MARITIME TRANSPORTATION REGULATORY ISSUES

(115–14)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

MAY 3, 2017

Printed for the use of the
Committee on Transportation and Infrastructure

Available online at: http://www.gpo.gov/fdsys/browse/
committee.action?chamber=house&committee=transportation

U.S. GOVERNMENT PUBLISHING OFFICE

25–312 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

BILL SHUSTER, Pennsylvania, *Chairman*

DON YOUNG, Alaska
JOHN J. DUNCAN, JR., Tennessee, *Vice Chair*
FRANK A. LOBIONDO, New Jersey
SAM GRAVES, Missouri
DUNCAN HUNTER, California
ERIC A. "RICK" CRAWFORD, Arkansas
LOU BARLETTA, Pennsylvania
BLAKE FARENTHOLD, Texas
BOB GIBBS, Ohio
DANIEL WEBSTER, Florida
JEFF DENHAM, California
THOMAS MASSIE, Kentucky
MARK MEADOWS, North Carolina
SCOTT PERRY, Pennsylvania
RODNEY DAVIS, Illinois
MARK SANFORD, South Carolina
ROB WOODALL, Georgia
TODD ROKITA, Indiana
JOHN KATKO, New York
BRIAN BABIN, Texas
GARRET GRAVES, Louisiana
BARBARA COMSTOCK, Virginia
DAVID ROUZER, North Carolina
MIKE BOST, Illinois
RANDY K. WEBER, SR., Texas
DOUG LAMALFA, California
BRUCE WESTERMAN, Arkansas
LLOYD SMUCKER, Pennsylvania
PAUL MITCHELL, Michigan
JOHN J. FASO, New York
A. DREW FERGUSON IV, Georgia
BRIAN J. MAST, Florida
JASON LEWIS, Minnesota
PETER A. DEFAZIO, Oregon
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
EDDIE BERNICE JOHNSON, Texas
ELIJAH E. CUMMINGS, Maryland
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
STEVE COHEN, Tennessee
ALBIO SIRES, New Jersey
JOHN GARAMENDI, California
HENRY C. "HANK" JOHNSON, JR., Georgia
ANDRÉ CARSON, Indiana
RICHARD M. NOLAN, Minnesota
DINA TITUS, Nevada
SEAN PATRICK MALONEY, New York
ELIZABETH H. ESTY, Connecticut, Vice Ranking Member
LOIS FRANKEL, Florida
CHERI BUSTOS, Illinois
JARED HUFFMAN, California
JULIA BROWNLEY, California
FREDERICA S. WILSON, Florida
DONALD M. PAYNE, JR., New Jersey
ALAN S. LOWENTHAL, California
BRENDA L. LAWRENCE, Michigan
MARK DESAULNIER, California

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

DUNCAN HUNTER, California, *Chairman*

DON YOUNG, Alaska
FRANK A. LOBIONDO, New Jersey
GARRET GRAVES, Louisiana
DAVID ROUZER, North Carolina
RANDY K. WEBER, SR., Texas
BRIAN J. MAST, Florida
JASON LEWIS, Minnesota, *Vice Chair*
BILL SHUSTER, Pennsylvania *(Ex Officio)*
JOHN GARAMENDI, California
ELIJAH E. CUMMINGS, Maryland
RICK LARSEN, Washington
JARED HUFFMAN, California
ALAN S. LOWENTHAL, California
ELEANOR HOLMES NORTON, District of Columbia
PETER A. DEFAZIO, Oregon *(Ex Officio)*

CONTENTS

Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

Bill Shuster
Chairman
Mathew M. Sturges
Staff Director

Peter A. DeFazio
Ranking Member
Katherine W. Dedrick
Democratic Staff Director

April 28, 2017

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 Regulatory Issues"

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will hold a hearing on Wednesday, May 3, 2017, at 10:00 a.m., in 2167 Rayburn House Office Building to examine a number of maritime transportation regulatory programs. The Subcommittee will hear from the U.S. Coast Guard, Federal Maritime Commission, American Salvage Association, National Response Corporation, Rapid Ocean Response Corporation, Alaska Maritime Prevention and Response Network, American Waterways Operators, and World Shipping Council.

BACKGROUND

Oil Spill Response:

The *Oil Pollution Act of 1990* (33 U.S.C. 2701, et al.) (OPA) was enacted in response to the 1989 T/V Exxon Valdez oil spill in Alaska. OPA established an oil spill prevention, response, liability, and compensation regime that partially uses Clean Water Act authorities. Prevention measures include double hulls for tankers, the use of towing vessels, and vessel communication systems, as well as liners for onshore facilities. Response measures are in the form of contingency planning, national response units, Coast Guard district response groups, and tank vessel and facility response plans. Liability measures define "Responsible Parties" as vessels, and onshore and offshore facilities where the owner or operator is required to pay for removal costs and any damages created by a spill. Compensation allows an injured party to seek payment for spill damages occurring to natural resources, personal or real property, subsistence use, or loss of revenues.

Section 311 of the *Federal Water Pollution Control Act* (33 U.S.C. 1321) requires the owner or operator of a tank vessel, non-tank vessel over 400 gross tons, offshore facility, and onshore facility to prepare a vessel response plan for spills of oil or hazardous substances. The plans must identify a qualified individual with authority to implement removal actions, identify and ensure by contract (usually with an Oil Spill Removal Organization (OSRO)), the personnel

and equipment needed to remove to the maximum extent practicable a worst case discharge, and describe the training, equipment, and other response actions that will be undertaken during a spill.

Several geographic areas under U.S. jurisdiction do not have sufficient resources to meet the national planning criteria outlined in 33 CFR Part 155 due to the low density of population and vessel traffic. Areas where response resources are not available, or the available commercial resources do not meet the national planning criteria, the owner or operator may request acceptance of alternative planning criteria (APC) by the Coast Guard. Coast Guard policy requires the Captain of the Port (COTP) to review APC applications to determine the status of response equipment available in the COTP zone and consider any basic ordering agreements that may be in place with pollution response contractors. The COTP should also seek input regarding available response resources from the regional response team, area contingency plan committee members, district response advisory team, and other port stakeholders. Finally, the COTP should verify the vessel's owner/operator has ensured that the maximum levels of response resources are available by contract or other approved means before issuing an APC.

Salvage and Marine Fire Fighting (SMFF)

The OPA mandated that tank vessel owners ensure the availability of adequate response resources to respond to a vessel's worst case discharge, including fire and explosion. At the time, the vessel response plan (VRP) regulations did not provide specific salvage or firefighting requirements and relied on the vessel owners or operators to identify contractor resources. On December 31, 2008, the Coast Guard issued SMFF regulations in 33 C.F.R. Part 155, Subpart I (SMFF regulations). These regulations require owners and operators of covered vessels to contract for or provide their own resources to meet the required salvage and marine firefighting capabilities.

In 2013, non-tank vessels, with a capacity of 2,500 barrels or greater of fuel oil, were also required to meet SMFF regulations in their VRPs. All vessels with VRPs are now required to determine the adequacy of the SMFF resource providers and must "ensure by contract or other approved means that response resources are available to respond." Concerns have been raised regarding the availability of SMFF companies or their subcontractors' ability to meet the response requirement, since response vessels are allowed to be put to other uses. Coast Guard started a SMFF system response review in December 2016. The plan calls for eventual testing of all four identified SMFF response providers in all 41 Coast Guard COTP zones. See Table 1 in the Appendix regarding the required SMFF services and response timeframes.

International Convention on Standards of Training, Certification and Watchkeeping (STCW)

In 2010, the International Maritime Organization (IMO) adopted the "Manila Amendments" to the STCW for Seafarers. The STCW is designed to ensure the necessary global standards are in place to train and certify seafarers. Changes made by the 2010 amendments include: improved measures to prevent fraudulent practices associated with certificates of competency and strengthen the evaluation process; revised requirements on hours of work and rest and new requirements for the prevention of drug and alcohol abuse, and medical fitness; new

certification requirements for able seafarers; new requirements relating to training in modern technology (i.e., electronic charts and information systems); new requirements for marine environment awareness training and training in leadership in teamwork; new training and certification for electro-technical officers; updating of competence requirements for personnel serving on board all types of tankers; new requirements for security training, including for pirate attacks; introduction of modern training methodology (i.e., distance and web-based learning); new training and guidance for personnel serving on board ships operating in polar waters; and new training and guidance for personnel operating Dynamic Positioning Systems. The STCW changes entered into force on January 1, 2012, with a five-year transitional period until January 1, 2017. The Coast Guard further delayed the implementation until July 1, 2017.

Commercial Fishing Vessel Exams

The *Coast Guard Authorization Act of 2010* (P.L. 11-281) and the *Coast Guard and Maritime Transportation Act of 2012* (P.L. 112-213) required mandatory dockside safety examinations for certain fishing vessels starting October 15, 2015. The *Coast Guard Authorization Act of 2010* required that all commercial fishing, fish tender, and fish processing vessels that operate more than three nautical miles offshore, carry more than 16 individuals, or, for the purposes of a fish tender, engage in the Aleutian trade, demonstrate full compliance with fishing vessel safety regulation by completing a biennial dockside safety examination.

The *Coast Guard and Maritime Transportation Act of 2012* required that dockside safety examinations be completed by October 15, 2015, and extended the biennial dockside safety examination to *at least* once every 5 years. On June 21, 2016, the Coast Guard issued a notice of proposed rulemaking to implement the requirements of the mandatory provisions of 2010 and 2012 legislation (Docket ID: USCG-2012-0025).

Towing Vessel Inspections

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, entitled *Towing Vessel Safety,* 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.

On June 20, 2016, the Coast Guard published the rule as subchapter M of title 46 of the U.S. Code of Federal Regulations providing for the establishment of third-party inspectors, the implementation of need for certificates of inspection (COI) on all applicable vessels, and a requirement for recurring compliance inspections or audits. The rule took effect 30 days after its

publication in the Federal Register on July 20, 2016, but the requirement to receive a COI will be phased in over several years.

Maritime Liens

A maritime lien is a privileged claim on a vessel or other maritime property that typically arises due to a vessel owner's failure to fulfill contractual obligations, or an injury caused by a vessel, and is attached not only to the vessel itself, but also to the vessel's appurtenances (accessories) and equipment, as well as to its cargo, freights, and subfreights.[1] Additionally, maritime liens generally remain attached to maritime property during a sale.

In 2001, a federal court ruled that fishing permits were an appurtenance to a vessel, and therefore can be seized to satisfy maritime liens.[2] Some have proposed clarifying existing law to state that a fishing permit is not included in the whole of a vessel, or as an appurtenance, or intangible of a vessel for any purpose, and therefore not subject to a maritime lien. Another reform would include prohibiting maritime liens on state and federal fishing permits.

Federal Maritime Commission

The *Shipping Act of 1984* (46 U.S.C. §§ 40101 – 41309) establishes a regulatory process for the common carriage of goods by water in the foreign commerce of the United States to be carried out by the Federal Maritime Commission (FMC or Commission). The FMC is tasked with reviewing agreements filed with the Commission and administers a limited antitrust exemption for ocean carriers pursuant to agreements filed with the FMC to ensure competition among carriers.

Another stated purpose of the *Shipping Act of 1984* is to create a regulatory process with minimum government intervention and regulatory costs. Agreements must be filed with the Commission when carriers discuss, fix, or regulate transportation rates as well as other conditions of service. Recently, the Commission approved key changes to regulatory requirements for ocean carrier service contract filings and non-vessel-operating common carrier (NVOCC) service arrangement filings that will make it easier and more efficient for shippers and carriers to do business. A NVOCC is a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

The Commission allowed an amendment to a roll-on roll-off carrier agreement [3] which went into effect on January 23, 2017. U.S. industry raised concerns with the amendment due to it allowing ocean carriers to collectively negotiate rates with maritime service providers, including tugboat operators, which industry states would be disadvantaged by such negotiations. In March 2017, the Commission received another agreement,[4] which also would permit ocean carrier alliances to jointly negotiate with maritime service providers. U.S. industry again raised concerns regarding maritime service providers having no counterbalancing ability to take collective action.

---

[1] Thomas J. Schoenbaum, Admiralty and Maritime Law § 9-1, at 496 and 501(2001 ed.)
[2] Gowen, Inc. v. F/V QUALITY ONE, 244 F.3d 64 (1st Cir 2001)
[3] WWL/EUKOR/ARC/GLOVIS Cooperative Working Agreement (FMC No. 012309-001)
[4] The Tripartite Agreement (FMC Agreement No. 012475)

U.S. industry has also raised concerns with the limited timeframe of 12 days in which comments can be submitted to the Commission on agreements and amendments to agreements.

WITNESS LIST

Panel I

Rear Admiral Paul F. Thomas
Assistant Commandant for Prevention Policy
United States Coast Guard

The Honorable Michael A. Khouri
Acting Chairman
Federal Maritime Commission

Panel II

Mr. Todd Schauer
President
American Salvage Association

Mr. Steven Candito
Board Member
Former President and Chief Executive Officer
National Response Corporation

Mr. Nicholas Nedeau
Chief Executive Officer
Rapid Ocean Response Corporation

Mr. Norman "Buddy" Custard
President and Chief Executive Officer
Alaska Maritime Prevention and Response Network

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

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

APPENDIX

TABLE 1—SALVAGE AND MARINE FIREFIGHTING SERVICES AND RESPONSE TIMEFRAMES

Service	Location of incident response activity timeframe	
(1) Salvage	CONUS: nearshore area; inland waters; Great Lakes; and OCONUS: <or = 12 miles from COTP city (hours)	CONUS: offshore area; and OCONUS: <or = 50 miles from COTP city (hours)
(i) *Assessment & Survey:*		
(A) Remote assessment and consultation	1	1
(B) Begin assessment of structural stability	3	3
(C) On-site salvage assessment	6	12
(D) Assessment of structural stability	12	18
(E) Hull and bottom survey	12	18
(ii) *Stabilization:*		
(A) Emergency towing	12	18
(B) Salvage plan	16	22
(C) External emergency transfer operations	18	24
(D) Emergency lightering	18	24
(E) Other refloating methods	18	24
(F) Making temporary repairs	18	24
(G) Diving services support	18	24
(iii) *Specialized Salvage Operations:*		
(A) Special salvage operations plan	18	24

(B) Subsurface product removal		72	84
(C) Heavy lift[1]		Estimated	Estimated
(2) Marine firefighting	At pier (hours)	CONUS: Nearshore area; inland waters; Great Lakes; and OCONUS: <or = 12 miles from COTP city (hours)	CONUS: Offshore area; and OCONUS: <or = 50 miles from COTP city (hours)
(i) *Assessment & Planning:*			
(A) Remote assessment and consultation	1	1	1
(B) On-site fire assessment	2	6	12
(ii) *Fire Suppression:*			
(A) External firefighting teams	4	8	12
(B) External vessel firefighting systems	4	12	18

[1]Heavy lift services are not required to have definite hours for a response time. The plan holder must still contract for heavy lift services, provide a description of the heavy lift response and an estimated response time when these services are required, however, none of the timeframes listed in the table in §155.4030(b) will apply to these services.

MARITIME TRANSPORTATION REGULATORY ISSUES

WEDNESDAY, MAY 3, 2017

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

The subcommittee met, pursuant to notice, at 10:14 a.m. in room 2167 Rayburn House Office Building, Hon. Duncan Hunter (Chairman of the subcommittee) presiding.

Mr. HUNTER. The subcommittee will come to order. Good morning. This is our second hearing in the 115th Congress, where we will review maritime transportation regulatory issues through two panels of witnesses. I ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

The question is on the motion.

All those in favor, signify by saying aye.

All those opposed, signify by saying nay.

In the opinion of the Chair, the ayes have it, and the motion is agreed to.

Our second order of business is to welcome new Members, since our last hearing was interrupted and, although rushed due to House floor votes, there was not time to properly welcome the new Members to the subcommittee.

I welcome to the subcommittee Mr. Randy Weber, Sr., Representative for the 14th District of Texas, who joins us from the gulf coast. He is not here, so we are not going to introduce him any more.

Brian Mast, not here, not going to introduce him.

Mr. Jason Lewis, our vice chairman? Not here.

I will now yield to Ranking Member Garamendi to recognize his new Members.

You are recognized.

[Laughter.]

Mr. GARAMENDI. We note the Democrats present, and Alan Lowenthal down at the other end, representing the great port of Long Beach and part of L.A. Port.

OK, would you like to make a 20-minute statement on the value of the Port of Long Beach?

[Laughter.]

Mr. LOWENTHAL. A bit later. I will defer——

Mr. GARAMENDI. OK. We will defer. Welcome.

Mr. HUNTER. The LBC, right? Long Beach County. Home of Sublime. It is a great place.

I will now move on to opening statements. Since we have a full slate of witnesses, I am going to go through the topics fairly quickly.

The Oil Spill Pollution Act requires vessel owners and/or operators to have vessel response plans which address oil spills and salvage and firefighting response measures. The act requires vessel response plans to meet the national planning criteria, but there are areas of the country that, due to low population or vessel traffic, cannot, and therefore use an alternative planning criteria.

The Coast Guard's view is that alternative planning criteria is a temporary solution to reaching the national planning criteria, however long that might take.

Another issue with the alternative planning criteria is whether or not it should cover the geographic area of the captain of the port zone.

I am interested to hear from the witnesses on these issues.

The Coast Guard implements the International Convention on Standards of Training, Certification, and Watchkeeping, which is designed to ensure seafarers are properly trained and certified. The Coast Guard will update us on their progress implementing this International Maritime Organization convention.

While commercial fishing vessel exams are somewhat controversial with the industry, the Coast Guard will give us an update on where they are with the mandated program.

The towing vessel inspection program may get the award for the longest ever regulatory process, lasting over 12 years. Having finally issued the rule last year, the Coast Guard will discuss its implementation.

Lastly, U.S. industry has concerns with the Federal Maritime Commission's recent review of ocean carrier agreements. I commend the Commission for deciding not to approve an agreement for the companies that are in the process of merging, to not extend prematurely antitrust immunity.

The Commission and industry representatives will discuss this important issue today.

I will now yield to Ranking Member Garamendi.

Mr. GARAMENDI. Mr. Chairman, thank you. Given that our—I think I will ask that my statement be entered into the record.

And, without objection, so ordered.

Mr. HUNTER. Without objection, so ordered.

Mr. GARAMENDI. Thank you. And simply say that there are some very, very important things going on here with regard to the regulation. I am looking forward to this hearing.

Of particular interest is the Federal Maritime Commission and their implementation of the Shipping Act, as it revolves around the issue of the alliances and the impacts that that may have on providers of services.

And finally, obviously, the Coast Guard, just to echo what you said—not echo it, just say yes, you are on track. We need to hear from the Coast Guard on the regulatory issues. Obviously, it is

very, very important that these regulations be done in a timely and proper way.

And, with that, I yield back.

Mr. HUNTER. I thank the ranking member.

Pursuant to rule 1(a)1 of the rules of the Committee on Transportation and Infrastructure, I move that the chairman be authorized to declare recesses during today's hearing.

The question is on the motion.

All those in favor, signify by saying aye.

All those opposed, signify by saying no.

In the opinion of the Chair, the ayes have it, and the motion is agreed to.

On our first panel we will hear from Rear Admiral Paul Thomas, Assistant Commandant for Prevention Policy of the Coast Guard, and Mr. Michael Khouri, Acting Chairman for the Federal Maritime Commission.

Admiral Thomas, you are recognized to give your statement.

TESTIMONY OF REAR ADMIRAL PAUL F. THOMAS, ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD; HON. MICHAEL A. KHOURI, ACTING CHAIRMAN, FEDERAL MARITIME COMMISSION; TODD SCHAUER, PRESIDENT, AMERICAN SALVAGE ASSOCIATION; STEVEN CANDITO, BOARD MEMBER, FORMER PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL RESPONSE CORPORATION; NICHOLAS J. NEDEAU, CHIEF EXECUTIVE OFFICER, RAPID OCEAN RESPONSE CORPORATION; NORMAN "BUDDY" CUSTARD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ALASKA MARITIME PREVENTION AND RESPONSE NETWORK; THOMAS A. ALLEGRETTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN WATERWAYS OPERATORS; AND JOHN W. BUTLER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, WORLD SHIPPING COUNCIL

Admiral THOMAS. Thank you and good morning, Chairman Hunter, Ranking Member Garamendi, distinguished members of the subcommittee. It is an honor for me to be here with you this morning to update you on the status of the Coast Guard maritime regulatory program.

Mr. Chairman, on behalf of Coast Guard's men and women everywhere, thank you for your leadership of this committee and continued strong support of our United States Coast Guard.

As you know, the Coast Guard offers truly unique and enduring value to our Nation. As the only branch of the U.S. armed services within the Department of Homeland Security, the Coast Guard is uniquely positioned to help secure the border, protect the homeland, and safeguard America's national and economic security.

But, as our Commandant discussed with you during his April 4th hearing, increasing mission demands, years of fiscal constraint, and diminishing purchasing power of our operating funds has eroded our ability to simultaneously execute the full set of missions and be prepared to respond to global contingencies.

Secretary Kelly understands this, and he fully supports the President's call to rebuild all of our Nation's armed services. Prudence demands that we invest in and rebuild Coast Guard capacity,

including the capacity of our marine safety and regulatory programs, as they are key components to the Coast Guard's national and economic security missions.

Our Nation's Marine Transportation System supports over $4.5 trillion of economic activity and hundreds of thousands of American jobs. The Coast Guard's governance of this system ensures that it remains safe, secure, environmentally sound, and productive, particularly with regard to shared critical infrastructure that our Nation relies on for national security, border security, and economic prosperity.

Regulations are one tool by which the Coast Guard shapes the environment in which we operate, and manages the risks in the Marine Transportation System. When we do regulate, we do so in response to congressional mandates, international obligations, and demand from industry and the public. And we are always mindful of the need to facilitate commerce, not impede it.

Coast Guard regulations provide the certainty required to encourage investment in innovation, and the level playing field needed to ensure fair competition and free market solutions.

In addition, a unified Federal regulatory regime adds consistency, and reduces the burden that can be associated with multiple, often contradictory State regulations, particularly for a global industry like shipping.

Coast Guard regulations are developed in full compliance with the Administrative Procedure Act, and with all administration directives and Executive orders. We work in close coordination with the regulated industry, science and academic communities, the interagency, the public, and our international counterparts to develop risk-based performance standards that provide the regulated industry flexibility in the development of their compliance strategies.

The Coast Guard is unique among Federal regulators, because we operate in the environment we regulate. And we know firsthand how maritime operations are impacted by regulations.

For this reason, the Coast Guard is focused on practical implementation and measured enforcement of regulations, particularly in the case of new regulatory regimes, like the subchapter M towing vessel inspection, or the salvage and marine firefighting regulations that require both the regulated industry and the servicing industries to develop capacity and capability over time, before full implementation can be achieved. This fully informed, commonsense approach to the development and implementation of regulations enhances our ability to manage all risks in the increasingly complex nationally vital Marine Transportation System.

Thank you again, Mr. Chairman, for your strong support of the Coast Guard, and for the opportunity to testify today. I ask that my written statement be entered in the record, and I look forward to your questions.

Mr. HUNTER. Thanks, Admiral Thomas. And we just figured out we have another panel that is going to be discussing oil spill and fire salvage issues, and we would ask if you could stick around for that panel, if you have time. We just asked Joanne behind, Commander——

Admiral THOMAS. If Joanne says it is OK, sir, I will——

[Laughter.]

Mr. HUNTER. OK. Thank you, Admiral.

Mr. Khouri, you are recognized.

Mr. KHOURI. Thank you, Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee. Good morning, and thank you for the opportunity to testify today. I would like to address issues, several Shipping Act and Federal Maritime Commission issues of current interest.

The FMC is a competition agency charged by Congress to prevent anticompetitive behavior by competitor collaborations in the international ocean liner industry, and protect competition.

This industry transports 65 percent of our Nation's waterborne international imports and exports. We are also charged with a mission of ensuring that pro-competitive efficiencies and cost savings are obtained for U.S. consumers.

On a broad scale, the Shipping Act provides full authority to the Commission to effectively carry out its mission.

The competition standard used by the Commission to review carrier agreements is section 6(g) of the act. It is, in all relevant respects, the same standard used by the Department of Justice and the Federal Trade Commission when they review mergers, acquisitions, and competitor collaborations. Congress, however, specifically designed our competition standard to apply to the ocean transportation industry.

As with DOJ and FTC, we assess industry concentration using the Herfindahl-Hirschman Index. Collaborations that do not result in concentrated markets under HHI are unlikely to produce adverse competitive effects. Key elements in any antitrust analysis are ease of entry into a market, ease of exit from the market, and availability of competitors able to compete in the relevant market.

Note, all antitrust laws, including the Shipping Act, protect competition, not individual competitors. The act provides for public comment. Together with our competition analysis, the Commission considers the public's views in determining how to address anticompetitive concerns.

The "Prohibited Act" section of the act mirror remedies found in other competition statutes. They provide the FMC with additional tools to address improper conduct, such as price-fixing, market allocation, unreasonable practices, discrimination in price or accommodation, refusals to deal, retaliation, boycotts, predatory practices, and discrimination based on shipper affiliation.

The ocean liner industry has undergone consolidation. However, by the end of 2018, there will still be 13 major shipping lines operating in the international trades. The number of major carrier alliances serving the U.S. trades has decreased from four to three. These two developments raise new issues and concerns for the FMC, and have changed the way we approach carrier agreements.

Broad authorities and language acceptable for a world with 20 or more carriers and more numerous but smaller alliances presented far fewer competitive concerns. With the increase in size and market share of alliances, the FMC has insisted on narrower agreement authorities and strict, clear, and definite agreement language.

Importantly, we have strengthened the quarterly and monthly monitoring information requirements. Alliances do provide ocean carriers with operational flexibility, efficiencies, and opportunities for cost savings. In a capital-intensive industry they facilitate the survival of independent companies, preserving industry competition and averting further industry concentration.

Because of concerns about potential market power of larger alliances, the FMC carefully analyzes and examines agreements that request joint procurement authority. After that market analysis, if the market shares and indicators fall within generally accepted antitrust standards, then the FMC has no legal basis to request an injunction in Federal court, where we, the government, have the burden of proof.

Note, please, all U.S. competition laws, including DOJ and FTC rules, and the Shipping Act, allow for joint collaboration by competitors because they can benefit the end American consumer.

To close, the Federal Maritime Commission, with its industry expertise and experience, is well positioned to understand the unique dynamics of the shipping industry and all of its stakeholders to apply to the competition laws fairly in this area, and to prevent anticompetitive behavior in these carrier agreements, all to ensure maximum benefits for the U.S. shipping public.

Thank you for your attention. I ask that my written statement be entered into the record. I would be pleased to answer any questions you may have.

Mr. HUNTER. Thank you, Mr. Khouri. Without objection, it will be entered into the record.

I am going to start. Chairman Young is not here. He is at a doctor's appointment. So I am going to ask some questions on his behalf, things that he is interested in that deal with Alaska. So let's start with those.

Admiral, for over 20 years in Alaska, the approved alternative planning criteria covered the entire Western Alaska Captain of the Port Zone. Why did the Coast Guard approve alternative planning criteria for two entities covering only a portion of the Western Alaska Captain of the Port Zone?

Admiral THOMAS. Thank you for the question, Mr. Chairman. I know this is an important issue to Congressman Young. And he has been in contact with the Coast Guard, and also with our district commander, Rear Admiral Mike McAllister, on this topic.

The regulations provide for alternative planning criteria that will allow vessels transiting certain portions of Alaska to meet the requirements by procuring services that are specific to their transit routes.

And so, the alternative criteria that have been approved by the Coast Guard are in full compliance with the regulations. And we are working hard with the congressman to seek additional solutions that will ensure coverage for the entire region.

Mr. HUNTER. Is it the Coast Guard's expectation that the equipment of all oil spill response organizations in western Alaska will be available for any response in which an individual OSRO is responsible, as stated in Mr. Custard's testimony?

Do you believe OSROs which are not responsible to respond will provide such equipment, despite their clear assertion that they are not—that they will not respond?

Admiral THOMAS. I absolutely believe that, in the case of a spill, all equipment in the area will be available for the Federal on-scene coordinator to leverage in response to that spill. And, in fact, we have seen that in several recent cases in Alaska, where we were able to bring to bear equipment from OSROs, who were not the primary providers, in order to mitigate a situation or, in some cases, prevent it from actually turning into a spill.

So, we absolutely believe that the increased response capability that the APC [alternative planning criteria] in Alaska have brought to the region are a good thing, and the total price of coverage has decreased, as a result.

Mr. HUNTER. Could you explain to me the difference between an oil—your oil vessel—oil spill response vessel and a firefighting response vessel, according to Coast Guard criteria?

Admiral THOMAS. Well, they are certainly very different capabilities. The oil spill response vessel typically brings the capability to recover oil from—floating oil from the water. Firefighting vessels will bring——

Mr. HUNTER. So they have a big boom?

Admiral THOMAS. They have a number of different mechanical——

Mr. HUNTER. To contain an oil spill?

Admiral THOMAS. Contain it, sometimes to deliver disbursements or other means of mitigating oil on the surface of the water. The firefighting vessels bring the ability to put foam and water on to a fire.

So there are different capabilities. Some vessels have both.

Mr. HUNTER. Some vessels do have both?

Admiral THOMAS. Yes, sir. Some vessels have both.

Mr. HUNTER. How many areas of the country cannot meet the national planning criteria for vessel response plans under the Oil Pollution Act?

Admiral THOMAS. Well, there are a number of areas of the country, mostly the remote areas, where we have approved alternative planning criteria specifically because the national planning criteria cannot be met. Alaska is one of them. Guam would be another one.

But in mainland—you know, the continental U.S., the national planning criteria is appropriate, and can be met.

Mr. HUNTER. So you say—so, for instance, you have it in the Gulf of Mexico, right? But you don't have planning criteria that can meet the actual criteria.

Admiral THOMAS. Yes, sir, particularly——

Mr. HUNTER. In the gulf. But they can't in Alaska?

Admiral THOMAS. Yes, sir. That is right. They cannot in Alaska, mostly due to the expanse and the remoteness of the area.

Mr. HUNTER. So you issue waivers and give them the opportunity to have alternative planning criteria in Alaska?

Admiral THOMAS. The regulation, again—and this is a perfect example of practical implementation of regulation—allows for the issuance of alternative criteria when the national planning criteria and the regulation cannot be met, and that is a means by which

we can grow with our national capacity to respond, while still accommodating the needs of commerce.

Mr. HUNTER. Thank you. With that I would yield to Mr. Garamendi—or Mr. DeFazio, if Mr. Garamendi would like to yield.

Mr. GARAMENDI. The structure of the hearing brings Admiral Thomas back a couple of times, so I am going to just move to some things that I think are not likely to be covered in the remainder of the hearing, and we will come back to the other issues later.

One thing that we have wrestled with here all the time I have been on this committee is the ballast water issue. It remains an issue. Currently among the things that are of concern—just some questions for Admiral Thomas—has the Coast Guard been able to devote the necessary personnel and resources to conduct effective oversight of the independent laboratories that are conducting the ballast water management systems type approval testing?

Admiral THOMAS. Thank you for the question, Congressman. And as always—and I think our Commandant is on the record that our Nation needs more Coast Guard, and that extends to all of our responsibilities—we do conduct oversight at the independent labs. We do that in the process of first certifying them as an independent lab and then, in the course of their work, we visit them.

No doubt, though, that particularly as the number of labs increase, and the workload at those labs increase, our ability to provide the level of oversight that we would like to is challenged by our lack of resources.

Mr. GARAMENDI. Well, certainly, if the 14-percent cut actually goes through, that situation will get worse. But even at this stable funding level of today, you are not able to do the kind of oversight that you would—that you believe is necessary.

Admiral THOMAS. Our Commandant is on record saying that the Nation needs a Coast Guard that has a—about a 4-percent increase, annually, in our O&M funds, and about a $2 million investment every year in our infrastructure. And that type of budget would allow us to rebuild readiness across all of our missions, sir, and fill the gaps, including the ones that you are pointing out with regard to our oversight of independent labs.

Mr. GARAMENDI. I didn't realize I had given you an opportunity to advocate for your budget, but I think it just happened.

[Laughter.]

Mr. GARAMENDI. Know that at least this member of this committee remains concerned about the quality of the oversight, and the independent testing laboratories. And, obviously, the international standards, all of these things remain a concern. It is a concern I know in California, from the various ports and water quality issues within those ports and the introduction of invasive species.

An old issue that seems not to go away is a very old, stern paddlewheel steamer called the *Delta Queen*. Where are you with regard to the issue of the exemption for the *Delta Queen* from the fire safety standards?

Admiral THOMAS. Congressman, thank you for that question, as well. I am aware of some work in Congress on legislation that would exempt *Delta Queen* from certain provisions, particularly structural fire protection provisions. The Coast Guard has not

taken any action, independent of providing advice on that particular legislation.

However, we do not support an exemption for any vessel that would increase the risk, particularly of fire at sea.

Mr. GARAMENDI. So, the Coast Guard remains opposed to exemptions from the fire safety standards for this vessel or any other vessel. Is that correct?

Admiral THOMAS. That is correct, Congressman.

Mr. GARAMENDI. Well, we will undoubtedly be wrestling with that, as that piece of legislation comes around.

The backlog on regulations. I guess that goes back to the 14-percent proposed cut and the additional $2 billion that you just requested.

So, have you received any new directives about the regulations from the Secretary of Homeland Security?

Admiral THOMAS. Well, Congressman, about the backlog, I mean, we are proud of the fact that we have reduced our regulatory backlog by over 40 percent since 2009. And we currently have about 60 rulemakings always working—each of our authorization acts adds, on average, 5 rulemakings to that backlog. So we have been able to hold steady, make improvements and hold steady.

We are currently studying and working with the Department on the impacts of the Executive orders that have to do with regulations, and particularly with regard to the requirement to identify regulations to take off the books if additional ones go on.

And we have—we are receiving some guidance from the Department and some from OMB, as well. We haven't really finished our assessment of what that will mean for our regulatory program.

Mr. GARAMENDI. Yes, the two-for-one issue. The regulations that you are required to update really are not new regulations. They are updating existing regulations, for the most part, as I look at those regulations.

So, you haven't yet figured out how to do the two for one, two out and one in. So what—in your opinion, given this point, given that Executive order, how then would you update the remaining regulations that are before you? Where would you find two to eliminate, as you update one?

Admiral THOMAS. So, we are currently conducting a comprehensive review of all the regulations. There are certainly some regulations that are still on the books that are outdated. And the reason we haven't taken them off the books is because the effort required to do that really exceeds the benefits, because there is really no one impacted by those regulations.

So, for example——

Mr. GARAMENDI. I want to hone in on that. To get rid of a regulation, it is the same process as establishing a regulation. Is that correct?

Admiral THOMAS. Yes, sir. And we are working hard to understand exactly how that process would work, and particularly how it would work in time with the process of putting additional regulations on the books.

Mr. GARAMENDI. And the other issue has to do with some 30,000 vessels that you are required to examine. I am basically giving you an opportunity to make a pitch for that $2 billion. Would you like

to comment on that piece of it, and get it on the record as to what it takes to examine the 30,000 fishing vessels and the 5,000 commercial towing vessels?

Admiral THOMAS. Well, thank you for the opportunities, Congressman. We are challenged, as our mission demands grow across the Coast Guard's mission set and, in addition, with our marine safety mission. And we—as the Commandant has said, we need more Coast Guard.

The Commandant has identified, you know, growth in O&M and in our infrastructure investment, which will allow us to close our readiness gaps and meet the mission demands that the Congress has put on us.

Mr. GARAMENDI. For the record, if you would, please, provide us with more detail on what it would take to carry out the specific responsibilities that you have on those inspections: the number of personnel, the amount of money it would take, and also the timeframe of trying to move through those 30,000 vessels, given the present budget level.

Admiral THOMAS. Yes, sir, be happy to provide that.

Mr. GARAMENDI. For the record, thank you.

Admiral THOMAS. For the record.

[The information follows:]

For towing vessels, the Coast Guard would need 76 additional billets at a recurring cost of $9,306,000 and it would take 4 years to complete issuing the initial Certificates of Inspection (COIs) to the affected population of towing vessels. For fishing vessels, the Coast Guard would need 60 additional billets at a recurring cost of $7,540,000 and it will take 3 years to complete the current 5-year examination cycle of the affected fishing vessel population.

In regard to Towing Vessels: The number of marine inspectors required to verify compliance with the Subchapter M regulations—"Towing Vessel Regulations," is directly related to the number of vessels enrolled in the Towing Safety Management System (TSMS) program. The TSMS program enables Coast Guard approved Third Party Organizations (TPOs) to verify compliance with the regulations, with the Coast Guard exerting oversight. If a majority of operators use a TPO to verify compliance, the Coast Guard's existing level of personnel should be adequate to handle the initial round of inspections for certification of the 5,000 towing vessels subject to Subchapter "M." Vessel owners and managing operators that choose not to use the TSMS program will require a more indepth annual exam from Coast Guard inspectors. To date, we do not have a firm number of how many vessel owners or managing operators will select the TSMS option. Once the initial round of inspections is completed in 2021, the Coast Guard will have sufficient records to assess the long-term personnel needs to conduct inspections of towing vessels.

In regard to Fishing Vessels: The Coast Guard has been able to meet the 5-year mandatory exam cycle requirements for the approximately 20,000 fishing vessels that require an exam using existing Coast Guard staff, qualified Third Party Surveyors/Examiners, and Coast Guard Auxiliary personnel.

Mr. GARAMENDI. I yield back my time.

Mr. HUNTER. I thank the gentleman.

I yield to Mr. Rouzer for 5 minutes.

Mr. ROUZER. Thank you, Mr. Chairman.

Admiral, with regard to salvage and marine firefighting, what is the Coast Guard's position on where the response industry is today

with regard to providing response capabilities for salvage and marine firefighting incidents?

Admiral THOMAS. Thank you for the question, Congressman. The congressional intent, when the Coast Guard implemented the regulations, the salvage and marine firefighting regulations, was to build our national capacity and capability to respond to such incidents. Our view is that the regulation has succeeded in that regard.

That said, there are certainly portions of the country where we have not yet reached the capacity that is intended by the regulation, and we are focused on ensuring that we continue to build capacity in those areas.

Mr. ROUZER. Is the Coast Guard aware of any incidents where a response vessel was not on scene within the required timeframe for a vessel incident?

Admiral THOMAS. I believe there have been a few incidents, but the key to remember is that the standards and the regulations are planning factors, not performance factors. And there are often, very often, other things like weather, et cetera, maybe multiple incidents at one time will make it impossible for the actual performance, on-scene performance, to match the planning factors that are required in the regulations.

But we watch that very carefully. And when there is a significant mismatch between the capability that we expected to be available and that which is available, we will do some work to determine why.

Mr. ROUZER. Have there been any incidents where a response vessel has refused to respond, as required by contract? What would prevent them from responding? You touched on that slightly. And would this be a vessel of opportunity, or would this be when a vessel of opportunity would be called to respond?

Admiral THOMAS. Again, in an actual event, as opposed to when—meeting their planning requirements, we are going to—the responsible party is going to use whichever resources are immediately available and can provide the services needed at the time.

There may be—there may have been times—and I am not aware, personally, of specific incidents, though the next panel may have some examples, where a resource or a vessel that has been identified in a plan is unable to respond, as was originally thought would happen, and therefore has refused service, in which case a vessel of opportunity clearly can step in and take that responsibility.

Mr. ROUZER. For the sake of time, Mr. Chairman, I yield back.

Admiral THOMAS. Thank you.

Mr. HUNTER. I thank the gentleman. I would now like to yield to the ranking member of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. I want to continue where we left off last time, Mr. Khouri.

You know, the issuance of the—to the folks of—you know, authority to jointly negotiate with our marine service providers, who are specifically precluded under U.S. law from joining together to negotiate—so we are talking about, you know, a conglomerate negotiating with individual service providers in the U.S. Apparently, your staff did an economic analysis. But the economic analysis has not been made available. Why not?

Mr. KHOURI. Thank you, Congressman. The Shipping Act statute under section 6(j) specifically says that all of the information provided by filing parties and all of the information developed during the review process is, number one, confidential; and, number two, is not subject to FOIA.

When we are—when the Commission is operating under this particular area and authority, we are essentially doing a law enforcement function, and these are the same types of rules that would obtain if all of the information was submitted in a normal situation at Justice, for example, under——

Mr. DEFAZIO. I—OK. If we could, so——

Mr. KHOURI. May I——

Mr. DEFAZIO. Sir, you have given me an excuse, or a reason. But here is the point I want to make. You have the foreign entity joining together to negotiate singly with our service providers. Our service providers, you know—how can you conclude that they aren't put at a disadvantage in these sorts of agreements? And what kind of analysis could you conduct that would say—that is going to have confidential information?

What did you get that was confidential from the RO/RO providers? Did they tell you what rates they were going to bargain for? What did they give you that was confidential?

Mr. KHOURI. If I could——

Mr. DEFAZIO. Well, just—what is confidential about the fact a conglomerate is now going to be authorized to negotiate singly with people who can't form a similar organization? What—tell me what is confidential in there.

You may be—you know, you are going to cite the law, and this and that, and this is all confidential. Your staff did an analysis. The analysis was there would be no negative impact. And you are saying that we can't see that analysis, the people who are going to be negotiating, you know, are somehow provided confidential information. What is the confidential information?

Mr. KHOURI. What I have offered to the Members that I have met with, and I offer to you today, Congressman, is, if I continue, under section 6(j) we can produce that information under a court order, or if Congress requests it.

Mr. DEFAZIO. OK.

Mr. KHOURI. And we would welcome—that was my final part. We would——

Mr. DEFAZIO. OK, great.

Mr. KHOURI [continuing]. Welcome a request from Congress.

Mr. HUNTER. I am pretty sure he just requested it. So there you go. Congress just requested it. Go ahead.

Mr. KHOURI. So we would be happy to bring that before you in a confidential setting with you and your staff. Let us bring our economist with us to that meeting, and lay out for you what we were looking at when we—and please understand, Congressman, it is a 2-step process.

It is—the authority that was given to the RO/RO group was not to enter into an agreement. They were allowed to go and begin a negotiation. And then, any agreement, as it was, has to then be brought back to the Commission so we can complete a full economic

analysis back and forth. So, we are still at the front end. The RO/ROs have never even started to do a single negotiation.

All we said was when we looked at all of the ports going around, it appeared that the market shares were sufficiently low to say, OK, let's let them go ahead and have the right to go talk, but not the right to contract. That is a second part that would have to still be done when they come back and let us look at very specific situations.

Mr. DEFAZIO. You are saying you have, your Commission, has the authority to look at an individual contract between a maritime service provider, domestic, and the foreign entity in this case, the RO/ROs, and that you could then say, no, that rate is too low, or somehow disallow it?

Mr. KHOURI. No, we do not regulate rates whatsoever, in any shape or fashion——

Mr. DEFAZIO. OK. Well, then, what would you—what would they bring back to you that you would review?

Mr. KHOURI. We would be looking at, from a well-accepted antitrust standards, of what is the market power of the purchasing entity. In this case it would be the RO/RO agreement. What is their market share of the product being purchased, which is tug assist.

Mr. DEFAZIO. All right. Well, the Justice Department, I have read—there are two letters from Justice expressing tremendous concern about this. But your—but the Commission is saying, "We don't have a concern," or, "Thus far we don't have a concern. We might have a concern after we see what happens"? I don't—I am not quite following this.

And I think, again, Mr. Chairman—my time is up, but I think this really points to the pressing need for Congress to consider some legislation on this area.

Mr. HUNTER. If you don't mind, keep going on this. I have got a question.

You say you can't do anything, that they entered into negotiations. So what actions can you take after they make an agreement? What do you do after that?

So you allow them to go into negotiations, right?

Mr. KHOURI. Correct.

Mr. HUNTER. Then you step back after you allow that. And what if they make an unlawful agreement? I mean what if their agreement, as a consortium, is unlawful? Then what can you do?

Mr. KHOURI. Then we would go into court with that evidence before a Federal judge and seek an injunction saying——

Mr. HUNTER. Well, let's make this easier. How do you determine that they created an uncompetitive practice? How do you make that determination to even take them to court?

Mr. KHOURI. The standards are—have been gone over by the Department of Justice and the Federal Trade Commission.

Mr. HUNTER. Sure, but—all right, well, just tell us. How do you make that determination, you, the FMC? Otherwise, why do we have the FMC? Why not just have the Department of Justice and the FTC?

Mr. KHOURI. Well, I think—perhaps let me, if I can, just go back to Congressman DeFazio's last statement to help fill in exactly what you are trying to get to, Mr. Chairman.

The Federal—excuse me, the Department of Justice, in their letter that you referenced, Congressman, they began with a factual assumption that all of the alliances were, in effect, mergers, and they say that they foreclose all competition amongst the alliances.

And so, they started with a factual situation that is simply not true. For each one of the alliances, we have monitoring information that there is very active price competition within each alliance, members within each alliance, and there is very active separate decisionmaking going on as to capacity coming in and out of all of those trades, both inside of the alliance, and capacity by members outside of the alliance.

Mr. HUNTER. So let's just—so you have—let's say three or four companies get together and form an alliance. You watch them and make sure that they don't talk amongst themselves and what they are going to charge the—or what they are going to try to get the port to agree to as they come in? You guys know that for a fact?

Mr. KHOURI. We——

Mr. HUNTER. These are foreign entities.

Mr. KHOURI. We follow—they file monthly and quarterly data on all of the revenue, on their boxes, on capacity coming in and out. And we are looking for, on an active basis, to see if there are parallel actions in the marketplace that would indicate what you just put at the end of your question. And what we continually find is there remains active competition on a pricing basis and on a capacity basis inside of each alliance.

If we found that they began to have parallel activity, I can promise you, Mr. Chairman and Congressman DeFazio, that we would be in court as quick as we could with that evidence presented to a Federal judge, saying, "Sir, this alliance is now not operating the way it should. We want an injunction and break it up."

Mr. DEFAZIO. Mr. Chairman, could you just yield back for a second?

Mr. HUNTER. I yield back.

Mr. DEFAZIO. Because I just want to follow up on this point. We are talking about one of these alliances—and again, I am reading from the Justice Department letter. For example, four companies, three of which are ocean carriers slated to join the alliance, have pled guilty. Eight corporate executives have been indicted or pled guilty in connection with worldwide conspiracy involving price fixing, bid rigging, market allocation among provides of roll-on/roll-off cargo shipping.

In addition, three companies, six individuals have pled guilty or been convicted at trial in connection with a price-fixing conspiracy among carriers of domestic freight between the continental U.S. and Puerto Rico.

And that is not a problem? I mean this went on. They—you know, substantial fines were assessed. Was that initiated by FMC or by Justice?

Mr. KHOURI. There are two different actions in the issue——

Mr. DEFAZIO. OK, so we have criminals, you know, running these companies that are now getting limited antitrust immunity. And they are going to negotiate fairly with U.S. marine service providers who have to individually negotiate with them, and these

people aren't going to bring market clout and put our people at a disadvantage?

I mean this is just extraordinary. It defies common sense and also, you know, history, since we get a bunch of criminals in these companies.

Mr. KHOURI. The Puerto Rico trades that you mentioned, Congressman, those operated under trade lanes regulated by the Surface Transportation Board, not the Federal Maritime Commission.

The second matter that you bring up, these were activities by some carriers that they were operating without an agreement. They did a separate—totally outside of the sight of any—there was no agreement filed for which we could have monitored. So they were acting totally outside of any regulatory scope, and it was totally illegal, and they paid a heavy price for that.

Mr. DEFAZIO. But now some of them are in the alliance, and the same people are running the companies. I mean that is who you are dealing with.

Anyway, thank you, Mr. Chairman. Thank you for the time.

Mr. HUNTER. I thank the gentleman. I yield to Mr. Graves from Louisiana.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman. Admiral, Chairman, I appreciate you both being here today.

Admiral, the Coast Guard issued a notice of proposed rulemaking for electronic readers at certain facilities that handle certain dangerous cargo, CDC. In the proposed rulemaking there was a proposed nexus between facilities and maritime access, where the electronic readers were going to be needed.

As you began to move forward in the rulemaking, in your final rulemaking, you actually significantly expanded the scope of the electronic reader to include any facility that could be within a security site plan. And that was a fairly expansive change within the rulemaking that was not part of the original notice. Therefore, people—the Coast Guard didn't have the benefit of comments.

I am concerned about the lack of tie-back to actual maritime in this case, under the rule. The site security plan is not necessarily—that is not necessarily—it doesn't necessarily have a connection to maritime. A site could be anything. Folks could have a site security plan upon an entire facility, even though it could be walled off or prevented from having access to maritime.

Can you give me a little bit of insight into why that expansion occurred during the rulemaking, and why that wasn't part of the notice of proposed rulemaking to begin with?

Admiral THOMAS. Congressman, thank you for the question. I am very familiar with that regulation, was involved in the development and implementation of the regulation all the way through, and I am very confused by your question.

When we published a notice of proposed rulemaking, the population of impacted facilities that are regulated under the Maritime Transportation Security Act was quite large. The final rule, it was narrowed significantly. And normally, the question that I get is how come that narrowing occurred, so I am confused by your question.

But in addition, the Maritime——

Mr. GRAVES OF LOUISIANA. Let me ask this. Did you remove the vessel interface requirement? Wasn't that the whole thing, is that when you finalize the rule you eliminated that vessel interface requirement?

Admiral THOMAS. Sir, and again, at the risk of maybe not understanding your question, the Maritime Transportation Security Act allows the facility operators to define for the Coast Guard what is their regulated footprint in the facility.

And so, there is nothing about the TWIC reader rule that changed that. What we—what the TWIC reader rule said was, at the access points that you have defined in your approved security plan, you must have TWIC readers. And if they define those access points beyond the facility-ship interface place, then that is where they—because that is the assessment that they did, they were going to move their access points out—then that is where the readers need to go.

But again, at the risk of maybe not understanding your question, there is nothing in between the proposed rule and the final——

Mr. GRAVES OF LOUISIANA. I understand that the law relegates the scope to site security plans. I understand that. However, in the notice of proposed rulemaking, you limited the geographic scope to the vessel-to-facility interface area.

In the final rulemaking, you no longer required that nexus, or that interface. Therefore, the entire site security plan was within the scope. So that is a growth of scope. And my point is that site security plans for a company that may carry out various activities, that may go—that site security plan may be beyond the geographic scope of a vessel interface.

Admiral THOMAS. All right——

Mr. GRAVES OF LOUISIANA. And so, here is what my concern is. My concern is that companies may come back and start compartmentalizing site security plans—which I don't think is to the benefit of overall security—in an effort to not have to include electronic readers all over these huge facilities. Does that make sense?

Admiral THOMAS. Well, I would really like to offer you a brief on this topic, but I agree with you. There are a number of regulated facilities that have, by their own choice, extended the regulated perimeter beyond what is required by the law.

Mr. GRAVES OF LOUISIANA. OK. So we agree on that point. Do you agree that you removed the nexus for vessel-to-facility interface in your final rulemaking when that was in the notice of proposed rulemaking?

Admiral THOMAS. Sir, I don't want to disagree with you on that. Again, I don't——

Mr. GRAVES OF LOUISIANA. If I am wrong, that is fine. Tell me I am wrong, if I am wrong. Because that actually would sort of be very helpful, and what I was going to ask you to do, anyway.

Admiral THOMAS. I am not clear enough that I understand what you are saying that I can tell you that you are right or wrong.

But again, this is—for me, this is totally——

Mr. GRAVES OF LOUISIANA. Oh, come on. You were going down such a good path.

[Laughter.]

Admiral THOMAS. Well, that doesn't ring a bell to me, that we removed the nexus. I think there is probably an interpretation issue in that the law says you need a nexus between the facility and the—you need to secure the area where you have that nexus between the facility and the ship.

Many facilities, for a lot of different reasons, have extended the regulated area beyond that. When they do their risk assessment and they give us their plan, we approve the plan, based on their assessment. And, in some cases, they have extended the regulated perimeter way beyond what is required by the law.

Mr. GRAVES OF LOUISIANA. Would you be willing to issue a clarifying statement that the rule applies to vessel-to-facility interface areas that handle CDC in bulk? Is that the intent?

Admiral THOMAS. I would be certainly willing to make sure I understand the issue, and then issue any clarifying statement that is required. But right now, sir, I am really not understanding this issue well enough to make you any declarative promises.

Mr. GRAVES OF LOUISIANA. Based upon the perhaps uncertainty here—and again I will totally open up, and maybe I am not understanding this correctly. But based upon my read, I think that there was potentially a geographic expansion that occurred here that perhaps wasn't intentional. Would you be willing to—if we can determine that there is uncertainty here, would you be willing to grant a longer compliance period, just so we can help sort this out, rather than requiring these facilities, many of which are in our district, to have to significantly change their reader profile?

Admiral THOMAS. Absolutely, sir. If there are unintentional consequences to the regulations that we—certainly don't meet congressional intent, we are all about practical implementation of regulations.

Mr. GRAVES OF LOUISIANA. Well, in additional to congressional intent, I think that—something else that is really important to me, and I am sure it is to you, as well, is when you issue a notice of proposed rulemaking and you identify scope, if you are going to go outside that scope, then the Coast Guard is not going to have the benefit of the public input on that broader scope. And I think that is an important point to make, as well.

Admiral THOMAS. I would agree, sir.

Mr. GRAVES OF LOUISIANA. Great. Thank you. But, look, I want to make sure that we do schedule a followup meeting here and try and track this down and figure out what steps the Coast Guard should take, moving forward, if there is some uncertainty.

Admiral THOMAS. Happy to do that, Congressman.

Mr. GRAVES OF LOUISIANA. Thanks, Admiral.

I yield back.

Mr. HUNTER. I thank the gentleman. If we seem combative today, we had the airline CEOs in yesterday, and we just—there was a headline today that American Airlines cut their leg room in economy class more, just to make the American people like them more, I guess. They are cutting leg room to make us happier. The airlines hate the American people, that is all I am saying.

I would yield to the gentleman from the LBC.

Mr. LOWENTHAL. Thank you, Mr. Chair. And thank you both, Admiral Thomas and also Chairman Khouri. And I do congratulate

you. I know you are the Acting Chair, or the Interim Chair. And my dear friend, Mario Cordero, is now the new chair, or the next executive director of the great Port of Long Beach. I think it was an excellent choice, and I am sure it was because of the great experiences he had at the FMC.

My first question, though, is for Admiral Thomas. And let's go back to my concerns about the Ports of Long Beach and Los Angeles, which really cover about 40 percent of the Nation's containerized cargo. Now, we anticipate that that cargo will increase over the next number of years. And so, how is this going to—as the port—as trade continues to increase, especially with greater megaships coming in, how is this going to affect the Coast Guard?

You already began, I think, talking about kind of stretched resources when you began. But as we see the growth in containerized trade continue, how will that impact the Coast Guard, and what additional resources to keep us safe do you think you will need?

Admiral THOMAS. Congressman, thank you for the question. And certainly we have seen growth in the size of ships, but not just the size, the complexity of systems that are used to move cargo through our ports more efficiently. And that is definitely a challenge for the Coast Guard, not just in L.A. and Long Beach, but around the Nation.

We definitely—and our Commandant is on record as saying that we need to invest in our people and our workforce, so that we can remain agile and keep up with the technology that is allowing our Nation to enjoy the prosperity that we see through ports like L.A. We need to invest in the enterprisewide systems that we use for managing data and an enterprisewide system we use for managing our people.

And we need to invest in the infrastructure that we currently use to service the marine industry, including the service we provide through our aids to navigation, but also that we provide at our National Maritime Center, where we credential mariners, and our National Vessel Documentation Center.

So, absolutely, the growth and demand through the ports translates directly to the growth and demand for Coast Guard resources.

Mr. LOWENTHAL. You know, we talk about national security, and the need for national security, and we look at our—and we take great pride in our military. But for me, who represents the port areas, I cannot tell you how appreciative I am of the Coast Guard. I mean I cannot overstate the importance of the Coast Guard to our—to protecting our maritime interests and protecting our citizens. It is just unbelievable on the west coast. And so we applaud you.

Acting Chairman Khouri, you know, you have talked a lot about how the increased consolidation is changing the work of the FMC. Maybe you could tell us a little bit more how you see the FMC changing. We have talked a little bit about the consolidation and some of those issues, but how do you see the work of the FMC changing with this tremendous consolidation that is going on?

Mr. KHOURI. I guess, number one, in our Bureau of Trade Analysis, which is where all of our economists are housed, we have had a great staff, and they have been hiring some new terrific transportation economists—it is a specialized area.

The monitoring that I mentioned earlier has become, according to the carriers, much more intrusive. And so that is music to our ears, not—you know, that is unfortunate, but—for them. But we have been quite insistent on, no, we need more information on a much more regular and timely basis, so that we can take all of this—and it is submitted to us confidentially, per the statute, then we match it up with an awful lot of commercially available information out there in the world, liner industry. It is labor-intensive for highly specialized people.

And I would say that is the main areas we have become more and more—I don't want to use the word "concerned," because that would make it sound like we think something is going on. It is just that the potential for activity that would be prescribed by the Shipping Act or by other antitrust laws grows.

So I think that is the best that I can respond to your question. If—I look to the chairman and his experience. You always had one Marine standing on the wall. We now have two Marines. So that is, I think, the best answer I can provide for that, sir.

Mr. LOWENTHAL. Thank you. And I will wait, and I will yield back.

Mr. HUNTER. I thank the gentlemen. With that, we are going to move to the second panel. I just got a quick question for Mr. Khouri.

How many times has the Commission weighed in after an effective date of an agreement?

Mr. KHOURI. I am sorry, sir?

Mr. HUNTER. How many times has the FMC weighed in after an agreement has been made?

Mr. KHOURI. The way that actually works—and I have an example in my hand, and I will start with that.

It should be no surprise that we have been in rather pleasant or otherwise conversations with filing counsel for the RO/RO agreement, and received a letter yesterday. And this is an agreement in effect as we speak today. I am authorized to share the content of the letter, but not the letter itself.

But I am just going to say they have committed, "willing to meet with the Commission staff to discuss possible amendments to the agreement that might address concerns being expressed with respect to the authority." So we expect them to be in promptly to talk about amendments. And that is how the process actually works, Mr. Chairman, is if there is something going on, we bring them in. They don't want to go to court, either, and that is how we obtain the constant update and amendments to all of these agreements.

If I might say, also, we will work with you and schedule—I am not aware of any time we have had to actually go into court, but that is how the process works. We bring them in and say, "This isn't working, we are going to change this."

Mr. HUNTER. Because—so just for the record, the Federal Maritime Commission has never taken a consortium or anybody to court.

Mr. KHOURI. May I——

Mr. HUNTER. Over anticompetitive practices.

Mr. KHOURI. May I consult my general counsel and his staff, and get back to you with a written answer to that?

Mr. HUNTER. So, to your knowledge, zero? To your knowledge, at this point in time.

Mr. KHOURI. In the 7 years I have been there, no. But we have been administering the Shipping Act for 100 years, so I think it would be foolish for me to make a categorical statement.

Mr. HUNTER. So the problem——

Mr. KHOURI. So we will come back to you.

Mr. HUNTER. The problem here, which I think we are all trying to get at, is you are here to protect American companies and American interests. I mean that is why you exist, right?

Mr. KHOURI. Absolutely.

Mr. HUNTER. That is why you are here. The law makes it so that you cover—you look more at the shippers, not the tugboats, and not the port or terminal operators. That is what you are looking at.

So, right now, you are not protecting the American interests, because the only guys that are shipping are foreign entities that are basically ganging up and forming these little groups, to where we have almost no competition whatsoever. You are not protecting the terminal operators because, by law, it is not required. Or the tug operators.

So, all the American companies, that is—basically, in your mind, as you follow the law and you quote law and cite law, there is no law making it so that you have to watch—you have to look out for the best interests of the American companies, because the law says you look at shippers, and that is it. That is what you are looking out for. And I think that is where we are getting kind of tied around the axle here, is that that is kind of hard to swallow for us, is that you are not there for the American companies.

Mr. KHOURI. Mr. Chairman, I believe a more, on one side, broad and perhaps—and more correct statement is we, like any other Federal competition agency, look to protect competition.

And within that, not competitors in any one area, because, at the end of the day, at the end of the day, if full competition is at work in the marketplace, the end of that process is the American consumer. The American consumer is the one who benefits with lower prices and their goods. The American exporter, who has more reliable and the least expensive available transportation for their export goods into international markets.

So, I would, with all respect, say we are not singularly focused on shippers in that regard. So——

Mr. HUNTER. Thank you, gentlemen. Admiral Thomas, if you will stick around, we are going to add a microphone and get on to panel 2.

Mr. Khouri, thank you.

Mr. KHOURI. Thank you so much.

Mr. HUNTER. Mr. Khouri, do you mind sticking around, too? We are just going to throw the staff into a tizzy, but do you mind sticking around? Do you have time?

Mr. KHOURI. I planned on staying to listen, so I would be happy to.

Mr. HUNTER. OK, thank you. Admiral Thomas, you can just stay where you are, if you want to. Oh, they are moving you over. OK.

[Pause.]

Mr. HUNTER. OK, I think we are all together. And if I could ask, too—I mean we want to get through this—obviously, this is a giant panel now, because we combined three into two. I guess we could have had you all there in the first place, but that enabled us to focus on a couple of things. And now we will go into this one.

So if you could keep your remarks brief, we can submit them for the record, and we will start just talking back and forth.

I thank the first panel for being with us today—and you are still here—and the second panel. The witnesses for the second panel are Mr. Todd Schauer, president of the American Salvage Association; Mr. Steven Candito, current board member and former president and chief executive officer with the National Response Corporation; Mr. Nicholas Nedeau, chief executive officer of Rapid Ocean Response Corporation; Mr. Norman "Buddy" Custard, president and chief executive officer of the Alaska Maritime Prevention and Response Network; Mr. Tom Allegretti, president and chief executive officer for American Waterways Operators; and Mr. John W. Butler, president and chief executive officer for the World Shipping Council.

Mr. Schauer, you are recognized for your statement.

Mr. SCHAUER. Good morning, Chairman Hunter, Ranking Member Garamendi, and members of this subcommittee. I represent American Salvage Association, known as the ASA. The ASA represents 90 percent of the U.S. salvage capability. We appreciate the chance to give an overview of the salvage industry, and to discuss current issues. In the interest of time, my submitted statement has been abbreviated.

Salvors are not ship scrappers. We are emergency responders and problem-solvers for the shipping industry. Beyond search and rescue, the Coast Guard does not have the assets to perform salvage operations such as rescue towing, firefighting, or other salvage services. Simply put, salvors respond to any casualty, anywhere, at any time. This may include collisions, fires, explosions, or groundings. It may involve tankers, cruise ships, LNG carriers, offshore rigs, or any other vessel type. This statement commitment may be hard to believe, but it is quite true.

Salvors are extremely resourceful and dedicated. Most of the companies are family-owned, multigenerational businesses. Salvors operate in the most difficult conditions on the planet. Some jobs are incredible feats of engineering. Most of you probably recall the *Costa Concordia* job led by an ASA member in Italy. Others are courageous acts of seamanship, such as rescuing a disabled tanker in heavy weather. A member did this just this past weekend off of Galveston.

Our members are the special forces of the marine industry, maritime response. The ASA has a good working relationship with the Coast Guard. Our operations teams respond together, and we interact often on regulatory matters. While we have our disagreements, we respect the capabilities and commonsense nature of the U.S. Coast Guard.

Salvors are the first line of defense in preventing marine pollution. Our objective is to keep the oil in the ship and out of the water. Plugging all breach fuel from a stricken vessel, or simply

saving the ship from sinking is much more effective than skimming spilled oil.

Regarding shipboard firefighting, the salvor has the requisite experience and equipment. We work alongside municipal fire teams, and we take the lead for all offshore fires. Salvors will clear all blocked waterways to restore commerce, whether caused by an accident or, God forbid, a terrorist attack.

The U.S. Navy's global salvage capability depends on response contracts with ASA members.

Due to the leadership of this subcommittee, the SMFF [salvage and marine firefighting] regulations were promulgated in 2008 for tankers, 2013 for nontankers. The result was extremely positive. The salvors rapidly organized, we expanded equipment inventories, and developed robust networks to comply.

Now, some third parties have recently questioned the commitment and resources of the SMFF providers. Let me be very clear. We will always respond. Our livelihoods depend on salvage job income, and our Coast Guard-approved and pre-agreed contracts with the shipowners will prevent any delays.

Now, providers rely heavily on subcontracted resources. Our networks are comprised of major fleets of tugs and barges, derrick barges, all variety of support vessels, and marine services. We also have agreements with municipalities. For example, the New York City Fire Department has pre-agreed to support us during a vessel fire.

This system of combining salvor-owned, specialized assets with extensive resource networks has proven effective in more than 180 responses since the inception of the regulations. Provider capability and compliance is verified by many layers of oversight. These include drills and exercises, two separate Coast Guard verification programs, owner and insurer vetting, and direct approval of all actual operations by the Coast Guard.

At the crux of the issue are nondedicated resources. Unlike spill response, the diversity of the 19 salvage services demands large networks of vessels of opportunity. There are no two ways to look at it. Providers rely heavily on this system. It includes more than 7,300 support vessels, alone. We also utilize existing U.S. air, sea, and ground logistics modes, arguably the most developed in the world. Duplicating all of these resources of opportunity with dedicated assets would be highly impractical, and overwhelmingly costly.

In closing, salvors will continue to respond quickly, grow capacity, and comply with all required verifications. The vessel of opportunity system works. Any attempt to duplicate it will place undue financial burden on the shipping industry and the consumer.

Thank you, and I request that my statement be submitted.

Mr. HUNTER. Without objection, so ordered.

Mr. Candito?

Mr. CANDITO. Good morning, Chairman Hunter, Ranking Member Garamendi, members of the subcommittee. I am Steven Candito, former CEO of National Response Corporation, one of the founders of 1 Call Alaska, along with Resolve Marine Group.

NRC and Resolve are leading oil spill removal organizations and salvage and marine firefighting providers in the United States.

Joining me today are leadership from Resolve, NRC, and senior members of 1 Call Alaska, the true local response experts. They represent the core 1 Call Alaska emergency response organization with the commitment and capability to prepare for and respond to marine casualties in western Alaska. I thank the subcommittee for the opportunity to address response plans under the alternative planning criteria for western Alaska.

I respectfully disagree with the need for section 107 of H.R. 5978. It would stifle competition and hinder improvement of oil spill response in Alaska. I will address the inaccurate arguments advanced by organizations that support section 107.

They claim reducing competition is necessary, and that a monopoly will better serve Alaska's interests. Specifically, section 107 prevents achieving a key goal of the Oil Pollution Act of 1990 to provide robust oil spill response capability along all U.S. coasts.

Under the Coast Guard's implementation of APC, the response industry is improving coverage, investing in vessels, aircraft, and staging facilities, and hiring experienced manpower, most of which is based in Alaska. Section 107 sets back progress made by 1 Call Alaska, discouraging further investment needed to move Alaska closer to the higher OPA [Oil Pollution Act] standards in the lower 48.

The *Exxon Valdez* exposed how ill-prepared the U.S. Government and the maritime industry were to respond to major spills, particularly in Alaska. There was very limited ability to respond to large, open-water spills. OPA jump-started the massive investment in private sector national response industry with four key provisions: first, clarifying chain of command and responsibilities under the National Contingency Plan; second, directing the private sector to provide the response equipment and manpower; third, incentivizing private investment by requiring vessel and oil facilities to contract with OSROs with capacity to meet the requirements; and finally, encouraging OSRO investment through responder immunity.

The Coast Guard has provided the necessary flexibility and competitive environment to accommodate challenges in complying with OPA's standards in western Alaska, while driving improvements in coverage. Section 107 type legislation impedes expansion of resources by excluding competition from the very companies with the most experience and the largest inventory of assets already in Alaska.

Such legislation is premised on false assertions: one, competition will drive up fuel prices; two, there will be a price war ultimately ending in an unsustainable price of zero; and, three, competitors provide duplicative resources, driving up costs. I will address each of these contentions separately. But, as a general matter, competition ultimately drives down prices, while increasing resources. The fallacy is that a nonprofit monopoly provides the most resources at the lowest cost.

With regard to fuel prices, our written testimony includes a fuel price report by Alaska's Department of Commerce, Community, and Economic Development, published in January 2017, reviewing the previous year. This report concluded heating fuel and gasoline prices in most regions of the State are at their lowest since early

in 2009, and most survey communities have seen significant declines.

With regard to the remote communities, the report noted remote communities have higher shipping costs, resulting in fuel prices that are significantly higher than the statewide average. However, since most communities receive at least one fuel delivery a year, they are continuing to benefit from the lower cost of fuel. Thus, the primary fuel cost drivers are the price per barrel, the fixed cost per shipment, and infrequency of delivery, rather than any minimal APC market pressure.

Secondly, I can confirm 1 Call Alaska has not participated in a price war. Our pricing is dependent on our cost of operations and number of customers. That scale has largely remained steady as of now, and we are the most expensive provider. In actuality, it is the nonprofit, which consistently undercuts our prices, seeking to compete, which they should not be doing, given their nonprofit status.

Finally, with regard to the assertion multiple providers duplicate resources, I note the significant number of resources we included and specific investments in Alaska. Simply put, the main reason an APC is needed is that currently the resources are insufficient to meet OPA standards. Thus, competition has caused us to add personnel and equipment. Further, the resources we added are not the same type that existed.

Since inception, 1 Call Alaska represents a $44 million investment in aircraft, equipment, vessels, and facilities. Resolve and NRC also employ full-time more than 100 Alaskans. Further, over the last year alone we cooperated with the Coast Guard to save 100-plus lives and prevent the discharge of millions of gallons of oil.

Importantly, most of the casualties we responded to were not customers of our APC. In fact, our services were called upon out of a necessity, as the entities advocating could not effectively respond to our customers' spills.

In closing, 1 Call Alaska is proud to announce plans to expand to the entire Western Alaska Captain of the Port Zone. Whether it is a stricken 4.2-million-gallon tanker, a disabled fishing vessel from Dillingham with 100 souls on board, or flying our aircraft, 1 Call Alaska endeavors to prevent, prepare for, and respond to marine casualties in western Alaska. Thank you.

Mr. HUNTER. Thank you.

Mr. Nedeau? And I am saying that right, correct?

Mr. NEDEAU. Nedeau. That is close.

Mr. HUNTER. Nedeau? OK. You are recognized.

Mr. NEDEAU. Chairman Hunter, Ranking Member Garamendi, and members of the Subcommittee on Coast Guard and Maritime Transportation, thank you for giving me the opportunity to testify and provide information on the gap between marine salvage and firefighting requirements, and the actual services contracted for by vessel owners. The gap places the marine environment and vessel crews in considerable jeopardy.

My name is Nicholas Nedeau. I am the CEO of Rapid Ocean Response Corporation. Rapid Ocean Response provides high-speed, dedicated vessels for offshore firefighters and surveyors, as required pursuant to the salvage and marine firefighting regulations.

The salvage and marine firefighting regulations are derived from the Oil Pollution Act of 1990. That statute reads, in relevant part, that tank vessels "identify, and ensure by contract or other means . . . the availability of, private personnel and equipment necessary to remove . . . a worst-case discharge (including a discharge resulting from fire or explosion), . . ."

The clear import of that provision is that Congress intended that when a fire or similar incident occurs offshore, marine salvage and firefighting resources be identifiable and ensured by contract to be available to respond. As my testimony will explain, neither of those requirements are currently being met.

In terms of the implementation of the salvage and marine firefighting regulations, the Coast Guard was surprisingly patient. Over a period of 23 years, the effective date of the regulations was repeatedly pushed back. The reason the Coast Guard usually provided for the delay was that more time would be needed to allow the resource providers to build the vessels necessary to achieve compliance with the rules. Unfortunately, the dedicated network the Coast Guard envisioned has not been established.

Looking at the salvage and marine firefighting regulatory requirements, it is clear that these requirements cannot be met consistently without a dedicated network. The regulations require "A planholder must ensure by contract or other approved means that response resources are available to respond . . ." Instead of building the dedicated resources the regulations required, the regulating community attempted to achieve compliance using a vessel of opportunity approach.

Under this strategy, a vessel owner lists numerous vessels in his vessel response plan, in the hopes that one might be available to respond. This approach is both legally and operationally deficient. Legally, of the four qualified resource providers, three conditioned the response on the availability of their vessels. All resource providers rely heavily upon subcontractors, whose contracts provide they will respond, if available.

Operationally, the vessel of opportunity approach also cannot achieve compliance consistently. Because nondedicated vessels are often engaged in other work, they must first disengage and return to port. There these vessels load the necessary equipment and personnel and are retrofitted with firefighting pumps. It is unlikely these activities can be accomplished and mount a compliant response within the 6-, 12-, or 18-hour timeframes.

The obvious question is how could these serious deficiencies not have come to the attention of the Coast Guard. The salvage and marine firefighting regulations provide a very specific list of mandatory exercises and drills. Unfortunately, the Coast Guard has not required vessel owners to provide proof of these exercises.

There are real-life examples of these compliance issues. On March 14, 2015, the *Grey Shark* lost power off the Coast of New Jersey. On the 15th, fire broke out. On the 17th, she arranged a tow back to New York Harbor, where the New York Fire Department put the fire out on the 18th. During that time the *Grey Shark* utilized a vessel-of-opportunity approach to compliance. She contacted over 200 vessels. None were available to respond.

The *Caribbean Fantasy*, a cruise ship, caught fire within 2 miles of the entrance to San Juan Harbor. Although a very successful evacuation was performed, according to Coast Guard commander Janet Espino-Young, the active firefighting component of the vessel response did not meet the criteria as required by the regulations. That is within 2 miles of a major port.

In 2015, RORC [Rapid Ocean Response Corporation] submitted an application to build a nationwide dedicated salvage and marine firefighting response network. That network, comprised mainly of harbor pilot groups, utilizes high-speed, oceangoing pilot boats to transport fire teams and surveyors. These pilot boats were to be used until custom-built fire boats could be placed in service. RORC provided examples of lack of compliance and operational deficiencies in each captain of the port zone.

On March 14th, the Coast Guard responded, explaining that the Coast Guard could not approve RORC's application without first determining that a gap in compliance existed. On March 17, 2016, Admiral Paul Brown announced a verification process to determine whether gaps in compliance did exist. Inexplicably, this process has not come to fruition.

In closing, the congressional mandate that salvage and marine firefighting resources be identifiable and ensured by contract to be available to respond has not been achieved. I ask the Oversight Committee to press the Coast Guard to reject vessel response plans that do not provide evidence of the required drills and exercises. Without requiring proof of compliance, Congress' clear intentions will remain unfulfilled.

Thank you, and I ask that my written statement be adopted to the record.

Mr. HUNTER. Without objection. This is interesting, too, because Mr. Schauer and Mr. Nedeau are talking about the same issues. Mr. Candito and Mr. Custard are going to be talking about the same issue on different sides.

So, Mr. Custard, you are recognized.

Mr. CUSTARD. Thank you, Mr. Chairman. Good morning, Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee. The Alaska Maritime Prevention and Response Network, a nonprofit organization, administers the only Coast Guard-approved, nontank vessel APC program that covers the entire Western Alaska Captain of the Port Zone. The Network supports over 450 maritime companies from around the globe operating in and transiting through western Alaska. I appreciate the opportunity to discuss the implementation of alternative planning criteria in western Alaska.

By way of background, the area referred to as western Alaska has long been of interest to the U.S. Congress. As the committee knows, western Alaska includes the U.S. Arctic region and other areas of critical national interest in western Alaska, including the unique environment and critical habitat, the largest and most valuable commercial fishing industry in the United States, and unique cultural interests.

In short, Congress has a long and valued history in recognizing and addressing the many challenging issues that are unique to this

area for the benefit of all Americans. As an Alaskan, I very much appreciate Congress' efforts in that regard.

The Western Alaska Captain of the Port Zone comprises over 1 million square miles of ocean. Because this exceptionally large area has little infrastructure, the national planning criteria used to meet the requirements of the Oil Pollution Act of 1990 in the continental United States have been very difficult and challenging to obtain there. Instead, vessel owners and operators have been using alternative planning criteria, or APC. The Network has concerns on several major issues.

The Coast Guard has deviated from the longstanding practice of managing the vessel response plan regulations in western Alaska on a captain-of-the-port-wide basis, creating confusion among the maritime industry and undermining the ability to sustain and enhance oil spill preparedness in western Alaska.

The current management practice, as well as the proposed guidance by the Coast Guard, will, over time, continue to lower response capability and capacity. They will weaken the oil spill safety net in western Alaska, undermining environmental protection and putting the livelihood of fishing vessels in Alaska, Washington, Oregon, and California in jeopardy.

The Coast Guard recently imposed competition on APC providers in western Alaska, but the terms were not clear, equitable, or consistently enforced. All APC providers should cover the entire captain of the port zone, and should position and build out, not minimize, equipment within Alaska, so that resources are readily available, rather than being a continent away, taking days to deliver and put in place. By then, the damage from the spill is done.

There has been no objective economic analysis completed by the Coast Guard. The independent economic assessment we provided to the Coast Guard validates a downward trend we are witnessing in sustaining response capabilities in western Alaska. We are now witnessing a decline in greater intensity and velocity than predicted by that study.

The claim that there is more equipment in western Alaska with multiple APC providers is a mischaracterization of reality, because it assumes all APC providers make their equipment available for any vessel during a response. But the only equipment a planholder can rely on is what is available through their individual APC provider.

As Congress examines a path forward, and to the extent that changes are made to the way APC is implemented in Alaska, we request that the following principles be considered: APC providers must cover the entire Western Alaska Captain of the Port Zone; continued fragmentation of the captain of the port zone will continue to result in reduced capacity to protect western Alaska and the Arctic.

Reducing the risk of oil spills must be an essential component of an APC program. The economic ramifications of how the Coast Guard is implementing APC in western Alaska must be analyzed and understood. Accountability is paramount. When an oil spill happens, Alaskans want assurance that vessels in an APC program have the resources in Alaska readily available to respond to a spill.

Unlike now, the Coast Guard must be able to consistently apply and enforce whatever rules it develops. Waivers should be the exception, not the rule.

Regular order must be adhered to in regulating industry. Regulations by administrative policy allows the Coast Guard to change the rules without notice or an opportunity for comment, and without analyzing the economic impact.

Up until recently, the Coast Guard managed oil spill prevention and response on a captain-of-the-port-wide basis in western Alaska. The result was a long-term, sustainable build-down of response resources for the benefit of the entire region. Congress should provide policy directives that result in continuity and predictability, and resolve the ambiguities in the regulations that allowed the Coast Guard to unilaterally depart from the successful approach, and direct the Coast Guard to return to an areawide APC requirement in western Alaska and the Arctic.

These principles are offered to restore order to the process of regulating the maritime industry in western Alaska. More importantly, they will ensure that oil spill response is administered in a fair and balanced manner, and will ensure that a robust and sustainable oil spill prevention and response program protects all of western Alaska, including the U.S. Arctic region.

The Network stands ready to work with the committee, the Coast Guard, and all stakeholders to craft a long-term solution that works for western Alaska.

Mr. Chairman, I appreciate the subcommittee's examination of this important issue. I ask my written remarks be entered into the record. Thank you.

Mr. HUNTER. Without objection. Thank you.

Mr. Allegretti, you are recognized.

Mr. ALLEGRETTI. Good morning, Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee, thank you for holding the hearing today. I am here to ask for your assistance in averting an existential threat to the health and the viability of AWO [American Waterways Operators] members in the ship-docking business.

Over the past year, international ocean carrier alliances have filed agreements five times with the Federal Maritime Commission, seeking authorization to negotiate collectively with tugboat operators and other domestic service providers who have no counterbalancing ability to take such action under U.S. antitrust laws.

In three of the cases, the parties to the agreement eventually withdrew the collective negotiation provision. But in January, a group of foreign car carriers filed an amendment that allows alliance members to negotiate jointly with American tugboat operators. Over AWO's objections, and without a thorough analysis of the injurious impact on the tugboat industry, the FMC allowed the amendment to take effect.

AWO believes that both the letter of the Shipping Act and congressional intent in enacting that statute prohibit collective negotiation of rates with domestic service providers. We foresee an egregious competitive imbalance and grave harm to American companies if foreign ocean carrier alliances are allowed to negotiate col-

lectively with the U.S. tugboat operators. We have laid out the legal and the practical reasons for our concerns in multiple submissions to the FMC and in meetings with FMC Commissioners and staff.

We are gratified that both the Department of Justice and the bipartisan leadership of this subcommittee and the full committee have voiced similar concerns to the FMC. But frankly, we are astonished that a majority of the FMC Commissioners do not share them.

Because the FMC allowed the car carrier group to collectively negotiate with U.S. companies, we were not surprised when, in March, a group of Japanese ocean carriers filed yet another agreement that would authorize the parties to negotiate collectively with tugboat operators. The FMC had signaled a green light for this provision. AWO and other service providers have registered strong opposition, but the offending provision was never removed from the agreement.

This series of events leads us to three basic conclusions, all of which are very troubling to us.

First, that foreign ocean carriers of ever-greater size and market power will continue to seek authority to negotiate collectively with American tugboat operators who enjoy no ability under the antitrust laws to take similar action.

Second, that the FMC is either unwilling or unable to halt and reverse this unfair and anticompetitive situation.

And third, that the FMC intends to extend its regulatory review over the tugboat industry, an authority Congress has not conferred. In the process, it will eviscerate the confidentiality of our commercial contracts with our customers.

My central message to you is this: It is fundamentally unfair, anticompetitive, and detrimental to the U.S. maritime industry to skew the playing field in favor of massive international shipping conglomerates, which include foreign, State-owned enterprises, and entities that have paid criminal fines for anticompetitive behavior, at the expense of American tugboat companies.

If the FMC lacks the will or the ability to act swiftly and decisively to stop and reverse this growing trend, then AWO members call upon Congress to amend the Shipping Act to unequivocally prohibit joint negotiation with domestic service providers. It is unconscionable to us that an agency of the U.S. Government would sanction the disadvantaging of an essential American industry in favor of foreign shipping alliances. Congress should act to rectify this injustice where the FMC has failed to do so.

Thank you very much for your attention. I look forward to your questions.

Mr. HUNTER. Thank you, Mr. Allegretti.

Mr. Butler, you are recognized.

Mr. BUTLER. Chairman Hunter, Ranking Member Garamendi, members of the subcommittee, my name is John Butler, and I am the president and CEO of the World Shipping Council. I appreciate the opportunity to testify today. I have submitted written testimony that I would ask be included in the record.

I would like to make two points about the liner shipping industry, and then I would like to address the issue of joint purchasing.

The first point is that the liner shipping industry is a critical link in our Nation's international trade, and it is a major driver of the economic vitality of this country. Whether our members are carrying consumer goods to retailers in the United States, supplying parts to automobile manufacturers, or carrying U.S. agricultural goods to foreign markets, liner shipping touches almost every part of the U.S. economy.

The second important point about liner shipping is that the industry is in a period of substantial change. The market for international containerized shipping services is intensely competitive. The result of that competition has been historically low ocean transportation rates for U.S. importers and exporters almost continuously since the global recession in 2008.

Persistent low freight rates have caused carriers to seek efficiencies in every part of their operations, and that includes tremendous investments in a new generation of highly fuel-efficient container ships. There have also been structural changes. A number of carrier mergers closed last year, and we will see several more that are likely to be completed this year. However, even after those mergers are completed, the liner shipping market will remain unconcentrated.

As the committee has discussed already, vessel sharing agreements or alliances are one of the tools that carriers use to make sure they get the best operational efficiency out of their vessel fleets. Sharing vessels allows carriers to serve more ports worldwide, which improves choices for shipper customers and increases competition. All carrier agreements must be filed with the Federal Maritime Commission, and the Commission may seek changes to carrier agreements based on concerns that the Commission may have, as well as concerns that may be raised by the public and interested parties.

As Mr. Allegretti referred to, in the case of the three major alliance agreements, for example, tug operators raised concerns about the authority of ocean carriers to jointly negotiate for tug services. And the carriers in those three agreements changed the language to clearly state that there would be no joint negotiation for tug services in the United States.

The staff summary for this hearing mentions two carrier agreements that contain some joint purchasing authority. The Commission, just yesterday, has decided that it does not have jurisdiction over one of those agreements. The only remaining agreement in question with general joint purchasing authority requires the parties to go back to the FMC before they take any actual concrete action under that authority. That means nothing happens under that agreement until the FMC gets another look at it, and the public has an opportunity to comment.

It is unclear at this stage whether and to what extent carriers in the future may wish to pursue joint purchasing of services and vessel supplies in the United States. What is clear is that any agreements with that authority will be subject to strict scrutiny. That is in line with the full committee's recent instructions to the FMC, and it is consistent with the FMC's actions to date. I think the message has been received on the carrier end, as well.

The one thing that I would respectfully ask of the subcommittee, of the FMC, and of service providers is not to take a categorical view about joint purchasing. The Department of Justice, the Federal Trade Commission, the Department of Transportation, and the Supreme Court have all said that joint purchasing can be pro-competitive. And, whether in a given situation those activities should be allowed, or they should be challenged, depends on the specifics of that particular situation.

As the shipping industry works through the current economic and operational challenges, there may be need for different types of business arrangements, including joint purchasing. And some of those activities may be beneficial, both to service providers and to service buyers. Let's not foreclose potentially useful tools without first making sure we understand how those tools might operate in the market.

I thank you for the opportunity to testify. I would be happy to answer any questions.

Mr. HUNTER. I thank you, sir. I am going to yield to Mr. Larsen over there. I don't think he got a question during the first panel. Do you have a question? Please.

Mr. LARSEN. Sure. This question is really with regards to this—the firefighting issue. And I was wondering if—for Admiral Thomas, if the regulations, the SMFF regulations, delineate elicit exercises and drills that vessel owners are required to conduct.

Are those vessel operators conducting those required drills?

Admiral THOMAS. Thank you for the question, Congressman. Yes, the regulations do specify, as was testified to, a number of different verification processes, including exercises and drills. The Coast Guard has limited resources to oversee all those, but we do oversee the ones that we can.

I think this is really a question about our capacity to verify compliance with the SMFF regulations. And, as I testified to in the earlier panel, we are limited in our capacity across our Coast Guard. But we do have a robust verification currently underway. That—the verification process itself, sir, is limited by some legal requirements, in terms of how much information we can ask for from regulated entities. So we are conducting that verification in the course of required plan renewals.

Mr. LARSEN. So what kind of legal requirements are there if, in fact, the law says that you are supposed to verify that these drills are taking place?

Admiral THOMAS. Well, sir, so we—for example, we can attend and oversee the drills that are required by the law. But what we are limited in is our ability to ask for additional information that we might use for verification outside of the normal cycle in which a regulated entity would normally be proving that information to the Coast Guard.

I think a key thing to understand here is that these regulations do not regulate anybody at this table, at least not the four gentlemen to my left. They regulate vessel operators. And those operators are compelled to comply with the regulations by procuring services from the likes of the gentleman to my left. And that is, I think, really, one of the fundamental issues here.

Mr. LARSEN. Much like the OSRO model?

Admiral THOMAS. Much like the OSRO model. The salvage model, business model, developed differently for a lot of reasons that Mr. Schauer touched on. But it is very similar, in terms of the legal and regulatory construct.

Mr. LARSEN. OK. Is it Nedeau? Nedeau?

Mr. NEDEAU. Nedeau, thank you.

Mr. LARSEN. Nedeau, sorry. All right. You said that earlier, thank you.

What would a successful verification process look like, in your opinion?

Mr. NEDEAU. Well, I think it is—a comprehensive and robust verification process for the response resources that we address would simply identify a vessel crossing within the 50-mile barrier falling within the jurisdiction of salvage and marine firefighting, and asking that vessel where its response resources are, and then determining whether they have contracts with those resources, which require them to respond.

If the contract provides that they will respond if they are available, it does not meet the legal requirements. If the vessels are 600 nautical miles away, or not in the captain of the port zone, it does not meet those requirements, operationally. And we provided evidence of that to the Coast Guard in 2015, with our application for an alternative planning criteria, evidence of the operational and legal deficiencies in every captain of the port zone, and they responded saying they would do a robust verification to determine if, in fact, those deficiencies were apparent. That has not come to fruition.

Admiral Thomas, by the way, is a man of unquestioned integrity, and tremendous leadership, and we have great respect for him. However, this program has not been reporting to him. So I do not believe he is as knowledgeable about the lack of verification. And his response to your question about whether they are conducting or requiring the mandatory drills and exercises, to my knowledge I am not aware of one shipping company that is required to provide those.

Mr. LARSEN. That is a—thank you. I think we need to explore that a little further. I appreciate it, thanks a lot. I yield back.

Mr. HUNTER. I thank the gentleman.

Mr. Graves?

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman. I appreciate it. I continue to have concerns about some of the vessel response that has been discussed today.

For example, I am concerned about the timing it is going to take for these vessels to get to some of the potential accidents that occur. Representing south Louisiana, I had the chance to spend a good bit of time on *Deepwater Horizon* activities, the oil spill in the Gulf of Mexico in 2010, and I am curious about how a tug that is traveling at 10 knots is going to have the capability to get out there in any reasonable period of time to provide the response time that we need in a disaster.

Admiral, do you care to comment on that?

Admiral THOMAS. Thank you, Congressman. The performance requirements, or planning requirements, are delineated in the regulations, in the national planning criteria, and they do specify re-

sponse times that are required. The process of determining those times was subject to, you know, robust analysis and comment through the rulemaking process.

I think one of the real keys here—and I would like to take this opportunity to correct—the law, and therefore, the regulation, never envisioned dedicated resources. It is not required. And, in the course of the regulatory analysis and, most importantly, in the economic——

Mr. GRAVES OF LOUISIANA. I just want to make sure—you said it never required dedicated resources? Is that what you said?

Admiral THOMAS. Yes, sir, that——

Mr. GRAVES OF LOUISIANA. OK.

Admiral THOMAS. That is what I said. And, in fact, the economic analysis—which, as you know, is required for every rulemaking—we would not have been able to support a cost-benefit analysis, had we required dedicated, under-contract resources.

So, the planning factors, they identify and procure, in one way or another, you know, make an arrangement with resources that can meet these planning factors. But as I explained earlier, those are not performance factors when it comes to actual response.

So there is a misunderstanding, in terms—in other words, if the Coast Guard were to require dedicated resources for this purpose, the law would have to be very specific, so that our regulation could be equally prescriptive.

Mr. NEDEAU. If I could address this, this is a common misunderstanding, I believe.

Mr. GRAVES OF LOUISIANA. Sure, but quickly. I have got some other questions.

Mr. NEDEAU. I think, as to the nondedicated resource question, it appears in the Federal Register at page 80634, Vol. 73, No. 251: "One commenter suggested that the use of nondedicated resources is a viable and commercially acceptable, cost-effective way of conducting emergency-response business, and therefore should be utilized to establish appropriate salvage and firefighting standards. The Coast Guard disagrees. This rulemaking has been designed to mirror the success that the OSROs and planholders have had with pre-arranged contracts as required in 33 CFR part 155. This will ensure that both industry and resource providers are clearly aware of who will respond on scene, and in what timeframe they are capable of arriving . . ."

Mr. GRAVES OF LOUISIANA. So we got a fight on our hands now.

Mr. NEDEAU. I would also like to address the planning standards if I could that were referenced by Admiral Thomas. The regulation is very specific. It provides that, in this instance, "Compliance with the regulations"—I am quoting from 155.4010(c)—"Compliance with the regulations is based upon whether a covered response plan ensures that adequate response resources are available, not on whether the actual performance of those response resources after an incident meets specified arrival times . . ."

The availability requirement that you have a contract with resources that are available and ensures that by contract is the legal requirement. It is true that planning standards don't kick in. Compliance is determined on whether you have a contract that ensures the resources are available. Thank you.

Mr. GRAVES OF LOUISIANA. Should we let the two folks in the middle move out of the way and let you all fight? Would that be better?

[Laughter.]

Mr. GRAVES OF LOUISIANA. All right. Let me go back to—I do want to hear your comment, but I want to make sure I understand something that you commented on, Admiral. You said that, under a cost-benefit analysis, you determined that a dedicated vessel was not appropriate. Is that what we learned about last week, this Paperwork Reduction Act consideration that occurred that we recently again just learned about last week? Is that what you are referring to?

Admiral THOMAS. No, sir, I don't believe so. I think that that particular act is what is making it more difficult for us to conduct the verification on the timeline that we would like to do. So we are really forced to do the verification on a timeline that is in synch with the normal industry requirement to renew their plans with us.

Remember that regulated entity here is the vessel operator. It is none of these services.

Mr. GRAVES OF LOUISIANA. When did that termination occur on the verification that would—as I understand from last week, we were briefed that it was based upon the Paperwork Reduction Act.

Admiral THOMAS. When did it occur, sir?

Mr. GRAVES OF LOUISIANA. Yes. When did that termination of verification occur?

Admiral THOMAS. We have not terminated the verification. We have just adjusted the timeline on when we can reasonably expect to get a good-enough representational data set to make a determination on whether or not the APC that has been requested is justified.

Mr. GRAVES OF LOUISIANA. OK.

Admiral THOMAS. We are still actively verifying.

Mr. GRAVES OF LOUISIANA. OK. So then, with—so it is being enforced, but you said the timeline is the issue right now.

Admiral THOMAS. Yes, sir. So we will conduct verification in the course of plan renewal—that is required already by the regulation—as opposed to going out to the planholders in between their renewal process and asking for additional information.

Mr. GRAVES OF LOUISIANA. OK. So your compliance process is what, again, then?

Admiral THOMAS. As—similar to what was described. But essentially, we will take a vessel's plan and we will impose a scenario on it, and we will freeze in time where that vessel is when it occurs, and where all their response resources are, and see how well they can meet the planning standards.

Mr. GRAVES OF LOUISIANA. Please, briefly, we are——

Mr. SCHAUER. Yes. Thank you, Congressman. Just to extend the logic of Mr. Nedeau here, if we extend this logic throughout the system that we use, salvage and marine firefighting, every 200 miles on the coast you would have a large ocean tugboat, dedicated, not able to do anything else, a derrick barge, you would have supply boats, crew boats, firefighting vessels. You would have air—charter cargo aircraft, dedicated cargo aircraft parked, because

those can't be of opportunity, either. You would have trucks parked, you would have—basically, all of the services that we provide are provided at the existing networks.

So, if you are going to say they ought to be dedicated, then throw all that out and let's build a new system. It is sort of ridiculous, when you look at the cost of it.

So now, we are commonsense folks. We think the Coast Guard is. There are layers—there are regions where probably less redundancy. There are places where there is a lot. In fact, the Gulf of Mexico, it is a resource-rich environment down there. We get a response there, it is easy. OK? Other places have less.

So it is a process we have to go through, and we have to look at the areas of—that, you know, need the most focus, and continue to grow capacity. Our industry has been growing capacity for—since our inception. So we have no problem doing that.

Mr. GRAVES OF LOUISIANA. I just—I want to caution you in using the term ridiculous when we are talking about this here, because we are potentially talking about lives. And response time and capabilities are very important because, potentially, we have lives at risk. And I want to remind you *Deepwater Horizon* we lost 11 people, the biggest part of that tragedy.

Can you go back? Just one thing that you mentioned earlier, you mentioned the New York Fire Department being part of your response capabilities. How does that work? And are you being compensated for the capabilities of the New York Fire Department? How does that——

Mr. SCHAUER. They have signed an agreement to be a resource provider to the SMFF providers.

Mr. GRAVES OF LOUISIANA. And do you pay them, or no?

Mr. SCHAUER. Yes, sir, if they—for their services, they are compensated for their services.

Mr. GRAVES OF LOUISIANA. OK, OK. And so—and they have complementary capabilities to yours, or——

Mr. SCHAUER. Basically, if—a fire at the dock is the jurisdiction of the local fire department. So we support them at a fire at the dock. If the fire moves away from the dock into the port, offshore, it switches. We take the lead offshore. So we have a mutual aid agreement. We support them when the fire is at the dock. They support us as it moves away from the dock.

Mr. GRAVES OF LOUISIANA. OK. Because in the case of the *Grey Shark*, I think it took 4 days in that case to put that one out. And obviously, that kind of timeframe, if that were a vessel with passengers, would be incredibly concerning.

Mr. SCHAUER. The *Grey Shark* started about 200 miles offshore, outside of the jurisdiction of everything. It was—I don't really want to talk specifically about cases, I am an elected officer of the ASA, but I am also—I work directly for one of the providers. So it was a competitor company, they responded to that. I am not going to address that specifically.

But it started 200 miles offshore, outside the jurisdiction of the regulations. It was towed in. It was handled—the New York Fire worked together with the provider, and that is how it is supposed to work.

Mr. GRAVES OF LOUISIANA. Thank you——

Mr. NEDEAU. If I could just say one thing, my comments have been limited to the response requirements, not the other 19 services provided by the salvage companies. I have limited my comments to those first three requirements, rapid response for firefighters and surveyors. That is what the subject of the alternative planning criteria I submitted to the Coast Guard addresses.

Mr. GRAVES OF LOUISIANA. Thank you.

Thank you, Mr. Chairman.

Mr. HUNTER. I thank the gentleman. And just to be clear, before I yield to Mr. Garamendi, I think the gentleman's point was that fire that occurred on the *Grey Shark*, they towed it back to the dock for 4 days, and then the fire department put out the fire at the dock. Right? So the salvors didn't put the fire out, I think is what he is saying, in the ocean. They brought it all the way back as it burned, and then the New York Fire Department put it out at the dock, like they put out a house fire. Is that right?

Mr. SCHAUER. That is correct. And again, it is—again, the specifics of the case I don't want to get into, but that is not an uncommon thing.

Mr. HUNTER. OK.

Mr. SCHAUER. To work on a fire that is at a place of safety where you can——

Mr. HUNTER. Sure. Admiral Thomas, is that what you—is that why the regulation is there, so that that happens?

Admiral THOMAS. Well——

Mr. HUNTER. I mean is that what the Coast Guard envisioned when they put this in?

Admiral THOMAS. As Mr. Schauer mentioned, that particular incident occurred outside the jurisdictional limit of the law and the regulation in this case. So——

Mr. HUNTER. OK. Say that it happened 20 miles offshore. Is it still your—is it the Coast Guard's intent, then, that you tow in the boats to the closest fire department at the dock, as opposed to putting the fire out in the ocean?

Admiral THOMAS. Coast Guard regulations are not as prescriptive as to tell the salvage professionals the best way to put a fire out on a ship. There may be situations where that is, in fact, the best response, and there are others where the salvage professionals would determine bringing response resources to the vessel is best.

But the regulations specify resource capabilities and timelines, but they are not prescriptive on which resources should be used when, and who—and how those decisions are made. That is made in consultation with the captain of the port as the situation evolves.

Mr. HUNTER. OK. I yield to the ranking member.

Mr. GARAMENDI. Mr. Chairman, thank you for scheduling such an informative and necessary hearing. We have gone through this rapid response issue thoroughly. I have some questions—and I may ask them for the record—with regard to that.

But I would like to focus, instead, on this alliance business and the FMC response to it. It seems to me that what has happened here is there has been a very significant change in the nature of the industry since the last amendment to the Ocean Shipping Act, and that the FMC's authority and responsibilities no longer fit the

reality of the industry. The emergence of all of the alliances and the significant power they have as a result of those alliances raises a question of antitrust, anticompetitive activity.

I noticed, Mr. Butler—I was reading your testimony here, and you kindly gave us the specific sections of the alliance agreements, and you helpfully underlined those sections, or those particular sentences that are to your benefit.

For example, "The parties shall negotiate independently," and the next 50 words are underlined, "independently with . . . stevedores, tug operators," and so on and so forth. And then there is this word, "provided, however," that specifically gives the alliances the opportunity to share information that is necessary to collude. And I am going "something is wrong here," because the specific—"provided, however, . . . the Parties are authorized to discuss, exchange information, and/or coordinate negotiations with" the providers of services.

The bottom line in all of this is the law is not up to date with the realities of the industry, as it exists today. Our task is to address changes in the law, as well as implementation of the law. It seems to me that the FMC can correctly argue that they are simply carrying out the law. We can debate whether that is or is not the case, and whether they are carrying it out correctly. But I think there is no doubt in my mind that the current law is out of date, and has to be changed. So, my specific questions go to that task that we have of writing law.

I want to start with Mr. Allegretti. How would you change the law to address the concerns that you have so ardently expressed to this committee?

Mr. ALLEGRETTI. The problem, Mr. Garamendi, with the current interpretation of the law, is the Shipping Act has an explicit and express prohibition against foreign ocean carriers negotiating collectively with domestic service providers, except that it does exactly what you just said. And then it says, "except or provided that it doesn't otherwise violate the antitrust laws."

The problem with that in the real world is who is going to determine that these negotiations have violated the antitrust laws? Is the tugboat operator supposed to sue his customers under the antitrust laws to push back on this? Shall we rely on the Department of Justice to do it? Should we rely on the FMC to do it? These are not going to happen in the real world. And the result is that, in fact, the express prohibition in the law will be routinely violated in the marketplace.

Mr. GARAMENDI. So what change?

Mr. ALLEGRETTI. Then the change would be to take that provision out of the current statute that says, "provided that it doesn't otherwise violate the antitrust laws."

Mr. GARAMENDI. OK. So the removal of a specific section of law.

Mr. ALLEGRETTI. It is a phrase at the end of that section that has the express prohibition in it.

Mr. GARAMENDI. Mr. Khouri? Same question.

Mr. KHOURI. Congressman, I would have to take some time with our general counsel and with my fellow Commissioners. I can't individually speak on behalf of the FMC.

I don't have a formed opinion as to whether that would be a bad idea or not. I don't have a current opposition to considering it, but I would want to have a reasoned amount of input from all parties to see might there be some unintended consequences with that. But I can't say, as I sit here and give testimony today, Congressman, that I am opposed to that as a solution.

So, you know, it is not that any of us—and I said this, you know, when we had a private meeting the other day—at the Commission, you know—the only degree I have on my wall is my United States Merchant Marine Officer's License as a Master and First Class Pilot——

Mr. GARAMENDI. I appreciate that. We really——

Mr. KHOURI. And we have others. So, you know, we have the sympathy——

Mr. GARAMENDI. Well, let me put——

Mr. KHOURI [continuing]. But, as you say, we have to work with the law.

Mr. GARAMENDI. Excuse me for interrupting, but I would like the—like your opinion, and I would like the opinion of the Commission as to how to address this problem of competition or lack thereof. So if you could respond to that question——

Mr. KHOURI. We will promptly prepare answers to all the committee——

Mr. GARAMENDI. We are probably less than a month away of writing the new law for the Coast Guard maritime. And so I would appreciate that in the next 2 weeks, if you would please provide that.

Mr. Butler, the same question to you.

Mr. BUTLER. Mr. Garamendi, obviously, if the Congress wishes to amend the law, we would be pleased to work with you at looking at language. That is the prerogative of the Congress to make that policy and make the law.

I would offer the perspective that the existing Shipping Act, as it was amended in 1998, did contemplate the kinds of activities that are going on today. I am not so sure that we are in a position where we need to look at a major rewrite of the Shipping Act. I think there is enough authority and flexibility to deal with these issues.

I would just note that the issue Mr. Allegretti has raised is very specific, and I understand you to be talking about perhaps broader issues. I think it is important to make that distinction.

Mr. GARAMENDI. Well, let me be very specific. Mr. Allegretti has proposed a specific change in the law that a certain clause be eliminated. Have you—I assume you have not had the opportunity to opine on that, but take a run at it.

Mr. BUTLER. Well, I want to talk to Mr. Allegretti about what he is trying to——

Mr. GARAMENDI. Well, if I——

Mr. BUTLER [continuing]. To accomplish. And we have had a conversation. And as I understand it—and he will set me right if I get this wrong—I think what he is trying to have is a flat prohibition on joint negotiation for tug services. And if——

Mr. GARAMENDI. Mr. Allegretti?

Mr. ALLEGRETTI. Can I try to put a more specific and practical perspective on what the problem is? There is a lot of conversation about law and analysis and competition. But here is the effect of what will happen if we don't change the law, and let me give you a practical example.

You are a tugboat operator in a port somewhere in the United States. You have three major customers, and they each constitute, let's say, 25 percent of the business that you have in that port. Those three customers form an alliance, and they are given authorization by the FMC to come to you and jointly negotiate their rate.

The first thing they do is they share the rate information, and they determine that one of them was paying $1,000, one was paying $1,500, one was paying $2,000. Well, the immediate thing they will ask that tugboat operator for is, "Give us all of the work at $1,000." Once they have done that, perhaps they will say, "And you know what? This is 75 percent of the business. Maybe you ought to give it to us at $800."

So, if you are the tugboat operator, and you are faced with this dilemma, you are now faced with either taking work at a non-compensatory rate that doesn't allow you to meet the cost of capital for your $15 million tug, for the crew that you provide family wages to, or the loss of 75 percent of the business that you enjoy in this port. We should not allow that to happen, Mr. Garamendi.

Mr. GARAMENDI. I very much appreciate your argument. It is clear to me—and I think to many members of this committee—that we have a situation evolving in which oligarchic power is in existence and can be used to the detriment of competition, pricing, and a competitive environment.

It seems to me that we need to modify the law, which is now almost 30 years old so that we recognize the realities of the industry as it exists today. I am particularly troubled by the language in the alliance, as Mr. Butler has presented to the committee, that allows the alliances to provide amongst themselves all the information they need to collude—independently, but nonetheless, collude, prior to independent negotiations. I think that is wrong. I think we need to change the law.

Mr. Allegretti, you have made a specific proposal as to how that might be done. I intend to pursue that. We will be writing a new authorization for the Coast Guard maritime in the next month or so, and it would be my intent to try to address this issue by changing the law to require—or to set up a balance that would create competition and eliminate collusion. Now, that would be my intent.

And I would appreciate, Mr. Khouri, if you and the FMC Commissioners would opine on that, and specifically on the language that Mr. Allegretti has proposed.

Mr. Butler, if you would do the same, it would be very helpful.

I yield back my time.

Mr. HUNTER. I thank the ranking member. So let me just go through this really quick. There are three issues here. One is firefighting and oil response. The second is the Western Alaska Captain of the Port Zone—and let me apologize for Don Young not being here. Otherwise, Mr. Custard and Mr. Candito would be much more—you would be much more involved. I have been to Alaska once when I was 13, I went fishing with my dad. So we are

going to work on this and be in touch. Then the third is the FMC and collusion between shippers, shipping companies.

So let's start with that one first, and then we will go to the oil—fire response. I am just trying to drill down, because what the law says is that the FMC is required—it is basically you are looking out for consumers. So as long as the rates are low, and the stock at Walmart doesn't rise in price because of shipping prices, then you are happy, right?

I mean that is, by law, what you care about. It is—because the law doesn't mention ports or tugs or terminals or any of that. It just mentions the shipping companies, right? And your job is to make sure that those prices stay low for the American people.

Mr. KHOURI. It is both price and service. So, you know, adequate service to the consuming public is included in that, Mr. Chairman.

Mr. HUNTER. And that means the availability of ships to export and to import, right?

Mr. KHOURI. Well, yes. But, you know, we do also regulate terminals, and they are common—they produce common tariffs, et cetera, and they also fall within our jurisdiction. So——

Mr. HUNTER. But when it comes to this case, by law you are looking at the availability of the ships to export and import, and low prices for the American people.

Mr. KHOURI. To see—as long as there is open competition, competition will obtain the best result. Yes, sir.

Mr. HUNTER. OK. So I think, in the end, that is what we are going to need to look at changing, if we are to make changes to this, so that the law can then prescribe to you that you are allowed to take in the interests of the American maritime industry, which is why you exist.

I mean you brought up the FTC, the Department of Transportation, the DOJ. I mean if we have all that, then why do we really need the FMC? I mean the reason you have an FMC is to look after—in my opinion, and I think in the ranking member's too—is to look after American interests when it concerns the maritime industry.

Mr. KHOURI. I——

Mr. HUNTER. But we are wrong, because that is not what the law says. That is just what we want.

Mr. KHOURI. I will be happy to look at that. You know, again, the sympathy is with the sentiment that you express.

If I could just take a second to make sure where we are moving from. Mr. Allegretti put together a hypothetical. Not to get back down into the weeds, but to be clear, if the hypothetical was—that he gave on the record today—was presented to us, I could look at my general counsel out there. It is 12:20. I bet you he could have an injunction on that hypothetical out of the U.S. District Court here in the District of Columbia before 5 o'clock today.

What he described was a very clear abuse of market power. So it is not that we don't have power to address those issues when presented. So——

Mr. HUNTER. Yes, am I correct, though—am I correct in basically saying what the law allows you to do and prescribes for the FMC?

Mr. KHOURI. That is correct, sir.

Mr. HUNTER. OK, OK. So that is what we needed to drill down on.

To Admiral, let's get to the response vessel plan, vessel response plans. If an oil-carrying rig off of Alaska gave you a vessel response plan that was a plan that included vessels of opportunity, some of which might not even have oil containment or oil-fighting, oil-dispersion capability, would you accept that?

Admiral THOMAS. Well, we would look at the plan to ensure that it meets, in the case of western Alaska, the alternative planning requirements that have been approved. That may include some vessels of opportunity that meet some of the 19 functional requirements. But we would have—in the case of oil spill response, we would have to make sure they meet the requirements in one way or the other. It may include vessels of opportunity, but, quite honestly, that is the case throughout the U.S., not just in western Alaska.

Mr. HUNTER. OK. Let's say in the gulf, where they drill for oil, would you be—the Coast Guard would accept vessels of opportunity for those oil response plans?

Admiral THOMAS. For the purpose of salvage or oil——

Mr. HUNTER. For the purpose of oil spills, for cleaning it up and stopping fires and oil stuff.

Admiral THOMAS. Absolutely. We will look—we verify that an OSRO who is listed on a vessel's response plan has the capability that is required by the law. If they provide that capability through vessels of opportunity, you know, that is common.

Mr. HUNTER. OK. So let's go back and make this simple for me. You are saying if the vessels of opportunity have the correct gear on them to deal with an oil spill, and you verify that, then that is acceptable?

Admiral THOMAS. Well, again, there are many different functional requirements in the regulations. Mechanical recovery of oil is one. Those are specialized vessels, and those would have to be, you know, specifically identified, and not necessarily used as a vessel opportunity.

But there are other functional requirements——

Mr. HUNTER. OK, so—but—so let's just stop there. So just that 1 out of the 19, that would require the vessel to be a specialized vehicle for oil response stuff, right?

Admiral THOMAS. Well, I don't want to confuse the salvage and marine firefighting regulations with the oil spill recovery regulations. They are both in OPA, but they are——

Mr. HUNTER. Right, but I am—we are not talking fire, we are talking oil.

Admiral THOMAS. OK. So the 19 functional requirements are specified in the salvage and marine firefighting rules.

Mr. HUNTER. And——

Admiral THOMAS. So the oil spill regulations say you have to identify your worst-case discharge and the resources required to, you know, respond to that.

So, for example, there may be a requirement to deploy boom. Deployment of boom is not going to require a highly specialized vessel, and that is a perfect opportunity for vessels of opportunity, particular, for example, vessels that are normally in a port working

that port to be identified in the plan as the resource which will deploy the boom.

Now, the resource that will conduct mechanical recovery, if that is actually required by the plan, is usually a very highly specified or highly specialized resource, and that would have to be identified, and we would have to confirm that it is reasonably available in the timeline required.

Mr. HUNTER. OK, and do you go by—do you look at—those vessel response plans on oil spills, do you look at those as planning requirements or performance requirements?

Admiral THOMAS. It is a planning requirement, sir. It is a worst-case discharge planning requirement, and identify the resources that would be required——

Mr. HUNTER. So they can say, "here is our plan," and then, when it comes down to it, they don't really have anything, but that is OK, because they had it—they had a plan for——

Admiral THOMAS. No——

Mr. HUNTER [continuing]. Between performance and planning requirements——

Admiral THOMAS. Well, so we require that you provide us a plan that meets certain planning factors, and that you identify the resources that would be available to meet that plan. The difference is, when it actually comes time to deploy those things, we don't go out and say, "Your plan said it would be here in 6 hours; it took 7 hours," right, because the performance didn't meet the plan.

If it was—in our judgment, when we approved the plan, you reasonably identified the resources and had the contracts in place to meet the performance requirements. We don't then come back and say, well, you know, it was 7 hours because there was traffic on I–95.

Mr. HUNTER. So is there a difference in your mind, then—so now let's confuse the two, the oil spill and firefighting.

Admiral THOMAS. It is easy to do.

Mr. HUNTER. Right? So what is the difference between the requirements, planning, and performance requirements between those two? Or do you kind of see those the same way?

Admiral THOMAS. Well, with regard to oil spill response, you have to plan for a worst-case discharge from your facility, from your vessel, et cetera. And that drives the planning requirements, because it says what kind of product am I carrying, how much might spill, et cetera.

With regard to salvage and marine firefighting, you have to plan for the 19 functional requirements that are in the regulations, things like deep-sea towing, firefighting, you know, et cetera, removal—wreck removal.

Mr. HUNTER. So that means, then, that the vessels that you choose, they have to have those capabilities, right?

Admiral THOMAS. Yes. Yes, absolutely. In the case—yes.

Mr. HUNTER. Go ahead, Mr. Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chairman. If I might, I had a meeting, a conversation, about a week ago with this—with the response organization for San Francisco Bay. And they had completed, within the last month or so, a drill in which they tested the response for an oil spill and a fire within the bay.

I think that is, if I recall from my experience as head of the State Lands Commission in California, that is uniform throughout the ports and some of the coast of California. As you get into the more remote areas, I don't think that is the case. But they do have a response plan, and they do exercise on a regular basis that response program. So I think it goes to the issue of both the plan and the capabilities.

Now, I can't speak for anywhere outside of the ports of California which I am familiar with that happening. And I think the question that we are trying to get to here is that—is it in other parts of the marine environment subject to American control sufficient planning and then response as a result of that planning? And does the Coast Guard have the capability of having some reasonable level of assurance that it does exist? Admiral?

Admiral THOMAS. So the regulatory requirements are consistent, you know, throughout the U.S., and including in western Alaska. And that includes the requirements for the planholders to conduct exercises like those that you have had the opportunity to observe.

The Coast Guard will oversee those exercises when our resources permit. But the fact remains that the responsibility to comply with that portion, with the exercise portion of the regulation, remains with the regulated entity, or the planholder. That includes both facilities and vessels. And that is a uniform requirement.

The question about whether or not the Coast Guard uniformly verifies compliance with both the exercise requirement and whether or not we uniformly verify compliance with the availability of the identified resources, absolutely, we are resource-constrained in our ability to do that. And we are also constrained in some ways by some legal requirements. But we are working hard to work our way around the country right now and complete those verifications.

Mr. GARAMENDI. I appreciate that. And my last 30 seconds here—because I think I know I have to go—I share the concerns with Mr. Young about what is happening in Alaska, and the way in which the western zone has been divided up, and the effect that that would have on providing services in those areas that are not directly related to the Prince William Sound. So, I will let it go at that, share that comment with you.

For those I said specifically—I asked specifically for three people to respond to Mr. Allegretti's point, and anybody else that wants to chime in, here we are. I look forward to that.

Mr. Chairman, a most useful committee hearing. Thank you so much.

Mr. HUNTER. I thank the ranking member. And we will—this has been a marathon sitting here, so we will finish really quickly. I just—back to the firefighting response stuff.

Admiral, I just read—John showed me the 155.4030(b). You do put in there—you have timeframes, right? You say you have to have fire suppression, do on-site assessment, and then you have timeframes for inside of 12 miles or inside of 50 miles, and you have to have external vessel firefighting systems and external firefighting teams, right? That is what you—that is what is in—that is Coast Guard regulation, right?

Admiral THOMAS. Yes, sir.

Mr. HUNTER. OK. So when you established that, what was—just walk me through this. So you have that. Then you say, "However, if you don't have that, and just have a good plan," and you list vessels of opportunity that may or may not have this capability, that may or may not be able to meet this timeframe, walk me through—then that is OK, because it is just for planning purposes, and it is not oil spill stuff, it is just a fire.

Admiral THOMAS. So I will try to clarify, Congressman. I am sorry that I confused this issue.

When we review a plan, we review the plan to ensure that they have made provisions—the contract or otherwise—for the resources that are required by the regulation and the response times that are required by the regulations.

In other words, their plan says, "Here is how I meet that 6-hour requirement for firefighting, and here is who is going to provide that service for me," and we review the plan, we do what we can to establish that these arrangements are, in fact, true. And in the case of salvage and marine firefighting, most of those come through the four big agreements that are out there.

And then, so that is how we approve the plan. So it—we do make sure that they have, in fact, identified a vessel that can fight fire.

Mr. SCHAUER. Chairman?

Mr. HUNTER. Yes, please.

Mr. SCHAUER. Thank you, Chairman. Just to clarify how—now we are operational guys. A fire is fought in a certain way. The way we look at it, similar to oil spill response, we use specialized equipment. We can't part—because we can't afford 200 fire boats everywhere, it would—cost prohibitive—we take specialized equipment, portable equipment, large-capacity pumps, large-capacity monitors, storages of foam, we put them in depots around the country, 25 depots. We have a big fire offshore? OK. We have the specialized people and equipment to do the fire. We just need something to transport it out there. OK?

We need—and the problem that is being presented is that it is trying to do two things at once. Carrying passengers and being set up to handle a big fire are two different things. Carrying the people offshore, that is taxicab service, OK? Not a big deal. We are concerned about, when we get there, having assets—taking those big pumps, big monitors—we can put remote monitors on top of the wheel houses of big tug boats, big offshore supply vessels, and direct the foam and water on the fire. That is effective operational response.

So it is not about just one little taxicab with a fire pump. It is about the system we use. And that is how we do it, that is how we do it cost effectively, with the portable specialized equipment loaded on vessels of opportunity.

Mr. HUNTER. Mr. Nedeau, go ahead.

Mr. NEDEAU. If I could comment, I think that the question that you posed is a very, very good one, and I want to go back to something you said earlier. You were concerned that it took 4 days to put out the fire on the *Grey Shark*. I should point out that it also took 4 days to put out the fire on the *Caribbean Fantasy*. That fire broke out within 2 nautical miles of the pierheads in San Juan, and the San Juan Fire Department put that fire out, as well.

I think, if you go back to the transcript of the hearings that were held in San Juan with the National Transportation Safety Board and the Coast Guard, you will find that the firefighting response was wholly inadequate. I cited in my comments that the Coast Guard has already concluded it was not compliant. And the reason it is not compliant is, again, relying on a vessel of opportunity works in some instances. However, in this instance, if your plan cites certain vessels of opportunity to respond, and they do not—they are transient, and they are not in the captain of the port zone, for example, then you do not have an adequate plan, from my perspective.

And my criticism of the Coast Guard is they haven't gone back to verify that a vessel entering a harbor—let's say Charleston—lists 30 vessels as its vessels of opportunity to respond, however none of those are located within the captain of the port zone. I do not think that is an adequate plan. And because the Coast Guard, as Admiral Thomas has pointed out, lacks the resources to do this type of verification, we have, time and time again, instances where the resources simply aren't available.

We bring spent plutonium into Charleston under the MOX Treaty. In that instance, you would think that we would have at least a dedicated resource or ensure that resources are within the captain of the port zone to address that, in the event of a fire. And I am surprised that the Coast Guard has not taken it upon themselves to review our alternative planning criteria, where we do propose to provide a high-speed fire boat.

Mr. Schauer is correct. The high-speed fire boats that we have proposed in the 20 largest ports in the United States would not necessarily put the fire out. We need the salvage community, we need them to bring those heavy assets. But to meet the response requirements in these strict timeframes that you alluded to, Chairman, that would require a high-speed, special-purpose fire boat, which we have proposed to provide in the 20 largest ports in the United States. Thank you.

Mr. HUNTER. Admiral, so let's end with you on this. What is—I guess put it this way. Is the Coast Guard happy with the way that things are? Because there is a clear delineation between what you require for oil spills, which might kill some fish, and fires, which may kill some people. I guess that is what I am trying to get to, because you require all this stuff for oil spills, because we all love the climate and it is—you know, the ocean is great.

But when it comes to people, you require whatever could be available at any—whatever is available, basically. And you do make that difference.

Admiral THOMAS. Sir, I think the Coast Guard would like to see more robust response capability around our Nation for both oil and salvage and marine firefighting. And it is clear that the congressional intent, when we were directed to implement the regulations, was to build that capacity.

Mr. HUNTER. The author of the regulation is here, by the way.

Admiral THOMAS. And I would say that we are achieving that goal. Probably not as fast as some in this room would like to see.

The Coast Guard, as you know, is constantly in the position of balancing the need to ensure that ships can continue to move in

and out our ports, and that we raise the bar with regard to safety and environment, et cetera. This is a case where our measured implementation and our measured compliance or enforcement is helping to build the capacity envisioned by Congress. But we can't turn it on overnight.

In the case of the Fast Response Boats, there is nothing in our regulation or in the law that prevents them from entering the market, from offering that service to a regulated entity—in this case a ship operator. What they are asking us to do, essentially, is to require that product be purchased by a regulated entity.

And we may, in fact, get to that point if, in the course of our verification, we determine that the salvage assets that are out there really don't meet the national planning criteria and so, as requested, we are going to lower those criteria in a way that then would allow the regulated ship—planholders to meet—to be in compliance by purchasing this substitute service. But we haven't gotten there yet, sir.

Mr. HUNTER. Tell me. But why do you differentiate between oil spills and fires on ships in the types of vessels, the specialized vessels that you require to be on hand, on stand-by?

Admiral THOMAS. I think that the type of assets that are required for oil spills are different. The regulatory regimes were put in place on different timelines. The industries matured differently. In fact, it is one of the reasons why the salvage industry was so anxious to get these regulations in place, because they saw what OPA did, in terms of our national capacity to respond to oil spills, and thought that that is what the Nation needs for other contingencies, as well.

Mr. HUNTER. Yes, sir?

Mr. SCHAUER. Chairman, just maybe a quick clarification. Salvage and firefighting, 19 different services, it is wholly different than responding to an oil spill. Responding to an oil spill is pretty—we all pretty much understand what you do. You contain it and you skim it out of the water. You could have a—you know, for salvage and firefighting, it is any manner of casualties. I described some of them. It could be fires, explosions, sinking vessels, fuel underwater, removing the wreck, even big, heavy-lift assets.

So it is—the diversification of what we have to do is so large, that it is not really comparable, because it is—oil spill you can pretty much focus down on what you need and, OK, we will dedicate most of them. It is too big. It is too big a problem. And it is—we are trying to meet it by best use of specialized assets versus—alongside of the vessels of opportunity.

Mr. HUNTER. So I guess, getting down to it, why—the last question. The really, really last question. Why do you have these in there, the planning standards, if there is no real requirement for someone to perform to them?

Admiral THOMAS. Well, sir, the way the regulation is construed is—or constructed is to require—or is intended to build our—a capacity to respond by requiring the regulated entity—in this case, mostly foreign vessel operators—to contract with service providers. It is not intended to regulate those service providers.

In other words, we are not going to go after the salvor and say, "You said you would be there in 6 hours, you didn't get here. Here is your ticket."

Mr. HUNTER. I understand.

Admiral THOMAS. So I think that is a key difference. But, really, what this boils down to, sir, is our capability to get out there and verify with some degree of robustness that the capability identified by the regulated entity actually exists. And if it doesn't, to hold them, the planholder, the ship operator, responsible. But we have to do that in a way, sir, that doesn't all the sudden stop vessel traffic in the U.S. And I think that is why you are seeing a measured approach to our verification.

And then we will come up with the best solution, in terms of how to build the capacity intended by the regulation. It might be an alternative planning criteria. But, quite honestly, that would lower the national standard. I am not sure why we would want to do that. But we are in the course of really working through those issues.

Mr. HUNTER. Why—I mean every ship that goes out is insured. Why don't—in your opinions, why don't the insurers require that planning criteria really be performance criteria to save your asset?

Admiral THOMAS. I think one of the reasons—and I think that most of the panel members here would agree—is because the Coast Guard has not been aggressively the compliance——

Mr. HUNTER. But just in the marketplace why don't they care, the insurers?

Admiral THOMAS. I can't answer that question, sir. Certainly I know they begin to care when the Coast Guard begins to hurt them by holding their ship up, et cetera. And that is what aggressive enforcement will do.

Mr. HUNTER. OK. I think that is it for me. Everybody, thank you very much. Thanks for being here, and thanks for your patience.

The hearing is adjourned.

[Whereupon, at 12:39 p.m., the subcommittee was adjourned.]

STATEMENT OF
THE HONORABLE PETER DEFAZIO
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
HEARING ON
"MARITIME TRANSPORTATION REGULATORY PROGRAMS"
MAY 3, 2017

Thank you, Mr. Chairman. We have a lot of ground to cover this morning so I will limit my remarks.

The regulation of the maritime industry is one of the oldest and most durable functions of the Federal Government.

Whether operating revenue cutters in the late 18th Century, crafting new requirements for steam-powered vessels in the 19th Century, or adopting new oil spill response regulations in the late 20th Century, the United States Coast Guard has diligently worked to regulate the U.S. maritime industry as that industry has evolved.

The maritime industry continues to evolve today. It is no exaggeration to say that the global maritime supply chain that moves trillions of dollars of commerce annually is a technological and logistical marvel, a fact that often goes unrecognized by the average person.

Regulating such a complex industry is a difficult undertaking considering the very high risks and costs associated with failure – especially the potential for the loss of human life.

Perhaps it will be an even more difficult job for the Coast Guard under the new administration that appears to view virtually any regulation as unnecessary.

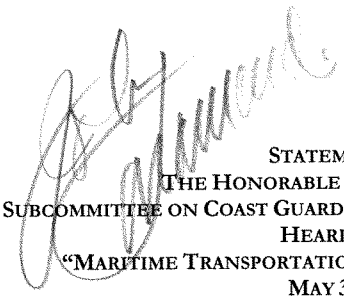
Notwithstanding this potential constraint, the Coast Guard does need to maintain progress in working down the backlog of overdue regulations, several of which were required by Congressional action. I expect that Admiral Thomas will be able to update the committee on the Coast Guard's progress.

I am also interested in hearing more from the Federal Maritime Commission and their regulation of carrier alliances under the Shipping Act.

I remain concerned about the impact of these alliances on competition in U.S. shipping – both in the short and long-term, and I look forward to hearing from Chairman Khouri on this important matter.

For example, if the commission's 6(g) authority under the Shipping Act needs to be strengthened to ensure fair competition among carriers and protect U.S. maritime service providers, I stand ready to work with Chairman Khouri and the other commissioners at the FMC to develop sensible amendments.

I look forward to a good discussion as this committee continues its work on Coast Guard and maritime reauthorization legislation. Thank you for being here today.



STATEMENT OF
THE HONORABLE JOHN GARAMENDI
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
HEARING ON
"MARITIME TRANSPORTATION REGULATORY PROGRAMS"
MAY 3, 2017

Thank you, Mr. Chairman. Considering the number of witnesses scheduled to testify this morning, my opening remarks will be brief in the interest of time.

The U.S. maritime industry and U.S. maritime transportation system contribute more than $4 trillion of economic activity to the U.S. national economy each year. Moreover, maritime operators provide good paying jobs that support the livelihoods of hundreds of thousands of U.S. workers annually.

To protect our national prosperity and economic vitality, it remains critical that our marine transportation system remains safe, reliable and efficient.

The best path to reach that goal is the sensible, responsible and cost-effective regulation by the Federal Government of the various elements of the marine transportation system. That responsibility falls squarely on the shoulders of the two agencies here this morning — the United States Coast Guard and the Federal Maritime Commission.

Generally, each agency has been successful in exercising this important authority. This fact in itself is a noteworthy accomplishment considering the many turbulent changes and innovations that have occurred in global marine transportation over the past forty years.

This is not to say that the each agency cannot improve, or for that matter, that the Congress should be allowed to neglect its oversight responsibilities. We must ensure that both the regulators, and the regulated communities, are each abiding by our maritime laws and regulations.

In this respect, I will want to examine further the Federal Maritime Commission's processes for analyzing new carrier alliance agreements under the Shipping Act. Now that these new alliances have gone into effect, I want to know what activities the Commission has initiated to monitor compliance by alliance members with the terms of each alliance agreement.

I also want to hear from the Coast Guard on their rationale and the administrative processes they used when authorizing new Area Planning Criteria, or APCs, for spill response capabilities in the Western Alaska Captain of the Port zone.

Critics of these two new APCs have reported that the Coast Guard's decision-making process was far from transparent or complete. It would be helpful to get all the underlying facts out in the open to understand better the merits and detriments of these new APCs.

In closing, Mr. Chairman, the regulation of the maritime transportation system is a demanding, complicated, and time-consuming government undertaking. At its core, however, such regulation remains essential to the functioning of the maritime supply chain.

We must vigilant in our oversight to ensure that the regulatory processes of the Coast Guard and Federal Maritime Commission remain balanced, transparent and fair to all stakeholders. I look forward to hearing from our witnesses to gain their perspectives on how we might best attain that goal. Thank you.

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

Commandant
United States Coast Guard

2703 Martin Luther King Jr Ave SE
Washington, DC 20593-7103
Staff Symbol: CG-0921
Phone: (202) 372-3500
FAX: (202) 372-2311

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

ON
MARITIME REGULATORY PROGRAMS

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

MAY 3, 2017

Introduction

Good morning Chairman Hunter, Ranking Member Garamendi, and distinguished members of the Subcommittee. It is my pleasure to be here today to discuss the Coast Guard's regulatory program.

America's economic prosperity is reliant on the safe, secure, and efficient flow of cargo through the Marine Transportation System (MTS). The Nation's waterways support $4.5 trillion of economic activity each year, including over 250,000 American jobs.[1] U.S. economic stability, production, and consumption, enabled by the intermodal transportation of goods through the midstream economy, are critical to American prosperity and national security. This trade-driven economic prosperity serves as a wellspring for our power and serves as a leading source of our influence in the world. The Coast Guard's marine safety program and regulatory process advance American prosperity by leveraging our unique capabilities to ensure that the MTS operates safely, predictably, and securely. We are mindful of the need to facilitate commerce, not impede it, and our marine safety program does this by helping to level the playing field for industry through a federal framework of common-sense regulations, that are enforced in a predictable and consistent manner across America's 360 ports. Coast Guard regulations and our regulatory compliance functions provide the means for investors and operators to evaluate and manage risk, promoting investment and innovation throughout the maritime sector. This federal framework levels the playing field, enabling U.S. shipping to compete internationally and U.S. ports to compete equally against each other, while protecting American interests from the risk of foreign-flagged sub-standard shipping in our ports and waters.

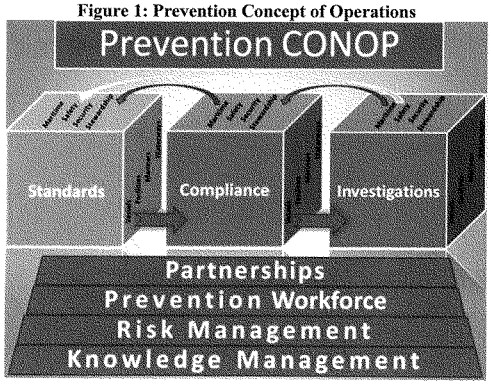
---

1 "Ports' Value to the U.S. Economy: Exports, Jobs & Economic Growth." American Association of Port Authorities, http://www.aapa-ports.org/advocating/content.aspx?ItemNumber=21150, Accessed April 17, 2017.

The maritime industry is a dynamic industry that includes many components. The maritime industry includes ships and mariners that sail our waters, the ports and facilities they call upon, the waterways upon which commerce moves, and water-bourne access to maritime natural resources. Our maritime industry provides vital transportation along marine highways, enables the harvesting of marine and offshore natural resources, supports recreation, and facilitates interstate and international trade. By providing access to transportation, trade, and natural resources, the maritime industry supports our Nation's economic prosperity and is a key driver for our national economy.

As the lead federal regulator for the maritime industry, the Coast Guard must be attentive to the industry's changing needs and dynamic challenges. Amidst emerging trends and needs within the MTS and the maritime industry, the Coast Guard's underlying concept of operations and our approach to continuous improvement remains unchanged. The Coast Guard continues to conduct our work, using the same concept of operations that has guided us for decades: the Coast Guard develops standards for safe, secure, and environmentally sound operations in the MTS; the Coast Guard assesses and enforces compliance with those standards; and when failures occur, the Coast Guard aggressively investigates them and drives the lessons learned back into our compliance and standards activities. These three phases of operations rely on our ability to leverage our marine safety workforce, engage other governmental, non-governmental, and industry partners, and manage risks and information. As shown in Figure 1, this operating concept applies across all of our prevention responsibilities including marine safety, maritime security, and environmental protection. Further, this concept of operations guides our interaction with each segment of the maritime industry including the vessels, facilities, mariners, and waterways. Lastly, this concept of operations is a reminder that the vessels and mariners operate within a broader MTS and that our responsibilities for marine safety extend beyond the vessels and mariners to include safe navigation and safe port operations.

Figure 1: Prevention Concept of Operations



Our concept of operations and service desire for continuous improvement are foundational strengths which will enable us to adapt to changing industry demands while meeting public expectations for effective oversight.

Challenges from a Dynamic Maritime Industry

Over the past decade, legislative and regulatory changes have led to increased oversight of fishing and towing vessels with the Coast Guard now examining or inspecting as many as 30,000 additional commercial fishing vessels and 5,000 additional commercial towing vessels. While the recent downturn in domestic oil production eroded much of the previous years' petroleum related growth, current shipment of other commodities, such as liquefied natural gas exports, set new highs. In addition to meeting the challenges of a dynamic industry, the Coast Guard regulatory and compliance programs must contend with the growing capacity of the MTS and address the increasing complexity in the maritime industry.

In the face of these challenges, our fundamental approach remains the same. The Coast Guard will continue to strive to reduce casualties, improve service, improve mission management, and continue to inform common-sense regulations that are consistently applied around the country. The Coast Guard must continue to adapt our standards and compliance processes, enhance our technical competency, and increase the productivity of our workforce to keep pace with advancements in the maritime industry.

Updates to the Coast Guard Regulatory Program and Status of Implementation of Regulations

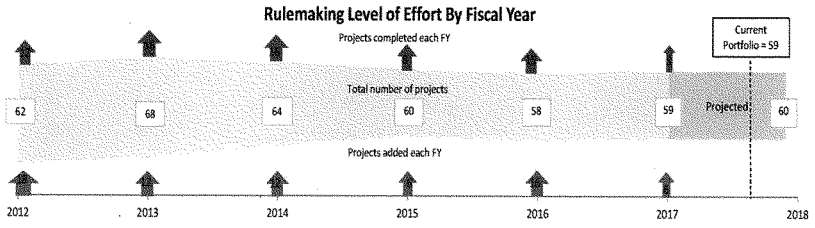


Figure 2: Number of Active Rulemaking Projects

With progress made on older rulemakings, the average rule development time has been reduced from 6.2 years at the end of FY 2009 to 5.7 years in 2017. The Coast Guard anticipates further reductions by prioritizing completion of older rulemaking projects. Further, the Coast Guard is actively participating in a DHS-wide (and interagency) effort to identify, consolidate, eliminate, and revise regulations where possible. We recognize the necessity of soliciting public comments and working with Advisory Committees, standards organizations, and many industry partners in our rulemaking projects, and any potential regulation reductions or consolidations, to develop clear economic impact analyses. Our disciplined, detail-driven approach takes time, but results in rules and regulatory changes whose benefits outweigh the costs.

Noteworthy Publications

Table 1 shows the notable publications in FY 2016 and thus far in FY 2017.

Table 1: Notable Publications

Fiscal Year	Rule (Date Published)	Phase
2016	Cargo Securing Manuals (May 9, 2016) **International agreement provision** • Implements requirements for a cargo securing manual on certain vessels operating on international voyages.	Final Rule
	Inspection of Towing Vessels (June 20, 2016) **Statutory mandate** • Adds towing vessels to the list of vessels requiring Coast Guard inspection.	Final Rule
	Commercial Fishing Vessels – Implementation of 2010 and 2012 Legislation (June 21, 2016) **Statutory mandate** • Aligns regulations with legislation for training, equipment, vessel examinations, and voyage termination for unsafe operations.	Notice of Proposed Rulemaking
	Tanker Automatic Pilot Systems July 11, 2016) • Harmonizes with international standards for automatic pilot systems on tankers operating in safety fairways and traffic separation schemes.	Note of Proposed Rulemaking
	Transportation Worker Identification Credential (TWIC) Reader Requirements (August 23, 2016) **Statutory mandate** • Establishes standards for devices used to read TWIC cards.	Final Rule
2017	International Maritime Organization Polar Code Certificate (November 22, 2016) **International agreement provision** • Adds the Polar Code Certificate to the list of certificates the Coast Guard or a Recognized Organization can issue.	Notice of Proposed Rulemaking
	Marine Casualty Property Damage Threshold (January 23, 2017) • Raises the threshold for required accident reporting.	Notice of Proposed Rulemaking
	Great Lakes Pilotage – 2017 Annual Review and Adjustment (April 5, 2017) **Statutory mandate** • Proposes updated rates for pilotage of vessels on the Great Lakes	Supplemental Notice of Proposed Rulemaking
	Recreational Boat Flotation Standards--Update of Outboard Engine Weight Test Requirements (April 5, 2017) **Statutory mandate** • update the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material	Interim Rule

The rules noted in Table 1 are priority rulemaking actions including Congressional mandates, rules required to implement international agreement provisions, and discretionary rulemakings to improve vessel and mariner safety or update equipment standards.

A current list of active regulatory projects, for which information is publicly available, is maintained at www.reginfo.gov, and at http://www.uscg.mil/hq/cg5/cg523/projects.asp. These lists also contain links to the Unified Agenda, dockets, and other information sources.

Progress on Statutory Mandates

Of the 59 rules in the regulatory development portfolio, 21 are statutory mandates. Table 2 lists 9 rules published in the 2016 Fall Regulatory Agenda that originate from a statutory mandate.

Table 2: Rules with Statutory Mandate listed in the Fall 2016 Regulatory Agenda

Title	RIN	Stage
Numbering Undocumented Barges	1625-AA14	Proposed Rule
Outer Continental Shelf Activities	1625-AA18	Proposed Rule
Offshore Supply Vessels of at Least 6000 GT ITC	1625-AB62	Final Rule
Higher Volume Port Area – State of Washington	1625-AB75	Final Rule
Revision to Transportation Worker Identification Credential (TWIC) Requirements	1625-AB80	Proposed Rule
Commercial Fishing Vessels--Implementation of 2010 and 2012 Legislation	1625-AB85	Proposed Rule
Cruise Vessel Security and Safety Act of 2010	1625-AB91	Final Rule
Seafarer's Access to Maritime Facilities	1625-AC15	Final Rule
Great Lakes Pilotage Rates – 2017 Annual Review and Adjustment	1625-AC34	Final Rule

Updates to Implementation of the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

The 2010 amendments to STCW entered into force on January 1, 2017. The Coast Guard issued a final rule on December 24, 2013, to incorporate these updates to U.S. regulations. Since that time, the Coast Guard has issued over 30 additional policy and guidance documents to assist U.S. mariners and the maritime and training industries in compliance with the new requirements. As noted by the Government Accountability Office in a report to this committee in January 2017, the vast majority of the industry was prepared to implement STCW amendments and was pleased with the Coast Guard's implementation of the new requirements.[2] This initiative serves as a prime example of the Coast Guard's ability to partner with industry in the implementation of a new regulatory regime, enabling American mariners to remain competitive worldwide while providing ship operators assurance of the competence and skill of their crews.

[2] U.S. Government Accountability Office, "Most Training Providers Expect to Implement Revised International Maritime Standards by the Deadline Despite Challenges," GAO-17-40, January 2017.

Update on Implementation of Fishing Vessel Examinations

The requirement for mandatory dockside safety examinations of commercial fishing vessels at least once every five years was implemented in October 2015. The Coast Guard conducted extensive stakeholder outreach prior to the implementation, including dockside courtesy visits by Coast Guard personnel, presentations by Coast Guard personnel to various regional fisheries management councils and safety advisory committees, and a letter to industry distributed in August 2015 followed by a Marine Safety Information Bulletin issued in October 2015. In general, the commercial fishing vessel industry has been receptive to these requirements and compliance rates have been high.

Update on Implementation of Towing Vessel Inspections

The Final Rule implementing mandatory inspection of towing vessels was published on June 20, 2016, and became effective on July 20, 2016. This rule applies to approximately 5,500 U.S.-flag towing vessels, increasing the U.S. certificated fleet by approximately 50 percent. The rule, published in 33 CFR Subchapter M, provides two distinct compliance options:

- The Towing Safety Management System, or "TSMS Option," using a Coast Guard authorized SMS along with an associated scheme of audits and surveys by a Third Party Organization (TPO) to verify compliance; or,
- The traditional Coast Guard annual inspection or the "CG Inspection Option."

We developed and are executing a multi-pronged implementation strategy, including preparation of additional guidance documents, training of Coast Guard personnel on the new requirements, and engagement of stakeholders on a recurring basis and in a variety of venues. We will begin issuing Certificates of Inspection to existing towing vessels on July 20, 2018, but are already well along in our outreach and TPO approval process. This two-year delay permits Coast Guard review of TPOs, and allows existing vessels to implement SMS and procure any equipment needed to comply with these new requirements.

Conclusion

The Coast Guard continues to sustain and improve its regulatory development and compliance program to ensure safety, security and environmental compliance within the MTS. Through streamlining internal processes, balancing input from maritime stakeholders, careful analysis of alternatives, and thorough evaluation of the cost and benefit of each rule, we are focused on ensuring every Coast Guard action sustains the smooth operation of the MTS, without imposing unnecessary costs on U.S. entities competing in a global industry.

Thank you for your continued support and the opportunity to testify before you today. I am happy to answer any questions you may have.

Question#:	1
Topic:	Coast Guard Regulation of CDC & TWIC
Hearing:	Maritime Transportation Regulatory Issues
Primary:	The Honorable Garret Graves
Committee:	TRANSPORTATION (HOUSE)

Question: Will the Coast Guard issue a policy statement that clearly states that only facilities handling Certain Dangerous Cargo (CDC) in-bulk with a vessel-to-facility interface must implement electronic inspections of TWICs?

Response: The Coast Guard published a blog post to provide short-term compliance guidance while it considers all legal options to provide stakeholders the appropriate information and clarity.

Question: Will the Coast Guard undertake a rulemaking to restore the applicability of the rule to only facilities that handle CDC in-bulk with a vessel-to-facility interface?

Response: The Coast Guard is considering all legal options, including a rulemaking, in order to provide stakeholders the appropriate information and to afford the Coast Guard time to clarify any inconsistencies.

Question: Will the Coast Guard grant the regulated industry an extension of the compliance date of the rule, to coincide with two years following whenever the amended final rule is published, due to the uncertainty created by the final rule?

Response: The Coast Guard is committed to common-sense regulations that are enforced in a predictable and consistent manner across America's 360 ports. We are examining all legal options in order to provide stakeholders the appropriate time to implement any requirements associated with this rule, and to afford the Coast Guard time to clarify inconsistencies.

Question: TWIC has traditionally been applied to CDC at secure areas with a maritime nexus. The Final Rule expands the application of TWIC, which was never addressed or raised by the USCG in the NRPM. Will the Coast Guard promptly issue an updated cost/benefit analysis justifying the Final Rule?

Response: The Coast Guard is in the process of evaluating whether unforeseen impacts resulted from differences in applicability between the Notice of Proposed Rulemaking (NPRM) and the final rule. We are evaluating all legal options, to include a potential rulemaking, in the event the original cost/benefit analysis does not justify the applicability in the Final Rule.

Question#:	2
Topic:	Verification of Vessels of Opportunity Listed
Hearing:	Maritime Transportation Regulatory Issues
Primary:	The Honorable Mark Sanford
Committee:	TRANSPORTATION (HOUSE)

Question: As stated in the testimony of the Coast Guard at this morning's hearing, the vessel of opportunity approach is being used to be included in Vessel Response Plans. Since the verification process is now only being conducted at the time of a VRP's renewal date, what type of verification process is the Coast Guard conducting to verify whether these vessels listed in a Vessel Response Plan for a particular Captain of the Port zone are actually located in that area to ensure compliance?

Response: The Coast Guard implemented a scenario-based Salvage and Marine Firefighting (SMFF) verification, in conjunction with the review of vessel response plans, (VRPs) to ensure compliance with applicable SMFF regulations. To verify whether vessels listed in a vessel response plan are actually located in the particular Captain of the Port zone, the Coast Guard accesses historical automated information system (AIS) data to determine the vessels location on the date and time from which the verification scenario is based.

Question#:	3
Topic:	Salvage & Marine Firefighting Regulation
Hearing:	Maritime Transportation Regulatory Issues
Primary:	The Honorable Mark Sanford
Committee:	TRANSPORTATION (HOUSE)

Question: Most of response resources that actually perform one of the 19 SMFF services are subcontracted with the primary response providers, the salvage company and not the vessel owner. The Salvage and Marine Firefighting regulations, § 155.4010 states (b) A planholder must ensure by contract or other approved means that response resources are available to respond. Although the primary contracts, which are submitted to the Coast Guard, may state the appropriate legal language, the subcontracts that contract with actual response vessels are not required to be submitted to the Coast Guard as stated in the Coast Guard's NVIC 2 -10, which states "contracts and funding agreements between primary resource providers and their subcontractors need not be submitted, but the Coast Guard reserves the right to view them at any time." Therefore, how will the Coast Guard ensure compliance with these requirements?

Response: The Coast Guard implemented a scenario-based Salvage and Marine Firefighting (SMFF) verification, in conjunction with the review of vessel response plans (VRPs), to ensure compliance with applicable SMFF regulations. To verify whether vessels (as primary and/or subcontractors) listed in a vessel response plan are actually located in the particular Captain of the Port zone, the Coast Guard accesses historical automated information system (AIS) data to determine the vessels location at the date and time from which the verification scenario is based.

Acting Chairman Michael A. Khouri Summary Testimony
U.S. House of Representatives
Committee on Transportation and Infrastructure
Sub-Committee on Coast Guard and Marine Transportation
May 3, 2017

Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee – good morning and thank you for the opportunity to testify today about the Federal Maritime Commission's ("Commission" or "FMC") programs. I am grateful to be able to share with you how the Commission works to safeguard competition in ocean transportation for the benefit of the American consumer.

First, I want to acknowledge my fellow Commissioners here today – Commissioners Dye, Doyle, and Maffei. I want to recognize former Chairman and - for the moment – our colleague Commissioner Mario Cordero, who is leaving the Commission on May 14 to become the Executive Director for the Port of Long Beach, CA. We wish him fair winds and following seas in his new position with the port.

I would like to take this opportunity to address a number of matters about the Shipping Act of 1984 ("Shipping Act" or "Act") and the Commission of current interest to the Subcommittee.

The FMC is a competition agency charged with an important role in antitrust enforcement.

First, the Commission has ample authority to address the competitive issues facing the international liner industry. We have been forward leaning in our use of that authority as we have reviewed new carrier agreements as they formed the new generation of alliances. We have also been careful to consider the concerns of parties affected by these agreements, and the views of our sister competition agencies as well.

The FMC is an independent agency of specialized expertise that administers an antitrust regulatory regime tailored to the special factors affecting the international ocean liner trade. The Shipping Act of 1984, and the Federal Maritime Commission that administers the Act, are related to, but separate from Department of Justice (DOJ) and the Federal Trade Commission (FTC) and the competition and antitrust statutes they administer. Since 1916, Congress has recognized that the international ocean liner industry, which transports a large percentage of the international exports and imports so essential to this Nation's economy, requires special consideration because of the industry's critical role in our international commerce, its international dimension, and the competing and potentially conflicting regulatory regimes and interests of our international trading partners.

Because of conditions and factors affecting the international ocean liner trade, Congress determined in 1916 to allow certain types of international ocean carrier collaboration not permitted under other antitrust statutes to ensure certain national objectives would be met, including the availability of shipping and stability of the infrastructure upon which the transport of a great proportion of our international commerce depends. The antitrust laws, including the

Shipping Act of 1984, are designed to protect competition, not individual competitors. Collaborative joint venture agreements among competitor ocean carriers, *as long as they are not anticompetitive*, are recognized as beneficial, finding efficiencies and reducing cost that ultimately benefits U.S. exporters and saves the U.S consumer money.

Congress entrusted competition oversight and antitrust enforcement for this industry to a specialized agency with particular expertise in this legal area, close familiarity with the ocean liner industry, and sensitivity to the interests of U.S. stakeholders and international trading partners. The FMC reviews and monitors international ocean liner carrier joint collaborations or agreements under the Shipping Act to ensure that procompetitive efficiencies and cost savings are obtained for the benefit of U.S. consumers and anticompetitive effects are prevented or properly mitigated.

As Congress noted in the Joint Explanatory Statement of the Committee of Conference – House Report No. 98-600, during consideration of the Shipping Act of 1984, "[a]s new and evolving forms of cooperative conduct develop, the conferees believe that the Commission, rather than the antitrust agencies or the courts in the first instance, is in the best position to assess an agreement's benefits and detriments in light of the objectives of this Act." Given the explosive growth in international commerce over the past three decades and the importance of this international trade to the U.S. economy, what was true in 1984 is even more valid today.

The Shipping Act's competition standard and its "Prohibited Acts" sections provide the Commission with strong tools to protect competition in the international ocean liner industry.

Under the Shipping Act, cooperative or collaborative agreements between or among competitor international ocean liner carriers are filed with the Commission and reviewed under the Shipping Act's competition standard to prevent anticompetitive behavior in these agreements. This standard the Commission uses to review carrier agreements, 46 U.S.C. §41307(B)(1) -"Anticompetitive Agreements," commonly referred to as 6(g), is analogous to the standard employed by DOJ and the FTC to review mergers, acquisitions, and competitor collaborations. Under 6(g), an agreement filed with the Commission goes into effect *UNLESS* the Commission determines (and convinces a judge to agree) that the agreement *is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost. In the event of such determination, the Commission then must go to a Federal District Judge as discussed below.*

The Commission's process for agreement review under 6(g) is modeled on the Hart-Scott-Rodino Act of 1976 governing premerger clearance of proposed acquisitions and mergers. Congress adapted this process for the Commission as part of the Shipping Act of 1984. Prior to 1984, the Commission reviewed and *approved* agreements under a broad "public interest" standard. Because approval became a lengthy process sometimes stretching into years, Congress put a Hart-Scott-Rodino type framework in place for Commission review of carrier agreements under the Shipping Act to ensure that that potential efficiencies and cost-savings would not be lost by consumers because of delay in agreement effective dates. Agreements filed with the Commission go into effect automatically in 45 days *unless* the Commission determines (and a

judge agrees) that the agreement is anticompetitive under the 6(g) standard referred to above. Under certain circumstances, the Commission may ask for additional information necessary to make a determination under 6(g), extending for an additional 45 days after receiving that information the time before the agreement becomes effective. In order to prevent the agreement from going into effect, the Commission must bring a civil action in the United States District Court for the District of Columbia and successfully obtain an injunction to halt the operation of the agreement. The burden of proof is on the Commission.

If parties agree to undertake activities that are governed by the Shipping Act, but do not comply with the Commission's process of review, they risk not only Shipping Act sanctions, but also federal criminal sanctions prosecuted by DOJ under the Sherman Act.

Some claim that section 6(g) is ineffective because it presents too high a bar to a successful court challenge of an anticompetitive agreement by the Commission. On the contrary, the paucity of 6(g) cases and the historical absence of the Commission's need to challenge agreements in court is testament to the Commission's successful efforts to mitigate or eliminate potentially anticompetitive provisions in pending agreements through detailed discussions with filing parties during the review process. One need only look at the THE Alliance and the OCEAN Alliance to see recent examples of cases where the major carrier alliance agreements, as originally filed, requested authority to jointly negotiate for goods and services. Following Commission review, however, the agreements lacked these joint purchasing authorities when they went into effect. By its terms, the Shipping Act provides an opportunity for the public to express its concerns about filed agreements. The Commission takes these comments seriously, and uses them together with its own economic analysis under 6(g) during the review process to consider and address anticompetitive concerns.

In addition to the review of carrier agreements for potentially anticompetitive effects under 6(g), the Commission may use section 10, the "Prohibited Acts" provisions in the Shipping Act, to preserve competition. This section of the Act includes prohibitions on a number of business practices on concerted carrier conduct acting outside of approved authority (such as price fixing or market allocation), unreasonable practices, discrimination in price or accommodations, refusal to deal, retaliation, boycotts, predatory practices, and discrimination based on shipper affiliation., 46 U.S. Code § 41105(4), prohibits carriers from jointly negotiating with non-ocean carriers *if doing so would violate antitrust laws* (emphasis added).

These prohibited practices mirror remedies found in other competition statutes, such as the Robinson-Patman Act of 1936. The Commission, of course, may enforce section 10; but private litigants may bring actions under these Shipping Act provisions to protect their interests.

The international ocean liner industry is not "concentrated" under normal antitrust benchmarks.

By any benchmark used by the Commission, DOJ, and the FTC, the worldwide ocean liner marketplace is not concentrated. Concentration is assessed using the Herfindahl-Hirschman Index (HHI). Theoretically, the greater the degree of market concentration and the fewer competitors, the higher the HHI. In its merger guidelines, the DOJ's Antitrust Division regards

markets as not concentrated if the HHI is below 1,500. Under DOJ guidelines, mergers and other less problematical, forms of horizontal collaborations, that do not result in concentrated markets are unlikely to produce adverse competitive effects and, ordinarily, do not require further analysis.

Following the last ocean common carrier merger, the HHI for the container shipping industry in the international U.S. trades today is 752, far down into the "safe harbor" area as recognized by DOJ, FTC, and our industry specialists at the FMC.

While still not "concentrated" under traditional antitrust standards and with overall market share of the largest oceangoing carriers diffused, the international ocean liner industry has recently experienced consolidation because of long-term structural issues in the industry and poor financial returns. Thirty-one different ocean common carriers carrying at least 12,000 containers a year serve the U.S. trades. The number of major carriers serving the U.S. trade will decrease from 20 in 2015 to 13 by 2018 with various company mergers and the bankruptcy of one major carrier.

As the industry consolidation continued over the last two years, the number of major alliances serving the U.S. trades decreased from four to three. A reassuring data trend shows us that the individual ocean carriers within each alliance continue to independently and vigorously compete on pricing. Further, individual ocean carriers within the alliances continue to add and withdraw vessels from trades both inside and outside the alliances in which they participate, demonstrating that competition remains in both vessel capacity decisions and pricing decisions within the alliances.

The reduced number and increased size of these major alliances (2M, THE Alliance, and OCEAN Alliance), however, have raised new issues and concerns for the FMC and changed the way in which the Commission approaches these joint ventures. Broader authorities and language for small or limited slot sharing agreements or in a world with seven or eight alliances with much smaller market shares presented fewer and less complex competitive issues. As noted below, provisions that might have been acceptable in earlier agreements for smaller and more limited joint ventures have become increasingly problematic as the number of alliances serving the U.S. trades has shrunk to four, and now three.

The FMC rigorously reviews carrier agreements before they go into effect, and continuously monitors joint activities for anticompetitive effects.

With the increased size and market share of carrier alliances over the last four years, the FMC has increasingly insisted on narrower authorities, more specific language, and enhanced monitoring requirements. For some time now with respect to these larger alliances, the FMC has required more "clear and definite" authority language for alliance agreements that was only recently "suggested" by DOJ in September 2016. Monitoring for these large alliances, requiring more details and more timely filing of monitor reports has increased.

Each agreement or alliance is reviewed and evaluated by the Commission on a trade-by-trade basis and using the appropriate relevant product market and geographic market. A large

trade-lane with many participants and with many potential entrants ("contestability") may not be concentrated under HHI, but a small trade-lane with limited current participants may appear to be concentrated. As an example, a trade lane, such as some Mediterranean trade lanes may appear concentrated, but when viewed from the basis of the number and scope of potential entrants, then that trade may not be considered as a competitive problem. That is why it is important to have an agency with broad knowledge and expertise in this industry.

The FMC reviews whether ocean liners are competing on price, and if so, each dollar saved by an ocean carrier in a competitive marketplace is more likely to be passed along to the ultimate consumer than a dollar saved by a service provider in a non-competitive industry. Much of the FMC's monitoring and oversight involves the conditions in each trade lane, so that the Commission can determine whether efficiencies can be gained, and whether they are substantially being passed along to downstream consumers.

Because alliances are ongoing cooperative agreements rather than mergers, the Commission is charged by Congress with ongoing and continuous monitoring after the initial review and following the effective date of the agreements. The Commission checks for anticompetitive behavior that would violate the Shipping Act. The Commission may challenge an agreement at any time after the effective date. Because of this ongoing monitoring role, expertise is important, and the Commission is the expert agency on the ocean liner industry, dedicated to understanding the nuances of this important and unusual industry. Our expert analysts, economists, and attorneys maintain a careful watch on industry trends, being vigilant for any indications of anticompetitive behavior by the participants operating within the filed agreements.

Joint ventures of ocean carriers, or alliances can and do benefit U.S. interests.

"Alliances" are no more than joint ventures of ocean liner companies. They are not mergers. They take various forms ranging from simple space or slot-sharing arrangements to very complex operational arrangements sharing vessel service strings, terminal space, and certain back office functions. It is important to remember that carrier alliances under the Shipping Act are not permanent mergers like those reviewed by DOJ, but much more dynamic arrangements that preserve price and service competition between and among the participants. Alliance structures can and do shift and rearrange participants on a regular basis with changes in the industry. These joint ventures provide ocean carriers with flexibility and they may facilitate the survival of independent companies, preserving competition and averting further industry concentration. The interests of the American shipping public and the American consumer will not be well served if carrier consolidations result in only a handful of mega-carriers transporting the Nation's cargo. Most importantly, alliances can be very beneficial for U.S. shippers, resulting in efficiencies and cost-savings that are passed on to our exporters and importers.

In the Joint Explanatory Statement of the Committee of Conference for the Shipping Act of 1984, Congress recognized the important potential benefits of carrier agreements properly reviewed and monitored by the FMC:

> Joint ventures and other cooperative agreements can enable carriers to raise necessary capital, attain economies of scale, and rationalize their services. Pooling arrangements can also offer significant benefits in reducing excess capacity and promoting efficiency. [292]

While the Shipping Act is an antitrust statute tailored to the international liner trade, the ability of competitors to collaborate is not unique to the Shipping Act. Competition laws, including the Shipping Act as well as those administered by DOJ and FTC, recognize that competitor collaborations that do not raise antitrust concerns because of "market power" can be procompetitive and beneficial. Competitors are permitted lawfully to collaborate under the Sherman Act and the Clayton Act, as well. The Federal Trade Commission and Department of Justice *Antitrust Guidelines for Collaborations Among Competitors* issued in 2000 notes, "that,[i]n order to compete in modern markets, competitors sometimes need to collaborate. Competitive forces are driving firms toward complex collaborations to achieve goals such as expand in to foreign markets, funding expensive innovation efforts, and lowering production and other costs." As long as anticompetitive effects remain within certain bounds, "[s]uch collaborations are not only benign, but *procompetitive*."

The Shipping Act permits carrier agreements to jointly purchase goods and services under certain circumstances.

As a general rule, subject to the competition standard of section 6(g) and the prohibited acts in section 10, the Shipping Act permits joint ventures among ocean carriers which can create efficiencies and cost savings that are passed on to exporters, importers, and ultimately benefit the U.S. consumer. This is not an issue of foreign carriers versus U.S. suppliers of goods and services. Whether under the Shipping Act administered by the Commission or other antitrust laws administered by the DOJ and FTC, the question is, as long as there are no anticompetitive effects, *what creates cost savings and efficiencies that will be passed along to the U.S. consumer.*

No distinction is made in the statute or the accompanying conference report between operational joint ventures or purchasing joint ventures. The Commission applies the Shipping Act's 6(g) competition standard to requests for joint purchasing authority just as it does for agreements seeking joint operational authority. Whether for joint purchasing or joint operational authority, the larger the market share of the participants to an agreement, the more concern the Commission will have about "market power" and potentially anticompetitive effects. Whether the Commission or any other antitrust enforcement agency will allow this joint purchasing authority to remain in an agreement depends on the specific facts of the agreement and an analysis of the potentially anticompetitive effects in each relevant geographic and product market.

This authority for ocean carrier agreement participants to jointly negotiate for goods and services is not new or an expansion of the Shipping Act or FMC jurisdiction into new areas. The Shipping Act and Commission regulations have long allowed joint authority in carrier agreements to extend to the purchase of goods and services from domestic suppliers, especially in the area of terminals and stevedoring services. In the last two or three years, however, the Commission has seen a growth in the number of filed carrier agreements requesting the authority

to jointly negotiate for goods or services: bunker supplies, terminal space, and tug-assist services. Ocean carriers are increasingly recognizing what other business know and that antitrust laws acknowledge: that joint purchasing arrangements consistent with competition laws frequently allow participants to obtain volume discounts and reduce transaction costs. Economic and market history shows, these savings ultimately do benefit U.S. consumers in the form of lower prices.

The Commission review of the competitive impact of an agreement is based on the specific facts of the requested authority. Such review would be very similar if not identical to the review by the Department of Justice for joint purchasing arrangements. If anything, the Commission's review of joint purchasing arrangements is more focused than its antitrust sister agencies. While the DOJ might permit joint purchasing after a survey of a marketplace, the FMC not only surveys the general marketplace, but also looks at each individual agreement to assess the relevant product and geographic market at the time of the proposed procurement. While the Commission's standard and analysis for joint purchasing collaborations by competitors is similar to the Department of Justice and Federal Trade Commission, the Commission does not use a "safe harbor" formula employed by these agencies. Employing its industry expertise, the Commission analyzes each agreement on a case-by-case basis, requiring that contracts entered into pursuant to any agreement negotiating authority be brought back to the Commission for further review based on the specific facts.

As noted above, the three large alliance agreements (2M, THE Alliance and the OCEAN Alliance) *DO NOT* include authority to jointly negotiate for goods and services. The only recent example of joint authority to purchase goods and services is found in a relatively small joint venture of Roll-on/Roll-off (Ro-Ro) vessels serving the U.S. trades. The WWL/EUKOR/ARC/Glovis Cooperative Working Agreement includes the authority for the agreement participants to jointly *negotiate* for tug-assist services at United States ports. The relevant product market under the competition analysis is tug-assist services for all commercial vessel calls at a port, including not only Ro-Ro, but all vessels - container, bulk, breakbulk, cruise, and tanker). The parties to this agreement control only 2.7% of the total global container ship and Ro-Ro ship fleets. As a general legal and judicial matter, the Commission simply did not have a plausible legal basis under 6(g) to seek an injunction in court to exclude this negotiating authority from this agreement.

Because a contract for tug-assist services at a particular port could have anticompetitive effects depending on the specific facts, the FMC only permitted this general negotiating authority to remain in the agreement on the condition that any proposed contract resulting from this joint negotiating authority must then be brought back to the Commission for review as to any anticompetitive effects under the 6(g) standard on a port by port and case-by-case basis. The competitive effects or acceptability under competition laws in a large port, such as New York/New Jersey, may be very different than that in a smaller port, such as Brunswick, GA, or Port Hueneme, CA. To date, this negotiating authority has not been used by this Ro-Ro joint venture.

Preventing such a joint purchasing venture that has passed regulatory scrutiny from obtaining cost savings or efficiencies may allow suppliers to charge higher rates than might otherwise be obtained, increasing the cost of overall ocean transportation that is ultimately

passed on to U.S. consumers and exporters in the form of higher prices and to U.S. exporters in the form of higher transportation changes. The ultimate harm would be to U.S. consumers, who would pay marginally higher prices for goods shipped internationally, and U.S. exporters who may lose sales in the international marketplace.

Application of the antitrust laws to joint ocean carrier agreements with certain domestic businesses, including common carriers by water not subject to the Shipping Act

It is important to note that ocean carrier agreements filed with the Commission do not exempt then from application of the general antitrust laws (Sherman Act and Clayton Act) whenever the joint carrier group is dealing with certain domestic businesses, including tug-assist operators. Congress expressly considered these types of agreements and explicitly excluded these arrangements from the types of agreement that are not subject to general antitrust laws. Because they are cooperative working agreements with two or more ocean common carriers, these carrier joint purchasing agreements must be filed with the FMC for review, but the agreements nevertheless do not receive immunity from the antitrust laws. This conclusion is reinforced by two statutory provisions:

- 46 U.S. Code § 40307 - Exemption from antitrust laws

  (b) Exceptions.—This part *does not extend antitrust immunity* to—

  (1) an agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this part relating to transportation within the United States;

- 46 U.S. Code § 41105 - Concerted action

  A conference or group of two or more common carriers may not—

  (4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements *are not in violation of the antitrust laws* and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;

As tugs are generally considered common carriers by water not subject to the Shipping Act, that an agreement is filed does not, in the end, exempt ocean liner carriers from the broader antitrust laws. Further, a non-ocean carrier that does not wish to negotiate with an ocean carrier need not do so, and may have a private party remedy against the ocean liner if the non-ocean carrier wishes to pursue it.

Other Commission Regulatory Issues

A further mission of the Federal Maritime Commission is to facilitate an open and free market for ocean shipping services by bringing transparency to market forces and protecting against anticompetitive behaviors. We are working to be a more efficient organization by making a concerted effort to reduce regulatory burdens on our constituents as well as aggressively looking for ways to make compliance with Commission requirements easier and more cost effective for shippers, carriers, and ocean transportation intermediaries. Toward those goals, a final rule amending requirements for Service Contracts and NVOCC Service Arrangements (NSAs) will become effective this Friday, May 5, 2017. Changes made via this action will ease regulatory burdens and reduce the costs of compliance with the agency's regulations. More specifically, the Commission instituted four key reforms with its action: 1) allowing for the filing of sequential service contract amendments with the FMC within 30 days of the effective date of an agreement between shipper and carrier; 2) allowing for up to 30 days for filing NVOCC Service Arrangement Agreements with the FMC after their effective date; 3) allowing additional time to correct technical data transmission errors from 48 hours to 30 days; 4) extending the period in which one can file a service contract correction request from 45 days to 180 days; and 5) multiple changes to a service contract or an NSA can be combined into a single amendment filed once every 30 days, provided each change clearly reflects the effective date of every term or rate being amended . This final rule was developed with extensive input from interested industry stakeholders.

An important way in which the Federal Maritime Commission meets its mission of protecting the shipping public and American consumers from financial harm is by knowing who qualified and actual service providers are. In terms of Non-Vessel Operating Common Carriers (NVOCCs) and freight forwarders, what are called "Ocean Transportation Intermediaries" (OTIs), the Commission achieves that goal by licensing these entities. Given advances in information technology, the Commission determined that there existed an opportunity to improve the quality and accuracy of information it has on file concerning OTIs while doing so in a manner that was not only easy to comply with, but of minimal burden. Several years ago, the Commission reviewed a survey of OTIs and discovered that over 25% had moved to new addresses without informing the FMC, that the person whose qualifications were reviewed as the basis of granting the license ("Qualified Individual") was no longer an employee of the company, and several other such filing discrepancies. A simple matter of not having the correct address of an OTI on file hampers the ability to have proper service in a legal matter and bringing our records up to date was an important goal. Earlier this spring, the first batch of OTI license holders were required to go to www.FMC.Gov to update information about their businesses. This completely online and no fee process takes approximately five minutes to complete. In total, 4,823 licensed OTIs will need to complete the license update process in the coming months. Licensed entities will need to update their information once every 36 months, a far less burdensome requirement than the annual updates all states require for all registered corporations, LLCs, and partnerships.

Conclusion

To close, we have the authority to effectively regulate the ocean liner carrier industry. We are the front line in terms of the significant changes roiling the industry. We listen and respond to public comments on matters pending before the Commission. We have responded with positive and proactive measures. We will continue to faithfully administer the Shipping Act.

Thank you for your attention and I will be pleased to answer any questions you may have.

Statement of

Mr. Todd Schauer
President
American Salvage Association
103 Oronoco Street, Suite 200
Alexandria, VA 22314
(703) 373-2267

Maritime Transportation Regulatory Issues:
U.S. Salvage and Marine Firefighting

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

May 3, 2017

Good morning Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. I am Todd Schauer, President of the American Salvage Association. Joining me today are representatives of ASA member U.S. marine salvage companies and members of the ASA Executive Committee. The four salvage companies that provide OPA 90 salvage and marine firefighting services nationwide are represented.

I think it is appropriate to note that I am not a professional lobbyist. While I serve as an elected officer of the ASA and I am acting in that capacity today, my normal job is serving as Director of Global Operations for one of the core 4 Marine Salvage and Fire Fighting providers. I started my career at the U.S. Coast Guard Academy, graduating in 1991 with a bachelor's degree in Naval Architecture. I rounded out a career in the U.S. Coast Guard with advanced degrees in Naval Architecture, Marine Engineering and Mechanical Engineering from the University of Michigan and as a registered Professional Engineer. Highlights of my Coast Guard duty included an afloat tour on a Polar Class Icebreaker with trips to the Arctic and Antarctica, and serving here in Washington for 5 years on the Coast Guard's Salvage Emergency Response Team (SERT) as Duty Officer and Team Leader. In these capacities, I responded to numerous shipboard emergency responses throughout the U.S. I transitioned to the private sector after 9 years on active duty, but completed a 20 year career in the Coast Guard Reserve where I served at various postings and qualified as a Federal On-Scene Coordinator. I have since culminated more than 17 years of experience as an emergency salvage responder and Salvage Master, responding to, planning, and directing the responses to more than 100 major salvage operations around the world.

On behalf of the ASA, I very much appreciate the opportunity to provide this committee with an overview of the ASA and the U.S. commercial marine salvage industry, and to discuss recent issues concerning the industry's response capability.

ASA Overview

The mission of the ASA is to be a unifying association of the commercial marine salvage industry, serving as the definitive spokesman for this industry in Washington, D.C. and elsewhere in North, Central and South America to include the Caribbean as well. The ASA membership represents approximately 90% of the United States salvage capability.

Please note that the terms "salvage" and "salvors," in this discussion also include marine firefighting.

The ASA membership is comprised of companies that provide all marine salvage services, as well as firms offering services that support salvage operations, including tug operators, diving companies, naval architects, response managers, underwater survey companies, lightering companies, pollution responders and other associated service providers. Port authorities and associated trade associations are also included in our ranks, as well as retired senior members of the U.S. Navy and U.S. Coast Guard. In recent years, our membership has expanded to

include companies and organizations that respond throughout the Americas and around the world.

The ASA was created in 2000 as an organization of professional salvors to improve marine casualty response in North American coastal and inland waters. Since inception, the association has become very active in educating government, industry and the public on the vital role of the marine salvor in protecting life, the environment, marine transportation systems and property from the impact of maritime casualties. Our association promotes compliance with specialized safety standards for often hazardous operations in which our members engage, and not only improved but standardized the salvage contracting process. Importantly, the ASA, actively participates in rulemaking processes which establish effective federal regulations and policies. Our goal has always been to assist in promulgating the best public policy that will protect life, property, the environment while facilitating commerce.

Of particular note is our longstanding working relationship with the U.S. Coast Guard. We work closely with this agency, as well as other federal and state agencies, municipalities and other response organizations to ensure coordinated, effective and professional responses to marine casualties. The ASA also leads and participates in numerous salvage response training sessions with the Coast Guard every year.

The U.S. marine salvage capability dates back many decades. It has evolved into an industry that employs a highly skilled, experienced and professional workforce utilizing the very latest technologies. One need look no further than the recent wreck removal of the passenger ship COSTA CONCORDIA in Italian waters to appreciate the technological sophistication of the U.S. salvage industry. This was the largest operation of its kind ever and it was conducted by a U.S. salvage company in partnership with an Italian construction firm.

Marine salvage spans a vast range of services from emergency towing to heavy lift, from underwater welding to complex structural and stability analysis, from fighting chemical fires to conducting diving operations in zero visibility. In all, the Coast Guard Salvage and Marine Firefighting (SMFF) Regulations cite 19 separate services that must be provided to meet OPA 90 response requirements. These salvage operations are often conducted under extremely challenging weather and sea conditions.

Historically, marine salvage involved the saving of lives, ships and cargo. Of significance is that, in the past several decades, protection of the marine environment has become an equally important service of the salvor. Salvors both prevent and mitigate marine pollution. Our objective is always source control, to "Keep it in the ship!" While pollution cleanup contractors may be able to achieve single digit oil recovery rates, keeping a vessel off the rocks or preventing a sinking may eliminate the entire loss of cargo and bunker fuel. If a vessel has incurred damage to cargo oil or fuel tanks, patching or transferring (known as lightering) to other tanks, another vessel or to shoreside facilities will greatly mitigate or halt further discharge. Although the salvage and marine firefighting regulations were promulgated under

OPA 90, some in the marine industry, the public and even some in government have been slow to recognize the vital role the salvor plays in pollution prevention and mitigation.

Another vital role of the U.S. salvage industry is response to the potential blockage of our nation's waterways, either through accident or, in recent years, terrorism. The nature of our harbors and rivers is such that slowing or completely stopping commercial traffic is not difficult. For example, in 2007 near the mouth of the Mississippi River, an Offshore Supply Vessel collided with a freighter and sank, with the loss of five crewmen. All river traffic, which included tankers inbound to supply major refineries and Military Sealift Command ships outbound to Iraq in support of the ongoing troop surge, was completely stopped. A major U.S. salvor, under conditions of heavy fog and high river current, conducted operations to open the river to one-way traffic in just four days with complete traffic restoration in seven days. This is but one example of incidents over the years where the U.S. salvage industry has responded to potentially catastrophic waterway and harbor closures.

The U.S. salvage industry not only responds to vessels in immediate distress under OPA 90, it removes wrecks that may have presented pollution and navigational threats, some for many years. Working in concert, the industry is very active in response to recent catastrophic events of national significance such as hurricanes Katrina and Sandy. During Hurricane Sandy, the salvage industry's response was principally to assist in restoring shoreside infrastructure-a departure from its traditional marine role.

As you can appreciate, the role of our industry has expanded over the years. It is vital to the nation that this organic American capability be maintained to protect life, property, the environment and the free flow of commerce.

Due to the leadership of the Subcommittee the Coast Guard Salvage and Marine Firefighting (SMFF) Regulations, 33 Code of Federal Regulations (CFR) Part 155 were promulgated. The regulations have had a major impact on the U.S. marine salvage industry as well as its client vessel operators. The Oil Pollution Act of 1990 is the governing statute of the SMFF regulations. This statute requires each vessel maintain a Vessel Response Plan (VRP) and that each plan must name a salvor, firefighting organization, and lightering resource.

The SMFF regulations were promulgated in December 2008 for tank ships and barges, and were extended to all commercial nontank self-propelled vessels over 400 gross tons in October 2013. As such, the regulations apply to all but the smallest U.S. and foreign-flag vessels operating in U.S. waters. Estimates place the number of vessels subject to the SMFF regulations at over 24,000 vessels.

The SMFF regulations have four principal components:

- Define salvage and marine firefighting services and resources
- Establish planning timeframes for response
- Provide criteria for determination of resource adequacy

- Provide for pre-arranged contracts

Notably, compliance with the SMFF regulations is required through the VRP. This plan is maintained by the vessel owner and/or operator (referenced as "planholder" in the regulations). The planholder is charged with ensuring compliance with the SMFF regulations and providing response, through contracted resource providers, in the event of a casualty. As is the case with the pollution response regulations, the planholder is also the "responsible party" when a casualty occurs.

Critical to an understanding of these SMFF rules is that they are planning criteria, not performance standards. This is specifically stated in the SMFF regulations in 33 CFR 155.4010. Compliance with the regulations is based on assumptions that may not exist during an actual incident such as weather, channel blockage, etc.

The marine salvage companies and associated subcontractors, or "resource providers" as termed in the SMFF regulations, provide response services in much the same manner as Oil Spill Removal Organizations respond to spills, which also are named in the VRP. As noted previously, there are four primary resource providers offering all 19 SMFF services nationally required by the SMFF regulations. There are also several regional providers and a host of companies providing specialized services. Together, these companies constitute a robust, professional and extensive U.S. response capability.

The response structure established by the U.S. marine salvage industry to meet the SMFF regulations is extensive. Even before the enactment of OPA 90 and the promulgation of the SMFF regulations, the U.S. salvage industry responded professionally and rapidly to all types of casualties. The only circumstance that might have caused a delay, in certain instances, was the establishment of a contract for services with the stricken vessel's owner and/or operator. In a business that is extremely competitive, a salvor's rapid and professional response was, and continues to be, crucial. If you don't mount effective responses, you're out of business! For the salvage industry, the SMFF regulation's principal impact was the elimination of unqualified and unprofessional "salvors." Pre-SMFF regulation, over 300 companies, some with virtually no salvage experience, had been listed in various Vessel Response Plans.

When the SMFF regulations came into effect, the salvage industry greatly expanded its existing equipment inventories, response staffing levels, and administrative support to ensure the regulatory timeframes are met for all 19 SMFF services. This expansion is concurrent with an even greater role internationally for American salvors. The U.S. SMFF providers through recent growth and continuous improvements in capability now represent a majority of the globally operating salvage providers; in essence, the strength of the US capability is growing and also being exported. This is also a substantial benefit to the US Navy's global salvage response capability which is directly supported by emergency response contracts with ASA members in a time of declining organic Navy capability.

For the salvage companies providing OPA 90 response nationwide, the response structure is comprised of company personnel, and company-owned and operated equipment located nationwide along with a wide ranging network of subcontractors, also providing equipment and personnel. Each subcontractor supporting one or more of the 19 services is contracted to respond and is fully vetted. This subcontractor network is "duplicated" in that, for example, several contractors offering the same service may be available in a particular port complex which provides for redundancy. In some locations, the local municipal fire department, if trained for marine firefighting, is listed in the VRP as the OPA 90 responder. One example is the New York City Fire Department, which has a substantial fleet of fireboats and extensive training and experience in marine firefighting.

Please note that "nationwide" locations of equipment and personnel, include the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands and Guam.

This system of national salvage resource providers, qualified subcontractors and other providers is fully capable and, importantly, cost effective for the salvage industry, the ship operators and, ultimately, the consumer. It spreads the opportunity for response over a range of existing businesses, from small tugboat operators to large diving contractors, precluding the need for new investment in equipment that may sit idle and be employed only occasionally.

This system of resource providers works. In the over 180 OPA 90 responses since the SMFF regulations came into effect, to our knowledge, there has never been a Coast Guard after-action report, much less a hearing critical of any response to a casualty conducted by an ASA member.

What assurances are there to the government and public that planholders and their resource providers meet the response times and resource requirements? In addition to the industry's superb response record, a system of oversight, exercise and vetting - likely the most vigorous in the marine industry - provides these assurances. The U.S. salvage companies, as resource providers, are subject to:

- SMFF regulatory drill and exercise requirements (33 CFR 155.4052) which include remote assessment and consultation exercises, shore-based SMFF tabletop exercises, and equipment deployment exercises
- SMFF regulatory rules (33 CFR 155.4045) requiring planholders ensure resource providers meet 15 selection criteria (as applicable) before contracting a provider
- Two separate Coast Guard resource verification programs
- Oversight by Coast Guard Captains of the Port on every OPA 90 response and, in some cases, oversight by state authorities
- Coast Guard Captain of the Port approval of salvage and towage plans, including review by Coast Guard naval architects and salvage engineers in certain cases
- Vetting of resource providers by insurance underwriters

For your further information and in support of statements made herein, we have included a PowerPoint presentation which we trust will be helpful.

It has come to the attention of the ASA leadership that the resource and response capabilities of the four national SMFF resource providers have been questioned recently, that these companies are not willing or contractually obligated to respond or somehow lack the resources to meet response requirements. I will address these issues separately.

Regarding the contractual obligation for an SMFF provider to respond, 33 CFR 155.4025 defines *Contract or other approved means* as a written contractual agreement that states the resource provider is capable of, and intends to commit to, meeting the Vessel Response Plan. 33 CFR 155.4045(b) states that the resource provider must consent to provide specified SMFF services and state these services are capable of arriving within the required response times. All four national SMFF resource provider agreements in question meet these regulations by making the necessary statements of capability and commitment to respond within the required response times. These contracts and consents are part of the Vessel Response Plan which is reviewed and approved by the U.S. Coast Guard. Rest assured that there will not be response delays due to contracting issues; the USCG clearly addressed this via the implementation of the SMFF regulations.

In addition to Coast Guard contract acceptance, the SMFF response contracts have undergone the scrutiny of the marine insurance International Group of Protection and Indemnity clubs, which have also approved the contracts of all national SMFF providers as meeting the SMFF regulations.

The agreements do contain statements of qualification that resources may not be immediately available, and that cascading of resources from other locations or providers may be necessary. In fact, no SMFF resource provider, nor, for that matter any provider in any response service, can warrant 100% availability of resources unless multiple backup is provided.

The crux of the matter is that 24-hour dedicated availability of each supporting resource in each location was never intended by the SMFF regulations. Such a commitment to have the vast myriad of SMFF support resources (tug boats, divers, derrick barges, supply boats, crew vessels, etc.) specifically dedicated for the 19 SMFF services in all U.S. ports and for all U.S coastal and offshore areas would be absolutely cost prohibitive for the salvor and its clients, and would virtually require the establishment of a second response infrastructure. This was clearly not considered by the original economic analysis of the SMFF Tank Vessel Regulations. Unlike pollution cleanup contractors that have focused kits of specialized equipment (boom, spill boats, and skimmers, etc.), the diversity of the 19 salvage services demands a vast network of high value support resources *in addition* to specialized salvage equipment and these support resources simply must routinely perform other marine related work and services to be commercially viable. (Please refer to the Federal Register Dec 31, 2008, Pg 80645, VII Regulatory Analysis, for a detailed discussion.)

SMFF providers rely heavily on this 'vessel of opportunity' and 'resource of opportunity' system that exists throughout the ports and waterways of the United States and throughout the industrial maritime infrastructure of the U.S. This includes thousands of tugs, workboats, supply and crew boats, hundreds of derrick barges, cargo barges and a nationwide network of other marine and industrial resources including heavy equipment, commercial logistics and transportation assets, industrial service providers, divers, welders, small boat operators, etc. The U.S. commercial support fleet alone is extensive with estimated 7,300-plus self-propelled vessels.

An underpinning critical element of emergency response salvage is logistics. Salvor's livelihoods are based on the ability of their logistics systems and networks to meet the extreme demands of the emergency salvage business. Salvors rely heavily on all air, sea, and ground transport modes.

Regarding the SMFF regulations, the table of services TABLE 155.4030(b) requires no specific logistical service requirement for means of delivering assets to the casualty scene. Such logistical support is, however, one of the resource provider selection criteria (33 CFR 155.4050) which states that the "Resource Provider has the logistical and transportation support capability to sustain operations for extended periods of time in arduous sea states." Such transportation, depending on the nature of the casualty, may include deck barges, oil barges for lightering (cargo transfer), supply boats to carry pumps and other heavy equipment, cargo and passenger aircraft, helicopters and crew boats to deliver salvage and firefighting personnel and equipment. Is there a regulatory expectation that a new logistics fleet of vessels, ground transport vehicles, and aircraft be created and dedicated 24-7 to OPA 90 response? Any such suggestion is not only illogical, but highly impractical and not founded by any past performance issues that we are aware of. Further, it would set a very disturbing precedent and create a host of other issues if the logic were extended to the entirety of support functions required for all 19 salvage services.

We are aware of some derogatory comments that are being circulated by special interests regarding a very small number of recent cases. We are not believers in arm chair speculation by third parties; if there are any concerns with an actual response we recommend that the Coast Guard engage individual providers directly to address any issues or lessons learned.

In summary, the ASA submits that the present resource provider contracting is in accordance with the SMFF regulations and was accepted by the U.S. Coast Guard and P&I Clubs. We further submit that through extensive oversight by various agencies and organizations, compliance with a number of exercise and verification programs, and, importantly, a proven track record of successful response, the nationwide SMFF providers meet the OPA 90 regulatory requirements while continuing to improve overall capability. A key element of this compliance is the incorporation of the expansive 'vessel of opportunity' and 'resource of opportunity' system. Any attempt to regulate the creation of a dedicated and redundant network for logistics and support resources for SMFF response would at the very least place

undue financial burden on the vessel owners and/or operators, shipper and, ultimately, the consumer.

In closing, the U.S. salvors will continue their proud and growing legacy of professional and effective salvage response throughout U.S. waters and in support of U.S. interests abroad. We will continue to meet or exceed SMFF response standards and work closely with ship owners, regulators, and resource providers to grow and improve upon our substantial response capabilities. The ASA member salvors will continue the time-honored marine salvage tradition of "best endeavors" in responding anywhere, any time and for any incident to protect life and the environment, to keep our waterways open for commerce, and to save valuable ships and cargo.

Thank you.

Mr. Steve Candito
1 Call Alaska
6231 South Airpark Place, Suite 215
Anchorage, AK 99502
(907) 243-0069

Maritime Transportation Regulatory Issues: Alternative Planning Criteria for Western Alaska

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

May 3, 2017

Good morning Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. My name is Steven Candito, former President & CEO of National Response Corporation (NRC), one of the founders of 1 Call Alaska along with Resolve Marine Group (Resolve). NRC and Resolve are leading Oil Spill Removal Organizations (OSROs) and Salvage & Marine Fire Fighting (SMFF) providers in the United States, respectively. As a result of my position, I am intimately familiar with both the regulatory and operational aspects of providing OSRO and SMFF services in Alaska. As parent companies to 1 Call Alaska, joining me today are leadership from both Resolve and NRC , but more importantly, we are happy to have in attendance from Alaska senior members of our local 1 Call Alaska team, who are the true response experts. Their presence is especially important as they represent the core of 1 Call Alaska, which first and foremost is an emergency response organization with the overarching goals to prevent, prepare for, and respond to marine casualties in Western Alaska

I thank the Subcommittee for the opportunity to testify about vessel response plans under the Alternative Planning Criteria (APC) for Western Alaska. I respectfully disagree with the need for Section 107 of HR 5978 and fear its adverse impact on the expansion and improvement of spill response coverage in Alaska. Additionally, I will clarify some of the inaccurate rhetoric surrounding this topic provided by organizations advocating in their own interests to stifle competition in the area at the detriment of Alaskan spill response and cloud the core issues. Specifically, Section 107 would undermine one of the key goals of the Oil Pollution Act of 1990 (OPA 90) -- robust oil spill response capability along all US coastlines. That goal has been met along the US East, West and Gulf coasts due to the investments in personnel and equipment made by the response industry to meet the high standards set by OPA 90.

Achieving the ambitious targets set by OPA 90 in Western Alaska has been challenging due to its vast, remote coastline, and challenging operating environment. Under the Coast Guard's implementation of APC, the response industry is making substantial strides in improving coverage -- investing in vessels and aircraft, building staging facilities, and hiring experienced manpower, most of which is based in Alaska. Section 107 would stifle further investment required to raise response

standards by restricting competition. It would discourage further commitment of the resources needed to move Alaska closer to the higher OPA standards of protection achieved in the lower 48.

The **Exxon Valdez** spill exposed how ill-prepared the US government and the maritime industry was to respond to a major oil spill, particularly one in Alaska. When Congress enacted the OPA 90, it established the foundation for creating the world's most extensive spill response industry. Before OPA 90 the spill response industry consisted of primarily local cooperatives with limited equipment. There was very limited ability to respond to large, open-water oil spills. Congress and the industry saw the urgent need to jump-start the creation of a robust nation-wide capability equipped to respond with major oil spills. OPA 90 set high standards and provided the key incentives that successfully transformed the spill response industry.

Congress established four critical conditions that brought about this transformation: OPA (1) clarified the role of federal, state and local agencies in planning and overseeing the National Contingency Plan (NCP); (2) designated the private sector, not the government, to acquire and deploy the response equipment, and to retain manpower; (3) incentivized private investments in response assets by requiring any entity that handles oil including refiners and tank vessels trading in US waters (Congress later added non-tank vessels) to contract with qualified response organizations that could meet tiered response standards up to the level of "worst case" spills; and (4) to encourage investment exempted from liability those responders acting under the NCP.

These OPA provision, coupled with vigorous, open competition led to the battle-tested US spill response industry that has invested billions of dollars in highly specialized physical assets and that has accumulated technical expertise on a global scale, often responding in extraordinarily demanding conditions.

The APC provision in OPA 90 is a pragmatic measure that acknowledges the potential obstacles in meeting the OPA 90 high response standards. The Coast Guard's current implementation of APC by the Captain of the Port (COTP) for Western Alaska provides the

necessary flexibility to improve coverage for vessels operating in the Western COTP. Section 107 type legislation will impede the expansion of response resources by excluding additional companies with the most experience and the largest inventory of open water assets already in Alaska.

It appears the push for such legislation has been premised on the following false assertions: One, competition will drive fuel prices up in Alaska. Two, there will be a price war between providers, ultimately ending at an unsustainable price of $0.00. Three, competitors will provide duplicative resources driving up costs.

I will address each of these contentions separately, but as a general matter and proven in the lower 48, competition ultimately drives down prices while increasing resources . The fallacy that a not for profit monopoly provides the most resources at the lowest cost is simply not true. Rather, these entities become inefficient bureaucracies that stifle innovation and ultimately only benefit the few high-priced employees.

With regard to fuel prices in Alaska, included in our written testimony is a fuel price report published by Alaska's department of Commerce, Community, and Economy. Published in January 2017 reviewing the previous year, this report concluded: "heating fuel and gasoline prices in most regions of the state are at their lowest since early in 2009, and most surveyed communities have seen significant declines." With regard to remote coastal communities, the report noted "remote communities have higher shipping costs, resulting in fuel prices that are significantly higher than the statewide average. However, since most communities receive at least one fuel delivery a year, they are continuing to benefit from the lowering costs of fuel that affected the rest of the country in late 2014." Thus, the primary drivers of fuel cost in Alaska are the price per barrel, the fixed cost per shipment and infrequency of delivery rather than any minimal APC market pressure.

Secondly, I can affirm 1 Call Alaska has not participated in a price war. Where our pricing structure for non-tank vessels is dependent on our cost of operations and number of customers (vessels covered), that scale has largely remained steady and as of right now, we continue to be the most expensive service provider. In actuality, it is the non-profit

service provider making this argument which consistently undercuts our listed prices seeking to participate in competition, which they should not be doing, given their not for profit status.

Finally, with regard to the assertion multiple providers create onerous duplicity in response resources, I note the significant number of regional maritime rescues we have conducted and specific investments in Alaska 1 Call Alaska has made. Simply put, the main reason an APC is needed is that currently the resources are insufficient to meet OPA 90's high standards. Thus, competition has caused us to ADD the personnel, equipment and resources. Further, the resources we added are not necessarily the same type that existed. Since inception, 1 Call Alaska represents a $44,000,000 investment in aircraft, equipment, vessels and fixed facilities. Between the parent companies' footprint in Alaska, we employ full time more than 130 Alaskans. On top of that, over the last year alone, we have cooperated with the Coast Guard to save 100+ lives, prevent the discharge of millions of gallons of oil and preserve the pristine Alaska environment through intervening in numerous Ship Casualty events. Key to note, the majority of the casualties we respond to (detailed in our written supplement) were not subscribers to our APC service. In fact, our services were called upon out of necessity, as the entities advocating for this legislative language to force us and other potential competitors out of the market could not effectively respond to their customer's needs in time of emergency.

I challenge any emergency response organization in the state of Alaska, short of the Coast Guard, to compare their success to ours over the last year and you will easily identify they pale in comparison.

In closing, as emergency responders, we are proud to announce preparations to expand our service to the entire Western Captain of the Port Zone. In the future, whether the incident be a stricken 4.2 million gallon refined product tanker, a disabled fishing vessel 114 nm from Dillingham AK with 100 souls on board, or flying our aircraft in support of Coast Guard Search and Rescue missions to augment persistence, 1 Call Alaska will consistently endeavor to prevent, prepare for, and respond to marine casualties in Western Alaska.

Thank you.

RESOLVE Alaska
6231 South Airpark Place Suite 216
Anchorage, Alaska 99502
o: +1 907 243 0069
ops@1callalaska.com

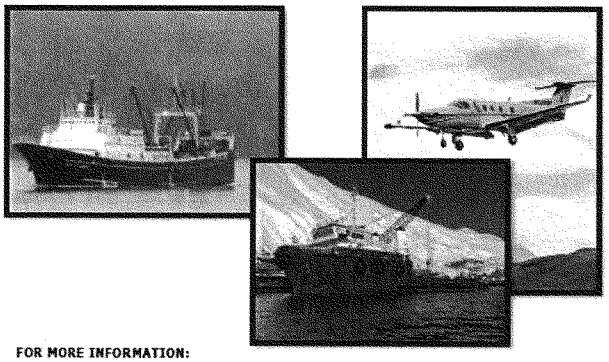
Executive Summary
Case Study – Alaska Juris
Prepared by Aaron Jozsef, Resolve Marine Group

February 7th, 2017

REPORT SECTION

SUMMARY OF EVENTS:

On July 29, 2016 the 229 foot Alaska Juris's crew discovered she was taking on water in the engine room. Shortly after that discovery, the 46 crew aboard abandoned ship into their life rafts. Over the course of several days, the RESOLVE PIONEER and Resolve Pilatus Aircraft were directed by the Unified Command including vessel owners, Qualified Individual and U.S. Coast Guard to conduct emergency search and recovery efforts for the stricken vessel. After numerous search patterns completed by both the Resolve Pilatus and RESOLVE PIONEER, a diesel slick was located in the vicinity of the last reported known position for the vessel and as a result active search efforts were terminated. The seamless integration & coordination of private emergency response organizations, publicly funded agencies and the responsible party was lauded as a hallmark success story by the U.S. Coast Guard.



FOR MORE INFORMATION:
Aaron Jozsef, Manager of Quality Health Safety Environment –
Resolve Marine Group 1510 SE 17th Street, Ste 400
Fort Lauderdale, FL 33316 (P) 954-764-8700 (C) 954-294-0253
ajozsef@resolvemarine.com

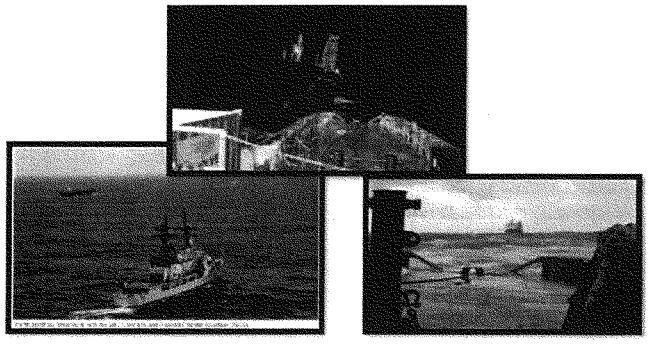
RESOLVE Alaska
6231 South Airpark Place Suite 216
Anchorage, Alaska 99502
o: +1 907 243 0069
ops@1callalaska.com

Executive Summary
Case Study – BBC COLORADO
Prepared by Aaron Jozsef, Resolve Marine Group
February 7th, 2017

REPORT SECTION

SUMMARY OF EVENTS:

On October 5, 2016 the 12,742 ton BBC Colorado transiting from Asia to the west coast of the United States main propulsion in 30 foot seas and 60 mph winds 200 miles south of the Aleutian Island Chain. After initially assisting the vessel, the U.S. Coast Guard completed a Marine Assistance Request Broadcast and the RESOLVE PIONEER was rapidly dispatched to assist the stricken vessel. The RESOLVE PIONEER arrived on scene and safely towed the BBC Colorado, her 12 person crew and load of heavy equipment out of peril, escorted by the U.S. Coast Guard to the nearest safe port of refuge in Seattle Washington. Ultimately the professional cooperation of the U.S. Coast Guard and RESOLVE PIONEER assisted in rescue of 12 sea farers, prevented 100,000+ gallons potential hydrocarbon pollution and demonstrated the outstanding working relationship between Resolve and the U.S. Coast Guard.



FOR MORE INFORMATION:
Aaron Jozsef, Manager of Quality Health Safety Environment –
Resolve Marine Group 1510 SE 17th Street, Ste 400
Fort Lauderdale, FL 33316 (P) 954-764-8700 (C) 954-294-0253
ajozsef@resolvemarine.com

RESOLVE Alaska
6231 South Airpark Place Suite 216
Anchorage, Alaska 99502
o: +1 907 243 0069
ops@1callalaska.com

Executive Summary
Case Study – M/T Champion Ebony
Prepared by Aaron Jozsef, Resolve Marine Group

February 7th, 2017

REPORT SECTION

SUMMARY OF EVENTS:

On June 24, 2016 south of Nunivak Island, Alaska while transiting to a fuel depot the M/T CHAMPION EMBONY ran aground carrying 14.2 millions gallons of fuel. The vessel was able to free itself under its own power and transit to safe anchorage nearby. After notification from the U.S. Coast Guard and vessel owner operators, a crack team of RESOLVE assessment technicians were dispatched from Dutch Harbor Alaska with full dive capabilities on the RESOLVE MAKUSHIN BAY. After arriving on scene, Resolve's emergency responders completed an underwater inspection of the hull to identify any apparent/potential structural issues with the vessel. A formal report was submitted to vessel owner/operators, insurance interests and the U.S. Coast Guard on findings which enabled the vessel to continue its critical delivery schedule to the remote areas of Alaska ensuring fuel prices in the region remain stable.

FOR MORE INFORMATION:
Aaron Jozsef, Manager of Quality Health Safety Environment –
Resolve Marine Group 1510 SE 17th Street, Ste 400
Fort Lauderdale, FL 33316 (P) 954-764-8700 (C) 954-294-0253
ajozsef@resolvemarine.com

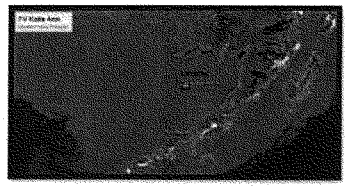
RESOLVE Alaska
6231 South Airpark Place Suite 216
Anchorage, Alaska 99502
o: +1 907 243 0069
ops@1callalaska.com

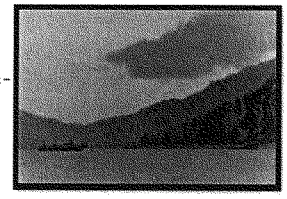
Executive Summary
Case Study - F/V Katie Lynn
Prepared by Aaron Jozsef, Resolve Marine Group
May 1st, 2017

REPORT SECTION

SUMMARY OF EVENTS:

On January 30, 2017 the 297 foot fishing vessel KATIE ANNE lost power and went adrift 100 NM north of Kodiak Island in gale force winds and heavy seas. The RESOLVE PIONEER was dispatched by vessel owners and U.S. Coast Guard to assist the stricken vessel. Moments after the Resolve Pioneer arrived on scene and took the vessel in tow, the KATIE ANNE lost all power to include auxiliary generators and back up electrical power. As a matter of timely response, the Resolve Pioneer assisted in saving the lives of 73 crew members on board, prevent 100,000+ gallons of pollution from entering the environment and preserved the commercial investment in equipment by the owner operator ensuring their corporate economic prosperity in the future. The vessel was ultimately towed safety to Dutch Harbor Alaska where repairs were completed.





FOR MORE INFORMATION:
Aaron Jozsef, Manager of Quality Health Safety Environment – Resolve Marine Group 1510 SE 17th Street, Ste 400
Fort Lauderdale, FL 33316 (P) 954-764-8700 (C) 954-294-0253
ajozsef@resolvemarine.com

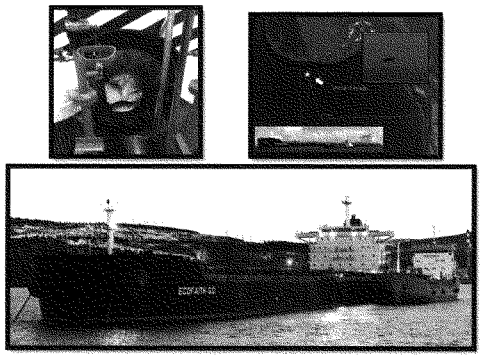
RESOLVE Alaska
6231 South Airpark Place Suite 216
Anchorage, Alaska 99502
o: +1 907 243 0069
ops@1callalaska.com

Executive Summary
Case Study – M/V ECO FAITH
Prepared by Aaron Jozsef, Resolve Marine Group
May 1st, 2017

REPORT SECTION

SUMMARY OF EVENTS:

In March of 2017, the 81,882 dead weight ton 751 foot bulker ECO FAITH while transiting in international waters snapped her main drive shaft. An emergency response tug was dispatched from Seattle in close coordination with 1 Call Alaska and the nearest safe port of refuge was identified to be Dutch Harbor, AK. Leaking water through the affect water shaft seal, the vessel internal bilge pumps were able to keep up with flooding in the engine room. 1 Call Alaska stood up an Incident Command Post at our Anchorage tracking center with Qualified Individual, the U.S. Coast Guard and State Representatives. Resources at risk were identified and a comprehensive pollution plan developed for the transit. The Resolve Pioneer was dispatched form Dutch Harbor to accompany the vessel under tow through the Unimak passage for safety and appropriate emergency anchorage was appointed for the vessel. Resources from Resolve Ship Response Center in Dutch Harbor were utilized to remedy all repairs at anchorage, stopping all potential pollution threats and enabling the vessel to be towed back East Asia for permanent dry dock. Quick planning, close interagency coordination and the flexibility of One Call Alaska's resources rendered this imperiled to safe port and repair.



FOR MORE INFORMATION:
Aaron Jozsef, Manager of Quality Health Safety Environment –
Resolve Marine Group 1510 SE 17th Street, Ste 400
Fort Lauderdale, FL 33316 (P) 954-764-8700 (C) 954-294-0253
ajozsef@resolvemarine.com

Alaska Fuel Price Report:
Current Community Conditions
January 2017

Bill Walker, Governor

Department of Commerce, Community, and Economic Development
Chris Hladick, Commissioner

Division of Community and Regional Affairs
Katherine Eldemar, Director

Cover page photo credit:
Department of Commerce, Community, and Economic Development; Division of Community and Regional Affairs

Find previous editions of *Alaska Fuel Price Report* on DCRA's website:
https://www.commerce.alaska.gov/web/dcra/ResearchAnalysis/FuelPriceSurvey.aspx

INTRODUCTION AND METHODOLOGY

The Alaska Fuel Price Report contains a bi-annual collection of fuel prices quoted in 100 communities during the months of January and July. It illustrates current changes in fuel prices across Alaska, and provides a historical perspective. The report highlights the price differences among Alaska communities and sheds light on the influence of transportation costs on the fuel prices in various locations. The effect of high transportation costs on the price of fuel, in part, explains the high costs of living in Alaska's remote locations.

To complement the fuel price information recorded from the survey, analysts at the Division of Community and Regional Affairs (DCRA) include monthly Alaska North Slope (ANS) crude price information and the national average prices of gasoline and heating fuel. The nationwide heating fuel prices are tracked only during the heating season that starts in October and stretches into March of the following year.

In 2005, the collection of fuel prices started out as a collaborative project between DCRA, Institute of Social and Economic Research (ISER) and Alaska Housing Finance Corporation (AHFC). The three agencies identified 270 communities to be surveyed and the questions to be included on the survey form. To accurately and consistently track longitudinal changes in fuel prices, the 2005 survey format and community sample were continually used through January, 2017. Therefore, the communities and core questionnaire items have remained the same.

DCRA surveys 100 communities, many of which are rural communities that have been recipients of DCRA's bulk fuel project assistance. These communities lie in the various regions of the state, as shown in Appendix A-1. AHFC surveys the remaining communities. DCRA publishes the fuel price report on the 100 communities it surveys every period. The information collected for all communities is recorded into the Community Database Online[1] and the Alaska Energy Data Gateway[2].

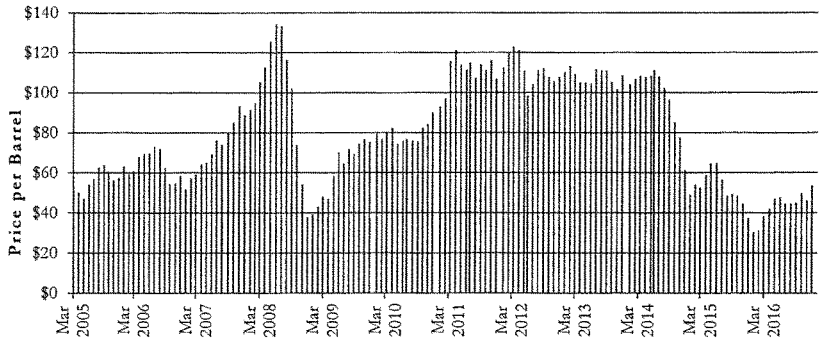
The current report contains monthly ANS crude price averages from March 2005 to January 2017, national heating fuel prices from March 2005 to January 2017, and national gasoline prices from March 2005 to January 2017, in addition to the statewide price quotations from the survey conducted between January 17 and 30, 2017. Local fuel retailers in the selected communities were contacted via telephone and asked to provide current per-gallon prices on heating fuel and gasoline (Appendix A-2) on the date of the survey. All fuel price quotes reflect either prices at the vendors' pump stations or delivered price for heating fuel, depending on how fuel is distributed in the community. Therefore, survey results are one-time measurements representative of retail fuel prices on a particular day of contact. Heating fuel and gasoline prices may have changed between the time of contact and the publication of this report.

[1] Click on the following link to connect to the CDO: https://www.commerce.alaska.gov/dcra/DCRAExternal
[2] Click on the following link to connect to the AEDG: https://akenergygateway.alaska.edu/

ALASKA NORTH SLOPE CRUDE AND NATIONAL FUEL PRICES

The shift of fuel prices in Alaska's communities over a given time period generally follow the ANS crude price trend. However, changes in transportation modes of fuel delivery and the cost of a community's existing inventory, held in bulk, also exert strong influences on current local fuel price levels.

Figure 1. Alaska North Slope Crude: March 2005 to January 2017



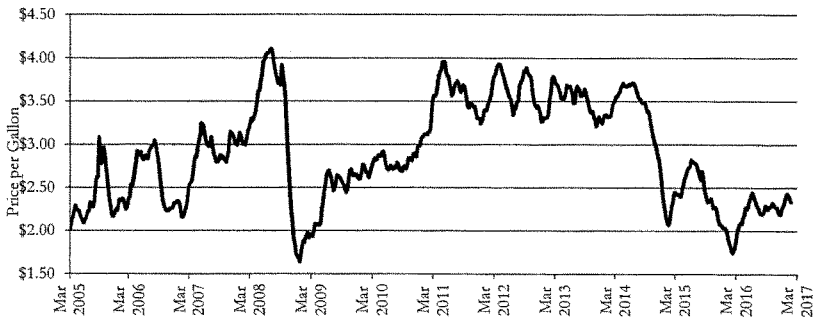
The Alaska Department of Revenue's Tax Division records the price of ANS West Coast crude oil[3] which has been tracked in this report from March 2005 to January 2017 (Figure 1). During this period, the price was highest in June 2008, at $133.78 per barrel, dropping quickly to $37.70 in December of the same year. Since the unstable period in 2008, crude oil prices steadily increased until mid 2011. From then on, average annual prices were at least $107.60 or higher for three consecutive years, peaking at $122.68 in March of 2012, the highest price recorded since 2008. Since June 2014, the price of crude has dropped dramatically. In January 2016, it hit its lowest price in over ten years, dropping to $30.22 per barrel.

The Energy Information Administration (EIA) has been tracking the national average price of gasoline[4] since 1990, but this report includes information since March 2005, consistent with the time period included in this report for the ANS West Coast crude oil dataset. As seen in Figure 2, gasoline prices (all grades – conventional retail) did not follow a predictable pattern until 2011. Between March 2011 and June 2014, the difference between the minimum and maximum price was $0.75 per gallon, with prices fluctuating between $3.21 and $3.96 per gallon. Average prices did not climb to peak levels or fall exceptionally until they began to drop in July 2014. The rate of decline was steady until January 26, 2015, when average gas prices hit a low of $2.07 per gallon. This was the

[3] Source: Alaska Department of Revenue, Tax Division. Retrieved on January 31, 2017, from: http://www.tax.alaska.gov/programs/oil/prevailing/ans.aspx
[4] Source: U.S. Energy Information Administration. Retrieved on January 31, 2017, from: http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm.

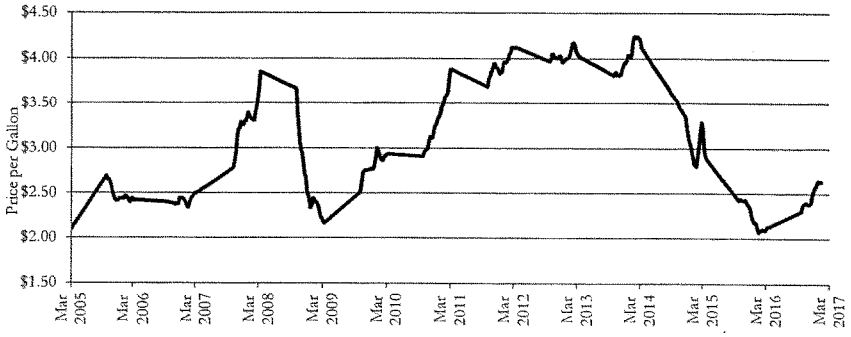
lowest average price since April 27, 2009, when gas prices were also at $2.07. The lowest recorded gasoline price since March 2005 was $1.64 on December 29, 2009. The most recent average price of $2.34 per gallon was recorded on January 30, 2017. This is an increase of $0.51, or 28% from the same date in 2016.

Figure 2. Weekly National Average Gasoline Price: March 2005 to January 2017



EIA also reports average residential heating prices, more specifically, heating fuel #2, since it is the most common fuel type used nationwide. Although heating fuel #2 is used in some Alaska communities, the more expensive heating fuel #1 is more common since it is better suited for cold temperatures. It should be noted that price quotes are only representative of the type of heating fuel most commonly used in the respective locations.

Figure 3. Weekly National Average Heating Fuel: March 2005 to January 2017



As shown in Figure 3, national average heating fuel #2 prices followed the pattern of national average gasoline prices. In February 2014, heating fuel prices hit a record high of $4.25. From then until March 2016, the national average price of heating fuel dropped steadily, falling to $2.07 by January 25, 2016 – the lowest average heating fuel price seen since February 2005. Since then, the price has recovered to $2.63 per gallon.

CURRENT FUEL PRICES ACROSS ALASKA

The prices of heating fuel and gasoline in 100 communities across seven regions of Alaska vary based on their location within Alaska and their proximity to the road system. Fuel price quotes in this report reflect prices as charged at the vendors' pump stations or delivered price for heating fuel, depending on how fuel is distributed in the community, and include local sales tax where applicable.

Table 1. January 2017: Retail Heating Fuel Prices per Gallon across Alaska

	Gulf Coast	Interior	Northern	Northwest	Southeast	Southwest	Western
High	$6.90	$12.00	$2.50	$7.21	$4.60	$6.85	$7.32
Low	$2.30	$2.40	$1.40	$3.50	$2.79	$2.56	$3.95
Average	**$3.48**	**$4.83**	**$1.74**	**$4.92**	**$3.27**	**$4.35**	**$5.17**

As shown in Table 1, Alaska communities in the Western Region reported the highest average heating fuel retail price at $5.17 per gallon, while Northern communities reported the lowest average retail price at $1.74 per gallon. The North Slope Borough subsidizes residential heating fuel costs, and two of the seven communities surveyed, Utqiaġvik (Barrow) and Nuiqsut, use natural gas for heating. Excluding the Northern Region, Southeast communities experienced the lowest average heating fuel price. The relatively short distance to fuel distribution centers and year-round marine access contribute to the lowest Alaska heating fuel prices at an average of $3.27 per gallon. This also holds true for the Gulf Coast Region, which has the next-lowest average price of $3.48 per gallon. Although the Southwest Region has year-round marine access, the greater distance to distribution centers results in higher prices, with a current average of $4.35. For a more detailed breakdown of heating fuel prices, see Appendix A-2 (page 11).

Table 2. January 2017: Northern Region Heating Fuel and Gasoline Retail Prices

Community	Community Retailer	Heating Fuel Retail Price		Gasoline Retail Price
		Residential	Commercial	
Anaktuvuk Pass	Nunamiut Corporation	$1.55	$8.35	$7.35
Atqasuk	Atqasuk Corporation	$1.40	$4.10	$4.10
Utqiaġvik (Barrow)	BUEC, Inc.	Natural Gas	Natural Gas	$5.90
Kaktovik	Kaktovik Inupiat Corporation	$2.50	$6.00	$6.00
Nuiqsut	Kuukpik Corporation	Natural Gas	Natural Gas	$5.00
Point Hope	Tigara Corporation	$1.74	$7.99	$5.76
Wainwright	Olgoonik Corporation	$1.50	$7.30	$5.11

Of noteworthy importance, the North Slope Borough (Northern Region) has village corporations that distribute fuel to residents throughout the Northern Region and, within the community, charge only a delivery fee on a per-gallon basis (Table 2). The North Slope Borough does not subsidize heating fuel for commercial use. Consequently, the retail price of heating fuel for commercial entities is significantly higher than for residences. The Northern Region community of Utqiaġvik (Barrow) and more recently Nuiqsut heat their homes primarily with natural gas.

To summarize statewide heating fuel prices, it is appropriate to exclude Northern Region communities because of the North Slope Borough subsidy for residential-use heating fuel and natural gas connections. On average, excluding the seven Northern communities, heating fuel retailed at $4.49 per gallon across the remaining surveyed Alaska communities. This is a decrease of $0.22 from the average heating fuel price in January 2016. Arctic Village (Interior Region) reported the highest heating fuel retail price at $12.00 per gallon. In contrast, Fairbanks (also Interior Region) reported the lowest heating fuel price at $2.30 per gallon (see Appendix A-2).

As Table 3 illustrates, average gasoline prices per gallon also varied across Alaska by region. Communities in the Northern Region reported the highest average retail price for gasoline, at $5.60 per gallon, and Southeast Region communities reported the lowest average retail price at $3.45 per gallon. Statewide retail gasoline prices vary widely. Arctic Village (Interior Region) reported the highest gasoline price at $10.00 per gallon. Juneau (Southeast Region) reported the lowest gasoline retail price at $2.21 per gallon. On average, gasoline retailed for $4.87 per gallon across the 100 surveyed Alaska communities. This is a $0.36 per gallon decrease from the prior year's statewide average.

Table 3. January 2017: Retail Gasoline Prices per Gallon across Alaska

	Gulf Coast	Interior	Northern	Northwest	Southeast	Southwest	Western
High	$6.95	$10.00	$7.35	$8.24	$4.85	$6.65	$6.81
Low	$2.68	$2.69	$4.10	$3.65	$2.21	$3.64	$4.65
Average	**$3.98**	**$5.04**	**$5.60**	**$5.28**	**$3.45**	**$4.72**	**$5.49**

Many Alaska communities are located off the road system and have limited and, at times, impaired (mostly due to weather) waterway access. Such isolation contributes to higher fuel costs. In the Northern, Northwest, and Western regions in particular, most communities depend on a few bulk deliveries by barge per year, but only if weather and water levels allow the service. Sometimes, fuel must be delivered into the communities by plane, further increasing the cost for consumers. Although fuel prices drop elsewhere, these remote communities remain locked into a higher price until they receive their next shipment.

In the Gulf Coast and Interior regions, some communities are on the road system, and others are not. Because of the lack of accessibility in off-road system communities, heating fuel prices tend to be higher than in communities on the road system (Table 4). This contrast is stronger in the Interior, where the average prices for heating oil and gasoline for communities off the road system were $3.25 and $2.97 higher, respectively, than the average prices for communities on the road system. In the Gulf Coast Region, where many of the communities receive shipments year-round by barge, the average price was $1.51 higher for heating fuel and $1.61 higher for gasoline for communities off the road system than the average price for communities on the road system.

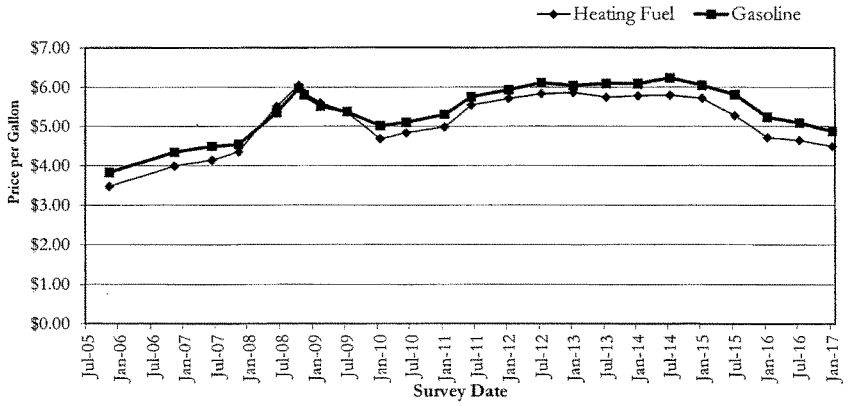
Table 4. January 2017 On the Road System and Off the Road System: Prices in the Gulf Coast and Interior Regions

Gulf Coast	On Road System	Off Road System	Interior	On Road System	Off Road System
Heating Fuel:			Heating Fuel:		
High	$2.60	$6.90	High	$3.50	$12.00
Low	$2.30	$2.83	Low	$2.40	$3.45
Average	**$2.47**	**$3.98**	**Average**	**$2.82**	**$6.07**
Gasoline:			Gasoline:		
High	$3.15	$6.95	High	$3.95	$10.00
Low	$2.68	$3.10	Low	$2.69	$4.60
Average	**$2.95**	**$4.56**	**Average**	**$3.20**	**$6.17**

CHANGE IN FUEL PRICES ACROSS ALASKA

Since January 2016, the average heating fuel price for the 100 surveyed communities has decreased by 4.6%. Excluding the Northern Region communities, the average per gallon heating fuel price was $4.71 in January 2016, decreasing to $4.49 by January 2017 (Figure 4). Regional prices reflected that decrease as shown (Figure 5): Gulf Coast 1.2%, Interior -4.4%, Northwest -5.9%, Southeast -4.7%, Southwest -12.7%, and Western -8.7%. The Northern region also had a 2.8% decrease in average price since January 2016.

Figure 4. Trend in Average Alaska Fuel Price



The average gasoline price of the surveyed communities fell by 6.9% from January 2016 to January 2017, from $5.23 to $4.87 per gallon (Figure 4). Every individual region also experienced an average decrease in price, as shown in figure 6: Gulf Coast -2.7%, Interior -6.1%, Northern -9.0%, Northwest -9.8%, Southeast -3.0%, Southwest -11.6%, and Western -5.6%.

Figure 5. Heating Fuel Retail Prices by Region

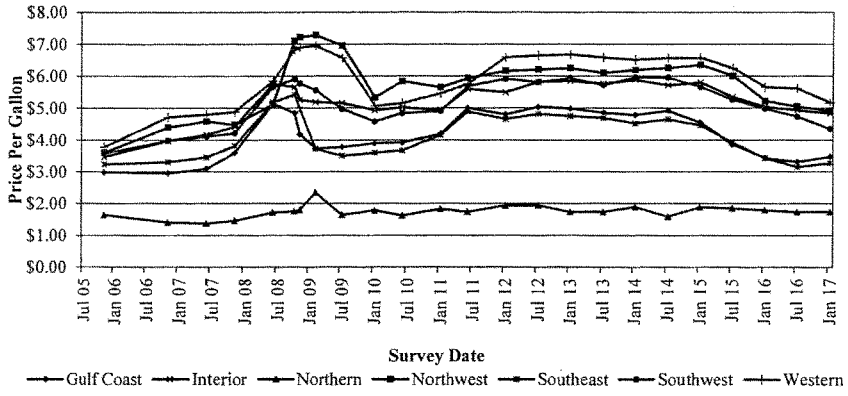
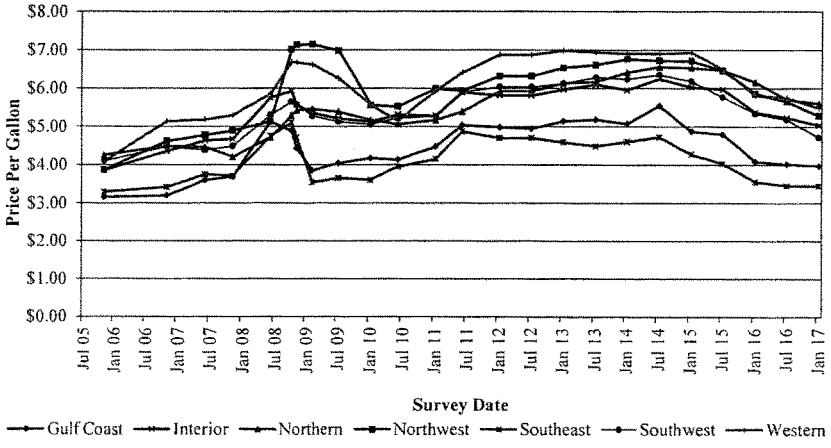


Figure 6. Gasoline Retail Prices by Region



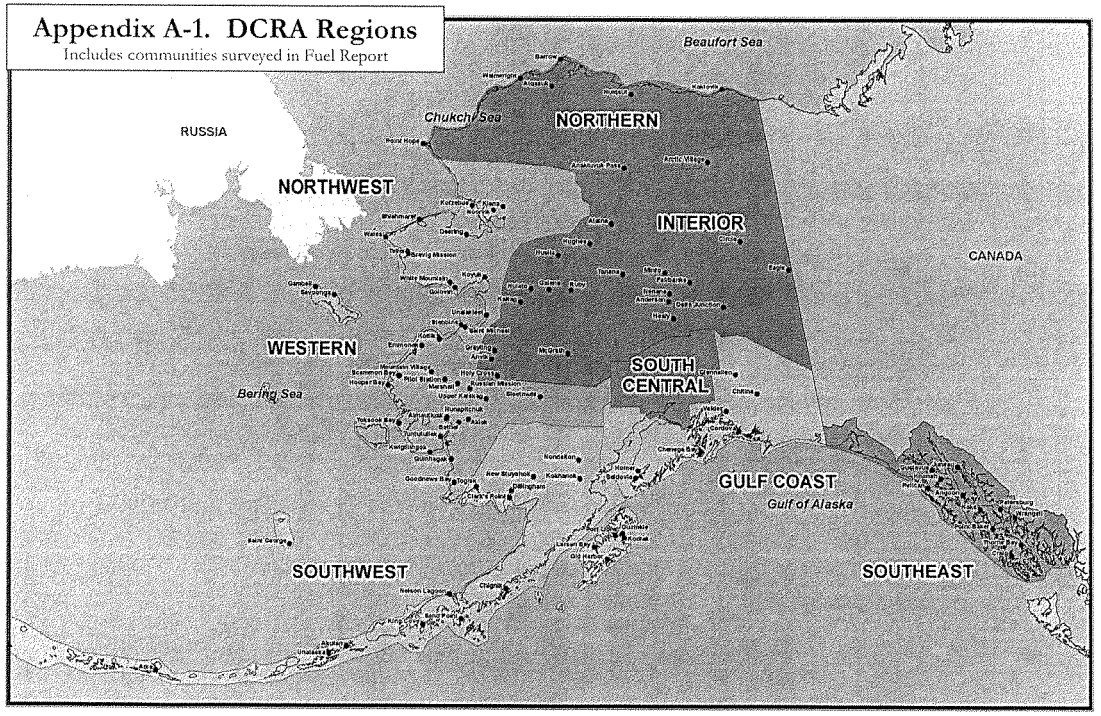
SUMMARY

During January 2017, current retail heating fuel and gasoline prices were collected from 100 select communities across Alaska. Overall, the average heating fuel price across the surveyed communities (excluding the Northern Region) was $4.49; whereas, the most recent national average (January 23, 2017) was $2.63. The average survey price of gasoline was $4.87 per gallon, while the national average gasoline price was $2.37 on January 23, 2017.

Since 2005, until the current survey period, the highest recorded average statewide price for heating fuel in Alaska was $6.05 and the lowest was $3.48, a difference of 64 percent. Alaska's average heating fuel cost has dropped by 4.6 percent between January 2016 and January 2017 while the national average increased by 27 percent during the same period. The highest recorded average statewide price for gasoline in Alaska was $6.04 and the lowest recorded was $3.83, a difference of 58 percent. While the national price of gasoline increased 27% from January 2016 to January 2017, the average gasoline price for Alaska decreased by 3.0%.

Alaska's rural communities, outside of the Southeast and Gulf Coast regions, typically receive large shipments of fuel delivered by barge once or twice per year, and are locked into a given price until the next fuel delivery arrives. These remote communities have higher shipping costs, resulting in fuel prices that are significantly higher than the statewide average. However, since most communities receive at least one fuel delivery a year, they are continuing to benefit from the lowering costs of fuel that affected the rest of the country in late 2014. Of the 100 surveyed communities, 59 recorded lower heating fuel prices and 65 had reduced gasoline prices compared to the prior year. Twenty-one communities recorded higher heating fuel prices and 19 recorded higher gasoline prices.

Alaska's prices lag behind national prices, especially in communities where shipping is infrequent. However, over the past year this survey has shown that Alaska's fuel prices are catching up to that of the national trend line. Because shipping costs to remote Alaska communities are high, prices are still far above national averages. Despite this, heating fuel and gasoline prices in most regions of the state are at their lowest since early in 2009, and most surveyed communities have seen significant declines.



ALASKA DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF COMMUNITY AND REGIONAL AFFAIRS, RESEARCH AND ANALYSIS SECTION

Appendix A-2: Community Heating Fuel and Gasoline January 2017

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel #1 01/2017 Retail: ($4.49*)	Percent (%) +/- Statewide (excl. NBS) Heating Fuel Average: (4.49)	Percent +/- 01/2016 HF Retail: (selling price per gallon)	Gasoline 01/2017 Retail Price: ($4.87*)	Percent (%) +/- Statewide Gasoline Average: ($4.87)	Percent +/- 01/2016 Gasoline Retail: (selling price per gallon)
Chenega Bay	Gulf Coast	Chenega Bay Utility	$6.90	55%	14%	$6.95	43%	4%
Chitina	Gulf Coast	Chitina Services	$2.30	-48%	-6%	$3.05	-37%	3%
Cordova	Gulf Coast	Hovers Mover	$2.94	-34%	5%	$3.78	-22%	20%
Glennallen	Gulf Coast	Crowley	$2.40	-46%	-2%	$3.15	-35%	11%
Homer	Gulf Coast	Home Run Oil	$2.58	-42%	10%	$2.92	-40%	14%
Kodiak	Gulf Coast	Petro Marine	$2.85	-36%	5%	$3.10	-36%	9%
Larsen Bay	Gulf Coast	City of Larsen Bay	$5.11	15%	-3%	$4.30	-12%	-27%
Old Harbor	Gulf Coast	City of Old Harbor	$4.10	-8%	1%	$6.18	27%	-16%
Ouzinkie	Gulf Coast	Ouzinkie Native Corporation	$2.83	-36%	-4%	N/A	N/A	N/A
Port Lions	Gulf Coast	Kizhuyak Oil Sales	$3.45	-22%	0%	$3.75	-23%	0%
Seldovia	Gulf Coast	Seldovia Fuel and Lube	$3.64	-18%	-9%	$3.88	-20%	-3%
Valdez	Gulf Coast	North Pacific	$2.60	-41%	-4%	$2.68	-45%	-11%
Alatna	Interior	Alatna Village	$7.00	58%	0%	$7.50	54%	0%
Anderson	Interior	Nenana Heating	$2.94	-34%	14%	$3.14	-36%	0%
Anvik	Interior	Deloyges, Inc.	$5.35	20%	-11%	$5.50	13%	-8%

Note: Survey prices for Alatna and Circle are from the respective communities of Allakaket and Central. Residents travel to obtain gasoline or heating fuel in those communities.

N/A: Not Available

\# Saint George was unable to provide information at the time of the survey.

* Heating fuel average does not include Northern communities, whose residential fuel is subsidized by the North Slope Borough.

Δ Community is on the road system; this only applies to communities in the Gulf Coast and Interior regions.

† Vendors in these communities sell primarily #2 heating fuel.

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel #1 01/2017 Retail: ($4.49*)	Percent (%) +/- Statewide (excl. NBS) Heating Fuel Average: (4.49)	Percent +/- 01/2016 HF Retail: (selling price per gallon)	Gasoline 01/2017 Retail Price: ($4.87*)	Percent (%) +/- Statewide Gasoline Average: ($4.87)	Percent +/- 01/2016 Gasoline Retail: (selling price per gallon)
Arctic Village	Interior	Arctic Village	$12.00	170%	N/A	$10.00	105%	0%
Circle	Interior	Central Corner (HF); Village of Circle (Gas)	$2.46	-45%	0%	$2.96	-39%	-20%
Delta Junction	Interior	Delta Fuel	$2.55	-43%	9%	$3.00	-38%	11%
Eagle	Interior	Telegraph Hill Services	$3.50	-21%	-18%	$3.95	-19%	-21%
Fairbanks	Interior	Alaska Petroleum	$2.50	-44%	8%	$2.89	-41%	8%
Galena	Interior	Crowley Marine Services	$5.95	34%	-4%	$6.40	31%	-6%
Grayling	Interior	HYL Grayling Fuel Company	$5.60	26%	2%	$5.50	13%	-4%
Healy	Interior	Fisher Fuel	$2.40	-46%	-9%	$2.69	-45%	17%
Holy Cross	Interior	Holy Cross Oil Company	$5.55	25%	0%	$6.00	23%	0%
Hughes	Interior	City of Hughes	$9.50	114%	6%	$7.50	54%	-21%
Huslia	Interior	Huslia Gas & Oil	$5.70	28%	-12%	$5.50	13%	-4%
Kaltag	Interior	Kaltag Cooperative	$4.25	-4%	-6%	$5.00	3%	-9%
McGrath	Interior	Crowley	$5.99	35%	-20%	$6.32	30%	-16%
Minto	Interior	North Fork Store	$3.25	-27%	-8%	$3.90	-20%	-3%
Nenana	Interior	Nenana Heating	$2.94	-34%	9%	$3.09	-37%	15%
Nulato	Interior	City of Nulato	$4.35	-2%	-2%	$5.00	3%	-7%
Ruby	Interior	Dineega Fuel Company	$3.45	-22%	-7%	$4.60	-6%	-15%

Note: Survey prices for Alatna and Circle are from the respective communities of Allakaket and Central. Residents travel to obtain gasoline or heating fuel in those communities.
N/A: Not Available
Saint George was unable to provide information at the time of the survey.
* Heating fuel average does not include Northern communities, whose residential fuel is subsidized by the North Slope Borough.
Δ Community is on the road system; this only applies to communities in the Gulf Coast and Interior regions.
† Vendors in these communities sell primarily #2 heating fuel.

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel #1 01/2017 Retail: ($4.49*)	Percent (%) +/- Statewide (excl. NBS) Heating Fuel Average: (4.49)	Percent +/- 01/2016 HF Retail: (selling price per gallon)	Gasoline 01/2017 Retail Price: ($4.87*)	Percent (%) +/- Statewide Gasoline Average: ($4.87)	Percent +/- 01/2016 Gasoline Retail: (selling price per gallon)
Tanana	Interior	Tanana Tribal Council	$4.25	-4%	-19%	$5.41	11%	0%
Anaktuvuk Pass	Northern	Nunamiut Corporation	$1.55	-65%	0%	$7.35	51%	-17%
Atqasuk	Northern	North Slope Borough	$1.40	-68%	0%	$4.10	-16%	0%
Utqiaġvik (Barrow)	Northern	Eskimos Inc.	$0.00	-100%	Natural Gas	$5.90	21%	-9%
Kaktovik	Northern	Kaktovik Inupiat Corporation	$2.50	-44%	0%	$6.00	23%	0%
Nuiqsut	Northern	Kuukpik Corporation	$0.00	-100%	N/A	$5.00	3%	0%
Point Hope	Northern	Tigara Corporation	$1.74	-61%	0%	$5.76	18%	0%
Wainwright	Northern	Olgoonik Corporation	$1.50	-66%	0%	$5.11	5%	-26%
Brevig Mission	Northwest	Brevig Mission Native Store	$3.75	-16%	-35%	$4.22	-13%	-34%
Deering	Northwest	Deering IRA	$4.38	-1%	-10%	$4.64	-5%	-10%
Gambell	Northwest	ANICA (Gambell Native Store)	$4.65	5%	-11%	$5.00	3%	-12%
Golovin	Northwest	Golovin Public Utilities	$4.00	-10%	-20%	$4.00	-18%	-20%
Kiana	Northwest	City of Kiana	$5.67	28%	0%	$6.18	27%	0%
Kotzebue	Northwest	Crowley	$5.34	20%	69%	$5.45	12%	-10%
Koyuk	Northwest	Koyuk Native Corporation	$4.71	6%	-2%	$5.17	6%	-2%
Noorvik	Northwest	Morris Trading Post	$5.64	27%	-14%	$6.06	24%	-23%
Saint Michael	Northwest	Saint Michael Fuel Company	$5.88	32%	0%	$5.60	15%	-6%

Note: Survey prices for Alatna and Circle are from the respective communities of Allakaket and Central. Residents travel to obtain gasoline or heating fuel in those communities.
N/A: Not Available
Saint George was unable to provide information at the time of the survey.
* Heating fuel average does not include Northern communities, whose residential fuel is subsidized by the North Slope Borough.
Δ Community is on the road system; this only applies to communities in the Gulf Coast and Interior regions.
† Vendors in these communities sell primarily #2 heating fuel.

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel #1 01/2017 Retail: ($4.49*)	Percent (%) +/- Statewide (excl. NBS) Heating Fuel Average: (4.49)	Percent +/- 01/2016 HF Retail: (selling price per gallon)	Gasoline 01/2017 Retail Price: ($4.87*)	Percent (%) +/- Statewide Gasoline Average: ($4.87)	Percent +/- 01/2016 Gasoline Retail: (selling price per gallon)
Savoonga	Northwest	ANICA (Savoonga Native Store)	$4.50	1%	-14%	$4.85	0%	-14%
Shishmaref	Northwest	Shishmaref Native Store	$4.00	-10%	-2%	$4.50	-8%	-2%
Stebbins	Northwest	Tapraq Fuel Company	$5.52	24%	-3%	$5.57	14%	-8%
Teller	Northwest	Teller Native Fuel Business	$5.96	34%	9%	$7.44	53%	21%
Unalakleet	Northwest	Unalakleet Native Corporation	$3.94	-11%	-14%	$3.94	-19%	-15%
Wales	Northwest	Wales Native Store	$7.21	62%	0%	$8.24	69%	0%
White Mountain	Northwest	White Mountain Native Store	$3.50	-21%	-20%	$3.65	-25%	-23%
Angoon	Southeast	Angoon Oil and Gas	$3.50	-21%	-2%	$3.49	-28%	-2%
Craig	Southeast	Petro Marine	$2.86	-36%	-3%	$3.37	-31%	2%
Gustavus	Southeast	Gustavus Dray - Gustavus Propane	$3.54	-20%	-1%	$3.39	-30%	-3%
Hoonah	Southeast	Hoonah Trading	$3.12	-30%	9%	$3.24	-33%	-4%
Juneau	Southeast	Delta West. (HF) Fred Meyer (Gas)	$2.88	-35%	-9%	$2.21	-55%	-31%
Kake	Southeast	Kake Tribal Fuel	$3.66	-18%	0%	$4.00	-18%	6%
Pelican	Southeast	Pelican Fuel	$3.21	-28%	-6%	$3.43	-30%	-1%
Petersburg	Southeast	Petro Marine	$2.79	-37%	-6%	$3.56	-27%	-2%
Point Baker	Southeast	Point Baker Trading Post	$4.60	4%	-1%	$4.85	0%	0%
Thorne Bay	Southeast	Petro Marine (HF) The Port at Thorne Bay (Gas)	$2.83	-36%	-8%	$2.97	-39%	7%

Note: Survey prices for Alatna and Circle are from the respective communities of Allakaket and Central. Residents travel to obtain gasoline or heating fuel in those communities.
N/A: Not Available
Saint George was unable to provide information at the time of the survey.
* Heating fuel average does not include Northern communities, whose residential fuel is subsidized by the North Slope Borough.
Δ Community is on the road system; this only applies to communities in the Gulf Coast and Interior regions.
† Vendors in these communities sell primarily #2 heating fuel.

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel #1 01/2017 Retail: ($4.49*)	Percent (%) +/- Statewide (excl. NBS) Heating Fuel Average: (4.49)	Percent +/- 01/2016 HF Retail: (selling price per gallon)	Gasoline 01/2017 Retail Price: ($4.87*)	Percent (%) +/- Statewide Gasoline Average: ($4.87)	Percent +/- 01/2016 Gasoline Retail: (selling price per gallon)
Wrangell	Southeast	Wrangell Oil	$3.00	-32%	-22%	$3.47	-29%	-5%
Akutan	Southwest	City of Akutan	$2.60	-41%	-5%	$3.80	-22%	-6%
Atka	Southwest	Atka Native Store	$6.85	54%	0%	$6.65	37%	-13%
Chignik	Southwest	City of Chignik (HF); Trident (Gas)	$3.31	-25%	2%	$4.00	-18%	-9%
Clark's Point	Southwest	City of Clark's Point	N/A	N/A	N/A	$6.00	23%	N/A
Dillingham	Southwest	Delta Western	$2.56	-42%	-28%	$3.93	-19%	-17%
King Cove	Southwest	Peter Pan Seafood	$3.07	-31%	-9%	$3.81	-22%	-15%
Kokhanok	Southwest	Kokhanok Tribal Council	$6.10	37%	-13%	$6.02	24%	-14%
Nelson Lagoon	Southwest	Nelson Lagoon Enterprises	$4.52	2%	N/A	$4.71	-3%	N/A
New Stuyahok	Southwest	New Stuyahok Village Corp.	$6.05	36%	-7%	$5.38	10%	-15%
Nondalton	Southwest	City of Nondalton	$4.43	0%	-16%	$4.91	1%	-18%
Saint George#	Southwest	Delta Fuel Company	N/A	N/A	N/A	N/A	N/A	N/A
Sand Point	Southwest	TDX Svcs (HF); Trident (gas)	$4.32	-3%	-4%	$3.80	-22%	-11%
Togiak	Southwest	Togiak Natives Limited	$4.46	0%	-3%	$4.73	-3%	0%
Unalaska	Southwest	Delta Western	$3.90	-12%	10%	$3.64	-25%	-7%
Akiak	Western	Kokarmiut Corporation	$4.72	6%	-24%	$5.16	6%	-8%
Atmautluak	Western	Atmautluak Limited	$5.62	27%	-16%	$6.16	26%	-4%

Note: Survey prices for Alatna and Circle are from the respective communities of Allakaket and Central. Residents travel to obtain gasoline or heating fuel in those communities.
N/A: Not Available
Saint George was unable to provide information at the time of the survey.
* Heating fuel average does not include Northern communities, whose residential fuel is subsidized by the North Slope Borough.
Δ Community is on the road system; this only applies to communities in the Gulf Coast and Interior regions.
† Vendors in these communities sell primarily #2 heating fuel.

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel #1 01/2017 Retail: ($4.49*)	Percent (%) +/- Statewide (excl. NBS) Heating Fuel Average: (4.49)	Percent +/- 01/2016 HF Retail: (selling price per gallon)	Gasoline 01/2017 Retail Price: ($4.87*)	Percent (%) +/- Statewide Gasoline Average: ($4.87)	Percent +/- 01/2016 Gasoline Retail: (selling price per gallon)
Bethel	Western	Crowley	$4.78	8%	-16%	$5.02	3%	-13%
Emmonak	Western	Emmonak Corp. Tank Farm	$5.20	17%	1%	$4.69	-4%	-6%
Goodnews Bay	Western	Mumtram Pikkai Village Corp.	$4.12	-7%	0%	$5.36	10%	0%
Hooper Bay	Western	Crowley Marine	$5.20	17%	-19%	$5.35	10%	-14%
Kotlik	Western	Kotlik Yupik Enterprises	$4.53	2%	-15%	$5.57	14%	-6%
Kwigillingok	Western	KWIK Marina Inc.	$3.95	-11%	-15%	$4.65	-5%	-9%
Marshall	Western	Maserculiq Inc.	$4.94	11%	-9%	$4.94	1%	-9%
Mountain Village	Western	Azachorak Fuel	$6.53	47%	31%	$5.86	20%	3%
Nunapitchuk	Western	Nunapitchuk LTD.	$5.15	16%	-21%	$5.51	13%	-16%
Pilot Station	Western	Pilot Station Native Corporation	$7.32	65%	0%	$6.81	40%	30%
Quinhagak	Western	Qanirtuuq Corporation	$5.00	13%	0%	$5.65	16%	0%
Russian Mission	Western	Russian Mission Corporation	$4.62	4%	-4%	$5.85	20%	-4%
Scammon Bay	Western	Askinuk Corporation	$5.46	23%	-14%	$5.46	12%	-14%
Sleetmute	Western	Henry Hill Store	$5.40	22%	-5%	$6.07	25%	-7%
Toksook Bay	Western	Nunakauiak Yupik Corporation	$4.85	9%	-19%	$4.85	0%	-19%
Tuntutuliak	Western	Qinarmiut Corporation	$4.88	10%	0%	$5.33	9%	0%
Upper Kalskag	Western	City of Upper Kalskag	$6.00	35%	-4%	$6.00	23%	-4%

Note: Survey prices for Alatna and Circle are from the respective communities of Allakaket and Central. Residents travel to obtain gasoline or heating fuel in those communities.
N/A: Not Available
Saint George was unable to provide information at the time of the survey.
* Heating fuel average does not include Northern communities, whose residential fuel is subsidized by the North Slope Borough.
Δ Community is on the road system; this only applies to communities in the Gulf Coast and Interior regions.
† Vendors in these communities sell primarily #2 heating fuel.

• NATIONAL RESPONSE CORPORATION •
COMPANY PROFILE

COMPANY NAME:	National Response Corporation (NRC)
ADDRESS:	3500 Sunrise Highway Bldg 200 / Suite 200 Great River, NY 11739
24 HOUR TELEPHONE:	+1 (631) 224-9141
FACSIMILE:	+1 (631) 224-9082
TELEX:	49617380 - NRC UI
E-MAIL:	iocdo@nrcc.com
WWW Home Page:	www.nrcc.com
CORPORATE AFFILIATION:	Wholly owned subsidiary of J.F. Lehman & Company
SERVICES:	NRC is a global service provider of environmental, industrial and emergency response solutions. With the highest safety standards and industry best practice, we are at hand to deliver a highly responsive local service in some of the world's toughest environments. First established in 1992 as an oil spill response provider following the introduction of the 1990 Oil Pollution Act, 'OPA 90'. Through strategic acquisition and organic growth, our service lines have since expanded to cover a wide range of industrial and remediation services as well as training, consultancy, and specialist response services. NRC provides oil spill response and environmental regulatory compliance services to the marine and oil industries. NRC owns and operates a vast amount of specialized oil spill response equipment and vessels pre-positioned throughout the US. Areas of expertise include resource & communications management, logistics & response planning and environmental training. NRC also provides environmental consulting and remediation services to the international business community. Major international projects include joint ventures in Thailand and Manila for provision of MARPOL waste reception facilities and response services to oil fields in the North Sea, respectively.
MARKETS:	NRC provides emergency response services to those who store, transport, handle or produce oil. NRC also offers environmental and industrial response, environmental planning, consulting and remediation services internationally. NRC services the energy, manufacturing, transportation, engineering and construction, and healthcare industries worldwide.
US OFFICE LOCATIONS:	Great River, NY • Anchorage, AK • Fairbanks, AK • Kenai, AK • Palmer, AK • Prudhoe Bay, AK • Houston, TX • Fort Worth, TX • Ormond Beach, FL • San Juan, Puerto Rico • Seattle, WA • Pasco, WA • Spokane, WA • Portland, OR • Alameda, CA • Long Beach, CA • Chico, CA • Sacramento, CA • Eureka, CA • Port Hueneme/Ventura, CA • San Diego, CA • Reno, NV • Albany, NY • Buffalo, NY • Syracuse, NY • Massena, NY • Rochester, NY • Philadelphia, PA • Franklin, MA • South Portland, ME • St Croix, USVI

National Response Corporation

National Response Corporation ("**NRC**"), a wholly owned subsidiary of J. F. Lehman & Company, a for-profit national Oil Spill Removal Organization (OSRO) which provides emergency spill response and regulatory compliance services to the oil and shipping industries worldwide. NRC holds USCG OSRO classifications of Levels "MM through W3", in the Rivers/Canals, Inland Great Lakes and Nearshore/Offshore/Open Ocean operating environments and Captain-of-the-Port Zones as defined by the Oil Pollution Act of 1990 (OPA '90) and OSRO Guidelines.

NRC's unique and cost conscious approach to spill response is supported by in-house expertise, a vast amount of specialized response resources and a highly skilled Independent Contractor Network (ICN). Presently, the ICN is comprised of emergency response & spill clean-up companies located in over 550 locations throughout our Area of Service. These contractors have been selected by NRC after a review of their resources, capabilities and experience. NRC then placed their own equipment, including shallow water portable barges, boom, high capacity skimming systems, inland work boats, vacuum transfer units, land-based response equipment, and mobile communication centers, at the ICN locations. NRC resources also include a Marine Resource Network which consists of thirteen Oil Spill Response Vessels (OSRVs) and eight Oil Spill Response Barges (OSRBs), which are strategically positioned throughout our Area of Service to meet the planning requirements of OPA '90. NRC has access to a vessel fleet of more than 2,000 offshore vessels and supply boats worldwide.

NRC provides its Clients with the ability to quickly respond to a spill of any size. Responses are initiated through NRC's International Operations Center (IOC), which is manned 24 hours a day, seven days a week by full time NRC employees. This organizational structure and pool of available resources allows NRC to mount a massive response, as necessary, through the cascading of personnel and equipment to the site of the incident. Once on-scene, NRC's logistics and communications specialists ensure that the entire response effort progresses efficiently and cost effectively. As a leading national OSRO, NRC offers proven experience with successful response operations to nearly every oil spill since inception.

In addition to proven response and compliance services, NRC provides a wide array of value added services to our Clients, who include clients from the energy, manufacturing, transportation, engineering and construction, and healthcare industries worldwide. Presently, NRC is listed in over 2,500 spill response plans filed with the US Coast Guard, the US EPA and the Bureau of Safety and Environmental Enforcement (BSEE) as the plan holder's primary and contractual OSRO.

NRC is a viable environmental response and remediation organization that emphasizes operational readiness, true capability, and customer satisfaction. For additional information please contact NRC's Corporate Headquarters by +**1 (631) 224-9141**.

For Oil Spill Emergencies please call **(800) 899-4672.**

RESOLVE MARINE GROUP

RESOLVE Marine Services
1510 SE 17th Street, Suite 400
Fort Lauderdale, FL 33316
o: +1 954 764 8700

RESOLVE Marine Group, Inc. / RESOLVE Salvage & Fire (RESOLVE), headquartered in Fort Lauderdale, FL, USA, has been actively offering Salvage and Wreck Removal services to the maritime community for over thirty years. The organization was first registered as RESOLVE Towing & Salvage, Inc., a Florida Corporation, in 1984. RESOLVE Towing and Salvage experienced steady growth and progressively expanded their operations into various marine related businesses while maintaining Marine Salvage, Wreck Removal and Emergency Response as the core business specialty. RESOLVE Marine Group, Inc. was incorporated in 1996 as the holding company for the various business units.

RESOLVE has grown significantly over the past 10 years. During this period, the group steadily moved from concentrating operations solely in North America, Central America, and the Caribbean to expanding marine operations across the globe. To date, RESOLVE has undertaken projects in Europe, Africa, South East Asia, Far East, Middle East, the Oceania and the Americas. These global projects eventually led to ownership of full-service facilities in South Africa, London, Rotterdam, Gibraltar, Spain, Singapore and Mumbai. These stocked and manned facilities and the facilities in the US, including Mobile, Alabama; New Orleans, Louisiana; Fort Lauderdale, Florida; and Dutch Harbor, Alaska enable significant job support and low project costs. Additionally, RESOLVE offers complete OSRO services in China with their Shanghai-based spill response joint-venture covering 102 ports.

With its steady and consistent growth, RESOLVE continues to add experienced and knowledgeable personnel to our in-house workforce. On-staff personnel include a complement of Salvage Masters, Naval Architects, Salvage Engineers, Salvage Divers / Technicians, Fire Fighters, Tanker Men, Equipment Operators, and Environmental experts. These professionals deal with all aspects of project planning, management, and execution. We take pride in carrying out professional and efficient operations.

RESOLVE's operational experience encompasses all sizes and types of vessels. The group's unique partnerships with key support sub-contractors enables the organization to truly serve their clients. RESOLVE prides itself in never having left or walked from a project due to unforeseen difficulties or unanticipated loss of financial viability. RESOLVE is committed to see projects through and understands the liabilities that the clients face.

RESOLVE is a founding member of the American Salvage Association, as well as a member of the International Salvage Union, the National Fire Protection Association, Association of Average Adjusters, Maritime London and the Singapore Shipowner's Association.

RESOLVE Marine Group, Inc. is an ISO 9001:2008 certified company.

Committee on Transportation and Infrastructure

U.S. House of Representatives

May 3, 2017

Testimony of Nicholas J. Nedeau

Thank you for allowing me to provide information on the gap between required marine salvage and firefighting regulations, and the actual services contracted for by regulated vessel owners. This gap places the marine environment and vessel crews in considerable jeopardy. My name is Nicholas Nedeau. I am the Chief Executive Officer of Rapid Ocean Response Corporation. RORC provides dedicated, high-speed response vessels, and related transportation, to offshore fire fighters and surveyors as required pursuant to the Salvage and Marine Fire-Fighting ("SMFF") regulations. The SMFF response regulations are derived from the Oil Pollution Act of 1990. (An amendment to the Clean Water Act; Federal Water Pollution Control Act, 33 USC §1251 et. seq.) The statute provides in relevant part, that tank vessels "identify, and ensure by contract or other means ... the availability of, private personnel and equipment necessary to remove ... a worst-case discharge (including a discharge resulting from fire or explosion), ..." Section 4205 of the Oil Pollution Act ("OPA") Pub. L. 101-130, 104 Stat. 484 (August 18, 1990), 33 USC 1321(j)(D)(iii).

The clear import of that provision is that the Congress intended that when a fire or similar incident occurs offshore, marine salvage and fire-fighting resources be identifiable and ensured by contract to be available to respond. As my testimony will explain, neither of those requirements are currently being met.

Implementation of the SMFF Regulations was Delayed

In terms of the implementation of the SMFF regulations, the Coast Guard was surprisingly patient with the regulated community. Over a period of nineteen years, the effective date of the regulations governing SMFF response requirements and the related Vessel Response Plans ("VRPs") was repeatedly pushed back. It wasn't until 2009 that the actual VRP requirements became effective. 73 Fed. Reg. 80618 (December 31, 2008). The reason the COAST GUARD provided for the delays was usually the same, more time would be needed to allow the SMFF resource providers to build the vessels necessary to achieve compliance with the SMFF requirements. Even after nineteen years of delays, the COAST GUARD gave the salvage industry one more chance to develop the required response resources by allowing waivers of up to four years. Unfortunately, the dedicated network the COAST GUARD envisioned has not been established.

The SMFF Response Requirements

Looking at the SMFF regulatory requirements, it is clear that these requirements cannot be met consistently without a dedicated network. The law requires "A planholder must ensure by contract or other approved means that response resources are available to respond... "33 CFR § 155.4010(b).

Although the COAST GUARD's response regulations in some way echo the CWA requirements, in practice the COAST GUARD has not require vessel owners to adhere to these requirements.

Vessels of Opportunity

Instead of building the dedicated resources the regulations require, the regulated community attempted to achieve compliance with a probability based approach known in the industry as a "vessel of opportunity" strategy. Under this strategy, a vessel owner lists numerous vessels in its vessel response plan in hopes one will be available to respond. This approach is both legally and operationally deficient. Legally, the three of four of the contracts the vessel owners enter into with the SMFF resource providers do not ensure the availability of the response resources as required. Instead, the provider's obligation to respond is conditioned on whether resources are "available." If the SMFF resource provider does not have resources available, the contract allows that resource provider to use subcontracted vessels to respond. These subcontracts invariably are conditioned upon the availability of the subcontractor's assets, clearly not adequate under the SMFF contractual requirements that require the vessel owner ensure by contract that the response resources are available.

Operationally, the vessel of opportunity approach also cannot achieve compliance consistently. Because the non-dedicated vessels are often engaged in other work, they must first disengage from those assignments and return to port where these vessels load the necessary material, and personnel and are fitted with fire-fighting pumps and equipment necessary to respond to the fire. It is unlikely that these activities can be accomplished, and mount a compliant response, within the 6, 12, or 18 hour required timeframes. There are numerous other response requirements related to carrying passengers, load lines and licensing that non-dedicated response vessels must comply with rendering many tugs ineligible to respond.

The COAST GUARD's Failure to Require Drills and Exercises

The obvious question is how could these serious deficiencies not have come to the attention of the COAST GUARD. The SMFF regulations do provide a very specific list of exercises and drills which vessel owners are required to conduct. 33 C. F. R. § 155.4052. Unfortunately, the COAST GUARD has not required vessel owners to provide proof of these exercises. Vessel owners I have spoken with have offered that they are not conducting these required drills. Further, the results of the only audit of sorts conducted by the COAST GUARD in 2012-2013, were not shared with the public.

Two Recent Offshore Fires Reveal the Problems with the Vessel of Opportunity Approach

There are real life examples of these compliance issues. On March 14th, the *Grey Shark* lost power off the coast of New Jersey[1], fire broke out on the 15th and on the 17th she began a tow back to New York harbor where on March 18th the New York Fire Department extinguished the fire. During that time, the *Grey Shark* attempted to arrange a SMFF response from the vessels available under the vessel of opportunity approach. Unfortunately, none of the of the over two hundred vessels of opportunity contacted were available to respond. WNYF Magazine, December 1, 2015, ICS Instrumental at Grey Shark Fire. The *Caribbean Fantasy* fire is another example of a failure of the vessel of opportunity approach to compliance. In that instance, a cruise ship caught fire within two miles of the entrance to San Juan's harbor. Although a very successful evacuation was performed, according to the COAST GUARD CMDR Janet Espino – Young, the "active fire – fighting component of the vessel response did not meet the criteria as required by the regulations." COAST GUARD/NTSB Hearings San Juan, PR March 24, 2017.

RORC's Application for an Alternative Planning Criteria

In early 2015, RORC met with the COAST GUARD and proposed building a nationwide SMFF response network. We applied for an Alternative Planning Criteria (APC) for twenty- six COTP zones in the Continental U.S. RORC explained in its application that it had developed a network comprised of nineteen participants, mainly of harbor pilot groups, who had agreed to use their high- speed, ocean going pilot boats to transport fire teams and surveyors, on a temporary basis, to provide shippers with compliance with the SMFF regulations. These pilot boats could be utilized until custom built pilot boat/fire boats could be built and placed in service in each of the 19 locations. RORC provided examples of both legal and operational deficiencies in each COTP zone based on data collected in 2014. On March 14, 2016, the COAST GUARD responded, explaining that the COAST GUARD could not grant an Alternative Planning criteria without first determining that a gap in compliance existed. The response further explained that the COAST GUARD would embark on a "verification" process to determine whether gaps in compliance existed.

The COAST GUARD's 2017 Verification Process

On March 17, 2016, Admiral Paul Brown announced that the COAST GUARD would conduct a "verification" process. Inexplicably, this process has not come to fruition

In closing I think it is clear that the Congressional mandate, that Salvage and Marine Fire-fighting resources be identifiable and ensured by contract to be available to respond, has not been achieved. I ask that the Oversight Committee press the Coast Guard to reject VRPs that do not provide evidence of the required drills and exercises. Without requiring proof of compliance, the Congress' clear intentions will remain unfulfilled. Thank you.

---

1 The *Grey Shark* incident began outside of the 50- mile purview of the SMFF regulations. Her tow, however, brought her within the regulation's jurisdiction.

STATEMENT OF
BUDDY CUSTARD
PRESIDENT & CHIEF EXECUTIVE OFFICER
ALASKA MARITIME PREVENTION & RESPONSE NETWORK

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE
ON COAST GUARD AND MARITIME TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

MARITIME TRANSPORTATION REGULATORY PROGRAMS

May 3, 2017

Good morning, Chairman Hunter, Ranking Member Garamendi and members of the Subcommittee. On behalf of the Alaska Maritime Prevention & Response Network, I appreciate the opportunity to discuss oil spill prevention and response in Western Alaska, and in particular, the implementation of Alternative Planning Criteria, in this region.

By way of background, the area referred to as Western Alaska has long been of interest to the U.S. Congress.

As the Committee knows, Western Alaska includes the U.S. Arctic region. Recent changes in climate have focused the attention of national policy makers on this region, which is subject to many national and international treaties and conventions. Many observers are concerned that predicted increases in maritime industry activity will introduce serious risk of marine casualties and oil spill in this region.

Another area of critical national interest in Western Alaska is the unique environment and critical habitat. Multiple National Wildlife Refuges have been established here to conserve marine mammals, seabirds and unique migratory birds, and the marine resources upon which they rely. Many of the Refuges are located in an area with large ocean-going ship traffic supporting billions of dollars in trade and commerce to and from the continental United States.

Also found in Western Alaska is Bristol Bay, the Bering Sea and Gulf of Alaska. These regions support the largest and most valuable commercial fishing industry in the United States. This multi-billion dollar industry is one of Alaska's largest employers.

Finally, but not less important, are the unique cultural interests in Western Alaska. Congress has already recognized the importance of Alaska Native culture and subsistence way of life in the region through the Alaska Native Claim Settlement Act and the Alaska National Interest Lands Conservation Act.

In short, Congress has a long and valued history in recognizing and addressing the many challenging issues that are unique to this area for the benefit of all Americans. As an Alaskan, I very much appreciate Congress's efforts in that regard.

The Western Alaska Captain of the Port (COTP) zone comprises over one million square miles of ocean. Because of this exceptionally large remote area with little infrastructure, the national planning criteria (NPC) used to meet the requirements of the Oil Pollution Act of 1990 (OPA 90) in the continental United States have been very difficult and challenging to obtain there. Instead, vessel owners and operators have been using Alternative Planning Criteria, or APC.

By way of background, the Network is currently an APC provider. In fact, the Network is the administrator of the only Coast Guard-approved non-tank vessel APC program that covers the entire WAK and Prince William Sound COTP zones and tank vessel APC program in the WAK COTP zone beyond Cook Inlet. The Network covers the entire COTP because it was what the Coast Guard expected when we initiated OPA 90 coverage in WAK. We value the safe passage of the crews and cargo of all vessels that pass through Alaska's waters while meeting environmental regulatory compliance requirements. Accordingly, the Network supports a diverse and complex maritime industry, including over 450 maritime companies around the globe operating in or transiting through this service area. The Network, as a non-profit organization, has designed, in close coordination with the Coast Guard, the most extensive, cost-effective, and resource-capable alternative spill response and risk reduction system that meets federal environmental protection regulations for the WAK Captain of the Port Zone.

Prevention focused – response ready are the Network's key principles. Helping to prevent an incident from occurring is our number one priority, using our programmatic risk mitigations strategies. Vessel owners and operators can rely on the Network to guide them through the necessary steps for complete compliance as they pass through all of Western Alaska. In the event an incident should occur, shipping companies can be assured that the Network's team of partners is ready to respond. Our dedication to maintaining safer and cleaner seas leads us to monitor safe routing measures, conduct tabletop and field exercises, and advocate for the maritime industry at the highest levels.

APC have been administered on a Captain of the Port-wide basis for over two decades and have been backed up by numerous Coast Guard policy documents, including Western Alaska Captain of the Port Marine Safety Information Bulletins (MSIBs) 03-14 and 01-15, and CG-543 Policy Letter 09-02. Starting approximately 18 months ago, and without any public notice, the Coast Guard changed the way APC are implemented in Western Alaska, putting less emphasis on oil spill prevention while allowing for-profit companies to carve up the Western Alaska Captain of the Port Zone in a way that focuses on the high-volume foreign-flag vessel traffic on the Great Circle Route through the Aleutians, all at the expense of the rest of Western Alaska.

Contrary to intent, the way the Coast Guard has implemented APC over past 18 months has actually resulted in an erosion of oil spill prevention and response capabilities in Western Alaska available to many vessel owners and operators. The Coast Guard's policies have also made it nearly impossible for the Coast Guard to enforce its own rules. This has benefited foreign flag vessels at the expense of Alaskans.

I would like to use my time today to provide detail on these issues, and to leave the committee with certain, key principles that the Network believes must be adhered to as policies governing

APC in Western Alaska are developed over the coming weeks and months.

The Coast Guard's implementation of APC in Western Alaska is eroding oil spill response capabilities in the Western Alaska Captain of the Port zone

It is probably not necessary to remind this Subcommittee that the maritime shipping industry is experiencing economic hardship, with container shipping lines likely to have incurred combined losses of over $5 billion in 2016. As a result, the industry is seeking ways to meet OPA 90 requirements at the lowest possible price and with the minimum needed to meet oil spill response readiness.

The Coast Guard's implementation of APC in Western Alaska is playing into this dynamic. Following approval of the Network's plan for the entire Western Alaska area, the Coast Guard has approved APC providers that cover only limited areas and with minimal equipment, allowing them to lower prices to take market share. In the eyes of industry and the Coast Guard Vessel Response Plan (VRP) review process, the lesser capable provider's compliance certificate is equivalent to a certificate offered by a broader-based capable provider. This has led to a large disparity of prevention and response capabilities among the Western Alaska APC providers.

The Coast Guard believes that competition will incentivize APC providers to supply more equipment into the market. Competition works if lower prices attract additional customers, which in turn generates additional revenue that can be invested in additional oil spill response capability. In Alaska, the customer base is pretty set – it will not grow; in fact the advent of larger container vessels means few vessels may traverse this area. Hence, lowering prices only serves to reduce the amount of money available for oil spill response, and that has eroded the ability of APC providers to maintain, sustain, and build out prevention and response capabilities in Western Alaska.

In contrast, the Coast Guard claims there is now more response equipment in Western Alaska due to multiple providers. This is a mischaracterization of how equipment is allocated among holders of a vessel response plan. The only equipment available to a vessel planholder is the equipment provided in their specific APC provider's program. Approximately 40-45 percent of the vessels transiting through Western Alaska have less response capabilities than they did 18 months ago. This runs contrary to the Coast Guard's expectation that all the equipment in Western Alaska will be available for a response. Ironically this is the very definition of the utility model that existed when APC was administered on a Captain of the Port-wide basis and that the Coast Guard now eschews in favor of a competition model. The problem is that the Coast Guard's version of the utility model hamstrings the ability of APC providers to build out and maintain a level of oil spill response equipment needed to protect Western Alaska.

The Coast Guard's implementation of APC in Western Alaska does not properly value prevention

APC guidance needs to be viewed holistically within the marine environmental protection program – a balance of prevention and response. Driving down risk of an oil pollution incident, and thus preventing it, should be on par if not greater than response capabilities. This is

particularly true in remote areas where NPC requirements are difficult to attain due to lack of infrastructure and prevailing environmental conditions.

The NPC are predominately based on mechanical recovery capabilities. Recovering spilled oil under the best of conditions is difficult. Numerous studies show mechanical recovery rate in ideal weather conditions average from 5-20%. The Aleutian Island Risk Assessment determined the response "weather" gap for open water mechanical recovery is 72 percent, meaning, at best, only 28 percent of the time, on average, will mechanical recovery methods be an option to deploy within the Aleutian Archipelago due to prevailing extreme weather and seasonal conditions. This would mean the mechanical recovery operations would be able to effectively recover only 1-6% of oil in open water in Western Alaska under ideal weather and seasonal conditions and within an effective timeframe.

Ultimately, an effective goal, consistent with OPA 90 objectives, should be to develop a maritime oil pollution prevention and response "system" in remote regions of Alaska – one that combines risk mitigation and response in a cost effective, practical, and sustainable manner.

The Coast Guard has failed to hold APC providers accountable, largely because of the agency's inability to enforce its own rules.

Prior to the Coast Guard abandoning existing APC policies and going to the geographically limited subzone APC model, VRP compliance for nontank vessels was over 95%. Now in less than two years after the nontank vessel APC programs were implemented in Western Alaska, compliance has dropped to around 74%. This falloff of compliance can be attributed to the fact that it has become unexpectedly challenging and highly personnel-intensive for the Coast Guard to manage compliance for three APC providers who are approved for different geographic coverage areas within Western Alaska.

The creation of subzones within the Western Alaska Captain of the Port Zone has caused confusion to the shipping industry. Many shippers are unaware of the subdivisions within the Western Alaska Captain of the Port Zone for VRP compliance purposes. These subzones are not defined in federal regulations or even in any Marine Safety Information Bulletin (MSIB), and they have not been defined to industry. They only appear in the individual APC programs developed by for-profit providers and accepted by the Coast Guard. Compounding this problem is that subzone boundaries pay no attention to a vessel's weather routing measures or the fact that a vessel master may want to transit on the shortest distance between two points – both requiring a vessel to operate outside the limited coverage area.

The Coast Guard's answer to a vessel transiting outside of the limited subzone covered by its APC provider is to exercise Captain of the Port authority and issue permits for limited transits. In effect, the Coast Guard has allowed APC providers who only cover a small portion of the Western Alaska COTP Zone to freely expand their coverage area de facto without any investment in resources through the waiver process. The problem is exacerbated each time the Coast Guard provides permitted limited transits to a vessel that transits outside its approved APC coverage area, ignores the violation, or is unaware the vessel is transiting through the Captain of the Port Zone in violation of VRP regulations.

Further, when vessels are granted a waiver, they are outside of their APC provider's coverage area, which means that their APC provider is no longer required to monitor the operational status of that vessel and, more importantly, has no responsibility to have response equipment staged or any pertinent risk mitigation measures in place for that area. This leaves Alaskan communities completely exposed to a potential spill from a vessel that has a plan without the responsibility to respond to the incident. Plus, the issues regarding who assumes liability and responsibility for the vessel as it operates under the authority of the U.S. government in an area without VRP coverage and the vessel has an incident are unanswered.

The Coast Guard policy, as now administered, benefits foreign flag operators at the expense of Alaskans

New entrants entering the APC program market for Western Alaska have focused for the most part only on foreign flag vessels transiting the Great Circle Route where revenue can be collected with minimum investment in equipment. Under the Captain of the Port-wide model, APC coverage is provided to U.S. flag vessels providing most of the service to places along the vast coast of Western Alaska, in part with revenue derived from the high volume foreign flag traffic. As revenue is diverted away from the only APC provider covering the entire Western Alaska Captain of the Port, the U.S. flag vessels plying the coasts of Western Alaska must pay more. This, in turn, increases the cost of goods shipped on these vessels, which increases the cost of groceries, heating fuel, or fuel to generate electric power to remote and rural Alaska. Unfortunately, the determination of the true cost of developing and sustaining oil spill removal equipment in an area the size, remoteness, and complexities present in Western Alaska has never been conducted. Additionally, the potential adverse economic impacts to the coastal communities that are dependent upon the maritime industry have never been considered nor assessed by the government.

Key Principles for Implementing APC in Western Alaska

As Congress examines the path forward, and to the extent that changes are made to the way APC is implemented in Alaska, we hope the following principles will be considered:

1. APC providers must cover the entire Western Alaska Captain of the Port Zone. APC organizations must meet the obligation to provide prevention and response capabilities for ALL parts of the Captain of the Port Zone, not only selected "easier" portions, which would leave those few vessel owners and operators serving less traveled and larger areas with onerous and disproportionate costs of compliance. Make no mistake: continued fragmentation of the Captain of the Port Zone will continue to result in significantly reduced capacity to protect Western Alaska, including the more remote and frequently most vulnerable areas.

2. Oil spill prevention must be an essential component of APC. Oil spill recovery is after the fact of a spill. When transiting extremely remote and challenging conditions of locations such as the Bering Sea, Arctic Ocean, and other Western Alaskan waters, reducing the risk of a spill from ever happening is hugely important. Therefore, a qualified APC must

not only provide access to a response capability, it must include adequate risk reduction measures and capabilities.

3. The economic ramifications of how the Coast Guard is implementing APC in Western Alaska must be analyzed and understood. Allowing APC to only cover the Great Circle Route through the Aleutians is making it more expensive to maintain oil spill prevention and response measures for the vessels calling at ports along the Alaskan coast from the Aleutians north throughout the Bering Sea and the Arctic coastline. This will cause harm to small, remote communities in the form of higher prices for fuel oil and other essential supplies, as well as strand response resources to the detriment of the lesser travelled areas of Western Alaska, such as the Arctic region.

4. Accountability is paramount. When an oil spill happens, Alaskans want assurances that any APC organization that says they have the resources available to respond to that spill can actually deliver on those promises. Current regulations do not hold APC organizations accountable, and they certainly do not ensure that organizations that administer an APC have dedicated oil spill response equipment and the ability to deploy that equipment in a timely manner.

5. The Coast Guard must be able to enforce whatever rules it develops. If APC covers an entire COTP zone, a vessel owner or operator is either in compliance or not. We are concerned that if the Coast Guard continues to administer APC by allowing limited profit-centered subzones that it will be unable to ensure that all vessels traveling around different parts of the COTP are covered by APC in every part of the zone in which they travel. Plus, the Coast Guard will have to grant limited permitted waivers in areas it did not have to or should when there is a qualified APC provider for that particular area.

6. Regular order must be adhered to when regulating industry. Regulation by administrative policy allows the Coast Guard to change the rules without notice or an opportunity for comment, and without analyzing the economic impact. As an example, the Coast Guard has been managing APC programs on a COTP-wide basis for years with success. Then recently, without public notice, the Coast Guard commenced managing APCs in Western Alaska via subzones. That is unfair to those who comply with established policy and rely on it to be in compliance. There should be no question that oil spill response be implemented by regulations implementing the Oil Pollution Act of 1990 and other statutory requirements. A formal rule-making process under the Administrative Procedures Act must be followed when imposing regulations on industry. If this had been done, there would be no issue regarding the implementation of APC requirements in Western Alaska. Anything short of this will not provide certainty to the maritime industry or Alaskans.

What Actions Should the U.S. Congress Take?

1. Congress should provide clear direction to the U.S. Coast Guard on their expectations for oil spill prevention and response from vessels operating in Western Alaska and the Arctic, based on the principles detailed above.

2. Congress should ensure the policy directive results in continuity and predictability so that those who provide prevention and response services in the remote stretches of Western Alaska can make the required investments in capability to support the needs of the maritime industry in this region. The maritime industry, which is regulated in order to prevent and adequately respond to oil spills from their vessels, particularly in remote regions such as Western Alaska, deserve predictable regulations and implementing policies which do not play favorites. The unique attributes of this area are too important to allow unpredictable changes in the regulatory environment by way of policies that are not vetted or explained to industry.

3. The Congress should resolve the ambiguities in the regulations that allowed the Coast Guard to unilaterally depart from the successful approach, and direct the Coast Guard to return an area-wide APC requirement in Western Alaska and the Arctic. Up until recently, the Coast Guard managed oil spill prevention and response on a Captain of the Port wide basis in Western Alaska. The result was the long term, and sustainable, buildout of response resources for the benefit of the entire region.

CONCLUSION

These aforementioned principles are offered to bring order to the process of regulating the maritime industry in Western Alaska. More importantly, they will ensure that oil spill response is administered in a fair and balanced manner and will ensure that a robust and capable oil spill prevention and response program protects all of Western Alaska, which includes the U.S. Arctic region.

I have included additional documentation to support my testimony, including two charts that show the correlation of the decrease in revenues available to expand response capability and decrease in actual response equipment in Western Alaska, as a result of the Coast Guard's recent implementation of APC. Also attached is a chart that illustrates the oil spill response capabilities (equipment hubs) of each APC provider in Western Alaska. Comments filed by AMPRN on the WAK APC issue in response to a solicitation for comments by the Coast Guard (Docket No. USCG-2016-0437) can be found at the following link: https://www.regulations.gov/document?D=USCG-2016-0437-0061. I ask that they be included as part of the record.

Mr. Chairman, I appreciate the Subcommittee's examination of this important issue and I look forward to working with you to ensure that APC works for Western Alaska. I will be happy to respond to any questions you and the members of the Subcommittee may have.

Statement of

Thomas A. Allegretti
President & CEO
The American Waterways Operators

Maritime Transportation Regulatory Programs

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

May 3, 2017

Good morning, Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. I am Tom Allegretti, President & CEO of The American Waterways Operators, the national trade association for the tugboat, towboat and barge industry. AWO's 350 member companies own and operate barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels, and supports more than 300,000 jobs in related industries nationwide. Each year, our vessels safely, securely and efficiently move more than 760 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates, and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

AWO very much appreciates your holding this hearing on maritime transportation regulatory programs. The U.S. Coast Guard is the principal regulator of our industry's operations, and we have worked closely with that agency for more than a quarter-century to improve marine safety, security and environmental stewardship, while facilitating the efficient movement of economically vital maritime commerce. We are very pleased that last June, after more than a decade of intense effort and close consultation with stakeholders through the Congressionally authorized Towing Safety Advisory Committee, the Coast Guard published final regulations (46 CFR Subchapter M) that establish an inspection regime for towing vessels, fulfilling the statutory mandate established by the Coast Guard and Maritime Transportation Act of 2004. Since the

rule's publication, the Coast Guard has worked closely with our industry to answer stakeholder questions, develop practical implementation policy, and prepare for full implementation of this complex regulation with no interruption of maritime commerce.

Given the importance of Subchapter M to our industry, and given the intense focus of AWO member companies on preparing for the regulations to take full effect in July 2018, it may surprise you that neither towing vessel inspection specifically, nor Coast Guard regulations generally, are the focus of my testimony today. Rather, I want to call your attention to -- and to implore your assistance in averting – what we believe to be an existential threat to the health and viability of the domestic harbor services industry, if foreign ocean carrier alliances are permitted to negotiate and contract collectively with American service providers that have no counterbalancing ability to take collective action. It is a testament both to the Coast Guard's care in crafting the towing vessel inspection regulations, and to the gravity of our concern about the threat to AWO members in the harbor services sector, that the latter is the focus of my message to you today.

Allow me to explain briefly. As you know, the vast majority of international ocean carriers operate in cooperative groupings known as shipping alliances. Under the alliances, carriers share ships and port facilities in an effort to reduce operational costs. In the United States, the Federal Maritime Commission is responsible for oversight of shipping alliances. In order for alliances to operate legally under the Shipping Act of 1984, they must file all cooperative agreements with

the FMC. If the FMC does not seek to enjoin an agreement, alliance members enjoy antitrust immunity for collective activities conducted pursuant to the agreement.[1]

AWO believes that both the letter of the Shipping Act, and longstanding interpretation of Congressional intent in enacting that statute, preclude collective action in agreements with or among domestic maritime service providers, such as tug and barge operators, stevedores, container equipment lessors, and others. However, over the past year, there have been five instances in which ocean carrier alliances have filed agreements with the FMC seeking authorization to negotiate collectively with domestic service providers. In three of these cases – the 2M agreement, filed on June 14, 2016; the Ocean Alliance Agreement, filed on July 15, 2016; and THE Alliance Agreement, filed on November 4, 2016 – the parties to the agreements elected to withdraw the collective negotiation provisions following discussions with FMC staff. Had the story ended there, we would certainly have been troubled by the repeated expressions of interest on the part of foreign carrier alliances in seeking new authority to negotiate collectively with domestic service providers – concerns also expressed by the Antitrust Division of the U.S. Department of Justice in communications to the FMC on September 19, 2016, and November 22, 2016. (See Attachments A and B) However, our concern might have been tempered by a sense that the FMC understood the illegality and unfairness of granting such authority, and was prepared to intervene with the alliances to secure the removal of the offensive provisions.

[1] The FMC has sought to enjoin an agreement and gone to court to prevent it from taking effect only once in the 33 years since the Shipping Act was enacted. That effort was undertaken against two U.S. ports, not ocean carriers, and was unsuccessful in the courts.

Unfortunately, this was not the case. In January 2017, a group of roll-on/roll-off carriers (WWL/EUKOR/ARC/GLOVIS) filed an amendment to their cooperative agreement that gives members the ability to negotiate jointly with tugboat operators. Over AWO's objections, and without a thorough analysis of the impact on domestic service providers, the FMC allowed the amendment to take effect. The Acting FMC Chairman has defended this decision, citing an internal economic analysis[2] concluding that the amendment would not result in anticompetitive effects or adverse consequences for our nation's ports, importers or exporters.[3] His lack of reference to domestic tugboat operators begs the question of whether the effect of the agreement on harbor service providers was considered in the FMC staff analysis, or in the FMC decision itself.

Following the FMC's acquiescence in the WWL/EUKOR/ARC/GLOVIS amendment, AWO met with each of the FMC Commissioners individually, as well as with FMC staff, on March 8-9 to express our deep concern about the egregious competitive imbalance that could result if foreign ocean carrier alliances are allowed to negotiate collectively with U.S. domestic service providers that have no authority to take joint action of their own. At an April 4 oversight hearing held by this Subcommittee, both Chairman Hunter and Representative Peter DeFazio, Ranking Member of the full Committee on Transportation and Infrastructure, voiced dissatisfaction with the FMC's oversight of shipping alliance agreements. Reps. Hunter and DeFazio challenged the

[2] The FMC's economic analysis has not been made public, and AWO's request for its release under the Freedom of Information Act was denied on April 28.

[3] In October 2016, individual carrier members of this agreement agreed to a multi-million-dollar settlement with the FMC, stemming from accusations of years of price-fixing, collusion, and failure to file required agreements with the FMC. The alliance also pled guilty to a criminal price-fixing conspiracy and paid over $98 million in fines to the Department of Justice in July 2016.

FMC to "do more" in the face of potential for anticompetitive collusion by foreign ocean carrier alliances against domestic service providers, and suggested that Congress should revisit, and perhaps abolish, the limited antitrust immunity granted to carrier alliances by the Shipping Act. We share the Members' concerns and support their proposal to reexamine and consider rescinding this antitrust immunity, especially if it is now to be wielded in a manner that would gravely harm domestic American industries.[4]

Against this backdrop of growing concern expressed by industry, the Department of Justice, and the Congressional committee of jurisdiction, AWO was disappointed, but not surprised, that on March 24, a group of Japanese ocean carriers (Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kaisha) filed the so-called Tripartite Agreement, Article 5.4. of which authorizes the parties to discuss, negotiate, and implement contractual agreements with feeder, tugs, barge and inland carriers. (Just two weeks earlier, we had told the FMC Commissioners of our grave concern about the precedential effect of their approval of the ro-ro carrier agreement, and warned that other alliances would inevitably seek collective negotiation authority for themselves. Our concerns were dismissed as overblown.)

AWO and other service providers, including the Institute of International Container Lessors, have filed comments with the FMC expressing strong opposition to Article 5.4 and urging the Commission to request additional information from the parties before allowing the provision to

[4] FMC Commissioners have told us that they will review contracts negotiated between ocean carrier alliances and tugboat operators to ensure there is no anticompetitive effect. This gives us little comfort, for two reasons. First, contracts entered into by domestic tugboat operators are confidential and not currently subject to FMC review. This is an expansion of FMC authority that Congress neither condoned nor contemplated when it passed the Shipping Act. Second, seeking to unwind or invalidate a contract after it has been negotiated is much more complex and problematic than simply prohibiting the collective negotiation that gave rise to the problematic agreement in the first place.

take effect. While we are aware that the parties have subsequently modified Article 5.4, the modification is inadequate to address our concerns,[5] and the provision has yet to be removed.[6]

This series of events leads us to three conclusions, all deeply troubling to AWO members:

- First, that foreign ocean carriers of ever-greater size and market power will continue to seek authority to negotiate collectively with American tugboat operators and other domestic service providers who enjoy no relief from the antitrust laws that allows them to take similar action;
- Second, that the FMC is either unwilling or unable to take action to halt and reverse this fundamentally unfair and anticompetitive situation; and,
- Third, that the FMC intends to extend its regulatory review over the tugboat industry, over which it has no statutory authority, and in the process, eviscerate the confidentiality of our contractual arrangements with ocean carriers.

AWO has articulated in repeated comments to the FMC (most recently, in our April 11 letter in response to the Tripartite Agreement filing) that we believe the Shipping Act expressly precludes collective negotiation with domestic service providers. §41105 of the Act provides that: "A conference or group of two or more common carriers may not –

[5]Counsel for AWO filed comments informing the FMC of our continuing concerns with the revised Article 5.4 on April 25.

[6] The FMC process for consideration of carrier agreements is opaque and provides affected – and potentially injured – parties with little opportunity to make their case. AWO and other commenters had a mere 12 days to comment on the Tripartite Agreement, and our request for an extension of the comment period was denied.

> (4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part . . .

The FMC has, apparently, read the caveat to that prohibition in such a way as to render it meaningless, begging the question of why Congress would have established the prohibition in the first place. I will spare you further recitation of the legal arguments here, but attach our comments for the record for your perusal. (Attachment C)

Let me instead cut to the heart of the matter: we submit that it is fundamentally unfair, anticompetitive, and at odds with the interests of the U.S. maritime industry to skew the playing field in favor of massive international shipping conglomerates – which include foreign state-owned enterprises and entities that have paid criminal fines for anticompetitive behavior – at the expense of American tugboat companies and other domestic service providers. If the FMC lacks the will, the firm legal foundation, or the ability to act swiftly and decisively to stop and reverse this growing trend, then AWO members call upon Congress to amend the Shipping Act to unequivocally preclude joint negotiation with non-ocean carriers. It is unconscionable to us that an agency of the U.S. government should sanction the disadvantaging of an essential American industry in favor of foreign shipping alliances. Congress should act to rectify this injustice where the FMC has failed to do so.

Thank you very much for your kind attention. I would be pleased to answer any questions that Members of the Subcommittee may have.

U.S. DEPARTMENT OF JUSTICE
Antitrust Division

RENATA B. HESSE
Acting Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)

September 19, 2016

Secretary, Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

Re: The OCEAN Alliance Agreement, FMC Agreement No. 012426

Dear Secretary:

The Antitrust Division of the United States Department of Justice ("Department") respectfully submits these comments in response to the filing of the OCEAN Alliance Agreement ("Agreement"), No. 012426. *See* 81 Fed. Reg. 47394 (July 21, 2016). The parties to the proposed Agreement are seeking to undertake joint activities that are likely to reduce competition and also may be inconsistent with the Shipping Act of 1984, as amended. The Department, accordingly, urges the Federal Maritime Commission ("FMC") to seek to enjoin the Agreement or, at least, to ensure the Agreement is narrowly tailored to achieve procompetitive benefits while limiting the risk of anticompetitive harm.

Background

The proposed members of the OCEAN Alliance are COSCO Container Lines Co., Ltd., CMA CGM S.A., Evergreen Marine Corporation (Taiwan) Ltd., and Orient Overseas Container Line Limited, which together control approximately 25 percent of the worldwide ocean container shipping capacity. All four OCEAN members provide container line shipping services to and from the United States. The proposed OCEAN Alliance Agreement contemplates extensive cooperation among members and would grant the parties the ability to broadly coordinate service between the U.S. and Asia, Northern Europe, the Mediterranean, the Middle East, Canada, Central America, and the Caribbean, including setting capacity on those routes. It also contemplates the unfettered exchange of competitively sensitive information. Unless enjoined or modified, conduct covered in the Agreement could enjoy total immunity from the U.S. antitrust laws once the Agreement becomes effective.

The formation of the OCEAN Alliance is part of a broader trend of consolidation and reshuffling of ocean carriers through mergers and alliances. Over the last several years, 16 of the top 20 global liner carriers combined into four alliances that serve the North American trade lanes: CKYHE, G6, Ocean Three (O3) and 2M. In addition, several liner carriers have announced recent mergers: COSCO and China Shipping, both state-owned Chinese carriers, merged in December 2015; French shipping company CMA-CGM recently acquired Singaporean carrier Neptune Orient Lines (NOL), which operates the container shipping line American Presidential Line (APL); and German carrier Hapag-Lloyd and Dubai-based United Arab Shipping Lines have agreed to merge. Ocean carriers now seek to realign into three alliances comprised of 13 carriers beginning in April 2017.[1] According to press reports, the 2M Alliance will gain a member from the G6; the remaining carriers will reshuffle into the proposed OCEAN Alliance and the anticipated THE Alliance, which has yet to be filed with the FMC.[2]

The FMC reviews all ocean carrier agreements prior to their implementation and may seek to enjoin any agreements that are "likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost," *i.e.*, are anticompetitive. 46 U.S.C. § 41307. Congress expressly gave the Commission authority to protect the public from agreements that will result in an unreasonable increase in price or reduction in service. This charge parallels the goal of the antitrust laws: to protect the public from a reduction in competition caused by agreements that unreasonably increase market power, that is, the power to increase price or reduce output.

The Department has long taken the position that the general antitrust exemption for international ocean shipping carrier agreements is no longer justified. The passage of the Ocean Shipping Reform Act in 1998 was a step towards deregulation, but the industry still lacks the full benefits of competition. The ocean shipping industry exhibits no extraordinary characteristics that warrant departure from competition policy. Price fixing and other anticompetitive practices by the industry over the years have imposed substantial costs on our economy through higher prices on a wide variety of goods shipped by ocean transportation.[3] However, to the extent that ocean carrier agreements continue to be immunized under the 1984 Shipping Act, it is important for the agreements to be limited and precise, as it is well-settled that antitrust immunities should be construed as narrowly as possible.[4]

---

[1] The charts in Appendix A show the current and proposed alliance structures.

[2] The following ocean carriers have announced the formation of THE Alliance: Mitsui O.S.K Lines (MOL), NYK Line, "K" Line, Hanjin Shipping, Hapag-Lloyd and Yang Ming Line.

[3] *See The Free Market Antitrust Immunity Reform Act of 2001: Hearing on H.R. 1253 Before the H. Comm. on the Judiciary*, 107th Cong. (2002) (statement of Charles James, Ass't. Att'y Gen.); *The Free Market Antitrust Immunity Reform Act of 1999: Hearing on H.R. 3138 Before the H. Comm. on the Judiciary*, 106th Cong. (2000) (statement of John M. Nannes, Dep. Ass't. Att'y Gen.).

[4] *See, e.g., Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 (1982) (antitrust exemptions must be construed narrowly); *Carnation Co. v. Pac. Westbound Conference*, 383 U.S. 213, 218 (1966) (the Shipping Act of 1916 does not exempt the entire shipping industry from the antitrust laws); *Otter Tail*

Competitive Concerns with Alliance Realignment

Applying well-accepted antitrust principles, the proposed alliance consolidation raises serious competitive concerns. The collaboration proposed here contemplates such close cooperation among its members that competition among them will be largely eliminated. In these circumstances, the competitive effects are similar to the competitive effects of a merger. The DOJ/FTC Horizontal Merger Guidelines describe the principal analytical techniques used by the antitrust enforcement agencies to determine whether mergers or other changes in market structure proposed by horizontal competitors are likely to reduce competition.[5] These Guidelines also provide useful and appropriate guidance for the Commission to analyze the competitive effects of the Agreement under its mandate. As the Guidelines explain, mergers "should not be permitted to create, enhance, or entrench market power or to facilitate its exercise. . . . A merger enhances market power if it is likely to encourage one or more firms to raise price, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives."[6]

Market concentration is an important, albeit not determinative, tool in competitive analysis, providing a "useful indicator of likely competitive effects."[7] In general, a reduction in the number of firms in a market may decrease the remaining firms' incentive to compete on price or innovation, particularly when the market is already highly or moderately concentrated. In addition, when a market becomes more concentrated, there is a greater chance that the remaining firms will overcome the difficulties and costs of reaching and enforcing an anticompetitive agreement. *See* DOJ/FTC Horizontal Merger Guidelines §§ 6, 7.

Following the proposed alliance realignment, the 2M Alliance will control approximately 30 percent of worldwide TEU capacity[8], the OCEAN Alliance approximately 25 percent, and THE Alliance approximately 20 percent. Of the top 15 ocean carriers, only Hamburg Süd, with a worldwide TEU share of less than 3 percent, will not be in an alliance. The three resulting alliances will be particularly dominant on Transpacific-U.S. routes: the OCEAN Alliance, THE Alliance and 2M Alliance are

---

Power Co. v. United States, 410 U.S. 366, 374 (1973) (narrowly construing antitrust exemptions in the Federal Power Act); *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 231-32 (1979) (narrowly construing antitrust exemptions in the McCarran-Ferguson Act); *United States v. McKesson & Robbins, Inc.*, 351 U.S. 305, 316 (1956) (narrowly construing antitrust exemptions in the Miller-Tydings and McGuire Acts); *United States v. Borden Co.*, 308 U.S. 188, 198-200 (1939) (narrowly construing antitrust exemptions in the Agricultural Marketing Agreement Act).

[5] U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (2010), *available at* https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf [hereinafter DOJ/FTC Horizontal Merger Guidelines].

[6] *Id.* at § 1.

[7] *Id.* at § 5.3.

[8] TEU means "Twenty-Foot Equivalent Unit" which is a standard unit used to measure a ship's cargo carrying capacity.

projected to each have capacity shares of approximately 40, 35, and 20 percent, respectively. Under the Horizontal Merger Guidelines, the transpacific container shipping market constitutes a "highly concentrated" market and the worldwide container shipping market constitutes a "moderately concentrated" market. *See* DOJ/FTC Horizontal Merger Guidelines § 5.3. The increase in concentration in the transpacific shipping market is presumed likely to enhance market power under the antitrust laws.[9]

Increases in concentration are of particular concern where, as in the shipping context, there is evidence of past collusion or anticompetitive behavior. For example, four companies (three of which are ocean carriers slated to join THE Alliance[10]) have pled guilty, and eight corporate executives have been indicted or pled guilty in connection with a worldwide conspiracy involving price fixing, bid rigging and market allocation among providers of roll-on, roll-off cargo shipping.[11] In addition, three companies and six individuals have pled guilty or been convicted at trial in connection with a price fixing conspiracy among carriers of domestic freight between the continental U.S. and Puerto Rico.[12] A reduction in the number of competing ocean carrier alliances is concerning, in part, because it may increase the industry's vulnerability to such illegal collusive conduct.

Moreover, the OCEAN Alliance's proposal that it jointly determine capacity on a broad range of trade routes raises serious competition concerns. Although alliance members ostensibly retain independent pricing authority, they propose to determine capacity jointly. It is foreseeable that the members will agree to rationalize schedules, call on ports less frequently, and/or call on fewer ports, resulting in significant harm to shippers in the form of reduced service and increased prices. Current low rates and overcapacity do not justify granting the parties the ability to collude on capacity or any other dimension. The shipping industry is cyclical, like many industries, and approving the current round of alliances now may be harmful in the long term.

Competitive Concerns with Specific Provisions of the OCEAN Alliance Agreement

For the reasons given above, the Commission should seek to enjoin the proposed OCEAN Alliance Agreement outright. If, however, it is not enjoined, it is critical that the

[9] The presumption is subject to rebuttal by "persuasive evidence" that the transaction would not likely enhance market power. DOJ/FTC Horizontal Merger Guidelines § 5.3.

[10] Kawasaki Kisen Kaisha, Ltd. ("K-Line"), Compañia Sudamericana de Vapores S.A. ("CSAV") (now merged with Hapag-Lloyd), and Nippon Yusen Kaisha ("NYK Line").

[11] Press Release, U.S. Dep't of Justice, WWL to Pay $98.9 Million for Fixing Prices of Ocean Shipping Services for Cars and Trucks (July 13, 2016), *available at* https://www.justice.gov/opa/pr/wwl-pay-989-million-fixing-prices-ocean-shipping-services-cars-and-trucks. Roll-on, roll-off cargo is non-containerized cargo -- such as automobiles, construction equipment, and agricultural equipment -- that are rolled onto and off of a vessel.

[12] Press Release, U.S. Dep't of Justice, Former Sea Star Line President Sentenced to Serve Five Years in Prison for Role in Price-Fixing Conspiracy Involving Coastal Freight Services Between the Continental United States and Puerto Rico (Dec. 6, 2013), *available at* https://www.justice.gov/opa/pr/former-sea-star-line-president-sentenced-serve-five-years-prison-role-price-fixing-conspiracy.

Commission ensure that certain provisions that raise particular competitive concerns are modified or eliminated. As discussed below, certain provisions contain ambiguous language and are overly broad, while others appear to extend beyond the scope of the antitrust exemption.

Several provisions authorize OCEAN alliance members to take unspecified future actions in furtherance of the alliance. For example, Article 5.1 broadly provides that "The parties are authorized to meet, discuss, reach agreement and *take all actions deemed necessary or appropriate* to implement or effectuate any agreement regarding sharing of vessels, chartering or exchange of space, rationalization and related coordination and cooperative activities pertaining to their operations and services . . . ." (emphasis added). Articles 5.2(c), 5.2(d), 5.2(h), 5.6, and 6.1, among others, similarly authorize the alliance members to take undefined steps to coordinate their joint operations, without limitation. Under the test laid out in *Interpool Ltd. v. FMC,* 663 F.2d. 142, 148 (D.C. Cir. 1980), activities taken within the scope of an immunized agreement will be allowed if the actions taken "restrict competition in a manner which can be reasonably inferred from the original...agreement already approved by the Commission." By permitting such broad and vague language in an approved agreement, the FMC could curb the government's ability to challenge collusive actions among OCEAN members in the future, as a court might find that virtually all forms of coordination would be "reasonably inferred" to be immunized under the Agreement. Open-ended authorizations, such as those described above, should be limited or excised from the Agreement so that it is clear what conduct is receiving immunity under the Shipping Act.

Article 5.3 provides for the unfettered exchange of competitively sensitive information among competitors, authorizing all parties to the OCEAN Alliance Agreement to "obtain, compile, maintain, and exchange among themselves *any information* related to *any aspect* of operations in the Trade. . . ." (emphasis added). The exchange of competitively sensitive information (such as third party cost information) goes well beyond the exchanges already permitted under the other provisions of the Act (e.g., § 40502(d), which requires some service contract terms to be disclosed). This broad authorization to share information may increase the likelihood of collusion on competitively sensitive variables, such as price, which would otherwise fall outside the Agreement. *See* Fed. Trade Comm'n & U.S. Dep't of Justice, Antirust Guidelines for Collaboration Among Competitors § 3.31(b) (2000) [hereinafter FTC/DOJ Guidelines for Collaboration Among Competitors] ("Other things being equal, the sharing of information relating to price, output, costs, or strategic planning is more likely to raise competitive concern than the sharing of information relating to less competitively sensitive variables."). We see no reason that such a broad license to share information is necessary to accomplish the stated goals of the Agreement: "to improve efficiency, minimize costs, and provide high quality services to the shipping public." We therefore recommend that Article 5.3 be struck from the Agreement, or revised to allow only for the exchange of specifically identified information, and only to the extent reasonably necessary to achieve any procompetitive benefits of the Agreement.

Additionally, by authorizing members to jointly contract for services, equipment, and facilities at marine terminals and inland, Articles 5.9 – 5.11 and 5.18 of the OCEAN Alliance Agreement may reach beyond the scope of the Shipping Act of 1984. The Shipping Act governs the ocean commerce of the United States, and permits antitrust immunity to attach to certain agreements among ocean common carriers and marine terminal operators. 46 U.S.C. §§ 40101, 40301, 40307. The Act expressly lists categories of agreements that may receive immunity. 46 U.S.C. § 40301(a). While the Act expressly reaches inland services in foreign countries,[13] agreements relating to domestic marine terminal and inland services are not included (other than intermodal through rates on cargo movements that include an ocean leg).[14] Furthermore, the premise that antitrust exemptions are construed narrowly strengthens the argument that the Act does not extend antitrust immunity to contracts for domestic inland and marine terminal services, equipment, and facilities. *See United States v. Gosselin World Wide Moving, N.V.*, 411 F.3d 502, 509 (4th Cir. 2005) ("nowhere in the 1984 [Shipping] Act did Congress indicate an intention to override the principle of narrow construction for antitrust exemptions that the Supreme Court had long applied to the 1916 [Shipping] Act"). As the Department has stated in the past, agreements among ocean common carriers to coordinate their land-based operations, ancillary to their shipping operations, should not receive antitrust immunity under the Shipping Act. *See* Letter from Sharis A. Pozen to Karen V. Gregory (Dec. 22, 2011) (opposing proposed amendments to the terms of a chassis pool agreement that would permit ocean carriers to engage in business activities removed from actual ocean transportation). Articles 5.9 – 5.11 and Article 5.18 should be eliminated or clarified such that the OCEAN Alliance Agreement does not extend antitrust immunity to activities relating to equipment, facilities, and services at marine terminals and inland within the United States.

Further, coordinated negotiation of supply agreements, permitted by Articles 5.2(e), 5.9 – 5.11, and 5.18, may allow OCEAN Alliance members to exercise monopsony power over suppliers. As explained in the Department's Antitrust Guidelines for Collaborations Among Competitors:

> Purchasing collaborations, for example, may enable participants to centralize ordering, to combine warehousing or distribution functions more efficiently, or to achieve other efficiencies. However, such agreements can create or increase market power (which, in the case of buyers, is called "monopsony power") or

[13] The Shipping Act provides antitrust immunity for agreements or activity relating to transportation services within or between foreign countries, including inland segments of through transportation in foreign countries, and relating to the provision of terminal facilities in foreign countries. *See* 46 U.S.C. §§ 40307(a)(4-6).

[14] Under the *expressio unius* rule of statutory interpretation, "[w]hen a statute limits a thing to be done in a particular mode, it includes a negative of any other mode." *Raleigh & Gaston R.R. Co. v. Reid*, 80 U.S. 269, 270 (1872). *See also Carnation Co. v. Pac. Westbound Conference*, 383 U.S. 213, 216 - 17 (1966) (the inclusion of a list of antitrust exemptions in the Shipping Act of 1916 suggests that other non-enumerated activities are not exempt).

> facilitate its exercise by increasing the ability or incentive to drive the price of the purchased product, and thereby depress output, below what likely would prevail in the absence of the relevant agreement.

FTC/DOJ Guidelines for Collaboration Among Competitors at § 3.31(a). Bunker fuel providers, inland terminals operators, tug service suppliers, and warehouse providers are examples of suppliers that could be harmed by this potential monopsony power. Provisions permitting OCEAN Alliance members to jointly negotiate supply contracts should be removed from the Agreement.

Competitive Concerns Should be Addressed Prior to Implementation of the Agreement

Monitoring and periodic reporting requirements, such as those the FMC has required of shipping alliances in the past, are insufficient to preserve competition in the container shipping market. An antitrust remedy should resolve the competitive problem and effectively preserve or restore competition.[15] The Supreme Court has stated that restoring competition is the "key to the whole question of an antitrust remedy." *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961); *see also Ford Motor Co. v. United States*, 405 U.S. 562, 573 (1972). Monitoring and reporting requirements, alone, likely would not preserve or restore competition in this instance. In addition, monitoring and reporting requirements can be burdensome, requiring investment of time and resources by both the FMC and the alliance members.

It is preferable to enjoin or revise an anticompetitive alliance agreement, rather than relying on monitoring and reporting, and then "unscrambling" the alliance post-hoc upon discovery of a violation. In the interim, before a violation is detected, harm may occur: a reduction in competition could result in higher prices, a delay in innovation or research and development, or the transfer of trade secrets or other confidential information between carriers. *See FTC v. PPG Indus., Inc.*, 798 F.2d 1500, 1508-09 (D.C. Cir. 1986). Congress gave the FMC the authority to review and enjoin ocean carrier agreements prior to their implementation to prevent this very type of harm. *See* 46 U.S.C. § 41307.

Conclusion

The Department strongly urges the FMC to carefully examine the proposed OCEAN Alliance Agreement, and to seek to enjoin it. If it is not enjoined, we believe it is incumbent on the Commission to ensure the Agreement is narrowly tailored to achieve procompetitive benefits while limiting the risk of anticompetitive harm. The Agreement is a concerning step towards industry consolidation. As drafted, many of the Agreement's provisions risk immunizing behavior outside the scope of the Shipping Act

[15] U.S. Dep't of Justice, Antitrust Division Policy Guide to Merger Remedies 3 (June 2011), *available at* https://www.justice.gov/sites/default/files/atr/legacy/2011/06/17/272350.pdf.

and may create obstacles to the enforcement of the antitrust laws if the lines between permissible and impermissible conduct are not clear. The ocean shipping industry, consumers, shippers, and the economy stand to benefit from vigorous competition, protected by the antitrust laws.

Very truly yours,

Renata Hesse

Renata B. Hesse

APPENDIX A

The charts below show the current alliances and the newly proposed alliances.

CURRENT ALLIANCES
(effective through ~ March 2017)

CKYHE	G6	Ocean Three (O3)	2M
Cosco*	Hapag-Lloyd (H-L)****	CMA-CGM**	Maersk
Hanjin	Hyundai Merchant Marine (HMM)	China Shipping*	Mediterranean Shipping
"K" Line (Kawasaki Kisen)	OOCL	United Arab Shipping****	
Yang Ming	Mitsui OSK Lines (MOL)		
Evergreen	APL (parent NOL)**		
	NYK Line (Nippon Yusen)		

*Cosco and China Shipping have merged.
**CMA-CGM and APL have merged.
***Hapag-Lloyd and United Arab Shipping (UASC) have agreed to merge.

PROPOSED ALLIANCES
(operational ~ April 2017)

2M	OCEAN Alliance (filed with the FMC on July 15, 2016)	THE Alliance (announced)
Maersk	CMA-CGM (with APL)	Hapag-Lloyd (H-L)*
Mediterranean Shipping (MSC)	Cosco/China Shipping	Yang Ming
Hyundai Merchant Marine**	Evergreen	Hanjin***
	OOCL	Mitsui OSK Lines (MOL)
		NYK Line (Nippon Yusen)
		"K" Line (Kawasaki Kisen)
		United Arab Shipping (UASC)*

*Hapag-Lloyd and United Arab Shipping have agreed to merge, so it is anticipated that UASC will become part of "THE Alliance."
**Hyundai Merchant Marine (HMM) is currently part of the G6 alliance. It has signed an agreement to become part of the 2M Alliance.
***Hanjin filed for bankruptcy in August 2016; it is unclear what will happen to its container vessel capacity.

DEPARTMENT OF JUSTICE
Antitrust Division

RENATA B. HESSE
Acting Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001
(202) 353-1535 / (202) 616-2645 (Fax)

November 22, 2016

Secretary, Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

Re: THE Alliance Agreement, FMC Agreement No. 012439

Dear Secretary:

The Antitrust Division of the United States Department of Justice ("Department") respectfully submits these comments in response to the filing of THE Alliance Agreement ("Agreement"), No. 012439. *See* 81 Fed. Reg. 79028 (November 10, 2016).[1]

THE Alliance Agreement raises a number of significant competitive concerns, particularly as it comes on the heels of the recently approved OCEAN Alliance. The creation of these two new alliances will result in a significant increase in concentration in the industry as the existing four major shipping alliances are replaced by only three. This increase in concentration and reduction in the number of shipping alliances will likely facilitate coordination in an industry that is already prone to collusion. For example, four companies (three of which are slated to join THE Alliance[2]) have pled guilty, and eight corporate executives have been indicted or pled guilty in connection with a worldwide conspiracy involving price fixing, bid-rigging, and market allocation among providers of roll-on, roll-off shipping.[3]

THE Alliance Agreement raises many of the same types of concerns we expressed in connection with the OCEAN Alliance. *See* Letter from Renata B. Hesse to Federal Maritime Commission Secretary (Sept. 19, 2016), attached. For example, Article 5.3 would allow the carriers to exchange a number of categories of competitively sensitive information, which may

[1] Members include Hapag Lloyd Aktiengesellschaft and Hapag-Lloyd USA LLC ("Hapag-Lloyd"), Kawasaki Kisen Kaisha, Ltd. ("K Line"), Mitsui O.S.K. Lines, Ltd. ("MOL"), Nippon Yusen Kaisha ("NYK Line"), and Yang Ming Marine Transport Corp. ("Yang Ming"). United Arab Shipping Company ("UASC") is effectively included in the agreement as well, as Hapag-Lloyd is in the process of acquiring UASC.

[2] K-Line, NYK Line, and Compania Sudamericana de Vapores S.A. (now part of Hapag-Lloyd).

[3] Press Release, U.S. Dep't of Justice, WWL to Pay $98.9 Million for Fixing Prices of Ocean Shipping Services for Cars and Trucks (July 13, 2016), *available at* https://www.justice.gov/opa/pr/wwl-pay-989-million-fixing-prices-ocean-shipping-services-cars-and-trucks.

facilitate collusion around aspects of competition (*e.g.*, rates) that would otherwise fall outside of the agreement. Second, the agreement appears to contemplate collaboration that extends beyond the scope of the Shipping Act. For instance, the joint contracting provisions in Articles 5.2 (e), 5.2(i), 5.2(j), 5.2(l), and 5.10 appear to allow the carriers to coordinate their domestic land-based operations. We have concerns that this could allow the carriers to exercise monopsony power in purchasing land-based ancillary services from third parties. Third, some of the provisions in the proposed agreement are vague and overbroad (*e.g.*, Article 5.7(c)). As drafted, these provisions risk immunizing behavior outside the scope of the Shipping Act and creating obstacles to enforceability if the lines between permissible and impermissible conduct are not clear.

As you are aware, once an agreement among ocean carriers is filed with the FMC and becomes effective, conduct covered in the agreement could enjoy immunity from the antitrust laws. Where, as here, an agreement contemplates extensive cooperation among members, extreme caution is warranted. We strongly urge the Commission to seek additional information from the carriers and to conduct a rigorous review of the record. At the least, the Commission must ensure the Agreement is narrowly tailored to achieve precompetitive benefits while limiting the risk of anticompetitive harm.

Very truly yours,

Renata B. Hesse

THOMPSON COBURN LLP

1909 K Street, N.W.
Suite 600
Washington, D.C. 20006

202.585.6900 main
202.585.6969 fax
thompsoncoburn.com

C. Jonathan Benner
P 202.585.6985
F 202.585.6969
jbenner@thompsoncoburn.com

April 11, 2017

VIA ELECTRONIC & FIRST CLASS MAIL

Rachel E. Dickon, Assistant Secretary
Federal Maritime Commission
800 North Capitol Street, NW -- Room 1046
Washington, DC 20573

Re: FMC Agreement No. 012475, Tripartite Agreement – Request by the American Waterways Operators to Submit Comments

Dear Secretary Dickon:

I represent the American Waterways Operators ("AWO") and submit these comments on the above-captioned agreement (referred to herein as the "Tripartite Agreement" or, simply "the Agreement") published in the Federal Register on March 30, 2017, on AWO's behalf. AWO respectfully requests that the Commission consider these comments in its review of the impacts of the Agreement on competitive conditions in the U.S. maritime trades.

AWO is the national trade association for the U.S. tugboat, towboat, and barge industry. AWO members operate on the rivers, coasts, and Great Lakes, and in the harbors of the United States, moving vital commodities safely; reducing air emissions, water pollution, and highway congestion; protecting homeland security; and providing family-wage jobs for tens of thousands of Americans. AWO promotes the long-term economic soundness of the domestic maritime industry and works to enhance its ability to provide safe, efficient, and environmentally responsible transportation.

As drafted, the proposed Tripartite Agreement (which is described as a "Joint Service Agreement" between three Japanese ocean common carriers, Kawasaki Kisen Kaisha, Ltd. ("K Line"), Mitsui O.S.K. Lines, Ltd. ("MOL"), and Nippon Yusen Kaisha ("NYK")) will affect AWO members who provide harbor tug services and those who provide containerized barge services between U.S. ports for cargoes destined for or following international transport. The Agreement, as published, is of indefinite duration and proposes to grant geographically unrestricted authority in the United States to its signatories. It is overbroad and vague and should not be permitted to take effect without a thorough assessment of its economic impact and substantial clarifying and narrowing amendments.

Of particular concern to AWO's members is Article 5.4. of the Agreement. This provision authorizes the parties, "acting directly or through a Joint Service Entity . . . to discuss, agree upon, negotiate and implement . . . decisions and/or agreements" . . . including "contractual arrangements with **feeder, tugs, barge and inland carriers . . .**" [emphasis added]. This Agreement thus presents the Commission and domestic service providers with yet another in a

recent series of ocean common carrier agreements in which foreign shipping interests attempt to gain authority to negotiate collectively with U.S. service companies that are at a decided competitive disadvantage vis-a-vis the combined market power of the ocean carriers. AWO has consistently opposed such provisions in prior agreements and does so here. AWO submits that the Agreement should not be permitted to take effect without deletion of this provision.

While the Shipping Act of 1984 ("the Act") clearly contemplated that ocean carriers in the international trades of the United States could collaborate in pricing their own services in ways not available to other industries because of prohibitions in federal antitrust statutes, we submit that the history and content of the Act did not envision that foreign ocean carriers would be given license to collectively assert their enhanced bargaining power against U.S. interests that provide services to these carriers. In the case of operators of harbor tugs or tugs providing feeder barge services to ocean carriers, there is a marked imbalance of negotiating leverage between large combinations of foreign ocean carriers and small (either in absolute or relative terms) U.S. firms, in a business where barriers to entry are relatively low and assets can be readily moved from place to place. At a time when international ocean shipping is experiencing a high and increasing degree of consolidation and concentration, we urge the Commission to subject proposals by global shipping companies to turn their collective market power against domestic industries to the highest degree of critical analysis, including review of market conditions in each port where the proposed agreement will operate, and in the coastal container barge sector of the industry. Collective negotiations for harbor tug and coastal barge services could depress output or quality of service to an extent that would be harmful not just to the immediate service providers, but also to U.S. commerce generally.

Section 41105 of the Shipping Act of 1984 explicitly prohibits a conference or group of two or more common carriers from "negotiat[ing] with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws...." 46 U.S.C. § 41105(4). Thus, the very authority sought by recent ocean carrier agreements is subject to an express prohibition in the Act. This express prohibition is clear evidence of Congressional misgivings about permitting conferences or groups of common carriers to negotiate with inland providers. While an exception is granted for "resulting agreements" that are antitrust compliant, an effective ocean carrier agreement filed with the Commission renders this prohibition a dead letter before negotiations commence or an agreement is reached. This could not have been the intent of Congress.

In addition to the explicit prohibition against negotiating with inland providers, the Shipping Act of 1984 does not extend antitrust immunity to "an agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this part relating to transportation within the United States." 46 U.S.C. § 40307(b)(1). As AWO previously noted in the context of the OCEAN Alliance Agreement, this language is admittedly not dispositive of every issue raised by modern ocean carrier efforts to obtain extensive joint bargaining authority through the means of agreements filed with the Commission. The legislative history of the Shipping Act of 1984, however, illustrates Congressional awareness that collective ocean carrier

activity enabled by the Act might create problematic interactions with deregulated inland transport modes or other domestic service providers that have no legal authority to negotiate jointly with ocean carriers in the international trades.

The current Congress has expressed concern with the prospect of foreign ocean carrier alliances receiving antitrust immunity to negotiate collectively with domestic service providers. At an April 4 oversight hearing held by the Subcommittee on Coast Guard and Maritime Transportation of the U.S. House of Representatives' Transportation and Infrastructure Committee, Representatives Hunter and DeFazio noted growing unease with the Commission's oversight of shipping alliance agreements. Representative Hunter highlighted industry's concern that the Commission's recent actions validate misuse of the Shipping Act's limited antitrust exemption for container shipping companies and expressed the subcommittee's interest in how the Commission "assesses agreement and works with industry to prevent . . . supply chain disruptions and maintain fair shipping practices.[1]" Representative DeFazio echoed the concerns of his colleagues, challenging the Commission to "do more" when the potential for antitrust collusion presents itself. Both suggested that Congress should revisit, and "strip out," the Act's limited antitrust immunity.

Enabling the broad and vague language in Section 5.4 of the Agreement (which allows the parties "to discuss, agree upon, negotiate and implement . . . decisions and/or agreements relating to: . . . **all other matters relating to the operation of a joint service and the business of an ocean common carrier**" [emphasis added]), is exactly what the Commission must *not* do. By acquiescing in such broad and vague language in an agreement, the Commission could limit the government's ability to challenge collusion among the Tripartite members in the future under the test explained in *Interpool Ltd. v. Fed. Mar. Comm'n*, 663 F.2d 142 (D.C. Cir. 1980).[2] With such language, a court may very well find that essentially all aspects of ocean carrier business could be "reasonably inferred" as covered under the Tripartite Agreement and further expand the scope of potentially anticompetitive behavior by Tripartite members.

AWO is aware of trade press reports that the parties to the Tripartite Agreement plan to merge in early 2018, and that there may be some sentiment that the subject agreement merely anticipates that merger. A merged ocean common carrier entity in which the continuing individual identities of the merger participants are extinguished might not require the submission to the Commission of a memorializing agreement such as the one at issue here.[3] The Agreement as drafted, however, commences its effect *prior* to the projected merger date and continues without limitation indefinitely. Moreover, the Agreement's terms are not contingent on the effectuation of a

---

[1] *Hearing on "Reauthorization of Coast Guard and Maritime Transportation Programs" Before the Subcomm. On Coast Guard and Maritime Transportation*, 115th Cong. (2017) (opening statement of Rep. Duncan Hunter, Chairman, Subcomm. On Coast Guard and Maritime Transportation).

[2] Actions within the scope of an accepted agreement are allowed if the actions "restrict competition in a manner which can be reasonably inferred from the original . . . agreement already approved by the Commission." 663 F.2d. at 148.

[3] *Fed. Mar. Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726 (1973). This issue might be affected by the degree to which individual remnants of the predecessors of the merged entity continue to participate in operational decisions. The language of the Agreement suggests that the parties to the Agreement will form a holding company and will designate directors to an operating company.

possible merger. If the planned merger does not occur – because of market conditions, the failure to obtain governmental approvals or other contingencies – the Tripartite Agreement, unless modified, would remain in effect. If the contemplated arrangement is a true merger, there is no need for Commission supervision of the relationship between the parties. If the resulting relationship does require a continuing relationship between competing carriers, AWO's concerns will remain valid over the life of the Agreement.

AWO understands that the parties to the Agreement may offer limiting amendments on this point. However, given AWO's concerns about the tugboat industry being confronted by combinations of foreign ocean carriers, the only amendment sufficient to address these concerns is removal of Section 5.4 in its entirety.

AWO also understands that the Commission's staff is conducting an economic analysis. It is unclear whether this analysis will consider the effect of the Agreement on the domestic tugboat business or will even be complete prior to the expiration of the 45-day review period. As should be clear from AWO's comments above, an economic analysis that does not take into account the Agreement's impact on the domestic industries in each of the affected or potentially affected ports is an incomplete and wholly insufficient analysis. On March 31, AWO urged the Commission to extend the comment period on the Agreement and request additional information from the parties, pursuant to Section 40304(d) of the Shipping Act. This Agreement compels a close, reasoned, and well-informed review by the Commission. It has an immediate potential to negatively impact domestic harbor service providers that do business with foreign ocean carriers. Approval of the Agreement in the absence of such due diligence as urged by AWO is in derogation of the Commission's duty to ensure that agreements between ocean carriers adhere to the requirements of the Shipping Act.[4]

AWO respectfully submits that Section 5.4 of the Agreement violates at least the intent of the limitations imposed on the application of collective market power to certain inland activities. At a time when the international ocean shipping industry has experienced a high degree of increased consolidation and integration through agreements that bestow exemption from antitrust constraints on member ocean carriers, AWO respectfully submits that the Commission should subject proposals to use joint negotiating power in dealings with domestic industries to complete and thorough analysis. We therefore request that Section 5.4 be deleted as a condition of the Commission not seeking injunctive action against the operation of the Agreement. Alternatively, the language of the Agreement should be modified to remove Section 5.4's references to domestic service providers.

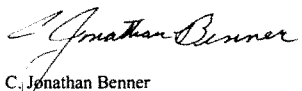
---

[4] It has been suggested to AWO that any agreement that results from a joint procurement of domestic marine services by ocean common carriers would be subject to separate additional review by the Commission and that abuses of joint procurement authority could be prevented in that review process. This is not reassuring to AWO members. Had Congress wanted to subject domestic marine service providers to the Commission's jurisdiction, it could have done so. It did not. That the contractual arrangements of AWO members might be dragged into FMC review proceedings or otherwise subjected to FMC jurisdiction by operation of new authority being granted regulated ocean common carriers modifies the structure of the Shipping Act without Congressional involvement or approval.

AWO greatly appreciates the Federal Maritime Commission's attention to the comments contained herein.

If you have any questions concerning this submission, please do not hesitate to contact me.

Yours very truly,



C. Jonathan Benner
Counsel to the American Waterways Operators

JB/JP

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 Regulatory Programs"

May 3, 2017

Mr. Chairman and members of the Subcommittee, thank you for the invitation to testify today. My name is John Butler. I am President and CEO of the World Shipping Council[1] (WSC or the Council).

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 1,200 ocean-going liner vessels, mostly containerships, make more than 28,000 calls at ports in the United States during a given year – almost 80 vessel calls a day. This industry provides American importers and exporters with door-to-door delivery service for almost any commodity to and from roughly 190 countries. In 2015,

[1] 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, the public, 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' international 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 services 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.

approximately 32 million TEUs[2] of containerized cargo were imported into or exported from the United States.

The containerized shipping sector provides the foundation for over one-third of the economic activity attributed to the U.S. port sector. That port sector was most recently valued by Martin Associates at $4.6 trillion, or about 26% of the nation's $17.4 trillion Gross Domestic Product in 2014. In addition, container shipping supports more than a half-million United States jobs, including shipping line employees and agents, longshore workers, truckers, warehouse and distribution center workers, freight forwarders and customs brokers, ocean carriers' agents, and railroads carrying containerized cargo to and from the ports. [3]

In short, the container shipping industry is one of the most important facilitators of the nation's growth and on-going economic activity. The efficient connection of liner vessels to adequate ports, roads and rail infrastructure completes an intermodal system that generally operates with such efficiency and reliability that in most parts of the country the average consumer is unaware of its workings.

My testimony will address a specific point that has been raised by Members of the subcommittee and by other witnesses: joint procurement by carriers utilizing ocean carrier agreements. Before I address that particular issue, I briefly provide some background on the economic and operational status of the liner shipping industry, as well as the regulatory structure under which the industry operates in the United States. This is an industry that is in the process of restructuring to address a very challenging set of economic circumstances. At the same time, the industry continues to make the investments necessary to keep America's foreign commerce moving.

A. Economics and Regulation of the International Liner Shipping Market

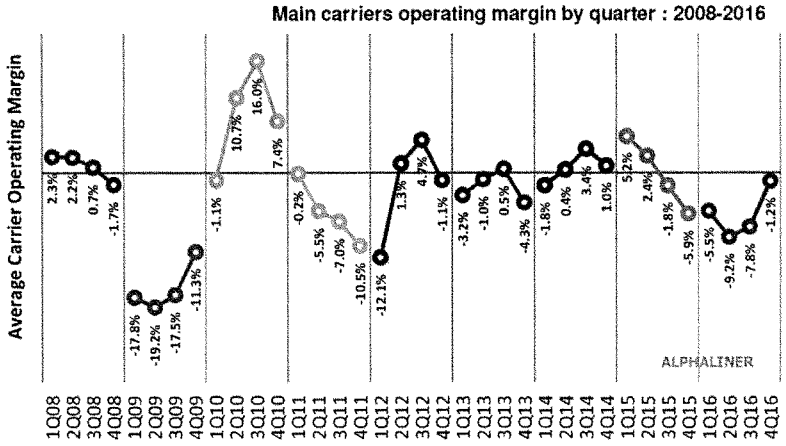
1. The Economic Situation in the Liner Shipping Industry

It is no secret that the shipping industry in general, and the liner shipping sector in particular, is experiencing rapid and substantial changes. Sustained weakness in global trade growth, consistently intense competition, a mismatch between the supply of vessel capacity and the demand to move cargo, the need to move to more energy-efficient vessels, and historically low freight rates have pushed the

[2] A TEU is a twenty-foot equivalent unit. Most containers are 40 feet in length and equal 2 TEUs.
[3] "The 2014 National Economic Impact of the U.S. Coastal Port System," Martin Associates, March 2015, supplemented by "The National Economic Impacts of Containerized Cargo Moving via the U.S. Maritime Transportation System, 2007," Martin Associates, April 2008 and World Shipping Council estimate.

industry to a point at which it has had to make fundamental changes in order to continue to provide the high quality ocean transportation services that drive the global economy, and the economy of the United States.

Coming out of the global recession that began in 2008, the liner shipping industry has yet to recover to a point where economic performance is sustainable for the long haul. Because of the supply and demand imbalance noted above, and because of the often non-compensatory rates that have resulted from that imbalance, the industry has had negative returns for the majority of the past six years. The graph below published last month by respected industry analyst Alphaliner illustrates the situation.



Average of CMA CGM (incl APL to 2Q 2016), CSCL (to 1Q2016), EMC, Hanjin (to 3Q 2017), Hapag-Lloyd (incl CSAV to 2014), HMM, KL, Maersk, MOL, NYK, WHL, YML, Zim

Source: Alphaliner Weekly Newsletter, Volume 2017, Issue 15, April 11, 2017.

In addition to unsustainable operating margins, the industry is facing increasing regulatory costs. For the liner sector alone, U.S. and international requirements to install ballast water treatment systems will cost $5-10 billion over the next five to seven years. A global cap on the sulphur content of marine fuel beginning in 2020 will add another $15 billion dollars in *annual* operating expenses for the liner shipping industry. To put these numbers in perspective, the liner shipping industry in 2016 lost an estimated $7 billion dollars worldwide. That means that the new regulatory costs that will come into play over the next several years will impose financial stress on the industry that is several times

greater than the already substantial economic pressures that exist today. These regulations will result in environmental benefits, but those improvements will be expensive.

2. The Industry's Response to Economic Challenges

The combination of historically low ocean freight rates, unfavorable supply and demand conditions, and new environmental regulations has caused carriers to seek efficiencies wherever they can be found. That need for efficiency has resulted in technological innovation in terms of highly fuel efficient new vessels that produce fewer emissions per container transported. Newer, bigger ships are inherently more efficient than the older ships that they have replaced – in some cases over thirty percent more efficient – but larger ships are only more efficient if they are fully loaded. A 14,000 TEU ship burns less fuel on a per-unit basis than a 7,000 TEU ship, but it still burns more fuel overall. Thus, a 14,000 TEU ship that is half full is less efficient than a 7,000 TEU that is full. A high utilization rate is critical to realizing the designed efficiency of these larger vessels.

A related response of the industry to challenging economic conditions has been the use of vessel sharing agreements ("VSAs"). VSAs are arrangements under which two or more carriers cooperate to operate one or more vessel services, typically using assets contributed by each of the parties, even as they continue to compete for customers based on price and other aspects of service. The larger, multi-trade VSAs are commonly referred to as "alliances." The use of alliances is necessary to capture the efficiency benefits of larger ships because carriers often do not have enough cargo to fill ships of this size on their own. Vessel sharing allows carriers to utilize these expensive, large assets more efficiently than they could by themselves.

The operational case for sharing vessel assets through alliances is a simple one. As the industry has developed, many liner shipping companies provide service on multiple trade lanes around the world. Large carriers operate in multiple trade lanes for several reasons. First, carriers naturally seek to grow their businesses by providing services to emerging trading markets. Second, international shipper customers often demand ocean transportation on multiple routes. Third, participating in multiple trades provides market diversification for carriers, who can re-deploy assets from markets with low demand to markets with relatively higher demand as commercial conditions dictate.

Vessel sharing substantially reduces the cost of entry into new markets. If every liner operator needed to provide vessel capacity by itself on every trade in which it participated, there would either be a gross oversupply of capacity, thus making the services economically unsustainable, or there would be a shortage of investment and fewer service providers. In short, in the absence of alliances, there would be fewer services and fewer competitors.

Carriers of all sizes can improve efficiency from vessel sharing agreements, as is demonstrated by the range in the sizes of carriers participating in the three major alliances as of April 1 of this year.

Those carriers range from a global capacity of 3.3 million TEUs at the high end to a global capacity of 375,000 TEU at the low end – a ten-fold difference in size from the top to the bottom of the range. A larger carrier in a trade can order and deploy larger, more efficient ships with confidence that it can share the vessel assets in order to achieve efficient capacity utilization. Smaller carriers that may not be able to afford larger, more efficient assets may obtain the economic efficiencies of larger vessels through vessel sharing arrangements. New entrants will have an easier time starting a new service by sharing vessels rather than having to finance a stand-alone service.[4]

Carrier alliances benefit shippers (importers and exporters) as well as carriers. The fact that alliances allow the maintenance of more competitors on more routes through the efficient use of vessel capacity and shared services has consistently been recognized as beneficial by shipper customers and by regulators around the world.

Although more efficient ships and vessel sharing arrangements have reduced costs significantly, sustained financial pressures on shipping lines and their profitability have also led to structural changes within the industry. A number of carrier mergers were completed last year and more are going through the process this year: CMA CGM acquired APL; Hapag-Lloyd acquired CSAV and UASC; Hamburg Süd acquired CCNI; COSCO and China Shipping have merged into a single carrier; and Maersk is now pursuing acquisition of Hamburg Sud. The three Japanese lines – K Line, MOL and NYK – have also announced their intent to combine their container operations.

This consolidation has had the knock-on effect of causing several operational alliances within the industry to re-structure. For example, we have seen the formation of the "Ocean Alliance" (which includes CMA CGM, China COSCO Shipping, Evergreen, and OOCL) and a new group called "THE Alliance" (which includes Hapag-Lloyd, NYK, K-Line, MOL, and Yang Ming). These new groups formed in addition to the already existing "2M" alliance between Maersk and MSC. The two new alliances have just begun service as of April 1, but industry analysts calculate that the alliances will bring more capacity, not less, into most of the trades that they serve.

3. The Regulatory Structure Under the Shipping Act of 1984, as Amended

Under the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, agreements among ocean common carriers must be filed with the Federal Maritime Commission, and there is a waiting period before the agreement can go into effect. The Commission uses that time to review the agreement and supporting data submitted by carriers and available to it from other sources, to analyze the possible effects of the agreement on competition in the trades involved, and to request

[4] While there are no regulatory barriers to entry in liner shipping, vessel sharing arrangements reduce the risk that ships' capital and operating costs become barriers to entry.

additional information when necessary. The Commission often asks questions about particular language in agreements and seeks changes to that language. In addition to having significant ability to obtain changes to agreement language, the Commission also has authority to seek a judicial injunction if the Commission decides that an agreement would have a negative effect on competition. An injunction may be sought either before or after an agreement goes into effect. Agreements with the potential to affect competition are also subject to extensive periodic reporting requirements that allow the Commission to monitor any market impacts from those agreements.

Agreements that are filed with the FMC and that become effective are granted antitrust immunity, but only with respect to those activities that are set forth in the agreement. In addition to being subject to the antitrust laws, non-immunized carrier activities may lead to penalties imposed by the FMC under the Shipping Act. For example, if a group of carriers took action under an agreement that was required to be filed with the Commission, but they did not file that agreement, the FMC could impose penalties under the Shipping Act. If that same activity violated the antitrust laws, then the Department of Justice could also take action. Thus, activity under an unfiled carrier agreement may be subject to enforcement by both the FMC and the DOJ. In addition, even carrier activities that are immune from the antitrust laws are subject to regulation under the Shipping Act under the so-called "prohibited acts" set forth in the Shipping Act. *See* 46 U.S.C. §§ 41104 and 41105.

One might reasonably ask why carriers generally support the Shipping Act approach to regulation of the liner industry. The simple answer is that the Shipping Act regime provides regulatory certainty to a very capital intensive industry. Once an agreement is filed and becomes effective under the Act, the parties to that agreement know that they may proceed with activities within the scope of the agreement without legal exposure under the antitrust laws.[5] That certainty provides two important functions that are important for both carriers and their shipper customers.

First, it allows parties to an agreement to focus on the operational issues that generate the greatest efficiencies and service improvements from their cooperative operations.

Second, the certainty provided by the Shipping Act provides a predictable regulatory structure within which to restructure or terminate alliances and form new alliances. This means, for example, that if the members of an alliance determine that their existing cooperation is not providing the efficiencies and service improvements that they expected, they can add or delete carriers, leave the alliance, or start a new alliance with new partners. The fact that the substantive rules and the Commission's review processes are well established and consistent prevents inefficient carrier collaborations from becoming locked in place on the basis that changing them would cause too much

[5] This regulatory system is consistent with the rest of the world. Virtually every country authorizes the operation of alliances.

regulatory uncertainty. Because the legal regime is reasonably predictable and timely, arrangements can be changed relatively quickly, which encourages competition both within alliances and among alliances. That this regulatory predictability has supported a market that is responsive to changing economic conditions is most recently evidenced by the substantial restructuring of the major alliances over the past six months.

In addition to providing carriers with certainty, the public agreement filing system under the Shipping Act provides shippers, service providers, regulators, and the public with a level of transparency that does not apply in most industries. All agreement filings and amendments are publicly noticed in the *Federal Register* by the Federal Maritime Commission, and the Commission accepts public comments on those agreements. All agreements and amendments are maintained in a public database accessible without cost or registration through the Commission's website.

B. Ocean Carrier Agreements and Joint Procurement Provisions

Most recently, some entities providing services to vessels in U.S. ports have urged the Commission to fully employ its oversight authority to ensure that any joint procurement activity by carriers under ocean carrier agreements does not unfairly disadvantage vendors providing services to ocean carriers operating under those agreements.

In order to simplify operations and improve efficiencies, carrier agreements have, in some cases, included authority for joint procurement of some services that vessels require from vendors in the ports where the vessels call. That is not the case with the three major alliance agreements, however.

Having heard concerns from some service providers about joint procurement under carrier agreements, the Commission advised the major alliance members (2M Alliance, THE Alliance and OCEAN Alliance) that joint procurement would be subject to particular scrutiny. The alliance members responded by making it clear through the relevant agreement language that various types of joint procurement are either not authorized or are significantly limited under those agreements. The relevant language for each of the three major alliances is set forth below as it applies to joint negotiation for tug services and marine terminal services in the United States. (The full language of these agreements is available on the Federal Maritime Commission's website.)

The 2M agreement[6] reads:

[6] FMC Agreement No. 012293, the Maersk/MSC Vessel Sharing Agreement.

"5.4(b) The Parties shall negotiate independently with and enter into separate individual contracts with marine terminal operators, stevedores, tug operators, other providers or suppliers of other vessel-related goods and services and/or inland carriers in the United States; provided, however, that the Parties are authorized to discuss, exchange information, and/or coordinate negotiations with marine terminal operators relating to operational matters such as: port schedules and berthing windows, availability of port facilities, equipment and services, adequacy of throughput and productivity, and procedures for the interchange of operational data in a legally compliant matter." (emphasis added)

The relevant wording of the agreement for THE Alliance[7] also limits joint contracting for certain services within the United States:

"5.2 In furtherance of the authorities set forth in Article 5.1, the Parties are authorized to engage in the following activities, to the extent permitted by the applicable law of the relevant jurisdictions within the scope of this Agreement, and subject to any applicable filing requirements:

(I) Discuss and agree upon the joint contracting with tug operators or other providers or suppliers of other vessel-related goods and services, provided they are procured outside the United States; …."

"5.10 (a) The Parties may discuss and agree upon the terminal(s) to be called by the vessels operated hereunder as well as the stevedore(s) that will service such vessels, and/or the volume of cargo to be handled by such terminals or stevedores. The Parties shall negotiate independently with and enter into separate individual contracts with marine terminal operators (including operating port authorities) and stevedores (except where the marine terminal operator or stevedore is agreeable to a joint contract with the Parties, in which case a joint contract would be authorized); provided, however, that whether contracting on a joint or individual basis, the Parties are authorized to discuss, exchange information, and/or coordinate negotiations with marine terminal operators or stevedores relating to operational matters such as port schedules and berthing windows; availability of port facilities, equipment and services; contract duration; adequacy of throughput; and the procedures of the interchange of operational data in a legally compliant matter." (all emphasis added)

The OCEAN Alliance Agreement[8] states:

"5.9(b) The Parties shall negotiate independently with and enter into separate individual

[7] FMC Agreement No. 012439, THE Alliance, among Hapag Lloyd, K Line, MOL, NYK, and Yang Ming.
[8] FMC Agreement No. 012439, OCEAN Alliance among COSCO Shipping, CMA CGM, Evergreen and OOCL.

> contracts with marine terminal operators (except where the marine terminal operator is agreeable to a joint contract with the parties, in which case a joint contract with such marine terminal operator would be authorized), stevedores, tug operators, other providers or suppliers of other vessel-related goods and services; provided, however, that the Parties are authorized to discuss, exchange information, and/or coordinate negotiations with marine terminal operators relating to operational matters such as port schedules and berthing windows; availability of port facilities, equipment and services; adequacy of throughput; and the procedures of the interchange of operational data in a legally compliant manner." (emphasis added)

We quote these provisions in full because they define what carriers within these alliances can and cannot do in the United States with respect to joint negotiations with service providers, specifically tugs and marine terminal operators. In short, the Commission and some commercial parties raised concerns about such activities, and the agreement language now in each case states that these services will be procured individually.

Although the Commission through its alliance agreement reviews and its regulations has, as a practical matter, substantially restricted the scope of joint purchasing by carrier agreements, there are instances in which that authority has been allowed to remain in agreements. Subject to proper oversight, that is an appropriate policy. Joint procurement can result in lower carrier costs and smoother port operations, which can result in lower costs and better services for U.S. importers, exporters, and consumers.

The Department of Justice and the Federal Trade Commission, in their Antitrust Guidelines for Collaborations Among Competitors (April 2000), have made it clear that whether a particular joint purchasing activity raises antitrust concerns depends upon the characteristics of the market in which the activity takes place:

> "Competitor collaborations may involve agreements jointly to purchase necessary inputs. Many such agreements do not raise antitrust concerns and indeed may be procompetitive. Purchasing collaborations, for example, may enable participants to centralize ordering, to combine warehousing or distribution functions more efficiently, or to achieve other efficiencies. However, such agreements can create or increase market power (which, in the case of buyers, is called 'monopsony power') or facilitate its exercise by increasing the ability or incentive to drive the price of the purchased product, and thereby depress output, below what would likely prevail in the absence of the relevant agreement." *Guidelines* at § 3.31(b).

Similarly, the Supreme Court has held that joint purchasing arrangements "are not a form of

concerted activity characteristically likely to result in predominantly anticompetitive effects." *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 295 (1985). In other words, the "rule of reason" standard applies to these arrangements, and they must be analyzed based on the facts of the given situation. This is the approach that the Commission has followed, and that approach is consistent with antitrust law.

C. Conclusion

The liner shipping industry is undergoing significant restructuring in order to find an economic and operational equilibrium that allows its participants to reach financial stability so that they may continue to provide regularly scheduled ocean transportation services that are on-time, efficient, and responsive to customer needs. Alliance agreements are one tool that helps carriers address some of today's challenges, so that carriers can continue to serve U.S. commerce, which is dependent upon an efficient international maritime transportation system.

The regulatory structure that is in place to manage these agreements is clear, well understood by all affected parties, and provides enough flexibility for businesses to adjust to changing market conditions. The agency charged with enforcing the regulations, the Federal Maritime Commission, provides active oversight that combines specialized industry expertise with familiar competition law principles. Commercially and structurally, many changes are taking place in the liner shipping industry. The scope and pace of those changes quite naturally make people nervous – carriers as much as their customers and service providers. But liner shipping has always been a cyclical industry. With the stable, predictable and transparent regulatory regime that is in place and a continued focus on operational efficiency, the industry will meet the current challenges. A period of major challenges in the industry is not the time to make significant changes to the regulatory scheme under which liner shipping operates. The regulatory regime that the United States has in place is both flexible and powerful, and the Federal Maritime Commission has the tools to maintain fair and competitive liner shipping markets in support of America's international commerce.

The World Shipping Council welcomes the Subcommittee's interest in this industry that is critical for the nation's economic success, and I thank you for the opportunity to testify today. We would be pleased to provide the Subcommittee with whatever further information may be of use as it continues its oversight of shipping regulation.

###

○