

Statement of

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Liability and Financial Responsibility for Oil Spills
Under the Oil Pollution Act and Related Statutes

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Good morning, Mr. Chairman, Congressman Mica, and Members of the Committee. I am Buckley McAllister, Vice President and General Counsel of McAllister Towing. Founded in 1864, McAllister is a fifth-generation, family-owned company operating a fleet of more than 70 tugboats and 12 barges along the East Coast of the United States. Our company is headquartered in New York City and maintains offices in Staten Island; Baltimore; Jacksonville; Philadelphia; Providence; Portland, Maine; Fall River, Massachusetts; Hampton Roads; Wilmington, North Carolina; Charleston, South Carolina; Port Everglades; and San Juan. McAllister vessels provide ship docking services for hundreds of steamship companies each year. We are also engaged in harbor towing, coastal towing, and bulk cargo transportation, and operate three ferries that carry about 400,000 automobiles and one million passengers each year between Bridgeport, Connecticut, and Port Jefferson, New York.

I am testifying this morning on behalf of McAllister Towing and The American Waterways Operators (AWO), the national trade association for the inland and coastal tugboat, towboat, and barge industry. I serve as Chairman of AWO's Atlantic Region and a member of the AWO Executive Committee. I am also on the Board of Directors of Steamship Mutual Underwriting Association (Bermuda) Limited, a Protection and Indemnity Club, though I am not speaking on behalf of Steamship Mutual today. Thank you very much for the opportunity to speak to you today about liability and financial responsibility under the Oil Pollution Act of 1990 (OPA 90).

McAllister Towing and the 350 member companies of AWO share a deep commitment to leadership in marine safety and environmental stewardship. Safely transporting our customers' cargoes – the building-block commodities that are essential to our nation's economy – is, quite simply, our reason for being. We well understand that spills of oil or hazardous chemicals are unacceptable to the American people and to the Congress. They are unacceptable to our customers and to the men and women who crew our vessels. They are a threat to the natural environment and they jeopardize our ability to stay in business as a company.

Mr. Chairman, we did not come to this realization in April, as the environmental and public policy impact of the Deepwater Horizon spill began to manifest itself. Our industry got its wake-up call two decades ago, when Congress passed the landmark Oil Pollution Act of 1990 in response to the grounding of the tank ship Exxon *Valdez* in Prince William Sound, Alaska. Since that time, we have worked every day to make our operations safer, to reduce our environmental footprint, and to go above and beyond the requirements of law and regulation to demonstrate our commitment to safety and environmental stewardship.

Our fundamental message to you today is this: with respect to vessel spills, OPA 90 is working. The well-crafted package of prevention measures, response planning requirements, and liability and financial responsibility requirements that Congress imposed 20 years ago has been a remarkable public policy success. Let me cite just a few examples:

- Tank barge oil spill volumes have plummeted by 99.6 percent since OPA 90, with a record low of 4,347 gallons in 2009. This is the lowest spill volume from tank barges since 1973, when Coast Guard recordkeeping began. With nearly 69 billion gallons of oil transported by barge on U.S. waterways, this means that 99.99 percent of oil moved by tank barges is delivered safely.
- Today, more than 90 percent of U.S. tank barges are fitted with double hulls, a full five years ahead of the OPA 90 deadline.
- Coast Guard-approved tank vessel response plans require vessel owners to plan for a worst-case discharge: the loss of a vessel's entire cargo in adverse weather. A rigorous program of training and drills ensures that such plans are ready to deploy immediately in the event of a spill or the threat of a spill.

- Since the largest number of spills occurs during product transfers, new regulations require tank overfill alarms and more rigorous training and certification for personnel overseeing cargo transfers.
- Comprehensive drug and alcohol testing programs are in place throughout the maritime industry, and zero tolerance for drug or alcohol abuse is the norm in our industry.
- To address human error as a cause of spills, the tugboat, towboat and barge industry has embraced the Crew Endurance Management System (CEMS), a science-based approach to reducing the risks of operating in a 24/7 environment. AWO is currently working with Northwestern University's Center for Sleep and Circadian Biology on a multi-year study aimed at developing practical interventions to improve the quality and quantity of sleep that towing vessel crewmembers obtain.
- Since OPA 90, our industry has been challenged – rightly, in our view – to shoulder the responsibility to lead improvements in safety and environmental stewardship, above and beyond the requirements of law and regulation. Developed in 1994, the AWO Responsible Carrier Program, a safety management system for tugboat, towboat, and barge companies, has been a condition of membership in AWO since 2000. All AWO members must undergo an independent third-party audit every three years to demonstrate their continued compliance. Companies that fail their audit forfeit their membership.
- Inspired by OPA 90, the Coast Guard-AWO Safety Partnership, the first public-private partnership of its kind in the maritime industry, was established in 1995 to track trends in industry safety performance and facilitate collaborative efforts to improve safety and stewardship. In the past 15 years, the Partnership has launched more than 30 Quality Action

Teams to tackle some of the most pressing safety issues in the industry, from tank barge spills to crew fatalities to bridge collisions.

- The tugboat, towboat, and barge industry has recognized the role of Congress and the Coast Guard in further raising the bar of safety for our industry. In 2004, AWO joined the Coast Guard in supporting the passage of historic legislation to bring towing vessels under a Coast Guard inspection regime and require all towing vessels to have a safety management system, as recommended by the National Transportation Safety Board. We have worked with the Coast Guard through the congressionally established Towing Safety Advisory Committee to develop regulations to implement this statutory mandate, and we continue to urge the Department of Homeland Security to publish its notice of proposed rulemaking immediately.
- The liability and financial responsibility provisions of OPA 90 have been an important contributor to this record of enhanced prevention and more timely and effective response. OPA 90 drove home the principle that the party responsible for a spill pays. Vessel owners must demonstrate financial responsibility up to statutorily imposed limits that were raised by Congress in 2006 and by the Coast Guard in 2009 to ensure that they keep up with increases in the Consumer Price Index. (Those limits can be breached in the event of gross negligence, willful misconduct, or the violation of applicable regulations.) Today, liability limits for tank and non-tank vessels are two to three times higher than they were in 1990, and a regulatory mechanism is in place to continue to increase the limits as needed over time. We applaud the leadership of this Committee in scrutinizing the limits and passing the legislation that established this common-sense mechanism (the Delaware River Protection Act of 2006).

Mr. Chairman, the record I have just described is a success story. It is the story of carefully crafted legislation passed by a Congress that has continued to

exercise its oversight responsibility and challenge industry to live up to the public's ever-higher expectations for safety and environmental stewardship. We welcome that oversight because it helps us do our jobs better.

In exercising its oversight mission today, against the backdrop of the Deepwater Horizon spill, we urge this Committee to be mindful of the context we have shared and the unintended but potentially severe consequences of changes in the liability and financial responsibility regime for vessel owners.

The current statutory and regulatory framework established pursuant to OPA 90 reflects a careful balance. This framework ensures that vessel owners have access to appropriate levels of insurance cover – typically \$1 billion for companies like mine that obtain coverage through membership in a Protection and Indemnity (P&I) Club. If the costs of a spill exceed those limits, or in the rare event that a responsible party cannot be found, claims are paid from the Oil Spill Liability Trust Fund (OSLTF). The OSLTF is not a pool of money drawn from the general Treasury to shift the cost of spills from polluters to U.S. taxpayers. Rather, it is essentially a supplemental insurance fund that is funded by the oil industry through a per-barrel tax on oil. In the 20 years since OPA 90, this system has proven effective in covering the cost of spill cleanup and ensuring timely payments to claimants.

We are troubled by proposals to further increase liability limits for vessel owners as a reaction to the Deepwater Horizon disaster. Tank vessels are not oil rigs. A worst-case discharge from a tank vessel is a quantifiable amount: the loss of the vessel's entire cargo. A worst-case discharge from a non-tank vessel is the loss of all fuel or other oil carried on the vessel. The liability limits for tank vessels, unlike the limits for oil rigs, have been examined by Congress and the Coast Guard and adjusted as needed over time. They reflect the careful consideration of both Congress and the Coast Guard, and were set at levels that recognize the

response and cleanup costs that could result from the loss of the vessel's cargo and fuel.

Moreover, it is important to remember that for a vessel owner, insurance is a finite commodity. There is not an unlimited supply. Clearly, unlimited liability is uninsurable, and I know of no domestic vessel owner who is able to independently self-insure his liability. However, it is not only unlimited liability that threatens companies like mine and other small- and medium-sized independent vessel owners. Proposals to raise liability limits to "all removal costs plus X" – an unspecified number – also threaten to raise the costs of insurance to a price that none but the largest companies can afford.

Under Coast Guard regulations for Certificates of Financial Responsibility (COFRs) under OPA 90, vessel owners must demonstrate financial responsibility up to the limits prescribed by regulation. However, even though the amount of insurance carried by most vessel owners far exceeds the limitation amount, vessel owners cannot rely on participation in a P&I Club as evidence of financial responsibility. Thus, vessel owners must demonstrate financial responsibility for purposes of the COFR regulations through self-insurance or supplemental COFR insurance. As liability limits are raised, it becomes increasingly difficult for all but the largest companies to demonstrate sufficient U.S. assets over worldwide liabilities to meet the self-insurance requirements. Thus, most vessel owners are required to purchase COFR insurance. The vessel owner receives no real value – beyond regulatory compliance – from incurring this significant additional expense. Significantly increasing the liability limits for vessel owners will exacerbate the financial burden on vessel owners and threaten the availability of insurance for small- and medium-sized companies like mine. And, it will do so to no good end since the existing liability limits are already appropriate and will increase over time given the changes Congress enacted in 2006.

We urge the Committee to be sensitive to the impacts that such changes would have on responsible, taxpaying, American companies that employ tens of thousands of American citizens, providing family-wage jobs aboard our vessels and on shore. We urge you to be thoughtful and judicious as you exercise your very important oversight responsibility and as you seek to identify the changes needed to ensure that a catastrophe like the Deepwater Horizon spill does not happen again. We urge you to recognize the differences between a tank barge or a tank ship and an oil rig, and the differences in the applicable statutory and regulatory regimes.

There is precedent for the kind of careful, reasoned, well-thought-out public policy that we ask you to strive for – even against the backdrop of a large-scale environmental disaster. That precedent is OPA 90, and you were its authors.

Thank you very much. I would be happy to answer any questions that members of the Committee may have.