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STATEMENT
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INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS
to the
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
on
MARITIME TRAINING AND THE WORKFORCE
OCTOBER 17, 2007

Mr. Chairman and Members of the Subcommittee:

I am Michael J. Rodriguez, Executive Assistant to the President of the International Organization of Masters, Mates & Pilots (MM&P). MM&P represents ships' Masters, other Licensed Officers and unlicensed mariners working aboard U.S.-flag commercial vessels in the foreign and domestic trades. MM&P also represents mariners working aboard civilian-crewed ships in the government's Ready Reserve and Military Sealift Command fleets, as well as harbor pilots in ports throughout the United States.

Thank you for the opportunity to present MM&P's views on the state of the Maritime Workforce in the United States.

I will begin my remarks by saying that we believe very strongly that America's mariners are an important national asset – an essential asset that our nation cannot afford to lose. As you, Mr. Chairman, and the members of your Subcommittee know, American mariners have, from the earliest days of our country, served with our armed forces. They continue this proud tradition today, serving in the Middle East by providing indispensable support for our troops. As Naval officers, many licensed mariners have performed on active duty at sea, ashore, and as harbor pilots.

American mariners also play an essential role in relief and humanitarian efforts. Following the attack on the World Trade Center, mariners evacuated thousands from Lower Manhattan. In 2005, they helped provide relief to victims of the Gulf hurricanes and to victims of the tsunami in Banda Ache.

Mariners face many challenges. Some of these are part of life at sea and cannot be changed. Long separations from home and family, extreme working environments, and the dangers of the sea have always been accepted by the men and women who take up the

maritime profession. There are, however, other negative aspects to life at sea that governments and industry can manage.

MARITIME POLICY

A strong commercial merchant fleet that provides good-paying, attractive jobs for Americans is an essential element of our national defense. Without it our country will not have the U.S. citizen manpower to crew the Department of Defense's privately-managed and government-owned vessels called into action in time of war or other emergency.

Therefore, it is vitally important for Congress and the Administration to support the full funding of the Maritime Security Program because it serves to maintain vessels under the US flag and preserve the management and seafaring skills necessary to support the U.S. military.

Furthermore, we urge Congress to consider increasing the maritime security fleet from 60 ships to a greater number of privately-owned, militarily-useful, U.S.-flag commercial vessels to ensure an American presence in the world shipping markets and provide opportunities for American mariners.

The Jones Act is another vital component of a strong American merchant marine. The Jones Act reserves domestic trade for vessels owned by Americans, built in American shipyards, and sailed by American mariners.

We urge Congress to continue to fully support the Jones Act. Foreign access and control of our domestic trades would eliminate an important source of jobs for American mariners.

Our nation's cargo preference laws must be fully enforced. These laws provide an important source of cargo for U.S.-flag ships, encouraging their owners to operate under the U.S.-flag. Weakening or eliminating the cargo preference laws will reduce the amount of government generated and taxpayer financed cargoes available to U.S.-flag carriers and drive vessels from our flag. Ultimately, the result will be the outsourcing of American maritime jobs to foreign seafarers.

Mr. Chairman, these essential maritime programs are the foundation of America's maritime policy and help ensure that our country will continue to have the U.S.-flag commercial sealift capability and U.S. citizen crews needed to support our economic and military security.

CRIMINALIZATION OF MARINERS

It is well known throughout the national and international maritime communities that the criminalization of seafarers is a recruiting and retention problem as well as a human rights issue. Seafarers are increasingly exposed to criminal sanctions as a result of industrial accidents occurring in the high-risk environment of shipping. There are many examples that I could cite in this context, but a recent one is particularly noteworthy.

In November 2002, the tanker *Prestige* began to break up off the northwestern coast of Spain. Captain Apostolos Mangouras reported to coastal authorities that his ship had been damaged. He sought refuge in a Spanish port but Spanish coastal authorities refused. The governments of France and Portugal also refused to grant *Prestige* refuge and the vessel

was forced out to sea. Ultimately, the ship was lost causing serious pollution along the Spanish and French coasts.

When Captain Mangouras reached the shore in Spain he was arrested and jailed. He was later released but forbidden to leave the country. He is now being held under house arrest in Greece pending the outcome of court proceedings in Spain which are delayed indefinitely for political reasons.

The international shipping community recognizes that mariners, who are subject to the laws of multiple jurisdictions, must be afforded special protections under uniform international standards. In fact, the International Maritime Organization (IMO), the United Nations organization responsible for the regulation of international shipping, has responded to the abuse of mariners following incidents like the *Prestige* by adopting *Guidelines on the Fair Treatment of Seafarers in the Event of a Marine Accident.* Presently, IMO is in the process of adopting the *Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Accident.* This code of practice is on track to become part of the Safety of Life at Sea Convention (SOLAS) and so will become binding on the nations that have signed the SOLAS convention. The United States is a party to SOLAS.

These recommended practices are:

1. Investigations should be based on the principle of determining lessons learned from the causes of accidents in order to prevent future accidents.
2. Seafarers' human rights, including the right to be informed of the nature of the investigation and the right to legal counsel, should be protected during accident investigations.
3. Seafarers should be informed of protections available to them to prevent evidence that they give being used against them by the investigating authorities.

We believe these principles to be in accordance with the basic human rights that should be afforded to mariners everywhere. Regrettably, however, these basic principles of fairness and human rights are not in force in every country.

Most regrettably, the United States opposes the basic principles of fairness and human rights when it comes to maritime accident investigations in the United States. At the recently concluded meeting of IMO's Maritime Safety Committee (MSC) held in Copenhagen, the United States opposed the Code saying that requirements for "individual legal rights and legal process" should be removed.

This is particularly disturbing when one considers that in the United States, maritime accident investigations and criminal investigations are the same. The Coast Guard, the investigating authority in the United States, is unwilling to fully inform mariners of the nature of the investigation and of their rights or that the information given by a mariner during an accident investigation could be used to prosecute the mariner.

We understand that aggressive prosecution and strong penalties for <u>intentional</u> criminal acts and resulting pollution make sense. Criminal sanctions offer the right deterrent and punishments.

However, the effects of the criminalization of unintentional acts of mariners involved in industrial accidents are counterproductive.

Criminalizing the acts of mariners involved in an accident: hinders accident investigators working to uncover the true cause of the accident, fails to address the root cause of the accident to avoid its reoccurrence, demoralizes the workforce, and discourages junior officers from seeking promotion to senior level positions. Finally, the threat of criminalizing accidents encourages experienced mariners to leave the industry and discourages new recruits from pursuing a career at sea.

We recommend that maritime safety investigations should be separate from, and insulated from, investigations that may lead to criminal prosecutions.

We also recommend that Congress should consider modifying 46 USC 6301, which governs investigations of marine casualties. The statute itself is punitive and in opposition to the international principles I mentioned. The law presupposes misconduct and so encourages the Coast Guard to be overly aggressive toward mariners.

To attract young people into our industry and to be fair to those who have dedicated their working lives to seafaring, we must stop treating our merchant mariners like criminals. A key first step towards doing this is to change 46 CFR 6301 by bringing the statute in line with the principles of the IMO standards and guidelines.

USCG MEDICAL POLICY

MM&P and many other organizations are deeply concerned over the effects of the Coast Guard's medical policy. The policy is to employ medical standards directly derived from the Federal Aviation Administration (FAA) without regard to their applicability to the maritime work environment and to centralize medical fitness decisions at the National Maritime Center (NMC).

Among our specific concerns are:

1. The application of medical standards that have been developed for airline pilots and not for mariners will jeopardize the continued employment of mariners who have spent their whole careers at sea.
2. The system is likely to reduce a mariner's ability to plan for a secure, long term career in the industry.
3. Some mariners will avoid seeking further evaluation and treatment for their conditions due to the uncertainty over the outcome of medical examinations and the possible negative impact upon their ability to continue employment.
4. The policy will require unnecessary medical consultations, evaluations and interventions for mariners who have successfully managed their medical conditions throughout their careers.
5. The policy will lead to increased costs for mariners, employers, and health care plans by attempting to mandate which medical tests are called for, in all cases, without regard to the individual medical factors present in each case.

6. The policy is not based upon demonstrated safety risks associated with the medical conditions that are being evaluated. The Coast Guard has not presented any safety data analysis which would justify the proposed complete overhaul of the medical evaluation process.
7. The Coast Guard has not presented a cost/benefit analysis of the potential financial impact upon the industry which might further impair the ability of the U.S.-flag maritime industry to compete.

MM&P strongly believes that the Coast Guard's medical policy should be supported by clear evidence after consultation with appropriate medical experts and analysis of the relevant medical literature and maritime accident statistics.

MM&P is pleased that the Coast Guard Authorization Bill for 2007 provides for a Merchant Marine Medical Advisory Committee. We feel, however, that more must be done in this area.

We strongly recommend that the USCG:

1. Use the recommendations developed by medical advisory panels from other transportation modes. For instance, the Federal Motor Carriers Safety Administration has a medical review process for commercial drivers. The aim is to develop evidence-based medical guidelines for particular medical specialties of concern (cardiology, neurology, pulmonary medicine, internal medicine). These recommendations could be adapted for use in the maritime industry.
2. Provide training and certification programs to medical examiners which will ensure consistency and accuracy of compliance with the recommended guidelines. Under such a system the Coast Guard would monitor compliance of examiners.
3. Adopt a system of medical review using the best practices of the United Kingdom and Australia, the governments of which provide job task analyses and clear guidance to participating medical professionals.

MANNING, WORKLOAD, STRESS AND FATIGUE

Mariners live where they work. The job is 24 hours every day of the week, in all conditions of weather. Aboard many vessels, mariners sleep only a few feet away from engine rooms, cargo spaces, and machinery. Accommodation spaces are often subject to noise, vibration, and exhaust emissions. Rest and access to leave ashore are essential toward maintaining a safe work environment and for overall health.

A recent study by the Cardiff Research Program, commissioned by the International Transport Workers' Federation, found that:

- one in four seafarers said they had fallen asleep while on watch;
- nearly 50% of seafarers reported work weeks of 85 hours or longer;
- mariners say their working hours have increased despite regulations to combat fatigue;
- almost 50% of seafarers believe their working hours present a danger to their personal safety;

- thirty-seven percent of mariners say their working hours posed a danger to the ship.

Stress and fatigue are serious problems in the maritime industry. Ships and other vessels operate around the clock. Minimal manning, fast turnarounds, foul weather, and long separations from home all combine to exert stress on mariners and deny them opportunities for quality, restorative sleep. In recent years, safety management regulations and security requirements have increased the mariners' workloads, often with little real benefit. In fact, much of a mariner's time is taken up producing paperwork.

Studies show that the effects of fatigue on a person's ability to function are comparable to the effects of alcohol. It is therefore ironic that many owners and flag states are working to ban or limit mariners' consumption of alcohol but have made little or no effort to address fatigue.

In the short term, the effects of stress and fatigue might be groundings, collisions or personal injuries. In the long term, the effects on mariners are poor health and reduced life expectancy.

Manning levels are clearly related to the issue of fatigue. However, manning levels are too often determined by taking into account only the technical characteristics of the ship (type of vessel, the degree of automation, and propulsion system). More attention needs to be paid to all aspects of a ship's operation, such as the administrative burdens placed upon crews in order to comply with U.S. and international regulations, trade route, cargo management, loading and discharging responsibilities, and cargo space and tank cleaning.

We recommend that the United States begin to treat fatigue as a serious health and safety issue for mariners.

We also recommend that manning level determinations should take into account the potential for fatigue. Regulations should remove the economic advantage of operating with the bare minimum manning.

We further recommend that the Coast Guard enforce hours of work regulations and support efforts at the IMO to develop international regulations for safe manning.

Finally, we recommend that maritime labor, the Coast Guard, and industry examine the manner in which fatigue is addressed in other modes with a view toward adopting best practices for the maritime industry.

THE INTERNATIONAL SHIP AND PORT FACILITY CODE AND MARINERS RIGHTS

Maritime security regulations have not only increased the workload on our mariners, they have resulted in dramatically cutting off the mariners' ties to shore.

Mariners live where they work. Therefore, it is essential that mariners, visitors, and representatives of mariners' welfare and labor organizations be allowed free access to shore leave and to the vessel. Unfortunately, in many ports around the United States, mariners, their labor representatives, and those who provide welfare services to mariners are denied access to shore or to the vessels under the pretense of maritime security.

The right to shore leave and access to visitors, labor representatives, and welfare providers is included in the International Ship and Port Facility Security Code (ISPS Code). Section 16.3.15 of the ISPS Code provides that an approved port facility security plan shall address:

"procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship including representatives of seafarers' welfare and labour organizations."

The ISPS Code is part of SOLAS and is, therefore, a treaty obligation of the United States. Remarkably, when the ISPS Code implementing regulations were written (33CFR104 and 105), the word "*facilitate*" was replaced with the word "*coordinate*". This change alters the wording of the regulation to a degree that enables terminals and port facilities to charge outrageous rates for "security escorts" or to deny altogether mariners' rights under the ISPS Code.

Denial of human rights in the name of maritime security runs counter to the very goal of effective security which is to provide security with as little intrusion into individual rights and commerce as possible. By continuing to deny mariners' basic right to shore leave and visitors, terminals and port facilities in the United States make it more difficult to attract recruits into our industry and retain the experienced mariners we have. These measures also invite other nations to retaliate against American mariners abroad.

We recommend that the Coast Guard be required to enforce the human rights provisions of the ISPS Code and withhold approval of port and facility security plans until such plans provide for the "facilitation" of mariners' access to visitors, shore leave, labor representatives and welfare providers.

TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)

The members of this Subcommittee are well aware of the problems with the TWIC program. There are two issues that we believe most directly affect the maritime workforce.

First, according to the regulations, individuals who desire to enter or remain in the maritime industry will be denied the opportunity, at least initially, if they have committed one of the disqualifying offenses within the past seven years. Therefore, an individual who is clearly not a terrorism risk will, nonetheless, be forced to prove eligibility for a TWIC. It is not unreasonable to conclude that many of these individuals will leave the maritime industry rather than endure this bureaucratic exercise.

Second, the TWIC regulations allow each state, local government, and private facility operator to issue their own access control requirements. Potentially, each mariner could have to pay for and carry an access card for every facility at which their vessels call. A TWIC will not guarantee that a mariner will be allowed access to his vessel or access to shore leave.

Our position has been consistent —the TWIC must preempt all other access control requirements. Otherwise mariners will be subject to repetitive application procedures and background checks and to pay the costs for each of these requirements or be denied access to their vessel and to shore leave. The result will be to encourage mariners and other maritime workers to leave our industry.

We urge Congress and the Administration to keep in mind that the TWIC program will have an impact on our ability to attract and retain individuals for seafaring employment. Aspects of the program that go beyond the scope of what was originally intended as an antiterrorism measure impose unnecessary burdens on the maritime workforce.

We recommend that the Merchant Mariner's Document should be accepted as an access/identification credential for mariners. Port facilities should be required to accept the Merchant Mariners Document in place of a TWIC.

CONCLUSION

Shipping needs young, talented people dedicated to moving the industry forward. Young people bring vitality and new skills. They look at things with fresh perspectives. We need their energy to innovate and meet challenges as our industry moves into the future.

The United States must stop treating mariners like criminals, allow them to plan for a full career, and stop locking them down aboard their vessels. If we begin to manage and develop this national asset appropriately, we have a chance to compete with other sectors of our economy for the best and brightest of our young people.

Thank you, Mr. Chairman. I look forward to answering your questions.