STATEMENT

of

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Northeast Maritime Institute

Subcommittee on Coast Guard and Maritime Transportation

Committee on Transportation and Infrastructure

HEARING

on

Oil Spill in New Orleans in July 2008 and

Safety on the Inland River System

Tuesday, September 16, 2008

2167 Rayburn House Office Building, U.S. House of Representatives, Washington, D.C. 20515

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Good morning, Mr. Chairman and members of the subcommittee. Thank you for calling this hearing and for the opportunity to testify before the subcommittee. I am Eric Dawicki, President of Northeast Maritime Institute located in Fairhaven, Massachusetts. NMI is the largest, private maritime education and training institute in the U.S. and has graduated 35,000 of mariner over the Institute's 27 years of operation.

I am a fourth generation mariner, having started my career aboard fishing vessels and inland passenger ferries, and as part of the United States Coast Guard Reserve. I later served as Captain of LNG and Dangerous Liquid Tankers and as part of the management team for LNG Tankers. In addition to my present position as President of Northeast Maritime Institute, I also am President and CEO for the Commonwealth of Dominica Maritime Registry, a company responsible for the management of the Commonwealth of Dominica Maritime Administration's 400 vessel fleet.

First, let me state up front that I understand that my testimony this morning might be construed as controversial, however it seems that the greater interest of serving my country through testimony is an imperative. It is not only a duty , as directed, but it is sincerely an honor to appear before you today to impart my views on the cause and effects of the recent economic, environmental and operational crisis caused by the oil spill on the Mississippi River.

In light of my experience and exposure to the inland and the western rivers trades, I am compelled to testify that this segment of this nation's maritime industry is severely flawed.

Everyone sitting here today has a significant stake in the oil spill that occurred on the Mississippi River last July 23, 2008. Let me be clear. We are all responsible for ensuring that we

as a nation have in place the sound foundational, operational, and technological capability to prevent tragedies like this oil spill from ever happening again in the United States. The Captain who left his vessel under the command of a non-licensed mariner, the non-licensed mariner who agreed to take the vessel across the river, the company that operated the towboat, the charterer that hired the company, the United States Coast Guard, Congress, the President, and I appearing before you this morning to enlist your support, we are all accountable for the safety and preservation of life, property and environment in this great nation.

The maritime safety program in the United States is in urgent need of restructuring, and a more solid focus on its mission and its operations is essential.

While the mariners, the shipping company, the charterers and the Coast Guard can be picked apart at every level, I believe that it will take a courageous stand by this very body to initiate a solid set of standards that this industry and the rest of this nation's maritime industry comply with. There is no scapegoat here. There is simply a systemic flaw in the governance of the maritime industry – from mariner licensing and work hour rules, to appropriate watch standing principles, quality management systems, business management practices and enforcement regulations.

Our maritime industry is fractured on almost every level and it will take strong leadership by this subcommittee and this Congress to independently investigate the systemic pitfalls and strength of the current system, to put in place measures to enhance performance, and to redevelop this industry to be revenue generating. The industry can again become an industry of excellence.

The economic impact of this very spill alone is predicted to be 100 of millions of dollars per day. I state, as a property owner that has been affected by an oil spill on Buzzards Bay, the spill is still having negative economic impacts on my community. I would suggest that a comprehensive economic impact statement might indicate that the negative impacts exceed shall exceed the predicted estimates considerably.

I strongly believe that 87% of all maritime casualties can and must be avoided. 87% of all marine casualties are a resultant factor of human error. As a maritime education, training and certification provider, I am convinced that there are absolutely no excuses for human error when managing the safe operation of a vessel. Unfortunately our system, without strong legislative and regulatory sanctions, enables excuses and exercises either special treatment or lackadaisical attitudes towards this very industry. More can and must be done.

Mr. Chairman, members of the subcommittee, I would like to thank you for your leadership in holding this hearing today. I sincerely hope that my testimony will assist the Congress in taking a closer look at our nation's inland and western river trades and recognize that the work we do today is needed to set the stage for a new generation for the United States maritime industry.

Identified Systemic Flaws

The Inland maritime transportation system is one of the most vital instruments for economic sustainability of the United States economy. The fact that we have continually turned a blind eye to the safety and security, but most importantly, the objectives of maintaining a sound program for the facilitation of commerce in the heartland in the 21st Century is heartbreaking. I

have identified what I believe to be systemic flaws in the current Maritime Safety Program within the United States.

STCW

The United States is a signatory to the Treaty on International Standards of Training, Certification for Watchkeepers and Seafarers, 1978, as amended (STCW). The STCW Code, the treaty's operational instrument, has been developed to create a strong performance based licensing system that measures field based performance models through a combined theoretical, practical, simulated and co-operative education model that far exceeds the current multiple choice license examination system that the United State Coast Guard currently uses. The STCW treaty does not differentiate significantly from the types of commercial vessel operations, but is more centrally focused on operational tonnage and kilowatt power per vessel models.

The United States Merchant Marine Licensing and Certification system should adopt the STCW protocol as its sole licensing and certification system as it is clearly defined, uncomplicated to implement and covers all forms of vessel operations, one could arguably determine that the vessels included in Inland operations. STCW ensures that performance based standards are delivered into the field to ensure safe operations are realized. STCW should be and must be the basis, without special interests interpretation, for the United State licensing and certification systems – after all, the US developed the STCW treaty for the international community to subscribe to.

Mariner Training

Recently, Northeast Maritime Institute received USCG approval under [46 CFR]. This approval combined theoretical based education with soft practical (simulation) and practical training on board inland river and near coastal tow boats. This approval clearly met the intent of STCW, yet was approved under a revision to domestic regulations. This program qualitatively and quantitatively created a better mariner with the knowledge and the skill sets to perform safely, efficiently and cost effectively in the field. Unfortunately, the shipping company that partnered with NMI cancelled the program prior to determining long term results.

Mariners who were approved to become Designated Examiners went through a comprehensive 40 hour course (Train the Trainer) and seemed to be apprehensive at first. Once they received the mariners to train and assess on board their towboats, the feedback was overwhelmingly positive. One email stated; "Please send more like this one". That email alone, summed up the program as it came from one of the more taciturn officers in the program.

Preventing Conflict of Interest in Mariner Training

Shipping companies, trade organizations and manning agencies should not be approved to deliver United States Coast Guard approved training. The clear opportunity to issue fraudulent training certificates as a result of trying to meet the demands of attrition and retention problems, "good ole' boy" networks, creating a fair and even playing field for all mariners to participate in without being controlled or placed under the thumb of the employer and most importantly – creating a cost effective auditing program that the Coast Guard ***must*** be able to be implement immediately, consistently and thoroughly.

Mariner Licensing

The current licensing scheme for inland, near coastal and Great Lakes towboat navigational officers is sub-standard. The requirements for licensing navigational officers are less stringent than the standard licensing protocol as well as the requirements for Pilotage is much less stringent.

While the vessels are typically “floating engine rooms”, there are no requirements for licensed engineers for the most part. It is outrageous that vessels carrying upwards of [tons] of critical cargo that has a higher potential for a collision, allision and grounding than the highly regulated deep draft vessel is beyond comprehension. The inland trading, near coastal trading and great lakes trading tug and barge operations have accounted for more oil spills in the United States in the last ten years than any deep draft vessels.

Bridge Watch System

The current watch system used in the tow boat industry clearly violates the International Navigational Rules Act of 1977 (Public Law 95-75, 91 Stat. 308, or 33 U.S.C. 1601-1608), and, the Inland Navigation Rules Act of 1980 (Public Law 96-591, 94 Stat. 3415, 33 U.S.C. 2001-2038). In order to comply with the Inland Navigation Rules Act of 1980 a bridge watch must be managed according to rule number five or Rule 5 states; “Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.”

The ability to clearly adhere to the tenets of maintaining a proper lookout by sight, hearing and sound as well as ***by all available means*** (navigational hardware) cannot be performed by only one individual on a bridge watch. It's physically impossible.

Watchkeeping and Work Hour Limitations and Manning

The 46 U.S.C. §8104(d) requires merchant vessels of 100 gross tons and above, when at sea, to be manned for a three-watch system, and mariners shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. This section of the law also states that a mariner cannot be required to work for more than 8 hours in one day. There are certain exceptions to the work-hour limitations relevant to the docking/undocking, conducting emergency drills, actual emergency situations or overriding operational conditions that compromise the safety of the vessel and its passengers and crew (See 46 U.S.C. §8104(f)) in which a mariner can be required to work more than 8 hours in a day. Mariners subject to 46 U.S.C. §8104(d) can consent to work in excess of 8 hours in a day.

Yet, 46 U.S.C. §8104(g) permits licensed individuals and crewmembers of towing vessels, offshore supply vessels, and barges, when engaged on voyages of less than 600 nautical miles, when at sea, to be divided into at least 2 watches. The Coast Guard interprets this section of

the law to mean that a mariner can be scheduled to work 12 hours in any consecutive 24-hour period, provided the mariner consents to work more than 8 hours in a day.

This has to be one of the greatest anomalies of marine safety regulation today. Under 46 U.S.C. §8104(d) a vessel is virtually doing nothing, but transiting a near coastal or ocean going voyage. No coastal piloting, no inland piloting, no docking and undocking procedures are in place, yet under 46 U.S.C. §8104(g), a port and starboard watch system (six hours on, six hours off) is engaged during the most dangerous operational periods of a vessels transit. 46 U.S.C. §8104(h) establishes that licensed operators of towing vessels subject to 46 U.S.C. §8904 may not work in excess of 12 hours in any consecutive 24-hour period, except in an emergency. It is virtually impossible for any licensed officer working in the inland river system to not work in excess of 12 hours. I find it incredible that this legislation was ever considered, much less adopted. The CG Authorization on Act 2004 § 409 directed the USC CG to do a study to remedy the need for work hour regulations to be developed. The study was completed, but no follow on action by has been realized to date.

Treatment of Mariners

I believe that it's high time that the Department of Labor, The United States Coast Guard and possibly an independent committee who is not afraid nor has a vested interest in the discovery of truth, should begin an inquiry about mariner treatment. During our short time training mariners for the inland waterways it was clear that the mariners were treated as third class citizens. I have personally been told about threats, discrimination, and work hour rule

violations. While I can only reflect on hearsay, it gravely concerns me that the stories that I have been exposed to remind me of the horrific stories that my grandfather, a merchant mariner, told me when I was growing up.

Quality Management System (QMS)

The objectives of the International Safety Management Code (ISM) are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property. The Code is expressed in broad terms so that it can have a widespread application. Clearly, different levels of management, whether shore-based or at sea, will require varying levels of knowledge and awareness of the items outlined. The cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result.

Anything less than the equivalent to the ISM Code for vessels 100 GRT or above trading on/in US waters would be a mistake. The Code not only rectifies sub-standard shipping, but enhances profitability and performance capabilities of a shipping company.

Charter Vetting Procedures

The charterer that hired the company that was involved in the accident was clearly aware of seafarer shortages and crew compliment shortages related to the Certificate of Inspection (COI)

compliance. A vetting program was scheduled to be developed but was cancelled as a result of a major management overhaul at the charterer's headquarters. Attention to this program would have likely prevented the recent accident as it was scheduled to be developed and implemented by Spring of 2008.

Regulatory Instruments and Enforcement

Future regulations for tow boat inspections and certificates of inspection must not be watered down versions of standards prescribed for all commercial vessels operating under the US Flag. This industry cannot and should not be held to a lower standard. More importantly, the United States Coast Guard ***targeted issuance date of 2011 is too late***! The draft regulations that the Coast Guard has shared with TSAC have been shared with TSAC still haven't posted them as a NPRM – or made it a document on which people can officially comment. I would submit that the Coast Guard must be enabled to do its job without special interests pressuring them and with the appropriate resources to ensure a comprehensive set of regulations be issued that meet or exceed international standards.

I have taken an excerpt from the proposed regulations as follows:

> Sec. 136.106 Towing Safety Management System
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> (a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a

Certificate of Inspection (CG–841 rev. x/xx) may comply through enrollment in an approved or accepted safety management system.

The suggested Towing Safety Management System is ***NOT*** a substitute for having a USCG inspector conduct a physical inspection of the vessel. Title 46 requires CG personnel to physically inspect the vessel, while the proposed system is nothing but a rouse for inspections. I would liken it to the current AWO "Responsible Carriers Program". The term approved delivers a hypothetical inspection and ***MUST*** include a physical inspection by USCG inspection personnel.

I recommend that CG be directed to develop and implement an active "enforcement " program utilizing modern techniques and practices- i.e., a computer based tracking system; develop a matrix based on the US Port State control matrix to target companies and vessels to be audited. Such a program should be one that utilizes pier side boarding's and inspections.

In Closing

I leave all who care to read this document with the following: I, Eric R. Dawicki, believe that it is the honor and the duty of Congress to provide all men who apply themselves in the workforce of the United States of America with the tools to work safely, diligently and with the highest skills for performance needed to ensure that this great nation is always looked upon as a model for other nations to subscribe itself to the standards from which we prescribe. Leaving a man or woman without the tools to honestly tell his children that he will come home safely after each trip on the water, in the soil, or in the factory removes ourselves from the very opportunities that out Constitution provides for us, "We the People".