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HEARING ON HARBOR MAINTENANCE FUNDING AND MARITIME TAX ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

AND

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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HARBOR MAINTENANCE FUNDING AND MARITIME TAX ISSUES

WEDNESDAY, FEBRUARY 1, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
SUBCOMMITTEE ON SELECT REVENUE MEASURES,
Washington, DC.

The subcommittees met, pursuant to notice, at 9:34 a.m., in Room 1100, Longworth House Office Building, the Honorable Charles Boustany [Chairman of the Subcommittee on Oversight] presiding.

[The advisory of the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT
SUBCOMMITTEE ON SELECT REVENUE MEASURES

FOR IMMEDIATE RELEASE
February 1, 2012
OS–09 & SRM–06

CONTACT: (202) 225–1721

Chairman Boustany and Chairman Tiberi Announce Hearing on Harbor Maintenance Funding and Maritime Tax Issues

House Ways and Means Subcommittee on Oversight Chairman Charles Boustany, Jr, MD (R–LA) and Subcommittee on Select Revenue Measures Chairman Pat Tiberi (R–OH) today announced the Subcommittees will hold a hearing on harbor maintenance funding and maritime tax issues, with a focus on the Harbor Maintenance Trust Fund and Harbor Maintenance Tax, maintenance underfunding, and the tax treatment of foreign shipping operations. **The hearing will take place on Wednesday, February 1, 2012, in Room 1100 of the Longworth House Office Building, beginning at 9:30 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

BACKGROUND:

The Harbor Maintenance Trust Fund (HMTF) provides funds for the United States Army Corps of Engineers (Corps) to dredge federally maintained harbors to their authorized depths and widths. The HMTF is funded by the Harbor Maintenance Tax (HMT), under which certain users of U.S. coastal and Great Lakes harbors pay a tariff of $1.25 per $1,000 in cargo value passing through these waters. The tax applies to imported and domestic waterborne cargo, as well as the ticket value of cruise ship passengers.

The tax was intended to provide a sufficient, stable long-term source of funding to pay for harbor dredging to maintain authorized depths and widths. In recent years, HMTF expenditures have remained flat while HMT collections have increased with rising imports, creating a large surplus in the trust fund. The HMTF's uncommitted balance continues to grow and reached an estimated $6.1 billion at the beginning of fiscal year 2012. In fiscal year 2010 alone, $1.2 billion in Harbor Maintenance Taxes were collected, while only $793 million was spent on dredging and related maintenance. Despite the accumulating balances in the HMTF, many U.S. harbors are under-maintained, resulting in the full channel dimensions of America's busiest ports available less than 35 percent of the time. Reduced channel dimensions could increase both the cost of shipping and the risk of grounding or collision.

Another potential concern with the structure of the HMTF arises with respect to what is known as "short sea shipping." Some have argued that the HMT itself is a major reason why very little non-bulk commercial cargo is transported using inland and coastal waterways. Currently, the use of short sea shipping, which involves the movement of cargo along coastal and inland waters, is primarily limited to bulk cargo while commercial non-bulk cargo is moved throughout the U.S. via other modes of transportation.

Finally, and unrelated to the HMTF, U.S. shipping companies must maintain investments in qualified shipping assets made between 1975 and 1986 to avoid sub-Part F (anti-deferral) tax treatment for their qualified foreign shipping income. Some have questioned whether this requirement with which U.S. shipping companies must comply has encouraged these companies to invest capital in their foreign operations—capital that otherwise could have been used to expand domestic operations and to create U.S. jobs.

In announcing the hearing, Chairman Boustany said, **"Our nation's harbors are a lifeblood of commerce. Years of chronic underfunding have severely limited ship traffic, prevented valuable cargo from moving efficiently, and adversely affected national, regional, and local economies. Funds collected by the HMTF should be utilized promptly and exclusively to keep our harbors open for business. The Subcommittees will conduct oversight of this critical problem and consider what solutions might better help American goods to compete in the global economy."**

Chairman Tiberi added, **"The U.S. maritime industry is vital to our economy and national security. Today's Tax Code places preference on investment in foreign shipping operations over investment in domestic operations. The Tax Code also discourages the use of local shipping channels as a means to move non-bulk cargo throughout the United States and the Great Lakes region. The Subcommittees should examine how to design tax policies that help create U.S. maritime jobs and that ensure the long-term growth of the domestic maritime industry."**

FOCUS OF THE HEARING:

The hearing will examine the structure of the Harbor Maintenance Trust Fund and the Harbor Maintenance Tax, with an emphasis on investigating whether the structures of the Trust Fund—including both its financing source and the expenditure of its balances—are appropriately structured. Similarly, the hearing will consider whether U.S. anti-deferral rules inhibit the expansion of the U.S. shipping industry.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, February 15, 2012**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721 or (202) 225–3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://www.waysandmeans.house.gov/*.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman BOUSTANY. We will get started. Good morning to everybody, and thank you for joining us for this morning's joint hearing of the Subcommittees on Oversight and Select Revenue Measures.

Today's hearing will take a closer look at the underfunding of the nation's maritime transportation infrastructure, specifically the Harbor Maintenance Tax and the Harbor Maintenance Trust Fund, and the tax treatment of foreign shipping operations.

While this might sound like an arcane subject, I think what you will see, as we go through the course of this hearing, is that this has—these issues have a huge economic impact on this country on its ability to receive imports, to export, our trade competitiveness, as well as the general economic impact and the job impact that this all has.

The Harbor Maintenance Trust Fund was created in 1986 to provide a stable, long-term source of funding to pay maintenance costs in federally-maintained harbors, the taxes imposed on users of the system, particularly shippers of goods passing through those harbors. The revenues, which total as much as $1.3 billion to $1.6 billion annually, are placed in the Harbor Maintenance Trust Fund and exist to fund harbor maintenance costs.

In the past decade we have seen growing disparities between the Harbor Maintenance Tax revenues and spending. Because the revenues and expenditures of the Harbor Maintenance Trust Fund are part of the overall budget, if the trust fund does not spend all of its revenues, the surplus goes toward offsetting and unrelated spending. Many see this as an abuse of a dedicated funding stream.

As a result of chronic underfunding of critical harbor maintenance—as a result of this chronic underfunding, critical harbor maintenance has suffered. The uncommitted balance of the trust fund continues to grow, reaching $6.1 billion at the beginning of fiscal year 2012. This means that there are billions of unused dollars belonging to the trust fund, even though there are significant harbor maintenance needs, hurting U.S. competitiveness.

Because of this underfunding, the full channel dimensions of America's busiest ports are available only a third of the time, and

there is increased risk of grounding and collision, and certainly an adverse economic impact to this.

To combat the chronic underfunding of federally maintained waterways, I have introduced H.R. 104, the Realize America's Maritime Promise Act. The bill requires that the total amount of available spending from the Harbor Maintenance Trust Fund each year be equal to the trust fund receipts, plus interest, as estimated by the President's budget for that year. This will ensure that taxes paid into the Harbor Maintenance Trust Fund will be used for their intended purposes, and not for other outside spending.

As we strive toward economic growth and job creation, we must recognize the importance of our maritime infrastructure. The President has set a goal of doubling American exports by 2015. If we are going to even come close to achieving this goal, we have to have the infrastructure to handle increased maritime traffic. This is not just a Mississippi or Calcasieu River problem, nor is it exclusively a Great Lakes problem. This is a nationwide transportation and economic problem. We ought to be spending these user fees on projects that improve our nation's critical transportation infrastructure, and make the American economy more competitive.

As Congress begins consideration of the surface transportation and reauthorization bill this week, I look forward to hearing from our witnesses today about their ports and businesses and communities, and what changes are needed to bolster American jobs and competitiveness.

Before I yield to the ranking member, the esteemed ranking member of the Subcommittee on Oversight, Mr. Lewis, I ask unanimous consent that all Members' written statements be included in the record.

[No response.]

Chairman BOUSTANY. And without objection, so ordered. Mr. Lewis, I now yield to you, sir.

Mr. LEWIS. Well, thank you very much, Mr. Chairman. Mr. Chairman, I want to thank you for holding this hearing today. And I also want to thank Chairman Tiberi and Ranking Member Neal.

Many of you know that I began my congressional career on what then was known as the Public Works and Transportation Committee. One of the main reasons for my move to the Ways and Means Committee center on this committee's work to finance our nation's transportation system, roads, transit, airways, and ports.

Transportation has always been a bipartisan issue in Congress. We see this in the legislative proposal before us today. This hearing provides us with an opportunity to hear about the needs of our nation's waterways. Transportation is the key to jobs, not only in the state of Georgia, but all around our country.

My congressional district is home to the largest passenger airport in the world, with nearly 90 million passengers each year. My district is only a few hours away from the Port of Savannah, the fourth largest and fastest-growing container port in the nation. In 2010, $8 billion in cargo good moved through the Port of Savannah to and from Metro Atlanta.

Across the state of Georgia there are almost 300,000 port-related jobs. The ports also contribute over $62 billion in revenue to Georgia's economy.

After the earthquake in Haiti, the Georgia Port Authority contacted us to see how they could support the relief effort.

Today I want to learn more what improvement should be made to the Harbor Maintenance Trust Fund. We must make sure that it is used for its intended purpose. Our ports must be able to compete internationally. We must move goods, service, and people safer and efficiently.

I look forward to hearing from all of the witnesses. I would like to extend a special welcome to Mr. Jamie McCurry, a former congressional staffer for my good friend and colleague, Congressman Jack Kingston.

And, Mr. Chairman, thank you very much again.

Chairman BOUSTANY. I thank the esteemed ranking member of the Oversight Subcommittee. And now I yield to Mr. Tiberi, the chairman of the Subcommittee on Select Revenue Measures. Mr. Tiberi has been a staunch advocate of our maritime industry, and a member of this committee who has really worked hard to promote job growth and American competitiveness.

Mr. Tiberi.

Chairman TIBERI. I should just end and not even begin, after that introduction. I thank you, Mr. Chairman. It is a pleasure to have the opportunity to hold this joint hearing with you today with our subcommittee. Our members have a lot of interest, as well, in the maritime industry and the maritime issues, and believe today's hearing is an excellent chance to examine how to strengthen our U.S. maritime industry.

I am glad to have the opportunity to join with my friends on the Oversight Subcommittee in examining the Harbor Maintenance Trust Fund. I too agree that it has been mismanaged, and appreciate immensely the leadership shown by Dr. Boustany on this particular issue and issues related to it.

Today's hearing also examines the policy issues surrounding the unique tax structure of the maritime industry. In the past, the Internal Revenue Code has unnecessarily, in my opinion, hindered the growth of the U.S. maritime industry, putting it at a competitive disadvantage, internationally. And while Congress has taken measures over the last decade to correct some of these problems, I believe there is much work to be done.

The Short Sea Shipping Act and the American Shipping Reinvestment Act are two pieces of legislation that stand to improve the maritime industry, help our economy, and create jobs. I look forward to exploring them further with our witnesses today. I thank you again, Dr. Boustany, for your leadership. And I yield back.

Chairman BOUSTANY. Mr. Tiberi, I thank you for your leadership in introducing these very important bills and bringing my attention to those particular tax structure issues that need to be addressed to enhance maritime competitiveness.

And now I yield to my friend from Massachusetts, Mr. Neal, who has also been a staunch advocate of our maritime competitiveness, and improving our trade competitiveness for this country. Mr. Neal?

Mr. NEAL. Thanks very much, Dr. Boustany, and I want to thank you and Mr. Tiberi and Mr. Lewis for calling this hearing

today on maritime tax issues. It is a topic that is particularly important to my home state of Massachusetts.

The ports of Massachusetts have played an important role throughout our history. Plymouth, sometimes known as America's Hometown, is where the Mayflower and the pilgrims landed in 1620. Gloucester is an important fishing port, both today and throughout our history. It is reportedly noted that the first schooner was built in 1713 in Gloucester. And, of course, the Boston Tea Party occurred in the Boston Harbor in 1773.

And today, Massachusetts seaports continue to play an important role as economic drivers. According to my guest this morning, Mike Leone, the director of the Port of Boston, who is testifying with us, American ports help generate almost 30 percent of America's GDP, and support more than 13 million jobs. America's ports provide a vital gateway to international trade by facilitating the transport of cargo around the world. I am delighted that Gulf Stream is locating a presence now in Westfield, Massachusetts. And the role that Westover Air Force Base plays in commercial activity is helpful to this argument today, as well.

I am pleased that we are examining the Harbor Maintenance Trust Fund tax today. Many ports around the country, including in Massachusetts, are in need of maintenance. In fact, the U.S. Army Corps of Engineers estimates that full channel dimensions at the nation's busiest 59 airports are available less than 35 percent of the time. However, even though users of our nation's waterways are paying significant amounts of money into the trust fund to maintain our ports, these dollars are not being spent on the ports and trust fund that last year had a surplus of almost $6.5 billion.

A very key item that needs to be noted as well this morning. I am excited about the prospects of the expansion of the Panama Canal, which will be completed in 2014. What that is going to mean for East Coast shipping is really very exciting. We need to ensure that we will be ready to handle the increased flow of trade and exports that this project is certainly going to generate.

To address this situation I am glad that I put my name as a cosponsor with Chairman Boustany and Representative Courtney's Realize America's Maritime Promise Act. This important legislation will ensure that the revenue from the Harbor Maintenance Tax is used exclusively for harbor maintenance projects.

Again, I want to thank Mike Leone this morning, for coming down from Boston. I was there yesterday to pay my regards to one of the great legends in Massachusetts's recent political history—where we pay great attention to that skill—the passing of Mayor Kevin White, who for 16 years governed one of the most exciting cities in all of the world, Boston. So, I want to thank Mike for his presence today.

And I look forward to hearing from our witnesses. And I want to thank you, Chairman Boustany, for conducting the hearing.

Chairman BOUSTANY. Thank you, Mr. Neal. Now I would like to welcome our very distinguished group of panelists here today, our witnesses.

First we have Mr. Michael Strain. He is commissioner of agriculture and forestry in Baton Rouge, Louisiana, a personal friend of mine and a staunch advocate not only for the agricultural sector,

a national leader in agriculture, but he has also been one who has recognized the importance of our maritime commerce, so that we can ship these agricultural products to foreign destinations.

Next we have Mr. Gary LaGrange, president and chief executive officer of the Port of New Orleans. He is no stranger to this committee. He has testified on our—in our hearings on trade agreements, and certainly understands the importance of all of this with regard to American competitiveness.

Very pleased to have Mr. Steven Fisher as the executive director of the American Great Lakes Port Association. Mr. Fisher, I have been working with Chairman Upton, chairman of the Energy and Commerce Committee. He has spoken very highly of you. And we are pleased that you can be here today to give that Great Lakes perspective on this.

Mr. Morten—is it Arntzen? Mr. Arntzen is president and chief executive officer of the Overseas Shipping [sic] Group, and we are very pleased to have your perspective, as well.

Mr. James McCurry is director of administration for the Georgia Ports Authority. And Mr. McCurry, thank you for being here. We understand the importance of the port in Savannah, and of the work that is being done in Georgia.

And Mr. Michael Leone is port director for the Massachusetts Port Authority. And I want you to know, Mr. Leone, Mr. Neal pushed very hard for you to be a part of this panel today, and I am very pleased that you are here today to give us an East Coast perspective, as well.

So, with that, you will each have five minutes to present your testimony, as is customary, with your full written testimony submitted for the record.

And Mr. Strain, we will begin with you.

STATEMENT OF MICHAEL STRAIN, COMMISSIONER OF AGRICULTURE AND FORESTRY, LOUISIANA DEPARTMENT OF AGRICULTURE AND FORESTRY, BATON ROUGE, LOUISIANA

Dr. STRAIN. Good morning, Mr. Chairman, Members. First of all, thank you for the opportunity to come and spend some time and talk with you. I am testifying today on behalf of the Louisiana Department of Agriculture and Forestry.

My statement is also consistent with the position of the National Association of the State Departments of Agriculture, NASDA, which represents the commissioners, secretaries, and the directors of the state departments of agriculture in all 50 states and in 4 territories. We are, combined, responsible for a wide variety of things such as food safety, but also for fostering the economic vitality and growth in our rural communities.

I am also president of the Southern United States Trade Association. It is a regional trade group that markets products from 14 southern states to foreign markets. We commend you for holding this hearing to discuss the Realize America's Maritime Promise Act, and express our appreciation for allowing us to do this.

I am going to give you compelling reasons to continue to fund efforts to do this. This will boost America's food and agriculture products, our exports, but also will support our small businesses and Americans throughout the United States.

The Mississippi River is the lifeline of transportation for agricultural products in our nation. It's been called America's Superhighway. More than 30 states and 2 Canadian provinces ship products: grain, coal, steel, petroleum, and aggregates, and many other products. It and its tributaries form one of the largest critical inland waterway systems in the nation, supporting about 50 percent of the nation's soybean exports and 60 percent of the total U.S. corn exports. Annually, more than 400 million bushels of soybeans, 1.1 billion bushels of corn, and more than 30 million bushels of wheat are moved by barge to ports along the lower Mississippi River.

As one of the largest single contributors to the nations' gross domestic product, agriculture is critical to our economy. The inability to maintain the Mississippi River at sufficient depths and widths by dredging will have significant impacts to Louisiana agriculture. Agriculture represents more than 85 percent of the surface area of our state, 10 percent of our workforce, 243,000 jobs. The exports from Louisiana grew by more than 15 percent last year, over $20 billion, accounting for more than 16 percent of America's total exports.

In the United States we are speaking about the golden age of agriculture. Last year the American farmer had a profit of over $100 billion, increased exports by almost 20 percent. A positive balance of trade of $37 billion and growing, expected to hit $45 billion. We expect to have $148 billion to $150 billion. One of the only sectors in America with a positive balance of trade.

We look at what's going on worldwide, worldwide: an increase in population of 2.2 billion people, and a greater need of all the products we produce. When you look at food and fiber and energy, these products are shipped worldwide via our water resources.

The great potential for the growth in the economy of America lies in our ability to compete worldwide. We see a growing middle class. The growth in the middle class will almost double in the next 15 years; 95 percent of that growth is outside of the United States, where real incomes are growing. They need our products. We have the products. We can grow those products. But failure to maintain our water systems severely limits our ability in trade.

When you look just at the Port of South Louisiana, one of the largest port systems in the world, over $200 billion in activity when you look from the bridge at the bottom of Baton Rouge to the mouth. When you look at this, three feet now, we have to shortload these ships by three feet of silt. Six thousand ships. That is $18 billion lost, just to those shippers.

Look at the Port of Lake Charles. The waterway gets down to 150 feet wide.

When you look at this, we must invest and dredge these rivers if we are going to double our exports. We have a market that needs our products. We are growing our products. We are selling our products. The shippers are paying the fees to do this.

We have the greatest potential for economic growth and agriculture and in industry we have ever seen in our lifetimes. And what can inhibit it is our inability to move these products. Thank you.

[The prepared statement of Dr. Strain follows:]

House Ways and Means Subcommittee on Oversight to consider
the Realize America's Maritime Promise Act

February 1, 2012

Statement of Dr. Mike Strain, DVM
Commissioner, Louisiana Department of Agriculture and Forestry

Good morning, Mr. Chairman. My name is Dr. Mike Strain and I am the Commissioner of the Louisiana Department of Agriculture and Forestry.

I am testifying today on behalf the Louisiana Department of Agriculture and Forestry. My statement is also consistent with the position of the National Association of State Departments of Agriculture (NASDA). NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the introduction and spread of plant and animal diseases, and fostering the economic vitality of our rural communities.

I am also the President of the Southern United States Trade Association. This is a Regional Trade Group that offers services to help U.S. food and agricultural companies promote their products in foreign markets.

We commend you, Mr. Chairman, and members of the committee, for holding this hearing to discuss the Realize America's Maritime Promise Act and wish to express our appreciation for this opportunity to share our views.

I will provide you with compelling reasons to continue to fund efforts that help maintain the ability of American agriculture, and boost America's food and agricultural exports. By doing so, you will be supporting our farmers, our small businesses, and the Americans that produce these outstanding products.

The Mississippi River is the lifeline for transportation of agricultural products in our nation. The inland waterways navigation system, especially the Mississippi River, is a vital asset in the movement of important commodities such as grain, coal, steel, petroleum and aggregate materials. The Mississippi River and its tributaries form the most critical inland waterway system in the nation, supporting about 50 percent of the nation's soybean exports and 60 percent of the total U.S. corn exports. Annually, about 400 million bushels of soybeans, 1.1 billion bushels of corn and more than 30 million bushels of wheat are moved by barge to ports along the Lower Mississippi River. As one of the largest single contributor to the nation's Gross Domestic Product (GDP), agriculture is critical to our economy and any disruption in commerce will have devastating impacts to the farmers and ranchers who produce our food and fiber.

The inability to maintain the Mississippi River at sufficient depths and widths through dredging will also have significant impact to Louisiana agriculture. Agriculture is the largest sector of our state's economy. Agriculture, forestry and aquaculture comprise over 85 percent of the surface

area of this state, 9.7 percent of our work force, and over 243,000 jobs. Valued at more than $30 billion, agriculture and forestry combined make up one of Louisiana's largest and most economically dependent industries.

Many of Louisiana's commodities are highly ranked at the national level. Our state ranks second in production of aquaculture and sugarcane, third in rice production, fourth in sweet potatoes and sixth in grain sorghum.

Louisiana's agriculture exports grew by a strong 15% last year to $20 billion, accounting for almost 16% of America's total exports. Much of these exports -- such as wheat and other grains -- originate in the midwest but are transloaded and shipped out of our port system. There are more agricultural products from Louisiana and shipped through Louisiana than any other state in the nation. But global demand for Louisiana products, notably soybeans, cotton, and rice, also rose sharply. Louisiana's exports of forest products, including lumber and plywood, were also on the rise.

In August of 2011, United States Department of Agriculture Secrertary Vilsack released the new forecast of U.S. agricultural exports. In this report data confirmed that the current U.S. export forecast for fiscal year 2011 was $137 billion, $22 billion higher than the previous record set in 2008 and $28 billion above 2010. Experts are forecasting that exports for 2012 will remain equally strong and help to support over one million American jobs. The United States is experiencing the three best years of agricultural exports in history.

The passage of the three free trade agreements with Colombia, Panama, and Korea are an important building block in President Obama's quest to double U.S. exports by the end of 2014. Passage of these agreements means over $2.3 billion in additional agriculture exports, supporting nearly 20,000 jobs in the U.S., according to the USDA. Because agricultural exports move in bulk, water-borne freight will grow as goods are carried by barge down the Mississippi river to the Gulf of Mexico. The agreements will particularly increase trade for a range of agricultural products that rely heavily on the Mississippi river system, including soybeans, poultry, rice, cotton, and corn. It is imperative that we keep our waterways open to commerce if we are to see this happen.

In Colombia, the Free Trade Agreement means that almost 70 percent of U.S. agricultural exports will be able to enter duty-free and duties on the remainder will be phased out over time. In Panama, the agreement immediately eliminates tariffs on more than half of U.S. agriculture exports. Under the Korean Free Trade Agreement, almost two-thirds of Korean imports of U.S. farm products will become duty free immediately. The U.S. Commerce Department's International Trade Administration forecasts grain shipments to Colombia and Panama to increase 60% to nearly 6 million tons as a result of the Free Trade Agreements.

With 60 percent growth projected in grain exports alone – not counting feed and other agricultural commodities nor manufactured goods – nearly 1,500 additional barge trips would be added by the Panama and Colombia free trade agreements based on export growth projections from the International Trade Administration. The long term health of U.S. agriculture and the entire economy depends on this nation making the necessary upkeep of our waterways. It would

seem futile to lose out on the advantages of the three Free Trade Agreements -- which took over five years of government and industry's hard work to finally pass – due to our inability to keep our shipping channels open.

In February 2011, the National Association of State Department's of Agriculture (NASDA) unanimously passed a resolution to support "action to fully utilize all funds in the Harbor Maintenance Trust Fund for the purposes of dredging our nation's ports, rivers and waterways to fully meet navigation channel maintenance requirements." NASDA has since been active in recruiting co-sponsors for the RAMP Act and, in July 2011, then-President Leonard Blackham, Commissioner of the Utah Department of Agriculture, submitted a letter to the leadership of the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment supporting passage of the legislation. A lack of action is of concern not only to lower Mississippi River states an upper Mississippi River states, but all ports that utilize the Harbor Maintenance Trust fund to maintain navigation.

In just one generation, there were 100 million more people in America and 2.4 billion more people globally. Ninety-five percent of the increase in the middle class worldwide is outside the United States. Now, these people see other people in the world have access to better foods, and they want it. Our nation's exports of food and agricultural products can continue to be a major success story in these otherwise difficult economic times. This is not the time to cut back on these efforts. It is a chance to take advantage of these global opportunities and put Americans to work.

Neglecting the maintenance needs of the river threatens to raise the cost of transportation in a way that harms farmers, industries and shippers throughout the heartland of America. More importantly, it harms America's international competitiveness and could stifle our nation's farmers and rancher's ability to help meet President Obama's export initiative of doubling exports in five years. Mr. Chairman and members of the committee, I encourage you to support efforts that continue to boost America's food and agricultural exports, that support our farmers, our small businesses, and the Americans that produce these outstanding products and ask for your assistance in securing much needed financial support and funds to our nation's ports and waterways.

I urge you to pass this important legislation.

Chairman BOUSTANY. Thank you, Commissioner Strain.

Mr. LaGrange, you may proceed.

STATEMENT OF GARY LAGRANGE, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE PORT OF NEW ORLEANS, NEW ORLEANS, LOUISIANA

Mr. LAGRANGE. Chairman Boustany, Chairman Tiberi, and Members of the Subcommittee, as the president and chief executive officer of the Port of New Orleans and a former chairman of the American Association of Port Authorities, I appreciate the opportunity that you provided us to highlight the importance of fully accessing the Harbor Maintenance Trust Fund to empower the Army Corps of Engineers to adequately maintain America's ports and harbors.

I want to tell you that the Port of New Orleans enthusiastically supports the Realize America's Maritime Promise, or RAMP, Act. We would like to sincerely thank Chairman Boustany for introducing this legislation. And once enacted, will ensure that the revenue generated through the Harbor Maintenance Tax is used for maintenance of the nation's ports and harbors.

Regrettably, decreased funding for dredging has limited the navigation capacity of the lower Mississippi River, including the New Orleans Harbor, thereby impeding the flow of imports and exports across the United States. In the past year, unusually high water led to the unfortunate flooding of many communities and the settlement of millions of tons of silt and settlement at the mouth of the Mississippi River.

Draft restrictions on vessels transiting the river were imposed, and some vessels ran aground. In fact, 41 vessels ran aground in the last 3 years, and 5 already this year in 2012, in the first 25 days. We worked closely with Congress, the Corps of Engineers, and the shipping community to address this crisis. But one lesson was clear: the Corps of Engineers does not have sufficient funds to properly maintain the lower Mississippi River and other key waterways in this country. The RAMP Act, in our opinion, will go a long way towards addressing the problem and its passage is critical to the nation and the economic recovery of the nation.

I would like to talk for a moment about the economic importance of the Port of New Orleans. As you know, through its direct facilitation of trade and commerce, the Port of New Orleans is one of the primary commercial engines of America. As a container and as a general cargo port, the Port of New Orleans serves the American Midwest through the 14,500-mile inland waterway system of the Mississippi River, and its most critical component, connecting approximately 30 states in the Heartland to international markets.

Our port is served by 50 ocean carriers, 16 barge lines, 75 trucking lines, and all 6 truck-line railroads. And in the past year we have invested a little over a half-a-billion dollars in improvements, in infrastructure improvements.

Because of its geographic location and modern facilities, the Port of New Orleans is uniquely positioned to provide access for American exports for the global market, and to receive imports of the goods and the commodities on which our economy relies. However, our efforts to facilitate international trade are being severely ham-

pered by the lack of reliable dredging of the navigation channels on the lower Mississippi River and throughout the country, completely throughout the country.

The Corps of Engineers estimates that some 30 percent of port calls by commercial vessels are negatively impacted in this manner. To make matters worse, due to the Corps of Engineers's budget constraints, there have been discussions to dredge certain areas of the lower Mississippi River to only 38 feet, where the traditional draft and the project draft is 45 feet. The negative economic impact of such a reduction in draft at the mouth of the Mississippi would be profound.

According to a recent study by Professor Tim Ryan of the University of New Orleans, Louisiana alone could be subject to spending losses of up to $423 million, the elimination of more than 3,800 jobs, and nearly $28 million in state and local tax revenue loss. At the national level, remember, 20 percent plus of all the cargo coming into the United States comes into the lower Mississippi River and the Port of New Orleans.

That said, Professor Ryan estimates that the U.S. economy would face potentially losses of almost $14 billion in spending. More importantly, 38,000 American jobs could lose their jobs [sic]. These losses don't even speak to the greater threat the national economy faces from an inability to maintain America's other maritime transport arteries, which you are going to hear in a minute.

The President has made a strong commitment through his national export initiative to double American exports over the next five years. However, we cannot double exports if we do not have the infrastructure in place.

The users of the nations ports and harbors for years have been paying in to the Harbor Maintenance Trust Fund with the belief that these funds would be used to dredge our waterways. In fiscal year 2010 total receipts of the fund were $1.363 billion. Sixty percent of these receipts were actually used, with a balance of $535 million left over last year. In fact, the fund's uncommitted balance has risen to an estimated $6.1 billion, leaving us in harm's way of losing our trading edge.

I assure that proper use of this surplus, together with the annual revenues deposited to the fund, would solve many of our nation's commercial navigation needs.

So it is imperative that the RAMP Act be enacted into law as soon as possible. Thank you very much.

[The prepared statement of Mr. LaGrange follows:]

Gary P. LaGrange
President and CEO
Port of New Orleans

Testimony before the
Subcommittees on Oversight and Select Revenue Measures
House Committee on Ways and Means

Hearing on Harbor Maintenance Funding and Maritime Tax Issues

February 1, 2012

Chairman Boustany, Chairman Tiberi and Members of the Subcommittees:

As the President and Chief Executive Officer of the Port of New Orleans, I appreciate the opportunity you have provided me today to highlight the importance of fully accessing the Harbor Maintenance Trust Fund to empower the U.S. Army Corps of Engineers to adequately maintain America's ports and harbors so that we can, in turn, preserve and enhance this Nation's economy.

Mr. Chairmen, at the outset, I want to tell you that the Port of New Orleans enthusiastically supports the Realize America's Maritime Promise or "RAMP" Act. We would like to sincerely thank Chairman Boustany for introducing this legislation that, once enacted, will ensure that revenue generated through the Harbor Maintenance Tax is used for the maintenance of the Nation's ports and harbors. Chairman Boustany's bill would unplug the shipping bottleneck that has increasingly clogged the Lower Mississippi River. Regrettably, decreased funding for dredging has limited the navigation capacity of the Lower Mississippi River, including the New Orleans Harbor, thereby impeding the flow of imports and exports across the United States.

In the past year, we have faced unprecedented conditions on the Mississippi River. Unusually high water led to the unfortunate flooding of many communities along the River. And, with that high water came millions of tons of silt and sediment, much of which settled at the mouth of the Mississippi River. As the high water receded, we faced a monumental task of keeping the Mississippi River open for business. Draft restrictions on vessels transiting the River were imposed and some vessels ran aground. We worked closely with Congress, the Corps of Engineers, and the shipping community to address this crisis as best we could. But one lesson was clear: the Corps of Engineers does not have sufficient funds to properly maintain the Lower Mississippi River and other key waterways around this country. As we all know, the Harbor Maintenance Tax is designed to provide this funding, but much of the money deposited

from that tax into the Harbor Maintenance Trust Fund is not being spent on its intended purpose: dredging our commercial waterways. This problem must be resolved in order to promote economic growth throughout the country. The RAMP Act, in our opinion, will go a long way towards addressing this problem. We therefore consider enactment of the RAMP Act to be one of our highest priorities and critical to the Nation's economic recovery. Chairman Boustany, we salute you for your persistent attention to this critical issue and stand ready to do whatever we can to assist you in the passage of this important legislation.

Mr. Chairmen, I'd like to talk for a moment about the economic importance of the Port of New Orleans. As you know, through its direct facilitation of trade and commerce, the Port of New Orleans is one of the primary commercial engines of the Gulf Coast, and serves as a key gateway at the mouth of the Mississippi River system for international and domestic trade. About 380,000 jobs in the United States depend on the cargo that is handled by the Port of New Orleans. Some $37 billion in national economic output is derived from the transportation and manufacturing of goods that flow through our Port. And, as a container and general cargo port, the Port of New Orleans serves the American Midwest through the 14,500-mile inland waterway system, of which the Mississippi River is the most critical component connecting approximately 30 states in the heartland to international markets. The Port of New Orleans is also a port hub for six Class One railroads and the interstate highway system. As a result, our Port is one of America's most intermodal ports – in addition to excellent rail access, the Port is served by approximately 50 ocean carriers, 16 barge lines, and 75 trucking lines. Within the past 10 years, the Port has invested more than $400 million in new state-of-the-art wharves, terminals, expanded marshalling yards, multi-purpose cranes, and transportation infrastructure. Needless to say, because of its geographic location and modern facilities, the Port of New Orleans is uniquely positioned to provide key access for American exports to the global market and receive imports of the goods and commodities on which our economy relies.

However, the Port of New Orleans' efforts to facilitate international trade are being severely hampered by the Corps of Engineers inability to perform necessary maintenance dredging. As sediment accumulates due to decreased dredging, navigation channels on the Lower Mississippi River and throughout the country are narrowing and shallowing to such a degree that commercial vessels are unable to carry full loads into and out of our Nation's ports. The Corps of Engineers estimates that some 30 percent of port calls by commercial vessels are negatively impacted in this manner. To make matters worse, on the Lower Mississippi River, including New Orleans Harbor, the Corps of Engineers traditionally dredged to a depth that would permit vessels with a draft of 45 feet to pass into and out of the river. Due to Corps of Engineers' budget cuts, however, there have been discussions to dredge certain areas of the Lower Mississippi River to only 38 feet of draft.

The negative economic impact of such a reduction in draft at the mouth of the Mississippi River would be profound. According to a recently released study by Timothy P. Ryan, Ph.D, professor of economics at the University of New Orleans, Louisiana alone could be subject to losses of direct and secondary spending of up to $423 million, more than 3,800 jobs and the accompanying $117 million in earnings. Additionally, state and local governments would lose nearly $28 million dollars in tax revenues annually. Decreased dredging of the Lower Mississippi River will not only harm Louisiana's economy, but will damage the Nation's

economy as more than 20% of the United States' maritime commerce passes through the Lower Mississippi River. Professor Ryan estimates that the U.S. economy faces potential losses of almost $14 billion in direct and secondary spending as a result of reductions in exports and cargo handling and higher gas prices should drafts be reduced to 38 feet. More importantly, more than 38,000 American citizens could lose their jobs. These losses, though significant, refer only to the harm done to the U.S. economy by a failure to adequately dredge the navigation canals of the Lower Mississippi River. They do not speak to the additional threat the national economy faces from an inability to maintain America's other critical maritime transport arteries.

Mr. Chairmen, the bulk of the economic damage from failing to meet the dredging needs of the Lower Mississippi River results from the potential decrease in exports from the United States. According to the American Association of Port Authorities, U.S. ports are responsible for moving 99 percent of America's overseas cargo, and more than 13 million Americans are working in port-related jobs. Stakeholders throughout the entire Mississippi River System are engaged in the international trade of agricultural products, mineral resources, and other goods, and rely on a well-maintained, dependable transportation corridor provided by the Mississippi River and its tributaries. Already, Lower Mississippi River pilots are imposing significant operating restrictions on commercial vessels transiting the river's mouth, restrictions that will significantly add costs and delays in the export of American products to international markets. A further reduction in draft of as little as seven feet could result in a decrease in exports of the ten mostly commonly exported commodities by more than 12 million tons, resulting in a potential loss of more than $5 billion in direct spending. When secondary spending is taken into consideration, the total loss due to the reduction of these exports could reach as high as $10.5 billion.

Failure to maintain America's ports and harbors also will interfere with the Nation's trade policies and its ability to meet international demand for its products. The President has made a strong commitment through his National Export Initiative (NEI) to double American exports over the next five years. That effort will be seriously undercut if we do not provide our trading partners and related maritime transportation interests with the assurance that our U.S. ports and waterways will be properly maintained. Stated another way, we cannot double exports if we do not have the infrastructure in place to handle the increased volume of trade. Demand for exports of American commodities and goods already is expected to increase dramatically as a result of the recently passed Free Trade Agreements with South Korea, Panama, and Colombia. America's ability to meet this increased demand will be inhibited if its ports and harbors are not up to the task.

Additionally, the United States must ensure it is fully prepared to handle the increased flow of trade that the expected completion of the Panama Canal expansion project in 2014 will generate. More than 60 percent of the current vessel traffic passing through the Panama Canal originates from or is enroute to ports on the Gulf and East Coasts of the United States. While the Port of New Orleans has undertaken a number of specific measures to handle increased commercial vessel traffic as a result of the Panama Canal expansion, our country needs to ensure that the Lower Mississippi River navigation channel and other critical waterways are properly maintained by the Corps of Engineers to meet the increased commercial vessel transport needs for United States exports. At a time when other countries are dedicating significant resources to

maintaining and improving their maritime infrastructure to meet increasing international trade demands, the United States inexplicably is allowing its navigation canals to deteriorate to the point where their full dimensions are not fully accessible approximately 70 percent of the time.

Mr. Chairmen, the users of the Nation's ports and harbors for years have been paying taxes into the Harbor Maintenance Fund for this very purpose. Far more funding is deposited in the Harbor Maintenance Trust Fund each year than is spent on vital dredging and other maintenance needs. In fact, the Fund's uncommitted balance has risen to an estimated $6.1 billion. In fiscal year 2010, total receipts of the Fund were $1.363 billion. However, only 60 percent of those receipts were used for authorized dredging and maintenance purposes, leaving over $535 million unspent. It is critically important that our Nation's ports are able to adequately handle the deep draft commercial vessels that are the principal "vehicles" for the facilitation of international trade and I assure you both, Chairman Boustany and Chairman Tiberi, that proper use of the surplus funds in the Harbor Maintenance Trust Fund, together with the annual revenues deposited into that Fund, would solve many of our Nation's commercial navigation maintenance needs.

It is unconscionable that a $6.1 billion surplus has been allowed to accumulate in the Harbor Maintenance Trust Fund. We have immediate dredging needs that could and should be addressed with those surplus funds. So, it is imperative that the RAMP Act be enacted into law as soon as possible.

Chairman Boustany and Chairman Tiberi, thank you for allowing me to appear before you today, and I look forward to any questions that you or the Subcommittee members may have.

Chairman BOUSTANY. Thank you.

Mr. Fisher, you may proceed.

STATEMENT OF STEVEN A. FISHER, EXECUTIVE DIRECTOR, AMERICAN GREAT LAKES PORTS ASSOCIATION, WASHINGTON, D.C.

Mr. FISHER. Thank you, Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, and Ranking Member Neal. And I appreciate this opportunity to appear this morning before the subcommittees to discuss the Harbor Maintenance Tax, and specifically to discuss its impact on the development of short-sea shipping services.

As you mentioned, I am Steve Fisher, executive director of the American Great Lakes Ports Association. Our organization represents the major commercial ports on the U.S. side of the Great Lakes. Maritime commerce plays a critical role in the economy of our region.

Last year we completed a massive economic impact analysis of the entire Great Lakes navigation system, both in the U.S. and Canada. It's a binational system. That study revealed that there are 227,000 jobs supported in the navigation system in our region; 128,000 of those jobs are in the United States, the rest in Canada. The navigation system generates $33.5 billion in business revenue; 18.1 billion of that amount is in the United States. So it has a significant impact on the region, and it is an economic driver in the region.

Before I discuss the Harbor Maintenance Tax and its impact and relationship to short-sea shipping services, Chairman Boustany, I want to thank you for your considerable efforts on the RAMP legislation. H.R. 104 is critically important to all the ports who are represented here today, and the Great Lakes ports, as well. In the Great Lakes region, we are experiencing a dredging crisis. There is a $200 million dredging backlog at Great Lakes ports throughout the region. That amounts to more than 16 million cubic yards of sand and silt that are choking our harbors and our region that still needs to be removed.

Last year, in fiscal year 2012 [sic], of the 52 federally-authorized harbors in our region, 34 required dredging. Only 11 were budgeted to be dredged by the Corps of Engineers. The rest were left to silt up with sand, and that affects their draft and the efficiency of those harbors.

Last year we had two small ports, one in Michigan and one in Illinois, almost close. In fact, the Corps of Engineers had notified local officials that those harbors would be closing last year. Fortunately, the Corps found some last-minute end-of-year money and was able to come in at the last minute and do some dredging and keep those harbors open.

There is still commercial businesses on those two small harbors. There is still industries on those harbors. And I am pleased they were able to keep them open. But next year will be another challenge.

As you mentioned, the Harbor Maintenance Tax was enacted by Congress in 1986 to be a user fee on the maritime industry for maintenance of our nation's ports by the U.S. Corps of Engineers.

The tax was originally set at $.04 per $100 of cargo value. It is a value-based tax, it is an ad valorem tax. In 1990, the tax was increased to $.125 per $100 of cargo value. The tax is not paid by the port, nor is it paid by the ship owner. The tax is paid by the owner of the cargo in the ship. In 1998—the tax originally applied to both exports, imports, and domestic cargo. In 1998 the U.S. Supreme Court struck down the tax as it applies to exports. So today it applies to imported cargo and cargo moved domestically between U.S. ports.

The structure of the tax has had—it is an important tax, and it is important for the maintenance, as my colleagues have mentioned, of our nation's ports. But the structure of the tax has had some unfortunate side effects. In a sense, the user fee has created a disincentive, in some regards, for greater use of our nation's waterways. The United States is blessed with more than 25,000 miles of waterways, navigable waterways. This is a tremendous transportation asset for our country.

At the same time—many of these waterways, unfortunately, are under-utilized. At the same time, our country is blessed with about 100—several hundred thousand miles of highways. These highways, unfortunately, are over-utilized, and are characterized by a lot of severe highway congestion.

Transportation planners in recent years have been trying to look at ways to make better use of our under-utilized waterways to relieve some of the highway congestion that we experienced in most major American cities. One of the greatest impediments to making better use of our waterways is the U.S. Harbor Maintenance Tax.

Throughout the nation there are entrepreneurs in the maritime industry trying to establish new short-sea shipping services. These are regional shipping services between U.S. coastal ports that are being explored as a means of relieving highway congestion. The Harbor Maintenance Tax, as I mentioned, acts as a disincentive to use waterborne transportation, and private companies that have to ship goods tend to prefer road and rail transportation in lieu of water transportation for the movement of domestic cargo.

The tax also has a discriminatory double-taxation effect on transshipped cargo. For example, a shipping container brought into a coastal port is assessed the Harbor Maintenance Tax when it is offloaded from a ship. If the transportation company would like to then reload that shipping container onto a second vessel for delivery to a second coastal port, that same cargo is taxed a second time. And thus, the transportation company is encouraged, in fact, to not move that cargo by water. But rather, once it arrives in the United States, to keep it on road. That simply exacerbates highway congestion and leads to greater gridlock in our major cities.

Chairman Tiberi, we very much support your legislation, H.R. 1533, which will provide a narrow exemption to the U.S. Harbor Maintenance Tax for short-sea shipping services in the United States, specifically for non-bulk cargo.

The legislation has been scored by the Joint Committee of Taxation, and it has a de minimum impact on revenue into the trust fund. To give you a relationship, there was more than $1.4 billion collected from the Harbor Maintenance Tax last year. This bill,

Chairman Tiberi's bill, will result in the loss of only $2 million a year of revenue to the trust fund.

I would like to recognize the strong support the legislation has had by many members of this committee and the House Transportation Committee, including Chairman Camp, Ranking Member Levin, Chairman Mica of the Transportation Committee, and Ranking Member Rahall. Tremendous support for the legislation.

We believe enactment of your bill, sir, will help remove the impediment, help relieve highway congestion, help create more maritime services and more jobs in the maritime industry, and help relieve highway congestion, and enable our economy to grow.

Thanks very much for letting me join you today.

[The prepared statement of Mr. Fisher follows:]

TESTIMONY OF
STEVEN A. FISHER
EXECUTIVE DIRECTOR
AMERICAN GREAT LAKES PORTS ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON SELECT REVENUE MEASURES
AND
SUBCOMMITTEE ON OVERSIGHT

HOUSE COMMITTEE ON WAYS AND MEANS

Joint Hearing on Maritime Tax Issues
February 1, 2012

Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, Ranking Member Neal, and members of the subcommittees, I appreciate this opportunity to testify on the U.S. Harbor Maintenance Tax and the development of short sea shipping services in the United States.

The American Great Lakes Ports Association represents the public port authorities on the United States side of the Great Lakes. Each of our member port agencies is a division of state or local government, or an independent agency created by state statute. As a group, and individually, Great Lakes ports work to foster maritime commerce in our region and economic development in their communities. A 2010 economic impact study determined that Great Lakes shipping supports more than 128,000 jobs in the United States, generating $18.1 billion in business revenue, and contributing $2.7 billion in federal, state and local taxes.

We want to thank you for holding this important hearing on harbor maintenance funding and the Harbor Maintenance Tax. While I am appearing today primarily to focus on short sea shipping, I want to make clear that our organization and, indeed, the entire Great Lakes maritime industry, supports Congressman Boustany's legislation (H.R. 104) to liberate the Harbor Maintenance Trust Fund and ensure that user fee dollars are being spent for their intended purpose - dredging the nation's harbors.

While the Harbor Maintenance Tax is an important source of user fee revenue, its structure has had several unfortunate side effects. In some regards the tax has actually been an impediment to full use of our nation's waterways. The Great Lakes ports wholeheartedly support H.R. 1533, legislation sponsored by Chairman Tiberi, which will provide a narrow exemption to the U.S. Harbor Maintenance Tax to stimulate so-called short sea shipping services and remove the discriminatory double taxation of transshipped intermodal cargo.

I would also like to recognize the support this legislation has received from Ways and Means Committee Chairman, Dave Camp, Ranking Member, Sander Levin, Transportation and Infrastructure Committee Chairman, John Mica, and Ranking Member, Nick Rahall - all of whom have cosponsored this legislation in either the 111th or 112th Congress.

Short Sea Shipping

In recent years, transportation planners have been struggling to identify ways to move people and goods more efficiently. Congested highways - particularly in urban areas - hinder the flow of commerce and create a drag on the nation's economy. Likewise, rail capacity is limited in some areas. The expansion of highway and rail infrastructure is expensive, difficult and time consuming. Today, there is a real concern that our nation's transportation system is constraining economic growth. The European Union confronted these same challenges a decade ago and found relief in greater utilization of its waterways for the movement of freight. America's waterways offer similar opportunities. For example, in the Great Lakes region, our navigation system operates at only 50-60 percent of its capacity. At the same time, many of the region's highways are severely congested.

In concept, short sea shipping refers to the movement of freight regionally between ports as a means of complementing the nation's highway and rail systems with the goal of relieving congestion. This same concept is also referred to as "marine highways."

In 2007, Congress recognized the potential benefits of short sea shipping and directed the U.S. Department of Transportation to establish a short sea transportation program to stimulate new regional shipping services. Subsequent legislation authorized a marine highway grant program. The resulting "America's Marine Highway Program" is administered by the U.S. Maritime Administration and provides grants to assist with planning and development of new short sea shipping services.

Despite these efforts, a key impediment to the establishment of short sea shipping services is the U.S. Harbor Maintenance Tax. Because the Harbor Maintenance Tax is only assessed on cargo if it moves by ship, the tax serves as a disincentive to move freight by water. As such, the tax actually encourages greater highway congestion and resulting fuel consumption and air pollution.

Harbor Maintenance Tax

The U.S. Harbor Maintenance Tax (HMT) was enacted by Congress in the Water Resources Development Act of 1986 (P.L. 99-662). The HMT is an "ad valorem" tax, meaning a tax on the value of cargo. Originally, Congress set the HMT at 0.04 percent of the value of cargo carried on ships. In 1990, the tax was increased to

0.125 percent of the value of cargo. The tax is not paid by the vessel owner, nor the port, but rather, by the owner of the cargo in each ship.

While the original tax applied to all cargo transported by ship (with a few exceptions), in 1998 the Supreme Court struck down the taxation of export cargo as unconstitutional. Thus, today, the Harbor Maintenance Tax is assessed on cargo transported between any two U.S. coastal ports - including Great Lakes ports - and cargo imported to U.S. ports from other countries. The tax is not assessed on export cargo.

It is important to note that the Harbor Maintenance Tax is also not assessed on shipments through inland river ports. Congress has enacted a separate user fee for the river barge industry. (Commercial barge operators pay a federal fuel tax).

The purpose of the HMT is to generate revenue from port users for port maintenance conducted by the U.S. Army Corps of Engineers. Specifically, the Army Corps of Engineers maintains federal shipping channels by conducting periodic dredging. Such dredging is necessary to remove sand and silt that naturally accumulate.

Harbor Maintenance Tax receipts are placed in the Harbor Maintenance Trust Fund, which serves as a source of revenue for the Army Corps of Engineers' dredging budget. However, there is no direct link between the inflow of tax revenue to the federal government and the outflow of dredging funds. Tax collections are determined by the volume of trade, which has grown over the last two decades. Expenditures are determined by the Congressional budget and appropriations process, which is increasingly constrained. For this reason at the end of FY2011, there was an excess balance of $6.28 billion in the Harbor Maintenance Trust Fund.

Negative Impacts

As stated earlier, the Harbor Maintenance Tax plays an important role in supporting the nation's marine transportation system; however, the structure of the tax has caused some unfortunate negative side effects. Specifically, the tax has become a disincentive for companies to ship goods by water when other options exist. This dynamic manifests itself in two primary ways.

> First, the tax discourages waterborne transport of domestic freight between U.S. cities. For example, the I-95 corridor along the east coast of the United States is heavily congested, particularly in urban areas. This key artery handles more than 10,000 trucks a day carrying 5.3 billion tons of freight annually. Despite this crush of commerce, there is very little movement of freight by water between east coast cities.
>
> Second, the tax creates a discriminatory double taxation of intermodal cargo transshipped to feeder vessels. For example, when a shipping container arrives at a U.S. coastal port from overseas, the cargo is assessed the Harbor

Maintenance Tax upon its arrival. Should that same cargo then be transshipped and loaded onto a second vessel for delivery to a second U.S. port, that cargo is taxed a second time. To avoid double taxation, transportation companies avoid domestic coastal shipping and instead choose to move freight to its final destination by road. The resulting diversion of cargo to local highways only exacerbates highway congestion and gridlock.

Legislative Solutions

A number of bills have been introduced during the last three Congresses to fine-tune the Harbor Maintenance Tax, eliminate double taxation of cargo, and stimulate short sea shipping:

110th Congress: H.R. 1499 (Cummings)
111th Congress: H.R. 3486 (Higgins), H.R. 528 (McHugh), H.R. 638 (Cummings)
112th Congress: H.R. 1533 (Tiberi)

These measures have the following common elements:

Geographic Scope of Exemption:

Each legislative proposal provides a narrow exemption to the Harbor Maintenance Tax for non-bulk cargo transported between any two ports in the United States. The legislation also exempts non-bulk cargo transported between Canada and the United States in the Great Lakes - St. Lawrence Seaway System. In this regard, the legislation acknowledges the unique bi-national economy of the Great Lakes region.

Types of Cargo Exempted:

The purpose of the legislation is not to provide a tax break for those currently paying the tax, but rather, to remove the tax as a disincentive. For this reason, the legislation specifically targets "non-bulk" cargo for exemption. Such cargo would include shipping containers, steel products, forest products, large machinery, etc. Because the HMT discourages the shipment of non-bulk cargo by water, there generally is no such activity today.

To the contrary, bulk cargo is often shipped by water. Such cargo is defined as loose, unpackaged products such as coal, oil, grain, salt, iron ore, etc. Due to its quantity and weight, it is often impractical to transport bulk cargo by other means. The owners of these cargoes currently pay the HMT. They would continue to pay the HMT under the terms of the legislation.

Cost:

The Joint Committee on Taxation's revenue estimate on this proposal indicates that the legislation is generally successful in its focus. More than $1.4 billion of Harbor Maintenance Tax revenue was collected during 2011. The narrow exemption provided in the legislation only results in a loss of $2 million annually for the Treasury.

Detroit-Windsor Truck Ferry

There is perhaps no better "poster boy" for the Harbor Maintenance Tax problem than Greg Ward. Mr. Ward operates a small truck ferry across the Detroit River between Detroit, Michigan and Windsor, Ontario. The ferry's primary customers are trucks carrying hazardous materials (such as gasoline and chemicals) across the border. For homeland security reasons, hazmat trucks are prohibited from using the nearby Ambassador Bridge.

More than 9,000 trucks cross the Ambassador Bridge on an average day. At times of peak congestion, delays may exceed 4 hours to make the crossing. Despite such delays, trucking companies refuse to utilize the Detroit Windsor Truck Ferry as an alternative for fear of being assessed the Harbor Maintenance Tax. Mr. Ward has marketed his service to many trucking companies, but none are interested. The tax disincentive is too great.

Throughout the United States other maritime entrepreneurs are exploring new short sea shipping services. These include services in Southern California, San Francisco Bay, the Gulf of Mexico, in the Pacific Northwest and along the East Coast. We have had at least five new services under evaluation in the Great Lakes. In each instance, these services will supplement and complement the nation's highway and rail network, ease traffic congestion, cut fuel consumption, and reduce greenhouse gas emissions.

For these reasons, a number of national organizations have endorsed elimination of the Harbor Maintenance Tax on domestic short sea shipping services. These organizations include the American Association of Port Authorities, the AFL-CIO, the American Waterway Operators, International Longshoremen's Association, International Organization of Masters, Mates & Pilots, Marine Engineers' Beneficial Association, American Maritime Officers, and Seafarer's International Union.

Chairman Tiberi, we are thankful for your leadership on this issue, and let me stress that Ohio's Great Lakes ports are - at this very time - developing short sea shipping projects that will, in part, be dependent on the success of your legislation. These new shipping services will create well-paying jobs for Ohio longshoremen and others in the maritime sector.

Thank you for inviting me to participate in today's hearing.

Chairman BOUSTANY. Thank you, Mr. Fisher.

Mr. Arntzen, you may now proceed.

STATEMENT OF MORTEN ARNTZEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, OVERSEAS SHIPHOLDING GROUP, NEW YORK, NEW YORK

Mr. ARNTZEN. Chairman Boustany, Chairman Tiberi, Ranking Member Neal, Ranking Member Lewis, and Members of the Subcommittee, thank you for convening this important hearing on tax matters facing the maritime industry. My name is Morten Arntzen, I am president and chief executive officer of Overseas Shipholding Group. We are, by far, the largest U.S. shipping company, a global leader in energy transportation. At the end of this last year we owned 116 U.S. flag and foreign-flagged ships. We employ about 3,600 people, and last year had revenues in excess of $1 billion.

The U.S. maritime industry is critical to our economic well-being. Today there are more than 40,000 vessels in the domestic maritime fleet, comprised of some of the most technologically-advanced vessels in the world. It is estimated that the U.S. maritime industry currently employs approximately 500,000 workers.

The participants in the U.S.-flag industry continue to invest in the expansion and modernization of the U.S. fleet. We are not sitting still. For example, during the past year, OSG took delivery of the last of a series of 12 double-hulled Jones Act anchors constructed for us at Aker Philadelphia Shipyard, a huge investment that created thousands of shipbuilding jobs, and will create thousands more relating to the vessels' operation, maintenance, and commercial use.

This 12-ship vessel series that we had constructed at the Aker Philadelphia yard, the site on which the original Philadelphia Naval Yard was founded by Benjamin Franklin in 1787, constituted the largest commercial shipbuilding order in the United States since the end of World War II.

Despite the successes of the U.S. maritime industry, we face severe competition and difficult market conditions. The last three years have been very challenging. Moreover, as a highly capital-intensive industry, we have very substantial funding needs. U.S. shipping companies simply cannot thrive if we are burdened with Tax Code provisions which do not apply to other U.S. corporations, or if access to capital, particularly our earnings, is impeded.

The American Shipping Reinvestment Act, or ASRA, would correct a decades-old provision in our Tax Code law that singles out U.S. shipping companies for less favorable treatment than other U.S. businesses, and impedes our access to our own earnings. As a result, shipping companies like OSG have been denied access to their own capital that could be used here in America.

The technical aspects of ASRA are detailed in the written testimony which I have submitted to the subcommittee. In short, due to Tax Code provisions enacted in 1975, U.S. shipping companies must keep the amounts earned by their foreign subsidiaries between 1975 and 1986 invested in foreign shipping assets or face a severe tax penalty. ASRA would repeal this.

Enactment of ASRA will allow U.S. shipping companies to redeploy funds currently sent abroad for use here at home. ASRA will

help U.S. shipping companies make investments in their U.S.-flags fleet, as well as vessels that support homeland security and the military.

Prior to the passing of the Jobs Creation Act of 2004, we committed to a significant U.S. investment program if the Act passed, which it did. Since that Act was passed, we have invested close to $2 billion in new and upgraded double-hull tankers and articulated tug barges. As we have discussed, as with members of the committee the last couple of years, we committed to continuing to invest in our U.S.-flag business. And we have. Since January 2009 we have invested approximately $500 million in our U.S.-flag segment. The proof is in the pudding.

I am deeply grateful for the leadership of Chairman Tiberi and Congressman McDermott, the lead sponsors of ASRA, as well as Chairman Boustany, Congressmen Roskam, Larson, Herger, Nunes, Rangel, Schock, who all have cosponsored the legislation.

We in the maritime sector look forward to working closely with the chairman and members of this subcommittee to ensure prompt passage of this important legislation.

Thank you again for the opportunity to testify today.

[The prepared statement of Mr. Arntzen follows:]

Testimony of

Morten Arntzen

President and Chief Executive Officer
Overseas Shipholding Group, Inc.

on

H.R. 1031, the "American Shipping Reinvestment Act of 2011"

Presented at the

House Ways and Means Committee Subcommittee on Oversight

and

House Ways and Means Committee Subcommittee on Select Revenue Measures

Hearing on

Maritime Tax Issues

February 1, 2012

Chairman Boustany, Chairman Tiberi, Ranking Member Neal, Ranking Member Lewis and members of the Subcommittees, thank you very much for convening this important hearing on tax issues facing the maritime sector.

My name is Morten Arntzen, and I am President, Chief Executive Officer, and a Board member of Overseas Shipholding Group, Inc.

OSG is a market leader in global energy transportation services. As of December 31, 2011, OSG owned and operated an international-flag and U.S.-flag fleet of 116 vessels made up of 111 operating vessels, aggregating 10.9 million deadweight tons and 864,800 cubic meters, and five vessels under construction. OSG has approximately 3,600 employees and had 2011 shipping revenues of over $1 billion.

The U.S. maritime industry is critical to our economic well-being and our homeland and national security. A recent PricewaterhouseCoopers study for the Transportation Institute about the U.S. domestic maritime industry found that the industry overall contributed more than $100 billion in economic output to the domestic economy and employed nearly 500,000 workers. Today, there are more than 40,000 vessels in the domestic maritime fleet, comprised of some of the most technologically advanced vessels and other assets in the world.

The technological advances which have resulted from that massive commitment of capital have greatly improved the flow of cargo, resulting in virtually seamless movement of goods from origin to destination anywhere in the world.

The U.S.-flag industry also continues to invest in the expansion and modernization of the fleet. For example, during the past year OSG took delivery of the last of the last of twelve Jones

Act ships constructed for us by Aker Philadelphia Shipyard, Inc., a huge investment that created thousands of U.S. shipbuilding jobs, and will create thousands more relating to the vessels' operation, maintenance, and commercial use. The construction of these ships at Aker represented the largest commercial shipbuilding order since World War II.

OSG also has made substantial investments in its U.S.-flag international fleet, which has been described by the Department of Defense's U.S. Transportation Command as "a vital element of our military's strategic sealift and global response capability." These investments help to sustain a U.S. shipbuilding industrial base, a pool of American seafarers and a fleet of U.S.-flag vessels for time of war or national emergency.

OSG and the U.S. maritime sector also play a key role in maintaining a vibrant U.S.-owned international shipping fleet which may be called into service for our nation's defense. American-owned companies' international ships are part of what is called the Effective U.S. Controlled Fleet ("EUSC fleet"), that is, the fleet of merchant vessels, registered in certain foreign nations, that are available for requisition, use or charter by the U.S. government in the event of war or national emergency. However, a 2002 study commissioned by the Department of Defense and performed by professors at the Massachusetts Institute of Technology found that the EUSC fleet dropped by 38 percent in terms of numbers of ships and nearly 55 percent in terms of deadweight tonnage between 1986 and 2000. Today, OSG's ships constitute a critical component of the EUSC fleet.

Despite the successes of the U.S. maritime industry, and notwithstanding the critical role U.S. shipping companies play in our nation's economy and national defense, we face severe

competition and challenging market conditions. Moreover, as a highly capital-intensive industry, we have very substantial funding needs. U.S. shipping companies simply cannot thrive if we are burdened with tax code provisions which do not apply to other U.S. corporations, or if access to capital, particularly our own earnings, is impeded.

A recent Lexington Institute study on the contributions of the domestic maritime industry to U.S. security found that "the greatest danger to the role and function of the United States as a seafaring nation is the decline of its maritime industry and merchant marine." I am here to testify today because OSG wants to do its part to keep the U.S. maritime industry healthy. My testimony focuses H.R. 1031, the "American Shipping Reinvestment Act of 2011", which would correct an antiquated provision in current law that singles out U.S. shipping companies for less favorable treatment than other U.S. businesses, and impedes our access to our own earnings. As a result, that flaw in the tax code has impeded shipping companies like OSG from having access to their own capital, funds that otherwise could be used here in America.

By way of background, as a general rule, U.S. corporations are permitted to defer U.S. taxation on their foreign subsidiaries' income. Over thirty years ago, in 1975, section 955 was added to the Internal Revenue Code. Section 955 provided that U.S. shipping companies could defer immediate taxation on their foreign subsidiaries' earnings from shipping operations only if those earnings were reinvested abroad in qualified foreign shipping assets.

The Tax Reform Act of 1986 made matters even worse by ending deferral altogether for shipping income earned by foreign subsidiaries of U.S. shipping companies, even if reinvested in foreign shipping assets. The loss of deferral devastated U.S. shipping over the next two decades.

Over time, Congress recognized the extent of that damage. To help revive U.S. shipping, the American Jobs Creation Act of 2004 ("JOBS Act") restored deferral for shipping income. This change strengthened our balance sheet and allowed us to embark on the largest U.S. shipbuilding effort since World War II.

That 2004 law also lowered the tax barriers that prevented U.S. companies which did business internationally from bringing foreign earnings earned prior to 2004 back for investment in the U.S. However, because the JOBS Act failed to address the problems created by enactment of section 955 thirty years earlier, shipping companies could not benefit from those lowered tax barriers. As a result, U.S. shipping companies were denied an opportunity that the JOBS Act afforded all other American corporations, and the foreign earnings reinvested in foreign shipping assets before 1987 remained stranded abroad.

Because section 955 remains law, U.S. shipping companies still must maintain investments in foreign shipping assets made decades ago, pre-1987. Any net decrease in those investments results in an immediate tax. This vestigial quirk in the tax law has caused capital of U.S. shipping companies to be left offshore, effectively preventing those companies from investing their earnings back into the U.S. economy. Legislation is needed to fix that problem for U.S. shipping companies, and permit those companies to redeploy their pre-1987 earnings in the U.S.

The American Shipping Reinvestment Act, or "ASRA", would repeal section 955, and allow U.S. shipping companies to bring home pre-1987 earnings that are stranded overseas by

affording U.S. shipping companies the same tax treatment on those earnings as the 2004 Act already extended to all other U.S. corporations with foreign subsidiaries.

Enactment of ASRA will allow U.S. shipping companies to be treated the same as all other companies were treated in the JOBS Act, giving them the ability to redeploy funds currently stranded abroad for use here at home. ASRA will help U.S. shipping companies make investments in the U.S.-flag fleet, as well as vessels that support homeland security and the military. ASRA also will help create and sustain thousands of American jobs in the shipbuilding, seagoing and related trades. More generally, by freeing up needed capital for the maritime sector, the legislation will provide an immediate economic boost in the short-term, while creating lasting benefits for the economy in the long-term.

For all those reasons, the American Shipping Reinvestment Act has earned broad, bipartisan support in the House and the Senate. It is also supported by U.S. maritime labor, U.S. shipyards, state maritime academies and U.S. shipping companies.

I am deeply grateful for the leadership of Chairman Tiberi and Congressman McDermott, the lead sponsors of ASRA, as well as Chairman Boustany and Congressmen Roskam and Schock, the members of the Subcommittees who have cosponsored the bipartisan legislation. We in the maritime sector look forward to working closely with the chairmen and members of the Oversight and Select Revenue Measures Subcommittees to ensure prompt passage of this important legislation.

Thank you again for the opportunity to testify today.

Chairman BOUSTANY. Thank you, Mr. Arntzen.

Mr. McCurry.

STATEMENT OF JAMES C. MCCURRY, JR., DIRECTOR OF ADMINISTRATION, GEORGIA PORTS AUTHORITY, GARDEN CITY, GEORGIA

Mr. MCCURRY. Chairman Boustany, Ranking Member Lewis, Chairman Tiberi, and Ranking Member Neal, distinguished Members of the Subcommittees, my name is Jamie McCurry, director of administration for the Georgia Ports Authority. I am very pleased to offer comments on behalf of the GPA regarding harbor maintenance funding and, in particular, the Harbor Maintenance Trust Fund.

If I had to summarize my presentation in the shortest way possible, it would be to say that this issue is about jobs. It is about preventing the waste of federal tax dollars already invested. And it is about opening the door to a proven pathway to economic growth.

The world economy today is driven by international trade, and the U.S. economy is heavily dependent on exports and imports. We cannot win in that marketplace if we do not have 21st century resources. To be competitive in international commerce, our U.S. port infrastructure must itself be competitive in its ability to handle the current generation of ships in the most efficient way, and to be able to accept the new generation of vessels that will come to dominate world trade.

As Mr. Lewis noted, in Georgia deepwater ports and inland barge terminals support approximately 300,000 jobs annually and billions in revenue, tax income, and personal income to Georgians. Beyond the state, Georgia's port activity is a critical economic driver for the southeast, sustaining tens of thousands of jobs in the neighboring states of South Carolina, North Carolina, Tennessee, Alabama, Florida, and beyond.

Georgia's ports contribute to over 3.5 billion in federal tax generation annually. Significantly, the Port of Savannah was the second-busiest U.S. container port for the export of American goods by tonnage in fiscal year 2011. It also handled 8.7 percent of all U.S. containerized cargo volume, and 12.5 percent of all containerized exports.

Regrettably, in Georgia we have seen the direct consequences of not fully utilizing the Harbor Maintenance Trust Fund with the needed maintenance dredging. One year after completing a $120 million project to deepen the Brunswick Harbor to 36 feet, inadequate federal O&M funding resulted in channel dimensions of less than authorized depth and width. If not for the availability of stimulus funds in 2010, the Brunswick Harbor would likely be at predeepening dimensions today, thereby wasting the federal and state investment in a project completed just five years ago.

Auto makers exported and imported over 465,000 vehicles through the Port of Brunswick in fiscal year 2011, and the port serves as a major conduit for the export of bulk agricultural products throughout the southeast. Nonetheless, save for the 2010 stimulus money, Brunswick remains substantially underfunded annually, and harbor depth and width again risk deterioration if oper-

ations and maintenance funding is not increased. The Army Corps of Engineers estimates current Brunswick Harbor maintenance needs to be about $16 million annually. Yet typically, annual funding has been $3 million.

Additionally, the Port of Savannah has experienced challenges due to a lack of adequate O&M funding, where the Corps estimates current Savannah maintenance needs to be approximately $30 million annually, yet typical annual O&M funding has been about $13 million annually.

With such limited resources available, the Corps has at times only been able to maintain the center portion of the channel in faster shoaling areas, and for maintaining the primary turning basins. If the typical recent funding levels in Brunswick and Savannah are not increased, shoaling may ultimately result in channel restrictions being imposed by the U.S. Coast Guard. Such restrictions would limit access to large military and commercial vessels into the port.

Beyond simply maintaining our harbors, we must also recognize the pressing need to invest in harbor-deepening projects required to serve the increasing size of vessels calling on U.S. ports.

Completion of the Savannah Harbor Expansion Project, or SHEP, as we call it, is critically important to the continued economic recovery and growth in the southeastern U.S. and the country, as a whole. Savannah serves a large percentage of the U.S. population, including some 21,000 companies, with operations collectively in all 50 states. In fact, Savannah was responsible last year for moving more than 18 percent of all East Coast containerized trade. In addition, more than 50 percent of all containers going through Savannah are exported U.S. goods.

The Savannah project has a projected benefit-to-cost ratio that well exceeds four to one. And the Corps study has shown that it will create $150 million in annual benefits to the nation. That is a perfect example of a way to leverage taxpayer dollars to provide both new jobs, new tax revenue, all through increased economic activity.

Today, due to the restricted depth, nearly 80 percent of container ships calling the Port of Savannah are forced to take on a lighter load or wait for high tide to sail into and out of port, and sometimes both. This already challenging situation will soon worsen, when the Panama Canal expansion is complete, and begins sending ships to Savannah and other East Coast ports. They are as much as three times the capacity of those current—those ships currently able to transit the canal.

In closing, I submit that we cannot take for granted the importance of our nation's ports and harbors. They have too often been the invisible infrastructure that is easily forgotten in times of economic stress. However, their importance to the U.S. economy cannot be overstated. We must not only continue to invest in their ongoing maintenance, but also in the expansion programs necessary to ensure their competitiveness in the modern global marketplace.

Again, I appreciate the opportunity to be with you today, and I look forward to any questions.

[The prepared statement of Mr. McCurry follows:]

Georgia Ports
Authority

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Testimony of James C. McCurry, Jr.

Director of Administration
Georgia Ports Authority

For the Record of the
United States House of Representatives
Ways and Means Committee
Subcommittee on Oversight and Subcommittee on Select Revenue Measures
Hearing: "*Harbor Maintenance Funding and Maritime Tax Issues*"

February 1, 2012 – 9:30 a.m.
Longworth House Office Building

Chairman Boustany and Ranking Member Lewis, Chairman Tiberi and Ranking Member Neal and distinguished members of the Subcommittees on Oversight and Select Revenue Measures, I am pleased to offer for the record comments on behalf of the Georgia Ports Authority regarding harbor maintenance funding and, in particular, the Harbor Maintenance Trust Fund. The Georgia Ports Authority is an entity of the government of the State of Georgia, and we own and operate the state's deepwater terminals in Savannah and Brunswick.

As you know, with increasingly larger ships transiting domestic and international waters, maintenance dredging and expansion of deep-draft navigation channels are escalating concerns for United States ports and the customers we serve. The constantly developing international marketplace demands that U.S. producers be able to reach consumers around the world in the most efficient, lowest cost manner possible. Regrettably, in part due to the underfunding of maintenance dredging and constraints on modernization of harbor channels, our citizens are being denied the full opportunities of the job growth that can come through world trade.

New, larger ships serving world commerce offer dramatically lower operating costs and decreased environmental impacts as more goods can be carried on fewer ships with more modern operating technologies. However, if these ships cannot access U.S. ports we stand to not only forgo the benefits of these vessels, but also to lose jobs and

economic opportunities to the other countries around the world who can accommodate them. It is therefore vital that this country both invest the necessary money to maintain authorized channel depths at our ports and to see that necessary expansion projects are completed in ports where deeper harbors are needed for the future.

Fortunately, the Harbor Maintenance Tax generates the annual revenue required to keep our ports at authorized dimensions. However, since this tax was instituted in 1986, it has seldom been sufficiently utilized for its intended purpose but has rather been used for unrelated programs while our harbors have been neglected. It has been reported that America's federal navigation channels have available their authorized dimensions (depths and widths) less than 35 percent of the time. The resulting restrictions to vessel transit, "light-loading" and tidal delays cost American exporters and importers millions of dollars daily and diminish the opportunity for domestic economic growth and job creation.

While this under-investment in our ports and harbors continues to occur on an annual basis, the Harbor Maintenance Trust Fund is running a growing surplus. At present, over $6 billion exists in the fund, with annual revenue of approximately $1.5 billion and growing. Meanwhile, less than $800 million is being spent on annual dredging and related maintenance. Continuing this trend will yield increased transportation costs, higher prices on imported goods, and reduced demand for U.S. exports. As a nation, we cannot overlook negative impacts to the key economic engines that our ports and harbors represent.

Public ports throughout the United States contribute substantially to their local and regional economies as well as that of the Nation. According to the American Association of Port Authorities, "commercial port activities in 2007 created employment opportunities for more than 13.3 million Americans, including nearly 12 million who were employed in exporter/importer-related businesses and support industries throughout the United States. Business activities related to waterborne commerce contributed approximately $3.15 trillion overall to the U.S. economy and those same businesses paid nearly $212.5 billion in federal, state and local taxes. Seaport activities alone in 2007 accounted for $31.2 billion in federal, state and local tax revenues. Jobs created by exports pay 13 to 17 percent higher wages than non-trade jobs in the economy ($49,000 a year on average for port-related jobs in 2007, compared to $37,000 on average for all U.S. workers)."

In Georgia, deepwater ports and inland barge terminals support more than 295,000 jobs throughout the state annually and contribute $15.5 billion in income, $61.7 billion in revenue and $2.6 billion in state and local taxes to Georgia's economy. Beyond the state, Georgia's port activity is a critical economic driver throughout the Southeast, sustaining tens of thousands of jobs in the neighboring states of South Carolina, North Carolina, Tennessee, Alabama and Florida. Georgia's ports contribute to over $3.5 billion in federal tax generation annually. Significantly, the Port of Savannah was the second busiest U.S. container port for the export of American goods by tonnage in

FY2011. It also handled 8.7 percent of the U.S. containerized cargo volume and 12.5 percent of all U.S. containerized exports in FY2011.

If the users of our ports are paying the required Harbor Maintenance Tax, the revenue generated from the tax should in turn be used to maintain the ports and harbors those users are paying to access.

Regrettably, in Georgia we have seen the direct consequences of not fully utilizing the Harbor Maintenance Trust Fund for needed maintenance dredging. One year after completing a $120 million project to deepen the Brunswick Harbor to 36 feet, inadequate federal Operations and Maintenance funding resulted in channel dimensions of less than authorized depth and width. In plain language, federal and state taxpayers paid to deepen and widen the channel because of the high benefit to cost ratio of doing so. Then the federal government stood back allowed the channel to begin to silt up again.

If not for the availability of stimulus funds in 2010, the Brunswick Harbor would likely be at pre-deepening dimensions today, thereby wasting the federal and state investment in the project. Automakers exported and imported over 465,000 vehicles through the Port of Brunswick in fiscal year 2011 and the port serves as a major conduit for the export of bulk agricultural products from the Southeast. Nonetheless, save for that 2010 funding, Brunswick remains substantially under-funded annually and harbor depth and width again risk deterioration if Operations and Maintenance (O&M) funding is not increased.

The U.S. Army Corps of Engineers estimates the current Brunswick Harbor maintenance needs to be $16 million annually, but typical annual funding has been about $3 million. Past funding allocations have allowed maintenance dredging of only the most critical shoals within the authorized project. Available funding is used to maintain only the authorized project width and a reduced (less than the authorized project) depth in the entrance channel, with no funds being available for the inner harbor maintenance. Slower growing shoals and the advance maintenance wideners in the entrance channel have not been recently dredged.

Over time, the shoaling accumulating on the sides of the channel and along channel wideners will continue to accumulate and shorten the time the channel will be available for daily transits without significant restrictions being put in place. While the 2010 stimulus funds allowed dredging of advance wideners and some of the back-logged maintenance in the entrance channel, the funds were not sufficient to completely dredge all existing shoaling to project depth and width.

At the current funding levels, shoaling will ultimately result in significant channel restrictions being imposed by the U.S. Coast Guard. Such restrictions would limit access of large ocean going ships to the port and waste significant federal, state and private investment at the Port of Brunswick.

Additionally, the Port of Savannah, the fourth largest and the fastest growing container port in the country over the last decade, has experienced challenges due to a lack of adequate Operations and Maintenance funding. The Corps estimates current Savannah Harbor maintenance needs to be approximately $30 million annually. However, typical annual O&M funding has been about $13.0 million. This under-funding has typically resulted in dredging of approximately one-half of the authorized project. Thus, with such limited funds available, the Corps has at times only been able to maintain the center portion of the channel in faster shoaling areas of the channel and for maintaining the primary turning basin (Kings Island Turning Basin) in the harbor. Slower growing shoals and other turning basins have not been recently maintained due to the limited funding.

Over time, the shoaling accumulating on the sides of the channel in slower shoaling channel segments and turning basins will fill to the center of the channel. Stimulus funds (FY10-11) allowed for maintenance dredging of a portion of the slow growing shoals but were not sufficient to completely dredge all existing shoaling to achieve full width, depth and advance maintenance needs.

If the typical recent funding levels are not increased, shoaling may ultimately result in channel restrictions being imposed by the U.S. Coast Guard. Such restrictions will limit access of large military and ocean-going ships to the port.

Beyond simply maintaining our harbors, we must also recognize the pressing need to invest in harbor deepening projects where required to serve the increasing size of vessels calling on United States ports.

In Georgia, the completion of the Savannah Harbor Expansion Project (SHEP) is critically important to continued economic recovery and growth in the Southeastern U.S. and the country as a whole. The Port of Savannah serves a large percentage of the population in this country including 21,000 companies with operations collectively in all 50 states. In fact, Savannah was responsible last year for moving more than 18% of all East Coast containerized trade. In addition, more than 50 percent of all containers handled through Savannah are for the export of U.S. goods and commodities. .

The SHEP is a project of national significance which has received bi-partisan support at both federal and state levels since its original authorization in 1999. When constructed, the SHEP will deepen the Savannah River from its current 42 foot depth to as much as 48 feet. Today, nearly 80 percent of all vessels calling at the Port of Savannah are forced to take on a lighter load due to the restricted depth. As a result, vessels must wait for the high tide to sail into or out of the port, which is the equivalent of putting a parking lot in the middle of an interstate highway and wondering why traffic is slowed and time is wasted.

This already challenging situation will soon worsen. In 2014, the Panama Canal expansion will be complete and will increase the maximum draft of vessels traveling to and from the East Coast from 39.5 feet to as much as 50 feet. The new locks will send

ships to Savannah and other East Coast ports that are three times the capacity of those currently able to transit the Canal. The economies of scale offered by these "post-Panamax" ships will result in an average of 17% cost savings to U.S. exporters and importers when compared to the operating costs of Panamax vessels. If not deepened, Savannah's ability to stimulate export and import trade and job development will be profoundly impeded by its current 42-foot channel when this new generation of deep-draft vessels begin to dominate world trade. This will have long-term negative consequences for Georgia, South Carolina, and the large percent of the U.S. population served through Savannah.

However, if completed, the SHEP will allow the larger, deeper draft ships to efficiently call on the Port of Savannah, further enabling the port to serve as a leading economic engine for the United States. This project is now nearing final approval and, with adequate funding, will be ready for construction in fiscal year 2013.

If the Savannah Harbor Expansion Project and other highly justified deepening projects at ports throughout the country are not completed in the short-term, our economy stands to suffer significant, negative long-term impacts. Yet we have the opportunity today to invest the necessary funds in these important infrastructure projects to yield substantial benefits for our country. The SHEP for instance has a projected benefit-to-cost ratio that well exceeds 4 to 1 and the Corps' study has shown that it will create $150 million in annual benefits to the nation. That is a substantial return on investment for a country seeking to energize a struggling economy.

In closing, I submit that we cannot take for granted the importance of our nations ports and harbors. They have too often been the invisible infrastructure that is easily forgotten in times of economic stress. However, their importance to the United States economy cannot be overstated. We must not only continue to invest in their ongoing maintenance, but also in the expansion programs necessary to insure their competitiveness in the modern, global marketplace.

The Harbor Maintenance Trust Fund should be fully utilized for its intended purpose and significant additional resources must be devoted to further modernizing our port systems. Our ports and harbor channels are the international highways that lead to national economic growth. The user fee money to maintain them has been collected, and it is time for the Congress to keep faith with the program and use those dollars for their intended purpose.

Again, I thank you for the opportunity to comment on these important issues.

Chairman BOUSTANY. Thank you, Mr. McCurry.

Mr. Leone.

STATEMENT OF MICHAEL LEONE, PORT DIRECTOR, MASSACHUSETTS PORT AUTHORITY, EAST BOSTON, MASSACHUSETTS

Mr. LEONE. Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, Ranking Member Neal, distinguished Members of the Committee, for the record my name is Michael Leone. I am the port director of the Massachusetts Port Authority, which owns and operates the public marine facilities within the Port of Boston. Thank you for this opportunity to testify in support of H.R. 104, the Realize America's Maritime Promise Act.

As the title of the proposed new act implies, the promise that America's maritime industry is asking Congress to realize is the same promise that Congress made 26 years ago, when it first established the Harbor Maintenance Tax. That is to fully utilize the taxes which have been levied on port users for the maintenance dredging of our ports and harbors.

I know, from the two terms I served as chairman of the American Association of Port Authorities, that ever since the trust fund's inception in 1986, port operators and customers have consistently raised concerns that Harbor Maintenance Tax revenues have been used for other programs, or never fully appropriated for their intended purpose of maintenance dredging of federal channels. As a result, only about 35 percent of America's navigation channels are currently at their authorized depth and width, which means that vessels calling our ports cannot be fully loaded, or maybe restricted to a one-way transit.

The entire maritime industry, therefore, is grateful for the oversight provided by your committees to ensure that the tax on port users is used for its intended purposes, ensuring that navigation channels leading to our ports are regularly dredged to their authorized dimensions so that vessels calling our ports can deliver essential commodities and can take American-made products to its global customers. Only with regular investments in dredging can these critical parts of our national transportation system continue to serve as gateways for the more than two billion tons of domestic import and export cargo that are expected to be handled each year, which in turn helps keep American businesses, both large and small, competitive in world markets.

As Congressman Neal has stated, this concern is even greater today, as East and Gulf Coast ports prepare for the larger vessels that will be transiting through an expanded Panama Canal.

What is frustrating for many port directors who have dredging needs that go unmet is that the money for these projects is available. The users of our ports and harbors still pay their full share for maintenance dredging, over $1 for every $1,000 worth of imported and domestic cargo they move, while only getting back half as much in benefit. Current estimates are that users of our nation's waterways are paying approximately $1.4 billion each year in Harbor Maintenance Taxes, which is about the amount the Army Corps of Engineers has determined is the annual need for maintenance dredging.

Yet this past fiscal year, only about 820 million was appropriated for channel maintenance. That still leaves, according to most estimates I have seen, a surplus in the Harbor Maintenance Trust Fund of over $6 billion and growing. This shortfall in funding is of particular concern to regional or niche ports, which are usually not included in the President's budget, because they generally handle less tonnage than the major container and bulk cargo ports.

There are many ports in Massachusetts in need of maintenance dredging, for example, which could be completed if all of the Harbor Maintenance Tax was appropriated each year. Not every port will need to have channels that are 50-feet deep in order to handle larger ships that will traverse the expanded Panama Canal when that modernization program is set to be completed in 2014. But many will. And others will need to be dredged to handle larger vessels that will be used in moving cargo from the larger ports to regional ports.

In the meantime, individual ports have been dredging our own berths at our own costs, buying cranes that can handle these larger vessels, and investing in terminal infrastructure. Indeed, it is estimated that seaports invest more than 2.5 billion every year to maintain and improve their infrastructure, which is why ports are often discouraged that federal investments in maintenance dredging have not kept pace with their own.

The larger issue with the spending on maintenance dredging is particularly critical at this time, and not only because of the larger ships that ports will soon be expected to handle, but to ensure that the administration's national export initiative, doubling U.S. exports within five years, can be fulfilled. U.S. ports are the gateways of international trade. And having a modern, reliable, and cost-effective marine transportation system will expedite the delivery of U.S. exports to the global marketplace. Delays in the movement of exporter cargo will only hurt the competitiveness overseas.

As it true throughout the country, the Port of Boston is a vital economic engine for the New England region, carrying cargo, opening markets for domestic goods, creating jobs, and generating economic prosperity for our citizens. American seaports carry all but one percent of the country's overseas cargo. They help generate over 30 percent of gross domestic product, and support more than 13 million jobs.

America's economic future depends on modern ports with facilities adequate enough and channels deep enough to keep pace with the demands of the global economy. It is now critical that Congress honor its pledge to maintain the nation's ports and harbors with the revenue provided by users. This can be accomplished through a shift in funding priorities in both the Congress and with the administration, given that annual revenue is available and adequate to meet current needs.

I would also urge the passage of H.R. 104 that would require that the annual Harbor Maintenance Tax revenue be made fully available to the Corps of Engineers for maintenance dredging in its annual appropriation. I, along with many other port directors, strongly support passage of H.R. 104, so that our marine transportation system can remain efficient and continue to serve as a national and regional economic engine.

I commend the efforts of Representative Boustany and the over-100 cosponsors in pressing for this important piece of legislation. And I urge the committee to support H.R. 104.

This completes my prepared testimony. I am pleased to answer any questions you may have.

[The prepared statement of Mr. Leone follows:]

Testimony of Michael Leone
Director, Port of Boston
Massachusetts Port Authority
House Ways and Means Committee
Subcommittee on Oversight &
Subcommittee on Select Revenue Measures
Hearing on H.R. 104, Realize America's Maritime Promise Act

Chairman Boustany, Chairman Tiberi and members of the committees.

For the record, my name is Michael Leone, Port Director for the Massachusetts Port Authority which owns and operates Conley Container Terminal, the Black Falcon Cruise Terminal and other public terminals within the Port of Boston.

Thank you for this opportunity to testify in support of H.R. 104, the Realize America's Maritime Promise Act.

As the title of the proposed new act implies: the promise that America's maritime industry is asking Congress to realize is the same promise Congress made 26 years ago when it first established the Harbor Maintenance Tax: That is, to fully utilize the taxes which have been levied on port users for the maintenance dredging of our ports and harbors.

I know from the two terms I served as Chairman of the American Association of Port Authorities that ever since the trust fund's inception in 1986, port operators and customers have consistently raised concerns that HMT revenues have been used for other programs or never fully appropriated for their intended purpose of the maintenance dredging of federal channels. As a result, only about 35% of America's navigation channels are currently at their authorized depth and width, which means that vessels calling our ports cannot be fully loaded or may be restricted to a one way transit.

The entire maritime industry, therefore, is grateful for the oversight provided by your committees to ensure this tax on port users is used for its intended purpose -- ensuring that the

navigation channels leading to our ports are regularly dredged to their authorized dimensions so that vessels calling our ports can deliver essential commodities and can take American made products to its global customers.

Only with regular investments in dredging can these critical parts of our national transportation system continue to serve as gateways for the more than two billion tons of domestic, import and export cargo they are expected to handle each year, which in turn helps keep American businesses – both large and small – competitive in world markets. This concern is even greater today as East and Gulf Coast ports prepare for the larger vessels that will be transiting though an expanded Panama Canal.

What is frustrating for many port directors who have dredging needs that go unmet is that the money for these projects is available. The users of our ports and harbors still pay their full share for maintenance dredging – over one dollar for every thousand dollars worth of imported and domestic cargo they move – while only getting back half as much benefit in return.

Current estimates are that users of our nation's waterways are paying approximately $1.4 billion per year in harbor maintenance taxes which is about the amount the Army Corps of Engineers has determined is the annual need for maintenance dredging. Yet, this past fiscal year only about $820 million was appropriated for channel maintenance. That still leaves, according to the most recent estimates I've seen, a surplus in the Harbor Maintenance Trust Fund of about $6.4 billion and growing. This shortfall in funding is of particular concern to regional or niche ports, which are usually not included in the President's budget, because they generally handle less tonnage than the major container and bulk cargo ports. There are many ports in Massachusetts in need of maintenance dredging , for example, which could be completed if all of the HMT was appropriated each year.

Not every port will need to have channels that are 50-feet deep in order to handle the largest ships that will traverse the expanded Panama Canal when that modernization project is set to be complete in 2014. But many will, and others will need to be dredged to handle the larger vessels that will be used in moving cargo from the larger hub ports to regional ports.

In the meantime, individual ports have been dredging our own berths at our own cost, buying cranes that can handle these larger vessels, and investing in terminal infrastructure. Indeed, it's estimated that seaports invest more than $2.5 billion every year to maintain and improve their infrastructure, which is why ports are often discouraged that federal investments in maintenance dredging have not kept pace with their own.

The larger issue is that spending on maintenance dredging is particularly critical at this time, and not only because of the larger ships that ports will soon be expected to handle, but to ensure that the Administration's National Export Initiative of doubling U.S. exports can be fulfilled. U. S. ports are the gateways for international trade and having a modern, reliable and cost-effective marine transportation system will expedite the delivery of U.S. exports to the global marketplace. Delays in the movement of exported cargo will only hurt the competiveness of U.S exports.

As is true throughout the country, the Port of Boston is a vital economic engine for the New England region -- carrying cargo, opening markets for domestic goods, creating jobs and generating economic prosperity for our citizens. American seaports carry all but about 1% of the country's overseas cargo. They help generate almost 30% of Gross Domestic Product and support more than 13 million jobs.

America's economic future depends on modern ports with facilities adequate enough, and channels deep enough, to keep pace with the demands of the global economy. It is now critical that Congress honor its pledge to maintain the nation's ports and harbors with the revenue provided by users. This can be accomplished through a shift in funding priorities in both the Congress and within the Administration, given that annual revenue is available and adequate to meet current needs. I would also urge the passage of H.R. 104 that would require that the annual Harbor Maintenance Tax revenue be made fully available to the Army Corps of Engineers for maintenance dredging in its annual appropriation. I, along with many other Port Directors, strongly support passage of H.R. 104 so that our marine transportation system can remain efficient and continue to serve as a national and regional economic engine.

I commend the efforts of Representative Boustany and the over one hundred co-sponsors in pressing for this important piece of legislation and I urge the committee to support H.R.104.

That completes my prepared testimony and I would be pleased to answer any questions the committee might have.

Chairman BOUSTANY. Thank you, Mr. Leone. We will now proceed with questions. And I just want to thank all of you for very eloquent testimony about this problem.

At a time when our country, everyone in our country, is concerned about jobs and the high level of employment, about the future of American competitiveness and global leadership, it is remarkable that we got Members on both sides of the aisle on this dais and in this House that see a way forward on this particular issue. And we are—with many of the problems that we are faced with, we don't see ready solutions. There is one here. And I think there is, you know, a recognition that we should go forward.

But clearly, Americans are fed up with budgetary gimmicks and games and some of the arcane budget practices that occur here in Washington.

So, I have a simple question and I would like each of you to answer it. Do you consider this a blatant abuse of a dedicated federal tax or user fee? Commissioner Strain?

Dr. STRAIN. Yes, I do. And when you look at this, it is—the dollars are being collected to dredge and to clean out our harbors. If you look at the Port of New Orleans and the Port of South Louisiana alone, failure to maintain short-shipping these loads, just short-shipping these loads, will result, at the Port of South Louisiana, in a $22 million decrease in the Harbor Maintenance Trust Fund in itself.

And if you look at the alternative, we are paying to have this done. The ships that use this, pay for this, they want to have this done. They need to have it done. Failure to do this will result in just—in what comes through the mouth of the river, at a cost of $150 million to the farmers throughout the Heartland of America. And so when—it is very, very simple: 1 15-barge tow, 1 tow, is the equivalent of 261 rail cars, or over 1,000 trucks.

So, it is. It is an abuse of it. And we need to get it right. But the thing of it is, this is an all-win for everybody.

Chairman BOUSTANY. Thank you. Mr. LaGrange.

Mr. LAGRANGE. Yes, sir. Absolutely an abuse, without a question. At a bare minimum, the $14 billion in spending loss, the 38,000 U.S. jobs, potentially, at a bare minimum, but also the flip side, as I alluded to, 41 groundings on the lower Mississippi in the last 3 years, 5 already in the first 25 days of this year, not to mention the environmental hazards and the potential hazards that are there, another Alaskan Valdez.

Homeland Security issues come into play, as well, when you have ships aground. In the shipping industry, transportation logistics times money. The cost of tug boats to come on the scene and spend four, five, six, eight hours to get that ship back into the main channel, whatever main channel might remain. In our case, a 750-foot-wide channel silted in recently to 115 feet. These ships are 143 feet wide. That is absurd. Yes, sir.

Chairman BOUSTANY. Thank you. Mr. Fisher.

Mr. FISHER. Yes, sir. It is absolutely an abuse of Congress's commitment to users when the original agreement was reached in the mid-1980s to assess a fee on users to pay for harbor maintenance.

Congress has even acknowledged that it is an abuse. We had this same problem with the highway trust fund and with the aviation trust fund. And Congress fixed it in those two instances. Those two trust funds had excess balances, as well, huge excess balances. And Congress enacted legislation to make sure those trust funds and those user fees were properly spent. Why wouldn't we do the same with the Harbor Maintenance Trust Fund?

Chairman BOUSTANY. Thank you. Mr. Arntzen.

Mr. ARNTZEN. Mine is a little bit different. It really isn't an abuse, it is an oversight. We are seeking to correct something that was not included in the 2004 Act. I have discussed it with many congressmen and senators on both sides of the aisle. I have not had one that objected. And we have very strong bipartisan support.

We have agreed to put in provisions that, if we did not maintain employment, in fact we would take penalties for that. So this is just correcting a mistake which would enable us to continue to invest in the country. And I think it is broadly supported by Democrats and Republicans, alike.

Chairman BOUSTANY. Mr. McCurry.

Mr. MCCURRY. Mr. Chairman, I think it goes without saying that if users of our ports are paying the required Harbor Maintenance Tax, the revenue generated from the tax should, in turn, be used to maintain the ports and harbors that those users are paying to access.

Chairman BOUSTANY. Thank you. Mr. Leone.

Mr. LEONE. I absolutely agree, sir. It is—the user fees should be paid. The users are paying the fee. It is the only mode of transportation that does not have the fees used for its intended purposes. And there are many ports that are—have accumulated—in the Port of Boston itself, we generate—we only use 30 percent. We are a donor port. And we have unmet needs in our port, and yet we are only using 30 percent of the amount that is collected. I think it is absolutely an abuse, and it should be corrected.

Chairman BOUSTANY. Thank you. I have one final question I want to ask Commission Strain, and that is you focused a lot on agriculture, and the importance for U.S. competitiveness. And I think you made a very eloquent statement. But could you further elaborate on why maintaining these waterways are so important to a farmer who might live remotely from a waterway?

Dr. STRAIN. Well, if you look at the waterways, if you look just at the inland system—and we have seen and there is discussions in recent reports about the fact that many of our inland waterways are in desperate need of maintenance and repairs.

To move that product, first of all, if you just look at that cost, $.10 a bushel, additional cost to move that product, say from Kansas to the coast. But also the infrastructure. If you look at the entire infrastructure along the systems that are in place, you are talking about billions of dollars of investment. If you don't have this, that similar infrastructure does not exist to move these products by different overland routes. And we are talking about efficiencies.

And when you look at using waterways, they can move, you know, a ton of materials 576 miles on 1 gallon of diesel. So it is critical, especially when you look at economic competitiveness, and

look at the commodity market: number one, increased cost not to do this; two, the availability to move this in an efficient manner and in a consistent manner.

And it is about economics, but it is also about getting the products, raw products, up river, the products that we import to make the fertilizers, to make fuel components, and about all the other things.

Chairman BOUSTANY. Thank you. Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman. Again, I want to thank you for holding this hearing, and I want to thank each member of the panel for your testimony. I think you have been very convincing.

I was joking with Mr. Tiberi a moment ago. I said seems like the chairman is no longer playing the role of a good doctor, but he is playing the role of a lawyer, he seems to be leading the witness.

[Laughter.]

Mr. LEWIS. I think you have been very convincing. But I want to ask each one of you. How does the funding or underfunding of a navigational channel affect the ability to create more jobs and move produce and goods? Could you just elaborate?

Dr. STRAIN. Yes, sir. If you look at the underfunding of this, and when you don't have the ability to fully load these vessels, start off with that. We look at 35 percent of all of the ports and the waterways are not adequately funded. You are talking about the economics in shipping. And if you start short-loading, first of all, it costs more money. When you cost more money, there is less dollars. And those dollars go all the way back to the first point of production, in the farmers' hands, in the manufacturers' hands. These are American dollars.

And what we talked about is the tremendous potential for growth, worldwide, to sell these products in the raw state and in the processed state. And along with that, all the technologies included. Not to do this will hamper our ability of this tremendous amount of growth throughout the heartland and throughout the United States, and will cost us the jobs that not only would have been generated, but also, when you start looking at—just talk about the cost on a ship, short-loading a ship. It is a $1 million per foot, per foot, to short-load these ships. If you look at the Port of New Orleans, 6,000 vessels, more than 400,000 vessel movements.

And so, we are creating an inherent inefficiency that makes us non-competitive worldwide. And so this costs jobs dramatically, and it costs jobs all over the United States.

Mr. LEWIS. Thank you.

Mr. LAGRANGE. Yes, sir. I totally agree. At present we know that there is somewhere between a 30 and 40 percent loss in jobs due to the inability of ships to come in fully loaded, come in light.

In looking at the future, though, the President's national export initiative, in looking at your wise passage of the free trade agreements with Panama, Colombia, and South Korea, and in looking at the expansion of the Panama Canal, threefold by the year 2014, all of these are perfect examples of the incremental new jobs that we will lose if we don't make ready our channels and dredge them appropriately.

In three different studies recently completed by Parsons Brinckerhoff, Booz Allen Hamilton, and A.T. Kearney, all three studies indicated that the incremental growth from the Panama Canal, by the year 2025, should be in the area of 20 to 25 million new TEUs a year, with about 75 to 80 percent of that going to the East Coast ports, Savannah included, and the other 20 or 25 percent coming to the Gulf Coast ports. East Coast ports, because that is where the people live, the consumers consume.

All of that said, this incremental growth is unbelievable, and we are just not ready to handle it. And that is just the Panama Canal, not the NEI and not the free trade agreements that were recently passed.

Mr. LEWIS. Thank you.

Mr. FISHER. Sir, it makes no more sense to operate a ship partially loaded than it makes sense to operate an aircraft half full of people. And if you can imagine the inefficiencies to an airline if it only flew its planes half full, it is the same thing with a shipping company operating a ship only partially loaded. It creates an inefficiency and it hits the bottom line of the shipping company and makes their asset, their investment in their ship, less competitive.

A more direct impact, as far as jobs, to answer your question, we actually have some ports, as I mentioned in my testimony, in the Great Lakes that are on the cusp of actually closing, small ports that are actually on the cusp of actually closing. And there is active industries, maritime industries, still in those harbors. They are small companies, but these jobs are precious in those small communities up in Michigan and Wisconsin and Illinois.

And so, if those harbors close and those industries are forced to close because they can't get delivery of raw materials, that is devastating to the local economy of those small communities.

Mr. ARNTZEN. My perspective is a little bit different, but I would like to talk a little bit about a success story. About four years ago we exported no refined petroleum products from the United States. This year I think we will be exporting about 800,000 barrels of refined petroleum products, mainly diesel, to Latin America and to Europe. This is an enormous growth market. It is because we have invested in refineries and we have accessed the cheap shale oil and gas.

This is going to be growing dramatically, and it is going to put a real strain on the facilities we have down in the Gulf. So there is real opportunity and real growth. It is—there are some good stories out there.

Mr. LEWIS. Thank you. Mr. Chairman, I noticed my time is up, but if——

Chairman BOUSTANY. Yes, the gentlemen, if they have comments to add to this, please proceed.

Mr. MCCURRY. Very briefly, if I may. I will say—and Mr. LaGrange mentioned—the exacerbation of this issue that will come with the Panama Canal. At the end of the day, vessels waiting cost the ship lines money. That money rolls into their operations and, therefore, their cost to the customers, which are our exports and our consumers.

Using, in Georgia, just the example of the poultry industry, where Georgia—we are the largest poultry exporting port in the

country, which is a huge industry for Georgia. It is also an industry with very, very thin margins. And if the shipping cost fluctuates even $100 on a box of poultry, that is absolutely the difference between producers in Georgia versus producers in another country securing business to export to Asia and other parts of the world.

Mr. LEONE. And just briefly, I concur with my colleagues, certainly, from Louisiana and Georgia. But the key element for every single port, the common theme for every port, is they need to have the highway—the channels into the terminals deep enough to handle the business they have. And the fastest growing portion of kind of the container business has been exports. We have seen that in Boston. And I understand from the Port of Georgia, the growth that they have seen.

And it is the jobs, not necessarily the maritime jobs that I am concerned—I think we need to focus on those manufacturing jobs. If they can't get to market, that is the key to it. It is that area and those jobs that are created outside of the area in the inland portions that keeps those regional economies alive. And without deep channels, they are not going to get to their marketplace.

Chairman BOUSTANY. Thank you, Ranking Member Lewis. Chairman Tiberi.

Chairman TIBERI. Mr. Fisher, you verbalized at the very end of your testimony the example that you gave with respect to why the tax needs to be fine-tuned with respect to short-sea shipping. And I see nods heading [sic] here, as in agreement. And you gave this general example of the taxes paid, once it comes into port in the United States. And then, if it is transported again on a ship to another port, it is taxed yet again. So the incentive is for me, as the user, to put it on a truck or on rail, rather than to put it on a ship. Correct?

From your spot where you sit today in your job, can you give some specific examples of people who have said to you, ''Wow, we lost this because it is going by rail, by truck,'' or different ports within the Great Lakes that have seen a decline over the time that this has been instituted? And what are happening to those ports? Can you give us some more specifics?

Mr. FISHER. Chairman Tiberi, transportation shipping companies throughout the United States would like to establish their operations in the most efficient way possible. In some places, that is establishing a service that is similar to what we are all familiar with with the airlines, a hub and spoke system, where essentially you go to a major hub first, and then you take a smaller aircraft, for example, to a secondary city.

The same thing should be happening along our coasts. Cargo coming in to major hub ports, and then transferring cargo to smaller—what we call feeder—vessels to then make the journey to secondary ports. That is efficient.

Unfortunately, the tax discourages that, and it doesn't generally go on. Yet, at the major hub ports in this country, which tend to be in the major cities, we have severe traffic congestion. So we are essentially forcing that second leg of commerce off the ships and on to the highways.

Well, the highways are already congested. And most of the gentlemen at this table will tell you that they have congestion issues

at their ports where they cannot move the cargo. Once it is off the ship, they have trouble moving it out into the hinterlands because there is so much congestion in their local city.

So, this tax actually acts as a disincentive to allow the shipping industry to do what is most efficient to be done.

Chairman TIBERI. And if you corrected that, then there would also be an increase in jobs in the maritime industry?

Mr. FISHER. Absolutely. All those feeder vessels that I mentioned, we would see the establishment of these services. That would create additional jobs in the maritime industry. It actually also would make the general economy more competitive and more efficient, because it would relieve some element of highway congestion, and that is good for the economy. We have a lot of waste in our economy, as commerce sits clogged in traffic jams, and isn't getting to its destination.

Chairman TIBERI. Dr. Strain, would you agree with that?

Dr. STRAIN. Yes, I would. When you look at all of the ways that we move product, and if you are looking at this particular example, we are only talking about $2 million in something where we are collecting, like, $1.5 billion. We must be competitive. We must also have a fair playing field, as well.

But if you look at the tremendous inland waterway systems that we have—and you talk about short-shipping—we must utilize those. But there is also something alarming that, as I have been reading in the last few weeks, there is such a deterioration of potential on our inland waterway systems. Many of those systems, locks and dams and others, are reaching past their 50-year life span.

And if you look at—for instance, if one major system breaks down on those inner waterway systems, it could cost $50 million to $100 million in lost economics. To tie up a ship, just a vessel, any vessel, unnecessarily, is $50,000 an hour.

Chairman TIBERI. Thank you.

Dr. STRAIN. An hour. So we must find all efficiencies possible.

Chairman TIBERI. Thank you. Mr. Arntzen, you are the man who builds these ships on the panel. Can you talk about what you did last year, and why ASRA would help stop a perverse reality from occurring in the marketplace, and what you would do, in terms of—if we could pass this bill, what you would do, in terms of investment in jobs?

Mr. ARNTZEN. Yes, I would love to. Last year for us was a really big year of pride, because we took delivery of our second Jones Act shuttle tanker. These are specially modified tankers that take oil from the ultra-deepwater Gulf and bring them into the refineries in the Gulf. We have the first two and we are now working on the third. And the second of those two did help clean up the BP spill. When they needed a ship to take the oil off the field after they finally capped it, they brought in our OSG shuttle tanker to do that. So we are very proud of that.

We see that as a big, new, exciting market. In fact, it is the fastest—it is really the first really big new market in the Jones Act tanker market in many decades. We are working on one such project today. Those ships will cost you somewhere between $100 million and $150 million: 1 ship. We will have to employ 50 crew,

25 on and 25 off on those ships. We think there is a possibility of 18 to 25 shuttle tanker demand in just the U.S. Gulf in the next decade. We want to play a big role in that.

So, at $100 million-plus a pop, these are very big capital equipment. This is why we have been pushing to be able to repatriate our foreign profits. It is a continuation of what we have been doing, and it is a very exciting market. And they are really well-paid secure jobs with pensions and medical benefits and training and the kind of jobs we want to create in the United States.

Chairman TIBERI. Well, my time is expired. Thank you very much. Chairman, thank you for a great panel today.

Chairman BOUSTANY. Thank you. Mr. Neal?

Mr. NEAL. Thank you, Mr. Chairman. Mr. Leone, the Commonwealth of Massachusetts offers a dollar-for-dollar tax credit to corporations moving goods from Massachusetts ports to offset the federal Harbor Maintenance Tax. And the credit can be applied against current and future taxes in the Commonwealth. Jim Brett, who is an old friend of mine, is now president and CEO of the New England Council, was one of the leaders when this tax credit was established during the time he was chairman of the Massachusetts House Taxation Committee.

The state seems to be unique in our approach to the Harbor Maintenance Tax. And can you tell us a bit about the policy behind the Commonwealth offering this tax credit? And, in your opinion, has the credit been successful in expanding harbor business in Massachusetts? Are you familiar with any other states that try a similar approach? And would you lay that out for us?

But one of the reasons behind this tax credit was because of the close proximity of Massachusetts to Canada. Some companies were shipping to Canada instead of Boston to avoid the Harbor Maintenance Tax. Has the state tax fixed this problem? And are there other reasons for companies still shipping to Canada instead of Massachusetts?

And lastly, seaports like Boston are certainly gateways to domestic and international trade, connecting us to the rest of the world. In your testimony you stated that U.S. ports and waterways handled more than two billion tons of domestic and import-export cargo annually. You also note that the Port of Boston is a vital economic engine for the New England region. Carrying cargo, opening markets for domestic goods, and creating jobs is certainly part of your mission. And perhaps then you could describe for us how much cargo goes through the Port of Boston, and how this translates into many of the jobs that we enjoy across the Commonwealth and New England because of that port.

Mr. LEONE. Thank you, Congressman Neal, for that question. I think that the legislature and certainly the Government of Massachusetts understood kind of the threat that was going to happen with the Harbor Maintenance Tax, and the fear that being adjacent to Canada, whether it was Montreal or whether it was Halifax, that certain freight would be able to move over those gateways in lieu of Boston, and it was concerned that certainly we would lose business in Boston. So they offered the dollar-for-dollar tax credit.

And it has been very, very successful. A lot of different Massachusetts companies have utilized that particular plan to be able to

offset the diversionary impact of HMT. And I know this is an ongoing problem in the western part of the state. Certainly in the Puget Sound it is an ongoing issue there as well. But I think this state tax credit has been effective.

But it is limited, as well. It has been limited in the fact that it only applies to, obviously, those individuals or those companies that file a Massachusetts income tax, and not everyone would have that benefit, depending on what their business model is, depending on who the beneficial cargo owner is, eventually.

So—but it has been effective in retaining business. And Boston's business had grown consistently to the point that it actually—we are handling well over 12 million tons of cargo, we are generating 34,000 jobs. It has also—has over $2 billion in economic impact. And that has been growing until some of this recent recessionary impacts.

But the Harbor Maintenance Tax credit not only has its limitations internationally, but we lost one large account several years ago, when Volkswagen moved about 100,000 of its automobiles from Boston to Rhode Island. In that particular circumstance, the Port of Davisville in Rhode Island does not have to assess a Harbor Maintenance Tax on the cargo that moves in and out of that port because it was a former Army base and hadn't been dredged. And back in the days when I was practicing law for the port authority, we had drafted a letter asking customs to reinterpret the law to say we shouldn't be allowing this tax to create a competitive advantage from one state to the other.

But the customs basically thought that my opinion was contrary to the initial interpretation and didn't change it. But Volkswagen clearly said moving 100,000 cars saved them at that point in time, back when the value of the car was less, about $3.5 million a year, pure savings from going from one port to the other.

I don't know if there is any other ports—I believe—and maybe my colleague from Louisiana—there is another port in the Gulf, I think, that has a similar issue, as well.

But that has been an issue for us. I don't know if other states has created a credit. I think maybe North Carolina was looking at it. I don't know if they still have that. But it has been an issue. So you not only have an HMT that you—you know, in Boston you are collecting a tax that you are getting 30 percent of the benefit of it, the money goes elsewhere. Yet an adjacent state doesn't have to pay the tax, even though they may receive other federal benefits as EDA grants. I mean I know they are getting Tiger grants to build cranes down there to compete against you. But, you know, they have a—there is no tax assessed or user fee assessed to that, and that has created a competitive disadvantage between those particular ports.

Mr. NEAL. Quickly, could you talk a little bit about your preparation, anticipation of the expansion of the Panama Canal, and what it is going to mean to the Port of Boston?

Mr. LEONE. Well, we have done many things in anticipation of this. We have added new cranes, at a cost of $15 million to the facility. We have purchased an adjacent oil facility for expansion of our container facility. We have added a bunch of equipment to our

facility, spending close to $100 million on new terminal operating systems, training programs for longshoremen to be prepared for.

You know, we don't expect to be seeing the largest of ships, but we need to have deeper water. And I know this isn't exactly an HMT issue, but our improvement dredging project, which I know that Georgia alluded to as well, has been stalled for almost 20 years, moving forward, trying to get authorization for deeper channels to handle the larger vessels.

So I know that necessarily isn't the subject of this, but that is kind of another frustration for ports, where you are making the investments in shore, but essentially, the major channel, the major access road to your facility, to a modernized facility, may not be available for you when the ships are—need to come there.

Mr. NEAL. Thank you.

Chairman BOUSTANY. Thank you, Mr. Neal. Ms. Jenkins.

Ms. JENKINS. Thank you, Mr. Chair. And thank you, Chairmen Boustany and Tiberi, for holding this hearing on a very important issue. Thank you, panel, for participating.

Mr. Arntzen, we have heard a lot of talk lately here in Washington about shipping jobs overseas. And no one is suggesting such a concern as it relates to this particular industry, but a general principle of deferral. And as you know, last fall the Ways and Means Committee released a discussion draft that would reform our system of international taxation. And while academics, economists, politicians can disagree about the pros and the cons of eliminating deferral, as your testimony references, the U.S.-based shipping industry gives us a real-life illustration of the peril of adopting such a policy.

It appears that the U.S. industry in shipping has been hurt following the repeal of deferral back in 1986, leading to foreign acquisitions of American businesses and loss of jobs. According to a 2002 Treasury report, immediate taxation put the shipping industry at a disadvantage relative to the foreign competitor, leaving less income to reinvest in its business, which can mean less growth and reduced future opportunities.

So, based on this real-life experiment in tax policy, can you elaborate on the lessons learned from the shipping industry's experience, particularly with regard to competitiveness, foreign acquisitions, and investments here at home?

Mr. ARNTZEN. Yes, I think the history is very clear on this. This is textbook. In 1986 they ended deferral for foreign-flagged shipping for U.S. companies. And you saw basically the diminishment of the U.S. fleet from 1986 all the way to 2004. The biggest two container lines, one was acquired by a Danish company, one was acquired by a Singapore company. We ended up being practically the only U.S. company that remained that was both in the international flag and the U.S. flag. We were paying tax at that time. But there is no question that was what essentially stopped investment in U.S.-flag blue water shipping.

The 2004 act got passed, and we, along with other of our competitors in the industry, started investing in new double-hull tonnage, as required by the Coast Guard, as required by the Oil Pollution Act of 1990. We couldn't have done that without the changes to deferral. And we said if we got that we would invest. And, in

fact, we did. And it wasn't just OSG, it was the rest of the industry. So, what you have now in the U.S. is a very modern double-hull tanker and large barge fleet operating along our coast, much safer than the older single-hull ones that we replaced.

So, I think it is absolutely textbook. And what we are asking for in the American Shipping Reinvestment Act is just a correction of the 2004 Act that was an oversight and that was sort of an obscure rule that went all the way back to 1986 to 1975. So it is textbook, and I am very proud that we lived up to the commitments we did. And we still see opportunity, such as the shuttle tanker business we talked about before, and other things.

Ms. JENKINS. Okay, thank you. And then for any member, really, on the panel that would care to comment, under these budget constraints that we are looking at at this point in time, how does the Army Corps of Engineers prioritize which projects get funded and which don't? Even with full funding, the Corps would continue to prioritize the work. How would you comment?

Mr. LAGRANGE. Basically, they use a cost benefit ratio on their projects. And once a project construction, obviously, on a project has begun, obviously they stay the course on that project until its completion. The unfortunate thing with that, because of the lack of funding and due to inflation, we are looking at projects like on the Inland Water System, the Olmsted Lock and Dam, Chickamauga, the Kentucky Lock and Dam, Inner Harbor in New Orleans, all of these prices are escalating.

In our case, with our lock, which connects 3,000 miles of inland waterways from Mexico to Canada, it was a $600 million price tag 10 years ago. It is now $1.4 billion. So we are going backwards, not forward. But it is by cost benefit ratio.

Ms. JENKINS. Okay.

Mr. MCCURRY. If I may, there are—clearly are two areas here, one with the Harbor Maintenance Trust Fund, where the country is taking in enough in fees to adequately provide for the maintenance dredging needs. So even with prioritization, the Corps could adequately perform the necessary work.

Then, when you look at the necessary expansion programs, even those that have significantly justifiable benefit-to-cost ratios struggle to get funding necessary to complete construction. The only project that I know of with much specificity is our own.

And when you are looking at a 4-and-a-half or greater to 1 benefit-to-cost ratio on a project whose life span is 50 years, your return on the investment is in a time period that is approximately 5 years. That is a pretty good investment, pretty good return on your dollar in any business. It is not the kind of project or programs that typically fall into what might look more like a grant. The projects do return to the United States that investment. I think it is important to look at them in that way.

Ms. JENKINS. Okay. Thank you, Mr. Chairman. I yield back.

Chairman BOUSTANY. Thank you, Ms. Jenkins. I have received confirmation from the Army Corps of Engineers by mail that if they had the full receipts of the Harbor Maintenance Tax for a given year, they could take care of all the authorized—where they have federal authority—all the authorized operations and mainte-

nance, and probably still have some left over. So, we repeatedly receive that kind of confirmation from the Army Corps.

Dr. McDermott.

Mr. MCDERMOTT. That is a wonderful segue. This hearing has two issues, and I want to thank Chairman Tiberi for bringing forward the American Shipping and Reinvestment Act. Thank you for your testimony, Mr. Arntzen. It is a bill that ought to pass without anything happening.

Now, as we get close——

Mr. ARNTZEN. Thank you.

Mr. MCDERMOTT [continuing]. As we get close to throwing off the lines and letting this baby go, we come to the second thing that is being loaded on to it, and that is the Harbor Maintenance Tax. Now, I am probably the only Member of the Congress who has a Z Card. I sailed the merchant marine. I went aground in Great Lakes in Lake St. Clair in 1956. So I know a lot about dredging.

[Laughter.]

Mr. MCDERMOTT. I also feel like the people who put this hearing together think that all the shipping in the world goes out of the south or the east. I would feel a lot better if there was at least one guy here from the West Coast. So I am going to talk——

Chairman BOUSTANY. We didn't think you had any problems with the West Coast ports.

Mr. MCDERMOTT. Oh, yes, we do. We ship—35 percent of the cargo in the country comes in through the West Coast through 5 ports. I happen to represent one of them. Seattle has submitted testimony; I hope the others will do the same.

But we all agree that it needs to be fixed. It is a question of how to fix it. The HMT shouldn't just sit there while our nation's ports have problems. I agree to that. And I have talked with the Seattle Port people and they tell me that the HMT makes them uncompetitive. I mean we have got the problem Boston has in spades, with the Canadian ports and what is going to happen in the near future in Prince Rupert and some other things. So, we are talking about a serious economic hit.

But the problem is that we don't get any of the money. We get $.01 back on every $1 we put into this thing. And 20 percent of it goes to New Orleans. And I understand why the chairman would want to have this hearing and would want to talk about it and want more money for the southern waterways that are all filled. We got 70-foot draft, okay? We load ships that come out of Portland that can't fully load because they can't get over the bar out of the Columbia. They come up to Seattle, they top off, and then head for Asia.

So, I know what the issues here are. And if my state got 20 percent of the money I would probably be advocating for more. What I am interested in hearing you talk about—and Mr. Boustany gave me a beautiful segue—there would be some money left for some of the things we need.

Now, Seattle has a sea wall. It has been there for 100 years, put in with wood, and the worms have been working on it all this time. We also live in an earthquake zone. We know we live in an earthquake zone. We have watched it. You have watched what happened in the tsunami in Japan. You know what the impacts could be on

one of the big ports of this country. And last year, 800,000 HMT-paying passengers boarded 193 cruise ships going out of Seattle. So this is not a—we are not talking a small operation. But if that sea wall goes, we are going to have a big problem.

I have been fighting. In fact, I had a bill in here for 15 years to deal with this. Jennifer Dunn, who is now gone from the committee, and I—a Republican and a Democrat; this is not a partisan issue, this is an economic issue that has got to be dealt with. And we can't get anybody to agree that we ought to use some of that money to study the sea wall and maybe repair it, because they say, "Well, that's not dredging."

So, I wonder if the committee would comment on the possibility of maybe broadening the use of the sea wall money—or the harbor maintenance money to make it a little bit fairer for those of us who are waiting for a disaster to happen. We know it is going to happen, it is just a matter of time.

Dr. STRAIN. Thank you, Mr. McDermott. When you look at the issue here today, we are talking about the whole of America. When we look at the growth in shipping, there is going to be more money coming in. There is $6.1 billion in this trust fund. And so, when you talk about—we need to do all the things that we need to do to protect our ports and to expand our ports. And I agree with you. If there needs to a sea wall to protect that port, that should be there. If we need to dredge, we need to do that. If we need to rebuild the inland waterways and those lock systems that are now—again, those are—yours is 100 years old, these are 50 years old.

But we have a way to generate the dollars. What we are talking about with this is a growth in the overall economy throughout the entirety of the United States. It affects coast to coast. And I think it would be wise to include such measures as that, and the other things that we need to do. Because it is all about our overall economic competitiveness.

And when you talk about coming from a state where sometimes you have to wait for the disaster, they generally catch up with us, so I understand your position on sea walls.

Mr. MCDERMOTT. Well, when we bring this bill for a markup, you would be supportive of an amendment to broaden the use maybe just a little bit?

Dr. STRAIN. If you tell me what that dollar figure is.

Mr. MCDERMOTT. Anybody else want to—yes, Mr. Leone?

Mr. LEONE. I—the concern that I would have, sir, is that what the Corps of Engineers estimates is the need for dredging now. The intended purpose of the Harbor Maintenance was about what they are collecting now.

And so, if we start to see a drift into other uses—and I understand, we are certainly a donor port, as well—but I think if you—then you will find out that you will have—the problem will continue. So I think it is very, very difficult to start to see more purposes for the Harbor Maintenance Trust Fund when there is such a backload of dredging work that needs to get done. And I understand the situation you are in, that Boston and others are in, but there are an awful lot of unmet needs over here that need to get dredged.

Mr. TIBERI. [Presiding.] The gentleman's time has expired. Anyone else want to respond to his question?

[No response.]

Chairman TIBERI. No takers?

Mr. MCDERMOTT. Thank you.

Chairman TIBERI. Mr. McCurry? No? Okay. All right, the gentleman from Pennsylvania, Mr. Gerlach, is recognized for five minutes.

Mr. GERLACH. Thank you, Mr. Chairman. Good morning, gentlemen. I apologize, I was out with a constituent meeting for a few minutes, so this question might have been asked, but I am going to pose it anyhow.

Certainly I think all of us on this panel want to work to try to get released all of that $6 billion that is sitting in the fund so you can undertake the projects that are necessary at your port facilities. My district is just west of Philadelphia, and so the Philadelphia port facility is very important to our neck of the woods.

But also, what seems to occur every now and then in the conversation—and I understand back in the Clinton Administration there was a specific proposal to establish a user fee on the ship owners themselves, and somebody alluded to this a little bit earlier in their testimony, about the larger ships that get constructed, get utilized, and certainly come into the port facilities, and then thereby require an expansion of the port facilities, an improvement of the port facilities to handle those larger ships and larger volumes of cargo.

So, I would like to get your thoughts, in addition to our efforts, to try to make sure that $6 billion gets passed back out to you for the projects you need. Should we also be considering some type of user fee on the ship owners, themselves? Not the shippers of the cargo, but the ship owners who have these large vessels that certainly have a cost impact to the facilities themselves?

Or, would a user fee simply be something passed on to the shippers anyhow as customers, and not really have an overall impact the way some might think?

So I would like to get your thoughts on that, whether there should be an additional user fee on the part of the ship owners, as well as those that are owning the cargo that is being taxed when it comes into the port now. And whoever would like to—sir, Mr. Fisher.

Mr. FISHER. Sir, I think the problem we start with that kind of an idea is a lack of trust. The Congress came to the maritime industry in the mid-1980s and told us that our harbors would be dredged if only we would agree to a new user fee being imposed on the users of our ports. And we agreed, and here we are today, 20 years, 30 years later, discussing why that user fee doesn't work, and talking about how to fix it.

I think the problem with discussing a new type of user fee is that we feel a little bit hoodwinked from the last one. And moving forward with the discussion of a new one, I think we would want to make sure and look at the last one and get it fixed first.

Mr. GERLACH. Others?

Mr. ARNTZEN. Yes. The idea of a user fee for the shipping industry, which right now on a global and domestic basis is going

through one of its more difficult periods in many decades—we, as companies, have to make big investments in double-hull ships. We are going to have to spend $20 million in the next 3 or 4 years on ballast water upgrades on our ships. We are going to have to spend $20 million a year just in mandatory dry docks to keep up with Coast Guard requirements.

The companies that we—carry oil refined petroleum products are large refiners, large oil companies, national oil companies which have a much greater capacity to carry those type of costs. The shipping industry—we are a big company, by shipping industry standards. But you will find it is a lot of smaller, very lean operators on very tight budgets that are trying their hardest just to keep up with the environmental and safety requirements and equipment investments we have to make. I think it would be a difficult one for the industry.

Mr. GERLACH. Okay, thank you. One other comment, and then I have one other question.

Mr. LAGRANGE. Yes. Quickly, I would like to agree with that. Certainly I think the rate of profit by the carriers is marginal, at best, today. We have employed something I don't think will ever go away again, and that is slow steaming out in the open water, which—time is money, again, in the transportation industry.

I think what this does is it encourages the competition from other countries, both Mexico and Canada, to those ports there and close to the borders, whereby the user fee would not be assessed.

Mr. GERLACH. Thank you. One other question quickly. In Pennsylvania, you may know, we have a burgeoning natural gas industry in Marcellus shale. Gas is being collected and now being distributed. And that is going to perhaps put a lot of the Philadelphia Port area into a situation where improvements will be needed to the port facilities to handle that type of export.

Should these harbor maintenance funds be used in any way to incentivize improvements to port facilities to handle new types of industry that will be happening in our country, and including the natural gas industry? Should some of these funds be used for things that transform these facilities to better accommodate that kind of new industry?

Mr. ARNTZEN. We operate four large LNG carriers. When they were built they were the four biggest in the world. We took the first one into the Houston ship channel and we also took one into Boston.

I mentioned earlier the growth in refined petroleum products, exports from the United States. It is phenomenal. Nobody saw it coming. We think there will be the capacity for the U.S. to export chemicals, ethylene, LPG gases. I think it is going to be a very exciting period, because we are going to be very competitive with the rest of the world in a whole lot of areas where we haven't been.

So, I would encourage it. And I think there is going to be a big opportunity in that area for the country.

Mr. GERLACH. Thank you. Any others?

[No response.]

Mr. GERLACH. Okay. Thank you very much. Appreciate it, Mr. Chairman.

Chairman BOUSTANY [presiding]. Thank you. Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman, and thank you for holding the hearing, and for the RAMP Act. And I am pleased to be a coauthor of the bill.

I represent a number of ports in my district on the West Coast. And I have seen firsthand how deferred maintenance and a lack of funding and attention has really hurt our area. I have one harbor in Crescent City in the northernmost part of California that, until we dredged it last year, was nearly completely silted in. You could—if you could walk on mud, you could have walked all the way across the water. And it was terrible for business, it was terrible from a public safety standpoint. The Coast Guard couldn't even get in and out of the harbor. And that is totally unacceptable.

In Eureka, a deepwater port, the only deepwater port on the north coast, they have been underfunded. I think it is about $18 million short of what the Corps says they need for their O&M requirements in that area. Again, it is terrible for business. And I think that is the emphasis that we really need to focus on.

This is about jobs. It is about the jobs that would be created if we lived up to our responsibility to maintain these ports and harbors. It is about the jobs that will follow because of the added business that these harbors, these ports and harbors, would do. I thought it was—I don't remember who said it, but the lost revenue because you have to short-load or light-load these ships, that is an astonishing fact that doesn't get talked about nearly enough.

And it is about the jobs that will come to the surrounding economies, the surrounding communities, because there is a vibrant economic activity on these—at these ports.

And then lastly, it is not about just jobs, jobs, and jobs, but it is about jobs, jobs, jobs, and public safety. It was mentioned—the homeland security issue, the oil spill issue. But any—I represent an area that has a rich commercial and sport fishing economy. And if something happens to one of those folks and the Coast Guard needs to respond and we don't have our harbors up to speed, it doesn't happen.

And this is something that should be a national—that is a national embarrassment. We need to live up to our obligation. We need to fund these things. It would be good for the economy. It would be good for business. It would be good for jobs. And I will reserve the rest of my time to ask questions during the West Coast hearing that we are going to have on this issue. Thank you.

[Laughter.]

Chairman BOUSTANY. I thank the gentleman. Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman. I would like to follow up on a statement Mr. LaGrange made, and any of the panel that can answer this question.

How do the Mexican ports and the Canadian ports pay for their maintenance and dredging?

Mr. LAGRANGE. Yes, sir. It varies from country to country. But in Canada and Mexico it is usually a direct appropriation from the Federal Government to the channel and to the port. And it is also subsidized in some instances, not all, by a tariff or a user fee based—and placed on the carrier or the customer, one of the two.

But in all cases, I think without exception, it is a direct appropriation from the Federal Government, sometimes subsidized.

Mr. MARCHANT. And does that—and where does the final decision on where those funds get appropriated rest? Do they have a similar institution like the Army Corps of Engineers that makes that decision? Or is it a purely political decision?

Mr. LAGRANGE. It is done at the legislative level. And I would probably like to yield in this case to Mr. Leone, who is a lot closer to the subject matter. But we have some of our friends in Canadian ports, certainly in Mexican ports, and I think it is done at the legislative or congressional level.

Mr. MARCHANT. Okay. Thank you. Mr. Leone.

Mr. LEONE. I believe that the—I am not exactly sure what the complete process is. I think Mr. LaGrange or myself, you know, have some information regarding it from conversations with our fellow port directors in those countries.

But they have kind of federalized those ports now up in Canada. I am more familiar with Canada. I know our greatest competitor, Halifax, has got the similar situation as the Pacific Northwest, that dredging is not necessarily needed for them. But they generally—once the decision is made to get it, how that gets accomplished and how it gets done, I don't think—it is not like a Corps of Engineers. It is done at the port level.

So I don't know of anybody such as the Corps of Engineers that kind of collects money, or it has money and then responds by doing it, the dredging, in and of itself in those particular ports. I think it is the port asking, and then the port then kind of finds a way to get it done itself in Canada.

And I don't—in Mexico, does anyone have any more information on Mexico?

Mr. LAGRANGE. Mexico is federalized totally.

Mr. MARCHANT. So how often do you find—and since I am from Texas, I am most familiar with the Mexican ports just south of Texas—how often do you find competitive advantage is given to those Mexican ports, where they can ship into Mexico and then come across the border with either rail or truck?

Mr. LAGRANGE. We haven't seen it from Mexico that often. And we have an organization, the Gulf Ports Association of the Americas, which consists of the nine ports on the Yucatan Peninsula, basically, from Cancun running west in the other direction, Tampico, Altamira, and so on and so forth. We have not seen that much in the way, due to the lack of overland infrastructure, the availability of it into the United States.

There has been a spike over the last year I am told, with the relaxation of truckers coming in from Mexico to the United States, but it has been very minimal.

Mr. MARCHANT. Thank you, Mr. Chairman.

Chairman BOUSTANY. Thank you. Next—let's see. We have Mr. Berg.

Mr. BERG. Thank you, Mr. Chairman. From North Dakota we don't have a lot of ports in our state. Having said that, you know, I guess even though we don't have a major port, obviously each of you are dealing with local and regional economies that don't have the port. But I would like you to just maybe just briefly talk about the direct and indirect benefits to those regional areas that don't have the port, and why it is important for the port, and also to ex-

plain why it is important for those constituencies to ensure that there is, you know, adequate money for the Harbor Maintenance Fund.

Dr. STRAIN. Yes, sir. In North Dakota, as you know, you have a tremendous agricultural base. And you've got a lot of oil and gas activity going on. And if you look at the United States, most of our agricultural products are exported. We, you know, feed a great deal of the world.

And so, for you to move your products out of your region, out of North Dakota, whether it is oil and gas, petrochemicals or all the different agricultural products—wheat, beef cattle, et cetera—and those markets are growing—without an efficient system, at the end of the day it will cost your farmers by not being able to move the products or moving them with greater cost.

And again, the figure that we have seen is you are going to add another $.10-plus to a bushel of anything you move if we cannot move it efficiently through our waterway systems.

Mr. FISHER. Sir, the closest port probably to North Dakota is probably the Port of Duluth on the Great Lakes. And I can tell you that North Dakota agricultural products are common cargoes at the Port of Duluth. They are exported—they are transported to Duluth and then put on export vessels and sent abroad. And that port essentially allows North Dakota farmers to market their products all over the world, and gives the state access to global trade.

As my colleague has stated, if the Port of Duluth isn't properly dredged, and the vessel operators who call there to pick up North Dakota farm products and export them, if they can only partially load their vessel because of insufficient channel dredging, those products, on a per-ton basis, the transportation cost actually goes up, because you are carrying less product on each shipload.

Mr. MCCURRY. Just to tack on to that, really the obvious, that if you have got goods that are going to other countries, or consumer goods that are typically coming in from other countries, they are going to go through the point of least resistance and maximum efficiency.

So when you look at the retail import cargoes, most of them are coming in and being trucked or railed, depending on how far the destination is. In our case, having two class-one railroads on terminal allows us to pretty readily access the Midwestern markets for touching the distribution centers for retailers. And then similarly in the opposite direction for a lot of your agricultural products that, more and more, are going into containers, just as they go down the river on barges and go out of the Gulf.

Mr. BERG. Thank you. I—kind of interesting. In North Dakota we never really talk about trucking it out or railing it out. We always use the word "shipping." We are shipping our corn, shipping our wheat, doing those things. And yet Duluth would be the first point where they would see a ship.

Thank you. I yield back.

Dr. STRAIN. Mr. Berg, if I may just make one short comment.

Mr. BERG. Sure.

Dr. STRAIN. I am sure you are familiar with the term "the basis." Right? Whenever you sell a product—you sell your wheat. If it is running, you know, $5.90, $6, the basis is set to the side.

And so you have a positive or a negative. That positive or negative is one, what is going on in the Chicago Board of Trade, but it is also the transportation cost.

And I can tell you that when you can have wheat get down to $2.80 with a $1 basis the wrong way, and you are getting $1.80 for your wheat, that is a real thing. And we fight hard to make that basis positive and not negative. But shipping costs are a major part of that variable. And when your farmers contract to sell their products, that basis is variable. And so when they bring it and deliver it, when they deliver that product, that is when it is assessed, based on, to a great degree, the current shipping cost to move that to the next point of sale.

Mr. BERG. Thank you.

Chairman BOUSTANY. I want to thank all of you for your testimony, your expertise that you brought today to the subcommittees. And please be advised that Members may have some questions that they will submit to you in writing, and I would ask you to respond to those, those questions. And of course your written testimony will be made part of the official record.

And with that, this hearing is now adjourned.

[Whereupon, at 11:17 a.m., the subcommittees were adjourned.]

[Member Submissions for the Record follow:]

The Honorable Kevin Brady, Statement

Statement
The Honorable Kevin Brady (R-TX)
Committee on Ways & Means Joint Hearing
of the
Oversight and Select Revenues Subcommittees
February 1, 2012

Chairman Boustany, Chairman Tiberi and my fellow Members of the Committee:

I appreciate the opportunity to share some thoughts regarding the Harbor Maintenance Trust Fund. Mr. Boustany, I particularly appreciate your leadership on this critical issue. Back home, our districts not only share a border across the Sabine River but also are united by some of our country's most critical port infrastructure and waterways, including America's Energy Gateway: The Sabine-Neches Waterway. I am a cosponsor and strong advocate of your legislation, Realize America's Maritime Promise (RAMP) Act, to address issues with the Harbor Maintenance Trust Fund.

I also thank you for joining me in our long fight to deepen the Sabine-Neches Waterway in preparation for the improvements to the Panama Canal that will bring much deeper and more efficient Post-Panamax Tanker Vessels to the Sabine-Neches Waterway and to many other ship channels in Texas, Louisiana and the rest of the Gulf Coast and even many improving ship channels along the East Coast. The Sabine-Neches Waterway has completed its feasibility study phase and successfully secured a favorable report from the Chief of the U.S. Army Corps of Engineers.

I recently had an opportunity to visit with the directors of our Texas ports. They had one simple but critical request: secure the Harbor Maintenance Trust Fund for the future, and more importantly, fully use the trust fund revenues for their intended purpose of maintaining the most competitive, efficient and productive waterways in the world.

The Sabine-Neches Waterway is an example of the issue we are discussing today. The Sabine-Neches Waterway has not been improved in over fifty years, and it has been fighting for its deepening authorization for over a decade. And, when this Congress approves these vital improvements—and I hope that is much sooner rather than later—the users of the waterway should not have to worry about whether the investment—their investment—is going to be maintained. The RAMP Act legislation will help ensure that the revenues in the Harbor Maintenance fund

will be used—as they should be—for its maintenance needs today and for many years to come after Congress authorizes the deepening of this critical waterway.

International trade is a critical component of our current economic recovery. The progress we made last fall in opening new markets for American products specifically with the new sales agreements with Colombia, Panama and Korea are bright spots for economic growth. The expansion of the Panama Canal presents another tremendous opportunity for American businesses, but only if we have the infrastructure to support the increased ship size and tonnage that will result. Ports, not only along the Gulf Coast but along our eastern seaboard, are getting ready and they want this business. But today, only one port can accept the Post-Panamax ships. How we address this critical situation is important not only for areas like the Sabine Neches Waterway I mentioned earlier, but for our nation's competitiveness.

Our Texas ports proudly rank number two in the United States in handling foreign and domestic cargo representing nearly one-quarter of our nation's port tonnage. Texas ports also account for one million jobs and $48 billion in personal income for Texans.

Those numbers should continue to grow absent one fact. As a nation, we are not effectively maintaining the capacity of our waterways. Other countries around the world are vying for this commerce and they are making the necessary waterway infrastructure investments to seize this growth. We can do the same. However, the revenues from the Harbor Maintenance Trust Fund are not being reinvested into our nation's waterways at a sufficient rate. For too long, the trust fund's revenues have accumulated while our waterways suffer.

Today, the trust fund has a surplus of over $6 billion yet the nation's backlog of harbor maintenance needs continues to grow. Our waterway users deserve much better. They have made the investment, at an annual rate of about $1.5 billion, but are getting much less in return.

We must use the harbor maintenance fees for harbor maintenance projects. That's the remedy offered by the RAMP Act, and why I hope my committee colleagues will support this legislation and create more jobs for our fellow Americans. Thank you, Mr. Chairman.

The Honorable Wally Herger and Earl Blumenauer, Statement

The Honorable Wally Herger and Earl Blumenauer

Statement for the Record

Subcommittees on Oversight and Select Revenue Measures of the House Committee on Ways and Means

Hearing on Harbor Maintenance Funding and Maritime Tax Issues

February 1, 2012

Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, and Ranking Member Neal,

Thank you for the opportunity to submit testimony to your subcommittees in support of legislation that would provide tax equity and allow U.S.-flag vessels that operate in both domestic and International trades to utilize the tonnage tax for international income.

On March 30, we introduced H.R. 1267, a bill to repeal the 30-day limit on domestic operations of U.S.-flag vessels that operate in both domestic and international trade. A companion bill, S. 57, was introduced by Senators Inouye, Begich and Cantwell.

Summary

Foreign registered vessels now carry 97 percent of the imports and exports moving in international trade with the United States. These foreign vessels are held to lower standards than U.S.-flagged vessels, and are virtually untaxed. Their operating costs are, therefore, lower than U.S.-flag vessel operating costs, which explains their 97 percent market share.

Six years ago, the American Jobs Creation Act of 2004 (P.L. 108-357) added a new Subchapter R to the Internal Revenue Code of 1986 that taxes a U.S.-flag vessel's income from international operations based on the tonnage of the vessel (tonnage tax), rather than the normal 35 percent U.S. corporate tax rate. The purpose of this lower tonnage tax is to help level the playing field for U.S.-flag vessels that compete in international trade against largely tax exempt foreign registered vessels.

A new concept (that was not included in either the House or Senate bill) was added in conference that is problematic. Specifically, a provision was adopted that prohibits a U.S.-flag vessel from using the tonnage tax on its international income if that vessel also operates in U.S. domestic trade for more than 30 days per year. The conferees reportedly added this 30-day limit on domestic trading in the mistaken belief that U.S.-flag vessels either operated in international trade, or in domestic trade, but not both. This is generally true, but not entirely. There are a small number of U.S.-flag vessels – approximately 63 vessels in all -- that operate in both domestic and international commerce. The 30-day limit has had the severely inequitable result of causing these American vessels to operate at a significant tax penalty relative both to foreign-flag and U.S.-flag competition in international trade.

In some cases, U.S. flag operators which engage in international trade have passed on available domestic carriage and tied their vessels up to avoid exceeding the 30-day threshold because exceeding the threshold by even one day would make all of the remaining foreign-generated income subject to the 35% U.S. corporate tax rate.

The solution is to repeal this 30-day limitation. This would enable U.S.-flag vessels to use the lower tonnage tax for income from international operations but still pay the normal 35% corporate tax on income from operations in the domestic commerce of the United States.

Background

The Jones Act states that only vessels that are (1) built in American shipyards, (2) 75% owned by United States citizens, and (3) registered in the United States, are qualified to operate in U.S. domestic trade between American ports. It is important to recognize that these requirements already put these vessels at a significant cost disadvantage when they venture into international commerce. More specifically, foreign vessels are built in lower cost foreign shipyards, are virtually untaxed, and are manned by lower paid foreign citizen crews.

The statutory prohibition on American vessels that operate in domestic trade using the tonnage tax for their international service is a completely unjustifiable additional burden on these vessels. United States tax policy should facilitate the participation of American vessels in our international trade rather than further handicapping them and exacerbating America's 97 percent reliance on foreign vessels to carry its international commerce.

30-Day Limit Repealed in 2006 for Great Lakes Vessels Only

The identifiable universe of "dual trade" U.S.-flag vessels that are adversely affected by the 30-day limit is approximately 63 vessels. In December 2006 Congress recognized the inequity caused by the 30-day limit and repealed it, but only for U.S.-flag vessels that operate in domestic and international trades on the Great Lakes. There are about 50 such vessels. They operate primarily in domestic trade between American ports on the Lakes, but also may periodically carry cargo between the United States and Canada in international trade. (See Section 415 of P.L. 109-432, the Tax Relief and Health Care Act of 2006.)

Conclusion

There is no tax policy justification for making this correction to the tonnage tax only for U.S.-flag vessels that operate in one region of the country. The correction should apply equally to all U.S. ocean carriers, regardless of the geographic region of the United States where they operate. There are approximately 13 U.S.-flag vessels remaining that are still adversely affected by the 30-day limit. These vessels operate in domestic trades that involve the U.S. Pacific Coast, the U.S. Atlantic Coast, the Gulf of Mexico, Hawaii, and Alaska.

We respectfully request your assistance in enacting the provisions of H.R. 1267.

The Honorable Brian Higgins, Statement

STATEMENT OF CONGRESSMAN BRIAN HIGGINS TO THE SUBCOMMITTEE ON OVERSIGHT AND THE SUBCOMMITTEE ON SELECT REVENUE MEASURE OF THE COMMITTEE ON WAYS AND MEANS ON MARITIME TAX REFORM

February 1, 2012

Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, Ranking Member Neal, and Members of the Subcommittees,

Thank you for holding this very important hearing today on the maritime sector and the role that the tax code has in encouraging its continued vitality.

Our nation's waterways have been pathways to its prosperity. The construction of the Erie Canal nearly 200 years ago was a farsighted infrastructure investment whose builders understood the potential that sea highways, and infrastructure in general, had in moving people and goods throughout our country. The construction of the Erie Canal prompted the exponential growth of Buffalo and the region I represent in the 19th Century – the legacy of which lives on today.

The Saint Lawrence Seaway and the modern Great Lakes Seaway System carries on that tradition today as one of the North America's most important maritime highways.

Yet we have seen that barriers exist in our tax code preventing full use of the modern Seaway System.

I am specifically concerned about the troubling double taxation of the harbor maintenance tax imposed on cargo transported on American vessels between American ports and ports in the Great Lakes. This double taxation has made it unfeasible for vessel operators to utilize the Seaway System.

The Short Sea Shipping Act, legislation I have worked on for several terms with Chairman Tiberi, Representative Steve LaTourette, Ranking Member Levin, and others, would address this problem head on. H.R. 1533 would exempt commercial cargo that is loaded at a port in the United States mainland or a port in Canada located in the Great Lakes Seaway System and unloaded in at another port in the United States mainland after traveling through the Great Lakes Seaway System.

H.R. 1533 has broad support amongst the maritime community. I strongly urge this Committee to include the proposal in any appropriate legislative vehicle this term.

I would also like to express my support for H.R. 104, the Realize America's Maritime Promise (RAMP) Act. As a member representing a district that includes many harbors, I am continually concerned by the growing dredging backlog. This bill would address this backlog and I urge the Committee to support it.

[Public Submissions for the Record follow:]

AGL Resources, Statement

STATEMENT BY GRACE KOLVEREID OF AGL RESOURCES BEFORE THE SELECT REVENUE MEASURES AND OVERSIGHT SUBCOMMITTEES OF THE HOUSE WAYS AND MEANS COMMITTEE

February 1, 2012

Thank you, Chairmen Tiberi and Boustany and Ranking Members Neal and Lewis, for the opportunity to submit testimony today before your subcommittees on the topic of "Harbor Maintenance Funding and Maritime Tax Issues."

I am Grace Kolvereid, Vice President of Tax for AGL Resources in Atlanta, Georgia, and I am representing one of our affiliates, Tropical Shipping Company. Tropical Shipping, a 48-year old company headquartered in Riviera Beach, Florida, supplies freight-shipping needs to and from the Caribbean and The Bahamas from the port of Palm Beach.

Tropical Shipping, along with several other American shipping companies, has been very supportive of the H.R. 1031 in this Congress, as well as H.R. 2542 in the 111th Congress. Both of these identical bills were introduced by Chairman Tiberi and Congressman McDermott and we commend them for their initiative. We appreciate that the scope of this hearing includes H.R. 1031, the "American Shipping Reinvestment Act (ASRA) of 2011," and our reasons for endorsing it.

Under an arcane 1970's tax provision, U.S. shipping companies must maintain investments in qualified foreign shipping assets made between 1975 and 1986. Because any net decrease in these investments results in an immediate tax penalty, this provision has stranded significant capital of U.S. companies in foreign assets. ASRA would repeal this outdated provision and would also allow U.S. shipping companies a one-time opportunity to reinvest those prior year foreign source earnings at a reduced tax rate. Enacting ASRA would allow companies to bring these funds home and reinvest them in the U.S. shipping industry. We need to expand and grow our domestic maritime industry. As a result, ASRA would spur job growth by creating a broad and diverse range of well-paying employment opportunities for American workers. H.R. 1031 would repeal IRC Section 955, with rules that apply to

foreign shipping income earned between 1975 and 1986, and will allow these stranded assets to be reinvested in the United States under the same favorable tax terms that were in effect for all other companies and industries, as a result of the one-time return of stranded foreign assets at a reduced tax rate under the "American Jobs Creation Act of 2004."

Without the commonsense and technical tax change in this legislation, these old, stranded assets will never return to the United States and never be subject to U.S. taxation.

The bill is guaranteed to create jobs for American workers with the funds being brought back into the U.S. economy-on the ships, in the shipyards building the ships, and in supporting businesses. The bill contains a provision that would impose a tax penalty if a shipping company reduces its full-time U.S. employment levels. The bill is strongly supported by maritime labor, shipyards and ship owners and operators and can provide a boost to the U.S. maritime industry at a time when the U.S. is struggling to find its economic footing.

Chairmen Tiberi and Boustany, Congress should enact ASRA this year, creating thousands of American seagoing and shoreside jobs and stimulating critical investments in American shipping companies that help sustain our economic and national security.

Thank you.

American Association of Port Authorities, Statement

Alliance of the Ports of Canada, the Caribbean, Latin America and the United States

AMERICAN ASSOCIATION OF PORT AUTHORITIES
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Testimony of Kurt J. Nagle, President and CEO

Submitted for the Record of The United States House of Representatives
Ways and Means Committee

Hearing on *Harbor Maintenance Funding and Maritime Tax Issues* February 1, 2012

The American Association of Port Authorities (AAPA) is pleased to present testimony for the record of the Ways and Means Committee hearing on *Harbor Maintenance Funding and Maritime Tax Issues*. We would like to commend Chairman Boustany and Chairman Tiberi for their leadership on the maritime tax issues before the Committee today. AAPA represents the leading seaports in the United States through which 95 percent of our nation's overseas imports and exports flow. In addition to supporting millions of U.S. jobs for the nation, efficient seaports expand market access for existing and new business by providing the capability to export their products. Ports also provide import capabilities for raw materials, parts, fuel stocks, and other inputs for American business.

Full Use of the Harbor Maintenance Tax

In 1986, Congress instituted the Harbor Maintenance Tax (HMT) in order for the users of these federal channels to pay for the maintenance dredging required to keep channels at their authorized depths and widths. Prior to that time, maintenance of federal channels was totally a federal expense. The new system imposed the HMT to pay for the federal share of maintenance, with local sponsors also at times paying a cost-share based on the depth of the channel. Unfortunately, when devising this new "user pay" system, Congress did not tie the receipts to spending. The subsequent low Appropriations levels have resulted in chronic underinvestment in channel maintenance.

H.R. 104 aims to resolve this inequity. This legislation requires appropriations for harbor maintenance dredging to be equal to the prior year's receipts plus interest. The bill provides a point of order against future appropriations bills that do not ensure this level of funding. Currently, the bill has 166 co-sponsors, which is evidence of the strong support for this bill.

Today, America's federal navigation channels have available their authorized dimensions (depths and widths) less than 35 percent of the time, which means channels may be restricted to one lane of travel, and the ships that are moving may not be able to carry full loads of cargo because of depth restrictions. At the same time, the current surplus in the trust fund stands at $6.4 billion with annual revenue of about $1.4 billion and growing. The annual need for maintenance dredging, which is in the range of $1.3 to $1.6 billion, according to the Army Corps of Engineers, is comparable to the funds collected. However, over the past five years, annual expenditures for channel maintenance have averaged less than $800 million, creating the surplus and leaving users with inadequately maintained channels. The net result is increased costs for waterborne transportation users, higher prices to consumers, and reduced competitiveness of U.S. exports in the global marketplace. Jobs, tax bases and income produced are adversely impacted as well.

We ask that Congress honor its pledge to maintain the nation's ports and harbors with the revenue provided by users. This can be accomplished through a shift in funding priorities in both the Congress and the Administration, given that annual revenue is available, or through legislation like H.R. 104, being considered today, that would require that the annual Harbor Maintenance Tax revenue be made fully available to the Army Corps of Engineers for maintenance dredging and related purposes in its annual appropriation. We applaud the efforts of Representative Boustany in pressing for full use of the annual revenue and urge the Ways and Means Committee to voice support for passage of this legislation.

While H.R. 104 is an important step in securing full use of the Harbor Maintenance Tax, critical work remains to gain support for full use among the leadership of both chambers and the chairmen of the committees of interest — Budget, Rules, and Appropriations. A solution needs to be found to correct an unfair allocation system in which harbor maintenance taxes are used to offset other federal spending by allowing the Trust Fund balance to grow, rather than using it for its intended purpose. Such an agreement was reached in the past for the highway and aviation trust funds, and it should be done now for maritime. The Harbor Maintenance Tax requires the same level of general accord and treatment to assure that the funds are applied annually as intended.

Encouraging Short Sea Shipping

AAPA has a long-standing policy in support of tax policy that supports short sea shipping, which has the potential to alleviate highway congestion and improve environmental sustainability. AAPA supports tax and program incentives for shippers and certain exceptions from the HMT to encourage more movement of cargo on the water.

AAPA strongly supports repealing the Harbor Maintenance Tax for certain domestic port-to-port movements of cargo to encourage more short sea shipping within the United States. This would eliminate the current tax disincentive to move containers and certain other cargo by water and off our overly congested roads, which are expensive to maintain. Europe has an extensive short sea shipping industry. By eliminating current federal tax disincentives, the Congress can help spur this fledgling industry in the United States.

Conclusion

Seaports are a vital component of our nation's infrastructure, and modern, navigable seaports are critical to our international trade and our nation's economic prosperity. Our trade partners are investing in their water infrastructure in order to address the needs of both today and tomorrow. In order to continue to be a strong maritime trading partner and support our nation's economic growth, we must look closely at the current disincentives and budget inequities that must be corrected in order for us to continue to maintain a world-class transportation system that encourages full utilization of our maritime assets.

American Road and Transportation Builders Association, Statement

Statement on
Harbor Maintenance Funding
and Maritime Tax Issues

Submitted to the
United States House of Representatives
Committee on Ways and Means
Subcommittee on Select Revenue Measures
Subcommittee on Oversight

February 14, 2012

On behalf of its 5,000 member firms and public agencies nationwide, the American Road and Transportation Builders Association (ARTBA) would like to thank Oversight Subcommittee Chairman Boustany and Ranking Member Lewis, and Select Revenue Measures Subcommittee Chairman Tiberi and Subcommittee Ranking Member Neal for calling the February 1 joint hearing on harbor maintenance funding and maritime tax issues. The committees' review of: H.R. 104, "Restore America's Maritime Promise;" H.R. 1533, the "Short Sea Shipping Act of 2011;" and H.R. 1031, the "American Shipping Reinvestment Act of 2011," begins an important discussion about how to address the nation's water transportation challenges.

The ARTBA membership comprises various groups within the intermodal transportation design, safety, and construction industries. The association brings together contractors, engineers, product suppliers, equipment manufacturers, public officials and financial experts to advance a singular mission: improving the nation's transportation infrastructure network. The industry we represent generates more than $200 billion annually in U.S. economic activity and sustains more than 2.5 million American jobs.

The ARTBA Ports and Waterways Council (PWC) includes members of the engineering, heavy construction, material and supply, and dredging sectors. Its primary mission is to develop and advocate consensus transportation design and construction policy positions, recommendations and programs aimed at growing a well-funded and efficient infrastructure market for the U.S. Marine Transportation System (MTS).

ARTBA applauds Chairman Boustany for introducing H.R. 104, which would link annual spending from the Harbor Maintenance Trust Fund (HMTF) each year to fund receipts, plus interest. ARTBA enthusiastically embraces this concept and continues to advocate maximum investment in all segments of the nation's intermodal transportation system, including maritime.

ARTBA also commends Chairman Tiberi for introducing H.R. 1533 and H.R. 1031. Both proposals would provide an opportunity to tackle important tax-related issues in the domestic shipping arena. ARTBA agrees with the goal of relieving congestion throughout our transportation network and encouraging further growth and investment in this important component of our nation's freight network.

The U.S. MTS is an integral component of the nation's intermodal transportation network. Ports, waterways and related-landside intermodal connectors serve as vital links for international and domestic trade, and play an important role in the nation's economic future. Port and waterway improvement projects support substantial, long-term employment and growth in the manufacturing, agriculture, mining and logistics sectors.

According the U.S. Army Corps of Engineers, for every dollar invested to improve navigation infrastructure, U.S. gross domestic product (GDP) increases more than $3 dollars. The lack of an efficient, secure, and globally competitive supply chain to move bulk commodities, containerized goods and large capital intensive products will severely hinder the drive to reclaim America's export heritage. Improvements in all modes of transportation infrastructure are critical to reducing the national trade deficit—a chronic economic disease that must be addressed to ensure continued economic growth.

International trade through U.S. ports, directly and indirectly supports 25-30 percent of U.S. GDP and 13 million jobs. However, many exportable products from the U.S., cannot compete in the global marketplace as a result of national export supply chain limitations. Inadequate port and waterway infrastructure and short comings in other components of the nation's transportation network undermine the export supply chain and overall competitiveness of the nation.

Ultimately, the U.S. transportation system is only as strong as its weakest link. We must continually assess and improve federal transportation policy and ensure adequate investment to better maintain and strengthen our MTS. The bills discussed during the February 1 joint hearing represent important steps to improve the nation's maritime transportation infrastructure and in turn bolster economic growth, promote job creation, and improve our global competitiveness. Thank you for the opportunity to make these views part of the hearing record.

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Big River Coalition, Statement

BIG RIVER COALITION

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February 15, 2012

The Big River Coalition was created in fiscal year 2011 in reaction to the announcement by the Commander of the Corps of Engineers' Mississippi Valley Division confirming the discontinuation of reprogramming funds to maintain the Lower Mississippi River navigation channel. This position change immediately meant the Mississippi River's navigation channel would no longer receive preferential treatment. Shortly after the 1989 grounding of the M/V Marshal Konyev near Pilottown which, in essence, closed the River to all ship traffic, the Corps' Headquarters announced in a position statement that it would maintain the nation's most critical navigation channel. The Big River Coalition's main focus has been to obtain additional funding to supplement the shortfall in the Corps' annual budget, to strive to establish a legislative firewall around the Harbor Maintenance Trust Fund, and to represent members of the Mississippi River navigation industry in matters related to coastal restoration.

The Big River Coalition has watched the Harbor Maintenance Tax (HMT) revenues increase while the Harbor Maintenance Trust Fund surplus grew to over $6.3 billion. This surplus is merely an accounting of what has already been diverted from the maintenance of our nation's critical trade arteries and deep-draft harbors. Our nation's most important waterways for international trade are often operating at channel dimensions significantly below their Congressionally authorized depths and widths. The Corps agreed that of our nation's 59 busiest waterways, fully authorized dimensions were only available 35 percent of the time. The ad valorem HMT is paid by shippers, and they have the right to expect these funds are used to maintain our critical navigation channels. However, because of the disconnect and surplus of funds, the same shippers who pay the tax are often further penalized by having their vessels delayed or negatively impacted by reduced channel availability.

BIG RIVER COALITION

The Lower Mississippi River (LMR) has been described using colorful monikers over the years, but for shippers it is often referred to as the "world's economic superhighway." This channel connects 31 states, 2 Canadian Provinces and approximately 12,500 miles of navigable channels to the world's free trade markets. The channel contributes approximately $125 billion annually to the U.S. economy. The Corps' New Orleans District (NOD) agrees that, on average, they require $110 million annually to maintain the navigation channel; however, they are often funded at a level around $65 million (unless supplemental funding or reprogramming of funds is approved). On January 31, 2012, the NOD received $54 million in supplemental funding due to the support and efforts of the navigation industry and the entire Louisiana Congressional Delegation. However, the funding increase was only made available after several draft and transit restrictions had to be enforced on the LMR and, most notably, after several vessel groundings occurred that were directly linked to the NOD being underfunded.

The NOD devised a budget-driven dredging plan based on the level of Congressional funding secured through normal funding sources. The NOD announced this budget-based dredging schedule in the form of a document known as the *White Paper*. Prior to receiving the $54 million, the NOD released their dredging planned based on the $72.6 million it had previously been budgeted. Because of the shortfall in this amount and the need for $110 million, the NOD was unable to dredge at times when the channel became deficient. The NOD recently released an amended *White Paper* based on the receipt of supplemental monies.

This supplemental funding should provide the NOD with adequate funding to maintain authorized dimensions on the 250 miles of LMR channel, barring any unforeseen circumstances such as flood stage river levels or significant hurricane or tropical events. However, the supplemental funding will only help to maintain the channel this Fiscal Year. As the next fiscal year starts without adequate changes in the budget, the LMR channel will again risk being compromised due to inadequate funding. Please remember that the shippers paying the HMT are the ones most unfairly penalized by the reduced channel dimensions. During the reduced draft recommendations that began in early January 2012, many of the shippers who pay the HMT were negatively impacted by vessel delays and were forced to absorb additional costs. The LMR deep-draft channel is Congressionally authorized to 45 feet deep by 750 feet wide over the majority of the channel, although there are several places where the width is narrower (Southwest Pass

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Jetties and the Crossing above New Orleans). At times the channel has been less than 100 feet wide and well below the authorized depth. The channel was reduced to 44 feet on January 2, 2012, and it was further reduced to 42 feet from January 17, 2012 through January 26, 2012.

The loss of 3 feet of draft on the world's economic superhighway comes with severe financial ramifications for the shippers who pay the .125% tax on the value of their imported cargoes. The Big River Coalition commissioned and released an Economic Impact Study by Dr. Tim Ryan, which documented problems associated with inadequate channel maintenance of the LMR navigation channel. Dr. Ryan's Study and the Executive Summary are available, along with other critical LMR channel information at:

http://bigrivercoalition.org/news.html

Dr. Ryan's Study clearly demonstrates what shippers have long known regarding the failure to fully fund the NOD's budget to preform channel maintenance—which is that the economic impact has huge financial penalties. Results of the Study highlight that there is an annual shortfall of approximately $45 million between the NOD's authorized budget and their actual maintenance costs. Dr. Ryan details that the failure to fund this additional $45 million could amount to economic losses to the nation totaling nearly $10 billion through reduced cargo and production cutbacks.

Dr. Ryan's Study featured several draft reductions based on announcements by the NOD during the high river stages that were associated with the flood of 2011. During this historic event, the NOD was openly concerned and advised the navigation industry that it may only be able to maintain the authorized channel to depths of 40 or 38 feet. Certain vessel operators, mainly those handling petroleum or hazardous cargoes, require up to three feet of under-keel clearance. Therefore, a loss to 40 feet would limit those vessels to a maximum draft of 37 feet or 35 feet, respectively. The economic losses now will only be further exacerbated when the new locks open on the Panama Canal. With the opening of the new locks, this will mean that the maximum draft on the LMR will become the limiting draft for vessels transiting the new Canal, which will have a deep draft of 50 feet. Clearly, in order for the U.S. to maximize the economic boom of the Panama Canal offering Post-Panamax vessel transits, our nation's critical trade channels will need to be maintained at 50 feet year round.

BIG RIVER COALITION

The following example offers a glimpse into the reality of taxation without channelization as it pertains to one vessel on a channel that sees roughly 6,000 vessel arrivals annually. A shipper regularly transits the LMR with shipments of about 70,000 tons pig iron, which has an estimated value of $500 per ton. The Harbor Maintenance Tax this shipper will pay is calculated as follows: 70,000 tons x $500 a ton = $35,000,000 cargo value x .125% = $43,750. This one vessel movement generates $43,750 via the HMT. The vessel has been unable to load to the Congressionally authorized depth of 45 feet because of the recently imposed draft restrictions of 42 and 44 feet (currently 44 feet). One foot of draft on a Panamax size vessel averages about 2,300 tons. The loss of one foot of draft equates to $1.1 million, and at 42 feet, the loss of cargo would be $3.3 million.

Therefore, the shipper who is paying the HMT is being penalized because our government is using money that his company paid into the HMT for other purposes. Take it a step further and say that products made from pig iron cost more to the American Tax payer because economies of scale are reduced. Consider that in relation to oil and gas imports, and you can see where the American taxpayer is being substantially penalized across the board, which has been clearly demonstrated in Dr. Ryan's Study.

The shipper paying the HMT is being unfairly penalized because the purpose of the HMT, as authorized in the Waterways Resources Development Act of 1986, was to fund the Corps' channel maintenance program. The vast majority of the funds were designed to cover the cost of dredging but, ironically, as more of the HMT goes unused, the government is also driving up the cost of maintenance dredging. Because of the loss of proper funding, the unused tax diminishes the effectiveness of the U.S. dredging industry. Conversely, with full use of the HMT monies, the dredging contractors would logically respond by building new, advanced equipment in U.S. shipyards as per the Jones Act requirements. The misuse of the HMT hurts the American economy and jeopardizes jobs, drives up the cost of products, and harms U.S. trade competitiveness.

The Big River Coalition encourages Congress to pass legislation that will stimulate the economy, create jobs, increase trade, maintain the nation's most critical deep-draft channel, and stop penalizing shippers who pay into the HMT. The Corps, at Headquarters level, has stated that with the approximately $1.5 billion generated by the HMT, it would be able to satisfy its deep-draft navigation commitments. The HMT is badly needed to encourage trade and promote the

BIG RIVER COALITION

future of our nation has tied to international trade. President Obama stated that he wanted to double trade over the next few years. Clearly, without proper and routine channel maintenance, this goal will never be met. Countries around the world envy the Mighty Mississippi, and it is time the country realizes and nurtures the "world's economic superhighway." The President's Export Council sent a message last year in the form of a letter on Transportation Infrastructure. This letter stressed the importance of maintaining the Mississippi River channel and is available at:

http://www.trade.gov/pec/docs/PEC_Transportation_Infrastructure_Letter_031111.pdf

Taxation without channelization is a key concern to the nation and, most notably, to the members of the Big River Coalition whose membership is represented from New Orleans to Minnesota northward, and from New Orleans to Pittsburgh in the Northeast. The HMT should be used for its intended purposes in order promote reliable channels across this nation to ensure and protect our position in the future of world trade.

The Big River Coalition extends our sincere thanks to Congressman Boustany, Chairman of the House Ways and Means Subcommittee on Oversight, for hosting the recent hearing and for his support to fix the broken trust fund mechanism via the Realize America's Maritime Promise Act (RAMP). The Coalition also thanks Congressman Pat Tiberi, Chairman of the Select Revenue Measures, for co-hosting this Hearing.

Carrix Inc., Statement

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Submission of Written Comments for the Hearing Record
U.S. House of Representatives, Committee on Way and Means
Subcommittees on Oversight and Select Revenue Measures
Hearing on Harbor Maintenance Funding and Maritime Tax Issues
February 1, 2012

CARRIX, INC.

SUBMISSION OF WRITTEN COMMENTS FOR THE HEARING RECORD
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEES ON OVERSIGHT
AND SELECT REVENUE MEASURES

HEARING ON HARBOR MAINTENANCE FUNDING AND MARITIME TAX ISSUES

February 1, 2012

Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, Ranking Member Neal and distinguished Members of the Subcommittees:

Carrix, Inc. ("Carrix") is pleased to submit written comments for the record in connection with the January 25, 2012 hearing of the Committee on Ways and Means Oversight and Select Revenue Measures Subcommittees ("the subcommittees") examining critical maritime tax issues. Carrix is a **closely held** U.S.-based port terminal operating company that manages more cargo terminals than any other company in the world. Carrix provides a full spectrum of transportation services, from terminal management to stevedoring, in a number of U.S. and foreign ports. Carrix and its affiliates directly employs more than 1,350 American workers, and indirectly employs more than 4,900 FTE American union workers, all of whom provide necessary services to the maritime industry. In addition, Carrix and its affiliates have marine terminal operations in 13 states.

As a company built on international trade, specifically in the shipping industry, Carrix fully appreciates the topic of today's hearing: the role that tax issues play in the maritime industry. Carrix, like many other U.S.-based companies in all sectors of the economy, faces fierce competitive pressure from foreign-based companies. Unlike most other U.S.-based companies, many of our foreign-based competitors are large foreign multinationals, some of which are closely aligned with foreign governments, and operate under more favorable home country tax regimes.

We would like to bring to the Committee's attention a tax issue that directly and negatively impacts our ability to grow our U.S. operations: the potential application of the personal holding company (PHC) tax to earnings we would seek to return to the U.S. in the form of dividends from our foreign subsidiaries. This should not be confused with the income tax that U.S. companies would pay on these foreign dividends. PHC is a discriminatory tax of 15 percent that is paid in addition to the income tax. As will be discussed further, the PHC tax is an outmoded relic in the Tax Code that offers little, if

any, compelling policy rationale for its continued existence. We applaud the full Committee's examination of fundamental tax reform, undertaken at the Chairman's direction last year. As the Committee continues to work on fundamental tax reform this year, we believe the PHC tax regime should either be repealed or substantially revised.

Background on the Personal Holding Company Tax

Section 541 of the Internal Revenue Code imposes a corporate level penalty tax of 15%[1] on the undistributed personal holding company ("PHC") income of a PHC. The purpose of the PHC tax regime[2] is to prevent individuals from avoiding the individual income tax on interest, dividends, rents and similar types of income by holding investments through corporations. A corporation constitutes a PHC if 60% of its adjusted gross income is PHC income and if 50% of its stock is owned by five or fewer individual shareholders at any time during the last half of the taxable year. PHC income generally is defined as interest, dividends, royalties, rents, and certain other types of passive investment income.

It is important to understand the roots of the PHC tax regime to appreciate why it needs to be reconsidered. In the 1930s the corporate tax rate was 13.5% and the top individual income tax rate was 63% (a 49.5% differential between the top corporate and individual tax rate). Also, pursuant to the so-called *General Utilities*[3] doctrine, corporations could liquidate and distribute to their shareholders appreciated assets tax-free. These two factors created incentives for individuals to incorporate their portfolio investments (so-called "incorporated pocket-book"). Congress responded to this situation appropriately by enacting the PHC tax provisions as part of the Revenue Act of 1934.

As the Committee knows full well, the nation's tax laws, and the need for many companies to operate on a global basis in order to effectively compete against our foreign counterparts, have changed significantly since the mid-1930s.

The policy rationales that led to the PHC tax regime are no longer operative. First, the top marginal tax rate for both individuals and corporations is 35%.[4] Second, corporate liquidating distributions of appreciated assets are taxed at the corporate level. ***Simply put: Today's tax laws do not provide an incentive to incorporate portfolio investments to escape the individual income tax.***

Application of PHC tax to Carrix

An example will help to clarify the lack of a compelling policy justification for the application of the PHC tax. In the case of a group of corporations filing a consolidated return, the PHC test is generally conducted on the basis of the operations of the

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[1] This rate is scheduled to return to the highest individual tax rate when the lower dividend tax rate expires.
[2] Sections 541 – 547 of the Internal Revenue Code of 1986.
[3] *General Utilities & Operating Company v. Helvering*, 296 U.S. 200 (1935). The *General Utilities* doctrine was repealed by Congress in 1986.
[4] The top individual tax rate is slated under current law to rise to 39.6% on January 1, 2013 – resulting in less than a 5% differential between the top corporate and individual rates.

consolidated group. However, in certain circumstances the test must be conducted on a separate company basis. When the test is conducted on a separate company basis, a group of corporations filing a consolidated return can easily find that it has a personal holding company tax liability even though a great majority of its revenue is generated from the active conduct of its trade or businesses.

The requirement to conduct the PHC tests on a separate company basis often unfairly penalizes corporate groups that are actively engaged in business. A common fact pattern that gives rise to this unwarranted imposition of the PHC tax is where a member of the group receives dividends from controlled foreign subsidiaries. ***In this case, the separate company PHC tax computation serves as a deterrent to the repatriation and reinvestment of foreign earnings in the United States.***

In other words, Carrix could be subject to the PHC tax to the extent it repatriated dividends from its overseas affiliates simply because it is a closely held company. If Carrix were organized as a public company, the PHC penalty tax would not apply. Simply because Carrix is closely held, the tax rate on foreign earnings returned to the United States would be, rather than the normal 35% rate, a 50% tax rate. Such a level of tax makes it more economical for Carrix to keep foreign earnings offshore for purposes of further developing international operations, rather than using earnings from overseas operations to fund productive investments in the United States.

In Carrix's case, for example, we could use foreign earnings to fund the construction of major port terminal facilities in Washington State, strengthen the financial well-being of the company and, most importantly, create and retain good, well-paying U.S. jobs.

Additional Policy Considerations

Carrix believes that additional policy considerations argue in favor or repealing, or substantially modifying, the PHC tax regime. The tax was enacted to prevent affluent individuals from escaping the reach of the individual income tax. Given the changes described above in the overall design elements of our nation's tax law today, in practice, the PHC tax regime does less to deter the formation of so-called "incorporated pocketbooks" than to inhibit closely–held active businesses with less than six shareholders from pursuing logical business transactions that other companies are able to do because they may give rise to PHC tax consequences.

Some companies are able to evade the reach of the PHC tax through sophisticated tax counsel, some companies elect to make investments internationally versus in the U.S. rather than pay this discriminatory tax, and other companies are not so lucky and are either unaware of the PHC tax or cannot avoid the tax unless they change their ownership structure. In addition, the PHC tax adds significant complexity to the Internal Revenue Code while raising a relatively nominal amount of tax revenue: approximately $38 million of total PHC tax was paid in 2008 (most recent year information available).

Most importantly, from our perspective, the PHC tax unnecessarily and unfairly taxes revenues which would otherwise be available for investment in much needed port infrastructure projects or other important corporate uses which would promote economic development in the United States. No federal support exists for port infrastructure other than a modest number of Tiger grants and a highway bill that is languishing and, more importantly, consistently lacks sufficient support to keep our ports competitive with other nations or to meet the growing demands of international trade.

Proposed Solution:

A proposed solution would eliminate the provisions that require certain consolidated groups of corporations to determine their PHC tax liabilities on a separate company basis.

This solution would not eliminate the PHC tax for a consolidated group of corporations that is determined to be a PHC on a consolidated basis. However, provided that a consolidated group of corporations is determined not to be a PHC on a consolidated basis, these corporations would not pay the additional 15% penalty tax, but would simply pay the same level of corporate tax as a similarly situated publically traded corporation.

Suggested Legislative Text:

(a) In General. – Section 542(b) is amended by –

(1) striking paragraph (2) and (4), and

(2) redesignating paragraphs (3), and (5) as paragraphs (2) and (3) respectively.

(b) Conforming amendments –

(1) Section 542(b)(1) is amended by striking "paragraphs (2) and (3) and inserting "paragraph (2)".

(2) Section 1504(c)(2)(B)(ii) is amended by striking "section 542(b)(5)" and inserting "section 542(b)(3).

(c) Effective Date – The amendment made by this section shall apply to taxable years beginning after December 31, 2012.

Conclusion

Thank you for the opportunity to submit these written comments for the record. As a significant service provider to the U.S. maritime industry and a large employer of American workers, Carrix looks forward to working with you and your staffs to ensure that the U.S. tax code is reformed in a way that makes sense and that, in particular, removes this piece of tax legislative "dead wood" from the Code.

Coastwise Coalition, Statement 1

Coastwise Coalition

October 4, 2011

The Honorable David Camp, Chairman
Committee on Ways and Means
1102 Longworth House Office Building
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Sander M. Levin, Ranking Member
Committee on Ways and Means
1139E Longworth House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Camp and Ranking Member Levin:

We write to ask that you to take up legislation to exempt certain non-bulk cargo from the Harbor Maintenance Tax in order to advance the development of the American Marine Highway.

The Coastwise Coalition is a diverse group of public and private sector organizations and individuals that include ports, maritime labor unions, shipyards, transportation professionals, vessel operators and others in the maritime industry and workforce. The Coalition's purpose is to promote the use of the marine highway as a safe, economical, energy efficient and environmentally supportable means to meet a growing need for reliable surface transportation options and capacity.

So much is being said about the need to boost the American economy through investing in infrastructure and our transportation system. Part of that system is the U.S. maritime sector, where more investment and attention to the development of the American Marine Highway can result in the creation of good paying port, shipyard and shipboard jobs.

Congress should encourage the use of U.S. flag shipping and the Marine Highway on our inland and coastal waters. It is the most efficient mode of transportation in the U.S., even more than freight rail, on a ton/mile basis. As supporters of the maritime sector you know this. So does Chairman Patrick Tiberi who introduced H.R. 1533, the Short Sea Shipping Act of 2011, along with Rep. Brian Higgins, the bill's chief sponsor in the 111th Congress. The bipartisan bill has 27 co-sponsors as of this writing including members of the Ways and Means Committee.

In 2007 Congress enacted a Short Sea Transportation program to encourage marine highway development as an "extension of the surface transportation system." The program is still in the early stages. It is important to build on it by providing incentives for marine highway users with the objective of encouraging more energy efficient and environmentally net-beneficial transportation alternatives.

The planning of new marine highway services is being undertaken by existing and new vessel operators as private sector initiatives. The challenge is that in the absence of some incentives much of that potential—new capacity for the national transportation system—may not be realized until our surface

Paul H. Bea Jr., Chairman
1130 Connecticut Avenue, NW Suite 300 Washington, D.C. 20036
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transportation system reaches crisis point due to gridlock on our roads. It also comes at a time when government is facing unprecedented difficulty in finding sufficient public dollars to put into our key infrastructure, including highways and interstate corridors. By adjusting tax policy to foster private investment in marine highway capacity our domestic transportation system can be enhanced at a lesser cost to taxpayers.

Specifically there are two solutions that we ask your committee to consider, both of which are discussed in the Department of Transportation's April 2011 report to Congress, "America's Marine Highway." First, Congress should remove a disincentive to the use of marine highways for freight transport. The Harbor Maintenance Tax (HMT), as it applies to the movement of non-bulk cargo in the domestic trade, and in commerce between the U.S. and Canada via the Great Lakes, is an unintended disincentive. The tax and administrative burdens of the HMT can discourage shippers from considering domestic marine transportation service in this country. By exempting non-bulk cargo from the HMT it would remove a disincentive both for domestic shipments, which are taxed once, and for transshipped international cargo, which is taxed twice. Congress should eliminate that burden to give marine highways a chance. The Committee has before it the Tiberi bill, H.R. 1533. We hope that at the first opportunity you will ask your committee to approve such legislation.

Second, please consider other options for providing an incentive for the use of marine highway service. The rationale for doing this is three-fold. The use of marine highways by shippers and trucking would reduce energy consumption when compared to the energy expenditure of other modes on a ton-mile basis. Likewise, pollutant air emissions are less, on a ton-mile basis, than the other modes. Last, the cost of a tax incentive will be a less costly way of addressing the increasing demand for new interstate lane miles along some of the country's corridors. By encouraging the use and development of marine highway service our surface transportation system will be enhanced in a cost-effective manner as Congress at the same time struggles to find ways to pay for infrastructure and new capacity development.

Thank you for your support of the American Marine Highway. We urge you to act to approve legislation that will leverage private sector investments in our American merchant marine.

Sincerely,

Paul H. Bea Jr., Chairman
Coastwise Coalition

James Patti, President
Maritime Institute for Research and Industrial Development

Capt. Chuck Beck, USCG (ret)
Transportation Maritime Manager
Connecticut Department of Transportation

Steven A. Fisher, Executive Director
American Great Lakes Ports Association

Sean T. Connaughton
Virginia Secretary of Transportation
Chair, AASHTO Standing Committee on Water Transportation

Joseph Cox, President
Chamber of Shipping of America

Amy W. Larson, President
National Waterways Conference, Inc.

Matthew Paxton, President
Shipbuilders Council of America

Horizon Lines, Inc.

Harold Daggett, President
International Longshoremen's Association

Capt. Lee A. Kincaid, President
American Maritime Congress

Clyde E. Mathis, Port Director
Port of Pensacola

Gregg M. Ward, Vice President
Detroit-Windsor Truck Ferry

Timothy Brown, President
International Organization of Masters, Mates & Pilots

Mike Jewell, President
Marine Engineers' Beneficial Association

Percy R. Pyne IV, Chairman & Founding Partner
American Feeder Lines Holding LP

Dennis Rochford, President
Maritime Exchange for the Delaware River and Bay

Robert Kunkel
Coastal Connect LLC

Mark Yonge, Managing Member
Intermodal Marine Lines, LLC

Stan Wheatley
Center for the Commercial Deployment of Transportation Technologies

Stephen Pepper, President
Humboldt Maritime Logistics, LLC

Spencer Schilling, President
Herbert Engineering Corp.

Michael Sacco, President
Seafarers International Union

Dr. Rockford Weitz, Senior Fellow
Institute for Global Maritime Studies Inc.

Torey Presti, President
National Shipping of America, LLC.

Joseph Riccio, Chairman
Connecticut Maritime Commission

Brenda Otterson
American Maritime Officers Service

Thomas J. Bethel, President
American Maritime Officers

Terry Turner
American Shipping Group

Lawrence Evans, Vice President
Research and Maritime Services
Transportation Institute

Bob Beegle, President
Marcon International, Inc.

William Gash, Executive Director
Connecticut Maritime Coalition, Inc.

Richard S. Armstrong
Maine Maritime Academy

H. Clayton Cook Jr.
Seward & Kissel LLP

Roberta Weisbrod, Director
Sustainable Ports

John Anderson, Managing Partner
CWE, Inc.

cc: The Hon. Patrick Tiberi, Chairman, Select Revenue Subcommittee
The Hon. Richard E. Neal, Ranking Member, Select Revenue Subcommittee

Coastwise Coalition, Statement 2

Coastwise Coalition

February 1, 2012

The Honorable Patrick Tiberi, Chairman
Subcommittee on Select Revenues
The Honorable Charles Boustany, Chairman
Subcommittee on Oversight

Committee on Ways and Means
1102 Longworth Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Boustany and Tiberi:

On behalf of the Coastwise Coalition I want to thank you for undertaking the hearing today on maritime related tax issues. Our Coalition consists largely of public and private sector entities and persons who are oriented to marine and freight transportation. We see the economic and public benefits to be realized by making greater use of coastal and inland shipping in our transportation system.

The subject of the Harbor Maintenance Tax is one that we have considered for some time as problematic to the advancement of domestic marine transportation, including within the Great Lakes system. Specifically, little in the way of intermodal cargo and other non-bulk freight moves in the contiguous U.S. trade in contrast to various bulk commodities that are able to take great advantage of the efficiencies inherent in waterborne transportation.

Congress should take steps beyond the Energy Independence and Security Act of 2007 to encourage the use of the intermodal marine mode. Most immediately we urge, as stated in our letter to the Committee on October 4, 2011, that legislation to exempt non-bulk cargo from the Harbor Maintenance Tax be approved by the Committee.

H.R. 1533, Chairman Tiberi's Short Sea Shipping Act of 2011, is co-sponsored by thirty-nine of your colleagues. Chairman John Mica has indicated he would include an HMT exemption with the new American Energy and Infrastructure Jobs Act. That makes eminent sense. The Harbor Maintenance Tax exemption would further the intent of the 2007 act to encourage use of efficient, intermodal transportation services on water corridors "as an extension of the surface transportation system."

We appreciate your support for the American Marine Highway and the American maritime sector. We ask that this and our October letter, which is attached for your reference, be placed in the record of today's hearing.

Sincerely,

Paul H. Bea Jr., Chairman
Coastwise Coalition

1130 Connecticut Avenue, NW Suite 300 Washington, D.C. 20036
pbea@phbpa.com 202.607.6415

Florida Ports Council, Statement

FLORIDA SEAPORTS
CHARTING OUR FUTURE

Comments submitted by
Doug Wheeler, President
Florida Ports Council
For the Records of the
United States House of Representatives
Ways and Means Committee
Subcommittee on Oversight
And
Subcommittee on Select Revenue Measures
Hearing on the Harbor Maintenance Funding and Maritime Tax Issues
Wednesday, February 1, 2012 – 9:30 a.m.
Longworth House Office Building

The Florida Ports Council (FPC) represents Florida's 15 public deepwater seaports, providing leadership, advocacy and information on seaport-related issues. On behalf of the FPC, we are writing today about the importance of releasing the funds collected via the Harbor Maintenance Tax (HMT) to assist seaports in maintaining their harbors, which are critical to our nation's foreign trade infrastructure.

Our nation's seaports and harbors are gateways to domestic and international trade. Greater than 90 percent of the U.S. foreign trade moves through our nation's more than 300 seaports, representing 25 percent of the U.S. Gross Domestic Product. In Florida alone, waterborne commerce represents $69.7 billion in international trade and generates more than 550,000 direct and indirect jobs. In addition, the average annual wage of seaport-related jobs is $54,000, double the average annual wage for all other non-advanced degree occupations and more than the average annual wage for all occupations.

Florida is located at the crossroads of growing north-south and east-west trade lanes, will have access to more than 1.1 billion consumers in the Western Hemisphere by 2035. The widening of the Panama Canal, together with the growth in Latin America and Caribbean markets, will realign global trade lanes and increase flows through this region in the coming decades. Without adequate maintenance of our harbors, critical opportunities will be missed and economic benefits lost.

The HMT is charged against the value of imports and domestic cargo arriving at federally-maintained U.S. seaports and deposited into the Harbor Maintenance Trust Fund (HMTF). The funds in the HMTF are to be used for maintenance dredging and dredged material disposal areas, yet currently only two of the nation's 10th largest ports are dredged to their authorized depths or widths. Every year, hundreds of millions of dollars are collected into the HMTF but are either never spent or diverted to other causes. In 2008, less than half of all HMTF revenues were spent on harbor maintenance.

The responsibility of U.S. port development and maintenance is shared between federal, state, and local governments, with extensive private sector participation. The role of the Federal government has been the maintenance of harbor access channels, while individual ports construct and maintain the landside terminal facilities; dredge their own berths; and cost-share channel improvements.

Relying on this long-standing partnership, local port authorities have spent over $16.8 billion nationally since World War II and expect to spend over $1 billion annually to construct and maintain the landside facilities. As a result of federal under-investment, federal channels now operate, on average, at less than 35 percent of the authorized and required channel dimensions.

Adequate maintenance and dredging of our harbors are vital to the economic health of our state and the competitive position of our nation. Failure to maintain harbor channels causes vessels to delay their transit while waiting for high tide, skip port calls altogether, or load less than full capacity. This not only impacts our nation's economic vitality, but also increases the risk of vessel grounding, collisions and pollution incidents.

The resolution of the problem does not require an increase in taxes or funding. Similar problems have been resolved by Congress responded by enacting legislation to more closely tie trust fund expenditure and revenues.

The solution is simple. Full access to annual revenues in the HMTF must be authorized to allow those revenues to be used for their intended purpose – operation and maintenance of ports and harbors. The commerce that flows through our harbors is fundamental to our nation's economy and less than adequate dredging of those harbors is unacceptable. The HMTF was created to fund this necessary maintenance and those funds should be used for their intended purpose as soon as possible.

Thank you for opportunity to contribute to this important discussion.

Doug Wheeler, President
Florida Ports Council

Horizon Lines Inc., Statement

Statement of Horizon Lines, Inc.[1]

Submitted to the

Subcommittee on Oversight

and the

Subcommittee on Select Revenue Measures

Committee on Ways and Means

United States House of Representatives

on

Modernizing the Capital Construction Fund Program to Create U.S. Maritime Industry Jobs

February 1, 2012

Horizon Lines, Inc. commends the Subcommittees for holding their February 1 hearing on maritime tax issues and appreciates the opportunity to provide these comments for the hearing record. Horizon Lines, Inc. is the Nation's leading domestic ocean container shipping and integrated logistics company. Horizon Lines owns or leases 20 U.S.-flag vessels and operates five port terminals. Horizon Lines offers regular service between the Mainland United States and, respectively, Alaska, Hawaii, and Puerto Rico. All vessels operated by Horizon Lines are U.S. citizen crewed.

We (Horizon Lines) take this opportunity to address an important maritime tax issue, the need to improve the Capital Construction Fund (CCF) program,

Action to remove regulatory obstacles, not required by statute, and modernize the CCF program can help create jobs and economic growth, benefitting vessel operators, mariners, and shipyards. In particular, as explained below, an administrative practice that precludes the use of CCF funds for lease payments, contrary to report language of the Ways and Means Committee, should be stopped, allowing CCF funds to be used for acquisition of vessels through lease, in accord with mainstream modern financial practice.

Overview -- Allow Capital Construction Funds to Be Used For Lease Payments

One of the very few tools available to modernize the U.S.-flag vessel fleet is the Capital Construction Fund. A Capital Construction Fund is a tax advantaged account that, to simplify, allows the owner or operator of a U.S.-flag vessel to deposit funds into the account, deferring taxes on the funds deposited. Funds can accumulate in the account to facilitate vessel acquisition. These are a company's own funds, not taxpayer funds, so no appropriation is required. The CCF program is administered by the Maritime Administration, USDOT, with tax aspects administered jointly with the Treasury Department (IRS).

The CCF program must be modernized to allow funds in a CCF to be used for lease payments, not just mortgage (purchase) payments. The current restrictive approach needlessly limits the ability of vessel operators to make the most effective financial decisions when considering acquiring U.S. built vessels. Taking a more modern, flexible approach could facilitate some vessel acquisitions, has the potential to create American jobs in shipbuilding and other benefits, and should be put in place promptly.

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[1] Company Contact: Robert S. Zuckerman, Vice President, Law and Government Affairs, Horizon Lines, Inc.; 4064 Colony Road, Suite 200; Charlotte, NC 28211; 704-655-1380.

Shipbuilding generates jobs and other benefits.

> Building a new large oceangoing vessel can support 300 or more direct jobs for 1-2 years and up to 4 times as many jobs in supplier industries.
>
> After construction, shipboard jobs are generated, which are good for the economy and help maintain a pool of mariners to aid in the national defense.
>
> New vessels are environmentally superior to the vessels they replace both in terms of fuel efficiency and other systems.
>
> Ship construction helps maintain the nation's industrial base, including but not limited to the defense industrial base.

Accordingly, policymakers should aggressively pursue all reasonable opportunities to facilitate shipbuilding in U.S. shipyards, including through enabling CCF participants to make qualified withdrawals from CCFs for lease payments on vessels.

Today, it appears that more ship acquisition transactions are through lease than purchase. As to major containership operators, recent data shows that a majority of vessels and vessel capacity is leased (Journal of Commerce, September 12, 2011 at 41). So, the program as administered has become increasingly non-responsive to market conditions.

The statute, however, refers to vessel "acquisition", not purchase. So, agency practice precluding the use of lease payments from a CCF is needlessly inflexible. There is also legislative history expressly stating that lease payments should be an allowable use of CCF funds.

USDOT has said that a lease does not have a basis and that qualified withdrawals from a CCF can only be made for an asset with a basis. Yet, there are a number of ways that the agencies can reconcile basis provisions with allowing lease payments from a CCF. For example, there is the opportunity for the lessor and lessee to coordinate as to a CCF so that, for example, if the lessor does not have a CCF, the lessee could benefit from the CCF program and the lessor's basis in the asset can be used to meet applicable CCF requirements. The law already allows coordination between a vessel owner (lessor) and a lessee as to making CCF deposits and it is inconsistent to not allow it as to CCF withdrawals.

So, the Executive Branch has the authority to allow qualified CCF withdrawals for certain lease payments and it should implement that authority promptly. The Subcommittees' encouragement to MARAD to allow this flexibility would be a welcome step supporting job creation. Alternately, legislation can clarify that there is such authority.

More Detailed Discussion

The Merchant Marine Act, 1936, as modified in 1970, established the CCF program, under which owners or operators of vessels are permitted to establish tax-deferred CCFs to be used in the "acquisition" or construction of vessels.[2] The statutory provisions include conditions regarding transactions that may be financed through a CCF and the tax consequences of contributions to, and withdrawals from, CCFs. In the Tax Reform Act of 1986, Congress added section 7518 to the Internal Revenue Code "to coordinate

[2] 46 U.S.C. §§ 53501-53517.

the application of the Internal Revenue Code of 1986 with the capital construction program under the Merchant Marine Act."[3]

Traditionally, vessel owners and operators have used CCFs in connection with *purchases* of vessels – i.e., for the acquisition of *title* to vessels. However, nothing in the statutory provisions in either the Merchant Marine Act, as amended, or the Internal Revenue Code limits the reach of the program to "purchases"; neither the term "purchase" nor the term "title" appears in the language. Rather, the operative term in the statutory provisions is "acquisition." That term is best construed, in context, to apply to the lease of vessels, as well as to the purchase of vessels, where the nature of the lease makes it treated as an acquisition.

First, the statutory provisions explicitly authorize lessees of vessels to establish CCFs; it seems incongruous for MARAD not to authorize lessees and other vessel operators to make withdrawals from CCFs for the purpose of leasing vessels. Second, the application of the CCF program to the acquisition of vessels by lease is strongly supported by the legislative history of the program.

Finally, in today's economy, leasing is very widely utilized. A recent report on leading containership operators found that 53% of their capacity, and nearly 60% of their container vessels, are leased and not owned.[4] Clearly, the marketplace finds leasing to be an effective and efficient means of financing the acquisition of vessels.

In short, action authorizing the use of CCFs for the acquisition of vessels by lease would be consistent with the statutory language and legislative history of the program and with current marketplace practices. Action enabling CCF funds to be used for lease payments could have the effect of spurring the construction of new ships in the United States and creating or preserving thousands of jobs.

Statutory Analysis

The Merchant Marine Act, 1936, as amended, provides that a United States citizen entity "*owning or leasing* an eligible vessel may make an agreement with the Secretary under this chapter to establish a capital construction fund for the vessel" (emphasis added).[5] The Act then provides that the purpose of the agreement "shall be to provide *replacement* vessels, additional vessels, or reconstructed vessels" (emphasis added).[6] It is quite straightforward that a "replacement" for a leased vessel could be a leased vessel. The Act also includes provisions for coordinating CCF contributions between lessees and owners with respect to the same vessel.[7] In brief, the Merchant Marine Act fully and explicitly anticipates the participation of lessees in the CCF program.

The Act authorizes CCF participants to make "qualified withdrawals" from CCFs for the "acquisition," construction, or reconstruction of vessels or for the payment of principal of indebtedness incurred in such acquisition, construction, or reconstruction.[8] This provision does not specify the manner in which the CCF participant must acquire the vessels. The provision does not require the acquisition of title; nor does it require the vessel to be purchased.

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[3] § 261(a), Pub. L. No. 99-514. The language in section 7518 of the Internal Revenue Code tracks that of its counterpart in the Merchant Marine Act, as amended, with minor wording variations. For simplicity, this statement generally will refer only to the provisions in the Merchant Marine Act, as amended.
[4] *Alphaliner's Top 50 Global Container Fleet Operators*, reprinted in Journal of Commerce (Sept.12, 2011) at 41.
[5] 46 U.S.C. § 53503(a).
[6] 46 U.S.C. § 53503(b).
[7] 46 U.S.C. § 53505. Among other amounts, a lessee is permitted to contribute an amount equal to the tax depreciation on the agreement vessel. However, that amount is reduced by the amount of depreciation which the agreement requires or permits the owner to contribute.
[8] 46 U.S.C. § 53509.

The term "acquisition" is far broader than the term "purchase." For example, the standard dictionary definition of the verb "to acquire" is to "gain possession of."[9] The term is not a synonym for "purchase;" one can gain the possession of property by purchase, by lease, or by a number of other methods. Similarly, in the Internal Revenue Code, the term "acquisition" is used in dozens or hundreds of places as a catch-all.[10] By contrast, the Internal Revenue Code uses the term "purchase" -- again in many places -- to refer specifically to the narrower transaction where ownership is transferred for value.[11]

The difference in reach of the terms "acquisition" and "purchase" for tax purposes is illustrated clearly by section 1.263(a)-4(c) of the Treasury Regulations. That provision requires taxpayers to capitalize the cost of acquiring certain acquired intangible assets, but only if the assets are "acquired from another party in a purchase or similar transaction." In other words, it is not enough that the taxpayer obtain possession of the intangible assets -- through a lease or loan of the assets, for example; rather, the taxpayer must have purchased those assets. The provision demonstrates that the term "acquisition" can sweep in a broad array of transactions through which the possession of assets can change.[12] See also section 45L(b)(4) of the Internal Revenue Code, which clarifies that, for purposes of the new energy efficient home credit, "the term 'acquire' includes purchase." In other words, the drafters understood that a taxpayer could acquire a home in a variety of ways -- one of which was through a purchase.

In title 46 as well, Congress has sometimes chosen to refer to a "purchase" rather than to an "acquisition", further demonstrating that the terms are not synonymous. See 46 U.S.C. section 53706.

In short, the term "acquisition" can be sensibly read to be far broader than the acquisition of ownership or a standard purchase. Given the explicit statutory authorization for the establishment of CCFs by lessees, and given that the statute explicitly states that one of its purposes is to "provide replacement vessels" for eligible entities owning or leasing eligible vessels, and in light of the legislative history discussed below, MARAD would be taking an obvious and short step in reaching the conclusion that the statutory language permits withdrawals from CCFs for certain lease payments, as well as for purchases.

There appears to be nothing in the statute to preclude interpretation of the term "acquisition" in the CCF context as including acquisition through lease. In fact, the opposite conclusion would appear to frustrate the intent of the legislation. Additionally, as recited above, the Merchant Marine Act permits withdrawals from CCFs for the purpose of paying off indebtedness incurred in the acquisition of vessels. It is hard to imagine that Congress would have intended for debt payments (i.e., mortgage payments) to qualify but not lease payments. In the modern commercial world, there is simply little difference between the two payments; leases are a method of finance, as are loans. If loan payments are permissible, lease payments should be permissible as well.

Legislative History

The legislative history makes it even clearer that the drafters of the CCF program fully intended to permit CCF participants to make qualified withdrawals for the lease of vessels. As described above, the tax provisions for the CCF program were re-codified in the Internal Revenue Code in the Tax Reform Act of 1986. The General Explanation of the Tax Reform Act of 1986, prepared by the staff of the Joint Committee on Taxation, describes Congressional intent as follows:

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[9] See, e.g., The American Heritage Dictionary of the English Language (1975). See also, Black's Law Dictionary (1996) (defines "acquisition" as "[t]he act of gaining possession or control of something").
[10] See, e.g., 26 U.S.C. § 42(e)(2)(B); 26 U.S.C. § 47(c)(2)(B)(ii).
[11] 26 U.S.C. § 36(a); 26 U.S.C. § 45L(b)(4) (clarifies that the term "acquire" includes purchase).
[12] Other examples of the distinction are found in the wash sale rules of section 1091, the small business expensing rules of section 179, and the accelerated cost recovery rules for cellulosic biofuels plant property and recycling property of section 168.

> *"... the phrase 'acquisition, construction, or reconstruction of a 'qualified vessel' is to be interpreted as including acquisition through either purchase or lease of an agreement vessel for a period of five years or more. This interpretation parallels the structure of: (1) the scope of eligibility to establish a capital construction fund under section 607(a) of the Merchant Marine Act, 1936 (which permits deposits into a CCF fund by either an owner/lessor or the lessee of an eligible vessel, of both, subject to certain limitations), and (2) the scope of qualified withdrawals for vessel acquisitions through either purchase (in the form of a down payment toward the purchase price) or payment of long-term indebtedness on an agreement vessel. This interpretation is also consistent with current industry acquisition practices reflecting a long-term trend toward vessel acquisition through lease rather than purchase."* [13]

That language originated in the following statement in the report of the House Ways and Means Committee on the 1986 act:

> *"For purposes of the definition of the term 'qualified withdrawals,' under new section 7518(e) (sec. 607(f) of the Merchant Marine Act, 1936), the committee intends the phrase, 'acquisition, construction, or reconstruction of a qualified vessel' to be interpreted as including acquisition through either purchase or lease of an agreement vessel for a period of five years or more."* [14]

Moreover, when the Congress revised the Capital Construction Fund provision in the Merchant Marine Act, 1970, the committees of jurisdiction clearly provided for flexibility as to the form of a vessel acquisition with CCF funds. The report of the Senate Committee on Commerce accompanying the 1970 legislation stated:

> *"Your committee expects that care will be taken to permit use of legitimate financing techniques to further the purposes of the capital construction funds maintained under this section. For example, the term 'acquisition' should be interpreted in a broad sense to include legitimate financing techniques that are the substantial equivalents of acquisitions in terms of furthering the purposes of this section."* [15]

In that same year, the report of the House Committee on Merchant Marine and Fisheries accompanying the legislation stated:

> *"Your committee expects that care will be taken to permit use of legitimate financing techniques to further the purposes of the capital construction funds maintained under this section."* [16]

In sum, the legislative history from both 1970 and 1986 reflects a general Congressional intent that the term "acquisition" be construed broadly to include leases, in accordance with the CCF program's goal of promoting vessel construction in the United States.

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[13] STAFF OF JOINT COMM. ON TAXATION, 99TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986 (Comm. Print 1987).

[14] H. REP. NO. 99-426 (1986) (Committee on Ways and Means). The Conference Committee on the 1986 legislation adopted the Ways and Means approach.

[15] S. REP. NO. 91-469 (1970) (Committee on Commerce), reprinted in Pike and Fischer, Shipping Regulation at 52:640.

[16] H. REP. NO. 91-1073 (Committee on Merchant Marine and Fisheries) at 53 (1970).

The Tax Basis Rule Is Not a Barrier to Authorizing Qualified Withdrawals for Lease Payments

Against the flexibility inherent in the statutory wording and the legislative history, USDOT has noted the tax basis rule. The CCF tax rules in the Merchant Marine Act and the Internal Revenue Code provide for the basis in a vessel acquired with qualified withdrawals from a CCF to be reduced in the amount of the withdrawals. That reduction in basis, which results in correspondingly reduced depreciation deductions, serves the purpose of recapturing the tax saving resulting from the original contributions to the CCF.

To treat the tax basis rule as a bar to use of CCF funds for lease payments, however, is to conclude that Congress, in passing a provision described clearly in the legislative history as authorizing qualified withdrawals for lease payments, meant that one subsection of the same provision would cancel out the authorization provided by another subsection. The subsection defining "acquisition", 26 U.S.C. § 7518(e), was structured and intended to authorize CCF withdrawals for lease payments (see discussion above). To conclude that the tax basis rule in the adjacent subsection -- 26 U.S.C. § 7518(f) -- precludes qualified withdrawals for lease payments is needlessly inflexible. To construe the statutory scheme as a whole and give effect to all the provisions, the Executive Branch must take a more flexible view of 46 U.S.C. § 53510. There are a number of ways this can be done.

Coordination with Owner Contemplated By Statute. The statute specifically contemplates contributions to CCFs by lessees for replacement vessels. The statute further explicitly precludes a lessee from contributing funds to a CCF with respect to a replacement vessel to the extent the lessor has contributed funds to a CCF with respect to the same vessel. In other words, the statute requires coordination between the lessor and the lessee.

To deal with the basis issue, MARAD and the IRS similarly could require the lessor of a vessel to agree to a basis reduction as a condition of the use of CCF funds by the lessee (in cases of leases that were not treated as conditional sales). There appears to be no statutory obstacle to such an agreement; the statute refers to reducing the basis of the vessel, not to reducing the basis of vessels held by the acquirer/lessee. A coordinated approach between owner and lessee as to basis would follow the approach used as to contributions, protect against providing double benefits, and not run afoul of 46 U.S.C. § 53510 or its title 26 equivalent.

It would be consistent with both the CCF statute and the promotional objectives of the Merchant Marine Act (of which the CCF program is a part), to provide a CCF agreement holder the flexibility to make lease payments from a CCF pursuant to such a coordinated approach (in cases of leases that were not treated as conditional sales). Further, to ensure that such an approach is limited to circumstances where a major commitment is made to a vessel, MARAD could limit such flexibility to cases involving longer term leases, such as those of at least 10 years.

Denial of deduction for lease payments. Alternatively, in the case of withdrawals from CCFs for purpose of making lease payments (in cases of leases that were not treated as conditional sales), MARAD (and IRS) could simply recognize that the functional equivalent of a basis reduction would be denial of the deduction for the lease payment. MARAD could require such a deduction disallowance as part of an arrangement to allow CCF withdrawals for lease payments.

Such a provision would give effect to the legislative history supporting flexibility in the form of acquisition, while avoiding any expansion of the CCF tax benefit. While 46 U.S.C. § 53510 sets forth a number of rules, that provision does not address every possible fact pattern. To administratively fill the gap with an equivalent tax treatment for leases is more consistent with the flexibility in the definition of "acquisition" -- particularly as explained in the legislative history -- than to deny the flexibility in that definition and crystal clear legislative history.

Substance Over Form. Reliance on the tax basis rule to deny the use of CCF funds for lease payments is also unpersuasive as to certain transactions styled as leases. The IRS has long held that a transaction, even if styled as a lease, can in substance be a sale and treated as such for tax purposes. This results from the straightforward approach of placing substance over form. In such cases the IRS will treat the "lease" payments as payments towards principal and interest and find that the "lessee" has a depreciable interest -- in other words, a basis -- in the asset in question. IRS has long laid out general principles for determining whether a transaction styled as a lease is really a lease or really a conditional sale, with the "lessee" having a basis in the property. See Rev. Rul. 55-540, 1955 C.B.-2 39; and Rev. Proc. 2001-28, 2001-1 C.B. 1156. At least one reported case of this nature involved a vessel "lease" which was found to be in the nature of a sale -- with the result that the "lessee" was found to have a depreciable interest in the vessel. See Rev. Rul. 72-543, 1972-2 C.B. 87.

If a transaction, though styled as a lease, is considered a conditional sale for tax purposes, with the "lessee" having a basis in the property, there seems to be no reason for MARAD to take a different approach as to the CCF program and be more restrictive than the IRS. In such cases, for MARAD not to allow an agreement holder the flexibility to use the CCF for payments towards the "lease" would be contrary to the promotional purposes of the Merchant Marine Act, not to mention the legislative history and other aspects of the CCF statute indicating that Congress intended to allow withdrawals from a CCF for lease payments. MARAD should not take an approach to the tax basis rule that is more restrictive than has been taken by the IRS under the above noted rulings.

Policy Support. Moreover, there are policy reasons for the agency to permit qualified withdrawals for certain lease payments. USDOT/MARAD has suggested that lease payments should not be a permissible use of CCF funds by reasoning that vessel owners will have CCFs and lessees will benefit as the owner passes through CCF benefits via the lease terms.

Yet there cannot be certainty that an owner's CCF benefits will be passed through in the lease terms. Nor can MARAD assume that prospective owners of leased vessels will always have or create CCFs (and CCF benefits to pass through). Financial institutions, for example, could be reluctant to subject themselves to regulation by MARAD (e.g., citizenship affidavits required for CCF agreement holders, 46 CFR §390.2(a)(2)(i)). This, combined with the increasing use of leasing as a means of acquiring vessels, suggests that the exclusion of lease payments from uses of CCF funds makes the CCF program less relevant than it should be to the acquisition of vessels built in this country. An approach that precludes the lessee from CCF benefits when the lessor does not participate in a CCF fails to follow through on policy objectives of strengthening the U.S.-flag fleet.

CCF Leasing Should Be Effected Promptly

The time has come to allow certain lease payments as a qualified withdrawal from a CCF. As explained above, this can be done promptly by the Executive Branch because it is warranted by analysis of the statute, the legislative history, the purpose of the CCF program (to facilitate shipbuilding in the United States), and the widespread use of leasing in the marketplace.

There are undoubtedly a number of formulations that the Executive Branch could use in making the determination to allow certain lease payments as a qualified withdrawal from a CCF. The guidance or other action could establish that an "acquisition" includes a lease of a vessel by means of bareboat charter if the Secretary determines that the lease period is for at least 10 years or for the remaining useful life of

the vessel, whichever is less. The 10 year test would provide the benefit of a bright line (at least in some cases), to facilitate planning by vessel operators, and is based on a vessel's depreciable life.[17]

Conclusion – CCF Leasing

The Subcommittees should encourage the Executive Branch to promptly allow lease payments to be made from a CCF. This more flexible approach would modernize the CCF program and help ensure its continued relevance in an era that features extensive use of leasing. Alternatively, legislation should clarify the authority to allow CCF leasing.

CCF for Maintenance, Repairs and Modifications.

Before closing, we also note our support for legislation that would enable CCFs to be used for maintenance, repair and modifications of U.S.-flag vessels. A vessel is a long-term asset and good maintenance is important to the quality of the U.S.-flag fleet and to maintaining this country's shipyard base, which is in competition with shipyards overseas.

We have seen legislation in past years that would provide for maintenance and repair costs from a CCF. We suggest that legislation also provide for CCF funds to be used for vessel modifications that are not as extensive as a "reconstruction" of a vessel. Costs toward the reconstruction of a vessel are already CCF eligible. It would be awkward for vessel planning by an operator if a statutory scheme allowed CCF funds to be used for very major work (reconstruction), or mere repair or maintenance work, but not small vessel improvements that are often undertaken in conjunction with repair and maintenance. Such a gap should be closed by also allowing CCF funds to be used for modifications that are less extensive than reconstruction – otherwise the scheme would miss a chance to encourage the use of U.S. shipyards for even for maintenance work, as that work not infrequently is combined with work on small improvements.

Conclusion

Improvements to the CCF program, particularly to allow CCF funds to be used for lease payments are overdue and can facilitate job creation and a stronger U.S.-flag fleet. Horizon Lines thanks the Subcommittee for its consideration and welcomes its support in achieving elimination of the barriers to job creation that we have described in this statement.

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[17] The Instructions for IRS Form 4562, page 10, list a vessel as 10 year property for depreciation. A bareboat charter condition, by requiring operating control of the vessel in the lessee, would further reinforce that the lease would be in the nature of an acquisition, as a bareboat charterer exercises possession and control of the vessel.

Jersey Harborside Transport LLC, Statement

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February 15, 2012

Chairman Charles Boustany, Jr
Subcommittee on Oversight
House Ways and Means Committee

Chairman Pat Tiberi
Subcommittee on Select Revenue Measures
House Ways and Means Committee

Re: Harbor Maintenance Tax

Dear Chairmen Boustany and Tiberi:

I am writing as a Principal of Jersey Harborside Railroad, LLC and Jersey Harborside Transport, LLC. We are in the process of developing a Short-Sea-Shipping service between Northern New Jersey and Davisville, RI, to serve trailer and intermodal container freight which currently travels along the I-95 Northeast Corridor by truck.

We will provide what is known as a Roll-On, Roll-Off service whereby a driver travelling up from the South along I-95 or from the West along I-81/78 will drop a trailer in our yard in Northern New Jersey. We will then roll the trailer onto a barge to be transported to Davisville, RI, where the trailer will be rolled off the barge at our yard in Davisville, and a local driver will then deliver it to the customer.

Our service will provide that rare confluence where business, governmental and environmental objectives coincide by:

- Reducing the cost of freight transport along this corridor;
- Reducing ware and tear on the existing road structure, with its resultant burden on the Federal Highway Trust Fund and several States' Transportation budgets;
- Reducing fossil fuel usage which furthers our national goal of energy independence;
- Reducing air emissions and congestion along this corridor; and
- Improve highway safety.

We will be competing against truck transportation and must offer our customers a competitive price and service relative to trucking. Truckers can offer low prices by being able to receive revenues on both the 'head-haul' trip and the 'back-haul' trip, as well. To compete with trucking companies, we need to do the same.

Davisville, R.I. is exempt from the Harbor Maintenance Tax. Therefore, northbound freight arriving in Davisville will not be subject to the HMT.

Southbound freight from Davisville landing in Northern New Jersey, however, will be subject to the HMT. Because the HMT is based on the value of the freight being moved, it will make the 'back-haul' prohibitively expensive—in many cases exceeding our entire profit margin on that move. Consequently, the HMT on almost any but the lowest value freight would make our service non-competitive with trucking, which, in turn, puts added pressure on the entire venture since it deprives us of reliable back-haul revenues.

We would eventually like to extend our service to other Northeast ports, such as: Portland, ME, New Haven, CT, and Port Jefferson, NY, however, we have told our financial supporters that this will not be feasible until the HMT is waived for freight moving between Northern New Jersey and these locations.

In this case, the structure of the HMT has the unintended consequence of, on the one hand, prohibiting an efficient means of transportation while not raising any revenues from that mode of transportation, while, on the other hand, causing freight to move on an alternative, competing mode of transportation (i.e. highways), which is costing federal and State governments far more in highway maintenance and repair than is recouped for such heavy weight freight through the federal and State gas taxes.

Eliminating the HMT on freight moving from and to Northern New Jersey and these locations will not result in a loss of any revenues to the U.S. Treasury because no freight will move via a Roll-On, Roll-Off trailer barge service as long as the HMT applies to it—because the HMT prevents such service from being competitive with trucking.

In order to minimize any impacts on U.S. Treasury revenues, any exemption from the HMT to common-carrier type providers of Roll-On, Roll-Off services for rail cars or trailers. If such freight cannot be exempt from the HMT, if the HMT was reduced to a flat rate of $12.50 per trailer for such freight, then our service could succeed.

Alternatively, I would urge that the generic Intra-Harbor exemption for New York/New Jersey Harbor, which currently runs from Perth Amboy to the Throgs Neck Bridge, be extended through Long Island Sound to the Cape Cod Canal—to follow the precedent set for Chesapeake Bay transport, which extends the Intra-Harbor exemption from Norfolk/Hampton Roads through to the Delaware-Chesapeake Bay Canal.

I would be pleased to discuss our service and ideas with you in greater detail.

Very truly yours,

Ronald A. Klempner
Principal
Jersey Harborside Transport, LLC

Lake Charles Harbor, Statement

Testimony of William J. Rase III

Submitted to

The Committee on Ways & Means

Subcommittee on Oversight and Investigations

For the Hearing on

Harbor Maintenance Funding and Maritime Tax Issues

February 1, 2012

Mr. Chairman and Members of the Committee,

My name is William J. Rase III. I am Executive Director of the Lake Charles Harbor and Terminal District. The District is the state-designated local sponsor for the Corps' Calcasieu River and Pass Project, a 68 mile waterway serving the Port of Lake Charles which is the 11th largest port in the United States. In 2009, the latest year for which data is available, the Port of Lake Charles handled some 52 million tons of cargo carried on 892 ocean-going vessels. Proper maintenance of the Calcasieu Ship Channel is an important national issue in a multitude of areas, including energy security, economic security, economic recovery and growth, export growth and jobs. Dollars spent on channel maintenance provides the Federal Government with an excellent return on its investment.

Based on studies done by the District, in 2006 the Port of Lake Charles generated over 31,000 jobs and contributed $765 million directly to the federal treasury; $624.7 million in federal income tax collections, $128.6 million in Customs collections and $12.6 million in Harbor Maintenance Tax collections. Despite these significant contributions to the national economy, the dredging budget of the Calcasieu Project has historically been grossly underfunded. To continue these funds into the federal treasury, the federal government must increase its investment in the Calcasieu Ship Channel. From FY 99 to FY 11, the Corps O&M budget for the Calcasieu Ship Channel averaged $14.56 million per year, or about 51% of the amount needed to properly maintain the channel. To properly maintain the channel in the future, between $40 million and $60 million per year will be needed. This includes funds to perform maintenance that has been

ignored over the past decade because of inadequate funding and to compensate for the increased cost of dredging during that time. The situation in Lake Charles is symptomatic of the lack of adequate maintenance dredging funds at public ports nationwide.

The Port of Lake Charles is one of six strategic energy ports along America's Energy Coast, which is the Gulf of Mexico. These ports can handle 7.5 million barrels of oil per day, or 60% of the country's total petroleum refining capacity. In 2008, three storms disrupted the Gulf Coast energy ports. Only the refineries in Lake Charles and Corpus Christi were able to operate near capacity throughout the storm season. Closing refineries has severe economic consequences. For example, when the Gulf Coast refineries began to shut down for Hurricane Ike, the price of gasoline, diesel and jet fuel increased sharply adding $200 million per day to the country's energy bill. Fortunately, hurricanes are relatively short lived and, barring a direct hit, refineries usually return to normal operations within a short time.

Just like hurricanes, the lack of dredging can interrupt port operations, but the impact will not be days or weeks. Shoaling can disrupt a port for months or longer. In FY 12 the Calcasieu Ship Channel, home of the 4th largest refinery in the United States, needed $61.6 million to properly maintain the channel. The President's FY 12 dredging budget for Calcasieu was only $15.5 million and Congress appropriated only $15.1 million. Project draft for the channel is 40 feet. This year the Corps only has funds to dredge the critical channel reaches to 37 feet for the full project width of 400 feet. To get a 40 foot operating draft at the current funding level channel users will have to make due with a 200 foot wide channel. This will stress channel operations to the limit causing one-way traffic in many cases and increasing vessel delays. There is no doubt in the minds of the Calcasieu channel users that the operating draft on the waterway will be reduced below 40 feet, and it will be reduced soon. With a bit more loss in width, the operating draft of vessels will be reduced. Crude tankers will arrive with less cargo. More ships will be needed to satisfy the country's energy needs and the cost of the additional ships will be passed on to U.S. consumers in higher fuel prices.

The Corps of Engineers determined the cost of losing draft on the vessels carrying import cargo (crude oil and LNG) into the Calcasieu Ship Channel in their 2010 Dredge Material Management Plan for the waterway. The loss of one foot of draft adds $6.3 million per year to nation's energy

cost.[1] These losses increase exponentially. The loss of 5 feet of draft adds $36.6 million per year to the national energy bill and the loss of 10 feet adds $92.7 million per year. These annual cost increases do not include the cost added to the price of American exports because of reduced vessel operating draft, with the added cost making U.S. products more expensive and less competitive on world markets.

Ports have a significant impact on the local and national economy. The Port of Lake Charles generates over 31,000 jobs, $2.3 billion in personal income, and $4.6 billion in business revenue. As mentioned above, it also contributes $765 million directly into the federal treasury. In order to efficiently provide these benefits in FY 13, the Calcasieu Ship channel must be fully funded at $64 million.

Nationally, the public port industry generates 13.3 million jobs, $649 billion in personal income and over $3.15 trillion in cargo related spending. Deep-draft ports move 99.4% of U.S. overseas trade by volume. The federal initiative to double the country's foreign trade will be supported by these deep-draft ports. The larger ship that will transit the new Panama Canal will call at these ports. Deep-draft ports are critical to the nation's Maritime Highway initiative, which will reduce congestion on U.S. highways and shrink pollution from trucks and railroads. In doing all of this, deep-draft ports will play a decisive role in the country's economic recovery. Yet nationwide, the federal channels at these deep-draft ports suffer from the same chronic underfunding as the Calcasieu Ship Channel.

The port industry cannot fulfill its potential as a national economic engine if the navigation infrastructure for these ports is not maintained. If deep-draft vessels are delayed, if they cannot load to the depths authorized by Congress, then imported cargo is more costly for U.S. consumers and U.S. exports become uncompetitive on world markets.

The irony here is that the funds to dredge and maintain deep-draft ports at congressionally authorized depths and widths are already collected and available. The Harbor Maintenance Tax was implemented to provide funding to maintain the nation's navigation infrastructure. This tax

[1] Inflation adjusted from 2004 to 2010.

has been collected for over two decades but never fully used for its intended purpose. The Harbor Maintenance Trust Fund has a surplus of some $6 billion dollars. And the surplus grows annually because Congress does not allocate all of the Harbor Maintenance Tax revenue for its authorized and intended purpose of dredging the nation's ports. H.R. 104 is a step toward solving this problem. H.R. 104 requires that all of the Harbor Maintenance Tax collections be used for navigation dredging. It does so without earmarks and without adding new taxes. If Congress passes H.R. 104 and adds to the Corps maintenance budget the incremental collections that have gone to build up the surplus, over the next ten years $5 billion will be spent on dredging the nation's harbors.

The key is to ***add*** the unspent portion of the tax collections to the Corps' Navigation Operations and Maintenance Budget. To illustrate, the Corps' average Navigation O&M budget over the past 5 years has been about $1.335 billion and the unspent portion of the tax collected is about $500 million per year. ***Adding*** the unspent portion of the tax means that the Corps' Navigation O&M budget should average $1.835 billion over the next 10 years. By doing so, the deferred maintenance of the nation's deep-draft maritime infrastructure should be caught up and the U.S. port industry will allow the country to "Realize America's Maritime Promise."

If we fail to properly maintain our navigation channels, the cost of trading with the United States will increase, the cost of energy and the ability of our farmers and manufacturers to compete in the global marketplace will decrease, and the economy of the United States will suffer. On behalf of the Port of Lake Charles, and the many users of the Calcasieu River Channel, I urge the Congress to pass H.R. 104 and fully fund harbor dredging with funds already collected for that purpose.

Thank you for the opportunity to submit this testimony.

APL Limited and affiliated companies, Maersk Inc. and Subsidiaries, Sealift Incorporated, and Hapag-Lloyd AG and affiliated companies, Statement

Mr. Gene Seroka, President, Americas, APL Limited

Mr. John Reinhart, President and CEO, Maersk Line, Limited

Mr. John J. Raggio, Chief Executive Officer, Sealift, Incorporated

and

Mr. John W. Murray, President and CEO, Hapag-Lloyd USA, LLC

Written Statement for the Subcommittee on Select Revenue Measures and Subcommittee on Oversight

House Ways and Means Committee

Hearing on Maritime Tax Issues and Harbor Maintenance Funding

February 15, 2012

Introduction

This written statement is being provided to the Subcommittee for inclusion in the printed record of the February 1, 2012, hearing on harbor maintenance funding and maritime tax issues. This statement is submitted on behalf of APL Limited and affiliated companies ("APL"); Maersk Inc. and Subsidiaries ("Maersk"); Sealift Incorporated ("Sealift"); and Hapag-Lloyd AG and affiliated companies ("Hapag"); all U.S. corporations, in respect of maritime tax issues. In particular, this statement is provided in response to the Internal Revenue Service's ("IRS") inappropriate and narrow interpretations of the tonnage tax provisions applicable to U.S. flag vessels competing in foreign trade. The tonnage tax provisions were added to the Internal Revenue Code (the "Code") by the American Jobs Creation Act of 2004 in order to reverse the "steady and substantial decline of the U.S. shipping industry" and to level the playing field with tax-advantaged operators of foreign flag vessels. Today, the overwhelming majority of cargo, in

excess of 95%, continues to move in and out of the United States on foreign flag vessels. Congressional action now to stop the IRS's positions would safeguard the fulfillment of Congress's intent in enacting the tonnage tax provisions.

As Select Revenue Measures Subcommittee Chairman Tiberi stated: "The U.S. maritime industry is vital to our economy and national security. Today's tax code places preference on investment in foreign shipping operations over investment in domestic operations. . . . The Subcommittees should examine how to design tax policies that help create U.S. maritime jobs and that ensure the long-term growth of the domestic maritime industry." Maintenance of a U.S. flag fleet is of great importance to our national security. As General Duncan McNabb, Commander of the U.S. Transportation Command, said in 2011:

> Maintaining U.S. Flag sealift readiness is a top priority for the United States Transportation Command (USTRANSCOM). . . . USTRANSCOM's partnership with the U.S. commercial sealift industry is a vital component to meeting the Nation's strategic sealift requirements. To date, over 90 percent of all cargo to Afghanistan and Iraq has been moved by sea in U.S. Flag vessels.
>
> [T]he Department of Defense (DoD) gains access to U.S. Flag commercial sealift and transportation networks while ensuring the continued viability of both the U.S. Flag fleet and the pool of citizen mariners who man those vessels. Any reductions [in the U.S. Flag fleet] will have to be offset in other ways to maintain current DoD sealift readiness.[1]

U.S. Flag Shipping Operations of APL, Maersk, Sealift and Hapag

APL is America's oldest shipping company and the world's seventh largest container transportation and shipping company, providing services across the globe through a network

[1] Letter from General Duncan J. McNabb, Commander of the U.S. Transportation Command, to Congressman Steven C. LaTourette (May 4, 2011).

combining intermodal freight transport operations with information technology and e-commerce. APL and its parent company, Neptune Orient Lines, currently own 16 U.S. flag vessels.

Maersk Line, Ltd. ("MLL"), a subsidiary of Maersk, owns or operates approximately 50 U.S. flag vessels either in international commercial service or under contract with the U.S. Government pursuant to various programs. Of these vessels, MLL operates approximately 16 vessels for the U.S. Government in preposition, surge sealift capacities, and special missions.

Sealift is an American shipping company based in Oyster Bay, New York. Sealift operates a fleet of 10 US flag ocean-going vessels most of which operate in its US flag liner service to world-wide destinations.

Hapag is a global container transportation company operating about 150 ships and five million containers with more than 80 liner services to all continents. Its subsidiary, Hapag-Lloyd USA, LLC, is a key supplier of end to end container transportation services to US government agencies and proudly operates six vessels under the US Flag.

Together, APL, Maersk, Sealift, and Hapag own or operate a substantial portion of the U.S. flag vessel fleet eligible for the tonnage tax provisions of the Code.

Overview of Tonnage Tax Provisions

In 2004, Congress made two significant changes to the Code to encourage American owned shipping. First, Congress introduced the tonnage tax provisions of the Code. Second, Congress repealed the so-called subpart F provisions of the Code concerning "foreign base company shipping income" applicable to controlled foreign corporations of U.S. companies.

The House Ways and Means Committee explained its reasons for enacting the tonnage tax provisions as follows:

> In general, operators of U.S. flag vessels in international trade are subject to higher taxes than their foreign-based competition. The uncompetitive U.S. taxation of shipping income has caused a steady and substantial decline of the U.S. shipping industry. The Committee believes that [the tonnage tax provisions] will provide operators of U.S. flag vessels in international trade the opportunity to be competitive with their tax-advantaged foreign competitors.[2]

When faced with other similar expressions of Congressional intent to encourage a particular activity, the courts have interpreted tax statutes in favor of the taxpayers that Congress intended to help.[3] Unfortunately, the IRS is interpreting the tonnage tax provisions in a manner that frustrates Congressional intent to allow U.S. flag vessels to compete with foreign competition.

Under the tonnage tax regime, the corporate income tax is imposed on a notional amount of taxable income determined on a per ton, per vessel rate. Actual gross income derived in respect of the U.S. flag shipping operations is excluded from gross income and associated deductions are disallowed. The tonnage tax regime is in Subchapter R (sections 1352 through 1359) of the Code.

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[2] H.R. Rep. No. 108-548, at 177 (2004). Similar reasons were provided for the repeal of the foreign base company shipping income rules. *Id.* at 209.

[3] *See, e.g.*, *United Telecomm. v. Comm'r*, 65 T.C. 278 (1975), *aff'd*, 589 F.2d 1381 (10th Cir. 1978), *cert. denied*, 442 U.S. 917 (1979) (noting that "because the investment credit provisions were enacted expressly to encourage investment in and modernization of facilities and equipment by reducing the net cost of acquiring assets, this Court and others have held that the investment credit provisions are to be liberally construed"); *Munson v. Comm'r*, 77 F.2d 849 (2d Cir. 1935) (concluding that under Merchant Marine Act, which allowed owners of U.S. vessels engaged in foreign trade to deduct the net earnings from such vessels so long as such owners invested a certain amount each year in building new vessels in the United States, the term "owner" should be construed broadly so as to allow the parent of eight subsidiary corporations to obtain such deduction, reasoning that such result would further the statutory purpose of encouraging investment in new ships, as a parent corporation could accumulate more quickly funds to build new vessels).

More specifically, section 1357 provides for exclusions of gross income from "qualifying shipping activities" derived by corporations in a tonnage tax electing group of corporations. Qualifying shipping activities relevantly include "core qualifying activities" ("Core") and qualifying secondary activities ("Secondary"). The exclusion for gross income from Core is unlimited (*i.e.*, 100% of a taxpayer's income from Core is excluded). However, the exclusion for gross income from Secondary is limited to 20% of the taxpayer's gross income from Core. Thus, whether a particular item of income falls within the definition of Core or Secondary activities is important to determining the amount of the exclusion from gross income.

Core activities is broadly defined as "activities in operating qualifying [U.S. flag] vessels in United States foreign trade."[4] A person is treated as operating any vessel that it owns, charters (including time charters), or provides services for pursuant to an operating agreement, as explained in greater detail below.

The Code provides a much more detailed definition of Secondary activities, which includes activities such as the provision of terminal, maintenance, repair, and logistical activities.[5] However, the entire definition of Secondary is subject to an important limitation that appears in the final flush language of the definition, namely, that in the event that a particular activity falls within the definition of both Core and Secondary, the activity is classified as Core and, therefore, is not subject to the 20% limitation on income from Secondary.[6] The definitions of Core and Secondary unequivocally establish that Congress understood that (1) vessel

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[4] I.R.C. § 1356(b).

[5] I.R.C. § 1356(c)(2).

[6] The final flush language of section 1356(c)(2) provides: "Such term [*i.e.*, 'secondary activities'] shall not include any core qualifying activities."

operators perform a wide variety of functions the income from which should receive favorable tax treatment as Core, and (2) there is an overlap in the definitions of Core and Secondary and that in such cases the definition of Core controls.

As a result of a 2005 technical correction, Congress confirmed that a taxpayer who provides services in respect of a vessel under an "operating agreement" is "treated as *operating* [a] vessel," and that activities such as crewing and performing technical services is included within the concept of "operating" a vessel.[7] Because Core is defined as "activities in *operating* qualifying [U.S. flag] vessels," the technical correction explicitly confirms that the provision of services pursuant to an operating agreement is Core.[8] Therefore, logic and common sense dictate

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[7] Emphasis added. As corrected, section 1355(b)(1) provides:

> For purposes of [subchapter R]—
> (1) In general.—Except as provided in paragraph (2) [relating to bareboat charters], *a person is treated as operating any vessel during any period if*—
> (A)(i) such vessel is owned by, or chartered (including a time charter) to, the person, or
> (ii) *the person provides services for such vessel pursuant to an operating agreement*, and
> (B) such vessel is in use as a qualifying vessel during such period.

(Emphasis added.) Gulf Opportunity Zone Act of 2005, P.L. 109-135, § 403(g)(1)(C).

[8] The Joint Committee on Taxation explains that the technical correction was meant to "clarify" the meaning of providing services under an operating agreement:

> The provision clarifies the treatment of operating agreements under the tonnage tax rules. An operating agreement is not a charter, but is instead an agreement with an owner or charterer of a qualifying vessel *to provide operating or management services* in respect of a qualifying vessel, *for example, crew, technical, or commercial services*. . . . [A] person providing services for a vessel under an operating agreement *is treated as operating the vessel* and may elect tonnage tax treatment, assuming the other requirements for such treatment are met. However, a subcontractor to a person providing services under an operating agreement is neither treated as providing services under an operating agreement nor as operating a vessel for purposes of the tonnage tax. The provision of equipment, tools, provisions, or supplies would not be considered an operating agreement or part of an operating agreement *unless such equipment, tools, provisions, or supplies are provided by the person providing the services under the operating agreement*, and such equipment, tools, provisions, or supplies are provided in connection with such services.

Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of H.R. 4440, the "Gulf Opportunity Zone Act of 2005," as Passed by the House of Representatives and the Senate*, JCX-88-05 (Dec. 16, 2005), at 243 (hereinafter the "Bluebook"). Indeed, in enacting the "operating agreement" technical correction, Congress considered at least two examples of typical operating agreements provided to it: One was an operating agreement

that the definition of Core should be construed broadly and that the performance of activities of the type contemplated under an operating agreement should also be treated as Core when those activities are performed by a person owning or chartering a vessel.

Examples of IRS Positions that Frustrate Congress's Intent in Enacting the Tonnage Tax

The IRS is taking aggressive positions, narrowly interpreting the tonnage tax provisions and resolving any ambiguity in those provisions against taxpayers, despite Congress's clear statement of intent in enacting the provisions. The IRS's positions frustrate and directly conflict with Congress's intent in enacting the tonnage tax provisions to encourage American ownership and jobs and to level the playing field for U.S. flag shipping to compete with foreign flag shipping. In general, the IRS asserts that normal every day activities of a U.S. flag shipping company do not constitute Core "activities in operating qualifying [U.S. flag] vessels."

Specifically, the IRS is asserting that activities from the every day operation of ships are not Core, but are instead Secondary to which the 20% limitation described above applies, in a fashion that taxpayers and Congress could not have imagined. For example, the IRS is taking the following positions:

- Loading and unloading cargo to and from vessels, agency activities, providing a crew for vessels, crew training, maintenance and repair, opening and closing hatch covers, and even flag raising (!) are Secondary, and not Core;

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with the U.S. military in respect of the Ocean Surveillance (T-AGOS) and Range Instrumentation (T-AGM) fleet of vessels, and the other was the commercial Baltic and International Maritime Counsel (BIMCO) Standard Ship Management Agreement Code Name: "Shipman 98."

- Many activities pursuant to operating agreements, such as those entered into with the U.S. military, are Secondary (and not Core), even though the 2005 technical correction to the statute (described above) made it explicitly clear that income from providing services for a qualifying vessel pursuant to an operating agreement is Core;

- Income from Core is not gross income to the taxpayer, thereby lowering the amount of its income from Core activities and concomitantly lowering the amount of the taxpayer's exclusion for income from Secondary activities;

- The IRS has attempted to allocate certain deductions unfavorably[9]; and

- The IRS has ignored Congress's mandate to allocate income from Core activities among the members of a tonnage tax "electing group," thereby frustrating Congress's recognition that shipping companies frequently choose to conduct their operations through separate legal entities within a single group, rather than only through a single legal entity with several branches.[10]

By taking the above positions, the IRS both completely ignores the plain mandate of the statute – that in the event of an overlap between Core and Secondary, Core trumps – and the breadth of the definition of Core. Under the IRS's strained interpretation of Core, the only activities that would be covered by Core are most (but apparently not even all!) "anchor up to

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[9] Section 1357(c)(1) disallows deductions with respect to any activity the income from which is excluded from gross income under the tonnage tax provisions.

[10] In this regard, Congress understood that separate entities in a shipping company group each perform functions that form an integral part of the group's activities in operating qualifying vessels in U.S. foreign trade. *See, e.g.*, I.R.C. §§ 1355(a)(2), 1356(e).

anchor down" activities.[11] Such an interpretation disregards, or perhaps reflects the IRS's misconceptions regarding, the every day activities that are part and parcel of operating a vessel.

Moreover, all of the income from activities that the IRS asserts is Secondary is exempt from U.S. taxation for non-U.S. flag carriers under section 883 of the Code (the reciprocal shipping income exemption) or a U.S. income tax treaty when derived by a qualifying foreign shipping company. The IRS position therefore not only maintains the unlevel playing field that Congress clearly intended to eliminate, but it also directly contradicts its own earlier determination of precisely what constitutes "shipping" activities.

The above positions being taken by the IRS substantially eviscerate the benefits that Congress intended to accord operators of U.S. flag vessels, leaving them vulnerable to their "tax-advantaged foreign competitors." We believe that the above positions being taken by the IRS must stop if U.S. flag shipping companies are going to be able to compete effectively with foreign flag shipping.

Relief Sought

We understand that the IRS is currently working on informal technical guidance to be provided to IRS agents in the field to reinforce the above stated questionable positions.

We urge Congress to work with the Treasury Department to stop the IRS's unreasonable interpretations and, if necessary, to enact a technical correction to the tonnage tax provisions. The technical correction would specify and implement Congress's original intent that income items derived in the day-to-day operations of a shipping company from its consignors,

[11] The IRS's interpretations would also place significant administrative burdens on operators of U.S. flag vessels, requiring them to make difficult allocations between Core and Secondary in respect of activities that are part of operating vessels.

consignees, shippers, and alliance members is income from Core.[12] Such action would achieve Congress's intent of leveling the tax playing field for U.S. shipping companies, thereby helping to ensure the continued existence of a U.S. flag fleet to be available to the United States in time of war or for other national security reasons.

[12] If desired, we would be pleased to provide suggested legislative language for the technical correction.

Port Freeport, Statement

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January 30, 2012

The Honorable Charles Boustany
The Honorable Pat Tiberi
House Ways and Means
1100 Longworth Bldg.
Washington, DC

Dear Congressmen Boustany and Tiberi,

I am writing to submit my comments regarding the hearing on February 1, 2012 regarding the Harbor Maintenance Funding and Maritime Tax Issues.

Currently, I am the Port Director at Port Freeport, Texas. Port Freeport is the 16th busiest port in the U.S. It is a deepwater port of 45 ft. We are in the final stages of pre-construction, engineering and design on a channel improvement project to widen and deepen our port. Our project, which has been deemed a "priority" project by both the Bush and Obama administrations, will allow two-way traffic in our busy channel and will prepare us for the influx of shipments as a result of the improvements to the Panama Canal, scheduled for completion in 2014.

As the immediate past Chairman of the American Association of Port Authorities, I can speak with certainty on the effect of insufficient dredging of all ports in our great Nation. Having been in the position of port director for over 20 years, I can assure you that maintenance dredging has become a nightmare for our ports. In times past, we were able to rely on the federal government to keep our federal channels to authorized depths. Those times are gone. Each year, our ports must fight each other for the little funds available for maintenance dredging. A large part of the problem with the lack of funding has been the robbing of the Harbor Maintenance Trust Fund (HMTF) for uses other than the intended purpose of the fund.

The HMTF was created to provide funds for the United States Army Corps of Engineers to dredge federally maintained harbors to their authorized depths and widths. The tax was intended to provide a sufficient, stable and long-term source of funding. In recent years, HMTF expenditures have been utilized by the Treasury as an offset to the

PORT COMMISSION

BILL TERRY, CHAIRMAN; RAVI K. SINGHANIA, VICE CHAIRMAN; JOHN HOSS, SECRETARY; SHANE PIRTLE, ASSISTANT SECRETARY;
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federal budget. The fund has not been utilized for its intended purpose or in its entirety. Many U.S. harbors are under-maintained, resulting in the full channel dimensions of America's busiest ports available less than 35 percent of the time. The result of this inability to keep our ports dredged is the loss of cargo and resulting jobs.

At a time when our economy is suffering, we can ill afford to lose business to ports outside of the U.S, particularly when there is an obvious and easy solution.

The Harbor Maintenance Trust Fund must be kept in tack and must be utilized in its entirety and for its intended purpose only. I urge this subcommittee to carefully review the bill submitted by Congressman Boustany – the RAMP Act- and correct this misuse of the fund. We must keep our federal harbors open for business. We appreciate your focus on the issue and trust that you will support your partners in keeping our channels competitive in the world marketplace.

Respectfully submitted,

A.J. "Pete" Reixach, Jr.
Executive Port Director/CEO

/mab
cc: Barry Holliday, Dredging Contractors of America
Kurt Nagle, AAPA

Port Metro Vancouver, Statement

February 15, 2012

The Honorable Pat Tiberi
Chairman
The Honorable Richard Neal
Ranking Member
United States House of Representatives
Subcommittee on Select Revenue Measures
1136 Longworth House Office Building
Washington, D.C. 20515

The Honorable Charles Boustany Jr.
Chairman
The Honorable John Lewis
Ranking Member
United States House of Representatives
Subcommittee on Oversight
1139 E. Longworth House Office Building
Washington, D.C. 20515

Dear Representatives Tiberi and Boustany:

On February 1, 2012, the House Ways and Means Subcommittee on Oversight and the Subcommittee on Select Revenue Measures held a joint hearing focused on harbor maintenance funding and maritime tax issues. In response to some issues raised at the hearing, the Vancouver Fraser Port Authority ("Port Metro Vancouver") appreciates the opportunity to submit comments regarding how Canadian ports finance dredging and maintenance operations.

Port Metro Vancouver is Canada's largest port which handles $CDN 75 billion annually in trade with over 160 countries.[1] The economic impact in Canada alone, of Port Metro Vancouver, includes 129,500 jobs, $CDN 10.5 billion in gross domestic product, and $CDN 6.1 billion in wages.[2] Port Metro Vancouver is North America's most diversified port, comprised of 28 major marine terminals with a jurisdiction that covers more than 400 miles of shoreline.

During the February 1st hearing, several witnesses provided inaccurate information regarding how Canadian ports fund their dredging and maintenance operations. For instance, one of the witnesses stated that Canadian ports fund harbor maintenance and dredging through "direct federal appropriations," and are "sometimes subsidized by a tariff or user fee." Another witness added that Canadian ports have been "federalized."

Given this testimony, Port Metro Vancouver would like to correct these statements and provide some information on how both we and other Canadian Port Authorities ("CPAs") fund dredging and maintenance operations. Under Canadian federal law, Port Metro Vancouver and other CPAs are federally-incorporated, autonomous corporations that are required to be financially self-sufficient. As a result, CPAs do not receive funding from the federal or provincial governments to meet operating costs or deficits. CPAs are responsible for funding their own harbor maintenance, including dredging, and are also required to remit an annual payment to the federal government for

[1] See http://www.portmetrovancouver.com/en/about/factsandstats.aspx.
[2] Id.

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portmetrovancouver.com

maintaining their "Letters Patent", a charge based on a percentage equal to the aggregate of specified gross revenues. Each port is governed by a board of directors, who are nominated by user groups, industry groups, municipalities, provinces, and the Government of Canada.

As you may know, the U.S. Federal Maritime Commission ("FMC") recently initiated a Notice of Inquiry ("NOI") into *United States Inland Cargo Moving Through Canadian and Mexican Seaports* (Docket 11-19). Port Metro Vancouver, along with several other CPAs, filed a response to this NOI on December 21, 2011. For your review, we have enclosed a copy of this response.

Port Metro Vancouver believes that fair and free competition between North American ports benefits consumers and businesses in both the United States and Canada. Canadian ports offer U.S. shippers choices that can help protect them from supply chain disruptions, such as inclement weather, labor strikes, and congestion, which can result in costly delays of getting products to U.S. markets. In addition, Canadian ports provide an outlet for the export of U.S. goods, handling over 2,527 thousand metric tons of goods in 2009. U.S. exports are critical to creating and sustaining domestic jobs; in 2010, U.S. exports supported an estimated 9.2 million jobs.

The U.S. and Canada are working closely together to enhance security and accelerate the free flow of people, goods and services. On December 7, 2011, President Obama and Prime Minister Harper released an Action Plan for the "Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness" ("BYB Declaration"). The plan envisions building upon the two countries long-standing ties to develop a perimeter approach to deal with the following issues: addressing threats early; trade facilitation, economic growth and jobs; cross-border law enforcement; and critical infrastructure and cyber security. The BYB Declaration recognizes the importance of expediting the free flow of goods and improving both countries trade competitiveness in order to spur economic growth and job creation. Port Metro Vancouver is eager to work with the Administration, Congress and other U.S. stakeholders on realizing the vision of the BYB Declaration, along with identifying other ways to spur economic growth and job creation in both countries.

I would be happy to meet to discuss these issues with you in more detail. My contact details are as follows:

Duncan Wilson
Vice President, Corporate Social Responsibility
Port Metro Vancouver
100 The Pointe
999 Canada Place
Vancouver, BC V6C 3T4 Canada
Direct Telephone: 1-604-665-9067
Fax: 1-866-284-4272
Email: duncan.wilson@portmetrovancouver.com

Please do not hesitate to contact me should you have any questions or comments.

Sincerely,

VANCOUVER FRASER PORT AUTHORITY

Duncan Wilson
Vice President, Corporate Social Responsibility

Enc-1

c.c. The Honorable Peter Roskam
The Honorable Erik Paulsen
The Honorable Richard Berg
The Honorable Kenny Merchant
The Honorable Jim Gerlach
The Honorable Michael Thompson
The Honorable John Larson
The Honorable Shelley Berkley
The Honorable Diane Black
The Honorable Aaron Schock
The Honorable Lynn Jenkins
The Honorable Thomas Reed II
The Honorable Xavier Becerra
The Honorable Ron Kind
The Honorable James McDermott

Port of Seattle, Statement

Written Testimony from Tay Yoshitani, CEO, Port of Seattle, Washington

Hearing on "Harbor Maintenance Funding and Maritime Tax Issues"

Oversight Subcommittee and Select Revenue Measures Subcommittee
House Ways and Means Committee
February 1, 2012

Since its inception, the Harbor Maintenance Tax (HMT) has served an important function for our nation's freight system. It is a key tool for maintaining the federal shipping channels serving our seaports. This tool is all the more valuable because it allows us to meet this challenge through revenue generated by those who use the system.

Yet it is very rare for any policy to work exactly as intended 25 years later, and the HMT is no exception. Some unforeseen shortcomings have emerged since 1986, and some problems that *were* anticipated have become more significant over the years. In some cases these shortcomings are actually harming US ports. After two and a half decades, it is time we make some much-needed adjustments.

Port of Seattle supports the RAMP Act

The first problem I want to discuss is the fact that the US is not fully spending the HMT revenue it collects. Congress appropriates only about half of annual HMT revenue toward its intended purpose. The balance has been applied to other federal spending even though US ports still have significant unfunded dredging needs. This is not only unfair; it also puts the HMT at risk of a challenge by trading partners.

If shippers must pay a fee to use our ports, these funds should support that use. The Port of Seattle and the other major West Coast container ports support the RAMP Act, which would ensure full utilization of the Harbor Maintenance Trust Fund.

Short Sea Shipping Act

I also would like to address another piece of legislation being discussed today, the Short Sea Shipping Act. As currently constructed, the HMT is preventing marine transportation from being a viable option for domestic freight moves. We understand the interconnectedness of the economies of Midwestern states with the neighboring Canadian provinces to the north. I sympathize with the desire to eliminate the double taxation on short sea shipping in the Great Lakes for US-Canada trade.

We can support a policy that limits the exemption to a more traditional definition of the St Lawrence Seaway that extends only to Sept-Îles, Quebec. But we cannot support the policy if the definition is expanded to include Nova Scotia. I know that many other ports agree with us. Extending the exemption to Nova Scotia would not significantly increase the volume of maritime trade between the US and Canada. Rather, it could have the effect of encouraging shippers to utilize the Port of Halifax and the planned port at Melford, Nova Scotia for the transshipment of Asian and European cargo at the expense of US East Coast ports. In effect, it would expand the HMT advantage Canadian ports already enjoy for marine containers that enter the US at land border crossings.

US policy should be neutral as it relates to the cost of importing non-NAFTA intermodal containers into the US, regardless of mode of arrival.

HMT land border loophole

This leads me to what is our most serious concern about the HMT, something that is increasingly having a detrimental impact on all US ports. Because the HMT does not apply to cargo that is moved through non-US ports and then over a land border into the US, the tax encourages shippers to divert cargo to Canadian or Mexican ports in order to avoid paying the HMT.

This unintended consequence is something the authors of the Water Resources Development Act of 1986 predicted could become a problem and sought to avoid. The original legislation required a study be undertaken as often as necessary to analyze the effects of the new policy. Specifically, the provision sought to determine whether the HMT contributed to cargo diversion to foreign seaports.

While a study probably would not have found cargo diversion to be an issue in 1987, today such a study would find the HMT is indeed encouraging shippers to avoid US ports. This is why West Coast ports were pleased to hear the Federal Maritime Commission announce that it would launch an inquiry into the matter last fall. The Port of Seattle's response to the FMC inquiry can be found here: www.fmc.gov/assets/1/Documents/11-19-comments%20of%20Port%20of%20Seattle.pdf. I would like to take this opportunity to summarize some of the key points from our response.

Changed landscape with new competitive threats

The first question people usually ask is, if the HMT has existed since 1986, why is it so urgent that we deal with it now?

The question has a simple answer: The shipping industry has changed a lot since the 80's, and we are facing a new competitive landscape. The change most relevant to today's discussion is the emergence of new port infrastructure in Mexico and Canada. These ports have given shippers the option to route cargo through foreign gateways that did not exist before. As a result, the land border loophole in the HMT has become a factor in port competitiveness.

The opening of Prince Rupert's container terminal in 2007 marked the first time a foreign port adopted a business model based on targeting US-bound cargo. Prince Rupert has already captured market share from US West Coast ports, and they have ambitious expansion plans. Many East Coast ports share West Coast ports' concerns about the land border loophole because Canada intends to replicate Prince Rupert's success with a new port at Melford, Nova Scotia.

Mexico's ports also are growing and plan to challenge US ports for US-bound cargo.

US ports are no strangers to competition, and we are willing and able to meet this challenge head on. But we do so with one hand tied behind our back: Because fees are not applied equally, US law is giving our new competitors a generous head start.

The role of the HMT in cargo diversion

Another common question is, does the HMT really affect cargo routing?

No one disputes that cost is one of the most important elements in a shipper's cargo routing decisions. While the HMT is only one of several cost factors, it is significant enough to influence trade flows.

In 2007, the Washington State Legislature commissioned a study to determine how a proposed container fee would affect Puget Sound cargo volumes. This study concluded that a $60 fee per forty-foot container would cut import volumes by 30%. A $150 fee would cut traffic in half.

The HMT averages $84 per forty-foot container nationally, significantly higher than the amount the Legislature's study predicted would result in major cargo diversion. But because the tax depends on the value of the cargo, it can be higher. This is why the Canadian transportation industry often references HMT savings of $200 or more, well above the level at which the study predicted drastic shifts in market share.

Canadian marketing of their HMT advantage

It is telling to note that in recognition of the significance of the HMT as a factor in cargo routing, the Canadian transportation industry proactively markets their HMT cost advantage. We have witnessed presentations by Canadians demonstrating how importers can save millions of dollars by moving their cargo through Canada instead of through the US because they can avoid the HMT.

The land border loophole reduces HMT revenue.

In addition to its detrimental impact on US port competitiveness, another reason to address the land border loophole is because every container that is diverted to a non-US port reduces Harbor Maintenance Trust Fund revenue. This leak in the trust fund will become more serious as cargo diversion increases.

Congress should level the playing field

As this committee continues its review of maritime issues, West Coast ports hope a structure can be created that allows US ports to compete on a level playing field. Federal policy should be modified to ensure equal treatment of all US-bound containers regardless of mode of arrival in the US.

Our ports are a building block of the US economy, linking our businesses with international markets and supporting millions of jobs across the nation. This includes jobs in the transportation sector and many millions more with importers and exporters who depend on America's ports. For agricultural exporters, healthy US ports can make the difference in whether their products are competitive in global markets. Manufacturers also depend on highly efficient, reliable ports to get their goods to market and to take advantage of the just-in-time processes that have become common practice in their industries.

The topic we are addressing today is an important one, and I applaud Chairman Boustany and Chairman Tiberi for calling this hearing. Whether or not we succeed in fixing the HMT will have implications for the ability of US ports to continue to survive and thrive in an increasingly competitive global business environment. Thank you for the opportunity to submit this written testimony.

Port of Tacoma, Statement

TESTIMONY OF

JOHN WOLFE, EXECUTIVE DIRECTOR, PORT OF TACOMA, WASHINGTON

SUBMITTED FOR THE RECORD

JOINT HEARING OF THE HOUSE WAYS AND MEANS COMMITTEE'S

SUBCOMMITTEE ON OVERSIGHT AND

SUBCOMMITTEE ON SELECT REVENUE MEASURES

ON HARBOR MAINTENANCE FUNDING AND MARITIME TAX ISSUES

FEBRUARY 1, 2012

Chairman Boustany, Chairman Tiberi and Members of the Subcommittee on Oversight and the Subcommittee on Select Revenue Measures, the Port of Tacoma appreciates the opportunity to submit testimony for your hearing on U.S. harbor maintenance funding and maritime tax issues. We appreciate your Subcommittees' interest in examining the structure of the Harbor Maintenance Trust Fund (HMTF) and the Harbor Maintenance Tax (HMT) and addressing the issue of whether the HMTF and HMT are appropriately structured.

The Port of Tacoma is an economic engine for Washington State, with more than 43,000 family-wage jobs in Pierce County and 113,000 jobs across Washington State connected to Port activities. The Port of Tacoma is a major trade gateway to Asia and Alaska and one of the largest container ports in North America. The Port is also a major center for bulk, breakbulk, and project/heavy-lift cargoes, as well as industrial machinery, automobiles and trucks.

Washington State is the most trade-oriented state in the nation, and the Ports of Tacoma and Seattle together are the third-largest container load center in the United States.

The Ports of Tacoma and Seattle, like the ports in America's largest container load center---the Ports of Los Angeles and Long Beach---get virtually no benefits from the HMT revenues collected at our ports, but the HMT drives cargo away from our ports to Canadian and Mexican ports. We encourage your Subcommittees to address these problems with the structure of the HMTF and the HMT, especially be removing the incentive in our tax code for shippers to divert cargo away from U.S. ports.

As you know, the HMT is assessed on ocean-going international imports that land at U.S. ports, but it is not assessed on U.S. imports that are routed through Canadian and Mexican ports. That cost differential is large enough to incentivize shippers to use foreign ports for their import shipments instead of U.S. ports. The Federal Maritime Commission is currently conducting an Inquiry (Docket No. 11-19) into whether and to what extent the HMT causes cargo diversion to Canadian and Mexican ports, and we eagerly await their findings.

Past research has demonstrated that the imposition of taxes and fees by U.S. governments can incentivize shippers to divert discretionary cargo to alternative gateways to avoid those charges. A 2007 study conducted for the Washington State Legislature's Joint Transportation Committee by Leachman and Associates concluded that import volume at the Ports of Tacoma and Seattle is very elastic with respect to potential container fees. Even

relatively small fees of $30 per TEU (twenty-foot equivalent units of containerized cargo) or less would make alternative supply-chain routes more economically attractive for imports, resulting in a loss of nearly 30 percent of cargo volumes at our Puget Sound ports. According to research performed by Martin and Associates, that amount of lost cargo would translate into a loss of 9,415 jobs, $590.8 million in personal income, $938.7 million in business revenue, and $58.5 million in state and local tax revenue. If a $30/TEU container charge would have that level of impact, surely the HMT, which averages $150 per container, has an even greater impact.

We believe that the dramatic growth of the Port of Vancouver and especially the Port of Rupert in Canada since the HMT was imposed in 1986 and then more than tripled in 1991 is not a coincidence. The importance of the HMT to shippers and carriers is acknowledged by stevedoring companies and port officials in Canada who go to great lengths to tout the financial benefits of bypassing U.S. ports and the HMT. The Port of Vancouver has run advertisements in trade publications like the *Journal of Commerce* claiming that they can "save you time and money with . . . no harbor maintenance tax." As early as the 1998 International Intermodal Expo in Dallas, representatives of the Port of Vancouver passed out marketing materials emphasizing this same point.

More recently, Global Container Terminals (GCT), the largest marine terminal operator at the Port of Vancouver, made a presentation at the 2010 World Shipping Summit in China quantifying annual HMT savings to shippers who bypass U.S. ports and call on their terminal in British Columbia. Similar figures have been used by GCT in sales calls made to shippers in the

United States in which the Port of Vancouver is promoted as a "U.S. gateway". They claim that "shippers saved an estimated $17 million in Harbor Maintenance Taxes" by circumventing U.S. ports.

The financial costs of the HMT might be acceptable if meaningful benefits were provided to those who pay the HMT. Unfortunately, that is not the case. The law as currently written creates massive transfer of revenue from natural deep-draft ports like Tacoma and Seattle to shallower harbors that need frequent dredging. A fifth of all HMTF expenditures are spent in a single state, Louisiana. According to a recent Congressional Research Service report, Tacoma and Seattle get "just over a penny for every dollar" their shippers pay in HMTs.

Finally, it should be noted that questions remain about the HMT's compliance with international trade law. In 1998, the European Union (EU) requested consultation with the United States over the HMT. Article VIII of the General Agreement on Tariffs and Trade prohibits "taxation of imports or exports for fiscal purposes", and the U.S. Supreme Court ruled in *United States vs. U.S. Shoe Corporation* that the HMT is a tax and not a user fee. That decision also struck down imposition of the HMT on exports as unconstitutional; the fact that the HMT is now collected on imports, but not on exports, makes it even more suspect under international trade law.

We acknowledge that shippers and carriers, when determining where to route cargo, consider many factors. The HMT is not the sole or determining factor. Shippers also consider

geographical proximity, cargo velocity improvements resulting from infrastructure investments, rail rates, labor rates and other factors. It is difficult to claim, however, that any factor that can increase the cost of moving a container by $150 plays no role. In recent years, carriers have sought lease rate reduction and other financial concessions from public ports for smaller dollar amounts than this, and shippers have voiced concerns about smaller increases than this in other supply chain costs. Price matters and the HMT significantly affects the price of moving cargo through U.S. ports.

This begs the question: Why should U.S. tax law provide preferential treatment for containerized cargo entering the United States through a Canadian or Mexican port compared with cargo entering the United States through a U.S. port?

Thank you for giving us this opportunity to present our views.

This testimony was submitted solely on behalf of the Port of Tacoma, Washington by:

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Shipbuilders Council of America, Statement

Statement of the Shipbuilders Council of America

Submitted to the

Subcommittee on Oversight

and the

Subcommittee on Select Revenue Measures

Committee on Ways and Means

United States House of Representatives

on

Modernizing the Capital Construction Fund Program to Create U.S. Maritime Industry Jobs

February 1, 2012

The Shipbuilders Council of America (SCA) commends the Subcommittees for holding their February 1 hearing on maritime tax issues and appreciates the opportunity to provide these comments for the hearing record. SCA is the national trade association representing the U.S. shipyard industry. Our members constitute the shipyard industrial base that builds, repairs, maintains and modernizes the largest and most advanced Navy and Coast Guard in the world. In addition, SCA members build, repair and service America's fleet of commercial vessels. In total, SCA is comprised of 51 companies that own and operate over 130 shipyards and directly employ over 75,000 Americans on all three U.S. coasts, the Great Lakes, inland waterways system, Alaska and Hawaii. In addition, SCA represents 72 shipyard suppliers who support the industry and provide jobs in all 50 states.

SCA takes this opportunity to address an important maritime tax issue, the need to improve the Capital Construction Fund (CCF) program. Removing regulatory obstacles and modernizing the CCF program can help create jobs and economic growth, benefitting vessel operators, mariners, and shipyards.

CCF for Maintenance, Repairs and Modifications.

Overview. One of the very few tools available to modernize the U.S.-flag vessel fleet is the Capital Construction Fund. A Capital Construction Fund is a tax advantaged account that, to simplify, allows the owner or operator of a U.S.-flag vessel to deposit funds into the account, deferring taxes on the funds deposited. Funds can accumulate in the account to facilitate vessel acquisition. These are a company's own funds, not taxpayer funds, so no appropriation is required. The CCF program is administered by the Maritime Administration, USDOT, with tax aspects administered jointly with the Treasury Department (IRS).

Shipbuilding generates jobs and other benefits.

> Building a new large oceangoing vessel can support 300 or more direct jobs for 1-2 years and up to 4 times as many jobs in supplier industries.

After construction, shipboard jobs are generated, which are good for the economy and help maintain a pool of mariners to aid in the national defense.

New vessels are environmentally superior to the vessels they replace both in terms of fuel efficiency and other systems.

Ship construction helps maintain the nation's industrial base, including but not limited to the defense industrial base.

Current Law. The Capital Construction Fund (CCF) was established in Title VI of the Merchant Marine Act of 1936, which authorized the creation of reserve funds into which U.S.-citizen vessel operators engaged in providing foreign trade U.S.-flag services could deposit earnings, tax free, for use in the construction of vessels to be employed in such services. Following World War II, the tax-free status was modified to limit the tax benefit on such uses to tax deferral. The Merchant Marine Act of 1970 continued the tax deferral approach and added non-contiguous vessel services (Alaska, Hawaii, Puerto Rico and Great Lakes) as qualifying trades under the CCF. Subsequently, U.S. Maritime Administration (MarAd) implementation of the CCF program included the addition of certain Gulf of Mexico and other offshore trades.

The CCF program assists U.S. vessel operators to accumulate the capital necessary to replace or expand their U.S.-flag fleets on a before-tax basis. The program authorizes the deferral of federal income tax on the income from vessel operations and the gain on the sale of vessels deposited into CCF accounts. For example, deposits will reduce a vessel's operating income for the taxable year by the amount of the deposit. The tax deferral ends when a "qualified" withdrawal from the fund to finance qualified vessel construction is made. When the qualified vessel is placed in service, the cost basis for the vessel is reduced by the amount of the CCF tax deferred financing, and the Federal government begins to recoup the deferred tax through reduced depreciation deductions.

Any U.S.-citizen owning or leasing one or more U.S.-built, U.S.-flagged vessels engaged in the foreign or domestic trades may establish CCF accounts administered by MarAd. Eligibility to establish CCF accounts is broad. A bank or financial institution may establish a CCF account in a vessel lease financing arrangement and shelter income for debt repayment.

Proposed Changes. The current program allows any U.S.-built, U.S.-flag vessel owner or operator to establish a CCF fund with MarAd regardless of where that vessel operates. However, qualified withdrawals from the fund may only be used to construct or reconstruct vessels in U.S. shipyards for service in the U.S.-foreign, non-contiguous domestic, or Great Lakes trades, or in support of operations on the Outer Continental Shelf. SCA supports legislation to expand the CCF program to allow qualified withdrawals for the maintenance and repair of U.S. or foreign built U.S.-flag vessels, provided that such maintenance and repair is performed in U.S. shipyards. In addition, this would allow U.S. shipyards to establish a CCF account for the purposes of maintaining and building new drydock facilities for the repair and maintenance of vessels in the U.S.

Rationale. The Congress, in DoD authorization legislation over the past several years, has expressed its belief that a strong ship repair industrial base is vital to the national security of the United States. Enabling U.S.-flag vessel owners and operators to establish CCF funds for

maintenance and repair of any U.S.-flag vessel in U.S. shipyards will help sustain the shipyard infrastructure at little or no cost to the Nation's taxpayers. This modest expansion of the CCF program will help U.S. shipyards compete on a more level playing field against subsidized foreign shipyards and will result in additional job creation at America's ship repair yards.

CCF Leasing Should Be Effected Promptly

The CCF program should also be modernized to allow funds in a CCF to be used for lease payments, not just mortgage (purchase) payments. The current restrictive approach limits the ability of vessel operators to make the most effective financial decisions when considering acquiring U.S. built vessels. Taking a more modern, flexible approach could facilitate some vessel acquisitions, has the potential to create American jobs in shipbuilding and other benefits, and should be put in place.

SCA thanks the Subcommittee for its consideration and welcomes its support in achieving elimination of the barriers to job creation that we have described in this statement.

Contact Information

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Tonnage Tax Coalition, Statement

Statement Submitted
By
Crowley Maritime Corporation
Marine Resources Group, Inc.
Matson Navigation Company, Inc.
Tote, Inc.
United Maritime Group, LLC

Committee on Ways and Means
Subcommittee on Select Revenue Measures
Subcommittee on Oversight

Hearing on Harbor Maintenance Funding and Maritime
Tax Issues

February 1, 2012

We urge the Ways and Means Committee to approve H.R. 1267. This bill, introduced by Representatives Herger, Blumenauer, Gerlach, Hirono, Inslee, Larsen, and Young would correct an anomaly in the tax treatment of U.S. flag ships which discourages U.S. operators from putting more U.S.-flag vessels into international commerce.

Congress enacted the tonnage tax alternative in the American Jobs Creation Act of 2004 (JOBS Act) as a means to encourage U.S.-flag operations in the international maritime trades and to mitigate some of the competitive disadvantages U.S. vessels face in the global shipping markets. The tonnage tax is a minimal tax alternative to 35% corporate income tax. This lower tonnage tax is intended to level the playing field for U.S.-flag ships that compete in international trade against foreign registered ships that are largely tax exempt. All of the major maritime nations, other than the United States, either do not tax ocean shipping income or impose a nominal tonnage tax.

Unfortunately, if a U.S. vessel operates in domestic commerce for more than 30 days per year it is prohibited from electing the tonnage tax for the international portion of its voyages. This 30 day limit prohibits a few U.S. vessels that operate in both domestic and international trade from using the tonnage tax at all and, therefore, puts these vessels at a disadvantage when they operate in international commerce. Because the penalty for exceeding the 30 day limit is so severe, many U.S. vessels will sit idle rather than risk exceeding the limit.

Congress attempted to correct this problem in December 2006 by partially repealing the 30 day limit (The Tax Relief and Health Care Act of 2006). Although the Senate version of the Tax Relief and Health Care Act of 2006 would have repealed the 30 day limit for all U.S. flag vessels, the final version of the Act repealed the 30 day limitation only for US vessels that operate in domestic and international trades on the Great Lakes.

The result of this arbitrary limitation is that U.S.-built, U.S-crewed, and U.S.-owned ships have been taxed at a higher rate than foreign-owned vessels and even U.S.-flag vessels that were not built in the United States. Crowley Maritime Corporation, Marine Resources Group, Inc., Matson Navigation Company, Tote, Inc. and United Maritime Group, LLC operate U.S. flag Jones Act-qualified vessels in both the domestic and international trades. Our five companies are competitively disadvantaged by the discriminatory tax treatment which penalizes us for operating U.S.-built vessels.

As you may know, 97% of all import and export cargoes to the United States are carried on foreign flag vessels. As U.S. flag operators, we suffer a significant competitive disadvantage against these foreign vessels engaged in the U.S. trades which benefit from a less costly regulatory environment, lower capital and operating costs and negligible tax burdens. This

inequity in tax treatment of similarly-situated taxpayers provides a competitive advantage to foreign flag vessels competing with U.S. vessels.

Although the tonnage tax was intended to make U.S. flag vessels more competitive in U.S. foreign trades, the 30-day cap on domestic operations prevents U.S.-built, U.S.-owned and U.S.-crewed vessels from electing the tonnage tax and makes those vessels less competitive in the international trades. H.R. 1267 will eliminate this inequity and enable U.S. companies to be more competitive in the foreign maritime trades.

Thank you for your consideration of our request.

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Vice President & General Counsel
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Vice President
United Maritime Group, LLC

West Gulf Maritime Association, Statement

WEST GULF MARITIME ASSOCIATION

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February 29, 2012

The Honorable Charles Boustany
Chair, Subcommittee on Oversight
The Honorable Pat Tiberi
Chair, Subcommittee on Select Revenue Measures

Re: Harbor Maintenance Trust Fund and Tax

Dear Chairmen:

The West Gulf Maritime Association is a trade association organized in early 1968 to represent the interests of ship owners, operators, agents, as well as stevedoring and terminal companies located in all ports from Brownsville, Texas, to the Port of Lake Charles, Louisiana.

As a result of federal under-investment, federal channels in U.S. ports now have available on average less than thirty-five percent of the authorized and required channel dimensions. Users have paid sufficient annual revenue into the fund to cover the need. Indeed, today a surplus of more than $6 billion exists in the fund, with annual revenue of more than $1.4 billion and growing. The annual need for maintenance dredging is in the range of $1.3 to $1.6 billion according to the Army Corps of Engineers, and is comparable to the funds collected. However, over the past five years, annual expenditures for channel maintenance have averaged less than $800 million, creating the surplus and leaving users with inadequately maintained channels. The net result is increased costs for waterborne transportation users, higher prices to consumers, and reduced competitiveness of U.S. exports in the global marketplace.

The situation is only exacerbated by the need to prepare our country for the Panama Canal expansion. It is vital that our country is prepared for the larger capacity ships expected to enter our ports. This makes it even more important that our channels and ports are adequately maintained and dredged. I applaud the House Ways and Means Subcommittee on Oversight and Subcommittee on Select Revenue Measures for hearing this important issue. It is our hope that these committees are able to reach a viable solution to this problem – specifically by aiding in the passage of H.R. 104 and S. 412, as well as H.R. 1533.

Thank you for your attention in this matter. With over 180 members, the West Gulf Maritime Association is more than happy to make ourselves available as a resource on this and any other maritime transportation issue.

Very truly yours,

Nathan Wesely

Nathan Wesely
President

3D MARINE USA

ACCP

AET INC. LIMITED

AGILITY LOGISTICS

ALLIANCE GROUP RESEARCH

ALLTRANS PORT SERVICES

AMERICAN SHIPPING & CHARTERING CORP.

APM TERMINALS

ARGOSY TRANSPORTATION GROUP

ATLANTIC CONTAINER LINE

AURORA TANKERS USA

AYERS MARITIME SERVICES

AZTEC MARINE AGENCIES

BARBOURS CUT INTERMODAL SERVICES

BASDEN AGENCIES

BAY HOUSTON TOWING CO.

BAYPORT GLOBAL LOGISTICS

BBC CHARTERING USA

BERTLING LOGISTICS

BEST BET LINE HANDLERS

BIEHL & CO., L.P.

BIGLER TERMINALS, LP

BLUE WATER SHIPPING US

BP PRODUCTS NORTH AMERICA

BRAEMAR MARINE

CELTIC INT'L SHIPPING AGENCY

CENTRAL HEALTHCARE SERVICE

CERES GULF

CHAPARRAL STEVEDORING CO. OF TEXAS

CHENIERE LNG

CHINA SHIPPING NORTH AMERICA

CHIPOLBROK AMERICA

CH2MHILL

CITGO PETROLEUM

CLIPPER AMERICAS

CLIPPER WONSILD TANKERS

CMA CGM (AMERICA)

COASTAL SHIPPING & LOGISTICS COMPANY

COOPER/T. SMITH STEVEDORING

COSCO NORTH AMERICA

DANNER'S ORPORATED

DAVIS SHIP AGENCIES

DET NORSKE VERITAS CLASSIFICATION (AMERICAS)

DIX SHIPPING

DOWLEY SECURITY SYSTEMS

ECM MARITIME SERVICES

EAGLE TRANSPORTATION SERVICE CO.

EITZEN CHEMICAL USA

EQUIPMENT MANAGEMENT SERVICES

EURONAV

EXECUTIVE SHIPPING SERVICES (USA)

FILLETTE, GREEN SHIPPING SERVICES

FRANK MOHN HOUSTON

FREEPORT LNG

FRITZ MARITIME AGENCIES

GAC-RUR

GALORG USA

GARNER ENVIRONMENTAL

GERMANISCHER LLOYD

GLOBAL ENVIRONMENTAL & MARINE SERVICS

GLOBAL STEAMSHIP AGENCIES

GOLDEN PASS LNG

GP TERMINALS

GUARDIAN MARITIME

GULF COPPER DRY DOCK & RIG REPAIR

GULF HARBOR SHIPPING

GULF INTRACOASTAL CANAL ASSOCIATION

GULF STEVEDORING SERVICES

GULF SUNRISE AGENCY

GULF WINDS INTERNATIONAL

HAPAG-LLOYD (AMERICA)

HBG LOGISTICS

HOEGH AUTOLINERS

HOLMAN SHIPPING

HORIZON LINES

HOUSTON MOORING COMPANY

HCAPE SHIPPING SERVICES

INTEGRATED MARINE SERVICES

INTERCONTINENTAL TERMINALS COMPANY

INTERGULF CORPORATION

INTERSCHALT MARITIME SYSTEMS

INTERSEE HOUSTON

INTERTANKO

J.A.M. MARINE SERVICES

JO TANKERS

K & C SHIPPING
"K" LINE AMERICA
LBH GROUP
LEEWARD AGENCY
LIGHTHOUSE SHIPPING
MAERSK LINE
MALIN INTERNATIONAL SHIP REPAIR & DRYDOCK
MARINE AGENCIES
MARINE HEALTHCARE SERVICES
MARINE TERMINALS CORPORATION
MEDITERRANEAN SHIPPING COMPANY
MID-GULF SHIPPING
MITSUI
MOFFAT AND NICHOL
MONTREAL MARINE USA,
MORAN-GULF SHIPPING AGENCIES
NEWSHIP
NORDANA LINE
NORD-SUD SHIPPING
NORTH STAR MARITIME
NORTON LILLY INTERNATIONAL
NOVA INTERNATIONAL SHIPPING
NSA AGENCIES
NEWSHIP
NORDIC TANKERS
NYK LINE
OBC SHIPPING
OILTANKING
ODFJELL USA (HOUSTON)
OOCL (USA)
O'ROURKE MARINE SERVICES
PORT HOUSTON TERMINAL
PORT MEDICAL
PORT OF BEAUMONT
PORT OF BROWNSVILLE
PORT OF CORPUS CHRISTI
PORT OF FREEPORT
PORT OF GALVESTON
PORT OF HARLINGEN AUTHORITY
PORT OF LAKE CHARLES
PORT OF ORANGE
PORT OF TEXAS CITY
PORTS AMERICA HOUSTON
PORTVISION
PROBULK AGENCY
PROMAR AGENCY
RESK MARITIME RESOURCES
REYNOLDS DOCKSIDE SERVICES
RICKMERS-LINIE (AMERICA)
RILEY- SHERMAN SHIPPING AGENCY
ROLLDOCK (AMERICAS)
SAFETY FIRST
SAL HEAVY LIFT USA
SANCO SHIPPING
SAN JUAN NAVIGATION
SCAN-TRANS
SCHAEFER STEVEDORING
SCHRÖDER MARINE SERVICES
SE SHIPPING LINES PTE LTD
SEARIVER MARITIME
SEAWAYS MARITIME SERVICES
SHELL TRADING
SHIPPERS STEVEDORING CO.
SKAUGEN PETROTRANS
SOUTHERN RECYCLING
SOUTHERN STEVEDORING CO.
SOUTHPORT AGENCIES
SSA GULF
STAR SHIPPING (NY)
SUDERMAN STEVEDORES
SUDERMAN TERMINAL OPERATORS
SUDERMAN & YOUNG TOWING COMPANY, L.P.
SUMITOMO CORPORATION OF AMERICA
SWIRE SHIPPING
T & T BISSO
TARGA RESOURCES
TEEKAY MARINE SERVICES
TEXAS MARINE AGENCY
TEXAS MOORING
THE ROWLAND GROUP
TOTAL MARINE TRANSPORT
TRANSCO SHIPPING (USA)
TRANSMARINE NAVIGATION CORP.
UNIGAS INTERNATIONAL
UNITED STATES MARITIME

SERVICES
UNIVERSAL INTERNATIONAL SERVICES
VALERO
VALLS SHIPPING COMPANY
VOPAK
WALLENIUS
WESTWAY TERMINALS
WILD WELL CONTROL
WILHELMSEN SHIPS SERVICES
YANG MING CORPORATION (AMERICA)
ZIM-AMERICAN INTEGRATED SHIPPING

American Maritime Labor Organizations, Statement

STATEMENT SUBMITTED BY THE

AMERICAN MARITIME OFFICERS,

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,

MARINE ENGINEERS' BENEFICIAL ASSOCIATION,

MARINE FIREMEN'S UNION,

SAILORS' UNION OF THE PACIFIC

AND THE

SEAFARERS INTERNATIONAL UNION

TO THE

SUBCOMMITTEE ON OVERSIGHT

AND THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS

ON

MARITIME TAX REFORM

February 1, 2012

CHAIRMEN BOUSTANY and TIBERI, RANKING MEMBERS LEWIS and NEAL, and MEMBERS OF THE SUBCOMMITTEES:

On behalf of our respective American maritime labor organizations, we greatly appreciate the opportunity to submit this statement in conjunction with your Subcommittees' hearing on maritime tax reform proposals. Our maritime labor organizations collectively represent ships' Masters, Licensed Deck Officers and Licensed Engineers, and unlicensed merchant mariners working aboard U.S.-flag commercial vessels operating in our nation's foreign and domestic shipping trades. The provisions in the Internal Revenue Code pertaining to the construction and operation of U.S.-flag ships have a significant impact on the ability of U.S. shipping companies to compete for a larger share of America's foreign and domestic trade and, as such, directly affect the economic viability of the U.S.-flag fleet and the jobs of American merchant mariners.

History has repeatedly proven – and Congress has repeatedly affirmed – that the United States must maintain and support a strong, active, and competitive U.S.-flag merchant marine in order to strengthen our nation's economic, homeland and military security. Most importantly, in times of war U.S.-flag commercial vessels and their United States citizen crews have always responded to our nation's call, providing the commercial sealift capability and civilian maritime manpower necessary to support American troops overseas. In fact, since 2008, U.S.-flag commercial vessels and their U.S. citizen civilian crews have transported approximately 95 percent of the cargo needed to support our troops and their combat operations overseas.

Without the assured capability provided by the U.S.-flag merchant marine and its civilian manpower, American troops overseas will be dependent on foreign vessels and their foreign crews to deliver the material, supplies and equipment they need to do their job on our behalf. Our country should not increase the risk American troops already face by forcing them to rely on the whim of foreign shipping interests to provide them with what they need when they need it. Rather, our country owes it to our servicemen and women fighting to protect and advance America's interests to ensure that they will in fact be supported when they need it the most.

This sentiment was expressed in 2008 by Major General Kathleen Gainey, Commander, U.S. Military Surface Deployment and Distribution Command, who commented on the important role played by the commercial U.S. maritime industry in support of the Department of Defense. She stated that *"The merchant marine has always been there beside us . . . You have been there and delivered for our service members around the world . . . I am here to tell you, having deployed twice, I know how critical it is that we get that equipment and supplies on time . . . You are the fourth arm of the Department of Defense and you are critical to this nation."*

Similarly, General Norton A. Schwartz, then-Commander, United States Transportation Command, stated in 2008 that the civilian American merchant mariners who crew the vessels whenever and wherever needed by the Department of Defense *"are the people who ensure that the promises we've made to our service men and women are and always will be promises kept."*

Today, U.S.-flag commercial vessels are on the front lines in our nation's War against Terror, not only abroad in support of the Department of Defense and our troops, but here at home, as well. Only American maritime workers are subject to the background and security checks imposed by the Department of Homeland Security and implemented by the Federal Bureau of Investigation, the Coast Guard and the Transportation Security Administration to help prevent maritime-related security and terrorism incidents on our waterways and in our nation's ports. The operation of U.S.-flag vessels with American crews in our domestic trades means that foreign companies and foreign maritime workers who are not subject to United States government background and security checks will not have unlimited access to America's ports, port facilities and coastal and inland waterways.

It is, in our opinion, ill-advised for our government, especially at this dangerous time in our nation's history, to weaken the domestic shipping statutes and to thereby relinquish control over the timing and the cost of transporting America's domestic commerce. Rather, it is extremely important that our government take the steps necessary to ensure that our nation has the United States-flag commercial vessels and American citizen crews needed to support our troops, to protect and enhance America's economic and security interests at home and abroad, and to strengthen United States defense operations around the world.

We strongly believe that one way to achieve these goals is to ensure that America's tax laws encourage, rather than discourage, investment in the United States shipping industry.

Consequently, as set out below, we support the proposed changes in the tax law that are the subject of today's hearing as well as other important maritime tax reform initiatives that we believe will help foster the growth of the United States maritime industry and preserve and create jobs for American maritime workers. Without such changes in our tax laws, American dollars and American jobs will continue to be outsourced to the benefit of foreign flag fleets and foreign maritime workers. With such changes, America's tax laws and policies will help promote the construction, acquisition and operation of U.S.-flag vessels and the employment of American workers in American ports, aboard American ships, and in American shipyards and related service and supply industries.

HR 1533 - *SHORT SEA SHIPPING ACT OF 2011*

Our maritime labor organizations are part of a large maritime industry coalition comprised of shipping companies, ports and other interests that strongly supports HR 1533, the Short Sea Shipping Act of 2011. We are extremely grateful that you, Mr. Chairman, introduced this bill

along with Representatives Steve LaTourette and Brian Higgins, and we are equally grateful to the bipartisan group of Representatives who have chosen to cosponsor this important U.S.-flag shipping and maritime jobs initiative.

This enactment of this legislation is necessary to end the discriminatory double taxation imposed on cargo transported by American vessels between American ports, including ports on the Great Lakes, under the Harbor Maintenance Tax (HMT). As Congress and the Administration consider proposals to reform America's tax laws and to eliminate those provisions that prevent American companies from investing in the United States and from hiring Americans, we would strongly urge the enactment of HR 1533 as a significant means to encourage investment in the American shipping industry.

We believe the enactment of this legislation will remove a serious tax-related impediment to the development of a marine highway system. Such a system has the potential to create significant new employment opportunities for American shipbuilding workers and workers in related service and supply industries as well as for those licensed and unlicensed merchant mariners who will crew these vessels. The shipment of cargo along our coasts will provide a significant opportunity for America's underutilized smaller and medium sized ports, creating important new employment opportunities for American longshoremen and other shoreside workers.

In other words, the enactment of HR 1533 and the resultant development of a marine highway system offer a greater potential for new employment in the domestic maritime industry than any other proposal or initiative presently before the Congress.

Today, cargo entering the United States is subject to the HMT. This will not change through the enactment of HR 1533. If that same cargo which has already been subject to the HMT upon its initial entry at a U.S. port is then transported by rail or truck to another destination within the United States, it is not taxed again under the HMT upon its arrival. However if, instead of moving by truck or rail to another destination within the United States, that same cargo is transported by a U.S.-flag vessel, it is taxed again upon its arrival under the HMT. This second discriminatory application of the HMT on cargo transported by water is what will be changed and eliminated through the enactment of HR 1533.

This discriminatory double taxation of cargo moving by water creates a significant economic disincentive for the owners of the cargo (i.e., shippers) to use waterborne transportation to move their cargo from one U.S. destination to another. Consequently, insofar as shippers understandably choose to avoid paying a tax more than once on the same cargo, the current application of the HMT has become one of the major impediments to the development of a marine highway system and the subsequent greater utilization of commercial vessels to transport cargo along America's coasts.

At a time when our economy is struggling to recover and the nation is working tirelessly to alleviate unemployment, eliminating this double taxation and encouraging the development of the marine highway system can result in significant benefits for the United States. In fact, this is why ending the double taxation of waterborne cargo under the HMT has achieved strong bipartisan Congressional support and the support of a diverse group of private interests.

For example, the Navy League of the United States, in its recent maritime policy statement, argued that "only a truly seamless, integrated, multimodal transportation system with an expanded Marine Highway System for freight movement will meet the nation's growing needs." The Navy League concluded by noting that "this double tax is a major disincentive for increased water transport."

Similarly, in a statement dated December 2009, the American Association of Port Authorities (AAPA) called for the end of the double taxation of waterborne cargo under the HMT. The AAPA stated that ending this double taxation "would remove a Federal disincentive to starting up this greener way to move freight."

Along these same lines, in 2008 the National Association of Counties adopted a resolution that calls on Congress "to support the development of a robust short sea shipping [i.e. marine highway] system to aid in the reduction of greater freight congestion on our nation's highway systems, with an additional benefit of reducing air pollution." The Resolution went on to state that "water transportation, especially along our coasts and inland waterways, is a sensible, economical, and environmentally-sound solution to many of our congestion problems and the related issue of air pollution. Urban and rural counties would benefit from increased use of coastal and inland waterways to move freight . . ."

We understand that the Congress may soon consider surface transportation legislation. We strongly urge that the Committee on Ways and Means ensure that language as contained in HR 1533 is included in The American Energy & Infrastructure Jobs Act or other surface transportation legislation in order to eliminate the double taxation of cargo moved by ship in domestic commerce and to encourage the development of a marine highway system.

This Committee and this Congress have an unprecedented opportunity to include domestic shipping as an integral component of our nation's domestic transportation network and to ensure that our industry is utilized to the fullest degree to facilitate the movement of cargo within our country. As noted in a statement submitted to the Committee on Ways and Means in 2009 by Congressman John Mica and twenty-nine of his colleagues, "America's coastal and inland waterways represent an underutilized alternative to the more common domestic cargo routes that utilize truck and rail." Referring specifically to the discriminatory double taxation affecting such transportation, Chairman Mica and his colleagues noted that "waterborne transportation faces several obstacles that have prevented the wider use of short sea shipping opportunities."

We again thank you, Chairman Tiberi, and your colleagues who have cosponsored HR 1533 for recognizing that the utilization of U.S.-flag vessels for the carriage of cargo along our coasts, inland waterways and on our Great Lakes will be a cost-effective, efficient, and environmentally-sound way to supplement and complement the rail and truck traffic that is already pushed to capacity in most major transportation corridors.

HR 104 – *REALIZE AMERICA'S MARITIME PROMISE ACT*

There is another legislative proposal relating to the Harbor Maintenance Tax that we and many others in our industry vigorously support: HR 104, the Realize America's Maritime Promise (RAMP) Act and its companion legislation, S 412. We greatly appreciate your decision, Chairman Boustany, to introduce this extremely important legislation along with Congressman Joe Courtney and we thank the 160 Representatives from both political parties who have cosponsored this bill.

At its core, the enactment of HR 104 will ensure that the funds collected under the Harbor Maintenance Tax (HMT) and deposited into the harbor Maintenance Trust Fund (HMTF) are in fact used for their intended purpose, namely, maintaining America's harbors and coastal waterways. However, expenditures for these purposes from the Harbor Maintenance Trust Fund have lagged far behind revenues, creating an unspent balance of approximately $6 billion in the HMTF at the end of Fiscal Year 2010, a balance that continues to grow as the need for these funds to be spent to maintain America's harbors and waterways continues to grow even greater.

We note and agree wholeheartedly with your statement, Mr. Chairman, that "To not maintain . . . harbors and ports impacts regional and national commerce, reduces our economic competitiveness, and increases risk of vessel groundings, collisions, and pollution incidents." Similarly, Senator Carl Levin, sponsor of S. 412, has stated that "The harbors and ports in the Great Lakes and around the country are critical hubs for the transportation of massive amounts of goods, including food, energy, and manufacturing supplies." He warned his colleagues and the Congress that "poor maintenance is a threat not only for shipping, but to every industry and family in America that consumes the goods flowing through them."

In fact, the failure to utilize the funds collected under the Harbor Maintenance Tax for their intended purpose is seriously and adversely affecting vessel navigation. Poor or non-existent maintenance means that navigation channels are getting narrower and shallower from sediment accumulation. It is estimated by the Army Corps of Engineers that almost 30 percent of vessel calls at U.S. ports are constrained due to inadequate channel depths. This means, of course, that vessels laden with American exports cannot carry all the cargo they are capable of carrying, lest they run aground, impeding our nation's ability to competitively sell American products in overseas markets.

HR 104 is, in our opinion, an essential component of our nation's campaign to revitalize American manufacturing and to increase the export of American made goods and products of all types. It will create thousands of good paying jobs for Americans in our ports and will eliminate a significant impediment to the economical and efficient waterborne transportation of America's foreign and domestic commerce. As stated by Congressman Frank LoBiondo, a cosponsor of HR 104 and the Chairman of the Coast Guard and Maritime Transportation Subcommittee: "Dredging harbors is one of the areas where spending money will make us money."

We are extremely pleased that the recently released draft of surface transportation legislation, The American Energy & Infrastructure Jobs Act, includes language that would achieve the objective contained in HR 104. We are especially grateful to Transportation and Infrastructure Committee Chairman John Mica and Water Resources Subcommittee Chairman Robert Gibbs for working diligently to have this provision included. As noted in the draft legislation's summary, "Waterborne trade at our nation's ports is vital to the American economy, and millions of jobs throughout the country are dependent upon the commercial shipping industry." We urge Congress to retain this provision in this legislation.

HR 1267 – *To Modify the Application of the Tonnage Tax*

Another important maritime tax reform initiative that we strongly support is contained in HR 1267, legislation to modify the existing tonnage tax regime applicable to certain U.S.-flag commercial vessels. This legislation, introduced by Congressmen Wally Herger and Earl Blumenauer, also enjoys bipartisan Congressional support.

Specifically, this legislation will make U.S.-flag vessels operating in the United States - foreign shipping trades eligible to be taxed under the tonnage based system enacted by Congress in the American Jobs Creation Act of 2004 (Public Law 108-357) regardless of the amount of time the vessels operate in the U.S. domestic shipping trades. This proposal will enable American shipping companies to compete on more equal terms for the carriage of America's export and import trade with foreign flag shipping operations.

Under existing tax law, the tonnage tax is presently available only to U.S.-flag vessels operating exclusively in the U.S. foreign trades, to vessels operating on the Great Lakes, and to U.S.-flag vessels that operate in the domestic trades for less than 30-days in each year. This 30-day limitation effectively precludes United States shipping companies which operate vessels in both the foreign and domestic trades from benefiting from the tonnage tax when they compete against foreign flag vessels in the international trades. As such, it discourages American shipping companies from investing in additional U.S.-flag vessel operations and prevents these companies from increasing their employment of American merchant mariners.

Our organizations strongly supported the enactment of the tonnage tax in 2004 because it helps American vessels compete on a more equal footing in the international shipping arena. A

significant number of foreign flag and foreign crewed vessels had already enjoyed the advantages of a tonnage tax and many foreign flag and foreign crewed vessels have long operated in what is essentially a tax-free environment, enabling them to capture more than 95 percent of all the commercial cargo entering and leaving our country. In response, Congress wisely enacted the tonnage tax, eliminating one of the tax-related disincentives to operating vessels under the U.S.-flag with U.S. citizen crews.

Unless the 30-day limitation is removed by this Congress, American shipping companies that operate vessels in the U.S. domestic trades will continue to be severely disadvantaged and effectively precluded from successfully expanding their operations into the U.S. foreign trades and recapturing a share of America's trade for American ships. Unless the 30-day limitation is removed, one of the primary objectives of the tonnage tax, namely, retaining, attracting and expanding U.S.-flag vessel operations, will not be fully realized as domestic shipping companies find themselves at a serious economic disadvantage as they compete against foreign flag vessels which have the benefit of operating under a tonnage tax regime.

As proposed, the 30-day limitation would be removed for all U.S.-flag vessels when they operate in the foreign trade. As a result, U.S.-flag vessels would continue to pay taxes under the current corporate tax rate for their operations in the domestic trades, and would be able to pay taxes under the tonnage tax regime when operating in the United States foreign trade in competition with foreign vessel operations.

We thank Congressmen Herger and Blumenauer and the cosponsors of this legislation for their leadership on this critically important maritime tax reform initiative. We ask that the Subcommittee on Select Revenue Measures and the Committee on Ways and Means work to remove the 30-day limitation on the eligibility of U.S.-flag commercial vessels under the tonnage tax regime so American shipping companies can begin to spend money in the United States and create jobs for American maritime workers.

HR 1031 – *AMERICAN SHIPPING REINVESTMENT ACT OF 2011*

A fourth extremely important maritime tax reform initiative is contained in HR 1031, the American Shipping Reinvestment Act of 2011. Once again, we are grateful to you, Chairman Tiberi, for sponsoring this legislation and to the bipartisan group of Representatives who have agreed to cosponsor this bill.

This legislation would repeal a provision in the Internal Revenue Code that prevents American shipping companies from investing in the United States. More specifically, HR 1031 would allow these companies to bring back to the United States pre-1987 earnings stranded overseas and to use these earnings for investment in U.S.-flag ships and shipping operations. These are

earnings that will not otherwise come back to be invested in the U.S. economy or be spent to support the U.S.-flag shipping industry.

This enactment of this legislation would spur domestic job growth by creating a broad and diverse range of well-paying jobs for American shipboard, shore-side and shipyard workers. Investment in the U.S. shipping industry would have a significant economic multiplier effect, spurring job growth in affiliated businesses.

Once again, we urge the Subcommittee on Select Revenue Measures and the Committee on Ways and Means to work to enact this legislation this year.

CAPITAL CONSTRUCTION FUND PROPOSALS

Finally, we would note that there are two proposals that relate to the qualified withdrawal and utilization of funds by American shipping companies that have a Capital Construction Fund. Both proposals would eliminate an existing impediment relating to the expenditure of funds in the United States for vessel construction and repair. The enactment of these proposals will help put Americans to work aboard commercial vessels and in American shipyards and related service and supply industries.

The existing Capital Construction Fund (CCF) program is contained in Chapter 535 of Title 46, United States Code. The primary purpose of the CCF program is to enable commercial shipping companies to accumulate the private capital necessary to expand, upgrade and modernize their U.S.-flag fleets. Taxes on the earnings deposited into a CCF are deferred until withdrawn by the company and used for their intended and statutorily authorized purposes.

We believe the existing Capital Construction Fund provisions should be amended to expand the definition of qualified withdrawal so that American companies have a greater opportunity to spend their own money in the United States and to help put American maritime workers to work.

First, while the existing CCF allows a company to withdraw its funds to build vessels in the United States, it does not specifically allow funds to be withdrawn by a company to be used for the maintenance and repair of its vessels in an American shipyard. This is, in our opinion, an unwarranted distinction that does little more than deny American ship repair yards of much-needed commercial business.

Expanding the permissible use of CCF funds to include maintenance and repair of vessels in U.S. shipyards will generate additional job opportunities for American workers in our shipyards. This will help reduce the outsourcing of vessel maintenance and repair work to foreign shipyards and the outsourcing of American jobs in this industry. Equally important, facilitating the maintenance and repair of U.S.-flag commercial vessels will enhance the competitiveness of U.S.-flag vessel operations and help achieve a more modern and environmentally-sound fleet.

The second change to the CCF that we support would expand the ability of American shipping companies to withdraw and use their CCF funds to acquire vessels built in American shipyards.

Under the current regulatory framework controlling the Capital Construction Fund companies are precluded from withdrawing and using their own money for the acquisition of U.S.-built vessels through a charter or capital lease payment. Rather, they may only do so to acquire a vessel through a mortgage or by an outright purchase. In our opinion, this limitation should be eliminated, especially in view of the wide spread use of charter arrangements in today's worldwide shipping industry. It is an unnecessary and highly impractical distinction in the allowable use by a company of its own money, and serves only to impede the growth and modernization of the U.S.-flag shipping industry.

This impediment and restriction limits the flexibility of American companies to pursue all options pertaining to the financing and acquisition of vessels. It limits the ability of U.S.-flag vessel operators to make the best decision when planning and implementing a vessel acquisition program oftentimes forcing a company to delay or abandon its plans because it does not have access to its own accumulated capital in its CCF.

As we have noted, the construction of commercial vessels in United States shipyards generates thousands of skilled jobs in the shipbuilding and related service and supply industries. After the vessels are constructed and delivered, jobs are created for Americans who work aboard ship – the men and women we are proud to represent – helping to ensure that the Department of Defense has the trained civilian seafaring personnel needed to crew the government and privately-owned vessels that are called into service in time of war or other international emergency.

It is important to note that neither proposed change will require the appropriation of any new Federal funds nor provide American shipping companies with any new tax incentive. Rather, both would simply expand the opportunity for U.S.-flag shipping companies to spend their CCF funds to build, maintain and repair commercial vessels in the United States.

CONCLUSION

In conclusion, we would again express our thanks to Chairman Boustany, Chairman Tiberi and the Members of both Subcommittees for holding this hearing and for giving us the opportunity to submit this statement on behalf of the seagoing workforce we proudly represent. It is time to eliminate the disincentives under the tax code that discourage American companies from investing in American shipping operations and which encourage the outsourcing of American maritime jobs. Your Subcommittees, the Ways and Means Committee and this Congress have it within their power to take the first steps necessary for America to begin to regain its position as a leading maritime nation, to increase the share of our export and import trade carried by American ships, and to put American maritime workers to work all while enhancing and strengthening our country's military, economic and homeland security.

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