

STATEMENT OF
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BEFORE THE
HOUSE SUBCOMMITTEE ON COAST GUARD
AND MARITIME TRANSPORTATION

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Good afternoon, Chairman Maloney, Ranking Member Gibbs, and Members of the Subcommittee. I am Jennifer Carpenter, President & CEO of The American Waterways Operators. AWO is the national trade association for the inland and coastal tugboat, towboat and barge industry. On behalf of AWO's over 300 member companies, thank you for the opportunity to testify at this important hearing on the status of the U.S. maritime supply chain during the COVID-19 pandemic.

I come before you today with three overarching messages: 1) the U.S. domestic maritime supply chain is resilient; 2) business continuity does not – and cannot – mean business as usual, especially where health and safety are concerned; and, 3) Congress, and this Subcommittee, have a vital role to play in ensuring the stability of the public policy pillars that create the foundation for the supply chain's resilience and our nation's recovery. Allow me to elaborate on each of these points.

The Domestic Maritime Supply Chain is Resilient

While our industry, like all Americans, has been challenged by this global health crisis in profound ways, the domestic maritime supply chain has proven resilient in the face of COVID-19. The men and women of the tugboat, towboat and barge industry have played a key role in keeping our nation's economy afloat, remaining open for business and continuing to move essential cargoes such as agricultural products, fertilizer, coal, petroleum and petrochemicals, wood and paper products, steel and construction materials. Tugboats continue to guide ships, from containerships and tankers to the hospital ships USNS Comfort and USNS Mercy, safely into port. Tugboats and barges

have begun a busy summer season of supplying native Alaskan villagers with everything they need to subsist in an unforgiving environment. While cargo volumes in many sectors have declined due to depressed demand, mariners have continued to report to work, vessels have continued to operate, and the industry has adapted to maintain operational continuity and readiness. As our nation takes the first steps toward reopening shuttered segments of the economy, the domestic maritime supply chain is flowing, capable of accommodating increased demand, and well positioned to support the long road to recovery.

Business Continuity, Not Business as Usual

Tugboat, towboat and barge companies have been able to maintain business continuity in large part because employers recognized early on that mariners are the lynchpin of their operations and protecting crewmember health and safety is key to keeping vessels moving and commerce flowing. The industry's extensive experience with contingency planning, safety management systems and incident command structures has served it well in managing the health, safety and operational challenges posed by the pandemic. A tow on the river or an articulated tug-barge unit at sea for two to four weeks at a time is effectively a self-quarantined environment, and companies quickly put in place – and have continued to refine – procedures aimed at keeping the virus off their vessels. These include, but are not limited to, pre-screening crewmembers prior to leaving home and again prior to boarding a vessel, often in conjunction with telehealth providers; modifying crew change procedures to keep crews together as a unit, minimize exposure during travel to vessels, and avoid large groups congregating on crew change days; minimizing non-essential contact between crewmembers and non-crewmembers, including increased reliance on objective evidence of regulatory compliance and remote audit and inspection techniques; and developing more stringent vessel cleaning and decontamination procedures.

Crewmembers, for their part, have taken seriously their status as essential critical infrastructure workers and taken steps to safeguard their health and safety while off duty. And, regulatory authorities, including the U.S. Coast Guard, have been proactive and cooperative in working with industry to employ flexibility to meet regulatory objectives while reducing unnecessary health and safety risks. Policies extending the validity of merchant mariner credentials, mariner medical certificates and Transportation Worker Identification Credentials; encouraging the use of remote audit and inspection techniques; and allowing deferrals of inspections and regulatory deadlines when necessary have been very helpful in reducing unnecessary interactions that could place the safety of vessel crewmembers and/or Coast Guard personnel at risk.

The result of these concerted and cooperative efforts has been to keep COVID-19 infections among the mariner workforce to a minimum – a win-win for health and safety and for the resilience of the maritime supply chain. To maintain this situation, it will be extremely important for employers, mariners, and regulators to remain vigilant and not relax prematurely the prevention policies and social distancing procedures that have proven successful in keeping vessels largely virus-free.

Congress's Role in Supporting the Maritime Supply Chain

Chairman Maloney, Ranking Member Gibbs, your leadership in holding this hearing today to examine the state of the maritime supply chain as our nation battles the COVID-19 pandemic is an important expression of Congress's recognition of the criticality of maritime transportation, and we thank you for that. It also tees up the question, "How can the Congress – and this Subcommittee – support the continued resilience of the maritime supply chain and the health and safety of mariners who make that possible?"

To answer that question, I'd like to hark back to the testimony I provided to the Subcommittee last spring, highlighting four pillars that enable the tugboat, towboat and barge industry to do the essential work it does for American shippers and the American

economy. Those pillars – the Jones Act; modern, well-maintained ports and waterways infrastructure; a nationally consistent system of laws and regulations governing vessels in interstate commerce; and maritime safety – are more important than ever amid the circumstances of the COVID-19 pandemic, and I want to thank the bipartisan leadership of this Subcommittee and the full Transportation and Infrastructure Committee for your longstanding support for them. Let me address each briefly.

The Jones Act

The Jones Act, which celebrates its 100th anniversary on June 5, but whose antecedents date back to the earliest days of our country, has served our nation’s economic, homeland and national security well. It is more relevant than ever today, as both the pandemic and the prevailing geopolitical situation underscore the inadvisability of relinquishing control of our domestic maritime supply chain to foreign companies (perhaps state owned) and foreign mariners. I want to thank Chairmen DeFazio and Maloney, and Ranking Members Graves and Gibbs, for your leadership in opposing opportunistic calls to waive the Jones Act and break faith with the American companies and American mariners on the front lines of keeping our economy afloat. Thank you, as well, for including in the Coast Guard authorization bill language to prevent the emergence of a Jones Act loophole related to the operation of heavy lift vessels servicing offshore energy installations.

Ports and Waterways Infrastructure

Investment in our ports and waterways infrastructure is an investment in American jobs, in American competitiveness, and, given that maritime transportation is the greenest mode of transportation, with the smallest carbon footprint, in the health of our natural environment as well. Now more than ever, investing in infrastructure will help our nation’s economy get back on its feet. This means passing a Water Resources and Development Act; increasing investment in locks, dams, harbor maintenance and dredging; and building the next generation of Coast Guard buoy tenders and ensuring

the funding to keep them operating. As demand for waterborne commerce increases as we recover from the economic shocks of the pandemic, we need to ensure that our waterways are open for business and in condition to accommodate this demand. Again, this Subcommittee and full Committee have been leaders on these issues; we thank you for that and respectfully ask for your continued support.

Federal Preemption

Our industry's experience during the COVID-19 pandemic has underscored the importance of a uniform national system of laws and regulations governing interstate maritime transportation. As state and local shelter-in-place and stay-at-home orders began to proliferate in March and early April, we could have experienced catastrophic disruption in the maritime supply chain. We did not, largely because the federal government recognized and took timely action to codify the status of maritime transportation businesses and workers as "essential critical infrastructure" that needed to continue unfettered operations. Guidance from the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, amplified by the U.S. Coast Guard, was vital to enabling marine transportation businesses to keep operating and vessel crewmembers and other maritime employees to travel to their jobs and report to work. The lessons of this experience are worth remembering as we move from the acute, to the chronic, and eventually to the recovery phase of the pandemic: just as a patchwork of state and local stay-at-home orders is incompatible with the efficient and effective operation of the maritime supply chain, so too is a patchwork of state and local laws and regulations established for other purposes. Uniform, nationally consistent regulations are essential to effective functioning of the maritime supply chain.

Maritime Safety

Maritime safety is our industry's franchise to operate, and our experience during the COVID-19 pandemic to date reinforces the fact that good safety is good business. As our industry manages the unique health and safety challenges posed by the pandemic, we urge Congress to support our efforts by:

- 1) Supporting prioritized access to COVID-19 testing for mariners as essential critical infrastructure employees. While access to diagnostic testing has improved in many parts of the country, the paramount importance of keeping the virus off the boats to crewmember health and safety and the resilience of the maritime supply chain – especially as opportunities for exposure off the job magnify with the relaxation of stay-at-home orders – underscores the need to increase access to testing as an optional part of the pre-screening process.
- 2) Enacting temporary, targeted liability protections for maritime employers who make good faith efforts to abide by applicable public health guidelines in working to protect their employees from exposure to COVID-19, while preserving the availability of legal remedies against employers who engage in reckless or willful misconduct. We are hopeful that a bipartisan consensus on time-limited and carefully crafted liability protections can be included in a forthcoming legislative package to support our national recovery from the many harmful effects of the COVID-19 pandemic.
- 3) Enacting the Coast Guard authorization bill, which includes a number of provisions that promote marine safety, including suspension of the towing vessel inspection user fee requirement until the Coast Guard promulgates regulations to establish specific fees based on whether a vessel uses the Towing Safety Management System or the Coast Guard option under Subchapter M. As the Subcommittee recognized in drafting that provision, the current fee structure provides a perverse disincentive to use of the TSMS option and imposes

duplicative costs on vessel owners who are already paying many thousands of dollars more for the services of Coast Guard-approved third-party organizations.

Conclusion

Chairman Maloney, Ranking Member Gibbs, thank you for the opportunity to testify today. The U.S. domestic maritime supply chain is resilient, and the tugboat, towboat and barge industry is well equipped to continue to serve our nation as we begin the long road to recovery from the economic disruption caused by this global public health crisis. We look forward to working with you to learn and apply the lessons of this experience to strengthen our resiliency as an essential critical infrastructure sector and a vital contributor to our nation's economy, security, environment and quality of life.

I would be happy to answer any questions you may have.