your own discretion. I am not trying to rush you, I am just trying to make sure. Because we keep having these breaks, and we will be here for a good while. I don't mind being here, but I am sure you have things to do.

Mr. Munoz.

TESTIMONY OF MARIO A. MUNOZ, VICE PRESIDENT OF VESSEL OPERATIONS, AMERICAN COMMERCIAL LINES; ERIC DAWICKI, PRESIDENT, NORTHEAST MARITIME INSTITUTE; RICHARD A. BLOCK, SECRETARY, NATIONAL MARINER'S ASSOCIATION; AUGUSTINE TELLEZ, EXECUTIVE VICE PRESIDENT, SEAFARERS INTERNATIONAL UNION; THOMAS A. ALLEGRETTI, PRESIDENT AND CEO, AMERICAN WATERWAYS OPERATORS

Mr. MUNOZ. Good morning, Mr. Chairman and Members of the Committee. My name is Mario Munoz, and I am Vice President of Vessel Operations for American Commercial Lines. I served as one of the incident commanders during the New Orleans oil spill response.

I am here today to talk about the events that transpired following the sinking of ACL's double-hulled tank barge in the early morning hours of July 23rd. I will also be making recommendations to enhance safety.

First, I want to express my deep disappointment that oil was spilled into the Mississippi River. As a native of New Orleans, I understand south Louisiana's exceptional culture, our important wetlands and the vital contribution that our region makes to the Nation's economy. American Commercial Lines is one of the Nation's leading inland barge companies. One of ACL's core values is safety: never compromising the safety of our people, of the environment, of our property or equipment.

In 2008, ACL was the first marine transportation company to be named as member of the EPA's National Environmental Performance Track Program. ACL also received the U.S. Coast Guard's William M. Benkert Marine Environmental Protection Award.

Please let me describe the events of July 23rd. At 1:30 in the morning, an inland tow boat operated by DRD Towing was pushing an ACL tank barge when it collided with a tank ship in New Orleans. DRD is an independent contractor based in New Orleans that provided towing services for ACL and other competing barge lines. The tow boat that was involved in the New Orleans oil spill is named the Mel Oliver and is owned by ACL.

On July 23rd, the Mel Oliver was operated and crewed by DRD Towing under a long-term bareboat and time charter contracts. DRD Towing was required to comply with all applicable Federal and State regulations. Consistent with the terms of the charter agreements, the Mel Oliver was under the custody and control of DRD Towing as the sole operator.

Now let me turn to the first phase of our spill response. Within minutes of the event, ACL was notified that a collision had occurred involving one of our barges and that there was a potential spill. Rather than waiting for companies who were operating the vessels involved in the collision to step up, we put our oil spill response plan into action. Within minutes, ACL activated our local oil spill response organizations and directed them to engage a potentially major spill. Our approach to the response was to deploy all available resources as quickly and safely as possible.

Although we initially did not know the extent to which our barge was damaged, we responded with a worst case scenario approach and planned for a total loss of the product, which was approximately 10,000 barrels of No. 6 fuel oil. Following the prioritized objectives laid out by our incident command staff, containment booms had been placed on the municipal water intakes and near the damaged barge. Human safety was our number one priority. From July 24th, ACL initiated continuous air monitoring that included over 2.5 million air samples. None of those samples ever showed any contamination at levels harmful to human health.

Protecting wildlife was also a top priority for us. From the beginning, we worked with specialists from the Federal and State agencies who set out to observe oiled waterfowl and mammals. Thankfully, recorded wildlife deaths were kept low. Significant wildlife impacts were avoided by protective measures put in place early in the response.

Within the first week, the unified command grew significantly. At its peak, we employed 2,300 personnel, 200 response boats and deployed over 100 miles of boom. We cleaned over 100 deep draft ships and over 1,100 barges and boats. Due to the collision, the damaged tank barge had settled in the base of the Crescent City Connection Bridge. I have included an illustration of the barge and the salvage operation for your review. While dangerous and complex, the barge was successfully salvaged without any other significant incidents. The barge design allowed us to reclaim one-third of the oil that was thought to have been lost.

As Chairman of the Towing Safety Advisory Committee, I have been directly involved in the development of both the Inland Towing Vessel Licensing Standards and Towing Vessel Inspection Standards. I am encouraged that the Coast Guard is close to publishing the notice of proposed rulemaking for the towing vessel inspection process. TSAC has recommended the new regulations include a strong emphasis on the safety management system. When a vessel's certificate of inspection is coupled with a measured safety management system, the combination will provide the Coast Guard with a solid enforcement tool that ties a vessel's human factors directly to a company's ability to engage in commerce.

ACL also supports a program of targeted enforcement from the Coast Guard. Current laws must be adhered to. ACL is also working with AWO to improve the Responsible Carrier Program. We need to make the results of RCP audits immediately available to trade association members and the Coast Guard alike.

I would like to once again recognize the Coast Guard, NOAA and State officials, especially Captain Lincoln Stroh, for his leadership in the Unified Command. I also want to thank this Committee for the opportunity to testify, and I am available for any questions. Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Dawicki.

Mr. DAWICKI. Thank you very much, Mr. Chairman and Members of the Subcommittee. Thank you for calling this hearing and thank you for the opportunity to testify this morning.

I am Eric Dawicki, President of Northeast Maritime Institute, located in Fairhaven, Massachusetts. NMI is one of the largest privately-held maritime education and training institutions in the United States and has trained approximately 35,000 mariners over the Institute's 27 years of operation.

I am a fourth generation mariner, having started my career aboard fishing vessels and inland passenger ferries and as part of the United States Coast Guard Reserve. I later served on board LNG and dangerous liquid tankers. I also served as part of the management team for LNG tankers.

In addition to my present position as President of Northeast Maritime Institute, I am also the President and CEO for the Commonwealth of Dominica Maritime Registry, a company responsible for the management of the Commonwealth of Dominica Maritime Administration's 400 vessel fleet.

First, let me state up front that I understand that my testimony this morning might be construed as controversial, however, it seems that the greater interest of serving my Country through tes-

timony is an imperative. It is not only a duty, as directed, but it is sincerely an honor to appear before you today to impart my views on the case and effects of the recent economic, environmental and operational crisis caused by the oil spill on the Mississippi River.

In light of my experience and exposure to the inland and western river trades, I am compelled to testify that this segment of the Nation's maritime industry is severely flawed. Everyone sitting here today has a significant stake in the oil spill that occurred on the Mississippi River last July 23rd. But let me be clear: we are all responsible for ensuring that we as a Nation have in place the sound foundational, operational and technological capability to prevent tragedies like this oil spill from ever happening again in the United States.

The captain who left the vessel under the command of a non-licensed mariner, the non-licensed mariner who agreed to take the vessel across the river, the company that operated the tow boat, the charterer that hired the company, the United States Coast Guard, Congress, the President and I appearing before you this morning must enlist your support. We are all accountable for the safety and preservation of life, property and environment in this great Nation's waterways.

The maritime safety program in the United States is in urgent need of restructuring and a more solid focus on its mission and its operations is essential. While the mariners, the shipping company, the charterers, the Coast Guard, can be picked apart at every level, I believe that it will take a courageous stand by this very body to initiate a solid set of standards that this industry and the rest of the Nation's maritime industry comply with. There is no scapegoat here. There is simply a systemic flaw in the governance of the maritime industry, from mariner licensing and work hour rules to appropriate watch standing principles, quality management systems, business management practices and enforcement of regulations all play a role in this failing system.

Our maritime industry is fractured on almost every level. It will take strong leadership by this Subcommittee and this Congress to independently investigate the systemic pitfalls as well as the strengths of the current system, to put in place enhanced performance and to redevelop this industry to be revenue generating. This industry can once again become an industry of excellence.

The economic impact of this very spill alone is predicted to be hundreds of millions of dollars per day. I state that as a property owner that has been affected by an oil spill on Buzzards Bay. The failure to prevent the spills continues to have negative impacts on my community many years later. I would suggest that a comprehensive economic impact statement might indicate that the negative impacts exceed three times the current estimates. I strongly believe that 80 percent of all maritime casualties can be avoided. I am convinced that there are absolutely no excuses for human error when managing the safe operation of a vessel. Unfortunately, our system, without stronger legislative and regulatory sanctions, enables excuses and exercises either special treatment or lackadaisical attitudes toward this very industry. More can and must be done.

Thank you. I am pleased to answer any questions you might have.

Mr. CUMMINGS. Thank you very much.

Mr. Block?

Mr. BLOCK. Mr. Chairman, Members of the House Coast Guard and Maritime Transportation Subcommittee, I appreciate the opportunity to speak here today.

I am the Secretary of the National Mariners Association and speak on behalf of approximately 126,000 lower-level mariners who work on tugs, tow boats, offshore supply vessels and small passenger vessels of less than 1,600 gross tons. Lower-level mariners comprise a clear majority of all American merchant mariners.

There are a number of problems that need to be resolved. We have new licensing regulations that went into effect in a very leisurely manner between May 21st of 2001 and May 21st of 2006. An entirely new apprentice mate/steersman position was added. I worked on the TSAC committee that prepared much of this material. We left it in the hands of the Coast Guard. Unfortunately, the word never really got out on what apprentice mate/steersman was all about and how to transition from one license to another.

The Coast Guard continues to have difficulties in licensing and unfortunately, driving many people away from the industry. Unfortunately, it has taken a $275 million accident to raise public attention here. In the past dozen years, there have been a number of other accidents, Bayou Canot, the Queen Isabella Causeway accident, Webers Falls, the Rhode Island oil spill, San Juan oil spill, Buzzards Bay oil spill. I find myself in agreement with an article that appears in the Waterways Journal, that a new inspection regime might have prevented this spill, might have prevented it.

Where are these new regulations? We have been sitting, waiting for these for four years. Why is a towing vessel so different from a small passenger vessel? There are many, many similarities. Why can't the regulations from one set of vessels apply to another? It seems to me that this entire rulemaking process is taking entirely too long.

The licensing figures that Admiral Watson had mentioned this morning, they were all in the single digits. Unfortunately, I hear about people running vessels without the proper license every day. Where is the Coast Guard? Why can't they hear this? We have reported many such incidents to the Coast Guard. The problem appears to be Coast Guard investigations. But this matter has already been covered in another hearing. There was an excellent report done by the Department of Homeland Security. We contributed approximately 13 volumes of material to that report. The DHS paid very close attention to us. And I am very satisfied with their report.

I think that Coast Guard investigations is a very serious problem in the marine safety system. It is not a new problem. It has been around since 1994. The Coast Guard themselves did a report on it in 1996. There are problems with Coast Guard inspections. There is a very serious problem with the entire marine safety system. We have written a number of reports on this, we have sent approximately 20 of them to Congress. A year ago, I presented a list of these reports. I believe in listening to the opening statements by

Chairman Cummings that you have read these reports, that you understand what is going on here and that some action needs to be taken. I believe the action that you are planning in H.R. 2830 is exactly what is needed. I want to congratulate the Subcommittee and the entire Committee for putting this together. I think you have done the right thing.

Thank you.

Mr. CUMMINGS. Thank you.

What the Committee is going to do is hear from Mr. Tellez, then we will have approximately five minutes to get over to the vote. There is one vote—we are of the opinion there is one vote at this time. Then we will come right back. Mr. Tellez, then we will adjourn and come right back.

Mr. TELLEZ. Thank you, Mr. Chairman.

My name is Augie Tellez, Executive Vice President of the Seafarers International Union, which represents thousands of American merchant mariners employed in all the maritime sectors. Most of my statement has been eloquently stated by you and others on the Committee. Therefore I will just in the interest of time start skipping around.

The one thing I will repeat is that the undeniable fact is that that vessel was operating without a qualified mariner in the wheelhouse and with no licensed master aboard. Unfortunately, it was also not the first time that this company performed this practice. As Ms. Richardson said, it was no secret that this company was a bad company, or better yet, an "irresponsible carrier." So it begs the question how was this company allowed to operate, why did a company as big as ACL charter it, knowing full well that it was an irresponsible carrier. To understand that, you have to understand how this industry evolved. Basically, the industry, no matter what the trade, fell into two categories. One was the regulated industry, which included and has all the protections and enforcement inherent in that name, and the other was the non-regulated sector of the industry, which the tugboat in question, the Mel Oliver, fell under, at least until spring of 2009, anyway.

To their credit, the industry itself, with the associations such as AWO, developed self-policing and third party ordered systems to fill that gap. Those policies may very well work in a perfect world. But in the imperfect and real world, there are companies who will choose the short-term commercial and financial advantage over and above safety of the environment and life. And I might add, to the detriment of responsible carriers who do invest in the effort to provide safe marine transportation on the rivers.

What was the immediate result of the company not abiding by the rules? As stated earlier, their membership was revoked. In other words, Mr. Chairman, they were thrown out of the club but they were allowed to still operate in the neighborhood. The company still operated in the inland marine environment, along with hundreds of others who do not belong to the program. The SIU does believe that the program does have merit and that most members have a sincere interest in providing safe and efficient transportation.

However, a deep regulatory void exists, as you say, a regulatory gap. The U.S. Coast Guard is the Government agency responsible

for promoting marine safety and protecting the environment on the inland waterways. In fact, recently in an article, a representative of AWO recently noted that only the Coast Guard can truly regulate the industry. We agree. Unfortunately, they have been unable to properly do it, for a host of reasons, one of which may be the lack of sufficient resources and funding.

Self-policing works only when everything is going well, especially when there is no shortage of manpower and the economic conditions are favorable. Today, that is not the case. And many companies seek short-term answers, as evidenced by the recent accident and the practices that led to it. Now, because of the shortage of manpower in the industry, inland companies are looking to Congress and the Coast Guard to decrease the requirements for the apprentice mate/steersman to progress to mate/pilot.

At this time, I would be remiss in not mentioning the SIU's school in Piney Point, Maryland. We work with our companies through the school to help ensure the company's vessels are crewed with properly trained and qualified people. The school has developed a total program for professional advancement, resulting in a highly-trained, up to date, competitive work force for the maritime industry. The latest five year Coast Guard marine safety performance plan has placed the towing industry under the heading of "significant residual risks." The report notes that the environment in which the towing vessels operate makes this industry especially high risk.

The SIU advances that the significant residual risk designation makes it abundantly clear that the U.S. Coast Guard must regulate all aspects of the tug and barge industry. Their marine safety program for towing vessels must include onsite towing vessel inspections, setting of safe manning levels, establishing training requirements, standards, et cetera.

In conclusion, the SIU and maritime labor has a history of appearing before Congress affirming their commitment to safety in the maritime environment. On multiple occasions we have testified for and supported the initiation of merchant mariner documents for mariners on the inland waterways, attempting to demonstrate that such documents and their inherent requirements and protections indeed would improve safety in that sector. Now is the time for the Subcommittee to revisit this important issue.

The SIU stands ready to assist the Subcommittee and the Coast Guard in promoting safety and environmental protection in the brownwater sector. As always, in closing, I urge all of you to visit us at Piney Point.

Mr. CUMMINGS. Thank you, Mr. Tellez.

We stand in recess for the next 20 minutes. Thank you.

[Recess.]

Mr. CUMMINGS. The Subcommittee will come to order.

Mr. Allegretti.

Mr. ALLEGRETTI. Thank you, Mr. Chairman, Members of the Subcommittee, for this opportunity to testify here today.

The members of AWO share your disappointment and your frustration at the oil spill that gave rise to this hearing. We know that Congress and the public have zero tolerance for spills and rightly so.

For the hundreds of AWO members who try hard to do the right thing every day, this accident is a painful reminder that we must do better. Zero spills is our goal, as it is yours.

The spill that brings us here today, as has been said, occurred when the towboat Mel Oliver was under the individual control of a steersman who lacked the legal authority to operate the vessel, except under the direct supervision of a licensed master or pilot. Let me be clear: this is a violation of current law, Coast Guard regulation and the AWO Responsible Carrier Program. AWO will neither defend nor seek to explain away such conduct. It is inexcusable and it is not representative of the way our industry operates and the care we take to uphold the public trust.

For the record, DRD Towing, the operator of the Mel Oliver, is no longer a member of AWO. The company's membership was terminated last month for failure to meet its obligations under the Responsible Carrier program.

Mr. Chairman, accidents like the Mel Oliver spill are not the norm in our industry. The culture of mediocrity that you referenced that results in such incidents stands in stark contrast to the culture of safety and stewardship that AWO members have widely embraced. The members of AWO share your determination that accidents like this never happen again.

I would like to highlight three recommendations for actions that Congress, the Coast Guard and the industry can take in support of this essential goal. First, AWO should and will develop a procedure to provide its member companies with immediate, real-time information when a company fails a Responsible Carrier Program audit. The RCP already requires AWO members to abide by vendor safety procedures for ensuring that vendors who provide towing and fleeting services to their vessels comply with high standards of safety.

AWO will develop a means to provide immediate notification to all of our members when a company has failed an RCP audit. This will help our members exercise due diligence with respect to the safety of their vendors.

Second, the Coast Guard should institute a targeted enforcement program that focuses on towing companies with marginal operating practices and poor safety records. As Chairman Oberstar has said many times, safety begins in the corporate board room. But when companies are unwilling to embrace their responsibility, Government must step in. This kind of risk-based enforcement scheme will make smart use of scarce Coast Guard resources to assure that current laws are enforced. Both the industry and the Coast Guard know that pockets of substandard operations still persist. These bad actors can be targeted without disrupting the operations of the vast majority of towing companies that operate safely and with respect for the law.

Third, the Coast Guard should publish a notice of proposed rulemaking by the end of this year to implement Congress' 2004 Towing Vessel Inspection Mandate. The Towing Safety Advisory Committee recommendation that the Coast Guard rule should include a safety management system as a core component would provide an additional and important safeguard for preventing incidents like the Mel Oliver in the future. Non-compliance with the safety man-

agement system is a leading indicator of casualties, and had the TSAC-recommended regulations been in place this year, the Coast Guard would have been notified when DRD Towing failed its third-party audit in May. That would have forced the company to either tighten up its procedures or risk losing its license to operate and its Coast Guard certification of inspection.

So Mr. Chairman, our industry has been uncommonly progressive in partnering with Government to make our waterways safe and clean. Both this Subcommittee and the Coast Guard can count on AWO to be a willing partner in implementing these recommendations and learning whatever other lessons emerge from the hearing record or from the Coast Guard's accident investigation. We share your commitment to fulfilling the public trust and to operating on our Nation's waterways with constant attention to safety, stewardship and full compliance with the law.

Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Allegretti, you heard the testimony, and your second recommendation went to this targeted enforcement, I guess you might call it. When you heard the testimony of the Rear Admiral, does that fit with your recommendation?

Mr. ALLEGRETTI. It absolutely does. It is long overdue and we should get on with it immediately. Our industry does not like sharing the river with bad actors. And as I said, we know that there are still pockets of substandard operation that exist on the river system, on our coasts and in our harbors. The Responsible Carrier Program has moved our industry forward immensely in the last 15 years. But as you said, sir, AWO is not a regulatory body. So we lack the regulatory authority to force people to do the right thing.

A targeted enforcement program is, in our view, the most important and immediate action that we can take to ratchet up attention on those who deserve additional scrutiny from the Coast Guard.

Mr. CUMMINGS. You know, it is interesting, Mr. Dawicki and others, that the Coast Guard, in their testimony, particularly the Rear Admiral, constantly said these are professionals. And I respect that. But you all heard the Ranking Member, Mr. LaTourette, talk about how we need to maybe have some amendments to the law which create a heavier hammer over some folks to say, look, if you are going to do these things, you are going to be subject to some jail time. I just want to get your opinion on that, and then I am going to come back to you, Mr. Munoz, for your opinion.

Mr. Dawicki, did you have an opinion on that?

Mr. DAWICKI. Yes, thank you, Mr. Chairman. I think the reality is you are scratching the surface. You think about these mariners today, they are poorly-paid. I think if you scratch the surface and you scratch a little bit deeper, you may or may not find out there was actually a captain assigned to that vessel or maybe not. Maybe they were sailing short-handed. I don't know, I don't want to suggest I know.

Mr. CUMMINGS. I understand. But would you agree that we have to start somewhere?

Mr. DAWICKI. You have to start somewhere. But it really requires a comprehensive review. This industry should be no lesser regulated than the deep draft industry. The fact, in my short experience

with this industry, I scratch my head and think about the liabilities that these companies put themselves under in the way they operate their vessels. I just can't believe it.

Again, I came from the LNG industry, where the best of the best operated and we put money into the company, the ships and personnel. I can honestly say I have not seen that in this segment of the industry. So I think a comprehensive review of all of the laws must be undertaken in order to ensure that if you are regulating a deep draft vessel which travels from A to B, with very limited activity, and you are regulating the hell out of it, excuse my terms, and then you take a vessel that is operating in a coastal piloting arena or a river boat arena, where you have all kinds of activity going on, you are going to find that the standards are heavily outweighed. It is surreal to me. I think if you really look at it deeply, you will find that the international standards, as minimum standards, are a good place to start.

Mr. CUMMINGS. Mr. Tellez, do you have an opinion on that?

Mr. TELLEZ. Yes, sir, Mr. Chairman. The only thing I would add is, when Mr. LaTourette's hammer comes down, let's make sure it comes down on the right head. In the real world, we don't fully expect an apprentice mate to buck the orders from high above unless he wants to terminate his career at that moment. Are we going to penalize someone for not making the left turn when in fact he was never trained or taught to make that left turn? We have to go beyond that person on the boat to the root cause of who allowed that person up there on their own and why they were allowed up there. So once again, when that hammer comes down, let's make sure it comes down on the right head.

Mr. CUMMINGS. Mr. Block, do you have an opinion?

Mr. BLOCK. I am going to agree with Mr. Tellez.

Mr. CUMMINGS. Let me ask you, Mr. Munoz, and then I want to get to my colleagues, since we have to be out of here, as a matter of fact, I am going to go to Mr. LaTourette right now. Because we have to be out of here by a quarter of.

Mr. LATOURETTE. Thank you, Mr. Chairman. I will be quick, I hope.

Mr. Tellez, I agree with you and I think I said that, that I would propose to change title 46 to hold responsible the person that knowingly operates a vessel that he is not qualified to operate, or the person that commanded him to do it or the person that is responsible for him being in that position. I do not think it is unreasonable, when you are driving a boat, to have a lower standard than we would punish you for for driving a car, particularly when you are driving around with a bunch of oil.

Mr. Dawicki, if I could just ask you a couple of questions. There was an article last year in 2007 about some resistance that you were having by some folks, discouraging fishermen and others from attending your safety workshops. Are you familiar with that discussion last year? Has that situation resolved itself?

Mr. DAWICKI. Actually, I believe fishing vessel safety, like this industry, run a parallel line. It is two unregulated industries that really need enhancing. Again, we are looking at saving the lives of mariners and ensuring that they can do the same things that you and I can do, Mr. LaTourette, put food on the table and educate

our children and make sure that they have the same opportunities that you and I have.

Mr. LATOURETTE. Can you briefly tell the Committee how many companies from the inland industry you have worked for, the number of employees that you have trained for those companies?

Mr. DAWICKI. We have been exposed to three or four companies since 1995, when I started at NMI. I don't know what the statistics are prior to that. I would have to ask my staff. In terms of training inland mariners, I would say maybe anywhere to 1,500 to 2,000 since 1995.

Mr. LATOURETTE. Thank you.

Mr. Munoz, your company continues to move petroleum products in the inland waterways. Could you briefly tell the Subcommittee just a couple of lessons learned from what happened in July, if there are any?

Mr. MUNOZ. Yes, Congressman, we do continue to move liquid products on the inland waterways. Certainly some of the lessons learned in this exact incident are really hard-pressed for us to be able to really dig deep down right now to figure those out. Obviously we still have an ongoing Coast Guard investigation as well as an ongoing NTSB investigation. We do know some preliminary facts, and the preliminary facts that the Coast Guard has released is that the towing vessel that was operated by DRD Towing was being operated by a master that was not properly licensed. Also, that we had a situation where the captain of that vessel had abandoned the command of that vessel. So we have existing laws in place for those requirements today.

And in getting to your question on increased enforcement, as I stated in my testimony, we certainly recommend that Coast Guard have targeted enforcement, based upon risk scenarios of companies. But yes, we do continue to operate today. And we are certainly prepared to take a good look at this investigation and make sure that we are able to spread some lessons learned from this incident.

Mr. LATOURETTE. Thank you. Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Baird.

Mr. BAIRD. I thank the Chairman, and I thank our witnesses.

I have the privilege of representing the Columbia River on the Washington State side, plus the Pacific Coast and the Puget Sound area. So we have a lot of experience with tug companies.

I have been impressed since I came to Congress nine years ago that this is an industry that actually asks to be regulated. I think many of us in Congress are pretty familiar with sitting up here while people say, don't regulate us, don't do anything, we will take care of it. Here is an industry that for years now has been saying, we need tighter oversight, we need best practices, basically, with a goal of zero accidents. That is really what it ought to be. It is frankly refreshing.

What puzzles me is, if we got word that al Qaeda was going to hatch a plot to drag a barge in front of a boat, we would move heaven and earth to stop it. Here we have proposals for best practices that would, I think, and my question is going to be, if the proposals you have put forward had been implemented and enforced and things monitored the way you are recommending, would we

have avoided this accident and what would we avoid in the future? Mr. Allegretti?

Mr. ALLEGRETTI. At the risk of suggesting that I have 20-20 hindsight, which I don't, I think it is reasonable to say that if the Coast Guard regulations had been in place, there would have been a process whereby, when that auditor went to DRD Towing and then concluded the audit, and said, I am not able to certify you as being in compliance, in this case it was with our Responsible Carrier Program, in the future, it would be in compliance with the Coast Guard regulatory standards, he would have been obligated to immediately call the Coast Guard and inform them of that.

I assume, again without being able to know exactly how the future system would work, that the Coast Guard would then immediately speak to the company to determine what the deficiency was and whether that deficiency was easily corrected, or whether it presented a risk in terms of a serious accident or injury or fatality and would take the appropriate action. That is what is missing now, Mr. Baird. The weight and effect of the Coast Guard's regulatory standard and enforcement is missing. Until we have that, it is going to be too easy for some people to look the other way in terms of the industry's best practices, because there is no consequence to ignoring them.

Mr. BAIRD. And there is a need, I understand also, for promptness. In other words, an audit that says, this company is deficient, they have practices that are questionable, if there is no prompt action on that, there may be every incentive for a company that is already skirting things to say, well, let's just wait until they catch us. And right now if they catch us, A, they are probably not going to and B, if they do, that is not a big deal if that do. If we told everybody the speed limit is 95 miles an hour and by the way, there are no cops on the road, and if they catch you they won't give you a ticket, it would be a spooky place to drive.

And that is to some extent, and my colleague Mr. LaTourette and the Chairman pointed that out, to some extent we have a very dangerous situation not being regulated the way it should be. I want to commend those of you who have been advocating for this, and Mr. Chairman, I think it is incumbent upon us and upon the Coast Guard to move this forward. We would move quickly if there were intentional threats to maritime safety from outside entities. Now we have internal threats and we are not moving as swiftly as we should.

So I want to thank all of you for you initiative to try to move this forward. If there are any other comments you would like to make, I would welcome those. Mr. Tellez?

Mr. TELLEZ. Yes, sir. The other danger here is, on any given day, the Coast Guard could tell you who is on any vessel that is in our waters, the regulated vessels. They can attest and confirm their skill sets because of documentation and certification. They would be hard pressed to do that for the rivers. I don't imagine there is anybody out there who can tell us who is on every vessel, what their skills sets are, what their qualifications are, on any given day.

Mr. BAIRD. Even minimum?

Mr. TELLEZ. Even minimum, sir.

Mr. BAIRD. If I am driving down the road, I know there will be some illegal people who didn't get their driver's license. But I am assuming most drivers have met certain verbal and practical tests through the driver's license bureau.

Mr. TELLEZ. For the most part, in your world, Puget Sound and the Columbia River, those are regulated vessels up there. So there is some oversight and there is a whole host of information readily available at a touch of a button. That is not the case on the rivers. Again, I tell you, there is no one who can tell you who is on every vessel that is plying the rivers right now, today.

Mr. BAIRD. I thank you for that insight.

Any others? Mr. Block?

Mr. BLOCK. I think one of the problems is that we don't know who any of the deck hands are, we don't know any of the background. They don't have any Z cards. Not only deck hands, we are talking about the people who take the place of engineers, deckineers or others that may be untrained. What about cooks? These people are completely under the Coast Guard radar. I don't know how many there are, or who they are, or where they came from. I know that many companies draw very heavily upon prison systems. I don't want to take it out on people who are being rehabilitated.

But at the same time, what about the TWIC card? Is that going to apply to deck hands on inland vessels? How about vessels under 100 gross tons as well? And people are sneaking huge vessels under the tonnage requirements.

Mr. BAIRD. We may think deck hand, it may sound like not necessarily skilled, but if you hook up a tow in the wrong way, which is I assume what deck hands do, you now have a tow floating loose down the river.

Mr. BLOCK. And who has trained them? That is another problem. And is there any training that some of these companies require? Some do not require any training. There are NAVICs that the Coast Guard has put out. But our association is very critical of two of these NAVICs. One of them, I can't think of the numbers right now, but it has to do with training deck hands. Another one has to do with engineering personnel. The engine rooms are becoming much more complicated nowadays. And the Coast Guard requires nothing in the way of training.

Thank you.

Mr. BAIRD. Thank you. Thank you, Mr. Chairman.

Mr. CUMMINGS. Just one question, Mr. Munoz. Why do you all have this complicated arrangement where you lease out the barge for a dollar and then you pay them to do the work? Why is that? Why do you do that? Is that an unusual arrangement?

Mr. MUNOZ. Chairman Cummings, it is not an unusual arrangement in the industry. If I may, before I answer your question, if I could just correct the record. I heard several times from the panel today that we are an unregulated industry. We in fact are not an unregulated industry. We are bound by the rules and regulations in 33 and 46 C.F.R. I just wanted to correct the record for that.

As far as your question, Mr. Chairman, the situation where a vessel that may be owned by an operator and is bareboat chartered out to a third-party operator for a dollar a day, whether that vessel

is chartered out for a dollar a day or $100,000 a day, that cost would just come back to us when we recharter the vessel on a term charter contract. So it is an accounting measure.

The reason that is done primarily is because companies such as our company, we are based in Jeffersonville, Indiana, our main business focus is line haul towing, meaning we move commodities long distances throughout the river systems in the United States. When our barges and those products get to the origins or destination points where they either load or unload, there is a whole host of local companies whose business it is to shift those barges to or from terminals or do shorter shifting. Those local companies have the local knowledge of the river system. They can tap into the local markets from a labor perspective. So in a lot of ways, they are better suited to be able to staff those vessels and tap into that market, and with the knowledge of the local rivers.

Mr. CUMMINGS. Did you know of the history of DRD, its history in violating the law? Did you have knowledge of that? And would that have had a bearing on your decision to enter into the kind of arrangements that you just talked about?

Mr. MUNOZ. Chairman Cummings, as far as the history that has been detailed today and the incidents that have come out as part of this investigation and in subsequent articles, we did not know of a history of DRD manning vessels without approved mariners or illegally licensed mariners, I should say.

Mr. CUMMINGS. So do you go about a vetting process? It seems like the equipment that you are leasing is very valuable and the liability seems to be quite, the potential is great. Do you do a vetting process at all?

Mr. MUNOZ. Yes, sir, Mr. Chairman, we do. Let me just say that there is absolutely no incentive for a company like ours to charter or do business with a third-party operator if they are not a prudent operator. That does not make any economic sense whatsoever for us. We have to make sure that we entrust our equipment and our customers' cargo to prudent operators. Yes, we do have a vetting program for all of our third-party vendors. In fact, DRD was part of that vetting process and we had in fact vetted DRD.

Mr. CUMMINGS. We have to be out of this room, but Mr. Taylor just came in and I can tell you have a question or two. We have to be out of here, unfortunately.

Mr. TAYLOR. I would just like to open this up to the panel. My gut tells me that we have an enforcement problem that had there been a high presence, had there been the certainty of the offending party that they were going to get stopped, I don't think they would have sent an unlicensed operator out there. I have been here for 19 years now, and what I have often seen is Congress overreact to a situation. So I want to open it up very quickly to the panel, if you could in one minute or less tell me what you think Congress ought to do to try and prevent this from happening, I would appreciate your thoughts.

I will start with Mr. Allegretti.

Mr. ALLEGRETTI. I can be brief, Mr. Taylor. I thought Mr. Cummings captured it very well. We need two things. We need stricter rules, and once the Coast Guard publishes the notice of proposed rulemaking, we will be on our way to stricter rules. And

we need stricter enforcement. Admiral Watson committed this morning to a targeted enforcement program, which we think is exactly the way to go.

Mr. TAYLOR. Mr. Tellez?

Mr. TELLEZ. Along with strict enforcement, I don't know if that does it all. Because strict enforcement of a broken system, the system is still broken. I think what needs to happen out there is again, I go back to confirmation of skill sets, identification of the people who are actually out there doing the work. As Mr. Baird said, it is a little crazy to hear us ask for more regulation or more oversight. But I think that is what is needed. More documentation, more accountability. And the programs that Mr. Allegretti is involved in will work.

Mr. BLOCK. I believe that the Subcommittee has looked at the problems very diligently. In listening to Chairman Cummings' introductory remarks, you know a great deal about what is going on. We have been happy to furnish information to you. We believe the information has been used well. Keep up the good work. The more you know about us, the better you will be able to regulate the industry. And thank you for all of your efforts.

Mr. DAWICKI. Thank you, Mr. Taylor.

I think, again, enforcement is, that is the easy part. It is having the right regulatory infrastructure in place, having the right system in place, and actually looking at the industry as a vital industry to the sound economic principles of how we need to operate the United States. I think this is an industry that does require regulation and enhancement of regulation. Thanks.

Mr. MUNOZ. Congressman Taylor, let me first say that we support a program of targeted enforcement by the Coast Guard. We also, and that targeted enforcement should be based on casualty review. We also look forward to the conclusion of the findings as part of this investigation of this incident and look forward to working with this Committee and the Coast Guard for lessons learned.

Mr. TAYLOR. Mr. Munoz, in the minute and a half I have left, I take it you represent American Commercial Barge Line?

Mr. MUNOZ. Yes.

Mr. TAYLOR. I appreciate the importance of local knowledge when you are dropping off your barges. I caught that point. But it does seem like a fairly convoluted process, when you take a multimillion dollar towboat, renting it to someone for a buck and then hiring your own boat back. So in the 20 minutes we have left, would you explain for my benefit why you do this? Again, I caught the local knowledge part.

Mr. MUNOZ. Yes, Congressman Taylor. It is not a decision that is made based solely on economics. It is a decision that is made based on the fact that we have that asset, we have invested the capital in that asset. Quite frankly, it may not be our core business in some areas to shift barges in origins or destination points that our vessels may not go to.

I understand you caught the fact about the local knowledge. That is an important piece of the bareboat charter arrangement. Being able to contract with companies that operate in those areas, do this for a living and give us that wider knowledge of that local area, absolutely.

Mr. TAYLOR. Why would you use your boats to do that? Why couldn't you just contract with a true third party to do that?

Mr. MUNOZ. Because in a lot of situations, we have the boats necessary. There is not an abundant supply of motor vessels out on the river system right now that are not being used. We have those assets. We may have assets that we have either in a laid-up fashion that we can have quick access to, that are at the fit and ready for staffing of crews.

Mr. TAYLOR. Just for clarification, the insurer of that bareboat, that is the responsibility of the person that you lease it to as far as the insurance, as far as the Oil Pollution Act of 1990 and the Harbor Workers Insurance, maritime insurance necessary for the crew?

Mr. MUNOZ. Mr. Congressman, let me try to clear things up a little bit.

Mr. CUMMINGS. You are going to have to clear it up very quickly.

Mr. MUNOZ. Under the terms of the bareboat charter, that operator steps in the shoes of the owner of the vessel, crews the vessel and insures the vessel. However, for the certificate of financial responsibility in this incident on the barge, absolutely no liability was shifted for the oil spill response certificate of financial responsibility. We stepped up, we are continuing to clean the process.

Mr. TAYLOR. How about for the tug? Because I am told it was carrying 23,000 gallons of fuel, which in itself could be a pretty good spill.

Mr. MUNOZ. Maximum capacity fuel in that vessel was 23,600 gallons. It is the responsibility of the operator, unless negotiated differently, to insure that vessel for pollution.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you all very much. We really appreciate everything that you all have had to say.

There will be some follow-up questions, particularly to you, Mr. Munoz. I did not get a chance to ask one tenth of the questions that I wanted to ask, but I will get them to you.

Thank you very much. This meeting is adjourned.

[Whereupon, at 1:58 p.m., the Subcommittee was adjourned.]

"Oil Spill in New Orleans in July 2008 and Safety on the Inland River System"

September 16, 2008 –10:00 a.m.
Room 2167, Rayburn House Office Building

Statement of Chairman Elijah E. Cummings

The Subcommittee will come to order [GAVEL].

Before we begin, we commend the Coast Guard for the work they are undertaking even now to aid those who have been so terribly affected by Hurricane Ike.

It is in these times of national emergency that we see the dedication that the Coast Guard brings to its work aiding those in peril – and we thank them for their heroic efforts.

The Subcommittee convenes today to examine the circumstances surrounding the spill of nearly 300,000 gallons of number six fuel oil into the Mississippi River near New Orleans on July 23.

We will also take a broader look at the significant safety issues in the towing industry highlighted by the accident that caused the spill.

The July 23rd spill occurred when a towing vessel pushed a tank barge into the path of an on-coming tanker. The towing vessel involved in the casualty, the *Mel Oliver*, was not being

operated at the time of the collision by a properly licensed master.

Instead, it was being operated by a person holding only an apprentice mate's license who was not authorized to operate a towing vessel without the presence of a licensed master in the wheel house.

DRD towing, the firm operating the *Mel Oliver,* has a history of operating vessels without properly licensed personnel. Less than two weeks before the accident involving the *Mel*

Oliver, DRD was apparently illegally operating the towing vessel *Ruby E* with a person holding only the apprentice mate's license when the vessel sank.

DRD Towing has also been cited by the Coast Guard for operating towing vessels without properly licensed personnel on several previous occasions.

DRD was a member of the American Waterways Operators – the industry trade association for the tug and barge industry – at the time of the

collision between the barge being pushed by the *Mel Oliver* and the tank vessel and at the time of the sinking of the *Ruby E.*

However, in May, the firm failed the safety audit that AWO requires as a condition of membership in its association. The audit is the cornerstone of the program AWO terms the "Responsible Carrier Program," which it argues is designed to ensure safety in the towing industry.

Only after the accident between the *Mel Oliver* and the tank vessel did the Coast Guard systematically check other DRD-operated towing vessels in the New Orleans area to ensure that they were operated by fully licensed personnel.

However, the fact that this firm could sink one towing vessel and then, less than two weeks later, cause a major collision with another towing vessel when neither was being operated with properly licensed personnel – and that too after having been cited on previous occasions for

such violations – suggests to me that either this firm was truly negligent or that its managers felt that there was little risk of being caught while operating without properly licensed personnel.

One of the deckhands on the *Mel Oliver* tested positive for the use of illegal drugs. This is likely an incidental finding. However, to be frank, there are widespread claims among those who work in the towing industry that the operation of towing vessels without properly licensed personnel is common – and that drug use is prevalent in the industry.

There are similar claims that violations of the rule that forbids licensed personnel from working more than 12 hours in a 24-hour period are also common – and simple mathematics would suggest that it would be very difficult for licensed individuals to comply with this limitation when there are only two such personnel on a towing vessel.

At the time of the accident on July 23rd, the towing vessel *Mel Oliver* was chartered by its owner, American Commercial Lines, to DRD under a bareboat charter and then hired back by

ACL under a fully found charter. This arrangement does not appear to have been designed to generate revenues for ACL.

Rather, it appears to have been designed to enable ACL to operate its vessel at the cheapest possible costs – by shifting maintenance responsibilities and, more importantly, the hiring of crew members onto DRD, a firm that was obviously ill-prepared to meet these responsibilities but with which ACL had nonetheless done business for a decade.

According to statistics provided by the Coast Guard, between 2000 and 2008, ACL, which is currently the second largest firm in the towing industry, has had eight deaths or missing persons on vessels for which it was the managing owner – more than on vessels under any other managing owner in the towing industry save for fatalities arising from a single accident involving another firm in 2001.

We have before us today a very troubling portrait of an industry that is essential to commerce in our nation. However, unlike in

many instances in which problems are prevalent within a given industry, the Coast Guard appears to have all of the authority it needs to deal with many of these issues.

The Coast Guard has had the authority since 2004 to set hours-of-service limits on towing vessels but has not chosen to exercise this authority despite widespread agreement that human factors – and particularly fatigue – are among the most prevalent of all causes of casualties on towing vessels.

Similarly, Congress passed a law in 2004 finally bringing towing vessels under inspection requirements – requirements from which vessels currently in operation had been exempt for decades simply because they were powered by diesel engines rather than steam engines. As part of the inspection process, the Coast Guard will be required to set manning levels.

However, now, four years later, the Coast Guard has not even published a notice of proposed rulemaking to initiate the effort to complete the rules needed to create the inspection process.

This rulemaking remains one of more than 100 pending with the service.

Today, we will examine these issues in more detail and identify the steps that need to be taken to ensure that the towing industry is as safe as it can possibly be.

We look forward to hearing from representatives of the Coast Guard and NOAA, as well as American Commercial Lines, the American Waterways Operators, the Northeast Maritime

Institute, the Seafarers International Union, and the National Mariners Association.

I note that we invited DRD to attend this hearing. DRD's owner, Daniel Dantin, responded to the Subcommittee's request for him to appear through counsel, stating the following:

> Although the Department of Justice has given Mr. Dantin no indication that he is a target or subject of any investigation, given the ongoing United States Coast Guard

> formal hearing and the United States Justice Department's involvement in this matter, Mr. Dantin would, if subpoenaed to the congressional hearing, refuse to testify and invoke his 5th Amendment privilege against self-incrimination.

I ask that DRD's full letter to the Subcommittee be included in the hearing record and without objection, it is so ordered.

With that, I recognize the Ranking Member, Mr. LaTourette.

Statement of

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

September 16, 2008

Good morning, Mr. Chairman. I am Tom Allegretti, President and CEO of The American Waterways Operators (AWO). On behalf of AWO's 350 member companies, thank you for the opportunity to testify at this important hearing.

We are here today because the members of AWO share your deep disappointment and, indeed, anger at the situation that gave rise to this hearing – the oil spill that fouled more than a hundred miles of the Lower Mississippi River in July, soiling the marine environment and disrupting maritime commerce. We know that Congress and the public have zero tolerance for oil spills, and rightly so. For the hundreds of AWO members who try hard to do the right thing, day in and day out, this accident is a sobering reminder that while we are proud of our industry's safety record and the dramatic declines in accidents and spills that we have achieved over the past decade, we are not yet where we need to be. We can, and must, do better. Zero spills is our goal, as it is yours.

We understand from Coast Guard and media reports that when this spill occurred, the towboat *Mel Oliver*, operated by DRD Towing, was under the control of an individual who lacked the legal authority to operate the vessel except under the direct supervision of a licensed Master or Mate/Pilot. The master had apparently left the vessel, leaving an Apprentice Mate/Steersman in charge. Let us be clear: this is a violation of current law, Coast Guard regulation, and the AWO Responsible Carrier Program.[1] AWO will neither defend nor seek to explain away such conduct on the part of any company in our industry. It is simply unacceptable and it is inexcusable.

We are here today because we share the Subcommittee's determination that accidents like this one never happen again. We offer below four recommendations for actions that Congress, the Coast Guard, and our industry can take in support of this essential goal. First, however, we want to place this accident in context by providing some important information on our industry's safety record and the initiatives we have undertaken over the past 15 years to live out our commitment to marine safety and environmental stewardship. We know that context can be cold comfort when oil is in the water and people and the environment are suffering from the effects of a major spill. But, the truth is that this spill is not representative of the way our industry operates and the care we take to uphold the public trust.

The Tugboat, Towboat and Barge Industry in Context

The tugboat, towboat, and barge industry is the largest segment of the U.S.-flag domestic fleet, operating nearly 4,000 tugboats and towboats and over 27,000 dry and liquid cargo barges on the inland rivers, on the Atlantic, Pacific and Gulf coasts, on the Great Lakes, and in ports and harbors around the country. Barges and towboats are a vital part of America's transportation system. The industry safely and efficiently moves over 800

[1] DRD Towing, which failed an AWO Responsible Carrier Program recertification audit in May, failed to complete the process of requesting probationary status from AWO and had its membership terminated on August 5.

million tons of cargo each year in the domestic commerce of the United States. These cargoes are vital building block commodities on which American farmers, factories and consumers depend. Our industry employs more than 30,000 American mariners as crewmembers on our vessels, providing good family-wage jobs with great potential for career advancement.

The tugboat, towboat, and barge industry is safe, environmentally responsible, cost-efficient, and uncommonly progressive in partnering with government to make our nation's waterways as safe and as clean as possible. Last year, a study conducted by the Texas Transportation Institute for the U.S. Department of Transportation found that inland waterways transportation is the safest, most environmentally-friendly and most economical form of freight transportation. In a modal comparison, the study found that waterways transportation has the lowest personnel injury and fatality record, the lowest hazardous material spill record, and generates the least amount of emissions compared to rail or truck transportation. Last year, our industry achieved record lows for crew fatalities and tank barge oil spills. Between 1994 and 2007, tank barge spills declined by 99.5%, and tank barges account for a smaller percentage of marine spill volume than tank ships, cargo ships, and marine transportation facilities. Today, the U.S. tank barge fleet is 85% double-hulled, well ahead of the 2015 deadline set by the Oil Pollution Act of 1990.

The Industry's Safety Journey

These impressive results are not a coincidence. They are the result of more than 15 years of concerted industry effort – in cooperation with Congress and the Coast Guard – to put into practice our commitment to safe operation and zero spills. Fourteen years ago, AWO became the first transportation trade association to establish a code of safe practice and environmental stewardship for member companies. Since 2000, the AWO Responsible Carrier Program (RCP) has been a condition of membership in AWO, and members must pass an independent safety audit every three years or forfeit their membership in the association. The program has evolved over time. We have incorporated new requirements – some based on the lessons of past casualties – and established more stringent training and qualification standards for RCP auditors. We are serious about the integrity of the RCP, and we have put our money where our mouth is, terminating the memberships of more than two dozen companies over the last eight years for failure to comply with the terms of the program. DRD Towing is the most recent example.

AWO was also the first maritime trade association to establish a public-private sector partnership with the Coast Guard. The Coast Guard-AWO Safety Partnership, established in 1995, is a serious, working partnership aimed at getting ahead of safety or environmental challenges and taking proactive steps to address them. Over the last 13 years, the Partnership has launched more than 30 Quality Action Teams on subjects ranging from preventing crewmember falls overboard, to safe operational procedures in the event of high or low water, to practices for the safe management of crew travel time. Through the Partnership, AWO member leaders meet regularly with the Coast Guard to

track trends in industry safety performance and develop interventions to keep those trends moving in the right direction.

We have also worked closely with Congress and the Coast Guard to make sure that all companies – not just those who choose to belong to AWO – live by the same high standards. Five years ago, the leadership of the tugboat, towboat, and barge industry took the unprecedented step of asking the Commandant of the Coast Guard to request statutory authority from Congress to establish a new inspection regime for towing vessels. Over the past four years, we have worked closely with the Coast Guard – with oversight and leadership from this Subcommittee – to implement the Congressional mandate incorporated in the Coast Guard and Maritime Transportation Act of 2004. We took this step because we believed it was necessary to take our industry to the next level of safety. We are proud of the safety accomplishments we have achieved through the Responsible Carrier Program, but we recognized a legitimate and essential role for government in helping us build on our successes and ensure that they extend throughout the entire industry. Safety begins in the corporate boardroom, and the RCP is based on that fundamental premise. When companies are unwilling to embrace their responsibility, government must step in.

With strong industry support, the Congressionally-authorized Towing Safety Advisory Committee (TSAC), a federal advisory group that includes representatives from the barge and towing industry, maritime labor, cargo shippers, ports and terminals, and the general public, has recommended an innovative and effective regulatory approach to towing vessel inspection that would, among other things, require all towing companies to implement a safety management system like the Responsible Carrier Program or the International Safety Management (ISM) Code. The goal of this approach is to meet all of the statutory requirements established by Congress for inspected vessels while focusing the program on what statistics consistently demonstrate to be the biggest cause of towing vessel casualties: human error, whether in the actions of personnel onboard a vessel or management decisions made on shore. This approach is consistent with the National Transportation Safety Board's 2000 recommendation that the Coast Guard require all towing companies to implement a safety management system.

Under the TSAC-recommended approach to towing vessel inspection, failing a safety audit would trigger immediate notification of the Coast Guard, which would force the company to correct the problem or get its vessels off the water. A company's vessels could lose their license to operate – their Certificates of Inspection – in the case of serious safety management system violations. To put teeth in the program without creating unnecessary burdens for the vast majority of companies who work hard to do the right thing, TSAC has recommended a risk-based enforcement regime in which companies with questionable safety records or poor performance on safety audits would be subject to the lion's share of Coast Guard enforcement resources.

Recommendations

In short, accidents like the *Mel Oliver* spill are not the norm in our industry. The culture of mediocrity that gives rise to such incidents stands in stark contrast to the culture of safety and stewardship that AWO members have embraced and continually worked to strengthen over the past 15 years. Both this Subcommittee and the Coast Guard can count on AWO to be a willing partner in working to ensure that such incidents never happen again. To that end, we offer four recommendations for action:

1. First, the Coast Guard should publish a notice of proposed rulemaking (NPRM) by the end of the year to implement Congress's 2004 towing vessel inspection mandate, based on the recommendations of the Towing Safety Advisory Committee. While operation of the *Mel Oliver* without a properly licensed master on board was a clear violation of existing law and Coast Guard regulation, TSAC's emphasis on a safety management system as a core component of the forthcoming inspection regulations would provide an important additional tool for preventing such incidents in the future. Non-compliance with a safety management system is a leading indicator of casualties. Had the TSAC-recommended inspection regulations been in place this year, the Coast Guard would have been notified when the company operating the *Mel Oliver* failed a third-party safety management system audit in May, which could have forced the company to tighten up its procedures for ensuring that only properly licensed personnel crew its vessels. The inspection rulemaking is a complex regulatory package, but the Coast Guard has received extensive technical input from TSAC and has already done most of the hard work; the agency should publish the NPRM as soon as possible, but certainly not later than the end of this year.

2. Second, the Coast Guard should institute a targeted enforcement program that focuses on towing companies known to have marginal operating practices and safety records. This kind of risk-based enforcement scheme is another core component of the TSAC recommendations for the towing vessel inspection regime, but the Coast Guard need not wait until the new rules are published to exercise its existing authority to enforce current law and regulation. This should be done without disrupting the operations of the vast majority of towing companies and vessels that operate safely and within the bounds of current law. While the culture of mediocrity is not the norm in our industry, both industry and the Coast Guard know that pockets of substandard operation still persist – and where to find them. The Coast Guard should identify those operators whose performance evidences insufficient regard for the law and target its enforcement resources on those companies.

3. Third, AWO should – and will – develop a procedure to provide its member companies with real-time information when a company fails a Responsible Carrier Program audit. The Responsible Carrier Program requires participating companies to abide by "vendor safety" procedures for ensuring that companies that provide towing and fleeting services to their vessels comply with

appropriately high standards of safety. AWO will develop a means to provide immediate notification to all of our members when a company has failed an RCP audit in order to facilitate their exercise of due diligence with respect to the safety of their vendors.

4. Fourth, the Coast Guard should work with the Towing Safety Advisory Committee to review Navigation and Vessel Inspection Circular (NVIC) 4-01, which provides guidance on implementing the towing vessel officer licensing regulations, and make any needed clarifications and improvements. While the *Mel Oliver* spill did not result from a lack of understanding of current Coast Guard guidance, we believe this unfortunate incident can serve as a "teachable moment" and an opportunity to add clarity to areas of the regulations that may not be consistently understood throughout the industry. The Coast Guard should also work with industry – through TSAC, the Coast Guard-AWO Safety Partnership, and other appropriate vehicles – to educate towing companies and mariners on compliance issues such as what it means to "directly supervise" an individual holding an Apprentice Mate/Steersman license.

Conclusion

Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee, thank you for the opportunity to testify today. Allow me to conclude by reiterating AWO's deep commitment to working with you and with the Coast Guard to ensure that the culture of safety and stewardship is embraced throughout the tugboat, towboat, and barge industry. We are committed to learning the lessons of the *Mel Oliver* spill and to ensuring that some good comes forth from this terrible incident. You can be assured that we will work with you to implement the recommendations we have offered here and to learn whatever other lessons may emerge when the Subcommittee's hearing record is complete and the Coast Guard's casualty investigation is concluded. Please know that you have in AWO a partner in good faith who shares your commitment to upholding the public trust and to operating on our nation's waterways with constant attention to safety, stewardship, and full compliance with the law.

Thank you.

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

Washington, DC 20515

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

November 5, 2008

Mr. Thomas A. Allegretti
President and CEO
American Waterways Operators
801 North Quincy Street, Suite 200
Arlington, VA 22203

Dear Mr. Allegretti:

I would like to request that you submit for the record of the Subcommittee on Coast Guard and Maritime Transportation's recent hearing entitled "Oil Spill in New Orleans in July 2008 and Safety on the Inland River System" an answer to the following question:

> Can you explain why some towing companies rely on subcontractors to tow or fleet their barges? Are there safety loopholes created by these business practices and, if so, how should those loopholes be closed?

Thank you for your attention to this matter.

Sincerely,

Elijah E. Cummings
Chair
Subcommittee on Coast Guard and Maritime Transportation

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November 21, 2008

The Hon. Elijah Cummings
Chairman
Coast Guard and Maritime Transportation Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Cummings:

The American Waterways Operators (AWO) appreciates the opportunity to address the following two questions from the Subcommittee to help clarify the record from the September 16 hearing entitled "Oil Spill in New Orleans in July 2008 and Safety on the Inland River System." As we have said in the past, AWO shares your determination to ensure that accidents like this one never happen again and your commitment to promoting the highest standards of safety throughout the tugboat, towboat, and barge industry.

Can you explain why some towing companies rely on subcontractors to tow or fleet their barges? The use of subcontractors is prevalent throughout American heavy industry for a host of reasons, many of which are shared by the towing industry. Our reasons for subcontracting are no different than those of any other industry, including maximizing market efficiencies, utilizing geographic expertise, and recognizing the operational realities of our specific industry sectors.

With respect to towing vessels, the use of charter boats and subcontractors helps provide value to our customers and shareholders. Demand for towing vessels is not constant and the use of charter boats and subcontractors allows companies to respond efficiently to long-term and short-term trends in the marketplace. The towing industry is demand driven and traditionally very cyclical. If a company's boat fleet is sized for the upper end of the cycle, a company will have idle equipment and laid-off personnel except during peak periods. This is neither efficient management nor sound operating procedure. If a company sizes its fleet to minimum requirements, it can avoid idle equipment and workforce disruptions, but it lacks the capacity to meet the requirements of high demand periods, such as the industry has seen over the last several years. Chartered equipment and subcontractors solve this problem, allowing a company to grow and shrink its fleet as needed to meet requirements over the business cycle.

The towing industry has faced a tight personnel market over the past few years. While larger companies offer handsome salary and benefit packages, some top quality mariners prefer to work for smaller companies headquartered closer to their homes. Some of these companies offer different work schedules or other perquisites that build a loyal and stable workforce of well qualified mariners. Hence, charter boat operators and subcontractors offer services and a means of accessing a work force that would not otherwise be maintained at a larger company.

Additionally, in some cases, companies purchase vessels under the management of a third party operator. In some instances, it can be mutually advantageous to allow the selling entity to remain the operator and act as a third party contractor. This arrangement allows for the seamless transition in operation of the boats and employment of the same crews, many of whom wish to maintain the long-term employment relationships with the established operator.

It is also common practice to use charter boats and subcontractors to move barges within local geographic areas. For example, if a towboat arrives in a port with six barges and three of them needed to go to one dock and three to a different dock, the barge company will often hire a local harbor boat to help shift three barges to their proper dock and stand by them as needed while the barge company's vessel stays with the other three barges. Charter boats and subcontractors can safely shift equipment in local waters using crews that know every local hazard, dock and bend in the river. Similarly, there are companies that specialize in providing assist boats at certain locks where these boats enhance safe transits by knowing the unique characteristics of the currents and other hazards common to a specific area. These boats will be hired to assist tows and enhance the safety of transits at a lock.

With respect to barge fleeting, companies frequently use fleets operated by third parties. A barge fleet is akin to a parking lot or a truck stop used in the trucking industry or a switching yard in the rail industry. Some towing companies operate their own fleets in a few of the major hubs where company activities are greatest and the ongoing presence of barges justifies the expense of acquiring the land and building and maintaining a fleet. However, in most areas, long haul towing companies rely on local fleeting service providers when it becomes necessary to tie up a barge or tow in a particular area. Just as many truck stops are not affiliated with any particular trucking company, many barge fleets are independent businesses that specialize in providing services to whichever barge line has need of their services in their particular area.

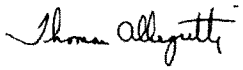
Are there safety loopholes created by these business practices and, if so, how should those loopholes be closed? While there are a host of reasons why it makes sense to use subcontracted or chartered equipment, no business decision, whatever its other merits may be, makes sense if it compromises safety.

AWO is committed to promoting the highest standards of safety throughout the tugboat, towboat, and barge industry. The goal of AWO and its members is to achieve zero accidents, zero oil spills and zero fatalities. Crew, vessel and cargo safety does not just depend on who owns or operates a vessel or facility, it depends on the commitment of the owners in the boardroom, the operators in the wheelhouse, the customers, employees and all others involved to ensuring safe operations. AWO members strive to have our safety culture permeate all operations regardless of whether they are performed by employees or subcontractors, which is why the AWO Responsible Carrier Program includes a vendor safety provision. Having said that, we understand that the Subcommittee's principal concern is to ensure that a common business practice does not create a loophole that allows smaller companies to operate less safely or larger companies to avoid responsibility for the actions of the subcontractors upon whom they rely.

Properly managed, our industry's subcontracting practices should not and do not create safety loopholes. Nonetheless, the best way to ensure that all tugboat, towboat and barge companies, of all sizes, maintain the same high standard of safety is for the Coast Guard to implement the towing vessel inspection regulations as recommended by the congressionally established Towing Safety Advisory Committee (TSAC). As recommended by TSAC: 1) all towing vessels will be subject to regulatory standards on a wide variety of material and human factors issues; 2) all towing companies will be required to implement a safety management system and to operate all of their towing vessels in compliance with that system; 3) towing companies and towing vessels will be subject to a three-tiered program of internal audits by trained company personnel, external audits conducted by Coast Guard-approved third parties, and direct Coast Guard oversight; 4) all towing vessels will be required to have a Coast Guard-issued Certificate of Inspection, which can be revoked by the Coast Guard for non-compliance with these requirements; and, 5) the Coast Guard will use a risk matrix similar to that used for Port State Control boardings to ensure that the lion's share of agency enforcement resources are targeted on those companies and vessels whose performance indicates the need for such scrutiny. We have and continue to strongly urge the Coast Guard to publish its Notice of Proposed Rulemaking on this critical regulation before the end of this year.

Thank you again for this opportunity to respond to the Subcommittee's questions. AWO members and staff remain committed to assisting you in any way we can.

Sincerely,



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November 3, 2008

The Hon. Elijah Cummings
Chairman
Coast Guard and Maritime Transportation Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

The Hon. Steven LaTourette
Ranking Member
Coast Guard and Maritime Transportation Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Cummings and Congressman LaTourette:

On behalf of The American Waterways Operators (AWO), thank you for the opportunity to testify at your September 16 hearing on the July 23 New Orleans oil spill and safety on the inland river system. AWO shares your determination to ensure that accidents like this never happen again and your commitment to promoting the highest standards of safety throughout the tugboat, towboat, and barge industry. We would like to address some of the questions raised by Members of the Subcommittee at the hearing and provide additional information to correct inaccurate and misleading allegations made on the record about the safety of our industry. We respectfully request that this letter and attachment be entered in the hearing record to supplement our written and oral testimony.

The Tugboat, Towboat, and Barge Industry
Has Been a Leader in Raising Industry Safety Standards

Chairman Cummings' opening statement described a "very troubling portrait of an industry that is essential to commerce in our nation," and two witnesses at the hearing (Mr. Richard Block and Mr. Eric Dawicki) made numerous allegations about substandard industry safety practices, including drug use, inadequate licensing, and poor training. The industry they described is not the industry that we know and represent. In fact:

- Crewmembers on towing vessels are subject to the same strict Department of Transportation (DOT) and Coast Guard regulations on drug testing as are crewmembers on other types of vessels. Regardless of whether or not they hold a license or Merchant Mariner's Document (MMD), towing vessel crewmembers are subject to pre-employment, random, post-accident, and reasonable cause drug

testing. Drug use is not only illegal, it is grounds for immediate termination of employment. We are aware of no evidence, nor did the other witnesses present any evidence, to support the allegation that illegal drug use is prevalent in the towing industry or that it occurs more frequently in the towing industry than in other segments of the maritime industry or other transportation modes.

- Under the auspices of the Towing Safety Advisory Committee, the towing industry worked closely with the Coast Guard to develop upgraded licensing requirements for persons operating towing vessels, which took effect in 2001. The new regulations not only increased the time required to obtain a license by one-third, but also required a practical demonstration of navigational proficiency, the first time such a requirement had been imposed on vessel operators from any segment of the domestic maritime industry. The Apprentice Mate/Steersman credential was created as an additional step in the licensing process precisely to ensure that prospective towing vessel operators are **not** allowed to operate a vessel on their own without substantial hands-on experience under the supervision of an experienced master or mate/pilot. (The fact that DRD Towing violated this regulation is an indictment of that company, not of the regulation it violated.)

- AWO members have a deep commitment to crew training and have invested millions of dollars in the development of state-of-the-art simulator technology to enhance the skills of towing vessel operators. We attach hereto a letter from Eric K. Larsson, Director of Maritime Training and Education at the Seamen's Church Institute, which operates highly regarded training facilities in New York, Paducah, and Houston. Mr. Larsson's letter speaks for itself and we respectfully request that it be included in the hearing record.

- The tugboat, towboat, and barge industry has played a uniquely proactive role in seeking additional regulation from government to do what no voluntary association can do on its own: establish and enforce mandatory safety standards. In 2003, AWO approached the Commandant of the Coast Guard and requested that the agency seek statutory authority from Congress to establish a Coast Guard inspection regime for towing vessels. We strongly supported passage of the 2004 Coast Guard and Maritime Transportation Act, which adds towing vessels to the list of vessels subject to Coast Guard inspection, and we have worked through the Towing Safety Advisory Committee to assist the Coast Guard in implementing this statutory mandate as soon as possible. We are proud of the AWO Responsible Carrier Program and the contribution that it has made to raising safety standards in our industry. But, we know that only the Coast Guard can step in when a company chooses not to embrace high standards of safety voluntarily.

Follow-Up on Actions Promised at September 16 Hearing

At the September 16 hearing, we pledged to review the lessons of the DRD Towing spill and make improvements to AWO procedures for administering the Responsible Carrier Program. We also pledged to work with the Coast Guard to implement a targeted boarding and enforcement program as a "bridging" strategy to enhance safety while the forthcoming towing vessel inspection regime remains under development. Since the hearing, we have taken concrete actions to fulfill both of these commitments.

On October 17, AWO's Board of Directors approved the most significant set of changes to the Responsible Carrier Program in more than a decade. These changes, which take effect in 90 days so as to allow time for a comprehensive member outreach and education campaign, include the following:

- Revoking AWO membership on the day immediately following the RCP audit deadline if an audit has not been completed;
- Eliminating probationary status for companies that cannot complete an RCP audit for lack of documentary evidence of compliance and eliminating the 90-day time frame to correct deficiencies found during an audit;
- Requiring companies new to AWO to undergo an annual RCP audit for the first three years of their membership. A company will be classified as a "provisional" member until the passage of its second annual audit;
- Requiring member companies to conduct internal audits every year; and,
- Immediately notifying all AWO members when a company's membership status changes due to failure to complete an RCP audit, posting this information on the AWO Web site, and making this information available to the Coast Guard.

AWO is also working with the Coast Guard to implement a two-part "bridging program" that will: 1) establish a voluntary examination program in which towing companies can request Coast Guard inspection of their vessels to demonstrate compliance with existing law and regulation; and 2) establish a targeted, risk-based boarding program that increases Coast Guard scrutiny of towing companies and vessels whose performance indicates the need for closer attention from government. The Coast Guard expects to have a draft "concept of operations" available this fall. In addition, AWO has worked with the Coast Guard to develop and implement "Operation Big Tow," a short-term "surge" initiative aimed at ensuring that all towing vessels are crewed by properly licensed personnel. The program got underway November 1 throughout the Coast Guard Atlantic Area command, which includes the Western Rivers system.

Crewmember Documentation

In response to a question from Congressman Baird, Mr. Block alleged that because not all crewmembers on inland towing vessels are required to carry a Merchant Mariner's Document, the industry's personnel operate "under the Coast Guard's radar." Mr. Block also made the spurious allegation that the industry's labor force is drawn heavily from "the prison system." These allegations are inaccurate, misleading, and offensive.

In fact, the institution of the Transportation Worker Identification Credential (TWIC), required by the Maritime Transportation Security Act (MTSA) of 2002, has largely supplanted the MMD as an identity and security document for vessel crewmembers. Under MTSA, any person who requires unescorted access to a secure area of a vessel must have a TWIC by April 15, 2009. Because towing vessels are small vessels on which escorting is not practical, the effect of this requirement is that every crewmember on a towing vessel covered by a vessel security plan – that is, any towing vessel that comes into contact with a tank barge or a barge carrying other regulated cargoes – must carry a TWIC (regardless of whether he or she is also required to have an MMD). The Subcommittee is well aware of the stringent background check requirements that exist to obtain a TWIC, and we will not belabor them here. Taken together, the combination of the licensing, MMD, and TWIC requirements means that: 1) anyone operating a towing vessel must carry both a Coast Guard license and a TWIC, regardless of the cargo the vessel carries; 2) anyone loading or unloading liquid cargo on a barge must carry an MMD with a Tankerman endorsement, as well as a TWIC; and, 3) anyone working as a crewmember on a towing vessel that comes in contact with (i.e., tows, fleets, shifts, etc.) a tank barge must carry a TWIC. Put differently, the only personnel on towing vessels who are required to have neither an MMD nor a TWIC are deckhands, cooks, and unlicensed engine room personnel on towing vessels exclusively engaged in moving dry cargo such as coal, grain, or rock.

Subcontracting Practices

Both Chairman Cummings and Mr. Taylor asked questions about the industry practice of using subcontractors to tow or fleet barges. This common practice is fundamentally driven by the need to manage expensive assets efficiently and by the importance of specialization and local knowledge that subcontractors and local vendors bring to the national transportation system. Large companies focused on transporting freight over long distances often depend on local operators to safely shift equipment in local waters using crews that know every local hazard, dock and bend in the river. AWO would be pleased to make knowledgeable industry executives available to meet with any Member of the Subcommittee who may have further questions about the financial or operational reasons why subcontractors are used.

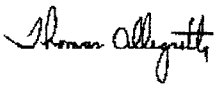
Having said that, we understand that the Subcommittee's principal concern is to ensure that a common business practice does not create a loophole that allows smaller companies to operate less safely or larger companies to avoid responsibility for the

actions of the subcontractors upon whom they rely. AWO shares this objective, which is why the Responsible Carrier Program includes a vendor safety provision. However, the best way to ensure that all companies, of all sizes, maintain the same high standard of safety is for the Coast Guard to implement the towing vessel inspection regulations as recommended by the Congressionally established Towing Safety Advisory Committee. As recommended by TSAC: 1) all towing vessels will be subject to regulatory standards on a wide variety of material and human factors issues; 2) all towing companies will be required to implement a safety management system and to operate all of their towing vessels in compliance with that system; 3) towing companies and towing vessels will be subject to a three-tiered program of internal audits by trained company personnel, external audits conducted by Coast Guard-approved third parties, and direct Coast Guard oversight; 4) all towing vessels will be required to have a Coast Guard-issued Certificate of Inspection, which can be revoked by the Coast Guard for non-compliance with these requirements; and, 5) the Coast Guard will use a risk matrix similar to that used for Port State Control boardings to ensure that the lion's share of agency enforcement resources are targeted on those companies and vessels whose performance indicates the need for such scrutiny.

Conclusion

Thank you for the opportunity to submit this supplementary information to augment the September 16 hearing record. AWO members take great pride in the work they do and the care they take to safeguard their crewmembers, their vessels, and the environment. We share the Subcommittee's commitment to ensuring that unsafe operations are weeded out "on our watch," and we stand ready to assist you in any way we can.

Sincerely,



Thomas A. Allegretti

NMA REPORT #R-350-A

DATE: September 16, 2008

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[Formerly Gulf Coast Mariners Association, Founded in 1999.]

Mr. Chairman, members of the House Coast Guard and Maritime Transportation Subcommittee, I appreciate the opportunity to speak toady. I am Richard A. Block, Secretary of the National Mariners Association, speaking on behalf of approximately 126,000 "lower-level" mariners who work on tugs, towboats, offshore supply vessels and small passenger vessels of less than 1,600 gross register tons. Lower-level mariners are the majority of mariners in the U.S. Merchant Marine.

My prepared testimony consists of NMA Report #R-429-N titled **Report to the 110th Congress: Maritime Towing Accidents Involving Apprentice Mates/Steersmen** that we submitted by mail to every member of the parent Transportation and Infrastructure Committee as well as to the Senate Commerce, Science, and Transportation Committee on July 28, 2008. It is available on our website at www.nationalmariners.org. Because our office is out of service from Hurricane Gustav, I do not have printed copies of this report to distribute today. I notified the Subcommittee Staff Director that I welcome questions on this document.

I wish to take this opportunity to support the enclosed article by Mr. H. Merritt Lane that appeared in the Waterways Journal with one caveat: Our Association fully supports the contents and research in the Article Tugs Operate Under Radar on the River by Times-Picayune reporter Ms. Jennifer DeGregorio. Ms. DeGregorio utilized independent sources as well as a number of contacts furnished by our mariners to prepare her story. The mariners who spoke with Ms. DeGregorio found the article entirely appropriate. Ms. DeGregorio's article appears in NMA Newsletter #57 that may be viewed on our website.

Our Association wishes to commend the Committee for its work in Title XI of H.R.-2830 that we enthusiastically support in its entirety as the new direction that Marine Safety must take in the years ahead.

If you have any questions on this statement or our report #R-429-N, I will be pleased to answer them for you.

NEW INSPECTION REGIME MIGHT HAVE PREVENTED SPILL

*[**Source:** The Waterways Journal, Guest Editorial, Aug. 25, 2008. by Merritt Lane, !!!.]*

The August 10 (New Orleans) ***Times -Picayune*** article "Tugs Operate under Radar on River." painted a misleading and very different picture of the tugboat, towboat and barge industry than the one I see as president and chief executive officer of New Orleans-based Canal Barge Company and Chairman of the Board of the American Waterways Operators (AWO), our industry's national trade association.

The industry in which I am proud to make my living is safe. Environmentally responsible phenomenally cost-efficient, and uncommonly progressive in partnering with government to make our nation's waterways as safe and as clean as possible. Last year a study conducted by the Texas Transportation Institute for the U.S. Department of Transportation found that inland waterways transportation is the safest, most environmentally-friendly and most economical form of freight transportation. Waterways transportation has the lowest personnel injury and fatality record, the lowest hazardous material spill record, and generates the least amount of emissions compared to rail or truck transportation.

Our industry has a long track record of both voluntary compliance with safe operating standards and partnership with government to promote ever-higher levels of safety and environmental protection. Fourteen years ago, AWO became the first transportation trade association to establish a code of safe practice and environmental stewardship for member companies. Since 2000, the AWO Responsible Carrier Program has been a condition of membership in AWO and members must pass an independent safety audit every three years or forfeit their membership in the association.

We have also worked closely with Congress and the Coast Guard to make sure that all companies — not just those who choose to belong to AWO — live by the same high standards. Five years ago, the leadership of the tugboat, towboat, and barge industry took the unprecedented step of asking the commandant of the Coast Guard to

request statutory authority from Congress to establish a new inspection regime for towing vessels. Over the past four years, we have worked closely with the Coast Guard under the leadership and oversight of House Transportation and Infrastructure Committee Chairman James Oberstar (D. Minn.) to implement this Congressional mandate so that accidents like the Mel Oliver spill never happen again.

With strong industry support, the Congressionally-authorized Towing Safety Advisory Committee (TSAC), a federal advisory group that includes representatives from the barge and towing industry, maritime labor, cargo shippers, ports and terminals, and the general public has recommended an innovative and effective regulatory approach to towing vessel inspection that would require all towing companies to implement a safety management system like the Responsible Carrier Program. Failing a safety audit would trigger immediate notification of the Coast Guard, which could force the company to correct the problem immediately or get its vessels off the water. To put teeth in the program — without creating unnecessary burdens for the vast majority of companies who work hard to do the right thing — TSAC has recommended a risk-based enforcement regime in which companies with questionable safety records or poor performance on safety audits would be subject to the lions share of Coast Guard enforcement resources.

Had this system been in place this year, the Coast Guard would have been notified when the company operating the Mel Oliver failed its industry safety audit in May which could have forced the company to tighten up its procedures for ensuring that only properly licensed personnel can crew its vessels.

The people of New Orleans have struggled mightily to rebuild our city and its economy following the devastation of Hurricane Katrina three years ago. We can't control Mother Nature, but we can prevent man-made disasters like oil spills that result from human error. The Coast Guard should move immediately to publish the TSAC-recommended towing vessel inspection rules and help make a safe industry even safer.

STATEMENT

of

Eric R. Dawicki, President

Northeast Maritime Institute

Subcommittee on Coast Guard and Maritime Transportation

Committee on Transportation and Infrastructure

HEARING

on

Oil Spill in New Orleans in July 2008 and

Safety on the Inland River System

Tuesday, September 16, 2008

2167 Rayburn House Office Building, U.S. House of Representatives, Washington, D.C. 20515

Eric R. Dawicki, 32 Washington St., Fairhaven, MA 02719, Tel: 508-992-4025, Fax: 508-992-1236

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Good morning, Mr. Chairman and members of the subcommittee. Thank you for calling this hearing and for the opportunity to testify before the subcommittee. I am Eric Dawicki, President of Northeast Maritime Institute located in Fairhaven, Massachusetts. NMI is the largest, private maritime education and training institute in the U.S. and has graduated 35,000 of mariner over the Institute's 27 years of operation.

I am a fourth generation mariner, having started my career aboard fishing vessels and inland passenger ferries, and as part of the United States Coast Guard Reserve. I later served as Captain of LNG and Dangerous Liquid Tankers and as part of the management team for LNG Tankers. In addition to my present position as President of Northeast Maritime Institute, I also am President and CEO for the Commonwealth of Dominica Maritime Registry, a company responsible for the management of the Commonwealth of Dominica Maritime Administration's 400 vessel fleet.

First, let me state up front that I understand that my testimony this morning might be construed as controversial, however it seems that the greater interest of serving my country through testimony is an imperative. It is not only a duty , as directed, but it is sincerely an honor to appear before you today to impart my views on the cause and effects of the recent economic, environmental and operational crisis caused by the oil spill on the Mississippi River.

In light of my experience and exposure to the inland and the western rivers trades, I am compelled to testify that this segment of this nation's maritime industry is severely flawed.

Everyone sitting here today has a significant stake in the oil spill that occurred on the Mississippi River last July 23, 2008. Let me be clear. We are all responsible for ensuring that we as a nation have in place the sound foundational, operational, and technological capability to prevent

tragedies like this oil spill from ever happening again in the United States. The Captain who left his vessel under the command of a non-licensed mariner, the non-licensed mariner who agreed to take the vessel across the river, the company that operated the towboat, the charterer that hired the company, the United States Coast Guard, Congress, the President, and I appearing before you this morning to enlist your support, we are all accountable for the safety and preservation of life, property and environment in this great nation.

The maritime safety program in the United States is in urgent need of restructuring, and a more solid focus on its mission and its operations is essential.

While the mariners, the shipping company, the charterers and the Coast Guard can be picked apart at every level, I believe that it will take a courageous stand by this very body to initiate a solid set of standards that this industry and the rest of this nation's maritime industry comply with. There is no scapegoat here. There is simply a systemic flaw in the governance of the maritime industry – from mariner licensing and work hour rules, to appropriate watch standing principles, quality management systems, business management practices and enforcement regulations.

Our maritime industry is fractured on almost every level and it will take strong leadership by this subcommittee and this Congress to independently investigate the systemic pitfalls and strength of the current system, to put in place measures to enhance performance, and to redevelop this industry to be revenue generating. The industry can again become an industry of excellence.

The economic impact of this very spill alone is predicted to be 100 of millions of dollars per day. I state, as a property owner that has been affected by an oil spill on Buzzards Bay, the spill is still having negative economic impacts on my community. I would suggest that a comprehensive

economic impact statement might indicate that the negative impacts exceed shall exceed the predicted estimates considerably.

I strongly believe that 87% of all maritime casualties can and must be avoided. 87% of all marine casualties are a resultant factor of human error. As a maritime education, training and certification provider, I am convinced that there are absolutely no excuses for human error when managing the safe operation of a vessel. Unfortunately our system, without strong legislative and regulatory sanctions, enables excuses and exercises either special treatment or lackadaisical attitudes towards this very industry. More can and must be done.

Mr. Chairman, members of the subcommittee, I would like to thank you for your leadership in holding this hearing today. I sincerely hope that my testimony will assist the Congress in taking a closer look at our nation's inland and western river trades and recognize that the work we do today is needed to set the stage for a new generation for the United States maritime industry.

Identified Systemic Flaws

The Inland maritime transportation system is one of the most vital instruments for economic sustainability of the United States economy. The fact that we have continually turned a blind eye to the safety and security, but most importantly, the objectives of maintaining a sound program for the facilitation of commerce in the heartland in the 21st Century is heartbreaking. I have identified what I believe to be systemic flaws in the current Maritime Safety Program within the United States.

STCW

The United States is a signatory to the Treaty on International Standards of Training, Certification for Watchkeepers and Seafarers, 1978, as amended (STCW). The STCW Code, the treaty's operational instrument, has been developed to create a strong performance based licensing system that measures field based performance models through a combined theoretical, practical, simulated and co-operative education model that far exceeds the current multiple choice license examination system that the United State Coast Guard currently uses. The STCW treaty does not differentiate significantly from the types of commercial vessel operations, but is more centrally focused on operational tonnage and kilowatt power per vessel models.

The United States Merchant Marine Licensing and Certification system should adopt the STCW protocol as its sole licensing and certification system as it is clearly defined, uncomplicated to implement and covers all forms of vessel operations, one could arguably determine that the vessels included in Inland operations. STCW ensures that performance based standards are delivered into the field to ensure safe operations are realized. STCW should be and must be the basis, without special interests interpretation, for the United State licensing and certification systems – after all, the US developed the STCW treaty for the international community to subscribe to.

Mariner Training

Recently, Northeast Maritime Institute received USCG approval under [46 CFR]. This approval combined theoretical based education with soft practical (simulation) and practical training on board inland river and near coastal tow boats. This approval clearly met the intent of STCW, yet was approved under a revision to domestic regulations. This program qualitatively and quantitatively created a better mariner with the knowledge and the skill sets to perform safely,

efficiently and cost effectively in the field. Unfortunately, the shipping company that partnered with NMI cancelled the program prior to determining long term results.

Mariners who were approved to become Designated Examiners went through a comprehensive 40 hour course (Train the Trainer) and seemed to be apprehensive at first. Once they received the mariners to train and assess on board their towboats, the feedback was overwhelmingly positive. One email stated; "Please send more like this one". That email alone, summed up the program as it came from one of the more taciturn officers in the program.

Preventing Conflict of Interest in Mariner Training

Shipping companies, trade organizations and manning agencies should not be approved to deliver United States Coast Guard approved training. The clear opportunity to issue fraudulent training certificates as a result of trying to meet the demands of attrition and retention problems, "good ole' boy" networks, creating a fair and even playing field for all mariners to participate in without being controlled or placed under the thumb of the employer and most importantly – creating a cost effective auditing program that the Coast Guard ***must*** be able to be implement immediately, consistently and thoroughly.

Mariner Licensing

The current licensing scheme for inland, near coastal and Great Lakes towboat navigational officers is sub-standard. The requirements for licensing navigational officers are less stringent than the standard licensing protocol as well as the requirements for Pilotage is much less stringent.

While the vessels are typically "floating engine rooms", there are no requirements for licensed engineers for the most part. It is outrageous that vessels carrying upwards of [tons] of critical cargo that has a higher potential for a collision, allision and grounding than the highly regulated deep draft vessel is beyond comprehension. The inland trading, near coastal trading and great lakes trading tug and barge operations have accounted for more oil spills in the United States in the last ten years than any deep draft vessels.

Bridge Watch System

The current watch system used in the tow boat industry clearly violates the International Navigational Rules Act of 1977 (Public Law 95-75, 91 Stat. 308, or 33 U.S.C. 1601-1608), and, the Inland Navigation Rules Act of 1980 (Public Law 96-591, 94 Stat. 3415, 33 U.S.C. 2001-2038). In order to comply with the Inland Navigation Rules Act of 1980 a bridge watch must be managed according to rule number five or Rule 5 states; "Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision."

The ability to clearly adhere to the tenets of maintaining a proper lookout by sight, hearing and sound as well as ***by all available means*** (navigational hardware) cannot be performed by only one individual on a bridge watch. It's physically impossible.

Watchkeeping and Work Hour Limitations and Manning

The 46 U.S.C. §8104(d) requires merchant vessels of 100 gross tons and above, when at sea, to be manned for a three-watch system, and mariners shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. This section of the law also states that a mariner cannot be required to work for more than 8 hours in one day. There are certain exceptions to the work-hour limitations relevant to the docking/undocking, conducting emergency drills, actual emergency situations or overriding operational conditions that compromise the safety of the vessel and its passengers and crew (See 46 U.S.C. §8104(f)) in which a mariner can be required to work more than 8 hours in a day. Mariners subject to 46 U.S.C. §8104(d) can consent to work in excess of 8 hours in a day.

Yet, 46 U.S.C. §8104(g) permits licensed individuals and crewmembers of towing vessels, offshore supply vessels, and barges, when engaged on voyages of less than 600 nautical miles, when at sea, to be divided into at least 2 watches. The Coast Guard interprets this section of the law to mean that a mariner can be scheduled to work 12 hours in any consecutive 24-hour period, provided the mariner consents to work more than 8 hours in a day.

This has to be one of the greatest anomalies of marine safety regulation today. Under 46 U.S.C. §8104(d) a vessel is virtually doing nothing, but transiting a near coastal or ocean going voyage. No coastal piloting, no inland piloting, no docking and undocking procedures are in place, yet under 46 U.S.C. §8104(g), a port and starboard watch system (six hours on, six hours off) is engaged during the most dangerous operational periods of a vessels transit. 46 U.S.C. §8104(h) establishes that licensed operators of towing vessels subject to 46 U.S.C. §8904 may not work in

excess of 12 hours in any consecutive 24-hour period, except in an emergency. It is virtually impossible for any licensed officer working in the inland river system to not work in excess of 12 hours. I find it incredible that this legislation was ever considered, much less adopted. The CG Authorization on Act 2004 § 409 directed the USC CG to do a study to remedy the need for work hour regulations to be developed. The study was completed, but no follow on action by has been realized to date.

Treatment of Mariners

I believe that it's high time that the Department of Labor, The United States Coast Guard and possibly an independent committee who is not afraid nor has a vested interest in the discovery of truth, should begin an inquiry about mariner treatment. During our short time training mariners for the inland waterways it was clear that the mariners were treated as third class citizens. I have personally been told about threats, discrimination, and work hour rule violations. While I can only reflect on hearsay, it gravely concerns me that the stories that I have been exposed to remind me of the horrific stories that my grandfather, a merchant mariner, told me when I was growing up.

Quality Management System (QMS)

The objectives of the International Safety Management Code (ISM) are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property. The Code is expressed in broad terms so that it can have a widespread application. Clearly, different levels of management, whether

shore-based or at sea, will require varying levels of knowledge and awareness of the items outlined. The cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result.

Anything less than the equivalent to the ISM Code for vessels 100 GRT or above trading on/in US waters would be a mistake. The Code not only rectifies sub-standard shipping, but enhances profitability and performance capabilities of a shipping company.

Charter Vetting Procedures

The charterer that hired the company that was involved in the accident was clearly aware of seafarer shortages and crew compliment shortages related to the Certificate of Inspection (COI) compliance. A vetting program was scheduled to be developed but was cancelled as a result of a major management overhaul at the charterer's headquarters. Attention to this program would have likely prevented the recent accident as it was scheduled to be developed and implemented by Spring of 2008.

Regulatory Instruments and Enforcement

Future regulations for tow boat inspections and certificates of inspection must not be watered down versions of standards prescribed for all commercial vessels operating under the US Flag. This industry cannot and should not be held to a lower standard. More importantly, the United States Coast Guard ***targeted issuance date of 2011 is too late***! The draft regulations that the Coast Guard has shared with TSAC have been shared with TSAC still haven't posted them as a

NPRM – or made it a document on which people can officially comment. I would submit that the Coast Guard must be enabled to do its job without special interests pressuring them and with the appropriate resources to ensure a comprehensive set of regulations be issued that meet or exceed international standards.

I have taken an excerpt from the proposed regulations as follows:

> Sec. 136.106 Towing Safety Management System
>
> (a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (CG–841 rev. x/xx) may comply through enrollment in an approved or accepted safety management system.

The suggested Towing Safety Management System is ***NOT*** a substitute for having a USCG inspector conduct a physical inspection of the vessel. Title 46 requires CG personnel to physically inspect the vessel, while the proposed system is nothing but a rouse for inspections. I would liken it to the current AWO "Responsible Carriers Program". The term approved delivers a hypothetical inspection and ***MUST*** include a physical inspection by USCG inspection personnel.

I recommend that CG be directed to develop and implement an active "enforcement " program utilizing modern techniques and practices- i.e., a computer based tracking system; develop a matrix based on the US Port State control matrix to target companies and vessels to be audited. Such a program should be one that utilizes pier side boarding's and inspections.

In Closing

I leave all who care to read this document with the following: I, Eric R. Dawicki, believe that it is the honor and the duty of Congress to provide all men who apply themselves in the workforce of the United States of America with the tools to work safely, diligently and with the highest skills for performance needed to ensure that this great nation is always looked upon as a model for other nations to subscribe itself to the standards from which we prescribe. Leaving a man or woman without the tools to honestly tell his children that he will come home safely after each trip on the water, in the soil, or in the factory removes ourselves from the very opportunities that out Constitution provides for us, "We the People".

Statement of

Mario A. Muñoz
Vice President of Vessel Operations
American Commercial Lines
1701 East Market Street
Jeffersonville, IN 47130
812-288-0347

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

September 16, 2008

Good morning Mr. Chairman and Members of the Committee:

My name is Mario Muñoz. I am Vice President of Vessel Operations for American Commercial Lines (ACL) and I served as one of the Incident Commanders during the New Orleans oil spill response. I'm here today to talk about the events that transpired following the sinking of ACL's 10,000 barrel double-hulled tank barge in the early morning hours of July 23rd in New Orleans Harbor.

First, I want to express that I am deeply disappointed that this accident occurred and oil was released into the Mississippi River. While we were not operating the towboat involved in the incident, we immediately took action to mitigate the effects of the spill. We are a leader in the industry in safety and environmental stewardship and we are committed to working with this committee, the Coast Guard and the American Waterways Operators to eliminate spills on the inland waterways.

American Commercial Lines, based in Jeffersonville, Indiana, is an integrated marine transportation and service company operating in the United States Jones Act trades. ACL's 2007 revenue was approximately $1 billion and it employs approximately 3,300 people in 36 states with concentrations in Kentucky, Indiana, Louisiana, Illinois, Mississippi, Missouri and Tennessee. With approximately 2,700 barges and 130 towboats in our fleet, ACL moved over 40 billion tons miles of freight in the United States last year.

One of ACL's core values is safety – never compromising the safety of people, the environment, property or equipment. Our unwavering commitment to safety is demonstrated by our leading safety records in both the barge transportation and ship building industries and by our voluntary participation in the chemical industry's Responsible Care initiative, the American Waterways Operators Responsible Carrier Program, Indiana's Environmental Stewardship Program, and Kentucky's Excel Program. ACL's leadership in environmental management has been widely recognized. In January 2008, ACL was the first marine transportation company to be named as a member of the U.S. Environmental Protection Agency's National Environmental Performance Track program. In July 2008, we received the William M. Benkert Marine Environmental Protection Award from the U.S. Coast Guard for outstanding achievements in marine environmental protection, and in September 2008, our manufacturing division, Jeffboat, will receive a 2008 Governor's Award for Environmental Excellence from the Indiana Department of Environmental Management.

In my testimony, I will briefly describe ACL's business relationship with DRD Towing. I will also provide a sequence of events describing the oil spill recovery operation and an update on the current status of the cleanup. Finally, I will reiterate our continued support for regulatory action to further enhance safety on the inland waterways system.

As a native of New Orleans, I understand South Louisiana's exceptional culture, our most important wetlands, and the vital contributions our region makes to the Nation's economy. I am pleased that our teamwork under the Incident Command System (ICS) resulted in an extremely effective oil spill response. On that note, I want to express my sincere appreciation for the leadership and assistance provided by the United States Coast Guard, the State of Louisiana and the Governor's Office, the City of New Orleans, Orleans Parish, Jefferson Parish, Plaquemines Parish, St. Bernard Parish, NOAA, U.S. Fish and Wildlife, the U.S. EPA and the U.S. Corps of Engineers.

DRD Towing is an independent towing contractor based in Greater New Orleans that provides towing services for a number of competing barge companies, including ACL. For over ten years, ACL had contracted with DRD Towing to provide local barge shifting and towing services.

The towboat that was involved with the New Orleans spill is named the *M/V Mel Oliver* and is owned by ACL. On July 23, 2008, the *M/V Mel Oliver* was operated and crewed by DRD Towing under long-term bareboat and time charter contracts. DRD Towing was required to comply with all applicable State and Federal regulations related to the operation of the vessel. Consistent with the terms of the charter agreements, the *M/V Mel Oliver* was under the custody and control of DRD Towing at the time of the incident. DRD Towing was solely responsible for operation of the *M/V Mel Oliver* and the safe towing and navigation of the barge.

ACL has and will continue to fully cooperate with this Committee and the United States Coast Guard to understand the cause of this collision. We look forward to the findings of the Coast Guard's comprehensive investigation and hope there will be lessons learned to advance marine safety and security on the inland waterways system.

Now let me turn to the first phase of our spill response and recovery effort.

The collision occurred at about 1:30 AM CDT. Under the Oil Pollution Act of 1990 (OPA 90), a carrier of petroleum products must identify a Qualified Individual who is responsible for initiating action in the event of a spill. Within minutes of the event, ACL's Qualified Individual was notified through the management of the oil terminal where our barge had been loaded that a collision had occurred and there was a potential spill.

Rather than waiting for the other parties who were operating the vessels involved in the collision to act, we put our oil spill response plan into action. ACL has established relationships with Oil Spill Response Organizations (OSROs) throughout the inland waterways system. OSROs provide pre-positioned oil spill response materials, equipment and trained personnel ready for deployment. Within minutes of our notification, ACL activated our local OSROs and directed them to engage a potentially major spill in the New Orleans Harbor.

Within 30 minutes after the incident, ACL had established our first base of operations to implement the Incident Command System (ICS) from our headquarters in Jeffersonville, Indiana.

For background, the ICS is a standardized emergency management model designed to allow government agencies and industry members to work together with a shared process and common language that is essential to mounting an effective response.

By 2:15 AM CDT, all of the required notifications to the National Response Center, the local Coast Guard and State officials had been made from our Incident Command Post (ICP) in Jeffersonville, IN. For the next couple of hours our ICP was engaged in activating additional OSROs, making internal notifications, directing internal resources and aggressively coordinating with Federal, State and local officials. By 5:00 AM CDT, we initiated plans to fly our command staff from Jeffersonville to New Orleans.

Shortly after the accident, towboats were working to stabilize the barge. By first light, our OSROs had deployed their first oil skimmers in the river. Containment boom had been placed near the damaged barge and on the municipal water intakes. From this point forward the pace and scope of the response effort accelerated with each hour. Our approach was to deploy all available resources as quickly and safely as possible.

At approximately 10:00 AM CDT our command staff had its first of many regularly scheduled over-flights of the affected area. This information gave us a better indication of the length and breadth of the affected area and helped us to begin the transition from reactive response to coordinated proactive response. Although no one could know how badly the barge was damaged, we responded with a worst case scenario approach and planned for a total loss of the product, which was approximately 10,000 barrels of #6 fuel oil.

By mid afternoon, the Coast Guard had established a Unified Command under the leadership of Captain Lincoln Stroh who served as the Federal On-Scene Coordinator, and Mr. Roland Guidry, who was the State On-Scene Coordinator.

By sunset the first day we had deployed over 400 field personnel who were directly engaged in oil spill response activities. The Unified Command staff had grown to over 120 individuals. These numbers would continue to grow in the coming days.

During the response operation, human health and safety was our first priority. From July 24, ACL initiated around the clock air monitoring in the densely populated areas. Working under close scrutiny of Louisiana and Federal environmental agencies, ACL collected and analyzed over 2.5 million air samples. All samples showed no contamination by any hydrocarbon at levels of concern to human health. In addition, ACL continuously monitored all the water intakes for oil contamination from July 24 until the evacuation for Hurricane Gustav. Again, not one sample showed contamination.

Protecting wildlife was also a top priority for the Unified Command and ACL. Specialists from Federal and State agencies observed oiled waterfowl and mammals. Where possible, animals were captured, cleaned, and released. Significant wildlife impacts were avoided by protective measures put in place very early in the response. While estimates are being finalized, experts do not anticipate permanent damage to wildlife populations as a result from this event.

Within the first week, the Unified Command grew significantly. At its peak, we employed approximately 2,300 personnel, 35 skimmers, 200 response boats and deployed over 160,000 feet of containment boom, 330,000 feet of snare boom and almost 60,000 feet of absorbent boom. All together we had deployed a total of more than 100 miles of boom in the affected area.

The tank barge had settled at the base of the Crescent City Connection Bridge where it continued to slowly seep oil. The tank barge was constructed with three separate tanks; one on the bow, one in the mid-section and one on the stern. With the mid-section severely damaged from the collision and tenuously connected to the bow section, the stern section rested on the river bottom. We were fortunate that the barge's double hulled, segregated tank construction provided the potential opportunity to salvage product that remained in parts of each tank. An illustration from the Times Picayune describing the salvage is attached to this statement.

After many salvage dives in difficult river conditions, we learned about the integrity of each of the tanks, including the number three stern tank that held approximately 3,333 barrels of oil that was previously assumed to have been lost. Once this oil was removed from the damaged barge, the barge was raised and the threat of an additional release was eliminated.

Ultimately, the success of the salvage and lightering operation as well as our oil spill recovery efforts greatly reduced the estimated size of the spill from approximately 10,000 barrels down to 5,950 barrels. We believe this recovery significantly reduced the negative effects of the collision and resulting spill.

At the height of our response operation, we cleaned over 100 deep draft ships, over 1,100 barges and boats, and had deployed over 100 miles of boom.

Before Hurricane Gustav struck, over eighty-four percent of the 100-mile long cleanup area had met the Unified Command's cleanup criteria and no further oil removal activities will be required. Over 9,000 feet of containment boom remained deployed in the area and over 930 people remained engaged in cleanup activities. In preparation for the hurricane, we demobilized the cleanup personnel, most of whom work for local private cleanup contracting companies. Cleaning operations resumed shortly after Gustav and will continue until State and Federal authorities are satisfied that the proper amount of clean up has been done.

As the Chairman of the Towing Safety Advisory Committee (TSAC), I have been directly involved in the development of both the inland towing vessel licensing standards and towing vessel inspection standards. As you know, TSAC is the congressionally authorized panel that provides the Coast Guard with direct industry and mariner representation in the development of new regulatory initiatives.

ACL has been on the forefront of a number of efforts to enhance safety on the inland waterways. I am encouraged that the Coast Guard is close to publishing the towing vessel inspection Notice of Proposed Rule Making. TSAC has recommended the new regulations include a strong emphasis on safety management systems. If the new regulations provide that non-compliance with a measured safety management system could result in suspension of a vessel's certificate of inspection, the combination will provide the Coast Guard with a powerful enforcement tool that ties a vessel's human factors directly to a company's ability to engage in commerce.

ACL supports a program of targeted enforcement from the Coast Guard. While we look forward to enactment of the new towing vessel inspection regulations, we are working with the American Waterways Operators to improve the Responsible Carrier Program. RCP audit results should be provided in a timely and transparent manner to trade association members and the Coast Guard alike.

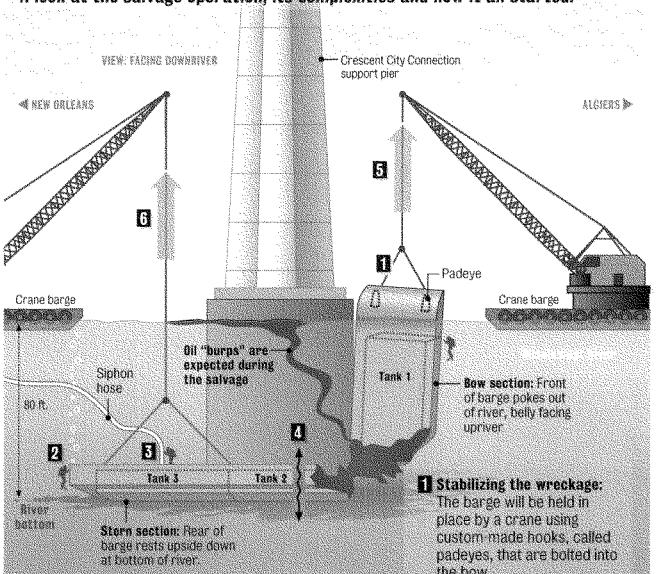
In closing, I want to thank the committee for this opportunity to testify. In the last decade, we have made significant strides to enhance safety on the inland waterways and I look forward to seeing the towing vessel inspection regulations finalized.

I would like to once again recognize the outstanding leadership demonstrated by members of the New Orleans Oil Spill Unified Command; especially RADM Joel Whitehead, Captain Lincoln Stroh, Mr. Roland Guidry with the Governor's Office of Oil Spill Recovery, Mr. Charles Henry with NOAA, and Mr. Jeff Douzat with the Louisiana Department of Environmental Quality. When this team of leaders confronted a problem, they left jurisdictional concerns aside to find the best solution.

I look forward to working with this Committee and I am available to answer questions about my testimony.

RAISING THE BARGE

Barring any setbacks, a marine salvage crew will begin bringing up the barge that has been spilling fuel oil into the Mississippi River for more than a week. A look at the salvage operation, its complexities and how it all started:



1 Stabilizing the wreckage: The barge will be held in place by a crane using custom-made hooks, called padeyes, that are bolted into the bow.

2 Getting the air out: Divers search for air pockets in the barge to further stabilize the wreckage and prevent explosions when boring into the hull.

3 Removing the oil: Tanks 1 and 2 will be cleared of any lingering oil. Tank 3, which may not be damaged, will be tapped and drained.

4 Cutting it up: A cutting barge called the Ajax will slice through Tank 2, separating the wreckage to ease the removal.

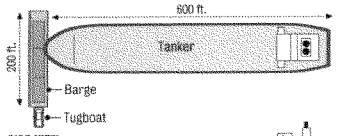
5 Removing the bow: The front section of the barge will be lifted straight up and onto a waiting barge.

6 Removing the stern: The rear secton of the barge will be harnessed and raised onto a waiting barge.

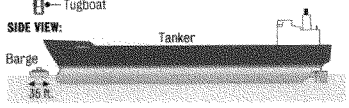
WHAT STARTED IT ALL

At 1:30 a.m. July 23, the tanker Tintomara hit a fuel barge steered by a tugboat whose crew was not properly licensed to operate on the Mississippi River. The barge, carrying more than 400,000 gallons of No. 6 fuel oil, was sliced open by the impact.

BIRD'S-EYE VIEW, JUST BEFORE IMPACT:

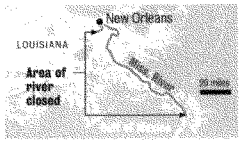


SIDE VIEW:



THE RESULT

The Mississippi River was closed to all ship traffic from New Orleans to the Gulf of Mexico. It has since reopened.

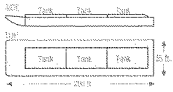


WHAT'S TAKING SO LONG

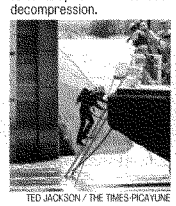
RESPONSE: As with any disaster, officials must assess the problem, coordinate efforts and plan accordingly, all of which takes time.

HIRING SALVAGE CREW: Bisso Marine was awarded the contract to remove the barge from the bottom of the river.

RESEARCH: The salvage crew had to locate a sister barge of the one that sank in order to determine dimensions, tanks and air pockets. Divers also needed to familiarize themselves with the barge because visibility will be limited.



DIVING: Facing strong currents and little or no visibility in the muddy river water, divers will struggle to do their job. They take shifts because they cannot stay under for more than an hour before needing to come up for more air and decompression.



TED JACKSON / THE TIMES-PICAYUNE

CUSTOM EQUIPMENT: A special hook, called a padeye, had to be manufactured to secure the bow section of the barge and lift it. Two padeyes were fitted for this operation.

EQUIPMENT DELIVERY: Special cutting and lifting equipment, such as the Ajax (below), had to be transported to the site.

Sources: Bisso Marine, Coast Guard

DAN SWENSON / THE TIMES-PICAYUNE

1701 East Market Street, Jeffersonville IN 47130-4717

MARIO A. MUÑOZ
VICE PRESIDENT OPERATIONS
812-288-0347

November 3, 2008

Chairman Cummings
Coast Guard and Maritime Transportation Subcommittee
507 Ford House Office Building
300 D St., SW
Washington, DC 20510

Ranking Member LaTourettte
Coast Guard and Maritime Transportation Subcommittee
505 Ford House Office Building
300 D St., SW
Washington, DC 20510

Dear Chairman Cummings and Ranking Member LaTourette:

As a witness at the Subcommittee's September 16, 2008 hearing, I am writing to request the opportunity to clarify the hearing record. According to the Subcommittee's Memo, "Between 2000 and 2008, ACL was the managing owner of equipment on which a total of 8 people died or went missing". While technically accurate in seven of the eight cases, I would like to clarify that other companies maintained operational control of the circumstances involving three of the casualties. I would like to offer the following:

First, the Coast Guard has acknowledged that one of the eight deaths in its fatality report to the Subcommittee was an error and should not have been included in the memorandum.

Of the remaining seven casualty reports, ACL recognizes that we lost four employees during the eight year period that occurred during the course of our operations. We deeply regret the loss of any mariner. No fatality is acceptable and ACL is committed to protecting the lives and well being of our employees by striving for continuous improvement in our safety program.

I would like to offer a brief description of each of the three remaining incidents. Two of the fatalities were the responsibility of independent operating companies who had chartered ACL owned equipment. The final fatality involved the employee of an independent marine service company who was contracted to pump an ACL barge while it was at dock.

The first fatality occurred on January 1, 2000 and involved a deckhand employed by Lewis and Clark Marine, Inc. of Granite City Illinois. The Marine Casualty Report was made by Lewis and Clark Marine. Lewis and Clark Marine assumed full responsibility for the accident and no claims were made against ACL. At the time of the accident, the Lewis and Clark operated towboat was owned by ACL and chartered to Lewis and Clark.

The second fatality occurred on March 28, 2001 and involved an employee of McKinney Towing Inc. of Baton Rouge, Louisiana. McKinney Marine filed the Marine Casualty Report and later indemnified ACL. ACL owned the towing vessel and chartered it to McKinney Marine who was solely responsible for the vessel's operations.

The third fatality occurred on May 23, 2002, when a tankerman employed by Adams Land and Marine, Ltd. went missing while intending to service an ACL tank barge moored at an Adams Land and Marine dock facility. After several days, the body of the Adams Land and Marine's employee was found twenty miles downstream from their dock. Following an investigation, OSHA cited Adams Land and Marine, Ltd. for safety violations involving the physical condition of their dock facility. The investigation could not have established the point where the tankerman fell into the river. No one knows if he fell from the dock or an adjacent barge. ACL had no involvement in the cause of this incident.

ACL is committed to safety. For this reason we felt that it was our responsibility to carefully review each of the casualties described in the Subcommittee's memorandum to ensure that they were an accurate reflection of our operating record. We hope this information is helpful to the Subcommittee's work.

Sincerely,

Mario Muñoz

Seafarers International Union
5201 Auth Way
Camp Springs, Maryland 20746, (301) 899-0675

Testimony of SIU Executive Vice President Augustin Tellez
Before the U.S. House Committee on Transportation and Infrastructure
Subcommittee on Coast Guard and Maritime Transportation
September 16, 2008

Mr. Chairman and Members of the Subcommittee:

I am Augustin Tellez, executive vice president of the Seafarers International Union – Atlantic, Gulf, Lakes and Inland District (SIU). The SIU represents thousands of American merchant mariners employed in all maritime sectors including the inland waterways. Thank you for the opportunity to appear before this subcommittee to discuss an issue of immediate importance: safety on the inland waterways of the United States.

This hearing was scheduled in order to discuss both the recent oil spill in New Orleans involving the tug Mel Oliver, which pushed a fuel oil-laden barge into the path of the tanker Tintomara on July 23, and the safety aspects related to what I consider this very preventable incident. The collision resulted in hundreds of thousands of gallons of fuel oil spilling into the Mississippi River, creating significant environmental and financial ramifications. While the causes of the incident are still under investigation, one critical and undeniable issue is the fact that the tug involved in the collision was under the control of an inexperienced and unqualified apprentice mate and had no licensed master aboard. This in itself is a clear violation and disregard of existing law and is made even more appalling by the fact that this was not the company's first instance involving tugs and unqualified mariners. Another tug operated by the company, the Ruby E, was involved in an incident on July 13, resulting in the sinking of that vessel. An investigation into that accident revealed that an apprentice mate was at the helm of the vessel instead of a licensed operator.

In a perfect world, the self-policing culture prevalent in the tug and barge industry on the inland waterways may have some value. Unfortunately, in the real and imperfect world, there are companies that will choose short-term commercial expedience and financial gain above marine safety and protection of the environment, to the detriment of responsible carriers who make the effort to provide safe marine transportation on the rivers of the United States. While the investigation into the Mel Oliver incident is ongoing and not all penalties have been assessed, what are the immediate consequences to the company stemming from the self-policing culture of the towing industry? According to press reports, the company's membership in a private association which acts as the "de facto regulator" of the towing industry has been revoked because of its failure to pass a third-party safety audit and failure to submit a letter agreeing to mandatory annual audits. However, despite this action, the company can still operate in the inland marine environment along with hundreds of other operators that do not participate in the program.

The SIU believes that the program has merit in that most members have a sincere interest in providing safe and efficient transportation. However, the SIU advances that a deep regulatory void exists in the tug and barge industry, and although it is laudable that the industry has attempted self-policing, it generally doesn't work. The U.S. Coast Guard is the government agency responsible for promoting marine safety and protecting the environment on the inland waterways. The agency has

been unable to adequately regulate the towing industry, due to lack of sufficient resources. As far as the SIU is concerned, it is the responsibility of the Coast Guard to set and regulate safety standards including those involving manning, training, inspections, etc. In fact, in a recent news article in the New Orleans Times-Picayune, a representative of the American Waterways Operators – which represents the tug and barge industry – noted that "only the Coast Guard can truly regulate the industry." We agree.

As mentioned, self-policing may have some value, especially when regulators do not step up to the plate. But, self-policing works minimally and only when everything is going well – especially when there is no shortage of mariners, and economic conditions are favorable. Unfortunately, today that is not the case, and many companies seek short-term answers. For example, with the shortage of personnel in the towing industry at an all-time high, some companies are allowing the apprentice mate/steersman to operate a vessel without a licensed operator. Desperate times can lead to desperate measures, and it is unrealistic to expect every company to show the necessary restraint.

As a further ripple effect brought on by the shortage of mariners, it has been observed that towing companies have dramatically cut training regimens to make up for staffing shortages. The result can be seen in an inexperienced steersman operating a vessel that runs right down the Mississippi River through New Orleans and causes a catastrophe.

And now, because of the shortage of manpower in the towing industry, inland towing companies are looking to Congress and the Coast Guard to decrease the sea-time experience and training requirements for the apprentice mate/steersman to progress to mate/pilot. It is astounding that at a time when accidents in the inland industry seem to be happening more frequently and at an unacceptable rate that the Coast Guard or Congress would even consider decreasing experience and training requirements for inland boatmen.

At this point I would be remiss in not mentioning the SIU-affiliated Paul Hall Center for Maritime Training and Education, which was founded in 1967 and is located in Piney Point, Maryland. We work closely with our contracted companies through the school to provide training opportunities for our members and to help ensure the company's vessels are crewed with properly trained and qualified people, including in the brown-water sector. The Paul Hall Center, which is a comprehensive, state-of-the-art vocational training facility, offers inland and general safety training not only at the school itself, but also on-site and aboard the company's vessels across the country as needed and requested by our companies. The school also has created company-specific curriculums.

Some of the 70-plus courses offered by the Paul Hall Center include Radar, STCW Basic Safety Training (which includes fire fighting, first aid and CPR), oil spill prevention and containment, apprentice mate/steersman, tank ship familiarization, tankerman-PIC-barge, master limited and master unlimited (500 and 1,600 tons), engineering, oiler, pumpman, and marine electrician. All of those courses are Coast Guard-approved.

In short, the school believes that anyone choosing a career as a mariner or boatman must be taught the knowledge and skills to keep pace with technological advances within their industries. As a result, the school has developed a total program for professional advancement – resulting in a highly trained, up-to-date and competent work force for the maritime industry. We expect no less from any other maritime training institution, and we believe it is up to the Coast Guard to scrutinize what such schools offer.

The latest five-year Coast Guard Marine Safety Performance Plan has placed the towing industry under the heading "Significant Residual Risks." The report notes that "the environment in which the towing vessel industry operates: year round, day and night, in most all weather conditions, to close quarter vessel traffic lanes, and in shallow waters (coastal and inland rivers) combine to make this industry especially high risk. The impact of disruptions to commerce due to towing vessel incidents – along with risks to ports and urban areas – can be substantial. In addition, more barges are carrying Certain Dangerous Cargoes…." The Coast Guard further states that "to address these concerns, risk mitigation, outreach, and a robust inspection program must be instituted to reduce towing vessel collisions and groundings, mariner deaths and injuries, and chemical and oil discharges."

The SIU advances that the "Significant Residual Risks" designation makes it abundantly clear that the U.S. Coast Guard must regulate all aspects of the tug and barge industry. Their marine safety program for towing vessels must include on-site towing vessel inspections, setting of manning levels, establishing training requirements and standards, etc. The Coast Guard should work with the tug and barge industry in a mutual cooperative effort to enhance safety on the inland waterways. But under no circumstances should the towing and barge industry be permitted to practice self-policing in crucial areas.

I would like to note that in the unregulated segment of the industry, companies which operate under maritime labor contracts such as those found in the SIU typically enjoy safe and efficient operations. Those safe and efficient operations in part are ensured by productive relationships between the unions and the companies that help provide comprehensive training while promoting high levels of personal safety and environmental standards. The agreements also stipulate effective and proper manning levels.

In conclusion, the SIU has a history of appearing before various Congressional committees and subcommittees affirming their commitment to safety in the marine environment. On multiple occasions, we have testified for and supported the initiation of Merchant Mariner Documents for mariners on the inland waterways, attempting to demonstrate that such documents indeed would improve safety in that sector. Now is the time for the subcommittee to revisit this important issue.

Again, thank you for the opportunity to participate in this hearing and to express our views concerning safety on the inland waterways. The SIU stands ready to assist this subcommittee and the Coast Guard in promoting safety and environmental protection in the brown-water sector. I will be happy to answer any questions.

###

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United States Coast Guard

Commandant
United States Coast Guard

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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

REAR ADMIRAL JAMES WATSON
DIRECTOR OF PREVENTION POLICY

ON THE

NEW ORLEANS OIL SPILL AND
SAFETY ON THE INLAND RIVER SYSTEM

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

U. S. HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2008

Good morning Mr. Chairman and distinguished members of the Committee. It is a pleasure to appear before you today to discuss the Coast Guard's role in the New Orleans's oil spill and uninspected towing vessel (UTV) regulations. This statement discusses the current status of the spill and the requirements of towing vessel operators.

Summary of accident

The incident occurred within the boundaries of Coast Guard Sector New Orleans, one of seven Sectors reporting to the Eighth Coast Guard District. The Eighth Coast Guard District is headquartered in New Orleans.

At approximately 1:30 a.m. local time on July 23, 2008 the Tank Vessel (T/V) TINTOMARA, a 600'downbound chemical tank ship, collided with the DM932 tank barge being pushed by the upbound UTV MEL OLIVER near Mississippi River mile marker (MM) 98.2 at the Harvey Lock and one-half mile upriver from the New Orleans Central Business District. Tank barge DM932 was carrying approximately 419,286 gallons of No. 6 fuel oil and was hit near amidships on the port beam, resulting in a major inland oil spill. The Tank Barge DM932 sank as a result of the collision and two of its three tanks were breached releasing approximately 282,828 gallons of oil into the Mississippi River. The 136,458 gallons of oil that remained in the undamaged tank was ultimately transferred from the sunken barge into a storage tank. The T/V TINTOMARA did not suffer a hull breach nor discharge any of its styrene and biodiesel fuel cargo.

At the time of the incident, UTV MEL OLIVER was operated by DRD Towing and owned by American Commercial Lines (ACL). Tank Barge DM932 was owned by ACL. While the UTV MEL OLIVER had an assigned crew of a Captain, Steersman apprentice, and two deckhands, the Captain was not aboard the vessel at the time of the collision. The steersman apprentice was operating the MEL OLIVER at the time of the collision. He was licensed but his license did not authorize him to operate the vessel without the captain's presence in the wheelhouse.

While there were no immediate notifications to the Coast Guard of personnel injuries on any of the vessels involved in the collision, there have been subsequent notifications to the investigating officer of minor injuries from the two deckhands onboard the MEL OLIVER. Those injuries involve back and neck strain.

The Response

Watchstanders at Coast Guard Vessel Traffic Service (VTS) Lower Mississippi River, which is located in New Orleans, were the first Coast Guard personnel to become aware of the collision. When the vessels were less than a half mile apart, the UTV MEL OLIVER turned slowly to port and began to cross the river; the path of which would have the Tank Barge DM932 cross bow of the T/V TINTOMARA. VTS watch standers observed both vessels approaching one another, heard the T/V TINTOMARA call repeatedly to the UTV MEL OLIVER to ascertain the vessel's intentions, and independently hailed the UTV MEL OLIVER. The UTV MEL OLIVER did not return the radio call outs from the T/V TINTOMARA or VTS prior to the collision. Immediately after the collision, the VTS Watch Supervisor notified the Sector New Orleans Command Center of the incident. Recognizing the potential danger and impact on surrounding vessel traffic, the VTS under the authority of the Captain of the Port closed the Mississippi River between MM 98 and MM 99 three minutes after the collision.

no need for Search and Rescue operations. Coast Guard small boats and an Incident Management Team from Sector New Orleans were dispatched to assess on scene damage and enforce a safety zone. One of the responsible parties, ACL, responded immediately to the incident and hired multiple Oil Spill Recovery Organizations (OSROs) shortly after being notified. The first (OSRO) was en route approximately 30 minutes after the collision and two more arrived on scene within two hours. Sector New Orleans coordinated first light overflights by Coast Guard Air Station New Orleans aircrafts to assess the impact of the spill and direct on-water recovery efforts. ACL also notified and dispatched its own Spill Management Team from their headquarters in Evansville, Indiana within hours of the incident. The Coast Guard notified the National Transportation Safety Board (NTSB) of the marine casualty within 6 hours of the collision.

A Unified Command (UC), including the Coast Guard Captain of the Port, Responsible Party, State of Louisiana officials, and other federal partners, was established to respond to the incident, protect public health, minimize adverse impact to the environment, and safely and efficiently reopen this critical waterway. Recognizing the precise extent of damage to DM932 might not be available for days, response efforts were based on an assumption of a total loss of cargo.

As a result of the incident nearly 100 miles of the Mississippi River from New Orleans to the Gulf of Mexico was closed to vessel traffic for six days. At the height of the response, five OSROs were cleaning up the spill with over 2,000 employees, ten skimmers, 300,000 feet of boom, four vacuum trucks, four barges, and 200 work boats. Over 80 miles of shoreline was surveyed with 100 Coast Guard members working with more than 2,300 people from dozens of federal, state, parish and local government agencies, as well as industry and oil spill response organizations.

The Unified Command successfully coordinated the recovery and restoration of area's marine transportation system. Simultaneous with these efforts, the Unified Command also oversaw the closure and opening of impacted water intakes, salvage of the damaged barge, oil spill response operations, wildlife capture, cleaning and rehabilitation, air quality monitoring, water sampling and other related missions.

Recognizing the economic importance of the Mississippi River to the city, state, region, and Nation, the Unified Command employed a Marine Transportation System Recovery Unit (MTSRU) within the Unified Command to identify and prioritize vessel movements to facilitate commerce without jeopardizing spill response and recovery efforts. The MTSRU for this incident was comprised of Coast Guard personnel from Sector New Orleans, Maritime Transportation System Recovery Assist Team members, and interagency and port stakeholders representing multiple facets of shipping and commerce interests. Using pre-established plans, the MTSRU coordinated the movement and rapid cleaning of hundreds of vessels to restore river traffic and quickly re-open the marine transportation system to full traffic.

Although a safety zone remained in effect during the pollution response, normal traffic was allowed to transit the Lower Mississippi River on July 30, 2008, just one week after the incident. The vessel cleaning stations remained open until August 13, 2008, three days after the salvage operations concluded to account for any vessels that may have become oiled while the barge was being removed. A total of 1,190 vessels were cleaned (106 deep draft, 94 tugs, 981 barges and 9 integrated tug and barges). All locks and water intakes were opened by August 10, 2008, and all ferries resumed normal operations by August 22, 2008. More than 320,000 gallons of oil and oily water have been recovered.

Investigations

Within twenty hours of the spill, the Eighth Coast Guard District Commander convened a District Formal Marine Casualty Investigation of the incident. The Coast Guard's formal investigation is conducted under the authority of Title 46, United States Code Section 6301 and Title 46, Code of Federal Regulations Part 4. The investigation is intended to determine the cause of the casualty to the extent possible and to obtain information for the purpose of preventing or reducing the effects of similar casualties in the future. The investigation also assesses if there is evidence of any incompetence, misconduct, or willful violation of law on the part of any licensed officer, pilot, seaman, employee, owner, or agent of such owner of any vessel involved or any inspector, officer of the Coast Guard, or other officer or employee of the United States, or any other person, which caused or contributed to the cause of this casualty. Additionally, the investigation identifies evidence of any violation of the provisions of the United States Code or any of the regulations issued there under.

Initial response to the investigation included four (4) qualified investigating officers (IO) and 2 break-ins, along with three (3) pollution investigators. An additional qualified IO joined the team within the first day. Within 10 hours all persons directly involved with the movement of the tanker TINTOMARA, including the Pilot, and the three (3) crewmembers of the UTV MEL OLIVER were drug and alcohol tested. All persons tested in relation to the tanker TINTOMARA yielded negative results for drugs or alcohol. Test results from the UTV MEL OLIVER yielded two (2) negative results and one (1) positive result; the Steersman and off-duty deckhand tested negative and the on-duty deck-hand tested positive for tetrahydrocannabinol (THC), a substance contained in marijuana.

Upon learning of the casualty, the NTSB sent personnel to New Orleans to investigate as well and has actively assisted the investigating officer during the fact-finding portion of the investigation. The NTSB has participated in the Coast Guard investigatory hearings held to date. In doing so, the NTSB may make recommendations about the scope of the investigation, call and examine witnesses, and submit or request additional evidence.

For the formal investigation six Parties in Interest have been designated; the TINTOMARA, the MEL OLIVER, Captain Chance Gould (Pilot onboard the TINTOMARA), American Commercial Lines (ACL) Inc. (owners of both the Tank Barge DM932 and the MEL OLIVER), DRD Towing (operator of the MEL OLIVER), the Captain assigned to the MEL OLIVER but not onboard at the time of the marine casualty, and the Steersman of the MEL OLIVER.

46 Code of Federal Regulations Part 4.03-10 defines a "party in interest." That section provides that "The term party in interest shall mean any person whom the Marine Board of Investigation or the investigating officer shall find to have a direct interest in the investigation conducted by it and shall include an owner, a charterer, or the agent of such owner or charterer of the vessel or vessels involved in the marine casualty or accident, and all licensed or certificated personnel whose conduct, whether or not involved in a marine casualty or accident is under investigation by the Board or investigating officer."

The Coast Guard formal investigation has held one public hearing to date and is currently in recess. The investigative hearing is scheduled to resume on the 9th of October. The Coast Guard will issue its report after the fact finding and analysis is complete. Likewise, the NTSB intends to issue a report when its investigation is complete. These reports may take six months to a year to complete.

Licensing Standards for Towing Vessels
The Secretary of Transportation and Coast Guard conducted a comprehensive examination of the safety of towing vessels after the September 1993 allision of a towing vessel and its barges with a railroad bridge near Mobile, Alabama. The examinations identified a need to improve licensing, training, and qualifications of operators of uninspected towing vessels.

In May 2001, the Coast Guard implemented a new licensing framework for maritime officers on towing vessels. The new licensing scheme consisted of a progression of three licenses titled master of towing vessels, mate (pilot) of towing vessels, and apprentice mate (steersman). Those officers who had towing vessel experience prior to the rulemaking were grandfathered into the new endorsement.

A mariner obtains a license authorizing service on towing vessels through the following:

- After 18 months of service (12 months of which must be on towing vessels) a mariner may undergo examination by the Coast Guard (or complete an approved training course) and, if successful, receive a license as apprentice mate (steersman).

- After 12 months of service on towing vessels (a total of 30 months) as an apprentice mate (steersman), training, and assessment of his/her demonstration of professional skill, the mariner may receive a license as mate (pilot) of towing vessels.

- After 18 months of professional experience as a mate (pilot) of towing vessels (a total of 48 months of service), a mariner is eligible to receive a license as master of towing vessels.

The Coast Guard also requires that towing vessel officers provide evidence of ongoing training and drills, or an assessment of professional skills when they renew their license authorizing towing service.

Additionally, the Coast Guard provided a process by which mariners licensed to serve on vessels greater than 200 gross register tons (GRT) can obtain authority to operate towing vessels. Previously, any mariner with a license to operate steam and motor vessels was allowed to operate towing vessels with no additional requirements. Now, an officer seeking the endorsement as master or mate (pilot) of towing vessels on their license must have at least 30 days of training and observation on towing vessels, and complete a towing officer assessment record showing evidence of assessment of practical demonstration of skills.

Licenses for officers of towing vessels are issued for either Oceans, Near-Coastal, Great Lakes-Inland, or Western Rivers routes. A mariner must document at least 90 days on the route they are seeking. For Great Lakes-Inland and Western Rivers routes an officer may choose to seek authorization for only a limited geographic area within the specified route. This allows the mariner to obtain a license as master of towing vessel with only 36 months of service and completion of a limited examination and limited assessment of professional skills, as appropriate for the reduced route.

If a seagoing towing vessel is greater than 200 GRT or on an international voyage, the officers must meet the requirements of the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended. These requirements are in addition to the requirements for those as master or mate (pilot) of towing vessels.

In general, each towing vessel of at least 26 feet must be operated by an individual licensed as a master of towing vessels or as a master of steam or motor vessels greater than 200 GRT holding either an endorsement on his or her license for towing vessels or a completed Towing Officer's Assessment Record signed by a designated examiner indicating that the officer is proficient in the operation of towing vessels. The license must be endorsed for the route upon which the vessel is operating.

If a towing vessel operates more then 12 hours in any 24 hour period a second officer must be on the vessel. The second officer must hold a license as master or mate (pilot) of towing vessel, or a license as master or mate of steam or motor vessels of greater than 200 GRT endorsed for towing vessels or holding a completed Towing Officer Assessment Record and having evidence of 30 days of training and observation on towing vessels.

The unlicensed crewmembers on towing vessels of at least 100 GRT must have a merchant mariner's document, except those crewmembers serving on towing vessels operating only on rivers and lakes (except the Great Lakes). At least 50 percent of the deck crew on a towing vessel, where merchant mariner's documents are required, must hold an endorsement for a rating of at least Able seaman. Able seamen are not required on towing vessels operating on bays and sounds connected directly with the seas.

Towing vessels are not part of the United States fleet of inspected vessels and the Coast Guard does not conduct routine examinations of these vessels or their crew. The Coast Guard does conduct enforcement actions on towing vessels in response to a maritime incident, (marine casualty, pollution, etc.), as part of voluntary examinations, during random vessel boardings, or in response to a credible report of improper manning. Additionally, during the mariner application process the Coast Guard ensures that mariners have met the requirements of licensing and credentialing regulations.

As part of a response to a maritime incident, the investigators review the credentials of the persons on board. During this process, they ensure that the appropriate credential is held by the mariner and that it is valid. If the investigation reveals evidence of possible misconduct, negligence or violation of law, a recommendation may be made to pursue suspension and revocation against the credential.

Some Coast Guard Districts have established a voluntary examination program for towing vessels. Depending on resource availability, participating towing vessels are examined by the Coast Guard under these programs for compliance with all laws and regulations including manning requirements.

Examinations will serve as a "bridge" acquainting both vessel operators and the Coast Guard with oversight of these domestic vessels using a safety management system and third-party audits and surveys.

Coast Guard's Issuance of Discontinued Licenses
When the Coast Guard created the new licensing scheme for towing vessels, it discontinued the use of licenses titled "Operator" and "2nd class operator" of uninspected towing vessels. It recently came to our attention that a minimal number of licenses were improperly renewed using the old titles vice "Master of Towing Vessel." The Coast Guard is taking steps to replace the five active licenses that were improperly issued. It is important to recognize that although those licenses included the wrong title, the mariners to whom they were issued were qualified to operate towing vessels.

Towing Industry Regulation
The Coast Guard and towing industry share an urgency to complete regulations to initiate inspections for certification. Currently, the Coast Guard intends to publish a Notice of Proposed Rulemaking in 2009. We are diligently working to meet that deadline.

The Coast Guard intends to develop regulations to inspect towing vessels and has worked closely with the Towing Safety Advisory Committee (TSAC) on the endeavor. TSAC developed a comprehensive set of recommendations including use of third party organizations to conduct alternate compliance verification of towing vessels and company safety management systems. Within such a scheme, the Coast Guard would be responsible for approval and oversight of the third party organizations and audits of the alternate programs subject to inspection. This ongoing engagement with TSAC has been productive, with the most recent meeting in March 2008 resulting in additional recommendations. The Coast Guard will consider those options and others in determining the best methodology to ensure towing vessel safety.

Thank you for the opportunity to testify before you today. I look forward to your questions.

TESTIMONY BY
DAVE WESTERHOLM
DIRECTOR
OFFICE OF RESPONSE AND RESTORATION
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE

HEARING ON
OIL SPILL IN NEW ORLEANS IN JULY 2008 AND
SAFETY ON THE INLAND RIVER SYSTEM

HEARING BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2008

Thank you, Mr. Chairman and members of the Committee, for the opportunity to testify on the National Oceanic and Atmospheric Administration's (NOAA's) role in response to the July 23, 2008, oil spill on the lower Mississippi River near New Orleans, LA. I am Dave Westerholm, Director of the Office of Response and Restoration, National Oceanic and Atmospheric Administration within the Department of Commerce.

I appreciate this opportunity to highlight the critical contributions provided by NOAA during oil spills. When oil spills into our coastal and inland waters, it can harm people and the environment and cause widespread economic effects. The best remedy is to prevent oil spills by promoting safe marine transportation. When a spill does occur, we must act quickly and effectively to mitigate any harmful effects and restore injured resources. An effective response, based on solid science and smart decision making, reduces environmental and socioeconomic impacts as well as clean-up costs. To ensure a quick and effective response, we must remain prepared for spills by maintaining adequate response capacity and capabilities on hand.

NOAA's Office of Response and Restoration (OR&R) has environmental scientists, oceanographers, physical scientists and biologists spread across three main divisions. These divisions are: (1) the Emergency Response Division, which provides 24/7 technical support to oil spills nationwide; (2) the Assessment and Restoration Division, which works on restoration of marine and coastal habitats after oil spills and chemical releases; and (3) the Marine Debris Program, which coordinates marine debris research, prevention, and removal activities. Staff from all three OR&R divisions, along with other key NOAA programs, supported the U.S. Coast Guard-led response to the New Orleans Barge Spill.

Early on the morning of July 23, 2008, a 600-foot chemical tanker and 200-foot fuel barge collided near downtown New Orleans, LA. The collision tore the barge "DM932" in half, discharging an estimated 270,000 gallons of #6 fuel oil, a viscous tar-like oil. The spill was

initially estimated to be 419,000 gallons, but nearly 150,000 gallons was trapped on the barge and removed during salvage. The barge had just loaded the oil at Stone Oil Co. in Gretna, LA, across the river from the accident site, and was on its way to Memphis, TN. The double-hulled tanker "TINTOMARA," loaded with styrene and biodiesel and outbound for Europe, had only minor damage and did not spill any material. This spill was approximately five times larger than the 53,000 gallons of fuel oil spilled in November 2007, from the COSCO BUSAN in San Francisco Bay.

The U.S. Coast Guard (USCG) has the primary responsibility for managing oil spill clean-up activities. NOAA provides Scientific Support Coordinators (SSCs) to assist the USCG in its role as federal On-Scene Coordinator. SSCs lead a team of scientists who provide scientific information that enables better decisions to be made during the response and clean-up. NOAA's response to each incident is dependent on that spill's characteristics, and scientific coordination is critical. Through experience, expertise, and state-of-the-art technology, NOAA forecasts the movement and behavior of spilled oil, evaluates the risk to resources, and recommends protection priorities and appropriate clean-up actions.

The OR&R team was notified shortly after the collision and we provided our first spill forecast predictions to the Unified Command within two and a half hours of the event. Over the following month, we provided 24/7 scientific support, both on-scene and in our Seattle Operation Center. This included daily or twice daily trajectories of the spilled oil, information management, overflight observations, weather and river flow forecasts, and shoreline assessment. Over 200 miles of river shoreline were surveyed to support clean-up activities. In addition, we quickly mobilized OR&R's damage assessment and restoration team to begin collecting data and a variety of environmental samples to initiate restoration planning as a Natural Resource Trustee. I would like to mention and thank the Incident Meteorologists, our colleagues at NOAA's National Weather Service, who provided on-site weather support throughout this event.

To give a sense of the scale of this event, within a few days of the incident, oil from the barge had spread over a hundred miles of the lower Mississippi River. Over 2000 individuals were involved in the clean-up, including over a dozen members of my staff. In addition to harming wildlife, wetlands, and other coastal habitats, the incident resulted in significant economic disruption including extensive waterway closures, closure of municipal and industrial water intakes, and interference with critical channel dredging activities. The closure of drinking water intakes created a concern over the adequacy and quality of potable water for hundreds of thousands of people. Hundreds of ships were trapped or prevented from proceeding through one of the nation's critical waterways. These closures remained in place for over a week because oil continued to leak from the sunken barge. When traffic was allowed to resume, ship traffic was slowed because of the need to minimize vessel wake and because ships had to be inspected and, if necessary, decontaminated before proceeding beyond the spill zone.

The river walk section of the French Quarter was heavily oiled and cross-river ferries were shut down. Several cruise ships were prevented from docking at the Port of New Orleans, resulting in a significant economic loss to the region. Over 200 facilities faced disruption because of the inability to ship or receive products including several crude refineries that rely on river

commerce to provide feedstock oils. NOAA's Scientific Support Team helped to minimize these disruptions and coordinated many of these environmental issues for the Unified Command, including technical issues associated with the fate of and behavior of the oil, shoreline and ship clean-up strategies, protection of water intakes, and contamination of dredge spoils.

The response has been disrupted several times because of severe weather, including the passage of Hurricane Gustav, but the clean-up is nearing completion. NOAA will continue to assist as needed until shoreline clean-up is completed and the response is demobilized. But while the operational response phase is winding down, NOAA's role as a natural resource trustee under the *Oil Pollution Act* will continue to ensure that the natural resources harmed by the spill are restored. NOAA is working with the other federal and state resource agencies and with representatives of the responsible party in a cooperative process to develop a restoration plan.

The Value of Readiness

The collision of a 600-foot chemical tanker and 200-foot fuel barge in one of the nation's most critical waterways is a reminder that accidents still occur, and will undoubtedly continue to occur, despite the many safeguards and improvements that have been put in place since the passage of the *Oil Pollution Act*. In the past six weeks since this incident, NOAA has responded to two dozen other spills around the country. Although the best remedy is to prevent oil spills, and despite our best prevention efforts, the huge volumes of oil moving through our waterways make spills a statistical certainty. Once oil is released into the marine environment, the best that we can do is to quickly and effectively mitigate and restore any harmful effects.

To mitigate environmental effects of future spills, responders must be equipped with sufficient capacity and capabilities to address the challenge. Response training and exercises are essential to maintaining capabilities. Continuous training, improvement of our capabilities, maintenance of our capacity, and investments in high priority, response-related research and development efforts will ensure that the nation's response to these incidents remains effective.

As has been noted, during these events NOAA is relied on to provide detailed information and reliable projections related to an oil spill's location and trajectory. NOAA's ability to observe the ocean environment and obtain timely information on tides, currents, and related oceanic conditions is directly related to the accuracy of the information and forecasts that are provided to incident responders. Our readiness, therefore, relies in large part upon the presence and reliability of ocean observing assets, which are critically important for the collection and integration of this data.

Conclusion

NOAA serves a key role in providing scientific support in emergency response incidents. NOAA's suite of scientific products and services, and the expertise of our personnel, are critical in mitigating harm, providing information for allocation of response assets, restoring adverse effects on natural resources, and informing overall response decision-making. Thank you for allowing me to testify on NOAA's response efforts.

The Honorable Elijah Cummings
Sub-Committee Chairman
U.S. Coast Guard and Marine Transportation
2235 Rayburn House Office Building
Washington, DC 20515-2007

Dear Congressman Cummings:

My name is Eric Larsson and I would like to comment on, and hopefully rectify or at least go on record as disagreeing with much of the testimony made by Mr. Eric Dawicki on September 16, 2008. If after reviewing my comments you wish to discuss my opinion further, I would be happy to travel to Baltimore or Washington to meet with you at your convenience.

First I would like to discuss my background. I am a 1976 graduate of the US Merchant Marine Academy and sailed on my license and advanced it to an Unlimited Chief Mate's License by 1982. Beginning in 1978 on my time off, I worked for a company involved in maritime simulation, an area that, 30 years later, I am still completely involved. I have an MS degree from Fordham University in Adult Education and Human Resource Development and am currently a doctoral candidate for a PhD in Education Psychology at Fordham University. On September 17, 2008 I had a successful oral defense of dissertation proposal entitled *Simulation Training of Boat Handling: Contributions of Problem Solving Style, Spatial Ability and Visualization*. I am the Chairman of the International Navigation Simulator Lecturer's Conference and an appointed member of MERPAC, a committee that offers recommendations and comments on regulations proposed by the US Coast Guard with respect to Merchant Vessel Personnel.

For the past 25 years, I have been employed by the Seamen's Church Institute (SCI), a 174-year-old mission to mariners dedicated to the personal, professional and spiritual well-being of these individuals. As an organization, SCI has been involved with maritime training on an informal basis since 1899 and formally since 1916. We are not affiliated with any union or company – our concern is for the mariner first and always. I consider the work that I do training mariners to be more than just a profession it is truly a vocation. During the last 25 years I have personally trained thousands of mariners in the classroom, through the use of simulation, and on board vessels. These mariners have varied backgrounds, from pilots on 500,000DWT tankers calling at offshore US installations, to officers on board cruise ships to the husband and wife seeking to learn the navigation skills necessary for safe weekend recreation on their 26' motorboat. Many of the mariners attending courses were licensed or unlicensed personnel serving on merchant vessels, on vessels of the US Coast Guard and vessels of the US Navy. As you might imagine, I believe very strongly in training for all levels of mariners on any waters, be they international, domestic coastal or inland.

Having seen and read the testimony of Mr. Dawicki, I respectfully disagree with the picture he painted regarding the commitment to training in the Inland industry. In 1997, working with 10 Inland companies, SCI opened a first of its kind simulator-training center specifically designed for Inland mariners in Paducah, KY. Prior to 1997, the inland industry used an apprenticeship model for training new mariners. Simulation for Inland waters and the tolerances required as well as the hydrodynamic models needed to replicate with accuracy the task of navigating on our inland waters did not exist prior to this time. A number of leaders within the Inland industry had the vision to aggressively seek such training capabilities where none existed nor none required. This augmented and complimented the voluntary training recommendations made in the AWO Responsible Carrier Program. This commitment of substantial financial resources of the Inland industry, coupled with a substantial commitment of SCI's own resources occurred without regulatory requirements or punitive inducements. It was and continues to be a commitment to excellence in training by the companies involved. These aforementioned 10 companies agreed to conduct 42 weeks of training per year for 5 years – a total of 210 weeks of training.

In 1998, a firefighting center was opened in Paducah using a towboat mockup provided by the industry to allow training tailored for fighting fires on inland vessels to be conducted. Some of the training conducted at this facility is required by the USCG under 46 CFR Part 10 regulations. Much of the training is not required, but the companies see value in conducting training where safety of the individuals on board and the safety of the vessel are concerned

In 2001, working with an additional 8 Inland companies and 3 deep-sea companies in the Gulf area, SCI opened a second simulator-training center in Houston, TX. These 11 companies agreed to conduct 40 weeks (33.5 weeks Inland) of training per year for 5 years, an additional 200 weeks of training.

The commitment to simulation training for these Inland companies, a total of 23 companies as of the date of this report (see appendix for these companies), is not only significant, it is not required by the US Coast Guard. In the past 11 years, SCI has trained more than 15,000 inland mariners. This number is greater than the number of individuals attending training, because it includes many repeat attendees or attendees that have attended multiple classes. Most of the companies are sending their officers to training on an 18-24 month cycle. Training that is ongoing, practical and relevant is crucial to the development of a professional workforce. These companies, representing 33% of the Inland towing vessels afloat over 1200 HP, are committed to the training of their waterborne staff. The investment made in the training of inland personnel over the last 11 years exceeds $10M. The mariners are grateful for this continuing education and interest in improving their already considerable skills, knowledge and ability. This treatment is a far cry from Mr. Dawicki's claim that mariners are treated as third class citizens. The companies involved that have driven this dynamic change have intensified and formalized their mariner training regimen. Both the companies and mariners have improved because of this training.

Mr. Dawicki offers up the STCW as a cure for the perceived lack of training in the Inland sector. In reviewing the requirements for international vessels of similar size, training includes Basic safety, CPR/First Aid, Firefighting and Bridge Resource Management. In reviewing the training conducted for mariners at SCI, the spirit of STCW if not the letter of it precepts is applied. Companies see the obvious need for CPR and first aid. Thousands of mariners have taken firefighting specific to towing vessels, fighting fires such as they would encounter on a towboat rather than a ship. Survival at sea, a part of basic safety just does not apply when working on a river. Man overboard has always been a concern however, and all forms of training, awareness and refreshers should be employed to enhance safety on board. This is a top priority of the AWO safety committee. It is also mentioned in virtually every Advanced Pilothouse Management course conducted at SCI. This course employs the principles found in Bridge Resource Management course required under STCW. The difference again is the practicality of the course. It is directed at Inland towing vessels and is practical and relevant. Because the course is not US Coast Guard approved the course can be changed to meet the challenges occurring in the industry without the laborious process of a course submission every time the course is altered. When security issues came to the forefront, the course was altered to include a simulation that addressed this problem. When there were difficulties with man overboard, the topic was reviewed in a new manner. If there were lessons learned from near misses or from daily operations, the course was flexible enough to change. The course curriculum design in its initial phase was well conceived and again showed the commitment of the industry.

The process of designing a training regimen for this industry began with a needs assessment. We conducted interviews with company presidents, port captains, and vessel officers and hired instructional staff for the new center. These interviews along with the content mastery experience of our staff was utilized in determining the desired job performance, learner needs, and objectives for the initial training program, as well as how the simulator would be used to have the desired effect on job performance. Course aims and specific objectives were discussed, evaluated and decisions were made in order to build a proper curriculum. Feedback from all levels was important. A decision had been made before this process began to design this program around a simulator specifically designed for the Inland towing industry. This impacted both the instructional strategies and the instructional resources. Evaluation and feedback have been a continual process, within each exercise, each course and each phase of training conducted. This commitment exceeds the basic level requirements of STCW.

Mr. Dawicki offers one e-mail as evidence of the effectiveness of training. I offer a series of anecdotal comments received from mariners during recurrent training, or related by company representatives about trainee's actual actions "on-the-job" that were indicators of the benefit of the type of training captains and pilots were receiving in Paducah and Houston. VHF communication and understanding the rules of the road were two areas cited multiple times when mariners were queried about positive changes because of training. One of the most common statements made by repeat trainees is that they know who was trained by SCI based on their communication on the VHF. Trained individuals are more likely to exercise not only their responsibilities under the rules of the

road, but also their rights. Lessons learned in simulated training scenarios such as the procedures to follow in the case of an oil spill and the application of the rules of the road in a proactive manner are but two of a host of "real life" situations where trainees observed they were more prepared to deal with the actual situation. Mariners have mentioned many times that the training helped them avoid accidents and helped elevate the levels of safety on board.

Mr. Dawicki states that "Shipping companies, trade organizations and manning agencies should not be approved to deliver United States Coast Guard approved training." SCI falls under none of these categories, but a number of highly reputable training organizations such as union schools in Florida and Maryland and a company school in Houston come to mind when considering this statement. All of these schools are of the highest quality and have a true commitment to training. They are in no way part of a "good ole boy" network. Placing people on board that do not meet required standards is just plain bad business sense. No matter the industry, there will always be those that take risks, and those are the people or companies that need to be guarded against. It should also be noted that all schools with US Coast Guard approved courses are audited by the US Coast Guard. Having undergone numerous audits at SCI, I have found them to be thorough, thoughtful and comprehensive.

Mr. Dawicki invokes a deep sea interpretation to Rule 5 in reference to the lookout. If the Congressional Report of the U.S. Senate is referenced (96-979) a further explanation of this rule is offered for pleasure craft, fishing vessels and towing vessels. It states that;

> "...the watch officer or helmsman may safely serve as the lookout. However, it is expected that this practice will only be followed after the situation has been carefully assessed on each occasion and it has been clearly established that it is prudent to do so. Full account should be taken of the weather, conditions of visibility, traffic density and proximity of navigation hazards. It is not the intent of these rules to require additional personnel forward, if none is required to enhance safety."

Fishing vessels and towing vessels have always operated in this manner.

The towing industry uses a two watch system. I have taken the US Coast Guard Crew Endurance Management Systems (CEMS) Expert course and taught many CEMS coaches courses. The Inland industry has responded to the US Coast Guard study that Mr. Dawicki mentioned as being conducted without any follow-up action. CEMS training is a follow-up action to that report. Many companies have taken it upon themselves to ensure that their wheelhouse officers have taken CEMS coaches Training. This is yet another example of a responsible industry that responds to recommendations that make good sense, whether required, mandated or suggested.

The towing industry approached the US Coast Guard about instituting an inspection regimen that was discussed at length by Mr. Allegretti of the AWO. It is my understanding that this regulatory work called Subchapter M would feature prominently a Safety Management System. Once again this is an example of the Inland towing industry taking decisive positive action.

Finally, I would like to commend you on your interest in maritime education and your support of the maritime High School in Baltimore. I have discussed this project with Mr. Art Sultzer and it has the potential to do great good for an industry that needs people of quality entering their ranks. SCI has partnered with the local school system in Paducah, KY. They developed a curriculum that is used for fifth grade students that is centered on the towing industry. It includes an adopt-a-towboat program, a visit to the vessel and a visit to the SCI simulator. The program excites students and is a genuine hands-on learning experience. Mariners also benefit from the interaction with the students.

I again restate my willingness to discuss this opinion further and my offer to travel to Baltimore or Washington to meet with you at your convenience. Many thanks for your consideration.

Best Regards,

Eric K. Larsson
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List of Inland Companies Actively Conducting Simulator Training

Paducah

Inland River Company	**Training for**	**Weeks/year**
Ingram	10+ years	13 Weeks
ACL	10+ years	9 Weeks
Western Kentucky Navigation	10+ Years	2 Weeks
Marathon Ashland	10+ Years	1 Week
Crounse Corporation	10+Years	2 Weeks
Canal Barge Lines	10+Years	1 Week
United Barge Lines	10+Years	2 Weeks
Bluegrass	5+ Years	2 Weeks
AEP/MEMCO	10+ Years	5 Weeks
Alter Barge Lines	5+ Years	1 Week
Madison Coal	5+ Years	1 Week
Consol	5+ Years	1 Week
Bunge	5+ Years	1 Week
Waxler	5+ Years	1 Week
		42 Weeks

Houston

Inland River Company	**Training for**	**Weeks/year**
Kirby	5+ Years	15 Weeks
Ingram	5+ years	2 Weeks
ACL	5+ years	4 Weeks
Canal	5+ Years	1.5 Weeks
Higman Marine	5+ Years	2 Weeks
Buffalo Marine	5+ Years	3 Weeks
Martin Gas Marine	5+ Years	2 Weeks
Horizon	2 Years	0.5 Weeks
Megafleet	5+ Years	0.5 Weeks
Magnolia Marine	New in 07	1 Week
Eckstein Marine	New in 08	2 Week
		33.5 Weeks

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September 11, 2008

VIA FAX (202-226-8068)

Congressman Elijah E. Cummings
Chairman
Subcommittee on Coast Guard and Maritime Transportation
United States House of Representatives

RE: Hearing set for Tuesday, September 16, 2008
Oil spill in New Orleans in July, 2008
Motor Tanker TINTOMARA
Collision with barge 932 in tow of the M/V MEL OLIVER
Date of loss July 23, 2008 at approximately 0130 hours

Dear Chairman Cummings:

This will acknowledge receipt of your letter, dated August 20, 2008, inviting Mr. Daniel Dantin, owner of DRD Towing, to the hearing which will take place Tuesday, September 16, 2008.

Following the receipt of your letter Mr. Daniel Dantin has conferred with counsel and declines your invitation to attend the hearing.

In discussion with your staff director, John Cullather, we were advised that the committee would issue a subpoena to Mr. Daniel Dantin if necessary. Pursuant to 46 USCA Section 6303 and 46 CFR 4.03-10, the formal United States Coast Guard investigation incident commenced on August 12, 2008 and was adjourned after 3 days of testimony. Recently, United States Coast Guard Lieutenant Commander M. J. Harper has proposed that the formal United States Coast Guard hearing reconvene on October 9, 2008 and proceed to conclusion during the following ten working days. Media reports in the local newspaper indicate that this matter is being investigated by the United States Department of Justice and they are contemplating bringing criminal actions if such is indicated by the results of the Coast Guard's investigation.

Although the Department of Justice has given Mr. Dantin no indication that he is a target or subject of any investigation, given the ongoing United States Coast Guard formal hearing and the United States Justice Department's involvement in this matter, Mr. Dantin would, if subpoenaed to the congressional hearing, refuse to testify and invoke his 5th Amendment privilege against self-incrimination.

That being said, I think it is important for the subcommittee to know that DRD Towing has investigated the facts surrounding this event. Our investigation indicates that without notifying DRD Towing, the Master assigned to the M/V MEL OLIVER, Mr. Terry Lee Carver, left the vessel on or about July 20, 2008 to attend to personal business out of state. In the process, he conspired with the Apprentice Mate (Steersman) to conceal his departure from the vessel from the management of DRD. The Apprentice Mate failed to report the departure of the Captain until after the casualty. It is for this reason the Apprentice Mate was operating the M/V MEL OLIVER alone on July 23, 2008. Even though DRD management checked in with the vessel every day, the actions of Captain Terry Carver and the Apprentice Mate were never brought to the attention of DRD Towing's management team. It was only after the collision that DRD and its management team learned that Captain Terry Carver had abandoned the vessel and conspired to allow the vessel to be operated by the Apprentice Mate in his absence.

Hopefully this letter will respond to your letter of August 20, 2008 and the inquiries Mr. John Cullather has made.

Very truly yours,

RANDOLPH J. WAITS

RWJ/rmn/244977