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THE INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
-FOR SAFE TRANSPORT, CLEANER SEAS AND FREE COMPETITION-
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UNITED STATE CONGRESS
HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON LIABILITY AND FINANCIAL RESPONSIBILITY FOR OIL SPILLS UNDER THE OIL POLLUTION ACT OF 1990 AND RELATED STATUTES

WRITTEN TESTIMONY SUBMITTED FOR THE RECORD BY
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June 9, 2010

INTERTANKO would like to thank the Committee for inviting the Association to provide written testimony for the record on this very important issue affecting the oil tank shipping industry.

The member companies of INTERTANKO - the International Association of Independent Tanker Owners – are based in over 45 countries and are responsible for the ownership and operation of over 70% of the world's independent oil and chemical ships trading internationally. These companies are therefore responsible for the transportation of the majority of the United States' importation of crude oil and petroleum products and export of the oil products from US refineries.

INTERTANKO's objectives are to support a professional, efficient and responsible industry that is committed to the safe, reliable and competitive shipment of oil and chemicals. The Association's goals include the development and promotion of best practices and the establishment of constructive partnerships with all stakeholders in the oil and chemical shipping community.
(For further information please see www.intertanko.com)

At the outset INTERTANKO wishes to express its sincere condolences for the tragic loss of life and to all those in the United States that have suffered from the unfortunate consequences of the accident to the Deepwater Horizon drilling rig. The Association and its member companies will naturally be pleased to make available any assistance or advice that may be useful in the clean up operations or assist in any other way.

Our specific comments below reflect our concerns at the various proposals from the Administration and Members of Congress to remove limits of liability for tank ships under the Oil Pollution Act 1990 (OPA 90).

In summary, INTERTANKO believes that:

- OPA 90's current limits for ships are realistic, adequate, allow for necessary increases, and incorporate well-tested, proactive spill response mechanisms.
- removal of the shipowner's right of limitation would cut across the 'polluter pays' principle,

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the bedrock of OPA 90, which preserves a balance between shipowner and cargo owner/receiver liability.
- a shipowner must be able to insure its liabilities otherwise he cannot trade
- revising any part of this equation could prejudice the continuance of oil imports to the United States

Our comments focus on 6 key areas:

1. differential risk profile for offshore drilling facilities and ships
2. adequacy of current OPA limits for ships
3. skilled response to tanker spills
4. preservation of the 'polluter pays' principle
5. preservation of the ability of vessels to insure pollution liabilities
6. continuance of oil imports to the United States

1. differential risk profile for offshore drilling facilities and ships

Whilst OPA 90 is a wide ranging piece of legislation covering pollution from both onshore and offshore facilities and wells and all types of ship, we believe it is inappropriate to consider the offshore energy industry and individual independent shipowning companies in the same light. They are different in their operation, size, capitalisation, economic potential and in their ability to cause damage from pollution risks. By way of example, over 40% of INTERTANKO's members operate fewer than 5 tank ships, and almost 70% fewer than 10 tank ships.

The exploration of natural resources offshore can involve new and complex technology. It may therefore be a hazardous and environmentally challenging undertaking. On the other hand, the day to day transportation of oil by ship is a fundamental operation that is vital to keep our economies running. It carries with it a much lower risk profile based on tried and tested technology and operation. OPA 90 has treated the two industries separately in the past and we advocate that this separation should continue.

2. adequacy of current OPA limits for ships

The current OPA 90 limits for tank ships are realistic, adequate and allow for necessary increases.

OPA 90 was adopted following the Exxon Valdez incident in order to ensure that adequate and timely compensation is available to those who suffer damage or loss as a consequence of an oil spill. It established strict liability on the owner of the ship from which oil is discharged for removal costs and damages, subject to certain rights of limitation of liability. This balanced approach is not uncommon but is a basic feature of all similar international maritime compensation conventions. Any financial limits are related to the tonnage of the ship, ensuring that the compensation available is linked to the size of each ship and is proportionate to its risk profile.

In addition, OPA 90 established the Oil Spill Liability Trust Fund (OSLTF) which is supported by per barrel levies on the oil companies. The fund available in the event of a spill is therefore spread between the owners and oil company stakeholders in a way that reflects the principle of 'polluter pays' embodied in the Act.

The OPA 90 model for ships has functioned well since 1990. Since 1990 there has been a significant reduction in the amount of oil spilled from ships. The OPA 90 regime has been instrumental in encouraging and enhancing both ship performance and oil response operations. Since 1990 there have been a number of spills with costs exceeding USD 1 million, with responsible parties (i.e. owners) paying the bulk of oil spill removal costs and compensation for

damages. In the few cases where the shipowmer limits have been exceeded, the OSLTF has stepped in with adequate means to meet additional liabilities.

Since 1990, unlike the OPA 90 provisions for offshore facilities, the OPA 90 limits of liability have been increased for tank ships to almost treble the original limits to ensure adequate compensation is available and that there is a proper apportionment of removal costs and damages between the oil industry stakeholders. In 2006, the Delaware River Protection Act (DRPA) increased limits from USD 1200 to USD 1900 per GRT for double hulled tank ships and from USD 1200 to USD 3000 for single hulled ships. Further increases were made in 2009 to USD 2,000 and USD 3,200 respectively. The DRPA also required there to be inflationary uplift in the limits to take account of the Consumer Price Index and to ensure that the principle of 'polluter pays' is preserved. At the same time, the ratio of accidental spills to tonne miles traded has dropped dramatically. The OPA 90 limits for shipping have therefore proved to be both realistic and adequate. They are substantially higher than the limits of liability under the International Civil Liability Convention regime which applies in most of the world.

In addition, OPA 90 contains strict provisions whereby the right to limitation can be easily lost. This can happen if the incident was caused by gross negligence or wilful misconduct, or if any applicable Federal safety, construction or operating regulation is violated. The right to limit will also be lost through a failure or refusal to report the incident, to provide all reasonable co-operation and assistance requested by a responsible official in connection with removal activities, or to comply with an order under certain sections of other Acts. This structure has incentivised owners trading to the US to behave both safely and responsibly.

3. skilled response to tanker spills

OPA 90 requires the owners or operators of vessels to take a proactive response to any spill. They must have in place a tested program to be able to responding to a worst case discharge of oil, whether actual or threatened.

An integral part of the response program is the Vessel Response Plan (VRP). This must be consistent with the requirements of the National Contingency Plan and Area Plans and approved by the US Coastguard, both initially and following any significant change. These plans must ensure the availability of equipment and personnel to respond to the anticipated 'worst case' scenario, and provide for periodic training and equipment testing as well as unannounced drills. The plan also identifies oil spill response organizations (OSROs) with whom the owners have service agreements ready to handle a clean-up operation in the event of a spill.

For each tank ship carrying oil either as cargo or as fuel, the 'worst case' scenario can be estimated. Unlike oil spilling from a drilling operation, the quantities of pollutant from a ship are finite and measurable, whether the oil emanates for example from a ruptured tank, or from a total loss of the tank ship. Any response plan can therefore be highly focused, practised and operated by experienced individuals and companies with whom the owners have pre-contracted. Their specialised equipment is geared to clean-up on or just below the surface where the ship may discharge oil and their operations well rehearsed.

4. preservation of the 'polluter pays' principle

The current proposals to remove the right to limitation would cut across the 'polluter pays' principle which is the bedrock of OPA 90 and other regimes.

The significant adjustments made to OPA 90 limits were made to preserve the careful balance between the shipowner and the oil receiving companies in the event of a spill. Without limitation,

the full burden of compensation would fall upon the shipowner, with no necessity for a contribution from the oil receiving companies. The OSLTF would become obsolete. That simply cannot be the intention of any amendment if liability is to continue to be shared in accordance with this longstanding principle embedded in the OPA 90 regime.

5. preservation of the ability of vessels to insure pollution liabilities

The system of mutual insurance operated via the pooling arrangement of the International Group of P & I Clubs, offers the widest range of coverage for marine liabilities. The Group Clubs insure 95 % of all tank ships. All Members of INTERTANKO are insured for third party liabilities by a Group Club. Club cover includes pollution liability but this is capped at USD 1 billion. In order to achieve this level of cover, pollution risks are pooled by the Clubs up to USD 50 million. The balance up to USD 1 billion for pollution risk is re-insured under what is the largest single marine insurance contract in the world. The system also relies on a small number of providers of Certificates of Financial Responsibility (COFRs) as required by OPA 90 to enable owners to demonstrate their capacity to pay pollution claims. The COFR providers in turn rely on the availability of market reinsurance, which could be over USD 500 million for some of the largest tank ships.

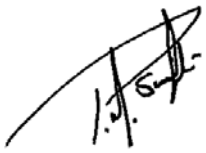
At a commercial level it is obvious that if the potential exposure for oil pollution compensation is unclear, then if insurance is even available, the costs will be higher, and these costs will be passed on ultimately to the consumer. The USD 1 bn currently available is adequate to cover OPA 90 limits. If the right to limit is removed altogether, we believe that no insurer would be prepared to underwrite unlimited liability for pollution risks. In a normal case, the ship owner will respond to the spill and will call upon his insurers to fund such response (up to the OPA 90 limit after which the OSLTF would respond). Claimants receive compensation with minimal delay and without recourse to litigation, even in situations where the owner is not at fault or when he is unable to meet his own liabilities. Without the benefit of limitation of liability, the P & I/COFR structure would fall away as the risk of pollution would be uninsurable to the detriment of both claimants and to any clean-up operation.

6. continuance of oil imports to the United States

In 2009 oil tankers delivered almost 60% of the United States' liquid fuels/oil consumption of 18.8 million barrels per day. Oil tankers were also responsible for some 1.7 million barrels per day of the transportation of the US' exports of refined oil products. The bulk of these shipments were provided by independent, internationally operated tank ship owners who have a highly commendable safety record, including an exceptionally low spill record over the last decade.

The economic and strategic importance of ensuring the continuing availability of safe and reliable marine transportation of crude oil and petroleum products to and from the United States is therefore widely recognized. This would, however, be seriously jeopardized by further increases in limits or the removal of the right to limit liability for pollution. These owners may not be willing to risk their whole operation and asset base in order to trade in waters where OPA 90 applies. It must be appreciated that the asset base of tanker owners is very different from those involved in offshore drilling and exploration. They have nothing like the capital resources of a multi-national oil major. The capital market values of our top three largest Members quoted on NASDAQ /NYSE are a very small percentage of the capital market value of any large international oil company. Most of our Members are much smaller national based entities with relatively small profit margins. Without the certainty of statutory limits and availability of commercial insurance, only the very largest, self-insuring, tanker operators would be able to risk exposure to the OPA 90 regime and it is likely that the risk would significantly outweigh the benefits. This would lead to far fewer ships trading to the US, a shortage of imports and higher prices for consumers.

I hope these comments are helpful to your Committee's deliberations. Thank you again for the opportunity to participate in this hearing.



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