

# MARITIME TRANSPORTATION SAFETY AND STEWARDSHIP PROGRAMS

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(114-38)

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
COAST GUARD AND MARITIME TRANSPORTATION  
OF THE  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
SECOND SESSION

APRIL 14, 2016

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

Washington, DC 20515

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April 8, 2016

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Subcommittee on Coast Guard and Maritime Transportation  
**FROM:** Staff, Subcommittee on Coast Guard and Maritime Transportation  
**RE:** Hearing on "Maritime Transportation Safety and Stewardship Programs"

**PURPOSE**

On Thursday, April 14, 2016, at 10:00 a.m., in 2253 Rayburn House Office Building, the Subcommittee on Coast Guard and Maritime Transportation will hold a hearing on Maritime Transportation Safety and Stewardship Programs. The Subcommittee will hear from the Coast Guard, the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine, the American Waterways Operators, the International Cruise Victims Association, Inc., the Agriculture Transportation Coalition (AgTC), and the National Association of Waterfront Employers.

**BACKGROUND**

The federal government creates or modifies rules and regulations through a rulemaking process guided by the Administrative Procedure Act (APA), codified in title 5, United States Code. The process involves notice in the *Federal Register* and the opportunity for public comment in a docket maintained by the regulating agency. In addition to complying with the APA, a federal agency must also promulgate regulations and rules in compliance with other statutory mandates and its own rules and policies. The Coast Guard's Regulatory Development Program is typical of the approach taken by other federal agencies in promulgating regulations (See Appendix A for more information on the regulatory process).

**Significant Coast Guard Rulemakings Affecting the Maritime Industry**

*Towing Vessel Safety* (RIN 1625-AB06). The Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293), requires the Coast Guard to publish a rulemaking providing for the inspection of towing vessels. Section 701 of the Coast Guard Authorization Act of 2010 (CGAA, P.L. 111-281) required the Coast Guard to publish the notice of proposed rulemaking (NPRM) by January 15, 2011, and issue the final rule by October 15, 2011. On August 11, 2011, the Coast

Guard published the NPRM for Inspection of Towing Vessels and held a public comment period until December 9, 2011. The Coast Guard received 268 comments and is working to finalize this rulemaking, but has declined to provide a specific date for when a final rule will be published. In 2011, the Coast Guard estimated the cost of the rulemaking on industry could total \$14.3 to \$17 million, while the annualized benefits could reach \$28.5 million (see RIN Data sheet).

*Cruise Vessel Safety and Security* (RIN 1625-AB91). Section 3 of the Cruise Vessel Security and Safety Act of 2010 (P.L. 111-207) requires the Coast Guard to issue regulations governing the installation and maintenance of certain safety and security equipment aboard cruise vessels operating in United States waters, as well as procedures for the vessel operator to follow in the event of a sexual assault or other crime. The deadline for vessels to come into compliance with much of the Act was January 27, 2012. The Coast Guard issued guidance to the industry to ensure compliance prior to the January 2012 deadline and published a NPRM on January 16, 2015. The comment period was open until March 10, 2015. A final rule has not been published.

Additionally, section 608 of the Coast Guard Authorization Act of 2015 (P.L. 114-120) requires the Coast Guard to complete a report on the status of technologies for immediately detecting passengers who have fallen overboard from cruise vessels, the feasibility of implementing such technologies and the costs and benefits. The Coast Guard has started its review and expects to meet the report deadline of August 8, 2017.

*Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters* (RIN 1625-AA32). On March 23, 2012, the Coast Guard published the final rule on Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters. The regulations are intended to control the introduction and spread of non-indigenous species from ships discharging ballast water in waters of the United States. The final rule requires the installation of ballast water treatment systems (BWTS) on ocean-going vessels. Each BWTS must be certified or "type approved" by the Coast Guard to ensure it will prohibit the release of ballast water containing more than 10 organisms that are greater than 10 micrometers in size per cubic meter of ballast water or certain concentrations of smaller size classes of organisms. This is the same standard adopted by the International Maritime Organization (IMO) under regulations to implement *The International Convention for the Control and Management of Ships' Ballast Water and Sediments*. Under the final rule, installation of BWTS must begin with new vessels constructed after December 1, 2013, and is phased in for existing vessels over five years. The Coast Guard estimates the 10-year total cost of the proposed rule on U.S. vessel owners could exceed \$645 million. The Service also estimates benefits could total between \$989 million and \$1.6 billion depending on the effectiveness of the BWTS technologies in stopping the introduction and spread of invasive species.

To date, the Coast Guard has certified two independent laboratories to accept BWTS applications from manufacturers for type approval testing. However, very few applications from BWTS manufacturers have been submitted, and no BWTS have yet been type approved. On September 25, 2013, the Coast Guard issued a policy letter to inform vessel owners of the procedure to request an extension to the deadlines to install BWTS on their vessels (Policy Letter CG-OES). As of March 2016, the Coast Guard has approved approximately 5,500 vessel ballast

water regulation compliance date extensions. Vessel operators that do not install a type approved BWTS or request an extension may achieve compliance with the Coast Guard rule for five years by installing a Coast Guard approved alternative management system (AMS). An AMS is a BWTS that has been certified to meet the IMO standard by a foreign country. As of February 23, 2016, the Coast Guard has accepted 56 AMS.

*Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels under the Clean Water Act's National Pollution Discharge Elimination System program (EPA-HQ-OW-2011-0055)*. Pursuant to a federal court order, in December 2008, the EPA promulgated final regulations establishing a Vessel General Permit (VGP). On March 28, 2013, the EPA released its final VGP to replace the 2008 VGP, which expired on December 18, 2013 (EPA-HQ-OW-2011-0141). The 2013 VGP is valid through December 18, 2018. The 2013 VGP requires the installation of BWTS on certain vessels operating in U.S. waters carrying more than eight cubic meters of ballast water. Similar to the Coast Guard's ballast water rule, BWTS under the 2013 VGP would need to be certified to prohibit the release of ballast water containing more than 10 organisms that are greater than 10 micrometers in size per cubic meter of ballast water or certain concentrations of smaller size classes of organisms (same as the IMO standard). However, the EPA does not require the BWTS to be type approved. In addition to regulating the 26 incidental discharges regulated under the 2008 VGP, the 2013 VGP adds the regulation of effluent, including ice slurry, from fish holds on commercial fishing vessels. The 2013 VGP also incorporates local water quality regulatory requirements added by 25 states that vessel operators must comply with while transiting those jurisdictions (See Appendix B for additional information).

*Small Vessel General Permit (sVGP) to cover commercial vessels less than 79 feet in length (EPA-HQ-OW-2011-0150)*. On December 8, 2011, the EPA released a draft sVGP which requires these vessels to comply with best management practices for the same 27 incidental discharges as the 2013 VGP. Commercial vessels less than 79 feet are currently subject to a Congressional moratorium from compliance with the VGP. EPA estimates that approximately 138,000 vessels will need to comply with the sVGP at a cost of up to \$12 million annually. This estimate does not include the cost of additional regulatory requirements which might be added by the states. EPA could not calculate monetized benefits as a result of the implementation of the draft sVGP, but it stated the permit would have the same two qualitative benefits as the 2013 VGP. While the final sVGP was released in the *Federal Register* on September 10, 2014, the moratorium for these vessels was extended in the Howard Coble Coast Guard and Maritime Transportation Act of 2014 (P.L. 113-281) and will expire on December 18, 2017.

#### Regulatory requirements in the 2014 and 2015 Coast Guard Authorization Acts

*The Howard Coble Coast Guard and Maritime Transportation Act of 2014 regulatory requirements:*

Offshore Supply Vessels, Towing Vessel, and Barge Engine Rating Watches (RIN 1625-AC25). Section 316 of the 2014 Act amended 46 U.S.C. 8104(g)(1) by allowing coal passers, firemen, oilers, and water tenders serving on offshore supply vessels, towing vessels, and barges engaged in seagoing voyages of less than 600 miles to be divided into at least two watches.

Previously, only officers and other deck crew members on those vessels could be divided into two watches. Current regulations provide the definition of “day” on vessels authorized to operate a two watch system to mean that a 12-hour working day can be credited as 1.5 days of seagoing service towards further mariner licensing. Because of the statutory change, regulations became inconsistent with current law and need to be updated. The Coast Guard published its final rule on October 26, 2015, and it went into effect on January 25, 2016.

*The Coast Guard Authorization Act of 2015 regulatory requirements:*

Port Access Route Study: In Nantucket Sound (RIN Not Available) – Section 310 of the 2015 Act directs the Coast Guard to complete and submit to Congress a Port Access Route Study (PARS) of Nantucket Sound to determine whether the Coast Guard should revise existing regulations to improve navigation safety due to factors such as increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty in the Sound. The Coast Guard released a notice of study and request for comments on March 22, 2016. The public comment period ends on June 20, 2016.

Survival Craft – Section 301 of the 2015 Act requires passenger vessels that are built or that undergo a major conversion after January 1, 2016, to be equipped with out-of-water survival craft. Additionally, section 301 of the 2015 Act directs the Coast Guard to revise its regulations regarding the carriage of out-of-water survival craft after a review of factors regarding out-of-water survival craft use and effectiveness on certain passenger populations. The Service issued Marine Safety Information Bulletins (Numbers 02-16 and 04-16) in February 2016 to inform the public on the changes made by the 2015 Act and expects to complete action on the section 301 requirements by December 31, 2016.

Recreational Vessel Engine Weights – Section 308 of the 2015 Act requires the Coast Guard to update its rule regarding the references the agency provides for manufacturers to use to determine the weight of engines when manufacturers conduct flotation tests of new products. Current regulations are out of date and an update of regulations will ensure more accurate vessel flotation tests and improved recreational vessel safety. The Coast Guard expects to publish a NPRM by August 6, 2016.

National Academy of Science 2016 report “Impact of United States Coast Guard Regulation on United States Flag Registry”

Section 605 of the 2014 Act (P.L. 113-281) required the Coast Guard to engage the National Academies of Sciences (NAS), to conduct an assessment of the authorities under subtitle II of title 46 United States Code that impact United States vessels and limit their effectiveness to compete in international maritime transportation markets.

The NAS assessment relies on analysis contained within two prior reports that reviewed impediments to United States flag registry for vessels engaged in international commerce.<sup>1</sup> The

<sup>1</sup> The first report “*Impediments to the United States Flag Registry, Report to Congress*” was issued by the Coast Guard on September 3, 2013. The second report entitled “*Comparison of U.S. and Foreign-Flag Operating Costs*” was completed by Price-Waterhouse and released by the Maritime Administration (MARAD) in September 2011.

NAS report acknowledges that over the last thirty years considerable progress has been made to decrease United States flag regulatory compliance costs while simultaneously improving marine safety and environmental performance. The Committee noted that additional improvements in the regulatory process could be made to further reduce industry costs. The Committee made nine recommendations in the report (See Appendix C).

#### **Vessel Container Weights**

In 2014, the IMO's Maritime Safety Committee approved changes to the *International Convention for the Safety of Life at Sea* (SOLAS)<sup>2</sup>, Regulation VI-2 – Cargo Information, to require verification of container weights before containers can be loaded onto ships. The requirement comes into effect on July 1, 2016. Under the requirement, all packed shipping containers must be accompanied by a signed, shipping document that lists the verified gross mass of each container before they can be loaded onto a ship operated by a flag state that is a party to SOLAS Convention (See Appendix D for more information on SOLAS and IMO).

There are two allowable methods by which to determine a container's weight — weighing the container after it is packed or weighing all the cargo and contents of the container and adding that weight to the container's tare weight (e.g. the weight of the container empty).

On March 14, 2016, a group of 49 shipping industry representatives sent a letter to the Coast Guard to relay concerns that carriers may interpret the new regulation to require a shipper to certify both the cargo and the carrier's container. The shippers state that implementing the SOLAS regulation in this way is "contrary to the practical realities of our United States export maritime commerce and fundamentally flawed conceptually." The letter supported the views expressed by Coast Guard Rear Admiral Paul Thomas whereby he indicated that should a shipper provide the cargo mass weight and the carrier add the tare weight of the container, the intent of the requirement would be achieved.

The Coast Guard has stated that United States carriers currently comply with SOLAS. Consequently, the Coast Guard is not requiring domestic shippers to make changes in existing practices. The Coast Guard will also continue to ensure SOLAS compliance aboard foreign-flagged ships via port state control examinations. This action will not change with the implementation of the July 1, 2016 requirements. The Coast Guard has stated it does not intend to initiate a rulemaking or to issue policy guidance to industry on the implementation of the amendments, unless there is a demonstrated need to ensure SOLAS compliance.

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<sup>2</sup> The *International Convention for the Safety of Life at Sea* (SOLAS) is an international treaty that governs the safe operation of all ships engaged in international maritime trade. The SOLAS Convention specifies the minimum standards for the construction, equipment, and operation of merchant ships.

WITNESS LIST

**Panel I**

RDML Paul Thomas  
Deputy Commandant for Prevention Policy  
United States Coast Guard

Mr. R. Keith Michel  
Committee Chair  
Transportation Research Board  
National Academy of Sciences, Engineering, and Medicine

**Panel II**

Mr. Thomas Allegretti  
President and Chief Executive Officer  
American Waterways Operators

Mr. John W. Butler  
President and Chief Executive Officer  
World Shipping Council

Mr. John Crowley  
Executive Director  
National Association of Waterfront Employers

Ms. Donna Lemm  
AgTC SOLAS Committee Chair  
Vice President  
Mallory Alexander International Logistics

Mr. Kendall Carver  
Chairman  
International Cruise Victims Association, Inc.

#### Appendix A - The Rulemaking Process

After identifying the need for regulatory action, the Coast Guard forms a rulemaking team. The rulemaking team creates a comprehensive work plan, which summarizes and defines the rulemaking project and ensures the availability of proper resources. The rulemaking team typically drafts a Notice of Proposed Rulemaking (NPRM) for publication in the *Federal Register*. Prior to publication, the NPRM must be cleared through several internal Coast Guard offices, and externally through the Department of Homeland Security, the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA).

The Coast Guard usually accepts public comments in response to an NPRM for 90 days. The rulemaking team then reviews the comments and develops responses in accordance with APA requirements. The rulemaking team posts all *Federal Register* documents (e.g., NPRM, public notices, economic and environmental analyses, studies and other references, etc.) and public comments (provided they do not contain classified or restricted information) to a public docket accessible at [www.Regulations.gov](http://www.Regulations.gov).

After considering public comments, the rulemaking team drafts a final rule for publication in the *Federal Register*.<sup>3</sup> The final rule must contain: (1) the regulatory text; (2) a concise general statement of the rule's basis and purpose; and (3) a discussion of the public comments and Coast Guard responses. Prior to publication, the final rule must be cleared in a manner similar to the NPRM clearance process described above.

The final rule includes an effective date which is typically 90 days after publication of the final rule in the *Federal Register*. The regulatory process is completed as of the effective date. However, once the regulation becomes effective, its implementation may be delayed by subsequent litigation, or judicial or legislative action.

#### **Major Rulemaking**

A major rulemaking is defined by the Congressional Review Act (CRA)<sup>4</sup> as a rule that is likely to have an annual impact on the economy of \$100 million or more; or, to result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; or, to adversely affect in a significant way competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Under the CRA, an agency must submit its major rulemakings to Congress. Within 60 legislative days after Congress receives an agency's final rule, a Member of Congress can introduce a resolution of disapproval that, if passed and enacted into law, can nullify the rule, even if the regulation has already gone into effect. Congressional disapproval under the CRA also prevents the agency from promulgating a "substantially similar" rule without subsequent statutory authorization. Currently no rulemakings directly impacting the maritime sector meet the definition of a major rulemaking.

<sup>3</sup> Certain circumstances may warrant the use of other types of final rule documents such as, an Interim Final Rule, Direct Final Rule or Temporary Final Rule, or may warrant termination of the rulemaking project for which specific withdrawal procedures exist.

<sup>4</sup> 5 U.S.C. 804.

Appendix B - Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels under the Clean Water Act's National Pollution Discharge Elimination System program (EPA-HQ-OW-2011-0055)

The 2008 VGP required vessel operators to be in compliance with best management practices covering 26 types of discharges incidental to normal vessel operations, including ballast water, deck runoff, air conditioner condensate, bilge water, graywater, and cooling system discharges. With respect to ballast water, the 2008 VGP incorporated the Coast Guard's previous regulation that required mandatory ballast water exchange.

The EPA estimated that over 70,000 vessels will need to comply with the 2013 VGP at a cost of up to \$23 million annually. This estimate does not include the cost to purchase and install BWTS on board a vessel, or the costs of additional regulatory requirements which might be added by the states. EPA could not calculate monetized benefits as a result of the implementation of the 2013 VGP, but it stated that the permit would produce two qualitative benefits: (1) reduced risk of invasive species; and (2) enhanced water quality.

As previously stated, the Coast Guard ballast water rule requires the installation of type-approved BWTS on a staggered schedule based on vessel ballast water capacity and construction date. Since no BWTS has been type approved, the Coast Guard is granting extensions to vessel operators from the deadlines to install BWTS on their vessels. The 2013 VGP does not include a similar administrative mechanism. On December 27, 2013, EPA released a memorandum outlining its enforcement policy for vessels that received an extension from the Coast Guard. The memorandum states that although these vessel owners would still be in violation of the Clean Water Act, EPA would "consider such violations... a low enforcement priority." Vessels that do install a Coast Guard approved AMS are in compliance with the 2013 VGP.

Appendix C - National Academy of Science 2016 report "Impact of United States Coast Guard Regulation on United States Flag Registry" Recommendations

- 1) Maritime Security Program (MSP) vessels from operating companies with proven safety records in MSP should be allowed to enroll in MSP Select (e.g. an Alternative Compliance Program (ACP) for inspection and oversight) at the time of reflagging.
- 2) The Coast Guard should apply ACP procedures for acceptance of replacement equipment for MSP vessels.
- 3) Vessels with a documented history of safe and reliable operation while allowing periodically unmanned machinery spaces (PUMS) should be permitted at the time of reflagging to continue such operations after about 1,000 hours of operation to validate the safety record.
- 4) The Coast Guard should perform a risk-based assessment of the costs and benefits of each regulation in the Code of Federal Regulations that exceeds international requirements and eliminate those regulations that cannot be justified on a cost-benefit basis.
- 5) The Coast Guard should accept type approvals for vessel equipment and machinery approved by recognized class societies in lieu of Coast Guard-specific approval process.
- 6) The Coast Guard's goal should be to monitor approved class society (ACS) while allowing ACS to perform the vessel oversight role with minimal redundancy between ACS and the Coast Guard. Allowing the Coast Guard to meet its responsibilities by serving in a safety, quality assurance, and oversight role rather than in a project and vessel oversight role.
- 7) The Coast Guard should implement a streamlined process for exemptions, interpretations, and appeals (for equivalent safety provision requests).
- 8) The Coast Guard should maintain its commitment to raise the standards of international regulations by continuing to work with approved class societies and the maritime industry within the IMO to improve the safety and environmental performance of the world fleet.
- 9) The Coast Guard should periodically schedule consultation with stakeholders regarding both existing and proposed regulations and establish metrics and monitor performance to allow for reporting of results and comparisons to the world fleet.

Appendix D - International Convention for the Safety of Life at Sea and the International Maritime Organization

The Coast Guard is the United States flag port state authority for international maritime treaties and is responsible for ensuring United States-flagged ships comply with the *International Convention for the Safety of Life at Sea* (SOLAS) when engaged in international voyages. The Coast Guard conducts reviews, technical assessments, and inspections throughout the life cycle of a ship and regularly issues certificates to show proof of compliance. The Coast Guard also verifies that all foreign-flagged ships comply with the SOLAS Convention when operating in United States waters. This is accomplished principally through examinations that verify the flag state has certified full compliance with the SOLAS Convention and confirmation of compliance with the flag state's certifications.

The IMO is a specialized agency of the United Nations that develops and maintains a governing framework for international shipping, including SOLAS and other international maritime conventions and codes dealing with the design, construction and operations of ships. The IMO has 171 member nations and three associate members. Sixty-five intergovernmental organizations (IGOs) and seventy-seven nongovernmental organizations (NGOs) have been granted observer status. The IMO conducts its work through five committees and seven sub-committees staffed by delegations of the member states, associate members, IGOs and NGOs. The Coast Guard leads the U.S. delegation to the IMO for both committee and sub-committee sessions.

## MARITIME TRANSPORTATION SAFETY AND STEWARDSHIP PROGRAMS

THURSDAY, APRIL 14, 2016

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

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 2253, Rayburn House Office Building, Hon. Duncan Hunter (Chairman of the subcommittee) presiding.

Mr. HUNTER. The subcommittee will come to order. The subcommittee is meeting today to hear testimony on a variety of maritime transportation safety and stewardship programs implemented and enforced by the Coast Guard. Actually, this hearing is going to cover everything.

[Laughter.]

Mr. HUNTER. John was kind enough to just put everything into this hearing.

The subcommittee has had—held periodic reviews of the Coast Guard’s regulatory regime to keep the committee updated and to provide the regulated community an opportunity to relay information on what effects, positive or negative, new program or updates to regulations have on industry.

As we have done with previous regulatory hearings, we will review pending and final rules impacting the safety and security of our ports and waterways, as well as regulations affecting business practices and the viability of the U.S. flag. The continued reviews allow for oversight on implementation and how the regulations are impacting vessel safety, the flow of commerce through our ports, and the ability to grow jobs in the maritime sector.

Maritime commerce is essential to the U.S. economy. That is why we are all here, right? While regulations must address concerns related to safety, security, and stewardship, they must also balance the importance of maintaining the flow of maritime commerce. Domestic shipping alone is responsible for over 500,000 American jobs and \$100 billion in annual economic output. In addition, 90 percent of all global trade and over 25 percent of our GDP [gross domestic product] moves via the sea. The Federal Government should foster an atmosphere where our maritime industry can compete and expand.

And I have got to say—and that I didn’t make up—but if you control the ocean, you control the world. And that is why we are here. If you control the ocean, you control the world.

The National Academies of Sciences Transportation Research Board recently released a report on the impact of Coast Guard regulations on the United States-flag registry. The good news for the Service is the board reported that U.S. regulations are not an impediment to the competitiveness of the U.S.-flag fleet. The board provided recommendations on further improvements that can be made by the Coast Guard to support the U.S.-flag fleet. What is an ongoing frustration is the lack of a unified approach within this administration to support programs that support—that promote the U.S.-flag fleet.

In fact, we just had a—we had an issue yesterday where we found out that there was a U.S.-flagged, U.S.-crewed MSP [Maritime Security Program] vessel sitting outside of a port, while a foreign-flagged vessel got the contract to carry goods. And they are going to be late. So you had a U.S.-flagged, U.S.-crewed vessel empty, an MSP vessel, which gets a U.S.-taxpayer-dollar stipend, sat there while a U.S.—while a foreign-flagged vessel is going to be late to pick up a full load, a military load, to go from Jacksonville to Kuwait. That is a huge screwup.

And you would think, as well as we are doing and what we know now, that that kind of stuff wouldn't happen. But it happens every day. And in fact, the head of TRANSCOM [United States Transportation Command] didn't even know it was happening until yesterday, until I talked to him. That is a sad state of affairs.

The Coast Guard and the Environmental Protection Agency have developed separate regulations under two different Federal laws to govern ballast water discharges. Although the agencies have worked together to try to reach uniformity, the programs still differ in implementation dates, vessels covered, geographic reach, enforcement, and penalties for noncompliance.

For instance, the Coast Guard rules allow for vessel owners to seek an extension if treatment technologies do not exist or cannot be installed by the deadline. The EPA provides no mechanism for an extension, leaving a vessel owner liable for civil and criminal penalties through no fault of their own.

This blows my mind. You have an 80-percent solution on ballast water. You have an 80-percent solution that exists now. You can make—you can do ballast water so you can drink it if there was no salinity, but it is not good enough for the Coast Guard. Blows my mind. So let's do extensions to dump dirty water, instead of taking an 80-percent solution to kind of fix things. It is—let's just keep going. We will talk later.

[Laughter.]

Mr. HUNTER. The situation only becomes more confusing and burdensome for vessel owners as each individual State adds its own ballast water discharge requirements on top of the EPA's program. Under the EPA's current program, numerous States and tribes have added their own differing discharge standards.

Some States have laws in place for forcing vessel owners to treat their ballast water to a standard for which no technology has yet been invented. The situation is ridiculous. It is completely unreasonable to ask vessel operators to comply with two Federal standards and as many as 25 different, contradictory, and unachievable

State and tribal standards. I hope my colleagues will join me in looking at ways to rectifying this issue in any way possible.

Lastly, the International Convention for the Safety of Life at Sea was amended by the International Maritime Organization in 2014 to require verified gross weights of containers before they are loaded on vessels. Implementation of the provision goes into effect on July 1, 2016. I look forward to the witnesses' views on how to implement this requirement in a manner to ensure U.S. exports continue to move unimpeded, because what we really want to see is more burdens placed on small businesses that are shipping things. Not really. That was a joke.

[Laughter.]

Mr. HUNTER. We want to do fewer things that impede the flow of commerce and the ability for the American people to keep their jobs, maintain their livability in the United States and make money.

If we want to grow our economy and remain a world power capable of defending ourselves and our allies, we must work together to strengthen and preserve our maritime industry. I thank the witnesses for appearing today and look forward to their testimony.

And with that I yield to the great ranking member, Mr. Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chairman. Sorry about your illness. And I expect I am going to separate myself from you.

[Laughter.]

Mr. GARAMENDI. Not in your testimony, which was—covers most everything I have to say here—so I'm going to just shorten this and put my comments into the record.

But welcome to the witnesses. Admiral and Mr. Michel, thank you very much for being here. Mr. Michel, I am particularly interested in hearing your testimony about how we might do the regulations and the whole process a whole lot better. And so I really want to focus on that.

It is obviously vital for the Coast Guard regulations to be targeted, fair, and reasonable, and to get them done on time, all of which seems to be a very difficult task for the Coast Guard to achieve. Eventually, you do get it right, and we thank you for that. Eventually it makes it tough when those years go by.

I think I will just submit this for the record and get on with the testimony. You covered all of it very well in your statement, Mr. Chairman, so I will do that.

And with your permission, I would like to introduce in the record a statement by Congresswoman Doris Matsui dealing with passenger safety on cruise ships, and also a statement from the American Commodity Company dealing with what seems to me to be the current issue du jour, which has to do—who is responsible for the weight of a container.

Mr. HUNTER. Without objection.

[The written statements of Congressman Garamendi and Congresswoman Matsui are on pages 45–49. The letter from the American Commodity Company is on page 121.]

Mr. GARAMENDI. Thank you.

Mr. HUNTER. On our first panel we will hear from Rear Admiral Paul Thomas, Assistant Commandant for Prevention Policy for the

United States Coast Guard, and Mr. Keith Michel, chair of the Committee to Review Impediments to United States-Flag Registry for the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine.

Admiral, thanks for being here. Keith, thanks for being here. And, Admiral, you are recognized.

**TESTIMONY OF REAR ADMIRAL PAUL F. THOMAS, ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD; AND R. KEITH MICHEL, NAE, CHAIR, COMMITTEE TO REVIEW IMPEDIMENTS TO UNITED STATES-FLAG REGISTRY, TRANSPORTATION RESEARCH BOARD, NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE**

Admiral THOMAS. Well, thank you. Good morning, Mr. Chairman and Ranking Member, distinguished members of the subcommittee. Thank you for your continued strong support of our Coast Guard and for the opportunity to talk with you today about our maritime prevention program.

As you know and as you said, maintaining and sustaining a robust maritime industry and maritime transportation system is a national security imperative, and our Coast Guard prevention program plays a key role. The Coast Guard concept of operations for prevention brings to bear our unique authorities and capabilities on the task of ensuring a safe, secure, environmentally sound, productive, and efficient global maritime transportation system, and on helping the maritime industry meet the triple challenge over the coming decades of growing capacity while reducing environmental footprint in the face of ever-increasing complexity.

We do this by developing smart risk-based standards which include both domestic and international regulations; by providing a well-trained workforce in our ports that can ensure compliance with those standards and provide the level playing field the industry demands; and by conducting investigations into accidents and violations of law so that both the standards and the compliance procedures can be improved, as we are currently doing in the case of the *El Faro*.

Thanks in large part to oversight provided by this committee, we have made significant improvements in our regulatory development program since 2009. We have added staff, reduced backlogs, cut our average age of our projects, and implemented process improvements. Most of the significant rules that we develop are developed in response to congressional mandates. In every case we work closely with all of our stakeholders, including the public and the industry, to ensure congressional intent is met, while providing maximum regulatory flexibility and minimum burden.

A perfect example is the subchapter M towing vessel regulation, which will apply to about 6,000 towing vessels, and will effectively double the size of the U.S.-inspected fleet. This will significantly challenge the Coast Guard in terms of our resources. As a result, we will rely heavily on the use of third parties to meet the inspection and audit demands and to provide the industry the needed flexibility.

We have developed a robust implementation plan for subchapter M, and we will bring industry into our implementation team as

soon as the rule publishes. We have already developed a very comprehensive outreach plan that engages both internal and external stakeholders.

But we know from experience that the publication of the final rule is really just the end of the first phase, and we are focused on smooth implementation. You mentioned our ballast water regulation, for example, which was published 4 years ago, and we are still in the implementation phase. Some of the challenges associated with that rule are due to overlapping jurisdictions between the Coast Guard and the EPA and between the States and the Federal Government. We appreciate the efforts of this committee to reduce those redundancies and to embrace standards based on best available technology that is both economically and operationally practical. We remain focused on type approval of ballast water management systems.

You mentioned the TRB [Transportation Research Board] report, sir, and we welcome that report as part of our constant effort to improve our regulatory programs. As you mentioned, the report concluded that compliance with Coast Guard regulations is not an impediment to the competitiveness of the U.S. flag, and I agree. But I also agree with the recommendations that there is room for further improvement in the Coast Guard regulatory programs, and I have already taken steps in line with the committee's recommendations.

Of the three recommendations in the report that are specific to the Maritime Security Program, two have already been enacted. To address the remaining recommendations, I have established a working group with industry operators to review and prioritize and suggest courses of action for each, and that group has its first meeting next week. We thank the TRB team for their efforts on our behalf.

And finally, you mentioned the SOLAS [Safety of Life at Sea] requirements, the SOLAS amendments that have become known as the container weight or VGM [verified gross mass] amendments. As these amendments were developed at the IMO [International Maritime Organization], our delegation was mindful of the existing regulatory structure in the U.S. which already ensures that the weight of a container is known before it is shipped over road or rail, is lifted out of the terminal, or is loaded at a port on a ship. And it is precisely because of this underlying regulatory framework that additional regulations are not needed in the U.S.

The SOLAS amendments may, however, require a change in the status quo in terms of how weights are verified and how that information is transmitted. I have been in contact with the key stakeholders, including those who will testify today, to ensure they understand the amendments and understand the flexibility that exists to achieve compliance. I will continue to facilitate discussions with them as I finalize their compliance strategies. There is no reason these amendments should cause any delays in our supply chain.

Thank you again for your support, and I look forward to our discussion.

Mr. HUNTER. Thank you, Admiral.

Mr. Michel?

Mr. MICHEL. Thank you. Good morning, Chairman Hunter, Mr. Garamendi, and members of the committee. My name is Keith Michel and I am president of Webb Institute, a college that focuses on naval architecture and marine engineering. I spent 40 years designing ships and—but I am here representing a National Academies' committee that was a committee mandated by Congress and tasked by the U.S. Coast Guard with evaluating whether Coast Guard regulations are an impediment to the competitiveness of the U.S.-flag fleet.

The committee met once, heard from industry, and had many discussions amongst committee members. And we came out with the conclusion, as was mentioned earlier, that—or the finding that Coast Guard is not an impediment to competitiveness. The reasoning was that we found if you consider the increased costs of U.S.-flagged ships over their international counterparts, the percentage of that increased cost that we could attribute to the Coast Guard was less than 1 percent.

Having said that, we found there were a number of areas where Coast Guard could improve processes and further reduce costs. So the report concentrates on that.

There are nine recommendations. The first three relate to the Maritime Security Program. That program was put in place quite a few years ago, with the intent that there be a seamless transition from international flag to U.S. flag. And there has been some challenges with the program, as we have heard from industry. The cost of reflagging is in the range of \$500,000 to \$1 million. It includes about \$250,000 related to requirements over and above the IMO related to engine room alarms and systems. So there is a significant cost in that transition.

Once a ship is in MSP there are ongoing costs related to the fact that—at least originally—the Coast Guard implemented the CFR, rather than the alternative compliance program. So there were issues with the cost of following the CFR, and especially involving replacement of equipment when it was required to be Coast Guard type approved equipment.

And finally, there were concerns with the MSP program. Coast Guard initially required that ships run with a watchstander in the engine room for up to 3,000 hours upon transition. These are ships that were operating in the international fleet without a watchstander. They had already been approved for unattended engine room operation, and had been operating that way. With the requirement that the watchstanding occur for up to 3,000 hours, that is an additional cost burden on the shipowner because that person could have been doing other work, maintenance work.

The Coast Guard in May of 2015 made a number of changes. They have softened the impact of the reliance on CFR by allowing what they call MSP Select. After 3 years a ship can largely follow the ACP [Alternative Compliance Program] processes, which are more efficient. The committee recommends that be the case immediately, rather than waiting 3 years.

The committee also recommends the Coast Guard look at, rather than using Coast Guard-type approval for these vessels, they consider allowing classification society approval for equipment. Again, these ships are built under international registry, the systems are

all in place. And when you have to replace it with a Coast Guard—due to maintenance, if you have to replace equipment with Coast Guard-type approved, it can be quite costly.

So those—and also the committee recommended that the requirement for watchstanding be reduced to 1,000 hours, and that consideration be given to eliminating it altogether if the crew is familiar with that particular ship and its automation systems.

So those were three recommendations related to MSP. There were a series of other recommendations. The committee recommends that Coast Guard, with assistance from industry, look at the CFR regulations and do a risk-based assessment. That is a very extensive effort. It is recognized that will take time, so we recommended the Coast Guard prioritize and, working with industry, determine which of the regulations are most burdensome.

There is also a recommendation that, in general, Coast Guard reconsider the equipment type approval, which can be quite burdensome on shipowners because most equipment is not U.S.-type-approved. The reason being the U.S. market is relatively small. And so if construction could use more of the internationally approved equipment, and if Coast Guard could rely on the approval processes of classification societies, the committee felt that would be more efficient without compromising safety.

And finally, the committee recommends that Coast Guard rely even more on classification society and have less redundant inspections, but that it enhance its audit program over class. Again, this has become an issue after the committee met more in focus because of the *El Faro* accident. The Coast Guard is evaluating how well its whole ACP process is working. So we understand that this recommendation will have to be evaluated, taking into consideration what the Coast Guard learns from its *El Faro* evaluation.

And so, those are the key recommendations. There were a few others in the report that—the report, again, is available on the NAE [National Academy of Engineering] Web site. Thank you.

Mr. HUNTER. Thank you, Mr. Michel. I am going to start recognizing Members for questions, starting with myself. So let's just go really quickly to the U.S.-flag fleet.

So the Coast Guard, you said, is only responsible for 1 percent. You said there is a 1—1 percent of the cost of being a U.S.-flag vessel—

Mr. MICHEL. Yes. What it is is we evaluated, for a typical container ship, the increased cost of operation. And we determined the dominant factor is crew cost. Crew cost—U.S. crew cost is about five times international crew costs.

Mr. HUNTER. Why is that? We are just better at it?

Mr. MICHEL. I think industry is better to answer it than me—

Mr. HUNTER. Go ahead. Give it a shot.

Mr. MICHEL. But, you know—

Mr. HUNTER. But you are sitting there.

Mr. MICHEL. Yes, I—

Mr. HUNTER. Give it a shot.

Mr. MICHEL [continuing]. I—you know, I think there is probably a variety of reasons. You know, the higher standard of living is obviously part of it. Maybe there is less competitiveness with the

unions and the shipping companies. There is a number of reasons. But it is substantially higher. And it is the dominant factor.

If—so again, we estimated if you look at the increased cost alone versus total operating cost, crew costs were roughly 57 percent, whereas the next most significant item was, as I remember, P&I [protection and indemnity] insurance is higher because of the way the Jones Act treats accidents on ships. And the drydocking costs are higher because there is a tax if you do your drydockings overseas, and they are much more expensive in the U.S.

Those three—and then Coast Guard was only 1 percent of the additional cost that we attributed. So it—

Mr. HUNTER. That is great to hear.

Mr. MICHEL. It is significantly reduced over time. Again, the ACP—

Mr. HUNTER. What was it?

Mr. MICHEL [continuing]. Program—what is that?

Mr. HUNTER. What was the Coast Guard's influence 20 years ago?

Mr. MICHEL. You know, I would guess it was 10 times higher than that. It is significantly lower.

And likewise, we looked—we talked to shipyards in the U.S. about the cost of construction and the Coast Guard impact on that over and above if they were working towards an international flag. And there, as I remember, it was about 1 percent of the cost of construction was related to the increase—the requirements of the Coast Guard over and above other international standards. So it is significantly reduced.

Mr. HUNTER. Thank you. The ranking member of the full committee is here. If we knew he was coming, we would have gotten a bigger room.

[Laughter.]

Mr. HUNTER. That is why everybody is here.

Mr. GARAMENDI. He would have given us one.

Mr. HUNTER. He would have given us one, that is right.

Admiral, I guess I have got about 2 minutes left, so let's just talk ballast water. And I have talked to your staff and understand you are fully prepared to talk about it.

Right now, is the Coast Guard giving waivers to ships to dump ballast water, untreated totally?

Admiral THOMAS. No, sir. And I am glad you asked that question so I can clarify that issue.

Mr. HUNTER. Yes.

Admiral THOMAS. When we grant a waiver there has to be some mitigating measures. Most of the vessels are mitigating the risk associated with invasive species by doing mid-water ballast water exchange, or mid-ocean ballast water exchange, which means—which is the protective measure that we have had in place for years.

So it is absolutely misleading to—

Mr. HUNTER. Which is what? What does that mean?

Admiral THOMAS. So you load ballast water in a port. There are many, many more critters in a port environment than there is in mid-ocean.

Mr. HUNTER. Because there's people.

Admiral THOMAS. Well, and—yes, and sewage and other things.

Mr. HUNTER. Stuff.

Admiral THOMAS. So—but mid-ocean, as you exchange your ballast water, you are bringing on water that has many fewer critters. And in fact, you know, once we have type-approved systems, that mid-ocean ballast water exchange won't be required.

Mr. HUNTER. So what you are saying is you will grant waivers if you do a mid-ocean ballast water exchange—

Admiral THOMAS. Or there are some other alternatives.

Mr. HUNTER [continuing]. Or other mitigating—

Admiral THOMAS. Right.

Mr. HUNTER. And you—how long have ships been doing that?

Admiral THOMAS. Well, ships have been doing ballast water exchanges—

Mr. HUNTER. For 30, 40, 50—

Admiral THOMAS. Well, not quite that long, but a couple—

Mr. HUNTER. Twelve years?

Admiral THOMAS. Yes.

Mr. HUNTER. What did they do before that?

Admiral THOMAS. They did nothing, and that is one of the problems—one of the reasons we have zebra mussels and other invasive species in our ports.

Mr. HUNTER. So up to the early 2000s they did nothing. And then around the early 2000s they started doing ballast water exchanges, right—1996?

Admiral THOMAS. Yes, yes.

Mr. HUNTER. OK. So 1996 you started doing mid-ocean ballast water exchanges. And if you do that, then you get a waiver? Or if you do something like that?

Admiral THOMAS. Or—yes. There are other options, as well.

Mr. HUNTER. OK, sure. So if you do one of those other options—which are what?

Admiral THOMAS. You can use public drinking water supply for your ballast, which is not really practical, but it is one of the options. You can use what we call alternative management systems, which are systems that are approved to the SOLAS standard—

Mr. HUNTER. And if you do one of those things, and you show the Coast Guard, hey, we are trying to mitigate, then what does the Coast Guard do?

Admiral THOMAS. So what the Coast Guard is saying is, hey, we understand, Industry, that the systems that meet the standard that is required by our law are not yet there, but they are very close. And since they are not yet there, we will grant a waiver to your compliance date that says you have to have one of those systems that meets our standard.

Mr. HUNTER. So what is required by law? What does the law say?

Admiral THOMAS. What the law, sir, specifies is a certain discharge standard with regard to how many critters can be in how much volume of water. And it also requires that we determine that those critters are—we know that we have an efficacy test that we know is reliable and repeatable. So the efficacy test that we have now is one that is very reliable and repeatable across a broad spectrum of ballast water that we would seek from ships coming

around the world, and that is the one that says we can count how many things are alive versus how many are dead.

And so, that is—we are focused on ensuring that we bring to the market, to the world market, really—because it is the U.S. that is leading the world in this aspect—systems that—

Mr. HUNTER. How many U.S.-flag ships do we have in the U.S.-flag fleet?

Admiral THOMAS. Yes, sir, so that is a very—

Mr. HUNTER. Total.

Admiral THOMAS [continuing]. Very good point. We punch way above our weight with regard—

Mr. HUNTER. But how many ships do we have in the U.S.-flag fleet? I am just asking.

Admiral THOMAS. Internationally sailing?

Mr. HUNTER. U.S.-flag, international-sailing vessels. How many do we have?

Admiral THOMAS. If you are talking about deep-draft trading vessels, I have heard the Maritime Administrator use the number somewhere around 80. That is—

Mr. HUNTER. Eight zero?

Admiral THOMAS. Yes, sir.

Mr. HUNTER. And how many are in the world?

Admiral THOMAS. Thousands.

Mr. HUNTER. Just guess.

Admiral THOMAS. Yes, thousands.

Mr. HUNTER. Tens of thousands?

Admiral THOMAS. Thousands.

Mr. HUNTER. 100,000?

Admiral THOMAS. 12,000.

Mr. HUNTER. 12,000, total? So 12,000 total ships, and we have 8-0? OK.

Admiral THOMAS. Yes, sir, for many of the reasons that Mr. Michel mentioned.

Mr. HUNTER. So do any ships right now use any kind of technology to mitigate their ballast water critters?

Admiral THOMAS. Yes, sir. I am glad you asked the question. There are a number of systems out there, and hundreds of them on ships that have been approved under a scheme that was developed by the IMO.

The IMO recently went back and reviewed the approval process for all of those systems, and have determined that there is great variance on how the standards were applied, and great deviation, in terms of interpretation, so much so that there really can be no confidence that the worldwide fleet has systems that will work, that actually—

Mr. HUNTER. The worldwide fleet or the U.S. fleet?

Admiral THOMAS. Most U.S.-fleet vessels have not yet installed ballast water systems. But those in the worldwide fleet who have chosen to have installed systems that they cannot have great confidence meet—

Mr. HUNTER. Then why would they—

Admiral THOMAS [continuing]. The standard—

Mr. HUNTER. Then why would a private company install something if they don't—why would they spend hundreds of thousands of dollars for no reason?

Admiral THOMAS. That is a good question, sir. I can't answer the decisionmaking process there. But what I will say is they bought a system that was certified to the international standard. Not to the U.S. standard. But the international standard is not robust enough to really drive the innovation and technology for systems that will meet this challenge.

Mr. HUNTER. OK. So again, let me ask you. What does the U.S. law state? What does U.S. law state on ballast water?

Admiral THOMAS. So the U.S. law and the SOLAS international convention are—

Mr. HUNTER. No, just—

Admiral THOMAS. They are exactly the same—

Mr. HUNTER. U.S. law, all right?

Admiral THOMAS. They are exactly the same with regard to the discharge standard, how many critters can come out at the other end of the machine. They are exactly the same. The difference comes with how do you prove to us that machine is actually meeting the discharge standard. That is the difference. And what I am telling you is our—

Mr. HUNTER. But U.S. law doesn't give you a number.

Admiral THOMAS. It does.

Mr. HUNTER. It doesn't state an actual number. It allows you to state the number.

Admiral THOMAS. Right. Yes, sir.

Mr. HUNTER. There is no—

Admiral THOMAS. Right, the standard. We set—

Mr. HUNTER. So once again—

Admiral THOMAS. And law—

Mr. HUNTER. U.S. law, what does U.S. law say? What does the United States law that Congress passed and the President signed, what does that say when it comes to ballast water critters?

Admiral THOMAS. It requires us to set a standard based on best available technology.

Mr. HUNTER. OK. Requires you to set a standard based on best available technology.

Admiral THOMAS. And the standard we currently have is—

Mr. HUNTER. What—so just—

Admiral THOMAS [continuing]. Synched with the international standard.

Mr. HUNTER. Let's go slow, let's just go slow. I am a slow Marine, all right?

Admiral THOMAS. Yes, sir.

Mr. HUNTER. Let's just go slow. So that is what U.S. law states. And you lay Coast Guard regulation on top of that, and what does Coast Guard regulation say?

Admiral THOMAS. So Coast Guard regulation sets a discharge standard, which is the same as the standard in the international convention. So it is a worldwide discharge standard, which—

Mr. HUNTER. OK.

Admiral THOMAS [continuing]. Since this is a worldwide global industry, seems to make sense. And you pointed out that it doesn't

make sense to have individual State standards, and we would agree with that.

Mr. HUNTER. So what is the best available technology, in your opinion right now, for ballast water treatment?

Admiral THOMAS. So, sir, we currently have 19 systems actively testing to our standards. Nine of those systems are UV [ultraviolet] systems. Those manufacturers are investing lots of money to run their systems through our test battery. And they are very confident that technology they currently are working with will meet the U.S. standard.

Mr. HUNTER. So let's get down—let's just really quickly—because I was confused about this yesterday when we were talking about this in our pre-hearing meetings. What is the Coast Guard regulation for what happens to the actual critters?

Admiral THOMAS. There is a number of critters per volume of water over a certain size that have to—the maximum number that can be—

Mr. HUNTER. Do you want to murder those critters?

[Laughter.]

Mr. HUNTER. Or do you want to just render them harmless?

Admiral THOMAS. So the—

Mr. HUNTER. And you have heard the term “rendered harmless,” right?

Admiral THOMAS. Yes, sir—

Mr. HUNTER. And why is that? Why do you know the term “rendered harmless”?

Admiral THOMAS. Viable versus nonviable is how you hear it in this context. But let me—

Mr. HUNTER. But rendered harmless—

Admiral THOMAS. What we want to do—

Mr. HUNTER. But talk to me. Admiral, hang on.

Admiral THOMAS. Yes.

Mr. HUNTER. “Rendered harmless,” have you heard of that term before?

Admiral THOMAS. Yes, I have.

Mr. HUNTER. OK. Why have you heard that? Is that in Coast Guard regulation?

Admiral THOMAS. Render harmless?

Mr. HUNTER. Rendered harmless. Critters rendered harmless.

Admiral THOMAS. I am not—I don't—I will have to go back and see if “render harmless” is in Coast Guard regulations, sir.

Mr. HUNTER. OK. So here is the actual—this is their code, right?

So here is your code. Let me tell you. “Ballast water management system means any system which processes ballast water to kill, render harmless, or remove organisms.” OK?

Admiral THOMAS. Yes, sir. So—

Mr. HUNTER. So those—any of those three. It doesn't say “and, and, and.”

Admiral THOMAS. Right.

Mr. HUNTER. It is any of those.

Admiral THOMAS. The trick, sir, comes in—

Mr. HUNTER. Tell me.

Admiral THOMAS [continuing]. Developing the test, the efficacy test for the system to determine whether the system has actually

killed or rendered harmless. And what I am telling you is there is a reliable, repeatable efficacy test to determine if something is dead. There is not a reliable, repeatable efficacy test to determine if they have been rendered harmless.

Mr. HUNTER. And by rendered harmless it means they can't procreate.

Admiral THOMAS. They can't procreate. But due to the wide spectrum of species that we are talking about from ballast water all around the world, the fact that you don't even know which species you are trying to render harmless, it is difficult to prove that you have cultured enough of them to know whether or not they are able to reproduce. That is essentially the problem.

So ballast water—so land-based water treatment systems, for example, are designed and constructed and operated for a known source of water that is to be treated. That water can be very well understood. You can know specifically which creatures you want to kill or render harmless—

Mr. HUNTER. Colorado River. You know what State it is going through, you know where it is going, right?

Admiral THOMAS. And you know—so you can not only tailor this treatment system to that specific water, you can tailor the efficacy test to that water.

Ballast water comes from all over the world, so you can't tailor the treatment system or the efficacy test, so you need a test that is reliable and repeatable for water from anywhere. And that test today is dead, not render harmless.

Mr. HUNTER. OK. So I am going to ask you. So right now, what you can do is simply dump the water and mix it in the middle of the ocean.

Admiral THOMAS. Which avoids bringing invasive species into our ports.

Mr. HUNTER. As opposed to using technology to get an 80-percent solution.

Admiral THOMAS. The 80-percent solution—

Mr. HUNTER. Or even a possible 100 percent solution. But the answer is you don't know, because you can't test it.

Admiral THOMAS. Absolutely, sir. And in our interpretation of congressional intent it wasn't put regulations that leave some doubt in terms of whether or not the—

Mr. HUNTER. I don't understand, so let's just get—I am using too much time, because I really don't understand this, right? This always blows my mind.

So we allow ships to simply dump and mix their ballast water in the middle of the ocean, as opposed to setting guidelines for saying, "Hey, we hope—we think that this works, we are pretty sure it works, but we are not going to count that. We just want you to dump the water in the middle of the ocean and mix it up."

I don't understand. Why not get an 80-percent solution? Why not say, "Hey, we are pretty sure that these—we watched the organisms for 2 years, and they haven't procreated yet, but maybe they will last 10 years," and they may. And—

Admiral THOMAS. So two points I should make.

Mr. HUNTER. Yes.

Admiral THOMAS. The first is the 80-percent solution that you have referred to is still currently under review by the Coast Guard. So it has not been eliminated.

Mr. HUNTER. But do you understand what I am saying?

Admiral THOMAS. I do, but—

Mr. HUNTER. Right now they simply dump it in the ocean, right? They take the ballast water and they mix it, right?

Admiral THOMAS. But there is no evidence that dumping ballast water in mid-ocean does environmental damage—

Mr. HUNTER. Then why do we worry about it at all?

Admiral THOMAS. Because when you dump it in a port environment, sir, that is a very different story than in the mid-ocean. That is how we move species from one port to another. That is how you get zebra mussels and Asian carp in waterways where we don't want them.

So there is a real difference. And we are not talking about a pollutant like oil. We are talking about moving species around the world.

Mr. HUNTER. OK. Once again, there is not technological—there is no technology right now that the Coast Guard says, "Hey, guys, go with this. This is the best way that we know how to do it. This is as close as we can get right now, in 2016."

Admiral THOMAS. So there are—

Mr. HUNTER. There is—

Admiral THOMAS. There are at least 19 systems currently testing in—

Mr. HUNTER. But not testing. There is nothing that the Coast Guard has said, "Hey, guys, go with this one."

Admiral THOMAS. We don't have a Coast Guard type approved system.

Mr. HUNTER. At all?

Admiral THOMAS. We do not have a Coast Guard type approved system at all, including the systems that provide the 80-percent solution, and precisely because—

Mr. HUNTER. Is the Coast Guard scared to back one of these? I mean what is—

Admiral THOMAS. Back one, sir?

Mr. HUNTER. Yes, to support some technology. Why not support the best technology—

Admiral THOMAS. We are—

Mr. HUNTER [continuing]. That is out there right now?

Admiral THOMAS. We are committed to the proven process of type approval. We are learning lessons from the less robust process in—undertaken by other flags that have resulted in the systems that IMO have identified as ineffective.

And so, we are committed to a solution that actually meets the standard, and I am confident that we will very soon. And in the meantime—

Mr. HUNTER. What kind of solution are you thinking? If you are confident, then tell me. What is that going to be?

Admiral THOMAS. There are—

Mr. HUNTER. What is your guess?

Admiral THOMAS. There are 19 systems using various technologies today that are testing, and I expect we will see some data

soon that indicates those systems meet the current Coast Guard requirement. And then we will be at 100 percent solution, sir.

Mr. HUNTER. OK. And what system might that be?

Admiral THOMAS. There are a number of them out there. Some of them are the UV systems—

Mr. HUNTER. No, don't—I am not asking what you are testing. I am asking what you think the technology will be.

Admiral THOMAS. Again, I think that this challenge is one that requires way more than one system, because every ship is different, every flow rate is different, every type of water is—so there needs to be a robust pool of these systems that use various types of technologies. And that is what is currently being tested. No one system, even if we had one system approved today, sir, it would not—

Mr. HUNTER. OK.

Admiral THOMAS [continuing]. Be effective on every ship.

Mr. HUNTER. Then which technologies? Instead of one, which one?

Admiral THOMAS. Well, there are some that use UV only, there are some that use UV with some other chemical processes. There are some that use chlorine. There—you know, there are a various number of different—

Mr. HUNTER. And which ones do you think are the ones that will do the job in the near future?

Admiral THOMAS. Well, I think the UV systems—there are two UV manufacturers who are already advertising that they can meet the Coast Guard standard. Some have already sold systems with guarantees that they will meet the Coast Guard standard. So, you know, those systems are promising.

Mr. HUNTER. All right. Sorry to—OK. Complicated issue.

Admiral THOMAS. It is a very complicated—that is why I appreciate the opportunity to have the discussion with you on it.

Mr. HUNTER. I yield to the ranking member.

Mr. DEFAZIO. I had a hearing downstairs. We should have exchanged rooms, because we have fewer people for that hearing, even though it is important.

In any case, Admiral, I—you know, the SOLAS requirements on shipping, on containers, are of particular concern to shippers in the Pacific Northwest of agricultural products. And the Coast Guard has taken a position that you feel that the U.S., with our current systems, is in compliance, and that it won't require dramatic changes.

They have an opposite opinion, which is that this potentially becomes disruptive because it involves coming to a determination of both the weight of the content and the container. The containers are beyond the control of the agricultural producers, but they feel that, you know, they are going to be essentially having to sign off on something over which they don't have total control.

And there is a good deal of confusion out there. How is it that you know or feel or can state that we are currently in compliance with these new standards? And if we are in compliance with these new standards, then I would assume that there will not be the sort of disruptions that the—some in the industry are anticipating.

Admiral THOMAS. All right, thanks for that question, because there is a lot of misunderstanding.

In my statement, sir, I mentioned that we have a number of regulations in the U.S. already—not Coast Guard regulations—that require the weight of a container be known before it is moved by road or rail or moved at a terminal. So the information required to be in compliance is already being generated. There may be a need for some business practice changes.

Part of the confusion, though, is being generated by a lack of understanding of the flexibility that exists within the SOLAS requirement, both in terms of how the regulation itself is written, and in terms of the general provisions within the convention for equivalencies. So I have seen a number of documents floated by IMO, by the World Shipping Council, by OCEMA [Ocean Carrier Equipment Management Association], and by agricultural exporters, each of which defines a path to legal compliance with the SOLAS requirements, each of which will result in compliance with the SOLAS requirements.

So this is for exporters and carriers to work out, in terms of which of those methods they are going to use with each other. But there is no reason that the regulation—there is no Government agency, no regulation, no international regulation that will cause a disruption in our supply chain. If it is disrupted it is because the shippers and the carriers haven't been able to figure out which of those many methods meet the SOLAS requirements they are going to employ.

Mr. DEFAZIO. So you are saying it is really a dispute between different businesses involved in the supply chain over what is—what they would feel would comply. I mean—

Admiral THOMAS. I don't know that it is a dispute. Again, I think that there has been a large amount of misunderstanding of the flexibility that is already provided by the regulation. I think that that misunderstanding is starting to be cleared up, and maybe you will hear today from the panel that they are beginning to have productive discussions on how they are going to meet this challenge.

But again, there is no reason that a regulation should cause a—this regulation should cause a disruption in our supply chain.

Mr. DEFAZIO. OK. Well then, I will have staff here, and I will hear about that, and I may want to get back to you after we hear from the witnesses, and after I clarify with some of the Northwest shippers.

And just—Mr. Chairman, on the issue of ballast water, I think we had hearings on this in the early 1990s, as I recall. And you know, we had heat, we had chemical, we had, you know, using the UV and the exchange, and none of them, I mean, have ever proved to be 100 percent effective. But it seems to me that a requirement both of a mid-ocean exchange and an effective approved treatment system is going to get us closest to the point. Because it doesn't take very many of these things, like zebra mussels or other—quagga mussels, these sorts of things, it takes very few to become essentially a plague, you know, and a significant invasion. Isn't that true?

Admiral THOMAS. Yes, sir, and that is why we are striving—

Mr. DEFAZIO. Right.

Admiral THOMAS [continuing]. For the 100-percent solution.

Mr. DEFAZIO. Right. And would 100 percent perhaps be a combination between both the mid-ocean exchange, which does help, to some extent, but isn't perfect, and a treatment system?

Admiral THOMAS. You know, I think once we have approved systems out there, we will continue to monitor how well they perform, and determine whether or not there needs to be that second step.

Mr. DEFAZIO. OK. All right. Thank you. Thank you, Mr. Chairman.

Mr. HUNTER. I thank the ranking member for being here.

Mr. Gibbs? You are recognized.

Mr. GIBBS. Thank you, Mr. Chairman.

Admiral, not to beat the ballast water to death—the chairman did a pretty good job—that is more of where my questions are going to, since I am from Ohio and represent the Great Lakes region. And start with my understanding on the EPA, they can—States can add additional requirements onto the—wherever the rules might be. Is that true?

Admiral THOMAS. So, as you know, there's two Federal statutes that govern this. One, Coast Guard, Invasive Species Act, and the EPA. And neither of those Federal statutes provide for preemption of the States.

Mr. GIBBS. OK.

Admiral THOMAS. So, yes, absolutely, it is true, the States can tack on additional requirements.

Mr. GIBBS. States can, OK.

Admiral THOMAS. Yes.

Mr. GIBBS. Because that is a real concern if you look at how the Great Lakes region works with the Saint Lawrence Seaway and—you know, so it makes sense that—I know the Coast Guard and EPA is trying to harmonize some of these separate laws and regulations.

I think from your earlier comment you are a supporter of doing that to a single regulatory policy. And if that is the case, would the Coast Guard be the agency to perform that, then?

Admiral THOMAS. Well, I would say the Coast Guard and the EPA can't harmonize the requirements. Congress has to do that. Our objective is one, single Federal standard that does preempt the States, because—

Mr. GIBBS. That is good clarification, and I meant to say it that way, yes.

Admiral THOMAS. Right.

Mr. GIBBS. But you are—support that Congress does that, because it makes for smooth interstate commerce. And especially in the Great Lakes region, it makes sense, right?

Admiral THOMAS. It makes sense, given the nature of this industry.

But—so we appreciate the opportunity we have had to work with this committee staff on drafting some language that might get to that problem.

Mr. GIBBS. OK. Back on the technology, my understanding, that the International Maritime Organization, IMO, has approved UV technology, but the Coast Guard hasn't. Is that correct?

Admiral THOMAS. Yes, and that is correct. So that goes back to the difference between the Coast Guard and the IMO standard lies

in the robustness of the type approval process. In other words, how do you actually prove that that box really does kill those critters? And what we found—and IMO themselves have gone back and found that the guidelines they have for type approval are probably not robust enough. In fact, they are in the process of revamping them to make them look a lot more like the U.S.

And one of the reasons that we haven't approved all the systems—or any of the systems—that the IMO has is because our process is more robust.

Mr. GIBBS. OK. So right now our shippers, vessel owners, are kind of just hanging in limbo because they—if they want to put in some newer technology, they don't know if it is going to get approved or not. So we are just—so we have all these extensions—

Admiral THOMAS. I would say yes, they are hanging in limbo, but they are hanging in limbo because of the pending ratification of the international convention to which we are not signatory. They are not hanging in limbo because of the U.S. regulations, because we are granting the waivers until the technology is available.

Mr. GIBBS. OK. Has any other country established vessel ballast water treatment standards that—you know, that specifically require ballast water management systems that kill these organisms? Has any country done that, or not?

Admiral THOMAS. So again, if you look at the IMO guidelines on type approval of international systems, the standard is dead. The fact of the matter is that a number of administrations, because those guidelines are not mandatory, have approved systems that don't kill things. They apparently are satisfied with the efficacy test. We have not yet been able to determine that efficacy tests are reliable and repeatable.

We continue to look at that. There is an appeal that is currently under review by the Coast Guard. We have got some new data. If we can determine that those tests are reliable and repeatable across the broad spectrum of species that you see in ballast water, then we will be in a better position to type approve those systems.

Mr. GIBBS. OK. Thank you, Mr. Chairman.

Mr. HUNTER. I thank the gentleman.

Mr. Garamendi?

Mr. GARAMENDI. I know, Admiral Thomas, this ballast water thing is going round and round here, and I appreciate your attempt to try to clarify and to inform us. You said something here a moment ago in exchange with the chairman, that there were three different standards: dead, not viable, and the third one. And then you just said dead, the international standard, dead.

I assume dead means not viable as in dead. Is that correct?

Admiral THOMAS. Not alive, sir.

Mr. GARAMENDI. Not alive.

Admiral THOMAS. As opposed to alive but not viable.

[Laughter.]

Mr. GARAMENDI. It is the nonviable that seems to be questionable here. Is that the case?

Admiral THOMAS. Yes, sir. I think, intuitively, you say, "If I can render this organism so it can never reproduce," that is effectively dead for the attempt of the regulation. And, quite honestly, I would agree with that.

The problem is demonstrating that you have, in fact, done that for every one of the organisms that might be in that ballast water. It is easier to demonstrate that they are dead than it is that they are nonviable.

Mr. GARAMENDI. Now that is where I want to go. Is part of this problem the fact that we have at least two—and I think there was a third—was there a third standard, also, or just the two? Dead and not viable, is that correct?

Admiral THOMAS. Oh. Well, yes, he—the congressman—the chairman said render harmless, which I have come to know as viable versus nonviable.

Mr. GARAMENDI. OK, so that is—we will stipulate that nonviable and—

Admiral THOMAS. Is harmless?

Mr. GARAMENDI [continuing]. Rendered harmless are the same, and that is the second standard.

If the standard was simply dead, would it be more likely and more feasible that the test and the replication of the test would be better achieved?

Admiral THOMAS. It is better. I mean, so that—efficacy tests for dead are reliable and repeatable. And if the standard were simply dead, then the industry that both needs to operate these things and needs to manufacture these things would have a larger degree of certainty.

Mr. GARAMENDI. So why—

Admiral THOMAS. And we would have the technology on board those vessels—

Mr. GARAMENDI. Why, then, do we even consider rendered harmless or not viable?

Admiral THOMAS. I think because the regulation is intended to be enduring. And there is a very good chance that in the future we will develop an efficacy test that may actually be effective to determine viability across the full subset. But today it doesn't exist. At least have not been able to—the data that we have been submitted—that has been submitted to us to substantiate this, we have run it through independent experts—

Mr. GARAMENDI. Who then—

Admiral THOMAS [continuing]. And we haven't been able to get to that same conclusion.

Mr. GARAMENDI. But we seem to be hung up on a shoal here called viable or nonviable.

Admiral THOMAS. The viability shoal.

Mr. GARAMENDI. The viability shoal. So why don't we just dredge this thing out and say dead?

Admiral THOMAS. Well, sir, you know, effectively, we have, but we are still open to innovators who—

Mr. GARAMENDI. Who created—

Admiral THOMAS [continuing]. Can come in and show us that they have been able to achieve the same standard through nonviability.

Mr. GARAMENDI. Who created the option? Is it the Coast Guard that created the option, or are—

Admiral THOMAS. It is a—

Mr. GARAMENDI [continuing]. We the responsible party here?

Admiral THOMAS. We—in our regulation I will tell you—and I wasn't involved in that, but the—there was a lot of discussion in the course of public comment about this very issue, of whether it has to be dead, or whether you should leave the option of non-viability—

Mr. GARAMENDI. How many years have we been wrestling with this question of nonviable or rendered harmless?

Admiral THOMAS. It has been a part of the debate for ballast water as long as we have been talking about ballast water.

Mr. GARAMENDI. Which is 1990s?

Admiral THOMAS. 1996 or so, yes.

Mr. GARAMENDI. It seems to me there may be a solution. Dead is dead. That we can agree with. On all of these critters, is that correct?

Admiral THOMAS. We can agree that dead is dead.

[Laughter.]

Mr. GARAMENDI. And we can agree that it is going to be dead for all the critters.

Admiral THOMAS. And for the rest of their lives.

[Laughter.]

Mr. GARAMENDI. And so, the industry, whoever they may be—and so the industry basically has been hung up on trying to wrestle with this not viable or rendered harmless?

Admiral THOMAS. Well again, I would tell you, the ballast water treatment industry is working hard to get to the dead, and there are 19 systems currently on—that those manufacturers are confident they are there, or else they would not have invested in the rigorous course of testing protocols.

Mr. GARAMENDI. And the industry is hung up—

Admiral THOMAS. And the—

Mr. GARAMENDI. It just seems to me that—I will just make a statement and then we will try to wrestle with this. It seems to me as though we are—I mean I understand dead. You are able to replicate tests that a system kills it, they are dead.

Admiral THOMAS. Yes.

Mr. GARAMENDI. You are not able to replicate the question of viable, nonviable, rendered harmless. That is where the hangup is. Is that correct?

Admiral THOMAS. Yes, sir. The efficacy test for nonviability is not—

Mr. GARAMENDI. And we have more than a dozen different systems that will kill.

Admiral THOMAS. Under testing today.

Mr. GARAMENDI. Period.

Admiral THOMAS. Yes, sir.

Mr. GARAMENDI. Well, it seems to me that the solution lies in eliminating the question of whether something is viable or not, and simply say if we are going to install this system, it is going to require that all the creatures, critters, are dead. Correct? And then we don't have any question.

Admiral THOMAS. I think you will get a different opinion when you hear from the industry panel on that, because they would like to retain the flexibility for future innovation.

Mr. GARAMENDI. And therefore, the entire industry is hung up, and we are left with mid-ocean exchange.

Admiral THOMAS. Right. That is why we are working hard on systems that we know will actually meet the standard.

Mr. GARAMENDI. Well, I will be interested to hear the witnesses. I think I will let it go at that. Thank you.

Mr. HUNTER. Mr. Sanford is recognized.

Mr. SANFORD. I thank the chairman. I guess the first question is are we making the perfect the enemy of the good with regard to the ballast water discharge issue? I mean we have had different iterations of the same question.

I have been approached by a number of different users in the Port of Charleston on this issue. It seems to be important. They brought up the UVA—the UV technology, and suggested that, you know, if it is good enough for the international standard, why isn't it good enough—a little bit—would you just flesh that just a little bit as to why we couldn't go with something that would give them certainty, or a greater degree of certainty? It may not be the perfect, but it would be the good, and it would allow them to move forward, particularly on the UV front, given some of the comments that they have offered in my direction.

Admiral THOMAS. All right. So just to reiterate, there are—UV systems are still viable with regard to being able to meet our standard. There are at least eight or nine of them currently being tested to the “dead” standard.

Mr. SANFORD. Right.

Admiral THOMAS. The question about why don't we just use the systems that have already been proven or international regime is answered really by the study that the IMO did on those systems, and they—when they looked at how those systems were approved, and what data was used, and how that data was interpreted, they found a wide variance in what—great deviation from even their own guidelines. And they concluded that we really have no certainty that these systems will work reliably and consistently.

And, in fact, that particular issue is what has thrown such a great deal of uncertainty into the international shipping industry. There are a number—

Mr. SANFORD. But the net consequence is you extend over 5,000 waivers, as I understand it. You continue to extend waivers. So the net effect is the same. In other words, you would still continue to move ahead with uncertain technology. I mean—

Admiral THOMAS. Well, again, I will remind you that it is not as if we are extending waivers with no mitigating actions in place. We are still requiring an action to mitigate the threat associated with invasive species. And while we do that, we are focused on a long-term solution that will really meet this challenge for the long term, and we are very close to getting there.

Mr. SANFORD. OK, which would bring me to my second question. My colleague, Congressman DeFazio, had raised the SOLAS question. That too has come up back home in Charleston. And I think one of the questions with regard to—particularly on the shipper side—is to what extent is Coast Guard going to enforce the new regulations, which I think are—I guess a July date, if I am not mistaken. It is this summer some time. I thought it was July,

but—and they want, you know, some degree of clarity, one on enforcement and, two, on penalties.

Admiral THOMAS. Right, and thanks for that question. The first key point is that this is not a new regulation. This particular regulation has been in place since 1994. And so—but there are amendments to the regulations that are going into place, and those amendments will not cause any changes in the Coast Guard's current enforcement stance for that particular regulation.

Mr. SANFORD. But it is July 1st, if I am not mistaken, that the new regulations or the new amendments to the regulation go into effect. Is that the case?

Admiral THOMAS. Yes, sir, but you asked about our enforcement stance on that.

Mr. SANFORD. Right.

Admiral THOMAS. What I am saying is that the enforcement stance after 1 July will be the same as it is prior to 1 July. That is a SOLAS regulation. So we enforce that as a flag state on U.S.-flag vessels, and we are confident that U.S.-flag vessels already have the guidance they need to be in compliance with that standard. We enforce that as a port state on foreign-flag vessels that come to U.S. ports, and our primary role there is to ensure that those vessels are operating in compliance with the requirements from their flag state.

Mr. SANFORD. So your point to the maritime community in Charleston would be there would be no big delta with regard to what they have seen—

Admiral THOMAS. So our—

Mr. SANFORD [continuing]. Past versus present.

Admiral THOMAS. Our authority, for example, on the port terminal is not derived from SOLAS. It is derived from Congress and from—

Mr. SANFORD. Right.

Admiral THOMAS [continuing]. CFR. So the enforcement that we do on deck at a terminal will be—will remain the same, because nothing has changed. Nothing has been amended, nothing has changed.

Mr. SANFORD. Sure, OK. Last question. I see I have 48 seconds. If you were to pick out the two most wasteful regulations that you are forced to enforce from the Coast Guard standpoint that probably have little in the way of effect, what would they be?

Admiral THOMAS. You would have to give me more time on that. But your point is well—

Mr. SANFORD. Well, what would come off just the top of your head? What would you say, you know, "That is kind of a waste of time, we"—

Admiral THOMAS. In our last—

Mr. SANFORD. [continuing]. "Spend X number of man-hours doing it, but, you know, it probably provides little in the way of utility or real difference in terms of environment, or real difference in terms of"—

Admiral THOMAS. We have been seeking legislative relief from the requirement in the Maritime Transportation Security Act, sir, that we have to go to every MTSA facility twice a year, regardless of risk. We would prefer to be able to target our resources to the

highest risk facilities so that a rock facility, for example, doesn't necessarily need to get visited twice a year, whereas a bulk liquid terminal, we would like to have the freedom to do it more often.

Mr. SANFORD. That would be one.

[Laughter.]

Admiral THOMAS. I thought it was good enough to come up with—

[Laughter.]

Mr. SANFORD. I will come back to you on that. Thank you, sir. I see my time has expired.

Thank you, Mr. Chairman.

Mr. HUNTER. I thank the gentleman. Mr. Graves is recognized.

Mr. GRAVES OF LOUISIANA. Mr. Michel, Admiral, thank you for being here.

Mr. Michel, in all the meetings we have had with industry in the last year and a half I have heard a lot of concerns expressed about the cost of compliance by U.S. shippers as compared to some of their foreign competitors. The report that you provided and some of the summary information in your testimony doesn't seem to be consistent with a lot of the feedback or a lot of the information we are receiving from stakeholders.

Could you speak to that disconnect? I mean do you think this evaluation was robust? Do you think that there were some deficiencies? Could you help connect the dots here?

Mr. MICHEL. No, I feel the numbers are good in our report. The—it is not insignificant. The cost of reflagging at \$1 million, taking 3 days, when if you were reflagging the other direction it would be 1 day and a fraction of the cost. It is not insignificant. But compared to the total increased cost of a U.S.-flag operation, it is not a major part. And so we didn't consider it an impediment to U.S.-flag competitiveness.

We have nine recommendations because we feel there is a lot of room for the Coast Guard to make further improvements and reduce costs. But it is not what we would call an impediment, because it is a very small percentage of overall increased costs.

So industry has a—you know, again, a strong position that—we have to be very careful about redundant inspections, about CFR requirements that require type approval and keep them from using current best available technologies and the most cost-effective way—Coast Guard needs to look at those type of issues. But when we add it all up, the numbers in the report are robust. That is a good estimate of the cost. It varies ship by ship, of course.

Mr. GRAVES OF LOUISIANA. Yes, sure, thank you. And I just want to highlight the point that perhaps some of the estimates pertain to relative costs. And I am anxious to hear from AWO [American Waterways Operators] and others in the next panel to understand that disconnect.

Admiral, the Academies' report notes that significant improvements have been made in regard to efficiency, environmental improvements, and I think helping reduce costs of regulatory compliance. Does the Coast Guard meet on a regular basis with stakeholders to discuss with them their perspective in regard to compliance and ways to comply with regulations and ways to perhaps update existing regulations?

Admiral THOMAS. We do. [Microphone off.]

Mr. GRAVES OF LOUISIANA. Thank you. I want to change gears a little bit, but similar questioning. I would like to talk about Coast Guard requirements for systems to be used aboard vessels navigating inland waterways, which is very different than oceangoing. I am not sure if it is legal or not, so I will just say that I may or may not have driven any tow barge configuration through some Mississippi River bridges and other places.

Admiral THOMAS. I haven't done it, either.

[Laughter.]

Mr. GRAVES OF LOUISIANA. And—but industry, again, it is very different than oceangoing. Even when I go out fishing, just fundamentally different navigation situation in those two scenarios.

There has not been a standard for electronic charting systems for the past 15 years. And, as you know, the industry has been working on their own to develop a standard. And you may recall that Congressman Abraham and our office and a few others sent you a letter last year on this topic.

I understand that you may be coming to the point where you are going to finalize some type of recommendation or some type of standard. But I would like to understand, if you are approaching a decision, how is that going to comply with or sync up with the efforts of the inland navigation community in what they have been doing over the last 15 years? As you know, compliance costs could be pretty hefty. I have seen numbers anywhere from \$20,000 to \$50,000 per vessel. And I just wanted to understand sort of how—what they have been doing so far on their own to ensure safety is going to comply, or the consistency with what you believe your final recommendation could be.

Admiral THOMAS. Well, I—thanks for that question, because this is really a good-news story here.

I want to be clear, though. You mentioned the term “compliance costs.” We have issued a NVIC [Navigation and Vessel Inspection Circular] on this topic, but it is not a regulation and it does not require anyone do anything. So there is no compliance to be added, and no associated compliance cost. The NVIC was issued in response to the demand signaled from the industry that they wanted the Coast Guard to provide a pathway to remove paper charts that are currently required by regulation. And, as you said, the existing standards for electronic systems were just not appropriate for that part of the industry. They work for large, oceangoing vessels.

So we work hard with our FACAs [Federal Advisory Committee Act] and with other organizations that develop these types of standards internationally, and we finally developed a good standard for this type of system. And that is the standard that is in the NVIC that says if you have systems that meet this standard and you employ them in certain ways with certain redundancies you can legally remove your paper charts.

The problem is that the existing standards on the vessels that are out there already operating aren't built to this standard, which is not a surprise, since it is a new standard. Right? So the market hasn't built things to meet this standard because this standard is just now out there. The fact of the matter is, though, that many of the systems that are already out there, if the manufacturers test

them, they will meet the standard. And working with AWO and others, the big-time operators who buy lots of these systems are putting the pressure on the manufacturers to test their systems.

And so, this is a case where the market will drive the solution. Eventually, it may become a regulation. But if it does, it is a market—an industry-driven regulation, as opposed to implementing a regulation that then causes the market industry to catch up.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman. I just want to urge, Admiral, as you finalize this, I will say it again, compliance with what they have been doing for the last 15 years, I think, is pretty critical. They are the ones who have really been the leaders in regard to establishing technology and standards in this case.

Thank you, I yield back.

Mr. HUNTER. I thank the gentleman. I think that is all we have. I think what we established today is it is not Descartes, “I think; therefore I am,” it is, “I procreate, therefore I am.”

[Laughter.]

Mr. HUNTER. That is what we have figured out today. It is very philosophical, and hopefully that will make some news. Right? Yes, right? Or you are considered dead, yes.

So, hey, thank you both very much. Thanks for being here, Admiral, and thanks for what you guys do.

Admiral THOMAS. Thank you.

Mr. HUNTER. The witnesses for the second panel include Mr. Thomas Allegretti, president and CEO for American Waterways Operators; Mr. John Butler, president and CEO for the World Shipping Council; Mr. John Crowley, executive director for the National Association of Waterfront Employers; Ms. Donna Lemm, Agriculture Transportation Coalition SOLAS committee chair and vice president of global sales for Mallory Alexander International Logistics; and Mr. Kendall Carver, chairman for the International Cruise Victims Association, Incorporated.

[Pause.]

Mr. HUNTER. We don't have to restart up, because we have already started. And I introduced everybody while you were getting seated. So thank you all for being here and taking time. And I am going to go ahead and just start from left to right.

Mr. Allegretti, you are recognized.

**TESTIMONY OF THOMAS A. ALLEGRETTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN WATERWAYS OPERATORS; JOHN W. BUTLER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, WORLD SHIPPING COUNCIL; JOHN CROWLEY, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF WATERFRONT EMPLOYERS; DONNA LEMM, CHAIR, CONTAINER WEIGHT COMMITTEE, AGRICULTURE TRANSPORTATION COALITION, AND VICE PRESIDENT OF GLOBAL SALES, MALLORY ALEXANDER INTERNATIONAL LOGISTICS; AND KENDALL CARVER, CHAIRMAN, INTERNATIONAL CRUISE VICTIMS ASSOCIATION, INC.**

Mr. ALLEGRETTI. Good morning, Mr. Chairman and Ranking Member Garamendi. Thank you for the opportunity to testify today. This hearing comes at a very consequential time, both for

the towboat and barge industry and for our country. We face a year of great challenge and extraordinary opportunity, and we need the bipartisan leadership of this subcommittee to successfully confront these challenges and take maximum advantage of these opportunities that are before us.

I come before you today with four requests. First and foremost, please continue to lead and vocally and actively support the Jones Act, and please strongly oppose the inclusion of measures to weaken the law in legislation that may originate in other committees.

The Jones Act is critical to our Nation's economic, homeland, and national security, and to the hundreds of thousands of good, family-wage American jobs and the billions of dollars of investments made by American companies in American-built vessels.

Those few but vocal critics who assert that the Jones Act raises the price of gasoline at the pump, or that repeal of the Jones Act will solve Puerto Rico's economic woes are, quite simply, wrong. Repealing or weakening the Jones Act won't make it a penny cheaper to fill up your car, and it will have no effect on Puerto Rican Government debt. What it will certainly do is destroy the domestic maritime industry, it will kill American jobs, and it will undermine U.S. homeland security: a bad deal, if ever there was one.

Second, please exercise your oversight responsibility and pay careful attention to the Coast Guard's implementation of the towing vessel inspection rule slated for publication this spring. This subcommittee's leadership was instrumental in the passage of the 2004 law that required this rulemaking and enjoyed AWO's strong support. We look forward to working with the Coast Guard to implement this rule that will raise the regulatory floor and take safety and environmental protection in our industry to a new and historic level without disrupting the efficient flow of maritime commerce. Please stay close to the implementation of this rule to ensure that it achieves both of those goals.

Third, please reaffirm by your words and your actions the Coast Guard's preeminent role in the regulation of navigation and vessel operations. The safe and efficient flow of interstate commerce depends upon clear Federal statutes and regulations consistently and uniformly applied nationwide. When States or localities muddy the waters by establishing their own requirements for vessels and interstate commerce, it not only does violence to the U.S. Constitution, but it places mariners, vessels, and the environment at risk. We urge you to support the Coast Guard in finalizing its proposed preemption statement, and speaking out in opposition when States attempt to usurp the Coast Guard's regulatory authority.

Fourth and finally, please pass the Vessel Incidental Discharge Act this year, and put an end to the dysfunctional regulatory system in which two Federal agencies and more than two dozen States regulate ballast water and other vessel discharges in overlapping and inconsistent ways. We have a real window of opportunity for the 114th Congress to accomplish what previous Congresses have not: to establish a uniform, science-based Federal framework for the regulation of vessel discharges that is good for the environment, good for the economy, and good for the American taxpayer.

Chairman Hunter, thank you for sponsoring this much-needed legislation, and we urge every member of the subcommittee to co-

sponsor H.R. 980 and to communicate to Chairman Shuster and Ranking Member DeFazio your support for passage this year.

Our industry very much appreciates this subcommittee's effective oversight of and your long record of support for the American maritime industry, and thank you for holding this hearing today and for the opportunity to appear before you.

Mr. HUNTER. For America.

Mr. Butler, you are recognized.

Mr. BUTLER. Chairman Hunter, Ranking Member Garamendi, distinguished members of the subcommittee, thank you for the invitation to testify today. I would ask that my full statement be included in the record.

The World Shipping Council represents the liner shipping industry, and our members operate about 90 percent of global container ship capacity. Today I would like to address an amendment to the Safety of Life at Sea, or SOLAS, convention, that becomes effective on July 1 of this year. You have heard a bit about this already today.

That SOLAS amendment addresses a very serious safety problem that has affected the container shipping industry for many years. That safety problem is the fact that in far too many cases the packed container weight provided to the carrier by the shipper is inaccurate.

In response to this problem of misdeclared container weights, industry and Governments began a discussion at the International Maritime Organization about how to fix the problem. That discussion at the IMO began in earnest in 2010, and continued over the next 4 years. Governments, shippers, labor, insurance providers, terminal operators, and carriers all participated. The United States Government, through the U.S. Coast Guard, actively participated in that process.

In 2014 the IMO member countries unanimously adopted a revised regulation under SOLAS that requires the shipper to provide an accurate gross weight for each packed container before that container can be loaded on to a ship for international transportation. The regulation provides two methods that the shipper can use to establish an accurate weight. Under method one the container is weighed after it is packed. Under method two the shipper weighs the cargo and the packing material and then adds that weight to the empty or tare weight of the container. And the tare weight of the container is conspicuously painted on the door of every container.

The amended SOLAS regulation requires two things that the existing SOLAS regulation does not. First, the amended regulation explicitly requires that the loaded container must be weighed. Estimating weights is no longer allowed. Second, the amended regulation now explicitly states that the carrier and the marine terminal operator may not load a packed container unless the shipper has provided a verified weight. Without a verified weight, the carrier and the marine terminal cannot put the container on the ship.

Compliance date is 2½ months away. A tremendous amount of work has been done around the world to make sure that the new regulation can be implemented smoothly. Carriers, shippers, and terminal operators are in the process of adjusting their procedures

and their communication channels in order to be able to share the verified gross weight information that needs to be provided before the container goes on the ship.

Although companies worldwide are preparing for compliance and making very good progress, there is disagreement from a group of U.S. exporters that you will hear from today. I address that situation in length in my written testimony. But to summarize, there are some shippers that would prefer to provide only part of the required weight information, and to have the carrier then provide the other part.

The problem with that approach is that it will not work with the information technology solutions the carriers have built to implement the SOLAS amendment. Those IT systems are designed to receive and process a complete verified gross mass number, a number that includes both the content of the container and the container weight itself. That is what the regulation says. And because that is what the regulation says, that is the way carriers have built their systems.

So, if shippers only provide the cargo weight, as a few wish to do, that would trigger a manual data handling process by the carriers. Such a manual process would not be able to efficiently handle the documentation flow. And that scenario, if it comes to pass, could lead to disruptions in cargo flow, and that is something everybody wants to avoid.

Obtaining and using accurate weights to stow ships is a shared safety responsibility of carriers, shippers, and terminal operators. The amended SOLAS regulation spells out what each party in the chain needs to do. Those tasks are reasonable and necessary. And if everyone does their part, the system will work and will make international shipping safer and more efficient for everyone. I hope that we can use the time that we have now—between now and July 1 to work together toward that goal. Thank you.

Mr. HUNTER. Thank you, Mr. Butler. We will just go all the way through.

Mr. Crowley, you are recognized.

Mr. CROWLEY. Good morning, Mr. Chairman and Mr. Ranking Member. I appreciate the invitation to be here today and your recognition of the importance of marine safety throughout our maritime transportation chain. I represent the marine terminal operator and stevedoring industry. I, from a visual standpoint, look at them as that engine within the fence in our ports that make the economy work, that make the intermodal transfer work safely, productively for our businesses, exports and imports.

Despite being a volume-based, cycle-time industry, safety is always job one for industry members. Safety, it comes in many forms. But for today's purpose we are looking at container weights. Containers originate from all over the world. They are carried by multiple flag vessels. They arrive at marine terminals, both here and abroad. The importance of having a consistent safety standard is almost without question. Those safety standards the National Association of Waterfront Employers look forward to.

We look forward to the amendments to ensure that that is continued, and that the condition, the contents, and the weight processes that are available and the records provided to us are depend-

able for marine terminal—those inconsistencies, if they are wrong, show up immediately and have the potential of grinding operations literally to a halt.

And we look forward to increased productivity. Toward that end, our members have worked hard to reengineer their processes, including technology solutions in concordance with our customers, those that Mr. Butler represents, and provide systems that are more agile, that provide a faster, better, safer system towards the improvement of our marine cargo transportation system.

Thank you for your attention, and look forward to questions from you today.

Mr. HUNTER. You win the shortest testimony yet. You get a prize after this.

[Laughter.]

Mr. HUNTER. Ms. Lemm, you are recognized.

Ms. LEMM. I am here today representing many of your constituents that are moving thousands and thousands of ocean container goods, specifically agricultural goods and forest products. These exports are critical to our economy, and they are critical to our Nation. I am the vice president at Mallory Alexander, based in Memphis, Tennessee. And our responsibility is to prepare the export documentation for exporters, as well as provide ocean services.

I am also the chair of the SOLAS—Safety of Life at Sea—Agriculture Transportation Coalition’s Container Weight Committee. Today our coalition is very strong. We come here with one voice for both your small farmer in your district, as well as your largest exporter in your district. The voice is one in unison for one reason: we are very, very concerned about these new regulations the World Shipping Council has announced, because there are only two methods that they have announced that are, in their minds, regulatory. And they are asking the shipper to abide.

My goal today is, first and foremost, to share with you that the U.S. exporter is committed to safety. We also have in place today, as the admiral said, a compliant method in which we report our weights to the ships. And we report both gross weights and net weights every day on our bill of lading. This has been approved and with the SOLAS regulation for decades.

The problem, in a nutshell, is that there is flexibility, as the admiral said, in the regulation. This is not a change in regulation. These are modifications. This is the heart of the disagreement. The guidelines that have been presented by the World Shipping Council are mandatory in tone. They are required in tone. They are not flexible, they are not commercial in setting, “Let’s go discuss this.”

And I am here to tell you that the two methods proposed—the first one, scaling, is nearly impossible for most of your ag and forest product shippers. Why? Where are the scales? Just last week, we saw the southern ports of the west coast announce that they were not ready or capable to weigh our containers. I live in New Orleans. There are no scales in New Orleans. Where are the scales? You know how expensive it is? Two hundred to two hundred and fifty dollars to weigh a container. Remember, they are asking us to certify. It is redundant. We are certifying today.

The admiral made reference to laws that exist today. We have the Intermodal Safety Act, which mandates that we certify the

weights that we produce. We produce a bill of lading. Shipper load and count, certified.

Second method that has been proposed is that we not only submit our gross weights, but we are also asked to submit the tare weight of a container we don't own or lease. We have members that their legal departments are saying, "There is no way we are going to allow you to certify or report on a weight on a piece of equipment you don't own or lease." The ramifications for port disruption are huge.

We are at total opposite ends. Many exporters—I was just at a conference last week—don't even have a field for tare weight. These IT systems that we talked about today honestly just started getting developed November, December. They have not been rolled out. There is no EDI [Electronic Data Interchange] standard. There are multiple portals, multiple carriers, multiple, multiple IT elements that the average exporter hasn't even begun to understand.

So, I am outlining one cost. I am outlining two—this window, VGM, is going to require a new cutoff, a totally new cutoff. We have one member that—they move 10,000 containers. They believe they will only be able to move half that number of containers because of this new window, this tighter window. These are huge ramifications.

We believe that, first and foremost, the solution is to recognize that the United States is not the problem. These incidents that they talk about did not happen off of our shores.

In the spirit of working together with the carriers we have tried for months now to find best practices. We have said that we will certify yet again in some kind of business arrangement—perhaps in contract—that our weights are true and correct. We have been met with the answer "no" each and every time.

In summary, I ask this committee please to help us, even if it is through legislative processes, to acknowledge that the processes that exist today are indeed compliant, that there is flexibility in this regulation. And if, in fact, the ocean carriers refuse to cooperate, we ask you to please seek the opinion of the Federal Maritime Commission for this collective activity.

In summary, I do ask, please, that you ask the Coast Guard for written statement about the many methods in which we can report and verify gross mass. I think there is some ambiguous discussion and confusion because it has only been in dialogue.

We thank you very much for the opportunity to talk to you today.

Mr. HUNTER. Thank you, Ms. Lemm.

Mr. Carver, you are recognized.

Mr. CARVER. I would like to thank Chairman Hunter and Ranking Chairman Garamendi and members of the committee for the opportunity to be here. I serve as chairman of a group called International Cruise Victims. Prior to that I spent 18 years in New York City as CEO of an insurance company, which—we were in a similar business at that time.

It was just 10 years ago that I sat here for the first time, one of five testimonies that I have given, and it resulted—the testimony—the hearing was called because Chris Shays, a Republican, had had a hearing in December of 2005, raising questions about safety on cruise ships. At the hearing at which we testified, we had

six victims tell their sad story, but we did something nobody suspected. We gave a 10-point program to improve safety, a simple program that anybody should accept.

After several more congressional hearings, the cruise lines failed to accept any of these points. As a result, the Congress shifted from the Republicans to the Democrats, so Senator Kerry and Representative Matsui picked up the cause, and the Cruise Vessel Security and Safety Act was passed.

For the first time a law was passed that mandated basic safety and security measures, some which were as fundamental as have been in hotels forever. Man overboard systems, rights to victims to contact the FBI directly, and other such provisions.

In addition, victims on a cruise ship, U.S. citizens, are subject to the rights of the Crime Victims Rights Act, which is a separate legislation which gives U.S. victims rights.

I would like to say that these major steps to improve safety have improved safety, but it hasn't really worked. Generally speaking, the bill is not being enforced. We are hoping, however, that the final regulations will correct the deficiencies that we are concerned with. As an example, in 2006 there were 19 convictions of crimes on a cruise ship. In 2013, after the law took effect, there were three convictions of crimes on a cruise ship. We are moving backwards instead of forwards.

There are several—most of the major items in the bill are not being enforced, and we ask the support of the committee with the regulations that have been developed, to make sure that they are issued in line with the goal of the passage of a bill that was passed with only four votes against it, first started by the Republicans for the first two hearings, and then taken over by the Democrats.

In addition, new legislation has been introduced. House bill 3142 needs to be passed to correct some of the deficiencies of the first bill and improve safety that includes the prompt reporting of crimes to the FBI, improved video surveillance, man overboard systems be installed on cruise ships, and improved medical standards.

It was 10 years ago that ICV [International Cruise Victims] turned to our Republican Representative, Chris Shays, for help. Again, as I said, when the Democrats took over, the Democrats picked up the ball and ran with it. Chairman Hunter recently had several mothers in his office in Temecula with their sad story. These women were from your district. One was a woman whose daughter was raped by a crewmember, and it has been covered by "60 Minutes" in Australia, the Anderson Cooper show.

Another mother was there who, on a family trip with 13 members of the family, lost a son. And he was a twin. His twin came to your office and said the impact that this has had on him. Two other mothers from California were there that lost their children. These stories just continue on and on and on.

My point is this. It all started with Republicans and the Democrats continued the effort. And now it has shifted back to the Republicans. The many victims in the United States and around the world are hoping that with the current leadership this effort to protect passengers will be seen as a bipartisan issue and move forward like the original legislation passed in 2010.

How will the cruise lines respond to this request that we have for more legislation? They will say that they are already highly regulated is their standard phrase. Well, in March of 2014, the National Transportation Safety Board had a meeting. The IMO came to that meeting and made a presentation. I can give you that presentation, if you like, but I am going to quote from one of the slides that said, "Role and function of the IMO. IMO is not a policeman. IMO does not implement anything, develop standards for strength or determine design requirements, approve equipment and systems, have (m)any sanctions." That is from a direct quote from their PowerPoint presentation. Therefore, it is up to the United States to protect our citizens.

Since flag states have taken no action for victims of crimes on cruise ships, we ask your support in working with the preliminary regulations that have been issued, and we ask for your support in the passage of the additional legislation that has been submitted. Thank you.

Mr. HUNTER. Thank you, sir. Before we start, I ask unanimous consent from us that the following materials be included in the record of today's hearing: a letter from the South Carolina Ports Authority; a letter from JBS USA Food Company; a written statement for the record from Ms. Lynda D. Sanford; a letter from Mr. William Plourd, president and CEO of El Toro Export.

[No response.]

Mr. HUNTER. Without objection, so ordered.

[The information is on pages 147–155.]

Mr. HUNTER. And with that I am going to yield to Mr. Garamendi, and go have a coughing fit outside, and I will be right back.

Mr. GARAMENDI. Very good. Mr. Allegretti, you spoke of the Jones Act and potential legislation in—from other committees. Could you be more direct as to what you fear going on in other committees?

Mr. ALLEGRETTI. Today the Natural Resources Committee is holding a markup of various provisions that may find their way into the Puerto Rico relief bill. And reports last night were that an amendment dealing with the Jones Act was poised to be offered.

Mr. GARAMENDI. In the Natural Resources Committee.

Mr. ALLEGRETTI. Natural Resources Committee.

Mr. GARAMENDI. Seems to be beyond their jurisdiction.

Mr. ALLEGRETTI. You would think so. And I will say that your subcommittee, Mr. Ranking Member, and the full committee have been clear and resolute and we very much appreciate your vocal support for the law and your clarity with the other committees that you intend to maintain your jurisdiction over this vital law.

Mr. GARAMENDI. Thank you for that. I understand that the provisions of the Jones Act do not apply to the Virgin Islands, is that correct?

Mr. ALLEGRETTI. That is correct.

Mr. GARAMENDI. And the cost of fuel on the Virgin Islands is, therefore, cheaper than the cost of fuel at Puerto Rico? I have been told by the Representative from the Virgin Islands that that is not the case, that in fact the cost of fuel in the Virgin Islands is sub-

stantially higher than the cost of fuel in Puerto Rico. Do you have—know if that is true or not?

Mr. ALLEGRETTI. I don't know specifically if that is true, but I will tell you this. This is exactly the kind of debate that takes place with respect to the Jones Act, that someone takes a particular data point and then tries to make that a larger point about the effect of the Jones Act on a particular territory or locality when, in fact, oftentimes the transportation costs have absolutely nothing to do with the delivered price of the cargo. It has to do with supply, demand, and all kinds of other things unrelated to waterborne transportation.

Mr. GARAMENDI. Well, if the Representative is correct—and apparently, she is, since she lives there and buys fuel on the Virgin Islands—that it is not the Jones Act issue—

Mr. ALLEGRETTI. Yes, sir.

Mr. GARAMENDI [continuing]. That raises the cost, but other matters.

Yes, I represent a big agricultural district. For the life of me I am not quite sure I understand why we are in such a quandary about this business of tare weights. It appears as though it might be the liability issue. Is that correct, Ms. Lemm?

Ms. LEMM. We believe that.

Mr. GARAMENDI. So the liability issue revolves around the question of the tare weight written on the side of the container.

Ms. LEMM. Correct.

Mr. GARAMENDI. So if we want to solve this problem, we could—are there other issues besides that?

Ms. LEMM. There are issues. I mean for—let's take the issue of the tare weight, itself. The carriers have said themselves that the tare weights are often inaccurate. We have members who have run their own tests to prove that the tare weights that are stenciled on the side of the container are not accurate, based on their data.

Mr. GARAMENDI. Within what range of accuracy or lack of accuracy? Five percent? Ten percent? One hundred percent off?

Ms. LEMM. Roughly 10 to 12 percent. But here is the issue—

Mr. GARAMENDI. And the container weighs how much?

Ms. LEMM. The container—let's take a 40-foot standard, generally around 8,000 pounds.

Mr. GARAMENDI. And 10 percent?

Ms. LEMM. 800 pounds. But here is the deal. What is bothering the shipper, the ag shipper, is that we have never been responsible for this tare weight before. The—OK.

Mr. GARAMENDI. I get it, and I don't have that much time, but—

Ms. LEMM. OK.

Mr. GARAMENDI. But it—your principal concern has to do with the liability. OK. So there is something printed on the side that gives you the tare weight. And if it is not—if the gross weight is not accurate, then you fear that you are going to be held liable if there is some accident or something happens along the line. Is that correct?

Ms. LEMM. That is correct.

Mr. GARAMENDI. So, really, it has to do with not being liable. Well, we could deal with that, but I suppose a court case could also deal with it.

OK. Are there any other issues beyond this liability issue?

Ms. LEMM. It is the administrative task of having to report equipment we don't own or lease. The——

Mr. GARAMENDI. That takes us back to the liability.

Ms. LEMM. OK.

Mr. GARAMENDI. So we are really stuck on the——

Ms. LEMM. Well, and it is cost. We talked too about IT, IT programming. Please remember, for decades we have only reported the gross weight of our cargo.

Mr. GARAMENDI. Well——

Ms. LEMM. And now we are being asked to report the weight, the tare weight of that empty container.

Mr. GARAMENDI. That would involve—I think my granddaughter now does that kind of mathematics in kindergarten.

Ms. LEMM. Well, we move thousands and thousands of containers that are transloaded every day. And so we have a timing issue. For us to sit and look to the side of the container and actually record the side of the container and that tare weight and then have to report it and certify it, time and energy.

I think it boils down to we are told that the practice that we are doing today is compliant. It is compliant. And if it is in compliance with the regulation, then we are asking why can't we continue to do what we are doing——

Mr. GARAMENDI. So you are essentially asking this committee to somehow sort out this issue of who is responsible for the tare weight.

Ms. LEMM. Actually, no. What we are asking the committee is—the changes are so drastic, so drastic in reporting in either, A, scaling or, B, in the way we report VGM—it is also a timing issue. There is a new cutoff. Please remember that the verified gross mass now will require certification. They are programming for a whole new certificate for a database.

And so, if, in fact, there is a new cutoff that is given to the U.S. ag shipper, that cutoff must be before that container rolls into the gate for that terminal operator. We are transloading constantly at a minute's notice. The fear is that the cutoff will be moved up another day, losing a whole other day to transload export goods—time and money. And so, we believe that it is an administrative function. The carrier already knows the weight of their container.

Mr. GARAMENDI. OK. Mr. Butler, what have we got going here?

Mr. BUTLER. Mr. Garamendi, let me address a couple of things in order, if I may.

First of all, Ms. Lemm started by saying that this was a regulation that was announced by the World Shipping Council. We are a trade association. This regulation was adopted by the International Maritime Organization with the participation of all the Governments of that organization, including the United States. So it is the law. So we have to follow it. We need cooperation from our customers so that we can all be in compliance.

Secondly, on this issue of tare weight, on the legal issue I do address that in my written testimony. We think this is a nonissue.

I have said it in public, many of our members have said it in public. No one is going to hold a shipper liable for any inaccuracy of the tare weight of the container. It is our equipment. We put that number there, and if there is a problem associated with it, that is for us.

The other thing I would say about the method number two, where the tare weight—

Mr. GARAMENDI. Excuse me. At that point can we make sure that is in the testimony? Because some trial lawyer is going to want to come back and look at that—

Mr. BUTLER. And they are welcome to, yes.

Mr. GARAMENDI. Thank you.

Mr. BUTLER. The other thing I would just mention about the tare weight, it only comes up in this method number two, where you put the two pieces together, you don't weigh the whole container. That was put in at the request of shippers. It wasn't this set of shippers, but it was a shippers group at the IMO that asked for that additional way of complying with the regulation. So it was an accommodation. You don't have to use it.

Mr. GARAMENDI. OK. We can go around and around. I just wanted to get this little piece on the record. I see the chairman is back, and—you want to take it from here?

Mr. HUNTER. I am going to yield to Mr. Sanford.

Mr. SANFORD. I thank the chairman. I guess I want to go back to your comment earlier on the Jones Act with questions on that front.

I think it is interesting that—I actually pulled the numbers here. I guess my query would be this. If it is good enough for the United States military to trust change on that front, why shouldn't it be good enough for the rest of the country, from the standpoint of looking at security?

What I mean by that is this. If you look at the Maritime Administration's Ready Reserve Fleet, a full 30 of their 46 RRF ships are foreign built. In other words, they don't comply with the Jones Act. Yet they have exemption at the Federal level, based on DOD [Department of Defense] needs. And yet oftentimes the argument is used, "Well, we need the Jones Act from the standpoint of national security." But the national security entity of our country, the DOD, has said, "No, we really don't need that. We trust foreign-flag ships to transport war materials from the United States to the Middle East." Why, if it is good enough for the DOD, is it not good enough for the United States, from the standpoint of national security?

Mr. ALLEGRETTI. From the perspective of the view of the American military as it applies to the Jones Act, they have been actually quite clear that they do not want to entrust the movement of domestic commerce on foreign-flagged vessels.

Mr. SANFORD. But they do the opposite. I mean, again, I look at the numbers here. Thirty of the forty-six ships in the RRF fleet don't comply with Jones Act.

Mr. ALLEGRETTI. In respect to the movement of domestic commerce, they want to preserve that and the military leaders, the Commandant of the Coast Guard, the Vice Chairman of the Joint Chiefs of Staff, the head of the U.S. Department of Transportation, have all spoken on—sorry, have all spoken recently and vocally on

this matter, that it is—it will denigrate the national security of the United States to allow foreign vessels to move our domestic commerce.

Mr. SANFORD. I hear you. But again, their actions speak otherwise.

Let me try a different bite at the apple. So I pulled the numbers. I don't know that we would view GAO as a biased source. I mean everybody has their bias, but the Government Accountability Office, I think, would be a fairly reliable source. And their numbers indicate, based on a report that I have here in front of me, that it, in essence, cost double to send a 20-foot container from the east coast of the United States to San Juan, Puerto Rico, than it would to Santo Domingo in the Dominican Republic, literally just a few sea miles away, if you look at the transit distance, whether you are going out of New Jersey or Charleston or, for that matter, Miami.

And so you are actually looking at a doubling of cost. So you could look at security within the confines of DOD perspective, and whether or not foreign flagged is acceptable from the standpoint of their security concerns or not, but you could also look at security from the standpoint of the economy.

And if you look at that kind of impact, for instance, in that one quadrant as it impacts San Juan—I am looking here and, for instance, their Farm Bureau in Puerto Rico, the rate of deference to the Jones Act carrier and foreign carriers has led farmers and ranchers on the island to more often source animal feed and crop fertilizer from foreign sources than U.S. sources because of, again, the difference in cost.

I look at here a report I saw just a moment ago from a State senator in Hawaii, talking about the difference in shipping cost. A 40-foot container from L.A. to Shanghai costs around \$790 at the time of this report, which was May 22, 2014, versus the cost to ship that same container from Los Angeles to Honolulu, \$8,700. Again, basically, a tenfold increase.

And so, you look at those kind of increases, whether it is in Puerto Rico, which is in the news, or Honolulu, which is not in the news, you are looking at multiples of cost from the standpoint of shipping cost, which then does, at an economic level, begin to factor in national security. What would be your thoughts there?

Mr. ALLEGRETTI. I would tell you, sir, that I think that is a very narrow reading of the Jones Act benefits and the costs. And while I am not familiar with the particular numbers that you are citing, I am familiar with the most recent report done by GAO, which was designed to look specifically at the cost of moving cargo to Puerto Rico, and the essential result of that report was they were not able to reach a firm conclusion about the cost differential, and here is why.

The difference that you look at when you look at those two numbers, is you are comparing apples to oranges, you are looking at an American vessel crewed with American mariners operating under the laws of the United States, and that is the cost basis for that vessel. You compare that to a foreign vessel that is not in compliance with any of those laws, any of our societal norms. And so their cost basis is lower.

So, if you were to allow them into the U.S. domestic trade, would you allow them to transport domestic cargo outside of our laws, or would you apply our laws to them? And so, if you are going to apply our laws to them, I would argue to you that their cost basis goes up, and thus so does their transportation rate.

Mr. SANFORD. I hear you. I see my time has expired. But I would simply, I guess, make this point, which is the question is how many of those different laws—in other words, whether it is from the standpoint of a fully unionized labor force—many of the companies in the Northeast or the Upper Midwest have come to a place like South Carolina because of a different type workforce. I don't know that that is absolutely essential to the creation of any product in the domestic United States.

I would also, I guess, make this point, which is I suspect you have traveled on foreign-flagged air carriers, and done so quite comfortably. They may not have all of the same standards that we do have in America, but the fact is, if you have been in Germany or you have been in the Far East, or you have been in Asia, and you have traveled on a Boeing jet that happens to be, you know, running in a different part of the world with a different standard, you feel relatively comfortable doing that or you don't take the flight.

I don't know that I would completely agree with your reasoning, but I see I am out of time, and to be continued. With that I would yield back, Mr. Chairman.

Mr. HUNTER. I thank the gentleman. And if anybody wants to really look at the national security implications of a defense industrial base and a shipping industrial base, we have tons of testimony that Mr. Forbes, who is chairman of the Seapower and Projection Forces Subcommittee on the Armed Services Committee, we go through this all the time.

And just for the record, the RRF, the Ready Reserve Fleet, and the MSP fleet are all U.S.-flagged, U.S.-crewed. They are not—Jones Act—they are not built in the U.S., but they are U.S.-flagged, U.S.-crewed vessels. And DOD is also subject to use 100 percent of their movement of cargo on U.S.-flagged, U.S.-crewed vessels. They get waivers, unfortunately, every now and then when they shouldn't—

Mr. SANFORD. But they get lots of waivers, if I am not mistaken.

Mr. HUNTER. They do, but they screw up all the time. Like we had an incident yesterday, truly. We had a U.S.-flagged, U.S.-crewed vessel sitting off the port, waiting for cargo that went to—they got subcontracted to a foreign vessel that is going to be late because TRANSCOM screwed up. So just for the record, in the end, I would like to say this. It is not necessarily about the Jones Act and the requirements.

The cargo preference laws that we have are not—it is not an economic thing. It truly isn't. It is about national security because when you have to start making ships and crewing those ships in times of war, when we go to war, you have to have U.S. crews to do that. If you don't have U.S.-flagged vessels, you don't have U.S. crews to crew them. And once you lose that ability, it is gone. It is gone forever.

Mr. SANFORD. Agreed. And I would always defer to you on military issues.

But having said that, I think the question is do we have to have the same standard of security in shipping a container, a 20-foot container carrying fertilizer from the east coast in Charleston down to Puerto Rico?

Mr. HUNTER. I yield to the gentleman. Go ahead, Mr. Garamendi.

Mr. GARAMENDI. Mr. Chairman, I would ask that we place into the record here the testimony from a recent hearing that the Seapower and Projection Forces Subcommittee of the Armed Services Committee had on this issue of the Jones Act. I will paraphrase very, very briefly a piece of it—all of it. And this came from TRANSCOM and from MarAd [Maritime Administration].

The testimony was, the Jones Act is absolutely essential for national security. And without the Jones Act, the military cannot have a reliable and available sea—shipment by sea. That testimony was extensive. Mr. Forbes asked a series of questions, as did I. Those questions completely—would be of most interest to you, to my—to the gentleman from South Carolina with regard to the Jones Act. I will make that available to you, and I would ask that that testimony be placed in the record here.

[The information is on pages 122–146.]

Mr. HUNTER. I would yield to the gentleman if you have any more talk about it.

I actually don't know what to think about the container weight issue. I don't think this is a congressional issue. I don't think you are going to—there is not going to be legislation. I think this is a deal that needs to be worked out between the shippers and the shippers. Right?

I don't think there is a legislative answer for this because, according to the U.S. Coast Guard, which would be the ones who would regulate this, correct? In a legal battle, who would be the overseers of people—of the farmers and shippers and the carriers? I mean who would administer it? Who would have oversight?

Mr. BUTLER. Mr. Chairman, the U.S. Coast Guard—excuse me—is the sole U.S. agency with that authority.

Mr. HUNTER. And the U.S. Coast Guard has not taken a position on this yet, correct?

Mr. BUTLER. I don't want to speak—pardon me—I don't want to—

Mr. HUNTER. Well, how about I tell you? The U.S. Coast Guard has not taken a position on this yet.

Mr. BUTLER. Correct. What they—

Ms. LEMM. May I—

Mr. BUTLER. What they have said is that there are many different ways to do this. And, frankly, the discussion that has been going on back and forth between the carriers and the shippers, it is not really so much about, you know, what is legally required. It is about how do we do this in a way that we can keep commerce moving.

And there are certain ways of doing this, if we have a uniform process, that is going to make it—particularly with a deadline coming up July 1, it is going to make it a lot more likely that we have

a smooth process if we all do it the same way. If everybody comes in and wants—

Mr. HUNTER. Let me ask you this, though. Here is what I don't understand. What has been—what happens until now? I mean everybody—when you get on an airplane the luggage gets weighed, they have to know how much stuff weighs. Same with ships, right? You got to know what stuff weighs, so you can load the ship properly, right?

So what has been happening until now in the United States? Forget the world.

Mr. BUTLER. It is a bit of a mix. Today carriers use various sources of weights in order to stow the ship. Sometimes they use the weight from the shipper, sometimes experience says that the weight from the shipper is, unfortunately, inaccurate and they have to disregard that. In that case they may use the in-gate weight when a truck comes across through the gate into the port.

In some cases, frankly, carriers have—excuse me—default weights for certain commodities. They know essentially what it is going to weigh, and they will use that. But too many times—and there is—I have talked to lots of our carriers, they are involved in this. And over the years, far too many times the weights are simply inaccurate.

Mr. HUNTER. Do—are containers not standard? Do they differ?

Mr. BUTLER. Well, containers—sure, there are standard sizes, but they differ—any given run of manufacturing of containers there is going to be some differences between the container weights. They will fall within a range.

Mr. HUNTER. A range, I mean, I would guess—pretty close, right?

Mr. BUTLER. Generally, yes.

Mr. HUNTER. So what does the Coast Guard say now, a 5 percent variance is fine?

Mr. BUTLER. The Coast Guard hasn't announced a numeric variance.

Mr. HUNTER. All right. What is the international standard for variance?

Mr. BUTLER. There is not an international standard. The U.K., for example—

Mr. HUNTER. All right. Where did 5 percent come from, then?

Mr. BUTLER. Five percent came from the United Kingdom.

Mr. HUNTER. OK.

Mr. BUTLER. And that is being discussed in Europe, it is being discussed in other places. And that is an enforcement variance—

Mr. HUNTER. What is their deadline?

Mr. BUTLER. Everybody's deadline is the same, July—

Mr. HUNTER. For the—

Mr. BUTLER. July 1—

Ms. LEMM. Chairman Hunter, I would just like to say that—

Mr. HUNTER. Yes, ma'am.

Ms. LEMM [continuing]. Only 10, 10 countries, have even taken a position, 10 of 171 countries that are affiliated with the IMO, have taken a position on this.

I would also like to say that the Coast Guard has been very clear that this is not a new regulation. I meant to say that the World Shipping Council has issued guidelines without flexibility. The

Coast Guard has also been clear that there is flexibility and there are multiple ways in which we can report gross mass. Historically, gross mass has been reported by the shipper to the carrier.

The responsibility has been the carrier to the master to report accurate weights. This VGM is a new term. Never before heard it before until a few months ago. Verified gross mass now replaces the term gross mass. And in its replacement of gross mass, it totally replaces the way we have for decades reported weights. The shipper has forever reported the gross weight of their cargo, and never had to report also the tare weight of an empty container that they don't own or lease.

One thing that I failed to say in my final summary, that if in fact these changes are mandated, and they are regulatory changes, then we have to follow and ask the Coast Guard for a rulemaking, an official rulemaking. Now, I believe the Coast Guard, in good faith, really thought we could just work it out, that in a commercial setting we could dialogue. But unfortunately, the margins are so thin on our agricultural commodities we can't afford a \$250 scale.

One shipper believes it is going to cost to his bottom line \$4 million if we are forced to scale. This is a major U.S. shipper.

Mr. HUNTER. When you say scale you mean \$250 every time you weigh—

Ms. LEMM. A container.

Mr. HUNTER. Got you.

Ms. LEMM. A lot of money on super thin margins for our exports. And we feel that that is burdensome. And the option, frankly, for most is a no-go.

Mr. HUNTER. Let me ask you this, Mr. Butler. Why—I mean this is the U.S. Congress. We have 80 U.S.-flag vessels that sail internationally. Sixty of them are MSP so they get stipend, right? So we have got about 20, is that about right? We have about 20 vessels that aren't MSP that are internationally—that are U.S.-flag international cargo vessels?

So why should we here put a burden on our shippers when it is more of an international issue than it is our issue? Meaning why should we worry about the international carriers, as opposed to the U.S. fleet?

Mr. BUTLER. The cargo—

Mr. HUNTER. And the U.S. economy, the U.S. businesses, and the people that are actually making things and exporting them, which is very—that is very few. We don't export a whole bunch of stuff. A lot of ag stuff. We aren't China, obviously, and we are not a lot of other countries that export a bunch of stuff. So why is this an issue for Congress?

Mr. BUTLER. Well, Mr. Chairman, I don't think it is an issue for Congress.

Mr. HUNTER. Then why are you here?

Mr. BUTLER. I think this—because I was invited to come.

Mr. HUNTER. I mean but what I am—I mean why are we talking about this, then, if it—you are saying that you might want legislative action—

Ms. LEMM. I am saying please—

Mr. HUNTER [continuing]. If things aren't solved.

Ms. LEMM. Well, what we would like to do is continue the practice that we are doing today. We would like to meet the carrier halfway by saying we will certify again—yet again—the gross weights of our cargo under contract, or perhaps when we send our shippers instructions for that master bill of lading, a check box and a signature that we verify our weights to be true and accurate.

Mr. HUNTER. Yes. I am missing something, then. What is wrong—how is that different than what you are asking for?

Mr. BUTLER. It is not what we are asking for, sir, it is what is in the regulation.

Mr. HUNTER. OK. Well, how—

Mr. BUTLER. And the question—

Mr. HUNTER. How is it different than what the regulations are asking for, and what she just said?

Mr. BUTLER. It depends on what the shipper is doing today. If the shipper today is weighing the cargo and providing us a full weight of the loaded container, then they are already in compliance.

Mr. HUNTER. Then that is it.

Mr. BUTLER. Right? Ms. Lemm has talked about the added cost of weighing things. Well, if you are not weighing things today, how do you know how much it weighs?

Mr. HUNTER. I think she—what she is saying is they have—they don't weigh the container that is full, right? They weigh their stuff—

Mr. BUTLER. Right, which—

Mr. HUNTER. They know what that—

Mr. BUTLER. Which takes us back to this method two, which we discussed a little bit while you were outside of the room. And the concern that has been raised there by shippers—a small number of shippers, but some shippers—is legal liability, or taking the weight that is painted on the door of the container, and adding that to the contents. And what I said at that time is we have been very clear. The carriers aren't looking to hold shippers liable for a weight that we wrote on the door of the container. That is on us.

But it was put in the regulation as an accommodation to shippers so that they could use method number two and not have to go find a scale to weigh—

Mr. HUNTER. And method two, again, is weighing your products outside of the container, right? And then adding that—

Mr. BUTLER. Tare weight.

Mr. HUNTER [continuing]. That is on the—

Ms. LEMM. And we contend—

Mr. BUTLER. Correct.

Ms. LEMM. We contend that if, in fact, we have to certify "C," which is VGM—"A" being gross weight of our cargo plus "B," tare weight of their cargo, "Don't worry about it, Mr. Shipper, you are not liable, but sign here," "C," verified gross mass—that any part of that equation then ties us to that certification.

We are also asking about the administrative function. Why would we be asked—we have heard the carriers say, one, tare weight is insignificant. Anybody—yes, a second grader can read, you know, the sides of the container. We are asking why would you burden the U.S. exporter who is already at an all-time low with

U.S. exports, why would you burden them with another administrative function that is not necessary? Why would you ask them to report on the tare weight of a container? When you own it, you already know. It is in your database.

They are—the World Shipping Council, several members, have suggested we go to their Web site to pull the container weight if we don't want to look at the sides of the containers. We are contending, "Come on, guys, why are we making this harder than it is?" You have already said it is insignificant. You have already said what you really want to look at is that gross weight. We agree, it should be reported accurately, and that is the only thing we, as U.S. shippers, have control over.

Mr. HUNTER. I am still—I am trying to get my hands around this. If the Coast Guard is not going to enforce the new regulation, what do you contend with that, then? If they are going to say, "The way things are, it complies, the way things are now, it complies with this regulation," that is basically what they are saying. The Coast Guard is not demanding that anybody do anything differently, correct?

Mr. BUTLER. I think actually, Mr. Chairman, that is not correct. What I heard today from Admiral Thomas is there are lots of ways of complying with this regulation in terms of your processes and so forth.

But he did say that because of the amendments to the regulation there will be changes in business processes. And there will be. And carriers have spent millions of dollars around the world, reconfiguring their systems so that we can efficiently process this information in conformance with the regulation. And the hope is that, in setting up these new processes and getting more accurate weight, we will have safer vessels to carry the commerce of the world and also the United States, to your original point.

Mr. HUNTER. Mr. Garamendi?

Mr. GARAMENDI. I don't know that this is the correct panel, but I am back to viable and dead.

[Laughter.]

Mr. GARAMENDI. And I don't know anybody that wants to comment on it, but it seems to me that the problem we are having with this discharge—and I guess there are the shippers here, so—Mr. Butler, you are going to be on here in a moment—the problem is that we can verify dead, and we can replicate that test that it is dead, but we can't get down to viable or whatever, inherently—

Mr. HUNTER. Rendered harmless?

Mr. GARAMENDI. Rendered harmless, whatever. Why don't we just say dead and be done with it? And apparently the systems are out there that can kill it.

Mr. BUTLER. Well, a couple of things. The systems may be out there. The problem is we don't know. No systems—and the admiral spoke to this earlier—no systems have yet been type approved by the United States. What that means is nobody has yet come in with test data that shows dead all the time.

Mr. GARAMENDI. I didn't hear it that way, and I think we need to go back and go back over this again. And I will, after the hearing.

I heard it that it is the viable or nonviable issue that they are not able to replicate, but that they can replicate and have high level of certainty that it is dead.

Mr. BUTLER. I think I can clear that up. I think he was talking about two things. One is how many systems today have been type approved by the U.S. Coast Guard. The answer is zero.

Mr. GARAMENDI. Correct.

Mr. BUTLER. With respect to the test, you are correct, sir. He said we can tell when something is dead, we are not so sure we can tell when it is viable.

From a carrier standpoint operating globally, what we want to know is when we put a system on a ship—and these things are not cheap—when we put a system on a ship, we want it to work and be recognized every place in the world, and we want to know that we have investment certainty that if we spend that \$1 million, \$2 million per ship to do this, it is going to have some environmental benefit, and we can count on being in compliance.

Ms. LEMM. And what we are saying is that at—the issue is what is compliance, what is compliant. What the admiral said was that our method, our current method, is compliant. And what we are suggesting is the problem is that the World Shipping Council and its members are telling us dogmatically, “We can’t accept your current compliant method. You have to do one of these two other methods.” These—

Mr. GARAMENDI. We are talking two different things here.

Mr. BUTLER. Yes.

Mr. GARAMENDI. I have moved over to—

Mr. HUNTER. It is analogous, maybe.

[Laughter.]

Ms. LEMM. It is analogous, in my mind. It is a circle.

Mr. GARAMENDI. Well then, just—I am into creatures of the sea.

Ms. LEMM. No, I understand.

Mr. GARAMENDI. OK. Then just hold it for a second, because we are going to be out of time here in a few moments.

Yes, I need to go back, and I will talk to the admiral about the tests themselves. And we don’t have the companies that manufacture or purport to manufacture the equipment, but I think we need to—I need to get into it in more detail. I think at this moment I am headed down the line that it is the viable issue or nonviable issue that is hanging everything up here, and that the technologies may be available to kill, as in dead, creatures that might be in the ballast water.

Mr. Butler, final comment on that. Then I have got—

Mr. BUTLER. The final comment is that would provide certainty to everybody, and on this issue certainty would be most welcome.

Mr. GARAMENDI. Thank you. Man overboard surveillance. This issue is an issue requiring a requirement for cruise ships to install a system to monitor and detect incidents where a person falls overboard.

Mr. Carver, you said there were a couple of technologies that seem to be available for this?

Mr. CARVER. There may be more than two, but I listed in my written testimony two companies that have systems that have been tested. In 2011 the Coast Guard asked for proposals on man over-

board systems. They got them. But to the best of my knowledge, they never contacted the companies that issued the proposals to validate their proposal.

And so, I have often asked them——

Mr. GARAMENDI. In your written testimony, which I must have missed, did you name the companies?

Mr. CARVER. Yes, I did.

Mr. GARAMENDI. Thank you. Well, David is going to contact them and we are going to see what those systems are and whether they really do work. And then, if they do, or at least they purport to do, we will do that. I assume the witnesses here are not into man overboard issues.

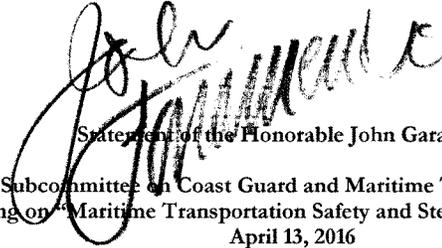
OK. Thank you. That is it.

Mr. HUNTER. Thank you all for being here, and thanks for staying a little bit extra time. We talked about a lot of things today. And I am not even going to rehash everything.

There are no further questions. There are no—any—there is nobody else here but me and John. So, with that, the subcommittee stands adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

9



Statement of the Honorable John Garamendi  
 Subcommittee on Coast Guard and Maritime Transportation  
 Hearing on "Maritime Transportation Safety and Stewardship Programs"  
 April 13, 2016

Good morning, Mr. Chairman, and thank you for scheduling this hearing to assess the status of the rulemaking activities of the United States Coast Guard.

Safeguarding and facilitating maritime commerce is a critical function of the Coast Guard. Whether ensuring the safe operation of vessels, the security of our ports and harbors, or responding to emergencies across our vast Marine Transportation System, the Coast Guard has always been a steady and reliable overseer.

But as I have stated before, it is vital for the Coast Guard's regulations to be targeted, fair and reasonable to ensure that the U.S. economy continues to build strength, and that the U.S. maritime industry remains a vibrant source of high paying jobs for millions of Americans.

Fortunately, the Coast Guard usually gets it right. But at times, Mr. Chairman, the Coast Guard's deliberations can try the patience of even its most strident advocates.

In this respect, I definitely will want to hear from Admiral Thomas on when we can expect the Coast Guard to finally publish a final rule for its Subchapter M, towing vessel safety regulations – a final rule that is now many years past due.

I will also want to learn more about the status of the Coast Guard's implementation of its ballast water discharge rule. Particularly, what is the status of the Coast Guard's type approval of ballast water treatment systems for oceangoing commercial vessels?

It is absolutely essential that the Coast Guard work to approve a ballast water treatment system that meets the IMO treatment standard at the earliest practical date to remove uncertainty and to instill confidence in vessel owners and operators.

And I will also be interested to hear from several witnesses this morning on the pending new international safety regulation promulgated by the International Maritime Organization requiring shipping containers to have a Verified Gross Mass before they can be loaded onto a vessel.

I am somewhat surprised at the sharp disagreement voiced by the different stakeholder interests for a requirement that was developed over a four-year period to address a legitimate safety issue raised by ocean carriers and marine terminal operators.

The bottom line is that no one wins when the U.S. maritime supply chain gets congested – a point that was made abundantly clear when West Coast ports were shut down last year.

Each stakeholder, including the Coast Guard, has a vested interest in working collaboratively with each other to make the transition to this new SOLAS VGM requirement as seamless as possible. And to that end, I look forward to our discussion this morning.

Thank you.

Congresswoman Doris Matsui  
Statement for the Record  
Maritime Transportation Safety and Stewardship Programs Hearing  
Thursday, April 14, 2016

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**Thank you, Mr. Chairman, for holding this hearing. I am pleased that Mr. Carver from the International Cruise Victims Association is here today to testify.**

**For the last decade, I have been working to better protect the safety of our friends and families on cruise ships. Cruise ship crime victims and victims' families, people like Mr. Carver, are the reason why I believe that this is such an important issue.**

**Shortly after I was elected to Congress, I was approached by a constituent who bravely shared that she had been a victim of sexual assault on a cruise ship. Her story immediately prompted me to seek answers and I soon discovered that there were many gaps in the protections available to passengers who are victims of crimes on cruise ships.**

**We took the first step to close these gaps when, in 2010, Congress passed my bipartisan cruise legislation, the Cruise Vessel Security and Safety Act, which put into place**

**critical protections for the thousands of Americans who take cruises every year.**

**But there is still much more work to do, which is why we are here today. The Coast Guard must issue a rule that fully implements the Cruise Vessel Security and Safety Act as Congress intended.**

**This means a rule that requires a Man Overboard system with both alarm and video capture features on every cruise ship. It also means that victims of crimes on cruise ships must be able to keep potentially sensitive information confidential from cruise lines if they wish to do so. And importantly, it means that the Cruise Vessel Security and Safety Act must apply to all cruise voyages regardless of whether or not a ship has “temporary” visiting status.**

**Even with the protections in the Cruise Vessel Security and Safety Act, we need to expand cruise safety laws further. That’s why I’ve introduced the Cruise Passenger Protection Act, which would expand upon the improvements we made in the law in 2010 to require better crime reporting**

**mechanisms and expand information available to cruise passengers.**

**Families should be able to expect a safe experience while on vacation. Standards for victims' rights and consumer protection should be strong, whether on land or at sea.**

**The security of our families and friends should not be a political issue, and this is rightfully a bipartisan cause. I've worked closely with my Republican colleague Congressman Ted Poe on this issue. And we will continue to push for improved cruise safety measures until passengers receive the protections they deserve.**

**Thank you, Mr. Chairman.**

U. S. Department of  
Homeland Security  
United States  
Coast Guard



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**TESTIMONY OF  
REAR ADMIRAL PAUL F. THOMAS  
ASSISTANT COMMANDANT FOR PREVENTION POLICY**

**ON COAST GUARD  
MARITIME TRANSPORTATION SAFETY AND STEWARDSHIP PROGRAMS**

**BEFORE THE  
HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE  
SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION**

**APRIL 14, 2016**

**Introduction**

Good morning Chairman Hunter, Ranking Member Garamendi, and distinguished members of the subcommittee. It's my pleasure to be here today to update you on some of the Coast Guard's Maritime Transportation and Stewardship programs. I greatly appreciate the opportunity to discuss these important programs that address the primary challenges I see facing the nation's maritime industry, which are: growing demands on the marine transportation system, the need to reduce shipping's environmental footprint, and the ever-increasing complexity of systems and technology. This hearing is an important step in shaping a way forward.

This morning, I'll address the following topics: First, the Coast Guard's position on the Transportation Research Board (TRB) of the National Academies of Sciences, Engineering and Medicine's recent report entitled, "Impact of United States Coast Guard Regulations on U.S. Flag Registry." Then, I will discuss the status of Subchapter "M" Towing Vessel Regulations and the IMO Verified Gross Mass Container Weight Amendments. Finally, I will provide a Coast Guard Regulatory Program Update.

**Transportation Research Board Report**

The TRB report concludes that compliance with Coast Guard regulations is not an impediment to the competitiveness of the U.S. flag registry. The TRB did make several recommendations aimed at further harmonizing Coast Guard regulations with international standards and further reducing the cost of compliance without increasing safety risks. The Coast Guard welcomes these recommendations and looks forward to working with industry and classification societies to this end.

The Coast Guard agrees with the TRB's conclusion that the cost of U.S. Coast Guard regulations is not an impediment to the competitiveness of the U.S. Flag registry. Over the last several decades the Coast Guard has undertaken multiple efforts to minimize duplication and harmonize standards within the maritime industry. The Coast Guard was pleased to see that these efforts have been productive and that for both new construction and reflagging of existing vessels, the cost of U.S. Coast Guard regulations amount to a fraction of one-percent of the total new build and operating costs.

Although the report concluded that the additional cost of Coast Guard regulations are small, we agree that there is further room for improvement and we have already taken steps in line with the committee's recommendations.

Of the three recommendations in the report specific to the Maritime Security Program, our most recent reflagging instruction directly aligns our policy with two of the recommendations. Of the five recommendations that pertain to standards development and appeals, we appreciate the recognition and continued support for U.S. Coast Guard leadership at the International Maritime Organization. We will continue our efforts to lead the development of international standards, and harmonize our regulations where appropriate. As we put forth new U.S. regulations, we strive to continue to develop a performance based approach, consult with industry advisory groups and provide detailed cost-benefit analysis, consistent with executive branch guidance. I will provide more details about our rule-making process later in this statement. Similarly, we appreciate the feedback with regard to the appeals process. We strive to ensure that this process is as robust as possible, and will further review existing guidance and training to reinforce industry's right to appeal decisions.

Finally, the remaining recommendation suggests changes to the Alternative Compliance Program. The National Transportation Safety Board (NTSB) and Coast Guard Marine Board of Investigation (MBI) that convened as a result of the tragic loss of the EL FARO, an ACP vessel, are looking into the program extensively. While the TRB recommends that the Coast Guard conduct less oversight the Coast Guard will wait for the final NTSB and MBI reports before reaching any conclusions. Ultimately, it is the Coast Guard's goal to refine our oversight policy and techniques to ensure that we achieve the proper balance so that our registry fleet remains both safe and competitive.

#### **Status of Subchapter M Towing Vessel Regulations**

Subchapter M, which is in the Final Rule stage, would impact thousands of towboats once the rule is effective. In the seven years the rule has been under development, we have executed a highly successful bridging strategy to help prepare the industry for the implementation of Subchapter M. This has included conducting over 8,000 voluntary towboat exams.

Subchapter M would effectively double the number of inspected vessels, so it will significantly challenge our resources. The NPRM for Subchapter M proposed the use of third parties. As shown for other parts of the U.S. inspected fleet, reliance on third parties to assist with vessel inspection activities has successfully provided the industry greater flexibility in meeting requirements, while also reducing Coast Guard inspections workloads. To improve readiness for Subchapter M, the Coast Guard has developed an implementation plan with three primary lines of effort: (1) policy development, (2) training and qualification, and (3) communications and outreach. When the regulations are enacted, we will begin collaborative review of the new rule with industry, finalize new policy guidance, and commence the significant training and qualification of our inspection workforce. Our Towing Vessel National Center for Expertise has developed multiple aids to assist industry with complying with the inspection and audit requirements of Subchapter M. Finally, we have a comprehensive communications plan targeting internal and external stakeholders, including the American Waterway Operators (AWO), the industry's leading advocacy group.

#### **Update on SOLAS Container Weight Requirements**

On July 1, 2016 new international requirements in the International Convention for the Safety of Life at Sea (SOLAS) concerning the verified weight of containers come into force. This has resulted in some confusion and misunderstanding.

The Coast Guard is strongly committed to ensuring that ships are safely loaded and ship Masters have the information they need to safely operate a ship in full compliance with SOLAS. Since 1994, SOLAS regulations have required shippers to provide the Master with the gross weight of the cargo prior to loading the container. In the U.S., longstanding Federal regulations require container weight to be determined before it is loaded on a ship. The existing regulatory structure will continue to ensure compliance with SOLAS, including these new requirements, without the need for new Coast Guard regulations. The amendments should not appreciably impact shippers or ship operators or cause any delays in the supply chain in the United States.

#### Coast Guard Regulatory Program Update

The Coast Guard continues to refine the standardized project management processes we use in our rulemaking program. We overhauled our Regulatory Development Program (RDP) in FY 2009 which has helped yield a 40 percent decrease in the regulatory backlog at the start of FY 2016. This decrease occurred while adding 74 rulemaking projects from statutory mandates and international treaty obligations. The rulemaking portfolio at the start of FY 2016 stood at 58 projects. The regulatory backlog has remained steady at about 60 rulemakings for the past three years.

*Figure 1* shows the average age of Coast Guard rulemakings over the past five years.

**Figure 1: Average Age of Active Rules at Close of the FY**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Average Age (years)	4.0	4.1	4.8	5.6	5.5

The Coast Guard's regulatory backlog includes eight projects over 10 years old that disproportionately influence the average age. Most of these projects are required by older statutory mandates such as the Oil Pollution Act of 1990.

*Figure 2* lists eight rulemakings published in the Fall 2015 Regulatory Agenda that have a statutory mandate.

**Figure 2: Rules with Statutory Mandate listed in the Fall 2015 Regulatory Agenda**

Title	RIN	Stage
Inspection of Towing Vessels	1625-AB06	Final Rule Stage
Transportation Worker Identification Credential (TWIC); Card Reader Requirements	1625-AB21	Final Rule Stage
Updates to Maritime Security	1625-AB38	Proposed Rule Stage
Tonnage Regulations Amendments	1625-AB74	Final Rule Stage
Higher Volume Port Area—State of Washington	1625-AB75	Final Rule Stage
Revision to Transportation Worker Identification Credential (TWIC) Requirements for Mariners	1625-AB80	Final Rule Stage
Commercial Fishing Vessels--Implementation of 2010 and 2012 Legislation	1625-AB85	Proposed Rule Stage
Seafarer's Access to Maritime Facilities	1625-AC15	Final Rule Stage
Survival Craft 2010 Authorization Act Requirements	1625-AC19	Proposed Rule Stage
Offshore Supply Vessels of at Least 6000 GT ITC	1625-AB62	Final Rule Stage

Despite our concerted efforts to advance these rulemakings towards publication, we have found it particularly difficult to collect enough information on the potential benefits to justify each rulemaking's costs. The average age of rulemakings less than 10 years old is 3.9 years. Improving the timeliness of rules remains one of the strategic goals for our regulatory development program in FY 2016.

*Figure 3* shows the number of effective rules (Interim Rules, Direct Final Rules, and Final Rules) published in each of the last five fiscal years, as well as projections for FY 2016.

**Figure 3: Number of Effective Rules Published Past 5 FY**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Effective Rules	17	17	15	16	8	12*

\*Projected

The Cruise Vessel Security and Safety Act (CVSSA) of 2010, amplified by section 608 of the 2015 Coast Guard Authorization Act, includes requirements for the design and construction of passenger vessels to integrate technology for capturing images of passengers or detecting passengers who have fallen overboard. This is to be done to the extent that such technology is available and to report to Congress the status of available technology and implementation feasibility.

We are working hard to identify key stakeholders that may provide reliable unbiased information for the report. At the same time the Coast Guard is undertaking a rulemaking that will implement the pertinent sections of CVSSA.

The Coast Guard will continue to improve our regulatory program by streamlining internal processes, balancing input from maritime stakeholders, conducting careful analysis of alternatives to the publication of regulations, and thoroughly evaluating the cost and benefit of each rule. Our goal is to ensure every regulatory action achieves the desired safety, security, and environmental protection outcome without imposing unnecessary costs on U.S.-flag vessel operators competing in a global industry.

#### **Conclusion**

I appreciate the opportunity to testify before you today on a number of areas of mutual concern in the Coast Guard's Marine Transportation Safety and Stewardship program. Thank you for your continued support. I'm happy to answer any questions you may have.

<b>Question#:</b>	1
<b>Topic:</b>	Discharge Standards
<b>Hearing:</b>	Maritime Transportation Safety and Stewardship Programs
<b>Primary:</b>	The Honorable Duncan D. Hunter
<b>Committee:</b>	TRANSPORTATION (HOUSE)

**Question:** Admiral Thomas, It is my understanding that the majority of IMO member states, with the exception of Italy and the United States, are prepared to establish ballast water discharge standards that are framed in terms of reproductive capability of organisms. I understand data from independent laboratories, including those approved by the Coast Guard for ballast water management system type approval testing, have favorably supported alternate test methods, specifically most probable number (MPN). In your testimony, you stated the efficacy test the Coast Guard uses is "very reliable and repeatable," while the MPN testing method is not. However, it is my understanding these claims have been disputed in the scientific community. Could you explain how the Coast Guard has come to conclude that its type-approval testing procedures are "reliable and repeatable" and MPN testing procedures are not?

**Response:** The reference to lack of support by only the U.S. and Italy for standards that are framed in terms of reproductive capability comes from discussions in the IMO Correspondence Group that occurred between IMO Marine Environment Protection Committee (MEPC) MEPC 68 (May 2015) and MEPC 69 (April 2016). This group is reviewing the IMO type approval guidelines and developing recommendations for revisions [for a report out at MEPC 70 \(October 2016\)](#). We have noted that some countries that had previously supported changing the definition of "viable" to one based on reproductive ability are now arguing against such a change. The rationale for the shift is that an approach based on reproductive ability would entail significant technical difficulties and uncertainties if applied to ballast water.

In its regulations governing type approval testing, the Coast Guard has incorporated by reference the EPA's Environmental Technology Verification (ETV) protocol for testing ballast water, which was developed with participation by a broad stakeholder group and several technical panels with expertise in environmental engineering and aquatic biology. The document was subject to the EPA's technical and quality assurance review process and public review and comment prior to publication in 2010. Since that time, pilot testing, validation, and two practicability reviews of the protocol have been conducted.

The use of an MPN based method to evaluate mixed assemblages of organisms in ballast water is being considered by the EPA's ETV technical panel, but they have not yet decided whether it is valid method to use in this context. The technical panel is composed of a multi-disciplinary group with a high degree of expertise in plankton and MPN analysis.

<b>Question#:</b>	1
<b>Topic:</b>	Discharge Standards
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MPN based methods were developed to estimate numbers of cells of one species with well-known culturing (or growth) requirements. This approach to enumerating cells does not easily apply to ballast water which contains multiple species. The use of MPN for multiple species assemblages is not widely practiced and has not been validated for use in analyzing ballast water samples.

<b>Question#:</b>	2
<b>Topic:</b>	Type Approve Systems
<b>Hearing:</b>	Maritime Transportation Safety and Stewardship Programs
<b>Primary:</b>	The Honorable Bob Gibbs
<b>Committee:</b>	TRANSPORTATION (HOUSE)

**Question:** Admiral Thomas, In response to a question I posed to you regarding ultraviolet light (UV) technology and International Maritime Organization (IMO) and Coast Guard regulations, you responded that our shippers and vessel owners are "hanging in limbo because of the pending ratification of the International Convention to which we are not signatory ..." and not "because of U.S. regulation because we [USCG] are granting the waivers until the technology is available." Is it possible that one of the factors in the delay in ratification of the International Convention is the USCG's failure to type approve systems?

**Response:** No, there is no causal relationship between the USCG's type approval timeline and the entry into force of the BWM Convention. Our understanding of other administrations' decision not to ratify the convention is also based in part on the lack of confidence that ship owners and operators have in the IMO type approval procedures. For example, a study by the IMO identified significant concerns among countries and ship owners regarding the reliability of BWMS type approved under the Convention. Numerous delegations to the MEPC have advocated for the IMO type approval procedures to be brought into alignment with the USCG procedures, which are widely viewed as more rigorous and providing more assurance that installed systems will work effectively.

<b>Question#:</b>	3
<b>Topic:</b>	Management Systems
<b>Hearing:</b>	Maritime Transportation Safety and Stewardship Programs
<b>Primary:</b>	The Honorable Bob Gibbs
<b>Committee:</b>	TRANSPORTATION (HOUSE)

**Question:** Please provide an explanation for how issuing more than 5,500 five-year extensions is more protective of the environment than requiring the installation of IMO type approved Ballast Water Management Systems (BWMS) with an Alternate Management System (AMS) acceptance.

**Response:** The Coast Guard has not issued 5,500 five-year extensions. Instead, the Coast Guard grants a vessel an extended compliance date until its next scheduled dry-docking because there are no Coast Guard type-approved BWMS available for installation. The duration of the extension varies per vessel due to a variety of factors but is generally between two to three years – it may be longer or shorter depending on the vessel’s individual circumstances.

Additionally, extensions do not excuse regulatory compliance. The vessel must still conduct ballast water exchange or one of the other ballast water management options provided in the regulations.

The Coast Guard established the AMS program as a bridging strategy so that vessels that installed BWMS in order to comply with the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004, prior to U.S. approval of BWMS, were not penalized for such installation while operating in U.S. waters. AMS was never intended to be a “requirement” because of the uncertainty surrounding some foreign-approved BWMS.

The AMS program allows the use of a BWMS that a foreign maritime administration has type approved in accordance with the guidelines of the International Maritime Organization (IMO). The interpretation of IMO guidelines may vary significantly from one administration to the next. For example, type approval testing conducted by foreign administrations may not be independent of the manufacturer or the administration, testing may not have been conducted with appropriate quality assurance and quality control plans, or test conditions may not be appropriate or adequately documented. The inconsistencies in the testing methods and results obtained by foreign administrations is one reason the AMS program only allows the use of a foreign type approved BWMS for 5 years following its compliance date.

<b>Question#:</b>	4
<b>Topic:</b>	MPN Efficacy Test
<b>Hearing:</b>	Maritime Transportation Safety and Stewardship Programs
<b>Primary:</b>	The Honorable Bob Gibbs
<b>Committee:</b>	TRANSPORTATION (HOUSE)

**Question:** It is my understanding that at least one USCG-certified independent laboratory has made the determination that that most probable number (MPN) efficacy test is reliable and repeatable. It is also my understanding that the Coast Guard has made a preliminary decision to reject MPN as an equivalent method for testing the efficacy of BWMS that use UV to render organisms unable to reproduce. Has the Coast Guard reviewed the determination from the USCG-certified independent laboratory before making this preliminary decision? If not, why? If so, what were your findings?

**Response:** Manufacturers of BWMS that use ultraviolet light technology to render organisms unviable (living, but unable to reproduce) have asked the Coast Guard to accept a proposed method that is based on a most probable number (MPN) dilution approach as equivalent to the required assays for living organisms under 46 CFR § 162.060-10(b)(1). The Coast Guard denied the requests for equivalency. Each of the four manufacturers has filed an appeal to this decision.

We understand the importance of this issue and are undertaking a thorough legal and technical review of the appeals. Detailed comments on the appeal and on suitability of MPN are not possible as the issue is still under consideration.

More generally, the opinion expressed by the independent lab DNV-GL supporting the use of MPN-based viability assessments was not supported by any quantitative and objective documentation of validation of any specific MPN-based method. This is in line with one of the key concerns revealed by the IMO's recently released study on implementation of the type approval procedures under the BWM Convention: the lack of transparency regarding testing methods. The degree to which the method used by DNV-GL to test systems for approval under the convention has been validated is not publicly available, nor is a comparison of that method with the different methods used by other labs in other countries. Many statements are made referencing "the MPN method", when in fact there have been many different methods used that all incorporated the MPN approach of serial dilution. Many other aspects of the methods have differed, such as the growth media and conditions to be used, which is critical, since different species require different culturing conditions. No documentation of validation of the methods that have been used from as far back as 2010 have been made publicly available. The validation information submitted to the Coast Guard by the four manufacturers was all generated in association with evaluations by the ETV Technical Panel after June 2013. Therefore, the Coast Guard disagrees with the assertion or implication that a well-established and validated MPN-based method has been used to evaluate the efficacy of BWMS during type approval testing under the BWM Convention.

IMPACT OF UNITED STATES COAST GUARD REGULATIONS  
ON UNITED STATES FLAG REGISTRY

Statement of

R. Keith Michel, *NAE*  
President  
Webb Institute

and

Chair, Committee to Review Impediments to United States Flag Registry  
Transportation Research Board/Marine Board  
The National Academies of Sciences, Engineering, and Medicine

before the

Subcommittee on Coast Guard and Maritime Transportation  
Committee on Transportation and Infrastructure  
U.S. House of Representatives

April 14, 2016

**TRB Committee Report, *Impact of USCG Regulations on U.S. Flag Registry***

Testimony – April 14, 2016  
Hearing on “Maritime Transportation Safety and Stewardship Programs”

Good morning, Chairman Hunter, Mr. Garamendi, and members of the Committee. My name is Keith Michel. I am President of Webb Institute; and served as chair of the Committee to Review Impediments to United States Flag Registry of the National Academies of Sciences, Engineering, and Medicine. The National Academy of Sciences was chartered by Congress in 1863 to advise the government on matters of science and technology and later expanded to include the National Academies of Engineering and Medicine. The committee was tasked by the United States Coast Guard to assess whether the United States Coast Guard regulatory process impedes the ability of U.S. flag registered vessels to effectively compete in international commerce. Because of the limited time provided for this Congressionally-mandated review, the committee that produced the report reviewed two reports (one by the U.S. Coast Guard and the other by the U.S. Maritime Administration), and gathered information from stakeholders.

This testimony provides an overview of the findings and recommendations contained in the letter report, *Impact of United States Coast Guard Regulations on United States Flag Registry*, which was released on February 25, 2016. The report, which can be accessed online via <http://www.trb.org/Main/Blurbs/173981.aspx>, was prepared under the auspices of the Transportation Research Board of the National Academies.

Over the last decades the cost for USCG regulatory compliance has been significantly reduced through the Alternative Compliance Program (ACP) and other USCG initiatives. The committee finds that the increased cost of U.S. regulatory compliance is now relatively small and not a significant impediment to the competitiveness of U.S. registered vessels. However, the committee believes that further steps can be taken to mitigate regulatory burden without reducing the safety of U.S. flag vessels. The letter report contains nine recommendations on steps that can be taken to further reduce the cost of compliance under U.S. registry.

In conducting its work, the committee was requested “to conduct an assessment of authorities under subtitle II of title 46, United States Code, that have been delegated to the Coast Guard and that impact the ability of vessels documented under the laws of the United States to effectively compete in international transportation markets.” The assessment was to include review of two reports: (a) a September 3, 2013, USCG report entitled *Impediments to the United States Flag Registry, Report to Congress*; and (b) a September 2011 U.S. Maritime Administration (MARAD) report entitled *Comparison of U.S. and Foreign-Flag Operating Costs*.

The MARAD report examines some of the major cost drivers that affect vessel owners’ decisions on whether to register their vessels under the U.S. flag or a foreign flag. The cost factors examined in the MARAD report include crew, stores and lubricating oils, maintenance

and repair (M&R), insurance, and overhead costs. The committee used the MARAD data supplemented by industry-supplied data to assess U.S. flag vs. international costs, including the costs of complying with USCG regulations.

The committee estimates that the annual increased cost related to USCG regulatory compliance to be \$60,000 per year, less than 1% of typical operating costs of a U.S. flag containership. The higher operating cost associated with U.S. flag is dominated by crew costs. Although there is considerable uncertainty in this estimate, the increased cost of compliance will remain a very small portion of the higher operating costs associated with U.S. flag vessels.

#### Assessment of Increased Operating Costs for a U.S. Flag Containership for 2010

	Cost Difference (U.S. - Foreign)	Percentage of Annual Operating Cost
Crew costs	\$4,443,510	57.4%
P&I insurance	\$380,184	4.9%
50% ad valorem duty	\$78,230	1.0%
USCG regulatory cost	\$60,000	0.8%

#### Recommendations related to USCG Certification and Inspection of Maritime Security Program (MSP) Vessels

MSP vessels represent the majority of U.S. flag vessels competing internationally and are, therefore, of primary relevance to the committee's work. The intent of MSP legislation was to allow a seamless transfer of international flag ships to U.S. flag. However, based on industry input, the committee estimates the initial cost to convert to U.S. flag under MSP at \$500,000 to \$1,000,000, including about \$250,000 for periodically unmanned machinery space (PUMS) upgrades.

MSP vessels were subject to CFR requirements rather than the Alternative Compliance program procedures. In NVIC 01-13 Change 1, dated May 26, 2015, USCG partially addressed this issue by offering MSP Select after 3 years of operation under MSP. Change 1 states that inspections by USCG for MSP Select vessels should be "of similar scope and frequency afforded ACP vessels." Some relief is offered to MSP vessels relative to the USCG requirement that all changes and replacements not exactly in kind should be in compliance with CFR requirements and approved by USCG. For MSP Select vessels, USCG allows the operator to request that class determine equivalency of the new equipment to existing CFR or alternate standards. The committee recommends MSP Select be available immediately upon entry in MSP for companies with proven safety records rather than after three years, and that ACP procedures for acceptance of replacement equipment on MSP vessels be applied.

The USCG requires that upon reflagging to U.S. registry, a MSP vessel operate with engine room watchstanding for up to 3,000 hours. Under international flag, these vessels would be operating with unattended engine rooms enabling the engineer to be utilized for maintenance.

This imposes a significant cost burden on operators. The committee recommends that USCG allow PUMS operation after 1,000 hours, and to consider allowing PUMS operation immediately upon reflagging should the ship's crew have prior experience with similar ships with similar control and alarm systems.

The committee offered three recommendations specifically addressing the regulatory burden on MSP vessels:

Recommendation 1: The committee recommends that MSP vessels from operating companies with proven safety records in MSP be allowed to enroll in MSP Select at the time of reflagging. Navigation and Vessel Inspection Circular (NVIC) 01-13 Change 1 indicates that MSP Select vessels may be reviewed by a classification society (class), similar to the ACP procedures, without categorically stating the ACP procedure should be applied. A formal tie should be established between the ACP supplements and MSP for modifications and upgrades of vessels enrolled in MSP Select such that MSP vessels are required to meet a standard no higher than that required for ACP vessels.

Recommendation 2: The committee recommends application of ACP procedures for acceptance of replacement equipment for MSP vessels. In the interest of providing flexibility in selecting equipment suited to existing vessel arrangements, consideration should be given to allowing type approvals in accordance with ACS rule requirements and international standards only.

Recommendation 3: The committee recommends that vessels with a documented history of safe and reliable operation using periodically unmanned machinery space (PUMS) at the time of reflagging should be permitted to continue such operations after about 1,000 hours of operation. If the crew has prior experience operating similar ships with similar control and alarm systems, consideration should be given to eliminating the waiting period.

#### **USCG Regulations (Title 46 CFR Shipping and ACP U.S. Supplements)**

Notwithstanding prior efforts to harmonize USCG regulations with international regulations and classification society rules, the committee believes a comprehensive risk-based assessment of the costs and benefits of CFR regulations would identify possible reductions in the scope of regulations without sacrificing safety and environmental protection. MSP vessels, almost all of which meet class rules and international regulations but are operated under U.S. flag with U.S. mariners, can serve as a source to compare safety records with those of ACP vessels with comparable service.

Recommendation 4: The committee recommends that USCG perform a risk-based assessment of the costs and benefits of each regulation in the CFR that exceeds international requirements, eliminating those regulations that cannot be justified on a cost-benefit basis. The committee recognizes the recommended risk-based assessment is a major, long-term effort that may require additional resources for USCG. Therefore, priority should be given to the review of those regulations included in the ACP supplements that apply to vessels with International Convention for the Safety of Life at Sea (SOLAS) certification. The first step in this process should be a comprehensive review of the ACP supplements by USCG in collaboration with ACS

and the maritime industry to identify regulations that ACS and/or industry consider redundant or unjustifiable.

#### **USCG Type Approvals**

The committee finds that ship owners incur significant costs obtaining certain equipment that is required to be USCG type approved. Due to the limited size of the U.S. market, USCG type approval requirements can also limit access to the newest and best equipment.

Recommendation 5: The committee recommends that USCG accept type approval through approved class societies in lieu of USCG-specific approval. This action will build on existing USCG policy that recognizes European Union (EU) type approvals for certain equipment.

#### **USCG Auditing, Review, Inspection, and Appeals Processes**

The committee finds overlap between the USCG vessel inspection and plan review processes and those administered by ACS. The partnership with ACS has worked well. The committee believes it is now time to build on this relationship and transfer further responsibilities to ACS. Following committee deliberations and report development, the El Faro accident and the subsequent investigations by the USCG into their audit practices and ACS inspection has raised issues that will influence how the USCG moves forward on this recommendation.

Recommendation 6: It is the opinion of the committee that ACS design review and survey personnel can effectively execute their plan review and vessel inspection responsibilities and that USCG can meet its responsibilities by serving in a safety, quality assurance, and oversight role rather than in a project and vessel oversight role. USCG's goal should be to monitor ACS while allowing ACS to perform the vessel inspection role with minimal redundancy between ACS and USCG. With this approach, USCG would still periodically inspect vessels as part of process oversight checking. Current USCG ACS plan review and inspection oversight actions outlined in NVIC 02-95 should be evaluated and streamlined. Application of modern information systems and auditing techniques should be employed to enhance the effectiveness and efficiency of ACS oversight.

Recommendation 7: A streamlined process for exemptions, interpretations, and appeals is needed. The current process, as outlined in NVIC 16-82, does not always work as planned, particularly with respect to timeliness.

#### **Harmonization of USCG Regulations with International Regulations**

The committee finds that USCG leadership presence at IMO has been instrumental in bringing about higher international standards applicable to all SOLAS-certified and International Convention for the Prevention of Pollution from Ships (MARPOL)-certified vessels, both of U.S. registry and the international fleet.

Recommendation 8: The committee commends the continued strong U.S. presence at IMO, which is critical to reducing the number of U.S.-specific regulations and raising the safety and

environmental performance of the world fleet. USCG should maintain its commitment to raising the standards of international regulations. This goal is most effectively achieved through partnership with ACS and the maritime industry. Thus, USCG should continue to partner with and proactively seek technical expertise from industry experts to serve as advisors on the USCG IMO delegations.

#### **Regulatory Development Process**

The committee finds that the USCG process for developing new regulations is robust and well documented. However, regular assessment of the impact of the regulations against pre-established metrics and through comparisons to the world fleet is needed. Performance metrics could include response time for applications, number of vessels enrolled, number and frequency of stakeholder consultations, and regulatory effectiveness.

Recommendation 9: USCG should promote continuous, effective, and inclusive communication through periodic scheduled consultation with stakeholders regarding both existing and proposed regulations. Metrics should be established and performance monitored, with regular and timely reporting of results. Whenever practical, regulations should be descriptive and performance based rather than prescriptive.

Statement of

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Maritime Transportation Safety and Stewardship Programs

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

April 14, 2016

Good morning, Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. I am Tom Allegetti, President & CEO of The American Waterways Operators. AWO is the national trade association for the inland and coastal tugboat, towboat and barge industry. On behalf of AWO's over 350 member companies, thank you for the opportunity to testify at this important hearing on maritime transportation safety and stewardship programs.

Let me begin by telling you a bit about our industry. The tugboat, towboat and barge industry is the largest segment of the U.S. domestic fleet. We operate more than 5,000 towing vessels and 27,000 dry and liquid cargo barges on the commercially navigable waterways that run through America's heartland; along the Atlantic, Pacific and Gulf coasts; on the Great Lakes; and in ports and harbors around the country. Each year, towing vessels and barges safely, securely and efficiently move more than 800 million tons of critical cargo, including agricultural products for export, coal to electrify our homes and businesses, petroleum products to fuel our cars, chemicals for manufacturing facilities, cement and sand for construction projects, and other building blocks of the U.S. economy. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

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

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

**I. The Jones Act**

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

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

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

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

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

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

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

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

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

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

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

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

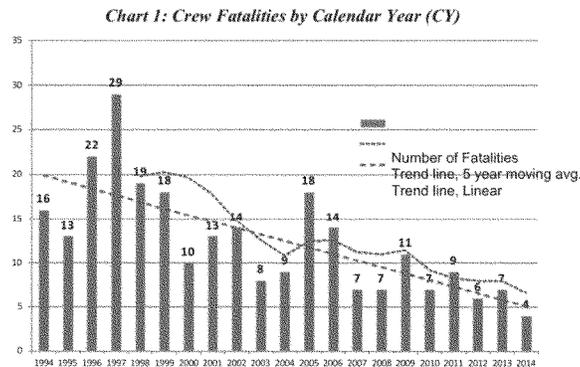
## **II. The Transition to Towing Vessel Inspection**

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

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

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

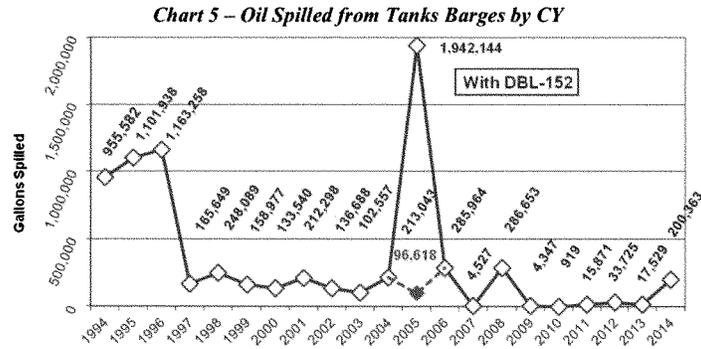
Let me elaborate on this journey, and how it has led us to this point. In 1995, the Coast Guard and AWO – in recognition of our mutual goals to improve vessel and personnel safety within the tugboat, towboat and barge industry and enhance the protection of the environment along our nation’s waterways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



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

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

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



industry is spilling much, much less of it.

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

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

The Subchapter M rule, which will establish the towing vessel inspection regime conceived by the Safety Partnership and mandated by Congress, was approved by the Department of Homeland Security and transmitted to the Office of Management and Budget for final review in

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

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

### III. Preserving Federal Authority Over Vessel Operations

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

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

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<sup>1</sup> *INTERTANKO and the United States of America v. Locke*, 529 U.S. 89, 99 (2000).

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

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

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

#### **IV. Vessel Discharges**

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

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

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

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

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

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

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

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

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

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

#### **Conclusion**

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



WORLD SHIPPING COUNCIL  
PARTNERS IN AMERICA'S TRADE

Statement of

**John W. Butler**

President & CEO

**World Shipping Council**

Before the

**House Committee on Transportation and Infrastructure  
Subcommittee on Coast Guard and Maritime Transportation**

on

***"Maritime Transportation Safety and Stewardship Programs"***

April 14, 2016

Mr. Chairman and members of the Subcommittee, thank you for the invitation to testify before the Subcommittee today. My name is John Butler. I am President and CEO of the World Shipping Council.<sup>1</sup> WSC members comprise an industry that has invested over \$400 billion in the vessels, equipment, and marine terminals that are in worldwide operation today. Approximately 1,500 ocean-going liner vessels, mostly containerships, make more than 27,000 calls at ports in the United States during a given year – almost 70 liner vessel calls a day. This industry provides

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<sup>1</sup> The World Shipping Council (WSC) is a non-profit trade association whose goal is to provide a coordinated voice for the liner shipping industry in its work with policymakers and other industry groups with an interest in international transportation. Liner shipping is the sector of the maritime shipping industry that offers regular service based on fixed schedules and itineraries. WSC members carry over 90% of the United States' containerized ocean commerce, and include the full spectrum of carriers from large global lines to niche carriers, offering container, roll-on/roll-off, and car carrier service as well as a broad array of logistics services. A complete list of WSC members and more information about the Council can be found at [www.worldshipping.org](http://www.worldshipping.org).

American importers and exporters with door-to-door delivery service for almost any commodity to and from roughly 170 countries. In 2014, approximately 32 million TEU<sup>2</sup> of containerized cargo were imported into or exported from the United States.

Today, my testimony will focus on an important international maritime safety problem that the shipping industry has been working for more than eight years to address: the problem of mis-declared container weights.

My testimony is organized into four parts. Part 1 discusses the nature of the problem of mis-declared weights for packed containers that are loaded on ocean-going vessels for international transportation. Part 2 of my testimony discusses the development of a solution to the weight mis-declaration problem through an amendment to the Safety of Life at Sea (SOLAS) Convention, adopted through the International Maritime Organization. In part 3, I address a common misunderstanding about the application of the SOLAS regulation, as well as a point of disagreement about means of compliance that has been raised by some shippers. Part 4 of my testimony discusses the state of preparation for the amended regulation and our expectations for implementation starting on July 1, 2016.

### **1. Mis-declared Container Weights**

The issue of mis-declared container weights has been a maritime safety problem for many years. Although there is an existing obligation under the Safety of Life at Sea (SOLAS) Convention for the shipper (the carrier's customer) to provide an accurate container weight declaration to the ocean carrier, there are too many cases in which that requirement is not met.

The safety and operational problems resulting from mis-declared container weights are real and include the following:

- Personal injury or death to seafarers and shore side workers;
- Loss of vessel stability;
- Collapsed container stacks;
- Containers lost overboard (including containers that were not mis-declared);
- Stability and stress risks for ships;
- Incorrect vessel stowage decisions;
- Damage to ships, cargo and container handling equipment;
- Overweight containers being transported on roads and highways;

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<sup>2</sup> A TEU is a standard container measure that represents a twenty-foot container. Most containers moving in the U.S. trades are forty-foot units equal to 2 TEU.

- Liability claims for vessel and marine terminal accidents;
- Impairment of service schedule integrity which causes supply chain delays for shippers of properly declared containers;
- Re-stowage of containers (and resulting delays and costs), if the incorrect condition is ascertained;
- Last minute shut-outs of booked and confirmed shipments when the actual weight on board exceeds what is declared, and the total cargo weight exceeds the vessel limit or port draft limit; and
- Impairment of optimal vessel trim and draft, which causes suboptimal fuel usage and increased vessel air emissions.

In short, mis-declared containers present tangible risks not only to maritime industry workers, ships, cargo and equipment, but also to operational reliability and to shippers of accurately declared shipments. Mis-declared containers also lead to higher operating costs, to highway safety problems, to liability claims, and to higher administrative costs.

## **2. History of the Effort to Fix the Problem of Mis-declared Container Weights**

Container vessels do not have the capability to weigh the containers that are loaded onto them. General practice for ocean carriers has therefore been to instruct their shipper customers on the appropriate and permissible packing of containers and on the existing SOLAS provision requiring that the shipper provide an accurate weight declaration to be used in stowage planning.

Following the structural failure and breakup of the containership *MSC Napoli* in 2007, mis-declared container weights were identified by the U.K. government as a factor contributing to the structural failure. In response to this casualty and several other container vessel safety incidents involving mis-declared cargo weights, the World Shipping Council (WSC) and the International Chamber of Shipping (ICS) jointly produced a document: *“Safe Transport of Containers By Sea: Guidelines on Best Practices”* (STC Guidelines). That document was published at the end of 2008 and presented to the IMO Maritime Safety Committee.

The STC Guidelines, which were endorsed by the international shipper association Global Shippers’ Forum, specifically addressed the issue of containerized cargo weight, noting in part that:

- Under the SOLAS Convention, the shipper or party stuffing the container is legally responsible for ensuring that “the gross mass of the container is in accordance with the gross mass given on the shipping documents;” and
- As a recommended best practice, Marine Terminal Operators should: “Verify the container weight against documentation by use of a weighbridge or weight gauge/load indicator on yard equipment or, alternatively, verify that weighing has occurred before entry and that such weighing was compliant with accepted best practice.” Container ships do not have cranes that can weigh containers and thus by necessity must rely on container weight verification to be performed on-shore.

Unfortunately, these voluntary Guidelines and other industry “best practice” guidelines, which noted that accurate container weights needed to be provided in advance of vessel stowing, had no discernible effect on reducing the incidences of shippers providing incorrect weights for packed containers. When it became clear that voluntary industry actions had not solved the problem, governments communicated to the International Maritime Organization (IMO) that they wanted the issue addressed.

In December 2010, the IMO’s Maritime Safety Committee discussed joint industry/government recommendations to ensure that the correct weight of each container is provided to the ocean carrier prior to vessel loading, and the Committee invited submissions for such a new IMO work item to address mis-declared container weights.

In 2011, the IMO approved a work item to consider requiring packed containers to be weighed. As a 2012 paper (co-sponsored by the United States government, WSC and others) to the IMO noted: “It is not sufficient to say that shippers should be required to provide accurate weights. That requirement already exists. The only way to ensure compliance and knowledge of actual weights is for a container to be weighed prior to vessel loading.”

Since the existing SOLAS regulation’s terms on container weight declarations were seen as in need of tightening, IMO undertook to amend that SOLAS regulation. The SOLAS amendment was drafted to require that the marine terminal operator and carrier have a shipper-declared container weight obtained by weighing the packed container, and specifying that the weighing could be done outside the marine terminal. This proposal was supported by industry, including some shipper interests.

In 2012, the need to address the mis-declared container problem was reinforced when Ukrainian Customs authorities weighed containers at their ports and found that 56% of the

containers' actual weights exceeded the shipper-declared weights. Other countries, including India and New Zealand, conducted similar tests and found similar results.<sup>3</sup>

Despite the proposal at the IMO that the shipper-declared weight be obtained by weighing all containers before they are loaded on a ship, some shipper and marine terminal operator interests wanted to keep the weight verification solely a matter of the shipper's declaration, and not require a weighing of the container. In 2013, a compromise was developed within the IMO by 15 governments and 13 industry organizations to allow two methods to be used by a shipper to generate a verified container weight, namely:

- Method 1: Weigh the packed container at the conclusion of stuffing the container; or
- Method 2: Weigh all the contents of the container (i.e., the cargo plus any packaging and bracing materials) and add that to the container tare weight (i.e., the empty weight of the container, which is listed on the container door).

Under the compromise, the shipper could provide a signed Verified Gross Mass (VGM) to the carrier electronically and the shipper would have to provide the VGM sufficiently in advance to be used in the preparation of the ship's stowage plan.

The compromise also required the vessel operator and marine terminal operator to have a verified container weight before loading a container aboard a vessel. If the shipper did not provide a VGM, the situation could be remedied by the marine terminal operator weighing the container, although SOLAS would not require a marine terminal operator to do this.

The "VGM" compromise received the full support of the Global Shippers Forum and various governments who received the views of their export communities. The IMO established working groups to develop recommendations and guidance for how to implement this new SOLAS provision. The last IMO working group, which oversaw the drafting of the SOLAS amendment and the Implementation Guidelines, was chaired by the U.S. Coast Guard.

***A Universal Container Weighing Requirement Prior to Vessel Lading:*** In May, 2014, the IMO Maritime Safety Committee approved the SOLAS amendment containing the "VGM" compromise. The SOLAS amendment is attached as Exhibit 1 to this testimony. The Committee gave the regulated parties more than two years – until July 1, 2016 – to implement the new

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<sup>3</sup> See also, the letter from Mr. James Newsome of the South Carolina State Ports Authority to Chairman Duncan Hunter, dated April 7, 2016. There, on page 1 of his letter, Mr. Newsome describes a sample weighing recently conducted at the Port of Charleston, which also revealed material discrepancies between the declared weights and the actual weights of containers.

requirements and also approved for immediate circulation IMO Implementing Guidelines to allow the affected parties the maximum possible time for implementation.

Since the IMO approved the SOLAS amendment and circulated its Implementing Guidelines in 2014, the WSC also circulated guidelines (on July 1, 2015) to assist ocean carriers and their customers in understanding and implementing the requirements. In December, 2015, WSC, the TT Club (insurers), ICHCA (international cargo handling association), and the Global Shippers Forum jointly published a frequently asked questions (FAQ) document on the implementation of the SOLAS amendments. WSC has participated in dozens of seminars, web meetings, and conference calls with industry groups representing shippers, ports, terminal operators, and carriers as part of its efforts to increase awareness of the revised SOLAS requirements. Other carrier groups and individual carriers have disseminated educational and operational materials to their customers in order to facilitate a smooth implementation of the requirements on July 1, 2016.

Copies of the SOLAS amendment, IMO Implementing Guidelines, industry guidance, and papers submitted during the IMO deliberative process (including pictures of container incidents involving containers with misdeclared weights) are available at: <http://www.worldshipping.org/industry-issues/safety/cargo-weight>

We are now approximately two and half months away from the July 1 implementation date. There is a common recognition that the amended SOLAS regulation requires the vessel operator and marine terminal operator to have a signed VGM from the shipper, or a weight from the terminal weighing the container, in order to load the container aboard ship. Ocean carriers have made substantial progress to be ready to comply with this requirement on July 1 and will continue to work closely with their shipper customers and with marine terminal operators to ensure that implementation goes smoothly. Some outstanding issues remain; we address those further below.

### **3. Issues on Which There Has Been Some Misunderstanding or Disagreement**

#### **a. Inaccurate Weight Declarations versus Containers Loaded Beyond their Rated Capacities**

There has been some confusion about the nature of the problem that the revised SOLAS regulation is designed to address and the nature of the information that the shipper needs to provide to the carrier.

For example, the World Shipping Council has fielded a number of questions that ask whether the shipper may comply by providing a certification stating that the container has not been loaded beyond the maximum rated capacity of that container. Such overloading is both dangerous and illegal, and there are in-gate weighing processes and sensors on yard equipment and container cranes that are designed to alert workers to grossly overloaded containers. However, the SOLAS rule is designed primarily to address a broader issue, namely declared weights that are within the maximum carrying capacity of a container, but that are inaccurate and thus cause containers to be stowed with an incorrect assumption about their weight, resulting in problems ranging from stability and stress problems for the ship to container stack collapses resulting in damaged cargo, containers lost overboard, and risk of injury to ship's crew and shoreside workers.

It was these sorts of incidents that the IMO, national governments, and the industry (including ports, carriers, shippers and labor) have tried to address through this new measure, and that led to the amendment of the SOLAS regulation on container weights. The objective of that amended SOLAS regulation is not just to prevent overloaded containers, but to provide the vessel and terminal operator with accurate weight information so that the vessel can be stowed safely.

b. Efficient Use of "Method 2"

The revised SOLAS regulation prescribes two methods that the shipper may use to derive the "verified gross mass" (VGM) of a packed container. The first (Method 1) is to simply weigh the container after the cargo is packed into the container. The second way (Method 2), which was included at the request of shippers, is to weigh the cargo and packing materials, and then to add the empty or tare weight of the container to the cargo weight to derive a total loaded weight for the packed container and contents. The tare weight of every container used in international ocean transportation is conspicuously marked on the exterior of the container.

Some shippers have taken the position that under Method 2, the shipper should only have to provide the cargo and packing material weight, and the carrier should add in the container tare weight in order to complete the VGM required before the container may be loaded onto the ship. Carriers have objected to such a procedure. The disagreement over this issue appears to be the primary obstacle to compliance by some shippers.

There is both a legal dimension and a practical dimension to this disagreement.

On the legal side, some shippers have argued that if they choose to use Method 2, and add in the tare weight written on the container, then they as the shipper would be taking legal responsibility for the accuracy of the tare weight of the container. Shippers object on the basis that they are not the party that owns or controls the container, and that they do not mark the tare weights on the container. The answer to that concern is that the shipper's use of the tare weight marked on the container was an accommodation in the regulation to make Method 2 more user-friendly.

Ocean carriers have repeatedly, publicly, and in writing stated that shippers are not responsible for the accuracy of tare weights. Further, no government has taken the position that a shipper is responsible for any deviation that might exist between the tare weight marked on the container and its actual weight. In addition to the fact that any discrepancy between the marked tare weight and the actual tare weight is likely to be immaterial from a safety standpoint, it is clear that the carrier – as the entity offering the container marked with the tare weight – is the party responsible for the accuracy of that tare weight. In short, this legal concern raised by some shippers is unfounded.

Some recent shipper statements have objected to adding the tare weight to the cargo weight before transmitting the weight certification to the carrier simply because they do not want to change their existing processes. The reason that carriers have resisted this approach is not because they wish to inconvenience the shippers that have made the proposal, but because carriers want to avoid causing delays and disruptions at our ports for all shipper customers. Let me explain.

Because of the large number of containers that carriers handle, maintaining an efficient flow of cargo requires that electronic transmission of data among carriers, shippers, terminal operators, and others be used to the greatest extent possible. Uniform, consistent business processes are needed for the efficient movement of American commerce. Particularly relevant here, it is very important to avoid manual procedures or exception handling in processing the data required for commercial and regulatory purposes. When data received by the carrier from the shipper arrives in a format and with content that allows for automated processing of that data, the entire documentation process moves expeditiously and accurately. In the case of the verified gross mass (or "VGM") message from the shipper, if that information arrives complete and in a recognizable format, the carrier can both transmit that information automatically to the terminal operator that is loading the ship, and also automatically confirm in the carrier's system that the required information has been obtained. If, on the other hand, the carrier must examine incoming data to determine whether it is a complete VGM or a partial VGM, that introduces a manual step that would slow down the process and increase congestion at America's ports.

The way that the introduction of a manual process – and the delays that come with it – would apply in the VGM context is as follows. The SOLAS regulation specifies that the shipper must provide a VGM that includes the weight of the container and everything in it. Therefore, under Method 1 (weigh the full container after packing) or Method 2 (weigh the cargo and packing materials and then add the tare weight of the container), the number transmitted by the shipper must include the weight of the container and the weight of the contents. In order to handle such declarations, carriers must build their information systems to recognize and process a VGM as consisting of that total weight. The carrier has no choice in the matter if it is going to build an efficient information technology process for handling shipper weight certifications, and this is in fact how carriers have structured their information technology systems to deal with VGMs.

Once an IT system is configured to recognize and process a VGM as being the gross weight of the packed container, any shipper input to that system that did not include the weight of both the container and the weight of the cargo would either cause an inaccurate weight to go to the vessel stow-planning software system, or it would trigger a need for the carrier to manually review submissions by all shippers in order to determine whether those submissions are complete or partial. The first outcome would defeat the purpose of the regulation, because container weight accuracy would get worse, not better. The second outcome would undermine the carrier's ability to efficiently process VGM submissions. Given that the primary concern about implementation of the regulation is that it could slow cargo flows and cause port congestion, carriers are very reluctant to accept a proposal under which the shipper would be allowed to choose whether to provide the full weight of the packed container or whether to provide only the weight of the contents.

To summarize, because carrier systems must be able automatically to process VGMs provided by shippers, all submitted weights have to be total weights in order to avoid manual processing and system disruptions and slow-downs. Put differently, providing an exceptional process for one group of shippers that may request it would have the effect of undermining the efficiency of the process for all exporters in the U.S. and around the world.

The first instinct of a carrier – as it is with any service provider in a highly competitive industry – is to say “yes” to its customer. Here, however, saying “yes” to those customers asking to be allowed to provide only the cargo weight would mean degrading service for all customers. That approach would lead to exactly the negative outcomes that everyone agrees must be avoided.

It is for this reason and in the interest of port efficiency in the U.S. that shippers need to include the container tare weight in every Verified Gross Mass that is calculated using Method 2.

#### **4. Status of Preparations**

There is no question that the amendment to the SOLAS regulation requires process changes by carriers, shippers, and terminals. Despite the fact that there have been very public discussions of the revised requirements since they were agreed at the IMO in 2014, it is probably the case that preparations should have started earlier than they did. That is probably the case with every regulatory change that has ever been imposed. However, a great deal of work has been done in the last six months, and there is no question that processes are available that will allow shippers to send – and carriers and terminals to receive – the information required to allow cargo to be loaded. Those processes include electronic transmission as well as web-based proprietary carrier systems and third-party portals. There is therefore no technical or process impediment to implementation of the regulation on July 1.

#### **5. Conclusion**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on this important maritime safety development, which will soon take effect and which will enhance not only the safety of container ships, seafarers, shore side workers, cargo and equipment, but also will reduce the supply chain delays and administrative and legal costs that result from mis-declared containers. It is 2016, and it is past time that everyone in the marine supply chain knows the accurate weight of the loaded containers that are moving this nation's international trade. The amended SOLAS regulation will provide that information.

We would be pleased to provide the Subcommittee with whatever further information may be of interest as it continues its oversight of environmental and maritime safety matters.

###

Exhibit 1

**SOLAS CHAPTER VI**  
**CARRIAGE OF CARGOES AND OIL FUELS**

**Part A**

**General Provisions**

**Regulation 2 – Cargo information**

The following new paragraphs 4 to 6 are added after existing paragraph 3:

"4 In the case of cargo carried in a container\*, except for containers carried on a chassis or a trailer when such containers are driven on or off a ro-ro ship engaged in short international voyages as defined in regulation III/3, the gross mass according to paragraph 2.1 of this regulation shall be verified by the shipper, either by:

- .1 weighing the packed container using calibrated and certified equipment; or
- .2 weighing all packages and cargo items, including the mass of pallets, dunnage and other securing material to be packed in the container and adding the tare mass of the container to the sum of the single masses, using a certified method approved by the competent authority of the State in which packing of the container was completed.

5 The shipper of a container shall ensure the verified gross mass\*\* is stated in the shipping document. The shipping document shall be:

- .1 signed by a person duly authorized by the shipper;
- .2 submitted to the master or his representative and to the terminal representative sufficiently in advance, as required by the master or his representative, to be used in the preparation of the ship stowage plan\*\*\*.

6 If the shipping document, with regard to a packed container, does not provide the verified gross mass and the master or his representative and the terminal representative have not obtained the verified gross mass of the packed container, it shall not be loaded on to the ship."

\* The term "container" should be considered as having the same meaning as defined and applied in the International Convention for Safe Containers (CSC), 1972, as amended, taking into account the *Guidelines for the approval of offshore containers handled in open seas* (MSC/Circ.860) and the *Revised Recommendations on harmonized interpretation and implementation of the International Convention for Safe Containers, 1972, as amended* (CSC.1/Circ.138/Rev.1).

\*\* Refer to the *Guidelines regarding the verified gross mass of a container carrying cargo* (MSC.1/Circ.1475).

\*\*\* This document may be presented by means of EDP or EDI transmission techniques. The signature may be an electronic signature or may be replaced by the name, in capitals, of the person authorized to sign."



## National Association of Waterfront Employers

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### Testimony

**John Crowley, Executive Director, National Association of Waterfront Employers**

**before the**

**Committee on Transportation and Infrastructure**

**Subcommittee on Coast Guard and Maritime Transportation**

**Hearing on “Maritime Transportation Safety and Stewardship Program”**

**April 14, 2016**

I am John Crowley, Executive Director of the National Association of Waterfront Employers, also known as NAWA. I appreciate the opportunity to testify today on behalf of NAWA’s members and associate members from across the country.

NAWE represents the interests of the marine terminal and stevedoring industry whose member companies are the entities that operate marine terminals in most major ports of this country. They are the port operators. We appreciate and encourage the interest of Congress in the safety and stewardship of the maritime transportation system and specifically, the American port sector where the members of my organization represent employment for over 30,000 men and women in good paying, skilled jobs. Total wages are over 2.5 billion dollars. Indirect and supporting jobs add even more. Ports are vital gateways for US commerce. We handle the goods and commodities that are essential to US manufacturing, the producing agriculture and mineral sectors, and consuming economies. In other words, they are essential elements of the freight supply chain and linchpins to a strong national economy.

As a critical part of the world's marine transportation system (MTS), the U.S. marine terminal operator (MTO) and stevedoring industry provides the critical link between ocean carriers and rail and/or motor carriers, as cargo and containers flow from point of origin to point of delivery. MTOs play an integral role in the import/export engine that drives the U.S. economy, creating jobs in America through trade.

Job ONE for our members is Safety – sending our committed workforce home to their families each day. There are many factors leading to safe and mishap free operations. Included are the container condition, its contents, and weight when it is put into commerce. Each of these factors becomes immediately relevant on a port terminal when it is lifted by container handling equipment (CHE). Is the condition including the

floor and corner castings able to support the designed strength of a container? What are the container contents and are they hazardous or have they leaked? Is the container weight within the handling limits of CHE?

Also important is productivity. The business of terminal operators and stevedores is more than in-gating or storing cargo or lifting cargo on and off container stacks or vessels. It is to smoothly, efficiently and effectively move cargo from landside transportation to water borne transportation or vice versa on an often busy and crowded terminal facility. Every added event in the cycle adds cost and time while reducing throughput. Productivity at the marine terminal is essential for productivity of the supply chain.

Our members are accustomed to immediate feedback in measuring safety and productivity. The condition, contents and weight of a container can create immediate unsafe conditions and delays. If these factors contribute to an unsafe condition the container is taken out of cycle adding time and cost while taking up valuable space in an already constrained system.

Because these containers are handled by global partners world wide, we advocate for consistent, global standards to prevent unsafe conditions and minimize impacts on productivity. We value standards for container construction, cargo carriage, and container weight. In this regard, NAWE supports the use of "verified gross mass" (VGM) as set forth in an Amendment to the Safety of Life at Sea Convention (SOLAS) and ratified under provisions of the International Maritime Organization (IMO). The International Maritime Organization is among those entities that contribute to the safety in maritime commerce as well as producing a level playing field among port and flag states. This contribution has been particularly important to those of us operating under U.S. standards.

The IMO has a distinguished tradition of establishing critical and consistent standards of safety, environmental protection and security across the global marine transportation system. IMO's International Convention for Safe Containers, with recently implemented amendments, establishes key standards for construction and inspection of containers for safe use in shipping. Similarly, IMO and its Marine Safety Committee began a review of reports from the shipping industry of the mis-declaration of container weights in 2010. The issue was further assigned to the Sub-Committee on Dangerous Goods, Cargoes and Containers (DSC) in 2011. The International Cargo Handling Association (ICHCA) represented the interests of its industry in these discussions and included comments from U.S. marine terminal operators. As a result of this work IMO published its Amendment to SOLAS in 2014. NAWE published the resultant new rule in 2014 to its members and began discussions in 2015 on measures needed to accommodate this Amendment in order to enhance safety and maintain productivity. Individual operators began discussing this new regulation with their customers, i.e. the carriers and vessel operators. Our association began this year to develop best practices and share them

with a partner association representing our customers.

At this time our association members are working diligently to do their part to achieve a successful implementation of the VGM requirements in SOLAS. It has been and remains the stated expectation of our association members that Carriers will provide the VGM data received from their customers to terminal operators on a timely basis and using agreed formats and standards. To accommodate this exchange of information, our members have invested in coding and other information technology changes that will allow various Terminal Operating Systems (TOS) to ensure VGM information will be accurately received, used within the container yard, and used in the course of vessel planning and stowing. If our customers are unable to timely transmit those VGMs prior to the arrival of export containers at our association members' facilities (whether by road or rail), volumes could overwhelm marine terminals and bring ocean-borne container trade in the U.S. to a standstill. The marine terminal operators have been working to be ready to implement these new changes and expect the shippers and carriers to do their part by providing VGMs before the containers arrive at terminals for export. Understanding this ahead of time should keep confusion to a minimum for shippers and the land transportation modes that deliver containers to the port operator.

With the combination of adherence to these SOLAS Amendments and industry efforts NAWA is confident in continued safe and productive marine terminal operations.

Thank you for the opportunity to testify today on behalf of NAWA members, I look forward to answering your questions.

**Testimony of  
Donna Lemm  
Vice President of Global Sales  
Mallory Alexander International Logistics  
On Behalf of the Agriculture Transportation Coalition  
Before The  
U.S. House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Coast Guard and Maritime Transportation  
Maritime Transportation Safety and Stewardship Programs  
April 14, 2016**

Good Morning Chairman Hunter, Ranking Member Garamendi, and distinguished Members of the Subcommittee. My name is Donna Lemm. I am here today representing many of your constituents, exporters of thousands of ocean containers of corn, rice, wheat, nuts, hay, cotton, poultry, beef, pork, lumber, paper and countless other agriculture and forest products. I am the Vice President of Global Sales for Mallory Alexander of Memphis, TN. We provide ocean services for many US exporters, managing a major share of all the US cotton exports, as well as representing a large segment of the United States forest product shippers. I am also here as Chair of the Agriculture Transportation Coalition's Container Weight Committee. The AgTC is the voice for the U.S. exporter – from small farmers to the largest agriculture merchants located in your Districts, who are alarmed by this proposed change and the way the ocean carriers now want us to report the weight of our cargo.

The impact of an ill-conceived application of the SOLAS amendment to U.S. exporters will be massive. One company estimates that their cost to export goods will rise 20 to 40%; an estimated \$4 million for one of our members. Further, this problem will create massive disruption at the ports again! We cannot afford a repeat performance of last year's port disruption when there is something we can do together to prevent this from happening again.

**My goal today is to let you know that:**

1. We are committed to safety.
2. The 'Best Practices' guideline for the SOLAS amendment issued by the World Shipping Council and circulated by the ocean carrier members of OCEMA will not advance safety, and will result in massive disruption to ports and supply chains, according to an investment bank report. Their guidelines only offer two methods to the shipper: a.)

scaling of container or b.) calculation of gross weight of cargo and empty weight of ocean carrier equipment to create Verified Gross Mass (VGM), when in fact there are multiple acceptable methods including our current process of reporting our gross and net weights of our cargo to the carrier.

3. Current practices are acceptable, legal and compliant. The U.S. exporter is subject to laws and regulations mandating accurate reporting and subject to heavy fines and penalties for inaccuracies. The US Coast Guard confirms current practices are compliant.
4. We have a "rational" approach which would minimize disruption and cost in which the exporter is responsible for the weight of its cargo, and the ocean carrier is responsible for the weight of its container and together these weights are calculated to provide verified gross mass. It is legal, compliant and will meet the SOLAS objectives according to the Coast Guard.

The Coast Guard has acknowledged that current methods are indeed one of several ways a shipper and carrier can work together for compliant weight calculations. No doubt the Admiral, will confirm again today that there is flexibility in the SOLAS guidelines.

The President's National Export Initiative has been a focus of this Administration, with the goal to improve conditions that directly affect the private sector's ability to export. The goal is not to create unnecessary administrative processes and heavy costs for the US exporter, but unfortunately that is what the SOLAS amendment, if implemented as OCEMA proposes, would do.

**The Problem for US exporters:**

1. Only ten of 171 member IMO countries have announced a position about implementing this amendment. And, only three of those countries have actually issued final rules. The other seven have just issued drafts or discussion pieces of what they may do. The U.S.' largest trading partner, China, has not taken a position.
2. The amendment shifts liability to exporters to certify the accuracy of the weight of carrier owned/leased equipment. It is ludicrous to ask a shipper to look on the side of every container and report its weight, which we know may not be accurate since it is equipment we do not own or lease.
3. Moreover, the carriers have refused reasonable compromises, such as the "Rational Method" AgTC proposes, as well as a suggestion for carriers to produce an industry acceptable average for weights of the containers they own and lease, since the containers of all types tend to fit within reasonable ranges of weights.
4. The amendment imposes new programming costs. Most US exporters do not even have software with a field designed to store the empty weight of a carriers' container.
5. The ocean carriers have offered NO standard for electronic communication for shippers to carriers and for carriers to terminal operators.
6. The extra time needed to send data from shipper to carrier; carrier to terminal; terminal recognition of weights and green light to proceed will cut some export shippers volume

in half because of the extra time. This is lost revenue and sales for the U.S. exporter at a time when our exports are already down significantly.

7. The World Shipping Council and member carriers which are nearly all **foreign** owned, are sending communications to U.S. exporters that these amended changes are mandatory, even though it is clear that there is no legal basis for them to take that position. US shippers are being bullied with these guidelines offering no flexibility.
8. United States terminals have weighed in on this SOLAS issue and are now, in the case of Maher terminal in New York and at the Port of Virginia, threatening to refuse containers into their terminal without verified gross mass information.
9. The United States supply chain infrastructure is unique and different from other parts of the world. Our major terminals are not set up with certified scales like European ports and, as a result, US exporters would be burdened to move containers miles out of their routes in order to find scales.

**The Solution:**

Recognize the United States exporter is not the problem. There is no data to support that any changes to US current methods of reporting weights to the ocean carrier are needed. US exporters have offered to meet carriers in the middle, by offering to certify weights we can control, our gross weights, calling this Method 3 or a "Rational Method". We should not be required, however, to certify the weight of equipment that we do not own or lease and there is no infrastructure in place in the US to support the significant requirements that the carriers are seeking to impose. Our current weight reporting is already held to strict requirements for accuracy under The Intermodal Safety Act and timely filing of export data to Customs and Border Protection. We adhere to the requirements developed by The Safety of Life at Sea Convention adopted in 1994 by the International Maritime Organization and approved by member nations. We are not aware of any contentions that shippers in the US export trade have created any problems for the carriers or that compromise safety at sea.

Even assuming carriers are bound by the rules of their flag state, very few of those states have actually issued laws or regulations requiring the mandatory application of the VGM Guidelines. In any event, in the US, it is the Coast Guard that determines all safety requirements, and the USCG has most clearly determined that additional new rules are not required for safety purposes and that US exporters need not change their existing practices. The Coast Guard acknowledges that there are several ways to meet compliant weight reporting.

**Summary:**

- We appeal to this Committee to insist that carriers and shippers can meet with a sensible solution without adding cost to the already burdened US exporter. The Agriculture Transportation Coalition has offered a Rational Approach to meeting VGM. We have introduced the rational method of reporting weights to the carriers. This "Method 3" holds the shipper responsible for reporting the cargo weight and the ocean

carrier responsible for providing the weight of the container. Informally carrier executives have told us this would be the most efficient and reasonable approach.

- We implore this Committee to insist, legislatively if necessary, that current methods of cargo weight disclosure are compliant, as the Coast Guard has repeatedly stated. Further, any modifications must be agreed between carriers and shippers, in a mutually acceptable way, in a commercial setting.
- If ocean carriers continue to refuse to work with the US exporter community and insist that only their method of SOLAS compliance are permissible, we ask Congress to exercise its authority to review treaties.
- The World Shipping Council and OCEMA guidelines to the SOLAS amendment offer such dramatic and disruptive change in current shipping practices that it merits a full Rulemaking by the Coast Guard if the ocean carriers refuse to honor other acceptable and compliant forms of weight reporting by the shipper.
- This Committee should request the Federal Maritime Commission's opinion as to whether the continued collective effort by the carriers to enforce the requirements are consistent with the Ocean Shipping Act. For instance, is such action an unreasonable practice, since they are not required for any safety or other purpose and are not, according to the US Coast Guard, required by either US or international law?
- Similarly, we request the Federal Maritime Commission's opinion regarding the collective action of the carriers to refuse to accept cargo from shippers and Ocean Transportation Intermediaries unless this VGM is provided in the manner dictated by the OCEMA "Best Practices" a violation of the Ocean Shipping Act?
- Finally, all parties – shippers, carriers, ports and terminal operators in the United States could move forward to find solutions if this Committee would encourage the Coast Guard to issue written, public guidelines on the several acceptable methods to achieve weight reporting (including the Rational Methods suggested by the Agriculture Transportation Coalition and the many United States export shippers we represent).

Testimony

Of

KENDALL CARVER  
Chairman

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Appearing Before  
Subcommittee on Coast Guard and Maritime  
Transportation

“Maritime Transportation Safety and  
Stewardship Programs”

HEARING SCHEDULED  
Thursday, April 14, 2016 –10:00 a.m.  
Rayburn House – Room 2253

I would first like to thank Chairman Hunter, Ranking Chairman Garamendi, and members for giving me the opportunity to address this committee. I am here today both as a victim and as Chairman of International Cruise Victims (ICV), an organization formed by people who have experienced tragedies such as deaths, sexual assaults and accidents on cruises and who have been treated poorly by cruise lines. My prior working experience was to serve as President and CEO for 18 years of an insurance company in New York City.

As a victim, I have personally felt the pain, not only of losing my daughter, Merrian Carver, but also having to struggle with the cover-up by a major cruise line regarding the facts concerning her disappearance and death. She had been a passenger on a Celebrity Cruise Ship, which is owned by Royal Caribbean.

Each victim member that has joined ICV since it was founded in January of 2006 has had similar painful experiences. ICV began as a group of cruise victims and has evolved to include maritime and security experts as members that serve on our Executive Committee. ICV now has corporations in the UK and Australia and membership in 35 countries around the world. The Executive Committee is now made up of six members, including victims and maritime experts. This brings a balance and adds an expertise not available when we first started.

In this paper, I will discuss three main areas of concern for ICV members as well as victims still unknown to our organization. First, it includes a background on the history leading up to the passage of the Cruise Vessel Security Act in 2010 (CVSSA). Secondly, I will discuss the effectiveness of the CVSSA. The third issue is the need to make sure regulations are enforced to the full intent of Congress of the CVSSA and the further need for legislation to protect the U.S. citizens on cruise ships.

It was just 10 years ago that I sat in this chair for the first time to testify. This followed a hearing called by Chris Shays, the Republican Representative from Connecticut, in December of 2005 who raised the question of safety on cruise ships for the first time. The hearing discussed the case of George Smith who disappeared and my daughter, Merrian Carver.

At the conclusion of the December 2005 hearing, it was determined that there was a safety issue with the cruise industry. Four families came together to form International Cruise Victims (ICV). At this hearing in March 2006, six victims testified including me. Even though we had only been formed for a few months, instead of just revealing our sad stories which included rapes and missing family members, we submitted a simple 10 point program to improve safety.

This simple 10 point program was later enlarged to 13 points but ultimately served as the basis of legislation call the Cruise Safety Security and Safety Act. How did the Cruise Industry react to these simple suggestions to improve safety?

In March of 2007, another hearing was called to further review this issue. Because of the change in leadership in the House, Rep Matsui, a Democrat, took this on because a victim in her district, Laura Dishman, went to her after receiving no cooperation after being raped on a cruise ship. Rep Poe, Chairman of the Victims Caucus, joined Rep Matsui in the effort.

Again the 10 point program was brought up to see what progress had been made on the suggestions earlier made by ICV. Clearly no progress had been made so Chairman Cummins ordered that the cruise lines representatives meet with ICV members to discuss these suggestions. This was done in July of 2007. Again, the answer was that these are great ideas but the industry would not commit to anything to improve safety.

Chairman Cummins again called another hearing in September of 2007 to determine what had been agreed to and the answer was again that there were no agreements to any of the suggestions. At the end of that hearing, he ordered the cruise lines to produce within 90 days a response to what they would agree to as far as safety issues.

In December, they produced their report again with no acceptance of suggested safety issues that were proposed. Not only did they not agree to anything, they produced a covering letter that misquoted the FBI three times on crime rates.

Because my daughter lived in Cambridge, Massachusetts, Sen. John Kerry introduced with co-sponsorship in the House of Rep. Matsui and Poe, the Cruise Vessel Security and Safety Act.

This legislation was passed after five congressional hearings between 2005 and 2008. The final passage had only four total votes against it in spite of major efforts by the cruise industry to defeat it. In addition, three additional Senate hearings in 2012, 2013, and 2014 were held on the issue of crimes on cruise ships lead by Sen. Rockefeller. Because of his frustration with the cruise industry, and his determination that Congress should hear the harrowing stories the victims of crimes at sea had to tell, the cruise lines were **not even** invited to the last hearing in July of 2014, only victims, most of whom were members of ICV that testified.

With the support of Chairman Hunter, Ranking Chairman Garamendi and this committee, in December of 2014 Congress Passed the Coast Guard Reauthorization bill. The passage of this legislation included a requirement that a numerical accounting of missing persons as well as requiring that all applicable alleged crimes committee on the cruise ship be *reported publicly regardless of the investigative status of the incident*.

Now for the first time, laws were passed which mandated basic safety and security measures -- some of which were as fundamental as those that had been implemented decades ago by the hotel industry. For instance, all passenger and crew cabin doors should be equipped with peep holes or other means of visual identification, security latches and time-sensitive key technology must be implemented. Security guides must be displayed for passengers to reference; electronic video surveillance to assist in documenting crimes must be maintained and provided as evidence for prosecution. Video records should be made available to law enforcement, upon request and during an investigation.

Also, Man over Board systems (MOB) designed to immediately detect anyone going overboard was required whenever the technology became available. In addition, Acoustic Hailing and Warning Devices were required to protect cruise ships from high risk attack such as Terrorist attacks. Also, in December of 2014 additional legislation was introduced to strengthen the CVSSA with regards to the reporting of crimes.

One of the most important items in the legislation was the rights given to passengers who were victims of crimes. One of the main provisions of the CVSSA legislation was to give the victims certain rights and the keeping of information confidential from the cruise lines without first obtaining the permission of the victim. The following is the actual wording from the CVSSA. .

**Under the CVSSA, the language requirement is as follows:**  
 '(5) provide the patient free and immediate access to—  
 "(A) contact information for local law enforcement, the  
 Federal Bureau of Investigation, the United States Coast  
 Guard, the nearest United States consulate or embassy,

**and the National Sexual Assault Hotline program or other third party victim advocacy hotline service; and  
“(B) a private telephone line and Internet-accessible computer terminal by which the individual may confidentially access law enforcement officials, an attorney, and the information and support services available through the National Sexual Assault Hotline program or other third party victim advocacy hotline service**

In addition, according to the United States Attorney's Office, the rights provided by the **Crime Victims' Rights Act** are guaranteed from the time that criminal proceedings are initiated (by complaint, information, or indictment) and cease to be available if all charges are dismissed either voluntarily or on the merits (or if the Government declines to bring formal charges after the filing of a complaint).<sup>1</sup> As a result, a Federal crime victim has the following rights.

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the Government in the case.
- The right to full and timely restitution as provided in law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

While I would like to say that this has taken a major step to improve safety, has it really worked? Generally it is not being enforced as expected. We are hopeful, however, that the final regulations will correct the deficiencies we are concerned with.

Attachment I shows, from an Article in the Loyola Consumers Law Review, the total number of crimes, for the period of 2011 to 2012, the discrepancy to Cruise Line Data and data made public. It shows that of 959 reported crimes; only 31 were required to be reported to the public. Under the Uniform Crime Reporting Act, all of these would be required to be made public.

Attachment I also shows that the number of convictions, instead of increasing since 2006 was reduced from 19 to just 3 in 2013. In addition, 216 individuals were reported overboard in records kept by Dr. Ross Klein.

What is supposed to happen when a reportable crime occurs? The following is from a memo written by Kathryn Turman of the FBI dated January 3, 2013 as to what is required.

***If the FBI determines that a crime has been committed that meets the criteria for one of the major offenses listed in the CVSSA as something the FBI may have jurisdiction for, then we are required by the Victims' Rights and Restitution Act to provide notice, information, and assistance to the victim. If the case is charged by a US Attorneys' Office then that office becomes responsible for providing notice and information to the victim during the prosecution and adjudication as dictated by the Crime Victims' Rights Act. If someone is charged for the crime by a US Attorneys' Office then the FBI VS will provide the victim with a point of contact in that office and will transmit the victim's information to the US Attorney's office."***

In summary, the following provisions of the CVSSA Act **are not being enforced**:

1. Victims are not given their legal right to be given automatic access to a hot line to report their crimes directly to the FBI and outside support.
2. Victims are not given notice that they have the right to go directly to the FBI. The result is that the victim is subject to the cruise lines employees taking the information which allows them to prepare the report in such a way that the cruise line is protected. An example, a rape victim is usually classified as a she said/he said and no action is taken.
3. MOB systems have not yet been installed on cruise ships even though they are available and have resulted in loss of lives. When someone goes overboard, the Coast Guard is called to search for this person. As can be seen in Exhibit I, these searches cost hundreds of thousands of dollars paid for by U. S. Taxpayers. If the cruise ships had MOB systems, obviously they would know where to search and save lives plus reduce the costs of the search.

At least two companies have submitted proposals for MOB systems which they **indicate meet the requirement** of the legislation. They include MARSS SAM, a MARSS Group Company and RADIO ZEELAND DMP AMERICAS LLC. CLIA has submitted reasons to the Coast Guard for not installing these MOB reasons. In a letter to me dated 6/3/2014, David Leone addresses each of their concerns. (Attachment I)

4. Acoustic Hailing and Warning Devices have not been required to be installed since the Coast Guard does not count terrorism as High Risk.
5. Victim's confidentiality is not provided since crimes are reported directly to the employees of the cruise ship.
6. Inadequate standards of medical care are not being provided resulting in unnecessary death of passengers.

7. Minor children that are raped by another minor find that no action is taken against the person committing the crime. One of the reasons is that they do not want to ruin the life of the person committing crime. What about the Victim of the Crime??

Final regulations were issued in January of 2005 and were clearly deficient as to the intent of this legislation.

What are these issues? Exhibit II provides an executive summary of the many concerns. This was submitted on April 13, 2015 to the Coast Guard and so far, we have received no response to these many concerns. The full report can be viewed at the following:

[http://www.internationalcruisevictims.org/ICV\\_Rulemaking\\_Committee\\_with\\_Letter\\_2\\_.pdf](http://www.internationalcruisevictims.org/ICV_Rulemaking_Committee_with_Letter_2_.pdf)

To really start to protect passenger's two steps need to be taken. First of all, it is essential that the final regulations for the Cruise Vessel Security and Safety Act be enforced to make sure the original intent of this legislation is being implemented. Secondly, additional legislation as proposed in **HR 3142 needs to be passed** to make further corrections and additions to the Cruise Vessel Security and Safety Act.

Exhibit III outlines the main provisions of this legislation. This important legislation outlines the necessary steps and the reasons for the various provisions.

1. Require provisions to include prompt reporting of crimes to the FBI.
2. Improve video surveillance equipment.
3. Allow individuals access to the video surveillance records
4. Website breakout of crimes reported against minors. With one third of all sexual crimes taking place against minors, parents need to have access to this information.
5. Study the feasibility of someone onboard to provide victim support.
6. Improved MOB systems to capture images **and** detection when a person goes overboard.
7. Improved medical standards for qualified physicians and requirements for crews to offer emergency medical and safety information.

In the last 10 Years, cruise lines have enlarged their hotel ships to hold up to 8000 passengers and crew members to generate more revenue, added alcohol packages to provide unlimited drinks, failed to follow the requirements of the CVSSA Act regarding disclosing of victims rights, etc. **In addition, they have spent over \$36,000,000 to lobby to avoid these measures to improve safety.**

They have also so structured themselves to avoid taxes by placing their corporations in Liberia and Panama and yet they use the service of 21 government's agencies according the Senate testimony.

Ten years ago, ICV turned to our Republican representative, Rep. Chris Shays, for help and he took action by calling the first two hearings. When the Democrats gained control, Rep. Matsui led this effort in the House and John Kerry in the Senate along with Rep. Poe.

Chairman Hunter recently had several mothers visit his office in Temecula with their sad stories. One victim, who lives in Temecula, CA, was a minor that was raped by a crew member. This was later shown on 60 Minutes in Australia and reported by Anderson Cooper. Another mother was from Fallbrook, CA, that lost her son on a family vacation at sea. This boy has a twin brother who also came to Hunter's office and told of what effect this has had on him. This mother was also on TV on telling her tragic story.

Two other mothers, Jamie Barnett who is President of ICV also joined in who had the tragic event of losing a daughter and the other mother, Georgia Ananias, was with her family on the Costa Concordia. These mothers are here today. Jamie's tragic story was on 48 hours. Georgia and her family were on CNN and multiple media and TV shows giving a voice to the 32 people that died and the other victims of the Costa Concordia.

My point is that this was all started by a Republican and the Democrats continued the effort to increase safety at sea for passengers. **The many victims in the United States and around the world are hoping that with the current leadership, this effort to protect passengers will be seen as a bi-partison issue and will move forward like the original legislation passed in 2010 with only 4 votes against it in the entire congress. The public deserves nothing less.**

How will the cruise industry respond? They will say they are highly regulated by the International Maritime Organization. What does the IMO say?? At the National Transportation Board meeting in March of 2014, the following is a direct quote from the IMO presentation and indicated the following.

**Role and functions of IMO**

**IMO is not**

**A policeman**

**IMO does not**

**implement anything**

**Develop standards for strength or determine design requirements**

**Approve equipment and systems • Have (m)any sanctions**

Therefore, it is up to the United States to move forward to protect our citizens, since the FLAGG states has taken no action to protect our citizens when they become victims.

Please feel free to contact ICV should you need any additional clarification and we can assist you in helping pass HR 3142 a bi-partisan bill that will increase the safety for people that travel on cruise ships.

Kendall Carver, Chairman

## Attachment I

### Statistics on Cruise Crimes, MOB Victims, Search and Rescue Costs, and MOB Systems Review

## Crimes on the High Sea 2003-2013

Based on FOIA requests made to the FBI

Year	Cases open	Convictions/Sentencing
2013	41	4/3
2012	18	5/4
2009	72	5/7
2008	75	7/5
2007	77	10/6
2006	46	15/19
2005	41	4/3
2004	51	4/4
2003	52	13/14

Source: [Cruise Junkie dot com](http://www.cruisejunkie.com)

### Cruise and Ferry Passengers and Crew Overboard 1995 - 2016

Summary (# of persons) -- 2006 - 2016													
	2006 - 05	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
<b>Carnival Corp</b>													
Carnival Cruise Lines	15	5	7	2	8	3	3	4	2	2	4		55
Costa		1	1	1	3	1	2	2		3	1		15
Cunard	3	1									1		5
Holland America	3	1			1	1	2	2		2	1		13
Ocean Village				1	1								2
P&O	2		1		1		1	1			1		7
P&O Australia					1			1					2
Princess	2		2		2	1	2		3	3	1		16
Seabourn		1									1		2
Crystal	3												3
Disney							1						1
Fred Olsen						1	1			1			3
MSC Cruises		1				1			2	1	2		7
NCL	5	2		2	1	2	2				3	1	18
RCCL													
Celebrity	1	1		1	1	2	4			1	1		12
RCI	12	4	1		2	3	2	5	3	4	3	1	40
Silversea	1				1								2
Star					2	1					2		5
<b>Other:</b>													
Casino Cruise Ship	2		1			1		1		1			6
European Ferry	0	1	4		1		2	3	2	2	1		16
P&O Ferries	1	1		1		1	1	1	2				8
Other Ferry		1	2					1	3	3	1		11
Other Cruise	4	2	1	2		3	1	3	1		4		21
<b>Total</b>	<b>54</b>	<b>22</b>	<b>20</b>	<b>10</b>	<b>25</b>	<b>21</b>	<b>24</b>	<b>24</b>	<b>18</b>	<b>23</b>	<b>27</b>	<b>2</b>	<b>270</b>

### C. Other Crimes On Board Cruise Ships

There are two crimes that do not require reporting under the CVSSA; however the FBI collected data for these crimes during 2007 to 2008.<sup>129</sup> The two crimes are: theft under \$10,000 and simple assault.<sup>130</sup> Dr. Klein indicates there were eighty-nine incidents of theft under \$10,000 and 115 incidents of simple assault during 2007 to 2008.<sup>131</sup> Since the CVSSA does not require these crimes to be recorded, victims are left without recourse or rights.<sup>132</sup> In theory, if I were a crewmember and wanted to rob a passenger's cabin, I would certainly steal less than \$10,000.<sup>133</sup> More importantly, by not collecting data on these crimes, there is no way to analyze the data so as to discern patterns or trends that could be utilized to help prevent future crimes.<sup>134</sup>

Under the CVSSA, the cruise line owners are required to report specific named crimes to the FBI and make statistics involving crimes on board ships available to the public.<sup>135</sup> For the CVSSA to apply, these crimes had to either occur on a vessel owned by a United States person; be a crime that involved a United States national that occurred in United States waters; or occur on a ship that departed

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United States investigation into the incident. See, e.g., Jim Walker, *Cruise Nightmare: Disney Crew Member Arrested on Charges of Molesting Child on Disney Dream*, CRUISELAWNEWS.COM (Apr. 10, 2014), <http://www.cruiselawnews.com/2014/04/articles/sexual-assault-of-minors/cruise-nightmare-disney-crew-member-arrested-on-charges-of-molesting-child-on-disney-dream/>.

<sup>129</sup> Testimony of Klein, *supra* note 5, at 30.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

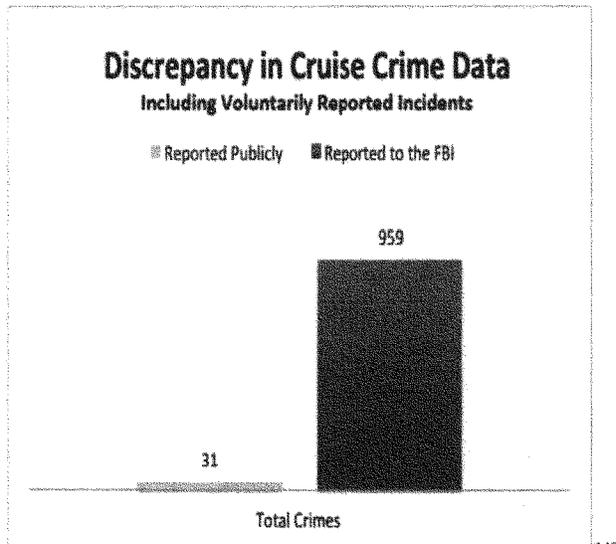
<sup>133</sup> Assuming that someone is foolish enough to carry that much cash around on a cruise ship.

<sup>134</sup> Testimony of Klein, *supra* note 5, at 30.

<sup>135</sup> *Cruise Ship Crime*, *supra* note 7, at i. It is mandatory for a cruise ship owner to keep record of all crimes reported, but they are only required to disclose specific types of crimes to the FBI. *Id.* at i n.6. The cruise ship owner is encouraged to voluntarily report crimes that are not required under CVSSA. *Id.* Thus, only crimes that are required to be reported to the FBI must be available to the public. *Id.* In addition, the FBI keeps a log of all crimes reported, but the FBI is not required to list those crimes on the Coast Guard website. *Id.*

from or arrived at a United States port.<sup>136</sup> However, the problem then became the lack of transparency. This is because the FBI decided to interpret the CVSSA to require public reporting of only those incidents that were no longer under investigation by the FBI.<sup>137</sup> In addition, the CVSSA only requires a subset of types of crimes reported to the FBI to be disclosed to the public.<sup>138</sup>

Senator J. Rockefeller of West Virginia and his staff found that since the passing of the CVSSA, the total number of incidents voluntarily and required to be reported to the FBI by cruise lines are thirty times higher than the number of alleged crimes reported publicly—for example, since 2011, 959 alleged crimes were reported to the FBI by cruise lines owners, but the Coast Guard only reported 31 alleged crimes to the public.<sup>139</sup>



<sup>136</sup> *Crimes on Cruise Ships*, RAINN.ORG, <https://www.rainn.org/public-policy/sexual-assault-issues/cruise-ship-safety> (last visited June 1, 2014) [hereinafter RAINN].

<sup>137</sup> *Cruise Ship Crime*, *supra* note 7, at 7 n.52–53. Some examples of crimes required to be reported to the FBI include: all homicides, a missing United State National, assault with serious bodily injury, firing or tampering with the vessel, and theft over ten thousand dollars.

<sup>138</sup> *Id.* at i.

<sup>139</sup> *Id.* at i–ii.

<sup>140</sup> *Id.* at 9.

## FOIA information for Rappe Search and Rescue

Activity ID	Asset Type	Time Spent Searching	Billable Rate	Total Cost
4492732	MH65C 6566	2 hrs 27 minutes	\$11,216 per hour	\$27,479.20
4492783	HC-130H 1503	7 hrs 01 minute	\$18,116 per hour	\$127,113.93
4493002	MH65C 6579	2 hrs 24 minutes	\$11,216 per hour	\$26,918.40
4493017	MH65C 6579	5hrs 35 minutes	\$11,216 per hour	\$62,622.66
4493233	Ocean Century 2302	5hrs 29 minutes	\$15,569 per hour	\$85,370.07
4493671	HC-130H 1718	3 hrs 00 minutes	\$18,116 per hour	\$54,348.00
443719	MH65C 6582	7 hrs 00 minutes	\$11,216 per hour	\$78,512.00
4493938	Ocean Century 2302	5hrs 01 minute	\$15,569 per hour	\$78,104.48
4492467	USCGC DECISIVE	36 hrs 57mins	\$6718 per hour	\$248,230.10
	USCGC NANTUCKET	36 hrs 48 mins	\$4106 per hour	\$151,100.64
			<b>Grand Total</b>	<b>\$939,799.48</b>

## FOIA information for Ariel Brianna Marion Search and Rescue

Activity ID	Asset Type	Time Spent Searching	Billable Rate	Total Cost
4442936	MH65C 6570	6hrs 9 minutes	\$11,216 per hour	\$68,978.40
4443259	HC-130H 1503	5hrs 14 mins	\$18,116 per hour	\$94,807.07
4443371	HC-144A 2309	5 hrs	\$15,569 per hour	\$77,845.00
4443854	HC-144A 2309	4hrs 54 mins	\$15,569 per hour	\$76,288.10
4444177	HC-144A 2306	5 hrs	\$15,569 per hour	\$77,845.00
	USCGC DIAMONDBACK	16 hrs 40 mins	\$4106 per hour	\$68,433.33
	USCGC BERNARD WEBBER	17 hrs 42 mins	\$2848 per hour	\$50,409.60
			<b>Grand Total</b>	<b>\$514,606.50</b>

## Appendix (C) DMP's answers to the CLIA's list of "Technical Problems"



951.163.1116      953.463.5737

6/3/2014

Ken Carver

I would like to address the Cruise Industry Response to the USCG Questions in reference to Man Overboard Detection Systems. It appears that all their concerns are focused around CCTV applications and in fact there has been no documentation reflecting any other technology. Our system is a combination of Laser Sensors and camera analytics which can be provided by us or utilizing what the vessel has already.

Their document states the following (our responses are in red): Factors that constrain system effectiveness and reliability at sea include:

- **Continuous changing horizon.**  
Laser sensor and cameras are set to not sense outside of 82 meter distance therefore the focus is concentrated in the area where a MOB could be possible so there is no issue with the horizon changing.
- **Salinity/corrosion**  
Laser Sensors and Cameras are maintained the same as present camera systems on board ship are maintained with a fresh water wash down. Sensors and cameras are IP67 completely sealed and are powder coated aluminum and therefore there is not corrosion.
- **Vessel Vibration.**  
Present cameras on board ship are not affected by vibration. Laser sensors that we use are not affected by vibration or vessel motion the laser unlike cameras does not require a focal point for analytics rather uses a beam that is transmitted and therefore movement and vibration does not affect its operation.
- **Extreme weather conditions**  
Extreme weather conditions are rare and have no bearing on the laser sensor. As for cameras the ships already have cameras that operate in extreme weather. The beam of the laser sensor is not affected by weather including fog and rain.
- **Vessel movement such as pitching, rolling, yawing**  
This is addressed above and the sensor and cameras are not affected by vessel movement.

- **Vessel design**

Vessel design has no bearing on the operation of the MOB sensors or cameras. Sensors are designed to be installed on existing vessels or during new construction.

- **Interoperability with other shipboard systems**

Our sensors are designed to interface with all present shipboard security systems including camera analytics.

- **Salt encrustation of lenses**

As documented above the sensors and cameras are IP67 and do not allow for intrusion of salt water and the sensors and cameras are to be maintained the same as the rest of the vessel with fresh water wash downs. The present camera systems are maintained this way presently.

- **Glare/Reflection off the water**

Due to the sensor being laser the reflection or glare off the water does not affect its operation. Also sensors are not directed downward but in fact upwards at 5 - 8 degrees to catch person falling overboard.

Regards,



Dave Leone  
President

## Attachment II

**Executive Summary of concerns with  
Proposed Regulations issued by the  
Coast Guard in January 2015**

Executive Summary of concerns with Proposed Regulations issued by the Coast Guard in January 2015

This document expands on those concerns and recommendations. Specifically we discuss: Systems for Detecting Falls Overboard, Hailing or Warning Devices, Security Guides, Sexual Assault Response (Victim Confidentiality), Crime Scene Preservation Course and Victim Assistance. These issues and demurs are summarized as follows:

**Man-Overboard Detection Systems**

The Coast Guard should require a Man Overboard (MOB) Detection system with both an alarm and video feature Capture and Detection. Proposals for this type of technology were submitted at the request of the USCG in 2011. However, no contacts were ever made with those companies that submitted proposals. It was determined through a FOIA request that CLIA had been contacted by the Coast Guard for their opinion and technical input on the MOB systems. As a result, it was reported in a recent Travel Weekly article that the Coast Guard would only be requiring cruise vessels to use capture technology to satisfy the CVSSA MOB technology requirement. The reasons given for capture over detection systems were that the "cruise industry" deems this technology unfeasible and unreliable. ICV considers this position to be both untrue and unacceptable in regards to protecting lives at sea.

Reliance on CCTV cameras that only cover (observe) decks which are not required to be monitored by ship's personnel while underway only provides half the protection and does nothing to save lives which was the CVSSAs main intent. In sum, the overboard victim has NO chance of survival if NOT DETECTED.

The intent by Congress was to be able to immediately have the capability to capture AND detect the man-overboard event:

The fall-overboard detection system, by itself, is intended to *sound an immediate alarm*, and *may (but need not) capture an image* of the falling person. It is apparent that from the above language that the technology does not need to capture an image but must (detect) the event and sound an alarm. The key word is "immediate" and not "capture." Ideally, the fall detection system should have both a detection capability to sound an immediate alarm, and a capture system to record the event for document and evidence purposes for criminal investigations.

***For these reasons,***

...cruise vessels must immediately install man overboard systems that have both capture AND, detection capability. Contrary to the cruise industry positions, this technology is available today and is reliable but has yet to be tested and vetted by the USCG.

**Acoustic Hailing and Warning Devices**

The ICV finds the USCG position that domestic maritime terrorism should not be included in the definition of "high risk" areas of the United States waterways as incongruous. The Coast Guard's mission is to defend the nation's water boarders against all maritime threats including terrorism, not just piracy. The ICV is seriously in disagreement with the position of the Rule Making Committee's that "high risk" as defined by the Coast Guard only applies to areas where pirates operate AND, is strongly opposed to

letting cruise vessels satisfy the acoustic hailing and warning devices requirement by allowing the use of the ship's PA (public address) systems, bullhorn or megaphones. The ICV is convinced that acoustic hailing devices (already carried by many cruise lines) was the technology on the CVSSA legislator's mind when they included this element in the CVSSA and not "PAs" as the Rule Making Committee suggests. Defining US waters as high risk for only pirates is an attempt to circumvent this requirement at the benefit of the cruise lines.

The purposed intent of this provision (in the CVSSA) was to help enforce the cruise ship security zone requirement. Homeland Security indicates that no ship (or small craft) should come within 500 feet of a cruise ship; this technology was not to necessarily protect cruise ships from pirates in domestic waters. The USCG and Department of Homeland Security are very concerned about terrorism in US waterways and ports and is the key factor in DHS's 2008 - *Small Vessel Security Strategy*. The plan states that: "*This strategy's purpose is to address the risk that small vessels might be used to smuggle terrorists or WMD into the United States or might be used as either a stand-off weapon platform or as a means of a direct attack with a WBIED.*" To not consider terrorism as a possibility in US waterways, ports and harbors is to deny the events of September 11, 2001.

Acoustic Hailing Devices are an important part of the ship's resources to confront small vessel threats at safe distances before they become threats close to the ship. This applies both domestically and in overseas ports and waters. The USCG believes that the ship's public address (PA) system (or bullhorn or megaphone) satisfies the requirement of acoustic warning devices. The ship's PA does not have the technical capability, nor was it designed to be audible at great distances from the ship. Conversely, acoustic hailing devices are a proven and effective resource in enforcing the cruise ship's security zone in domestic waters and allows for recognition and warning of surface threats both domestically and internationally. Finally, the technology has the proven capability to ward off pirate invaders as was demonstrated by the cruise ship *Seaborne Spirit* using the LRAD to fend off a pirate attack off the coast of Yemen in November, 2005.

***For these reasons,***

...Acoustic Hailing and Warning Devices must be carried on all cruise vessels without regard to whether they are in domestic or overseas waters. Ship Public Address Systems do not satisfy this requirement.

**Security Guides**

The ICV is in agreement with the Rule Making Committee's provisions for implementing security guides and its contents on all cruise vessels. However, the ICV is concerned that the proposed information contained in the Security Guides is lacking, and that steps should be taken to inform, advise and alert cruise passengers that the security guide in fact, exists and that it contains critical information on what the passenger should do in the event he/she becomes the victim of a crime (especially a sexual crime) while aboard the ship or while ashore in a foreign or domestic port.

Because one of the provisions of the CVSSA is to guarantee the rights of a victim of sexual assault or other crimes, the security guide itself must ensure the passenger knows how to contact the FBI, the USCG and local law enforcement using the ship's technical communication equipment set-up for this purposes, e.g.,

Email, hotline, mobile or satellite telephone communication systems. This requirement is tied to, and linked congruently with the [sexual] victim's right to confidentiality discussed in the next section.

***For these reasons,***

...passengers must be informed of the importance and location of the Security Guides upon their registration /onboarding in the cruise terminal AND, be reminded while on the ship on how to access the ship's communication resources if they are a victim of a crime to contact the FBI, the USCG or US Embassy or consulate.

**Victim Confidentiality**

One of the main provisions of the CVSSA legislation gives victims certain rights and ensures that their information is kept confidential from the cruise line unless and until permission is granted by the victim. The proposed regulations state that the Coast Guard will train someone on the cruise line to take care of victims of a sexual assault crime. This would now have the effect of releasing the details and circumstances of the alleged crime directly to the cruise lines FIRST which is clearly not the intention of the CVSSA without the victim first knowing his/her legal rights.

Victims should be advised, according to the CVSSA, at the time of the crime that they have the right to go directly via a private hotline to the FBI or other governmental law enforcement agencies to report the alleged crime, as well as an outside national sexual assault hotline program or other third party victim advocacy hotline service; legal advice AND, a lawyer without going through the security of the cruise ships which will write the report in a way favorable to the cruise line rather than the victim. In addition, if an alleged crime has been committed which meets the criteria for one of the major offenses listed in the CVSSA as something that the FBI may have jurisdiction for, then the FBI is also required by the Victims' Rights and Restitution Act to provide immediate notice, information, and assistance to the victim.

***For these reasons,***

...in lieu of the Coast Guard training cruise line employees on how to counsel a sexual assault victim, because of the requirements of the CVSSA and the Victims' Rights and Restitution Act, the proposed regulations should have the Coast Guard certify someone as a victim advocate on cruise ships to ensure the alleged victim has been given their rights and understands them while making certain the cruise ship complies with the actual CVSSA requirements. Victims requiring an advocate need to be advised of their rights under the CVSSA and the Victims' Rights and Restitution Act before they discuss the [sexual] incident with the cruise line employee. They are then given the opportunity to sign a waiver which would relieve them of these rights. The FBI must act (respond) to every report it receives concerning alleged sexual crimes on cruise ships. This is a mandatory and not a discretionary response.

**Model Training Course**

A training course was prepared and issued by the USCG, FBI and the U.S. Merchant Marine Academy (MARAD) in crime prevention, detection, evidence preservation and reporting. It is the opinion of the ICV that it is deficient in its content, time, delivery, and will not serve to properly train ship personnel to fulfill

the standard requirements as intended. While the Rule Making committee is considering making this requirement mandatory, in its current voluntary status, it is ineffective in providing qualified first responders with the capability to address shipboard crime, especially sexual crime. Many outside experts including private maritime training academies have concurred that this course is seriously inadequate.

This training should indeed be mandatory and certified by an independent 3<sup>rd</sup> party entity not to include "in-house" training by the cruise line themselves. Self-certifying and self-inspection should not be considered sufficient in this application.

While this course is currently voluntary, even if determined to be mandatory, such crew members receiving the training in accordance with its provisions, add little value in [criminal] investigations conducted on the ship because they are proprietary security guards in the employment of the very entity which owes them their livelihoods. Even today, while the cruise lines are making efforts to "train" their security staffs in [criminal] investigations, unless they are recognized as "*agents of the state*" or there is an independent ship- rider deputized to conduct criminal investigations on behalf of the US government, evidence thus collected by the ship's crew members will be suspect (challenged/impeached) in any criminal proceeding and likely prevent successful prosecution of the crime.

***For these reasons,***

...the model security training course should be a mandatory requirement and not a voluntary feature of the CVSSA conducted by certified individuals not associated with the cruise lines, and should be intended for a deputized security presence on the ship with direct reporting to the FBI, the USCG and other state and local law enforcement AND, the victim of any crime onboard a cruise ship, investigated by any security personnel, has the right to a copy of any incident, or report of investigation (ROI) written by cruise ship security personnel.

**Temporary Port Calls**

The ICV is in agreement with the Rule-Making Committee in applying the provisions of the CVSSA to all foreign flagged cruise ships (as most if not all cruise ships are foreign flagged), however, the ICV is strongly against the Rule-Making Committee adding verbiage to exclude applicability of the CVSSA to cruise ships which only stopover in US ports and do not embark or disembark passengers.

***For these reasons,***

...the ICV is strongly against the Rule Making Committee adding verbiage to subpart 70.40 "*except that embarking and disembarking does not include temporary port calls by passengers.*" Because "*we do not think the U.S. interest in the safety and security of a vessel engaged in such a voyage is sufficient to subject it to the proposed regulations...*" In the ICV's opinion the Rule making Committee is selectively interpreting the language of the CVSSA which may purposefully or unintentionally add a loophole to a vast majority of ships which visit United States ports and create a two-tiered level of safety and security provisions required by the CVSSA.

## Attachment III

# Summary of the Cruise Passenger Protection Act (CPPA) H.R. 3142

Summary of the Cruise Passenger Protection Act (CPPA)  
H.R. 3142

1. Ensures a cruise vessel owner notifies the FBI within four hours of an alleged incident. ***There have been cases where the crime actually happens in U.S. waters or even while still in port and the crime is not reported for hours until the ship is actually on the "High Seas." If crew members are responsible, they are taken off the ship in a foreign port so that no action can be taken against them or the cruise line.***
  
2. Ensures that if an alleged incident occurs while the vessel is still in a U.S. port, the FBI must be notified before that vessel leaves the port. ***One example of this happen when an 11 year old girl was molested on a Disney Cruise ship by a crew member while the ship was still in port. The crew member was caught on camera, but not reported until the next day even though it was reported immediately and clearly known by cruise line. In this case the crew member was allowed to leave the ship at a foreign port and return to his home country with no action taken.***
  
3. Requires vessel owners to also report an alleged offense to the U.S. Consulate in the next port of call, if the alleged offense is *by or against* a U.S. national. ***A victim could go for days without any support so this is the reason for this provision.***
  
4. Clarifies that vessels must have video surveillance equipment in all passenger common areas, and other areas, where there is no expectation of privacy. ***This will offer protection to victims just like they receive in public areas in hotels, and other public buildings throughout the US.***
  
5. Allows individuals access to video surveillance records for civil action purposes. ***There should be no question that the victims and their attorneys have access to any video surveillance of a crime as soon as requested.***

6. Mandates that all video records are kept for 30 days after completion of the voyage. ***In many cases such as rape of a minor, the victim does not even proceed to report the crime until after the completion of the cruise. Victims are usually in a state of trauma, and many need some time to execute their rights.***
  
7. Directs the Coast Guard to promulgate final standards within one year detailing requirements for the retention of video surveillance records.
  
8. Transfers authority for maintaining the internet website of alleged crimes on cruise ships from the Coast Guard to the Department of Transportation. ***This is required because of the Rockefeller amendment to the Coast Guard funding bill in December of 2014.***
  
9. Requires that the website breakout the crimes that are reported against minors and alleged "man overboard" incidents. ***It was determined by the Senate in 2013 that minors accounted for 1/3 of all sexual crimes. The public needs to be aware of this when they take their minor children on a cruise vacation and records should be made available to the public.***
  
10. Directs the Department of Transportation to conduct a study to determine the feasibility of having an individual on board each passenger vessel to provide victim support services. ***Since the "Security" of the cruise ship and their crew members work for the cruise line with no legal ability to act as an independent police force, there needs to be a review of the feasibility of having a U.S. Government person on a ship with thousands of passengers to assure that all laws regarding crimes, etc. are complied with. Without this, it would be like a city having no independent police department.***

11. Requires integration of technology that can both capture images and detect when a passenger has fallen overboard. The CVSSA passed in 2010 required MOB systems if they are available. ***Even though required by the law, cruise lines have not install such systems even though there are several companies that have indicated that they have workable systems that meets these requirements. This wording strengthens the current wording of the CVSSA that these systems must be installed which capture images and detect when someone goes overboard.***
  
12. Ensures medical standards that would require a qualified physician and sufficient medical staff to be present and available for passengers, crew member basic life support training, accessible automated defibrillators, and that the safety briefing includes important emergency medical and safety information. ***There have been too many cases of failure to treat ill passengers properly and requirements need to be put in place. With thousands of passengers and crew members, there is clearly a need to make sure medical care is given to those in need of prompt and proper care.***
  
13. Ensures that should a U.S. passenger die aboard a vessel, his or her next of kin could request the vessel to return the deceased back to the United States. ***In the tragic cases where an individual passes away while on a cruise ship, clearly the body should be returned to the United States and not left in some foreign port of call.***



AMERICAN COMMODITY COMPANY, LLC  
P.O. Box 520 • 6133 Abel Road • Williams, CA 95987 • USA

The Honorable John Garamendi  
U.S. House of Representatives  
2438 Rayburn House Office Building  
Washington, D.C. 20515

April 6, 2016

Dear Congressman Garamendi:

As you know, American Commodity Company, LLC (ACC) is a major exporter of California grown rice based out of Williams, CA. The Subcommittee on Coast Guard and Maritime Transportation of the Transportation and Infrastructure Committee will hold a hearing on April 14, 2016 on a subject of great importance to ACC—the implementation of the International Maritime Organization’s **Safety of Life at Sea (SOLAS) Container Weight Documentation Amendment**.

We are very concerned about the impact that this Amendment, if not implemented correctly, will have on ACC’s ability to continue to effectively, efficiently, and affordably export California rice to our established foreign markets.

ACC is a member of the Agriculture Transportation Coalition. Testifying on our behalf and on behalf of hundreds of other farms and agribusinesses in the Third District and across the country will be Donna Lemm, Chair of the Agriculture Transportation Coalition Committee on SOLAS. She speaks for us.

Rear Admiral Thomas of the US Coast Guard (who will also be testifying) has repeatedly stated that **there are many ways to submit VGM and comply with SOLAS**. However, the steamship lines have refused to be flexible, and are requiring the US exporter to provide the weight of their cargo (which is appropriate), but also for an individual working at ACC to personally certify to the steamship line the weight of the container which is owned, controlled, and managed by the steamship line. This method places undue liability on the US exporter. If exporters must determine the weight of the carrier’s equipment and then report it back to the carrier, it will impose new unnecessary costs, at a time we are already struggling in export markets due to the high value of the dollar. It will create congestion at the ports, missed sailings, damaged cargo, and angry customers. These added costs will immediately result in lower rice prices for California producers.

**We support a rational method of SOLAS compliance in which the US exporter certifies the weight of the cargo and dunnage (packing materials), and the steamship lines certifies the weight of its own container.** The steamship line would then combines the two weights to create a VGM which is submitted to the terminal operator before loading. The Coast Guard has stated this method is compliant with SOLAS guidelines.

We hope that you will consider Ms. Lemm’s testimony as essential to ACC’s interests as a major exporter and employer in the Third District, and that you will support a method of SOLAS compliance that allows the US exporter to remain competitive in the global marketplace. [Click here](#) for a one-pager with additional information on the topic.

Sincerely,

Chris Crutchfield  
President & CEO

*Please submit for record*  
*J. Garamendi*

NOT FOR PUBLICATION UNTIL  
RELEASED BY THE HOUSE  
ARMED SERVICES COMMITTEE

**STATEMENT OF**  
**MR. F. SCOTT DILISIO,**  
**DIRECTOR,**  
**STRATEGIC MOBILITY / COMBAT LOGISTICS DIVISION**  
**OFFICE OF THE CHIEF OF NAVAL OPERATIONS**  
**ON THE**  
**LOGISTICS AND SEALIFT FORCE REQUIREMENTS AND**  
**FORCE STRUCTURE ASSESSMENT**  
**BEFORE THE**  
**HOUSE ARMED SERVICES COMMITTEE**  
**SEAPOWER AND PROJECTION FORCES SUBCOMMITTEE**

March 22, 2016

NOT FOR PUBLICATION UNTIL  
RELEASED BY THE HOUSE  
ARMED SERVICES COMMITTEE

Chairman Forbes, Ranking Member Courtney and distinguished members of the House Armed Services Subcommittee on Seapower and Projection Forces. As Director of the Strategic Mobility/Combat Logistics Division in the office of the Deputy Chief of Naval Operations (DCNO for Fleet Readiness & Logistics), I appreciate the opportunity to provide you an update on the current state of readiness of the Combat Logistics and Strategic Sealift Forces. My testimony will describe the forces and the framework in which they operate. Additionally, it will touch on what has been accomplished over the past year, to include – continuing to meet operational requirements, while simultaneously driving successful, innovative, and non-traditional solutions to global maritime logistics.

#### **Mission**

The Combat Logistics, Service Support and Sealift missions are accomplished by a force comprised of 122 ships. Since July 2014 when I saw this committee last, the mix of ships includes new platform types with capabilities that have not been available in the past. The total force brings a variety of capabilities in direct support of numerous missions; from at-sea resupply of our naval combatants and large cargo transport to prepositioning and reconfiguring at sea, critical cargo for Marine Corps, Army, and Air Force. Additionally, missions include humanitarian assistance/disaster relief (HA/DR), diving and salvage operations, rapid intra-theater movement of cargo/personnel, towing, and afloat staging capabilities. This unique segment of the Fleet provides and facilitates the scalable capability required by the Combatant Commander to execute their missions around the globe. I'll now provide a brief description of the force.

**Combat Logistics Force (CLF) and Service Support**

The Navy's mission is expeditionary and has long required the capability to conduct worldwide and sustained operations at sea. The Navy has been, and will always be, called upon to operate forward in areas where access to shore bases may be limited. Therefore, the ability to rearm, refuel and re-provision our ships at sea, independent of any restrictions placed on it by a foreign country, is critical to the Navy's ability to project warfighting power from the sea.

As the lifeline of resupply to Navy operating forces underway, the ships of the Navy's Combat Logistics Force (CLF) enable Carrier Strike Groups and Amphibious Ready Groups to operate forward and remain on station during peacetime and war. The global peacetime CLF force structure supports continuous Navy presence worldwide and Fleet required sustainment training and deployment workup cycles. For perspective, these ships last year collectively delivered just under 470 million gallons of fuel (in 3,000 events), 29,000 pallets of ordnance (in over 160 events), and 82,000 pallets of dry cargo (in over 1,300 events).

The CLF is made up of single and multi-mission ships. The older single mission ships, specifically the Fleet Replenishment Oilers (T-AO), primarily provide one product, fuel, but have the ability to provide limited quantities of dry cargo. The multi-mission Fast Combat Support Ships (T-AOE) provide station ship support to customer ships by simultaneously replenishing ammunition, provisions and fuel. The Dry Cargo and Ammunition Ships (T-AKE) primarily provide ammunition and provisions, but can also supply fuel at limited transfer rates and quantities compared to the AOE or AO. Ships of the Combat Logistics Force include:

**Fleet Replenishment Oilers (KAISER Class)**

There are fifteen fleet replenishment oilers (T-AO) that fuel deployed Navy combatants and their embarked aircraft via connected replenishment. Each is capable of carrying Diesel

Fuel Marine (DFM), aviation jet fuel (JP-5), fleet cargo and provisions. They do not have embarked helicopters but are capable of vertical replenishment.

*Recapitalization Fleet Replenishment Oiler (JOHN LEWIS Class)*

The JOHN LEWIS Class, formerly T-AO(X), will recapitalize the existing Fleet Replenishment Oiler capability and will enable continued sustained forward naval operations. The current KAISER class T-AO will begin to inactivate starting in FY 21. The JOHN LEWIS class T-AO will maintain proven fuel delivery capabilities and will significantly increase its freeze/chill capacity. As the Fleet continues to operate in a dispersed manner, the ability of the T-AO to deliver both fuel and dry cargo will become increasingly important and will enhance operational flexibility. The JOHN LEWIS class T-AO will be double hulled and will meet current environmental standards. Additionally the ship will have a flight deck to support vertical replenishment.

Contract award for the first ship of the class is scheduled the summer of 2016 and it is anticipated that USNS JOHN LEWIS will be delivered in FY 21. Serial production begins in 2018 and total ship quantity is planned to be 17 ships.

*Dry Cargo/Ammunition Ships (T-AKE: LEWIS AND CLARK Class)*

This class of auxiliary ships is comprised of 14 supply ships that deliver ammunition, provisions, stores, spare parts, potable water and petroleum products to naval forces. They provide supplies at sea by connected replenishment or vertical replenishment with their own helicopter. Twelve ships are assigned to combat logistics missions and are capable of landing and refueling a V-22 Osprey. The remaining two T-AKEs belong to the Military Sealift

Command Prepositioning Program that supports the Marine Corps. The two Prepositioning ships are undergoing hangar modifications to permit embarkation of two V-22 aircraft.

*Fast Combat Support Ships (SUPPLY Class)*

The two Fast Combat Support Ships (T-AOE) in service deliver fuel, ammunition, provisions, stores, spare parts, potable water and petroleum products. These supplies are delivered at sea by connected replenishment or vertical replenishment with their own helicopter. The AOE class is also capable of higher sustained speeds than the T-AO or T-AKE, when mission requirements dictate.

*Service Support Ships*

Another facet of naval support is provided by our Service Support Ships. Capabilities resident on respective platforms include afloat medical facilities, and towing, rescue and salvage, ships. Our hospital ships (T-AH) have been involved in humanitarian civil assistance missions and are able to provide medical care onboard and ashore, from primary care to internal medicine, dental, radiology, and pharmacy services among many other specialties. These ships have routinely participated in humanitarian assistance across the globe and reinforcing efforts with partnering nations. The Navy's Towing and Salvage Ships (T-ATF and T-ARS) support global towing, salvage, submarine rescue and diving requirements. Collectively, Service Support ships bring Combatant Commanders a wide scope of critical naval support across the globe.

*Summary and Vision for CLF and Service Support Ships*

The Combat Logistics Force has proven its ability to support operations worldwide. It is my expectation that we will continue to explore improving our agility in theater and solution sets to meet the logistics demands of our naval warfighters.

**Sealift**

Major ground combat operations require access to and transportation of a high volume of unit equipment and supplies – well over a million tons in some scenarios. Bringing this capability into the theater of operations is Strategic Sealift, which provides the necessary transportation for Marine Corps, Air Force and Army combat unit equipment, ammunition, fuel, and sustainment materiel in times of contingency. Sealift delivers this capability to the Combatant Commander through strategic afloat prepositioning, surge sealift and sustainment shipping.

The program manages a mix of government-owned and long-term chartered dry cargo ships and tankers, as well as additional short-term or voyage-chartered ships. These 85 ships are in two major categories: prepositioning and surge. When called for tasking, each type brings a unique and vital set of capabilities. Large Medium-Speed Roll-on/Roll-off (LMSR) sealift ships, which are nearly the size of aircraft carriers, have the capacity of more than 300,000 square feet of cargo and can carry aircraft and heavy armored vehicles. They have cranes, a stern ramp and a movable ramp that services two side ports for easy offload. Marine Corps, Army and Special Operations Forces are the principle customers of the LMSR fleet.

Surge vessels are maintained in a 5-day Reduced Operating Status (ROS). While in ROS, these ships are manned by a reduced crew whose responsibility is to bring the ship online when activated. These ships are managed by the Military Sealift Command (MSC) or U.S. Department of Transportation Maritime Administration (MARAD). Upon activation, MARAD vessels are under MSC-operational control. Each year, some ships are provided no-notice activation orders to be “ready to sail” by the prescribed timeline.

Afloat Prepositioning

Of the 85 ships performing Sealift missions, 24 are designated as Afloat Prepositioning. The afloat prepositioning ships support Marine Corps, Army and Air Force requirements. Fifteen ships are assigned to the Maritime Prepositioning Force (MPF), seven are assigned in support of an Army Prepositioning Set (APS-3), and two support the Air Force. These ships are a combination of U.S. government-owned ships and long-term chartered U.S.-flagged ships and are pre-loaded with Service equipment, supplies and ammunition.

The Prepositioned Fleet is strategically staged in key areas, such as Guam, Saipan and Diego Garcia, ensuring ready-access for contingencies. Doing so provides flexible, first-response stocks of military equipment, combat gear, and supplies essential to sustaining initial phases of major combat operations. As an example of the capabilities provided, ships supporting the Maritime Prepositioning Force (MPF) provide equipment and supplies for two Marine Expeditionary Brigades (MEBs) – over 18,000 Marines – and has the ability to sustain their operations for 30 days. The forces are capable of responding within the theater in seven days for a range of military operations. The Expeditionary Transfer Dock (ESD), formerly Mobile Landing Platform (MLP), joined the LMSR as part of both Prepositioning Squadrons. They enable greater sea-basing capability and increased flexibility across the operational area. In addition, the Dry Cargo/Ammunition Ship (T-AKE), coupled with aircraft from amphibious ships, CH-53 Super Stallion and MV-22 Osprey, can provide sustainment directly to joint forces ashore. The Offshore Petroleum Discharge System (OPDS) delivers fuel from up to eight miles offshore.

An ESD is a tremendously versatile ship, acting as a floating base for expeditionary operations. Equipped with a ramp, Landing Craft Air Cushioned (LCAC) spots and ample cargo

space, the ESD is an intermediary transfer point for troops, equipment, and cargo moved ashore by Expeditionary Fast Transport (EPF), formerly JHSV, or LCAC. ESDs can land up to three LCACs, which can in turn access over 80% of the world's coastlines.

### Surge

Surge ships are the second subset of Sealift, comprised of 61 ships (of the 85 Sealift ships). These ships move unit equipment from the U.S. to a theater of operation and are comprised primarily of Roll-On/Roll-Off (RO/RO) ships which facilitate the rapid on-load and off-load of rolling stock and Service-unique, special mission equipment. Of the 61 Surge Sealift ships, 15 are operated by MSC and include ten LMSR's and five RO/RO Container ships. The remaining 46 Ready Reserve Force (RRF) ships, maintained by the Maritime Administration, include eight Fast Sealift Ships, two heavy lift, two aviation support, 27 RO/ROs, six crane ships, and one OPDS ship.

When activating surge ships, MSC operationally controls the inventory of organic sealift vessels, including RRF ships. MARAD's RRF ships supplement the sealift capacity of the MSC surge sealift ships. Ships are expected to be fully operational within their readiness status timeframe and tendered to MSC for operation. MARAD and MSC contract with commercial U.S. ship managers to provide ship maintenance, equipment repairs, logistics support, activation, manning, and operation management. Ships in ROS have maintenance crews of about 10 U.S. merchant mariners that are supplemented by additional U.S. mariners during activations.

All aspects of Sealift - prepositioning, high speed intra-theater transport, and surge - bring new prospects in providing efficient and cost-effective ocean transportation for the Combatant Commanders, as well as other federal agencies.

*Expeditionary Fast Transport (EPF) (Formerly Joint High Speed Vessel)*

Another integral, unique and new part of the Sealift capability is the EPF. Unlike the aforementioned prepositioning ships, EPF is not assigned to a specific squadron or service support role. This auxiliary ship can be directed to support any area of operation as required, and is designed for high-speed intra-theater transport. With a 20,000 square-foot mission bay capacity and passenger seating for 312, an EPF can deploy 600 tons of vehicles, tanks, trucks, ambulances, or bulldozers and a company of Marines or Soldiers extended distances at speeds exceeding 35 knots. EPF has an adjustable stern ramp for rapid on-load and off-load as well as a crane to move up to 40,000 pounds of cargo to/from ship or pier. The EPFs have operated globally in support of Fleet Commander missions by providing an agile and highly capable ship suitable for adaptive force packages of many types.

EPF 6 was delivered in January 2016 and production continues with EPFs 7-10. In FY2016, Congress provided funding for a twelfth EPF and the Navy is currently issuing a Request for Proposal for construction of EPF 11 and 12.

**The Role of U.S. Navy's Military Sealift Command**

MSC exercises operational control of all U.S. Transportation Command (USTRANSCOM) and MSC forces not otherwise assigned to Fleet Commanders. MSC also provides oversight for civilian-crewed ships, that support the Navy, Marine Corps, Army, Air Force, USTRANSCOM, Missile Defense Agency and other U.S. government agencies, fulfilling national maritime needs worldwide. In addition to its active ships, MSC can recall MARAD's RRF ships or charter civilian shipping to meet specific logistics requirements.

**Innovative Use of Adaptive Force Platforms**

Navy is looking to find efficient ways to more effectively perform Theater Security Cooperation (TSC) missions by developing innovative mission payloads/packages. Emergency aid deployed from Maritime Prepositioning Force (MPF) cargo embarked on LMSRs and EPFs can support engineering, disaster relief, and medical stability operations. The Navy has been developing and leveraging modularity concepts and scalable adaptive force packages to provide a wide variety of capabilities. Alternative platforms equipped with payloads have already begun to meet Combatant Commanders' needs in support of an expanded range of military operations.

The deployment of Adaptive Force Packages using material in the Fleet inventory can create opportunities for auxiliary ships to expand support missions and increase global presence. We can use sealift and other ships that traditionally fill a support role to accomplish missions on the "low end" of the Range of Military Operations (ROMO), freeing surface combatants, to receive needed maintenance and to focus and train toward core warfighting missions. There will be a steady requirement for missions related to humanitarian assistance, disaster relief, and engagements with our partners that non-combatant ships can and may be directed to fill.

**Summary**

Global operations continue to assume an increasingly maritime focus. As we look to the future, we see a continued need for Navy forces on station to meet the mission requirements of the Combatant Commanders. We will continue to support forward presence and relieve stress on the rest of the force through traditional and innovative approaches. The Navy supports regional stability through naval presence, deterrence of aggression and the assurance of our allies. We will continue to rely on the CLF, Service Support Ships and Sealift as they contribute to the

CNO's tenets for our Navy. I want to thank you for your continued support of our Force. Also, thank you again for the opportunity to appear before the Committee.

**STATEMENT OF PAUL N. JAENICHEN  
MARITIME ADMINISTRATOR  
U.S. DEPARTMENT OF TRANSPORTATION**

**BEFORE THE  
HOUSE COMMITTEE ON ARMED SERVICES  
SUBCOMMITTEE ON SEAPOWER AND PROJECTION FORCES**

**Logistics and Sealift Force Requirements**

**March 22, 2016**

Good afternoon Chairman Forbes, Ranking Member Courtney, and Members of the Subcommittee. I want to thank you for the opportunity to discuss the U.S. Merchant Marine's support of our Nation's logistics and sealift force requirements.

To defend American interests and carry out national policy overseas, the United States must be capable of deploying military forces and providing humanitarian assistance anywhere in the world on short notice to meet emergent contingency requirements. Sealift is critical to meeting those requirements. The U.S.-flag fleet of privately owned, commercially operated vessels, along with government-owned vessels, provide sealift surge and sustainment capacity to move equipment and materiel for the Armed Forces and Federal agencies when needed, and where needed, during times of conflict, humanitarian crises and natural disasters. Supporting these capabilities are the Maritime Administration's (MARAD) National Defense Reserve Fleet (NDRF), Ready Reserve Force (RRF) and Maritime Security Program (MSP).

**Ready Reserve Force**

The RRF fleet of Government-owned merchant-type vessels was established in 1976 as a subset of MARAD's NDRF. The mission of the RRF is to ensure the capability to rapidly deploy military forces and equipment or emergency humanitarian assistance/disaster response supplies to events that require intervention by the U.S. Government. The program began with six modernized NDRF ships left over from World War II and peaked in 1994 at 102 ships. Since then, requirements have changed and the RRF currently consists of 46 ships selected on the basis

of their capabilities, readiness condition, and location to meet Department of Defense (DOD) expected surge sealift needs. This includes 45 RRF vessels that are maintained ready for operation within five days to transport defense related cargo to the area of operations and one RRF off-shore petroleum discharge vessel maintained ready for operation within 10 days. The size and readiness of the RRF is directed by DOD to meet their sealift requirements. While the RRF has not been fully activated, during the 1991 Operations DESERT SHIELD AND DESERT STORM—which predate the Maritime Security Program—78 vessels were activated. Currently there are 46 ships in the RRF. Over the history of the RRF program, there have been more than 600 vessel activations, over half of which were for missions other than to test readiness. The average number of annual activations, including readiness testing, has been nearly 27 since 1990.

The RRF has contributed to the success of numerous U.S. military and humanitarian operations. These include 118 ship activations in support of Operations ENDURING FREEDOM and IRAQI FREEDOM and support for humanitarian and emergency response following Hurricanes Sandy, Katrina and Rita, the earthquake in Haiti, the Ebola crisis in West Africa, and the international effort to destroy the Syrian Government's declared chemical weapons. While the RRF has provided reliable and safe sealift to support military and humanitarian missions, the fleet is aging. The average age of the fleet is 39 years—well above the normal service life of commercial vessels. MARAD is working closely with DOD to monitor the material condition of the RRF, as well as determining future recapitalization requirements of the fleet.

#### **Maritime Security Program**

The Maritime Security Act of 1996 established the MSP which provides direct annual stipends for up to 60 active, commercially viable, militarily useful, privately-owned U.S.-flag vessels and crews operating in international trades. The MSP fleet ensures DOD access to U.S.-flag ships in ocean-borne international commerce with the necessary intermodal logistics capability to move military equipment and supplies during armed conflict or national emergency. The fleet also provides critical employment for up to 2,400 highly qualified U.S. merchant mariners. Under this program, participating operators are required to commit their ships and global commercial transportation resources upon request by the Secretary of Defense during times of war or national

emergency. Of the 78 U.S.-flag vessels that trade internationally today, 57 currently participate in the MSP program. MARAD recently approved one vessel to enter the program as a replacement and is in the process of filling the remaining two vacancies in the program.

#### **U.S.-Flag Merchant Fleet**

The total number of vessels in the internationally trading U.S.-flag fleet has varied considerably over the years, rising from 92 in 2001 to 106 in 2011 and declining to 78 vessels today. The decline in this segment of the fleet is coincident with the decline of Government-impelled preference cargoes. Government-impelled cargoes are those which move as a result of direct Federal Government involvement, financial sponsorship of a Federal program, or in connection with a guarantee provided by the Federal Government. In addition to the movement of DOD-owned equipment, Government-impelled cargoes include items supported by, or associated with civilian agencies such as Export-Import Bank, the U.S. Department of Agriculture and U.S. Agency for International Development (USAID) programs. The overall volume of preference cargo transported on U.S.-flag vessels has substantially decreased since 2005, when preference cargoes peaked due to military operations in Afghanistan and Iraq.

The number of U.S.-flag vessels has been trending lower for decades for a number of reasons, and a substantial portion of trend over the past 25 years cannot be statistically explained, although carriers who have reflagged or retired ships out of the U.S.-flag fleet from 2011 through 2013 have stated that the predominate driver in their decision to remove vessels has been the loss of preference cargoes. Vessel owners take into account a variety of factors before making a decision to leave the fleet including government-impelled cargo as well as foreign-flag trading options for their vessels. In individual circumstances, particularly for operators that do not have the benefits of participating in the MSP, loss of government-impelled cargo could influence a vessel owner's decision to retire vessels from the fleet or reflag. Unfortunately, detailed data that would allow the exact calculation of when a vessel owner would make that decision are not available and are difficult to obtain.

What we do know is that the reason that privately owned and operated ships remain in international trade under the U.S. flag is to move cargo. We also know that a reduction to our fleet of U.S.-flag vessels trading internationally means a reduction in mariner jobs in international trade. While this does not preclude these mariners from seeking jobs in the growing Jones Act trade, the number of ocean-going, self-propelled vessels trading in the domestic coastwise trade has stayed roughly the same.

The causes of the falling volumes of preference cargo do not appear to be transient. Continued reductions in the number of garrisoned or permanently stationed U.S. Armed Forces personnel overseas as well as the number of U.S. military bases in foreign countries, coupled with decline in the number of troops deployed for global operations, suggest that DOD preference cargoes are unlikely to increase in the future.

#### **Mariner Availability**

MARAD is responsible for determining whether adequate manpower is available to support the operation of sealift ships during a crisis, as set forth in the National Security Sealift Policy – National Security Directive (NSD) No. 28 dated October 5, 1989. MARAD's assessment of the civilian U.S. Merchant Mariner pool shows that the number of civilian mariners available to crew government sealift ships when activated has declined over the past decade, and the current number of qualified and experienced mariners available may not be adequate in the near future. U.S. mariners serve on all types and sizes of vessels, and their qualifications are not interchangeable. For example, mariners employed aboard vessels in international trades, must meet international standards for training, certification and fitness. Their credentials must carry the appropriate internationally recognized endorsements. These same qualifications are required for employment aboard commercial or government reserve sealift ships. However, only ocean going mariners must meet all of these additional requirements.

The primary source of mariners available to crew government reserve sealift ships is the pool of U.S. mariners actively sailing on board U.S.-flag ships in both the domestic coastwise and international trades. While the domestic trade has grown, the number of mariners with

appropriate credentials serving on large self-propelled ships has not increased proportionately. In addition, the number of U.S.-flag ships trading internationally has declined, further depleting the number of appropriately credentialed active U.S. mariners. The decline in the number of afloat jobs supported by the U.S.-flag international fleet comes at the same time that training requirements for mariners are increasing due to updated Standards of Training, Certification and Watchkeeping (STCW) requirements adopted at the International Maritime Organization that take effect in January 2017. An offsetting factor is that the USMMA and the six State Maritime Academies (SMAs) are graduating nearly 900 cadets per year with the necessary credentials.

Current estimates show that only about 11,280 mariners have the necessary U.S. Coast Guard credentials and recent sea service (i.e., within the last 18 months) to operate large oceangoing ships. This number is sufficient to activate the Federal government-owned surge sealift fleet of 63 ships for a period of four to six months, but it is not enough for sustained operations. Further losses in the number of commercial U.S.-flag ships, and the corresponding loss of mariner jobs in international trade, will significantly impact our ability to crew this sealift fleet. While mariner jobs in coastwise domestic trade are growing in some sectors, they usually do not require mariners to maintain ocean-going credentials. We also anticipate shortfalls in specific skills that require higher levels of experience such as steam engineers and electricians. Given this assessment, I am working closely with the U.S. Transportation Command, the U.S. Navy (Military Sealift Command) and the commercial maritime industry to address the mariner availability issue.

#### **The Department of Transportation's National Maritime Strategy**

MARAD is taking action to aid the Department of Transportation's efforts in safe and efficient freight transportation, and to address the issues that challenge the U.S. maritime industry through the development of a draft National Maritime Strategy. We expect to publish the draft strategy in the coming months, which will be available for public comment before MARAD finalizes it. As required in Section 603 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, the strategy will identify Federal regulations and policies that reduce the competitiveness of U.S.-flag vessels operating in foreign trade; and the impact of reduced cargo

flow due to reductions in military deployment overseas. It will also include recommendations to make U.S.-flag vessels more competitive and increase the use of U.S.-flag vessels in international trade, ensure compliance by Federal agencies with cargo preference laws, increase the use of third-party inspection and certification authorities to inspect and certify vessels; increase the use of short sea transportation routes; and enhance United States shipbuilding capability. Following publication of the draft strategy for public comment, I look forward to providing the strategy to the Committee.

Thank you for your interest our Nation's maritime transportation capacity and capability, the opportunity to provide a status update for our program and to discuss what may be a critical juncture point for the long-term health of the international trading U.S. Merchant Marine. I look forward to any questions you may have.

**Statement of**

**Lieutenant General Stephen R. Lyons, United States Army  
Deputy Commander, United States Transportation Command**



**Before the House Armed Services Committee  
Subcommittee on Seapower and Projection Forces  
On "Logistics and Sealift Force Requirements"**

**22 March 2016**

I want to thank the members of the Congress for inviting me and my colleagues here to testify in front of this Subcommittee on Seapower and Projection Forces. A major strategic advantage of the U.S. is its ability to project and sustain forces anywhere and anytime around the globe. I am honored to represent the proud members of United States Transportation Command (USTRANSCOM). Our Service component commands, the Army's Military Surface Deployment and Distribution Command (SDDC), the Navy's Military Sealift Command (MSC), the Air Force's Air Mobility Command (AMC); our functional component command, the Joint Transportation Reserve Unit (JTRU); and our subordinate command, the Joint Enabling Capabilities Command (JECC), in conjunction with the transportation industry, provide unparalleled logistics support and enabling capabilities to our forces, their families, and coalition partners around the world.

Under the President's Unified Command Plan, USTRANSCOM has six designated roles and responsibilities: (1) mobility joint force provider, (2) DOD single manager for transportation, (3) DOD single manager for global patient movement, (4) Distribution Process Owner (DPO), (5) global distribution synchronizer, and (6) provide joint enabling capabilities. Our continued success in these roles depends on preserving an agile and resilient global distribution network – a complex array of capabilities, infrastructure, access, partnerships, and command and control mechanisms. This complex network underpins our Nation's response to emerging crises, and undergirds our warfighters' successes. Through this network, the United States maintains the strategic advantage to project and sustain forces anywhere and anytime across the globe.

#### **Strategic Sealift Requirements**

Our nation has been, and will continue to be, reliant on sealift as the predominant means

to move military equipment and supplies in support of global operations. The world's oceans represent the vast deep-blue space over which the life blood of any decisive U.S. combat power must travel. Our nation's strategic sealift capability comprises two distinct fleets. First is the gray-hulled organic fleet, consisting of continental United States-based vessels in a reduced operating status and pre-positioned ships at strategic locations worldwide. Second is a commercial merchant fleet managed by commercial operators, for which the Department of Transportation provides government advocacy. A series of DOD mobility studies, informed by our National Military Strategy, have validated the DOD's sealift requirements as follows: 20 million square feet (MSFT) of Roll on/Roll off (RO/RO) capacity of which 5 MSFT are provided by our commercial carriers, the ability to surge approximately 34,000 shipping containers (20 foot container equivalents), 86 petroleum tanker ships, and an array of special purpose ships. The 20 MSFT of RO/RO capacity (91 vessels) is the most critical to accommodate military equipment and is comprised of forward deployed prepositioned ships and government owned ships in reduced operating status, along with commercial sealift augmentation vessels. It is important to note that the crews for both government ships as well as commercial ships are sourced from the same pool of qualified U.S. Merchant Mariners. The subsequent paragraphs further highlight the afloat prepositioning program, government organic strategic sealift, U.S.-flag commercial fleet, civilian mariner posture, and the challenges of maintaining future readiness.

#### **Afloat Prepositioning Program**

Our afloat prepositioning program is managed by our Navy Component Command, MSC, and is an essential element in the DOD's readiness strategy. Afloat prepositioning strategically places military equipment and supplies aboard ships located in key ocean areas to

ensure rapid availability during crisis. The 25 vessels in the prepositioning fleet support the Army, Navy, Air Force, Marine Corps and Defense Logistics Agency, and include a combination of U.S. government-owned ships and long-term charters of U.S.-flag commercial vessels. In addition to combat equipment sets and supplies, this fleet also includes specialized capabilities to include an Over the shore Petroleum Discharge System (OPDS), an expeditionary transfer dock, and aviation maintenance in support of USMC.

#### **Government-Owned “Organic” Sealift Fleet**

In addition to the aforementioned prepositioned vessels, the government-owned organic fleet consists of 61 vessels comprised of a Surge Fleet and a Ready Reserve Force (RRF) fleet. The Surge Fleet is managed by MSC and includes 15 RO/RO vessels in a reduced operating status. The RRF, managed by MARAD, is comprised of 46 vessels in reduced operating status with 35 RO/RO vessels and 11 various multi-purpose vessels. Both the surge fleet and the RRF are maintained in a reduced operating status, available in 5 days, referred to as “ROS-5” with the exception of OPDS in ROS-10. ROS-5 enables DOD to meet validated deployment timelines. USTRANSCOM routinely conducts readiness exercises, called Turbo Activations, to ensure the fleet remains at a high state of readiness.

The Surge Fleet comprised of U.S.-built vessels and the RRF fleet comprised of mostly foreign-built vessels are maintained and operated by American ship management companies, and subsequently crewed by U.S. Merchant Mariners upon activation. These companies conduct all organizational level maintenance, manage the U.S. Merchant Mariners, and oversee the lifecycle maintenance of the vessels under MSC and MARAD governance.

The average age of this fleet is approximately 40 years old and our first vessels will begin to reach their 50-year service life in 2020. Based on age out rates, we anticipate that

we will lose 4 MSFT of organic RO/RO capability by 2030 and an additional 5 MSFT by 2040. As a result we are working closely with the U.S. Navy to begin recapitalization planning to prevent a significant loss of capability in meeting DOD's enduring sealift requirements, and anticipate future Navy funding to support.

#### **Commercial Sealift and U.S. Sealift Emergency Preparedness Programs**

DOD has long relied on commercial augmentation to meet sealift requirements in peace and war. Access to commercial fleets is formalized through DOD contracts, MARAD Voluntary Intermodal Sealift Agreement (VISA), the Maritime Security Program (MSP), and the Voluntary Tanker Agreement (VTA). Through these programs, DOD gains critical access to U.S. commercial capabilities and the merchant mariners that will crew our government fleet.

Since their inception in the mid 1990's, these commercial augmentation programs have provided the federal government assured access to a significant amount of capacity and intermodal capabilities that cannot be replicated by government sources. VISA provides a staged, time-phased means to transition from peacetime to war while minimizing disruption to the Nation and its commerce. VISA and MSP are complementary programs. Specifically, MSP provides a fleet of up to 60 military-useful commercial vessels routinely operating in international commerce, with intermodal networks throughout the world, and a seasoned crew of U.S. Merchant Mariners. In addition to cargo preference, each MSP ship receives a legislatively appropriated stipend to offset the cost of operating under a U.S.-flag relative to a foreign flag.

The health of the Maritime Security Program relies on government impelled cargo; viable commercial trade; and the MSP stipend. Due to the decline in the sealift industry, we are concerned about our nation's ability to retain a U.S.-flagged merchant fleet in support of

commerce and national security. Over time, the U.S.-flag vessels in international trade has fluctuated, rising from 92 in 2001 to 106 in 2011 and is now down to 78 vessels. The MSP stipend helps defray the operating cost differential between a U.S. flag and a foreign-flag vessel. In the overall scheme of DOD's sealift program, DOD relies on leveraging commercial capacity to access important sealift capacity.

The U.S. National Sealift policy underscores our role as a maritime nation and clearly articulates the need for DOD to retain the ability to respond "unilaterally to security threats" while taking into account the costs and benefits involved.

#### **U.S. Merchant Mariner Pool**

The current link between the government-owned fleet and the commercial fleet is manpower, specifically qualified commercial merchant mariners. With the responsibility to manage the global mobility enterprise, USTRANSCOM is dependent on a healthy U.S. Merchant Mariner pool. U.S. Merchant Mariners are critical to USTRANSCOM's ability to meet its military requirements, and their training and proving ground are the commercial vessels of the U.S.-flag fleet. As the numbers of vessels decrease, fewer opportunities exist for future generations of mariners to gain critical experience. Currently MARAD assesses we are medium risk with approximately 11,300 mariners available, trending toward high risk. Although we are currently capable of meeting activation requirements, we remain concerned about the decline of the U.S.-flag fleet and the associated merchant mariner pool, as our overall sealift capability is tied to commercial industry, both for the vessel capacity and manpower.

#### **Future Challenges**

We recognize that where we are today is not where we will need to be in the future. I

would like to highlight three future challenges pertaining to U.S. Sealift in support of our military strategy: mariner availability, age-out of our government sealift fleet, and a joint operating environment with emerging great power rivals.

Regarding the available U.S. Merchant Mariners, we are working closely with MARAD to ensure the nation retains a viable U.S. Merchant maritime capacity in support of DOD's sealift requirement.

Second, we are working with the U.S. Navy on a recapitalization plan to prevent the degradation of our enduring organic sealift requirements due to forecasted age-out rates.

Third, emerging adversaries will attempt to counter U.S. interests around the globe and contest our operations in the domains of cyber, space, air, and maritime in ways we have not seen since WWII. This will require continuous innovation and agility to adapt faster than our adversaries. We are working today within DOD to anticipate emerging threats and vulnerabilities to USTRANSCOM's global distribution network.

We will need, and greatly appreciate continued congressional support in each of these areas to maintain the competitive advantage that DOD's Strategic Mobility capability brings in support of our National Defense Strategy.

#### **Final Thoughts**

Many outside of this committee are unaware that in a major contingency, the United States Army sails to the fight. While our current sealift capacity is adequate with acceptable risk, the environment is changing rapidly and not necessarily in predictable ways. As such, we can state that our need to project power will not decline, and may increase in the future.

In this unpredictable environment, what we can predict is the age-out of our current government-owned fleet. The Nation recognized the necessity to vastly improve sealift

capabilities after Desert Shield and Desert Storm, and created the government-owned capability we have today. Action is necessary to maintain the capability into the future.

We appreciate the teamwork and support from key stakeholders like Congress, the U.S. Navy, and Department of Transportation as we seek future investments to modernize our government-owned sealift fleet, and seek ways to reinvigorate our U.S. Merchant Marine capability. The emerging joint operating environment will certainly challenge us in ways that we have not been challenged before. Thank you again for your interest in the readiness of DOD's Joint Deployment and Distribution Enterprise.

James I. Newsome, III  
*President and Chief Executive Officer*



April 7, 2016

176 Concord Street  
 P.O. Box 22287  
 Charleston, SC 29413 USA  
 (843) 577-8608

The Honorable Duncan D. Hunter  
 Chairman – Subcommittee on Coast Guard and Maritime Transportation  
 United States House of Representatives  
 507 Ford House Office Building  
 Washington, DC 20515

[scspa.com](http://scspa.com)

Dear Chairman Hunter,

We are grateful to learn that you are conducting a hearing on the subject of the new SOLAS container weight mandate, which is effective July 1 and has the potential to have a significant impact on the expeditious flow of U.S. exports shipped in containers. Not much has been heard from the ports on this topic and, while I do not feel there is agreement among ports as to proper approach, we would at least like to express our view on this subject to your subcommittee in advance of the hearing. I would also point out that, in addition to being a port executive currently, the main portion of my career was spent as a senior executive in two U.S. container shipping organizations. This gives me some experience from the viewpoint of an ocean carrier.

Certainly, the global implementation of this SOLAS weight mandate has highlighted a very important issue, that shipper-declared weights at time of export shipments have not been of sufficient accuracy and consistency to assure the sound loading of vessels, or for that matter, the safe handling of containers on ocean terminals. We have done some random sampling with the assistance of some shipping lines in preparation for the impact of this rule that shows that weight variances between declared weights and terminal scale weights can routinely be 10 percent or more. This is too large of a variance to be acceptable. So, the global mandate, in our view, clearly has a legitimate intent. Perhaps its only shortcoming is that it is too prescriptive or limiting in terms of logical solutions, especially in consideration of time-honored best practices used to load ships on many U.S. container terminals, including ours. I will go into more detail on this in a moment. Although not explicitly stated, nation states seem to have the right to propagate practical implementation guidelines for this mandate. This would only be logical. Additionally, the Coast Guard seems to be totally correct in saying that the requirement to provide an accurate weight for transportation of cargo is not a new one just because it is declared in a global mandate.

This issue was long ago identified by the Occupational Safety and Health Administration (OSHA) with regard to the safe handling of cargo on container terminals. OSHA regulation 1918.85 (b) (3) is worded as follows:

“Every outbound container received at a marine terminal ready to load aboard a vessel without further consolidation or loading shall be weighed to obtain actual gross weight, either at the terminal or elsewhere, before being hoisted.”

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April 7, 2016  
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It also says that this weight should be incorporated in the stowage plan to allow the safe loading of cargo (paraphrasing).

Responsive to these regulations, most U.S. ports have scales where a high percentage, if not all, of the export containers received are weighed by regularly calibrated (not certified) scales and these weights are provided to the shipping lines contemporaneous with receipt and routinely used in the stowage plans of container vessels handling exports from U.S. ports. I would say that this practice has occurred for over twenty years and represents what can legitimately be called a "best practice" in the safe loading of vessels in the U.S. While these weights are not perfect (as example, the weight of the truck may be inaccurate due to varying quantities of fuel), random samples that we have done lead us to believe that they are within 2 percent of being accurate. Countries who have defined an accuracy standard (the U.S. has not) thus far for SOLAS container weight implementation have typically set the acceptable degree of deviation at 5 percent. Given the randomness of the minor deviations, the impact of a collective group of minor weight disparities to a ship is even less. Moreover, the use of these terminal-provided scale weights is part of a well-orchestrated process that not only allows the use of very accurate weights but addresses the time sensitive nature of receiving cargo and loading ships. This is a fast paced activity which is today addressed in a productive way. The further advantage is that one set of scales, consistently designed and calibrated, is used to discern all weights. Potential for inaccuracy is thus greatly reduced.

Getting to the point of this letter, while only two methods of providing accurate weights are proscribed in the international SOLAS regulations, it seems to us that a container shipping line should have the right to use a third option, that being the existing best practice of using the scale weights provided by the terminal on receipt of export containers, to the extent this practice exists and is comprehensive. This would be at the discretion of the container lines, they could choose to use this or not as a third option. It may be important to note that there is a statement in the SOLAS container weight implementation guidelines that says that terminal provided weights can be used or even should be used in the case of doubts about shipper provided weights.

This has a number of advantages:

- (1) It retains an existing best practice that has allowed the safe handling of cargo on terminals and onto ships in many U.S. ports for years. Export cargo is weighed in a very controlled way by relatively few scales.
- (2) It assures continued compliance with the OSHA regulations on cargo handling on marine terminals. We will continue to weigh every container that comes onto our terminal for export in response to these regulations and to assure safe cargo handling on our terminals.
- (3) It addresses the potential for conflict between terminal provided weights and the verified gross mass (VGM), which is to be provided by the shipper to the line. Not much discussion has occurred about how such a conflict would be resolved, or whether there are enough publicly available scale facilities to handle the increased demand for weighing services if Method 1 of the mandate is chosen. The potential for mistakes in receiving weight data in such a disaggregated way is seemingly very high, certification or not.

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- (4) It eliminates potentially the need for a very damaging procedure which some terminals are opting to employ, namely rejecting containers received without a VGM on file. This has the potential to further harm an already challenged container trucking industry and severely impact the efficiency with which container freight moves into and out of ports. Many truckers delivering export cargo will subsequently pick up an import container, what are they to do with the rejected container?

Again, the decision on this should ultimately be up to the container shipping lines. But, it is our very committed view that a well-intentioned international rule should not lead to the discarding of a well-accepted best practice in the loading of ships in the major U.S. container ports, that by the way complies with OSHA regulations that have been in effect for many years. It must be noted that terminals do not have certified scales but rather calibrated scales. This calibration does, however, lead to the ability to determine that they are reasonably accurate.

There are varying views as to whether this new mandate will disrupt the smooth flow of export containers through our ports. My view is that the potential for disruption is significant enough that an alternative as above should be considered.

Chairman Hunter, I appreciate the opportunity to give input on this subject and stand ready to answer any questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "James I. Newsome, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James I. Newsome, III

JIN, III:mar

cc: Mr. John Rayfield, Staff Director

The Honorable Duncan Hunter  
Chairman  
Coast Guard and Maritime Transportation Subcommittee  
House Transportation and Infrastructure Committee  
2251 Rayburn House Office Building  
Washington, D.C. 20515

April 13, 2016

Dear Chairman Hunter:

JBS USA Food Company is a leading exporter of beef, pork and poultry with destinations in more than 100 countries around the world. With 38 production units across the U.S. and Puerto Rico, our 56,000 team members contribute to the more than \$140 billion in U.S. agricultural exports annually. We are a member of the Agriculture Transportation Coalition, which represents hundreds of other farms, agribusinesses and forest products companies in your district and across the country.

On April 14, 2016, the House Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation will hold a hearing to review implementation of the International Maritime Organization's Safety of Life at Sea (SOLAS) Container Weight Documentation Amendment. This amendment requires the weight of each container to be verified before it is shipped.

The method by which verified gross mass (VGM) is determined will affect each one of our export shipments and those of every other exporter in the U.S. JBS is very concerned about the impact that this amendment will have on our ability to efficiently and affordably export our products to foreign markets if it is not implemented correctly.

U.S. Coast Guard Assistant Commandant for Prevention Policy Rear Admiral Paul F. Thomas, who is also testifying, has repeatedly stated that there are many ways to submit the VGM and comply with SOLAS. Steamship lines are requiring the U.S. exporter to provide not only the weight of their cargo, which is appropriate. However they have indicated they will also require an individual working in our company to personally certify the container weight which is owned, controlled and managed by the steamship line.

If exporters must determine the weight of the carrier's equipment and then report it back to the carrier, it will impose new, unnecessary costs, create congestion at the ports, missed sailings, spoiled cargo and angry customers. Finally, it places undue liability on exporters who have no control over the containers.

Donna Lemm, Chair of the Agriculture Transportation Coalition Committee on SOLAS, will be testifying on behalf of the coalition and its exporting members. We support a rational method of SOLAS compliance in which the U.S. exporter certifies the weight of the cargo and packing materials, and the steamship lines certifies the weight of their own container. The steamship line may then combine the two weights to create a VGM which is submitted to the terminal operator before loading. The Coast Guard has stated this method is compliant with SOLAS guidelines.

We hope that you will consider Ms. Lemm's testimony as essential to the interests of exporters around the country, and respectfully request that you support a method of SOLAS compliance which allows U.S. exporters to remain competitive in the global marketplace.

Sincerely,



Teresa Craft

Head of International Logistics

JBS USA Food Company

## Written Testimony – Lynda D. Sanford

**To:** Kevin Rieg for Submission to the April 14, 2016 Hearing Written Record, U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation - Cruise Industry Oversight: Are Current Regulations Sufficient to Protect Passengers and Environment?

**From:** Lynda D. Sanford, Survivor of KENA IV on Behalf of Elizabeth Sanchez Stevens, Deceased

**Date:** April 13, 2016

**Subject:** 2012 Bill to Amend the Death on the High Seas Act (DOHSA) of 1920

It has been fifteen years since I managed to survive the boating accident that killed my mother and 2 other cruise ship passengers and injured me and 13 other cruise ship passengers. My brother and I are not corporate lobbyists. We did not know "how the system works" in Washington, DC. Despite this fact, we managed to get a Death on the High Seas Act (DOHSA) amendment introduced to the House of Representatives in 2006. However, ONE DECADE LATER, DOHSA, a 100 year-old law, remains unchanged for cruise ship victims. Our DOHSA amendment was reintroduced to the US Congress in 2007. In 2008, I brought DOHSA our amendment to the International Cruise Victims Association (ICV), who represents victims of cruise ship crime. It became part of the 2009 Cruise Vessel Security and Safety Act (CVSSA) but was removed to allow the rest of CVSSA's protections to become law. I hounded Blair Bjellos of Congressman Poe's office relentlessly until she finished rewriting DOHSA specifically for cruise ship victims. A copy of her DOHSA amendment for my family is attached. I do not understand how a hearing on maritime safety can ignore Death on the High Seas, AS WAS ATTEMPTED AT THE 2012 HOUSE HEARING ON THE COSTA CONCORDIA. Then Congresswoman Hirono was the only person who asked about DOHSA at that 2012 hearing. She was not a member of the hearing committee!

## Written Testimony – Lynda D. Sanford

I remained in Cabo San Lucas, Mexico immediately after my mother's death and escorted the three corpses back to Los Angeles, California where I questioned what went wrong. The cruise line told me that our tragedy was a "freak accident". After burying my mother in Texas, I returned home to Atlanta, Georgia and contacted the cruise line attorney who had been flown to Cabo San Lucas, Mexico to interrogate me about my mother's death. The cruise line would not provide me with any more information and ignored my family's requests for answers. I was devastated after having flown across the United States to meet my mother in California for a 7-day mother-daughter cruise and returning with her corpse and no explanation for her death other than a "freak accident". I acquiesced to my family's request to sue the cruise line because our mother had died and was horrified to learn that we could not do so because all of my mother's children were adults.

The Death on the High Seas Act (DOHSA) of 1920 did not allow us to sue for negligence resulting in the death of our mother, her pain and suffering as she drowned or the loss of her contribution to society as a bilingual, special education teacher and mother who raised five children without child support from our deadbeat dads. The U.S. Congress had allowed the cruise line industry to influence it when DOHSA was amended in 2000. Consequently, DOHSA by Wrongful Act entitles these legal remedies only to commercial aviation victims. The Death on the High Seas Act (DOHSA) of 1920 entitled my mother's corpse to receive only burial expenses! In 2006 and 2007 my Congressman, Congressman John Lewis of Atlanta, Georgia, co-sponsored Death on the High Seas Act amendments introduced by Congressman Lloyd Doggett for cruise ship victims. These bills held cruise lines accountable for negligent deaths regardless of the age of the victims. The amendments became a part of the original legislation of the Cruise Vessel Security and Safety Act. However, again, the cruise lines' paid lobbyists successfully pressured the U.S. Congress to allow the cruise line industry to evade

## Written Testimony – Lynda D. Sanford

accountability. All of the protections of the Cruise Vessel Security and Safety Act were in jeopardy in 2010 if DOHSA was not removed. So, DOHSA was removed and the Cruise Vessel Security and Safety Act became law in July 2010. Despite cruise line claims of safety, a 2008 U.S. Senate hearing divulged that cruise lines did not know how many passengers had died or disappeared from foreign-flagged cruise ships using American ports. The cruise lines did not keep count of the dead or missing because they were not required to do so. Consequently, complaints of negligent death when the deceased has no dependents continue to be dismissed from court because DOHSA does not allow surviving adult family the right to sue for the death of their loved one. The family of the deceased does not have the opportunity to have the facts of their loved-one's death heard and decided by a jury. The benefit of the ability to sue for a loved one's death when they have no dependents is NOT money, the BENEFIT IS ANSWERS! ANSWERS TO KNOW WHY YOUR LOVED ONE DIED!

Unlike DOHSA of 1920, state tort laws have evolved to reflect the value of human life in commercial maritime deaths. Every state in the United States has laws that allow victims to sue for financial damages for wrongful death. Some states also allow surviving family members to recover damages for the conscious pain and suffering of the deceased. Others also impose punitive damages for serious wrongdoing and to serve as a deterrent. In the case of wrongful maritime deaths, state law is superior to Federal law. It is inequitable, unfair, and inhumane to force cruise ship victims to apply the antiquated Death on the High Seas Act of 1920 to their loved one's death. My mother's life is no less valuable than an airline passenger's life and my family's grief is no less painful than the grief of any airline victims' family. The U.S. Supreme Court has recommended that Congress correct this inequity for maritime victims and there are no costs associated with making this change. By continuing to force maritime victims to do so, the U.S. Congress is telling survivors that the life of their loved is worthless in comparison to that of an aviation victim! The result is that cruise ship victims are

## Written Testimony – Lynda D. Sanford

victimized not only by cruise lines but by the United State Congress. I urge Congress to do what is was intended to do—REPRESENT IS PEOPLE--by correcting the injustice of DOHSA of 1920.

Respectfully,

Lynda D. Sanford, MBA, CIA, CFE, CISA  
*FORMER* Vice- President, International Cruise Victims Association

Lynda Sanford has been auditing for the public and private sector for 30 years. She has been an internal auditor, forensic auditor, and external auditor for the federal government for 20 years. She has received numerous awards for her audit work and earned her designations as a Certified Internal Auditor, and Certified Information Systems Auditor, and Certified Information Systems Auditor through examinations. She earned her Master of Business Administration with a concentration in international business from Kennesaw State University and her Bachelor of Business Administration degree in accounting from Texas A&M, Corpus Christi. She has worked in North and South America, Africa, Asia, the Caribbean and the South Pacific. She has lived in Georgia since 1986 and has been a resident of Atlanta, Georgia since January 2001.

### **About Our Mother**

Elizabeth was a divorced mother of five children. She began her career as an Operating Technician and then Licensed Vocational Nurse in Corpus Christi, TX. She earned her Bachelor's Degree in Secondary Education and Master's Degree of Public Administration in her mid-40s from Texas A&M, Corpus Christi. She moved to Anchorage, AK in 1987, where she taught Special Education and English as a Second Language until her tragic, untimely death in 2001 during a mother-daughter cruise with Lynda.

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The Honorable Duncan Hunter  
U.S. House of Representatives  
2429 Rayburn House Office Building  
Washington, DC 20515

April 12, 2016

Dear Congressman Hunter:

My name is William R. Plourd, President/CEO of El Toro Export, LLC. We are an agricultural commodity trading company located in California's Imperial Valley. Exports of Agricultural goods is a critical part of our business and sustains the economy and jobs here in the Imperial Valley. The Subcommittee on Coast Guard and Maritime Transportation of the Transportation and Infrastructure Committee will hold a hearing on April 14 on a subject of great importance to us—the implementation of the International Maritime Organization's **Safety of Life at Sea (SOLAS) Container Weight Documentation Amendment**. El Toro Export is very concerned about the impact that this Amendment will have on our ability to efficiently and affordably export Agricultural goods to foreign markets if not implemented correctly.

El Toro Export is a member of the Agriculture Transportation Coalition. Testifying on our behalf and on behalf of hundreds of other farms, agribusinesses, and forest products companies in your District and across the country will be Donna Lemm, Chair of the Agriculture Transportation Coalition Committee on SOLAS. She speaks for us.

Rear Admiral Thomas of the US Coast Guard (who will be testifying) has repeatedly stated that **there are many ways to submit Verified Gross Mass and comply with SOLAS**. However, the steamship lines have refused to be flexible, and are requiring the US exporter to provide the weight of their cargo (which is appropriate), but also for an individual working in our company to personally certify to the steamship line the weight of the container which is owned, controlled, and managed by the steamship line. This method places undue liability on the US exporter. If exporters must determine the weight of the carrier's equipment and then report it back to the carrier, it will impose new unnecessary costs, at a time we are already struggling in export markets due to the high value of the dollar. It will create congestion at the ports, missed sailings, spoiled cargo, and angry customers.

**We support a rational method of SOLAS compliance in which the US exporter certifies the weight of the cargo and dunnage (packing materials), and the steamship lines certifies the weight of its own container.** The steamship line then combines the two weights to create a VGM which is submitted to the terminal operator before loading. The Coast Guard has stated this method is compliant with SOLAS guidelines.

We hope that you will consider Ms. Lemm's testimony as essential to our interests as your constituent, and that you will support a method of SOLAS compliance that allows the US exporter to remain competitive in the global marketplace. [Click here](#) for a one-pager with additional information on the topic.

Sincerely Yours;

EL TORO EXPORT, LLC

WILLIAM R. PLOURD  
President/CEO

**BEFORE THE COAST GUARD AND MARITIME  
TRANSPORTATION SUBCOMMITTEE  
HOUSE OF REPRESENTATIVES  
Washington, D.C.**

**COMMENTS OF THE GLOBAL CONSOLIDATORS WORKING GROUP**  
(a working group of the of major consolidators in the US Trades)

**Hearing on Maritime Transportation Safety and Stewardship Programs**

CaroTrans International, Inc.  
Ecu-Line N.V.  
Shipco Transport Inc.  
Vanguard Logistics Services (USA), Inc.

Counsel  
Ashley W. Craig  
Elizabeth K. Lowe  
VENABLE LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004

April 14, 2016

The following comments are submitted by the Global Consolidators Working Group (GCWG) for consideration by the Coast Guard and Maritime Transportation Subcommittee, House of Representatives. We appreciate this opportunity to discuss the International Maritime Organization (IMO)'s amendments to the International Convention for the Safety of Life at Sea (SOLAS).<sup>1</sup> The SOLAS amendments will require (as of July 1, 2016) that a shipper verify the gross mass (VGM) of a container's cargo/contents to the underlying carrier and a terminal operator. Failure to provide such a VGM verification will result in a carrier refusing to load the container.

The GCWG is a working group of the leading consolidator non-vessel-operating common carriers ("NVOCCs")<sup>2</sup> in the foreign commerce of the United States.<sup>3</sup> The GCWG includes: CaroTrans International, Inc., Ecu-Line N.V., Shipco Transport Inc. and Vanguard Logistics Services (USA), Inc. Each of the GCWG companies engages in co-loading activities (*i.e.* consolidation of Less-than Container Load or LCL shipments), as well as Full-Container Loads (FCL). For LCL shipments, the individual GCWG companies act as the "Masterloader" or the consolidator of the LCL shipments and then tender the consolidated container to the underlying ocean carrier for transport.

#### **I. Background on Consolidation Sector**

The LCL or consolidation market is unique from other sectors of the ocean transport industry. In particular, the GCWG companies specialize in providing ocean and related

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<sup>1</sup> International Convention for the Safety of Life at Sea, as amended.

<sup>2</sup> Non-vessel-operating common carrier is defined as "... a common carrier that—(A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier." See 46 U.S.C. § 40102(16).

<sup>3</sup> Foreign Commerce of the United States as referenced herein includes all the major North-South and East-West trades and sub-trades, such as the Trans-Atlantic Eastbound/Westbound trades, Trans-Pacific Eastbound/Westbound trades, etc.

multimodal transportation services for small and medium-sized companies (typically other freight forwarders or NVOCC's), thus leveraging combined freight volumes, cost-savings for smaller companies and increased efficiencies across the supply chain—including benefits to ocean carriers who accept the consolidated shipments from the Masterloader NVOCC.

It is important to understand how a consolidation shipment functions, both operationally and commercially. In terms of a chain of custody for LCL shipments, a variety of parties are involved in each transaction: actual shippers/consignees (that look to the co-loading forwarder or NVOCC for services); the co-loading forwarder or NVOCC (that looks to the Masterloader for service); the Masterloader (that provides consolidation services to the down-stream parties); third-party truckers (that may receive the consolidated container from the Masterloader for transport/dray carriage to the terminal); the ocean carrier (that provides the ocean transport); and terminal operators (both at origin and destination). At times, third-party Container Freight Stations (CFS) may be utilized as part of the overall consolidation process. The consolidation market has become embedded in today's global shipping environment.

For each consolidated/LCL shipment, multiple bills of lading are issued—by the co-loader NVOCCs, the Masterloader, and, ultimately, the ocean carrier. By way of background, the Masterloader accepts the LCL shipments from other NVOCCs and issues a House Bill of Lading (HBL) or receipt to each of the individual NVOCCs that tender freight for consolidation; there could be dozens of such HBLs issued by the Masterloader. The shipper and/or consignee party on the Masterloader HBL will reflect the tendering co-loader NVOCC, as well as its overseas agent, affiliate or branch offices. When the tendering co-loader acts as an NVOCC (in contrast to when it acts only as a forwarder), it will issue its own HBL to its shipper-client (often the actual, underlying shipper); depending on the number of co-loader NVOCCs in a consolidated container, these HBLs may be in the dozens. Once the consolidated shipment is

tendered to the ocean carrier, a Master Bill of Lading is issued by the ocean carrier, reflecting the Masterloader as the shipper/consignee and the Masterloader's overseas agent, affiliate or branch office.

For purposes of the SOLAS amendments and VGM requirements, an understanding of the above is critical, since securing weight verifications will depend on each of the above actors—a disruption or misunderstanding by even one of the parties in the chain of custody may result in a weight miscalculation.

## **II. SOLAS Amendments: GCWG Position**

The GCWG appreciates the work of the IMO on this important subject, but cautions implementation as currently envisioned may lead to unintended consequences, such as delay of shipments, additional costs for shippers and US exporters, congestion at the ports, and, potentially, a reduction in US exports, which will affect almost all sectors of the international trade community, including the countless small and medium-sized customers serviced by each of our companies. Accordingly, the GCWG submits the following for further consideration by the Subcommittee and other stakeholders, including the United States Coast Guard (USCG) as the Competent Authority under the IMO SOLAS Convention, as the shipping industry approaches the July 1 effective date for the SOLAS amendments.

In sum, the GCWG supports the following:

1. Reasonable delay of the effective date for the SOLAS amendments of twelve (12) months (thus, the new effective date would be July 1, 2017)
2. Consideration by USCG (and other Competent Authorities) of requiring the terminal operator act as the verifier of a container's Gross Mass;
3. Further outreach to the shipping community—all sectors—by USCG during the additional 12 months under a delay; and

4. Increased transparency on behalf of the IMO regarding the global implementation status of the VGM rule.

Our companies believe the above positions are practical, balanced and will enable the entire global supply chain community to work constructively as the eventual SOLAS VGM effective date approaches. Our companies acknowledge implementation of the VGM amendments is a near-certainty. We support further awareness of the importance of the amendments to all members of the international shipping community—but believe additional time and further consideration of how best to achieve VGM certification are required to ensure the true objective of the IMO’s work is realized.

### **III. Request for Delay**

We understand that under the terms of the SOLAS convention and, specifically, the VGM amendments a Member State, such as the United States, has the authority to delay the effective date of up to twelve (12) months. While all Member States must in principle comply with amendments to the Annex of the SOLAS Convention other than Chapter I by the time they enter into force, individual Member States may nonetheless delay implementation of such amendments for a period not longer than one year from the date of entry into force.<sup>4</sup> Member States may do so by notifying the Secretary-General of the IMO before the date set for entry into force.<sup>5</sup> In the instant case, the VGM amendments amend Chapter VI (Carriage of Cargos) of the Annex to the SOLAS Convention, therefore, a 12-month delay would be permitted per the provisions of the Convention, and could be requested by June 30, 2016.

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<sup>4</sup> SOLAS Convention, Article VIII(b)(vii)(2).

<sup>5</sup> *Id.*

The GCWG respectfully submits that a 12-month delay would not only be permitted but also warranted here. Pursuant to Resolution MSC.380(94),<sup>6</sup> the industry is readying the necessary arrangements in order to comply with the VGM amendments. However, the GCWG submits that additional time is justified to negotiate commercial arrangements for the allocation of responsibility and additional costs among shippers, carriers, and terminal operators in the event containers are weighed in-terminal. Additionally, it is unclear whether the existing weighing equipment, certified and calibrated at a state level, is sufficient in number to allow for the smooth flow of container traffic into terminals.

Accordingly, a 12-month delay would be appropriate as it would allow the industry to make the legal and operational arrangements necessary for the proper implementation of the VGM amendments. Further, this delay would not compromise the policy objectives intended by the VGM amendments. Rather, it would contribute to their proper implementation and help prevent unnecessary delays in the supply chain as a result of a swift and improper implementation due to lack of time.

Alternatively, the GCWG respectfully requests USCG consider an exemption for an additional 12 months from the VGM requirements specifically for the consolidation market. As noted, the LCL sector is unique from FCL shipments, involves potentially dozens of individual shippers in relation to the Masterloader in one, consolidated container and holds the possibility of creating significant disruption and confusion for the industry, if the July 1, 2016 effective date remains.

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<sup>6</sup> MSC.380(94).

**IV. Terminal Operators Should Provide VGM Certification**

Based on our understanding of global supply chain operations, the flow of container traffic and the realities of port operations, the GCWG maintains a terminal operator is best positioned to weigh each container and provide the VGM certification to the underlying ocean carrier. In fact, we understand from discussions with various US-based terminal operators that most containers, if not all, are already weighed upon entry to a port.<sup>7</sup> We support equipping terminals, if they are not already equipped, with the necessary scales to determine the actual weight of each container, prior to lading. The SOLAS amendments require a shipper to provide the VGM certification to the carrier prior to a carrier loading the container. Ideally, our companies maintain that the weighing of a container should be the responsibility of the terminal operators or the underlying carrier, as they are the parties that are best positioned to undertake this exercise, given that a stow plan is the responsibility of the master operating the vessel that provides the ocean transport service on a particular voyage. As a comparison, in the air transport sector, it is the air carrier that is responsible for determining the weight of each airfreight container, also called Unit Load Devices (ULD). The same is true in the surface transport sector, where each motor carrier is responsible for verifying the weight of the cargo/truck load.

By having a terminal operator provide the physical weighing of the container (as instructed by a shipper), the purpose of the SOLAS amendments is achieved, while minimizing unintended disruptions or consequences further up the supply chain. This option makes practical sense, given the proximity of the terminal to the vessel and the critical role that the terminal

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<sup>7</sup> We acknowledge that the weight taken at entry to the port includes the weight of the cargo and container plus the weight of the chassis, truck and fuel; however, we understand that this is already taken into account to determine the container weight for stow plan purposes, so it should not be difficult to account for the additional weight and determine the actual container weight.

operator plays in the lading and unloading of a vessel. Should this option be practically achievable prior to July 1, 2016, there would be no need to impose the 12-month delay.

We further note that under current Occupational Health and Safety Administration (OSHA) regulations all outbound containers must be weighed at the terminal to determine the weight prior to being hoisted/loaded.<sup>8</sup> If scales are available at the terminals, containers must be weighed at the terminals. Requiring shippers to also weigh and certify the weight of the container appears to be duplicative and unnecessary given the current regulations and requirements already in place in the United States. These existing regulations underscore that the terminal operator is the most appropriate party to weigh outbound containers.

**V. Further USCG Outreach**

We applaud the USCG for its engagement on the subject of VGM, for continuing discussions with members of the international ocean transport community and for its willingness to listen. We further applaud the USCG for taking the position that shippers may comply with the SOLAS amendments by simply providing the cargo mass weight—as is the case currently. Yet, GCWG companies believe that an additional 12 months for outreach and preparation prior to the effectiveness of the SOLAS amendments can only provide additional benefits to the USCG (as the enforcer) and both users and providers of containerized ocean transport in the US trades. While we understand that the subject has been pending before the IMO for several years,

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<sup>8</sup> 29 C.F.R. 1917.71(b)(3) and (4) (“(3) Every outbound loaded container which is received at a marine terminal ready to load aboard a vessel without further consolidation or loading shall be weighed to obtain the actual gross weight, either at the terminal or elsewhere, before being hoisted. (4)(f) When container weighing scales are located at a marine terminal, any outbound container with a load consolidated at that terminal shall be weighed to obtain an actual weight before being hoisted. (ii) If the terminal has no scales, the actual gross weight may be calculated on the basis of the container’s contents and the container’s empty weight. The weights used in the calculation shall be posted conspicuously on the container, with the name of the person making the calculation and the date.”)

we fail to see why an additional year could be viewed in any other way other than being reasonable, given the amount of attention that VGM is now receiving from all sectors of the shipping industry and public. As noted above, our companies understand that the SOLAS amendments' effective date is inevitable—it becomes in our view a question of whether we rush towards July 1, 2016 with a litany of questions unanswered or use an additional year to ensure that all such issues are resolved and the entire ocean shipping community—users and providers alike—are prepared properly for implementation. As has been noted (including by the World Shipping Council, OCEMA, TT Club and others), failure to provide the VGM certification could result in sanctions and/or delays, as well as commercial complications for many parties involved in the supply chain.<sup>9</sup> While we understand that the USCG does not intend to penalize shippers for failure to verifiably provide the cargo gross mass, the GCWG submits that without careful consideration of the SOLAS amendment's impact on all parties of the trade, the possibility for operational and commercial disruptions remain real.

#### **VI. Increased Transparency on the IMO's Behalf**

The SOLAS amendment requires that shippers in all IMO Member States provide the VGM. Uniform and consistent implementation across the globe is necessary to successfully implement IMO's latest initiative. This will allow all parties to operate on a level playing field by abiding by the same standards—enforced in a similar way by all Member States. As a global industry, global clarity and standardization are needed.

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<sup>9</sup> See generally "Verified Gross Mass Industry FAQs: Implementation of the SOLAS amendments effective from July 1, 2016," Dec. 2016. [http://www.ttclub.com/fileadmin/uploads/tt-club/Publications\\_Resources/Document\\_store/SOLAS\\_VGM\\_Industry\\_FAQs\\_Dec\\_2015\\_A4\\_WEB.PDF](http://www.ttclub.com/fileadmin/uploads/tt-club/Publications_Resources/Document_store/SOLAS_VGM_Industry_FAQs_Dec_2015_A4_WEB.PDF)

To date, less than 10 IMO Members appear to have provided some sort of meaningful guidance on the implementation details of the VGM rule. Consequently, our companies—and many others which maintain global operations—are currently unaware as to how IMO Member States will implement the new rule. This lack of information, guidance and transparency makes it nearly impossible for shippers to implement necessary arrangements to comply with the SOLAS amendment at the Member State level. To this end, the GCWG took the initiative to address this issue in an open letter, asking the IMO—as the globally competent authority—to gather and publish a series of vital information regarding the VGM’s implementation status. Unfortunately, the IMO has remained silent thus far, thereby exacerbating the challenges that shippers face in complying with the VGM rule on a global scale. With this in mind, the GCWG respectfully calls on the US Government to request from the IMO to enhance transparency on the matter by collecting and publishing the requested information.

#### **VII. Conclusion**

The GCWG companies thank the Subcommittee for consideration of this testimony. We have drafted it with careful consideration given to the IMO’s work on container weight verification, the ocean carriers’ commitment to improving safety and how shippers will need to comply with the new requirements. We maintain that a delay of 12 months, consideration of the terminal operators providing the weighing of the container, and increased transparency, coupled with further discussions with the trade community will yield the most practical implementation of the SOLAS amendments.

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Respectfully submitted,

Global Consolidators Working Group

**CAROTRANS INTERNATIONAL, INC.**

**ECU-LINE N.V.**

**SHIPCO TRANSPORT INC.**

**VANGUARD LOGISTICS SERVICES (USA), INC.**

Washington, D.C.

April 14, 2016

**Comments of the U.S. Clay Producers Traffic Association, Inc.****Submitted for the Record of the Hearing of April 14, 2016****Before the****U.S. House of Representatives Committee on Transportation and Infrastructure  
Subcommittee on Coast Guard and Maritime Transportation  
Maritime Transportation Safety and Stewardship Programs**

As legal counsel to the U.S. Clay Producers Traffic Association, Inc. (Clay Producers), I have been asked to present to the Committee concerns and recommendations of its members on the International Maritime Organization's (IMO) amended regulation under the Safety of Life at Sea Convention (SOLAS) requiring that ocean carriers condition the loading of a packed container onto a ship for export upon a shipper's providing a signed certification of verified gross mass (VGM), effective July 1, 2016.

Clay Producers is a non-profit trade association dedicated to promoting the transportation related interests of members involved in the mining, processing and sale of kaolin and similar minerals in operations located in the Southeastern United States. Publically available industry data shows that approximately 4,000 U.S. citizens are employed in the mining and processing of kaolin, and thousands more are employed in related businesses serving the industry. Kaolin's unique chemical properties make it a valuable ingredient in paper, paint, plastics and many manufactured items. Kaolin is only found in a few regions of the world and as a result, those countries having deposits export it throughout the world. US kaolin exports are extremely sensitive to variations in transportation cost.

Clay Producers export approximately 100,000 containers per year from Georgia and regions in the Southeastern United States. Exports are packaged in empty ocean containers which are not owned by exporters. Typically, containers are owned, leased or controlled by ocean carriers. Since Clay is sold by weight, each package is weighed as it is bagged and loaded into ocean containers. For many years, Clay Producers have furnished the ports and ocean carriers with accurate gross and net mass weights in accordance with existing regulations enforced by the U.S. Coast Guard.

Clay Producers are concerned that the SOLAS VGM regulation, while motivated out of concerns for the safe handling of containers at ports and their safe stowage on ocean vessels, fails to rationally balance the needs of safety against the reality of a just-in-time export environment. Specifically, the regulation ignores the fact that the variations in the weight of an empty 40 foot, 8,000 lbs container makes it impossible, and problematic from a legal liability standpoint, for a shipper to certify the verified gross mass of the loaded container.

SOLAS is legally binding on ocean carriers and for that reason, the carriers take the position that they will not accept a container unless the shipper of record signs a VGM. In response to

criticism that shippers do not own or lease the containers whose weight they are asked to include in the VGM certification, carrier representatives have dismissively stated publically and in sworn testimony that no one would hold a shipper legally responsible for an inaccurate certification of weight where the actual weight of the empty container varied from the weight stenciled on the outside of the container. In other words, carriers are implicitly acknowledging that stenciled container weights (tare weights) are not 100% accurate. (Understandably, a stenciled weight can vary from a container's actual weight if the container had been repaired or had the floor replaced with heavier wood.) Nevertheless, the wording of the SOLAS regulation is absolute and does not expressly provide for a substantial compliance standard. The U.S. Coast Guard, the domestic enforcing agency, has not officially stated whether minor variations in weight would satisfy the SOLAS standard.

In other words, on the one hand, shippers are facing a take-it-or-leave-it demand that they provide what amounts to a legally binding guarantee of the actual loaded container weight, while on the other hand, carriers are stating that no one will impose liability on shippers for providing a less than 100% accurate verified gross mass.

Members are deeply concerned that as shippers, the impractical language of the VGM requirement will cause a serious disruption in the flow of commerce without any discernable improvement in safety. Furthermore, it poses the risk of imposing an unjustified guarantee liability on shippers in the situation where the shipper has accurately established the true weight of all cargo, packages, pallets, dunnage and securing materials, but certifies the required VGM in reliance on an inaccurate tare weight stenciled on the container.

Members question whether they can be compelled to accept legal responsibility for verifying the accuracy of the stenciled weight of a container they do not control. They also question whether relying on stenciled container weights in making the required VGM certification would be covered by liability insurance.

Members have long provided the gross and net mass of exports (the weight of their commodities and packaging) in compliance with federal regulations and legitimate safety concerns. However, the IMO's SOLAS regulation appears to indirectly impose a duty and liability on US export shippers over whom IMO lacks jurisdiction. Even if a shipper were to certify a VGM based on the stenciled weight provided by the container owner, a realistic legal analysis is that while the container owner might be primarily liability for an inaccurate tare weight, it could be alleged that the shipper had a secondary liability.

Another troubling aspect of the regulation is the likely additional administrative cost which is imposed without any realistic safety benefit. There is more than a mere change to business practices involved here, but even if one merely considers the manual task of finding the container's stenciled tare weight (a container which may have been provided just before loading and delivery to the export site), timely adding that weight to the commodity and dunnage, and modifying the necessary IT programs which generate shipping documents sufficiently in advance

of the carrier's preparation of a ship stowage plan is not an insignificant cost. Furthermore, it is questionable whether these changes can be accomplished by July 1st.

In light of the practical difficulties surrounding the VGM regulation as presently worded, would the Committee be open to sponsoring a "Sense of the Congress Resolution"? Such a resolution would urge that the Coast Guard propose to the International Maritime Organization that it amend and modify the regulation to eliminate the requirement that export shippers include the weight of the empty container in the shipping documents they provide. Clay Producers suggest that such a resolution could state:

**IT IS THE SENSE OF THE CONGRESS that:**

**WHEREAS, shippers of US exports do not generally own or lease containers and are not responsible for ensuring the accuracy of the empty container weight (tare weight) stenciled on the empty container;**

**WHEREAS, shippers of US exports face uncertain legal liability risk and unquantifiable insurance cost by reason of a SOLAS regulation which requires that shippers declare on shipping documents a Verified Gross Mass of a loaded container which must include the tare weight of the empty container;**

**WHEREAS, shippers have invested significant resources in designing business practices and IT systems to comply with existing obligations to report Gross Mass and Net Mass on shipper document, and would face additional costs if required to report tare weight of empty containers;**

**WHEREAS, the Coast Guard has jurisdiction over the accurate reporting of Gross Mass and Net Mass and is the domestic enforcement agency with jurisdiction over the SOLAS VGM regulation.**

**BE IT RESOLVED:**

- 1. To the extent the SOLAS regulation requires shippers to certify a VGM which includes the weight of an empty shipping container which they neither own nor control, the regulation is vague, and should not be interpreted by the courts or federal agencies as imposing liability against export shippers for fines or personal or property damage.**
- 2. To the extent that shippers of US exports presently provide shipping documents to carriers reporting accurate Gross Mass and Net Mass, said shippers should be deemed to have satisfied a reasonable standard of care applicable to liability for personal and property damage or fines.**

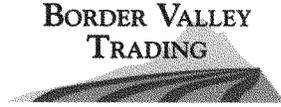
**3. In light of the uncertainty arising out of the lack of clarity surrounding the impending implementation the container weight regulation, Congress urges the Coast Guard to give notice to the International Maritime Organization that the United States requests a one year delay in implementation of the regulation so that a practical method of weight certification can be prescribed without having shippers certify the accuracy of empty container weights.**

**4. In the alternative, if it is not feasible for the Coast Guard to effect a one year delay of the regulation and eventual modification of what is being certified by the shipper, Congress urges the Coast Guard to proscribe a substantial compliance standard allowing for a stated weight variance, such as 5%.**

In conclusion, we hope our input will assist the Committee in addressing this most serious situation facing members of the U.S. Clay Producers Traffic Association, as well as many other export shippers. Thank you for holding these hearings and listening to the practical difficulties currently facing exporters.

**U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.**

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The Honorable Duncan Hunter  
U.S. House of Representatives  
2429 Rayburn House Office Building  
Washington, D.C. 20515

April 6, 2016

Dear Congressman Hunter:

I am a hay exporter in the Imperial Valley of California. The Subcommittee on Coast Guard and Maritime Transportation of the Transportation and Infrastructure Committee will hold a hearing on April 14 on a subject of great importance to us—the implementation of the International Maritime Organization's **Safety of Life at Sea (SOLAS) Container Weight Documentation Amendment**.

Border Valley Trading is very concerned about the impact that this Amendment, will have on our ability to efficiently and affordably export hay to foreign markets, if not implemented correctly.

Our company is a member of the Agriculture Transportation Coalition. Testifying on our behalf and on behalf of hundreds of other farms, agribusinesses, and forest products companies in your District and across the country will be Donna Lemm, Chair of the Agriculture Transportation Coalition Committee on SOLAS. She speaks for us.

Rear Admiral Thomas of the US Coast Guard (who will be testifying) has repeatedly stated that **there are many ways to submit Verified Gross Mass and comply with SOLAS**. However, the steamship lines have refused to be flexible, and are requiring the US exporter to provide the weight of their cargo (which is appropriate), but also for an individual working in our company to personally certify to the steamship line the weight of the container which is owned, controlled, and managed by the steamship line. This method places undue liability on the US exporter. If exporters must determine the weight of the carrier's equipment and then report it back to the carrier, it will impose new unnecessary costs, at a time we are already struggling in export markets due to the high value of the dollar. It will create congestion at the ports, missed sailings, spoiled cargo, and angry customers.

**We support a rational method of SOLAS compliance in which the US exporter certifies the weight of the cargo and dunnage (packing materials), and the steamship lines certifies the weight of its own container.** The steamship line then combines the two weights to create a VGM which is submitted to the terminal operator before loading. The Coast Guard has stated this method is compliant with SOLAS guidelines.

We hope that you will consider Ms. Lemm's testimony as essential to our interests as your constituent, and that you will support a method of SOLAS compliance that allows the US exporter to remain competitive in the global marketplace. [Click here](#) for a one-pager with additional information on the topic.

Sincerely,

Greg Braun  
President  
Border Valley Trading LTD.



Robyn Boerstling  
Vice President,  
Infrastructure, Innovation &  
Human Resources Policy

April 15, 2016

The Honorable Duncan Hunter  
Chairman  
Committee on Transportation and Infrastructure  
Subcommittee on the Coast Guard and Maritime  
Transportation  
U.S. House of Representatives  
Washington, DC 20515

The Honorable John Garamendi  
Ranking Member  
Committee on Transportation and Infrastructure  
Subcommittee on the Coast Guard and Maritime  
Transportation  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hunter and Ranking Member Garamendi:

The National Association of Manufacturers (NAM) appreciates the bipartisan effort you have undertaken to review the implementation of the International Maritime Organization's (IMO) International Convention for the Safety of Life at Sea (SOLAS) Container Weight Amendment by the United States Coast Guard (USCG).

Manufacturers are extremely concerned about possible delays of shipments, new burdensome requirements and additional costs borne by this new international regulation. The lack of clarity, transparency and formal guidance from the USCG on implementation and enforcement are significant issues that we hope today's hearing will address. Manufacturers are committed to complying with these new requirements to ensure global vessel safety but significant concerns over implementation are creating significant impediments to achieving full compliance.

Efficiency at our nation's ports is a necessity to meet manufacturers' contractual obligations, serve global markets, grow manufacturing, create jobs and keep pace with our global competitors. The adoption of this IMO amendment to SOLAS took place in 2014 without full participation from a broad range of stakeholders and has left manufacturers facing practical implementation issues that had not been taken into account when this issue was first presented by the ocean carrier industry. As the July 1, 2016 implementation deadline approaches, manufacturers have received limited, informal information from the USCG on the implementation and enforcement of this amendment. Manufacturers are requesting greater clarity as to how this requirement will be enforced. To that end we welcome the Coast Guard and Maritime Subcommittee's assistance in seeking answers to several questions on the page that follows this letter.

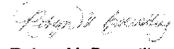
In order to ensure the efficient movement of cargo and prevent unintended delays, manufacturers strongly recommend the issuance of formal guidance from the USCG. Of note, global ocean carriers who have led us to this new policy have also been slow to address practical implementation concerns as well. The consideration of an acceptable weight variance similar to the United Kingdom would also go a long way in addressing concerns. Manufacturers appreciate the commitment to safety embodied by the IMO, but request consistency and clarity to properly implement this rule in coordination with our global trading partners. As these issues are worked through in a transparent setting, an implementation delay should not be discounted.

*Leading Innovation. Creating Opportunity. Pursuing Progress.*

733 10<sup>th</sup> Street, NW, Suite 700, Washington, DC 20001 • T 202-637-3178 • F 202-637-3182 • [www.nam.org](http://www.nam.org)

Thank you for your attention to this critical issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robyn M. Boerstling".

**Robyn M. Boerstling**

Attachment:  
SOLAS Container Weight Amendment Implementation Concerns from Manufacturers

1. When determining Verified Gross Mass (VGN) using Method 2, what responsibility does that employee/company (personal or corporate liability) have for certifying a tare weight that was provided by the carrier. Legally, can a shipping employee certify a weight they do not themselves provide? Is it then accurate that the USCG will not require shippers to verify a carrier's tare weight, but may accept the weight printed on the container, placing the liability on the owner of said container? In such case as an incident may occur, what liability does the employee or company have if that tare weight was misprinted?
2. In a scenario where a third-party is contracted to weigh and sign on behalf of the shipper, what method may be used in this circumstance to provide the VGM to the carrier, and does liability for any incorrect weights fall upon the shipper or the third-party?
3. Does the USCG accept SOLAS 5.1.2.1 which states "individual, original sealed packages that have the accurate VGM of the packages and cargo items (including any other material such as packing material and refrigerants inside the packages) clearly and permanently marked on their surfaces, do not need to be weighed again when they are packed into the container."
4. Given the nature of products, and the likelihood that due to moisture or other natural occurrences, weights may vary, a 100 percent accuracy would be impossible to guarantee in all cases. Would the USCG consider allowing some kind of variance, such as the U.K. model?
5. Rear Admiral Paul Thomas stated at a public hearing at the Federal Maritime Commission on February 18, 2016, that enforcement would consist of only the USCG re-weighing a container as needed and updating the VGM if incorrect. However, shippers would like clarity as to under what circumstances the USCG plans to determine when containers would need to be re-weighed. Will this be at the vessel or terminal operators choosing, or the USCG? If selection will be by the USCG, is enforcement expected to be done at random or only as weights are suspected to be incorrect. Will only Method 1, using a certified scale, even if one is not available at said port, be allowed in those circumstances? If a container is designated for re-weigh, would all of the additional containers from the same shipper as part of the same shipment be selected as well automatically? Will there be any fines or fees associated with this enforcement activity?
6. Would the USCG clarify the acceptable methods for electronic filing?
7. Will the USCG be responding to, or accepting of, the Ocean Carrier Equipment Management Association (OCEMA) approved set of Best Practices for the implementation of the SOLAS Container Weight amendment?