MEDICAL CARE FOR SELF-EMPLOYED SEAMEN

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 2108, H.R. 2669, H.R. 3338, H.R. 3873, H.R. 7002, S. 978

BILLS TO PROVIDE MEDICAL CARE FOR CERTAIN PERSONS ENGAGED ON BOARD A VESSEL IN THE CARE, PRESERVATION, OR NAVIGATION OF SUCH VESSEL

OCTOBER 14 AND 24, 1963

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MEDICAL CARE FOR SELF-EMPLOYED SEAMEN

MONDAY, OCTOBER 14, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC HEALTH AND SAFETY
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Kenneth A. Roberts (chairman of the subcommittee) presiding.

Mr. ROBERTS. The subcommittee will please come to order.

We are holding hearings today on six bills: H.R. 2108, introduced by our colleague, Mr. Rivers of Alaska; H.R. 2669, introduced by our colleague, Mrs. Hansen; H.R. 3338, introduced by our colleague, Mr. Pelly, a former member of this committee; H.R. 3873, introduced by our colleague, Mr. Pike; H.R. 7002, introduced by our colleague, Mr. McIntire; and S. 978, a bill which has passed the other body.

These bills are designed to restore to owner-operators of small vessels the right to public health service which they enjoyed prior to an administrative ruling of the Department of Health, Education, and Welfare, in 1954, which interpreted sections 2(h) and 322 of the Public Health Service Act as not authorizing such services for such owner-operators.

The purpose of the bills is to remove an inequity in present practices by amending the act to include certain self-employed seamen among those who have the privilege of receiving medical care in Public Health Service hospitals.

At this point in the record, the text of the bills and the agency reports thereon will be inserted.

(The bills and reports follow:)

[H.R. 2108, 88th Cong., 1st sess.]

A BILL To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(h) of the Public Health Service Act (42 U.S.C. 201(h)) is amended by striking out "any person employed on board" and inserting in lieu thereof "any person employed or engaged on board."

SEC. 2. Section 322(a)(1) of such Act (42 U.S.C. 249(a)(1)) is amended by inserting immediately after "employed" the following: "or engaged".

[H.R. 2669, 88th Cong., 1st sess.]

A BILL To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(h) of the Public Health Service Act (42 U.S.C. 201(h)) is amended by striking out "any person employed on board" and inserting in lieu thereof "any person employed or engaged on board".

SEC. 2. Section 322(a)(1) of such Act (42 U.S.C. 249(a)(1)) is amended by inserting immediately after "employed" the following: "or engaged".

[H.R. 3338, 88th Cong., 1st sess.]

A BILL To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(h) of the Public Health Service Act (42 U.S.C. 201(h)) is amended by striking out "any person employed on board" and inserting in lieu thereof "any person employed or self-employed on board".

SEC. 2. Section 322(a)(1) of such Act (42 U.S.C. 249(a)(1)) is amended by inserting immediately after "employed" the following: "or self-employed".

[H.R. 3873, 88th Cong., 1st sess.]

A BILL To amend section 322 of the Public Health Service Act to permit certain owners of fishing boats to receive medical care and hospitalization without charge at hospitals of the Public Health Service

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 322 of the Public Health Service Act (42 U.S.C. 249) is amended by striking out "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(8) Persons who own vessels registered, enrolled, or licensed under the maritime laws of the United States, who are engaged in commercial fishing operations, and who accompany such vessels on such fishing operations, and a substantial part of whose services in connection with such fishing operations are comparable to services performed by seamen employed on such vessel or on vessels engaged in similar operations."

[H.R. 7002, 88th Cong., 1st sess.]

A BILL To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (h) of section 2 of the Public Health Service Act (42 U.S.C. 201(h)) is amended to read as follows:

"(h) The term 'seaman' includes any person employed or self-employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation;".

SEC. 2. Section 322(a)(1) of such Act (42 U.S.C. 249(a)(1)) is amended by inserting immediately after the word "employed" the following: "or self-employed".

[S. 978, 88th Cong., 1st sess.]

AN ACT To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (h) of section 2 of the Public Health Service Act (42 U.S.C. 201(h)) is amended to read as follows:

"(h) The term 'seamen' includes any person employed or self-employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation;".

SEC. 2. Section 322(a)(1) of such Act (42 U.S.C. 249(a)(1)) is amended by inserting immediately after the word "employed" the following: "or self-employed".

Passed the Senate May 28, 1963.

Attest:

FELTON M. JOHNSTON,
Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 2, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of February 22, 1963, in which you requested the views of the Bureau of the Budget regarding H.R. 3873, a bill which would make certain owners of fishing vessels eligible for free medical, surgical, and dental treatment and for free hospitalization now provided seamen. These services would be provided by the Public Health Service to owners of vessels registered, enrolled, or licensed under U.S. maritime laws (1) who accompany such vessels on commercial fishing operations, and (2) a substantial part of whose services in connection with such operations are comparable to those performed by seamen employed on such vessels engaged in similar operations.

Your letter of February 14, 1963, also asked us to comment on H.R. 2108. This bill goes beyond H.R. 3873 in that it amends section 2(h) of the Public Health Service Act (42 U.S.C. 201(h)) to provide care not only to fishing boat owners, but also to any person who may be employed or engaged on board the vessel in its care, preservation, or navigation.

The Bureau of the Budget recognizes that self-employed seamen and fishing boat owners are undoubtedly engaged in the same general type of duties and activities as the men classed as seamen who are now eligible for free hospital and medical care. They are similarly transient and are subject to the same injuries and diseases. The major distinction between self-employed seamen and fishermen and other seamen is that the self-employed individual assumes the business risks of an entrepreneur in the expectation of income in the form of profits rather than wages. In the United States such individuals normally bear their own costs for medical care. The statute treats the owner-operator as an entrepreneur for this purpose.

It is estimated that there are roughly 6,000 owner-operators of commercial fishing vessels who would be affected by H.R. 3873. Although patients from this group might, at the beginning of an expanded program, be cared for in Public Health Service hospitals and clinics with an out-of-pocket cost only for food and supplies, experience indicates that the increased patient loads would soon require the employment of additional staff and other expenses. Thus, the cost to the Government of providing free medical care in Public Health Service hospitals and clinics to the group covered by the bill could soon reach a level of $1 to $1.5 million annually. In addition, capital improvements might be required to enable specific hospitals and clinics to handle the increased workloads, with a resulting increase in program costs.

The Bureau's principal concern, however, with an extension of benefits as contemplated by H.R. 3873 and H.R. 2108, lies with the proposed further departure from the fundamental principle followed in financing the program from 1798 to 1905. This principle is that the seamen or the industry should bear the entire cost of special programs of medical care provided by the Federal Government. This principle lies behind the tonnage tax still levied today. However, since 1905 the cost of medical care for seamen has increased until approximately $5 million in annual tonnage tax revenue now covers only about 20 percent of the costs of the program.

The direct operating expenses incurred by the Public Health Service in providing this care are estimated at $25 million. In addition, another $5 to $6 million is attributable to the indirect costs of the program such as depreciation, self-insurance, and Public Health Service overhead, plus deferred capital expenditures as high as $30 to $50 million for modernizing or replacing hospitals. As a result, the direct and indirect costs to the Federal Government of providing such care are not appreciably different from the estimated $33 million it would

cost to provide comprehensive medical and dental care coverage through health insurance plans for the estimated 119,000 currently eligible seamen.

In view of these considerations, the Bureau of the Budget believes that benefits should not be extended as proposed in either H.R. 3873 or H.R. 2108, without a return to the principle that all or a substantial part of the cost of providing medical care for merchant seamen should be paid by the industry or by the seamen themselves. Two alternative means for accomplishing this would be a substantial increase in the tonnage-tax rates or the establishment of a user charge for hospital and outpatient care furnished individual seamen.

With regard to the second alternative, it should be noted that the maritime industry has, to a varying extent, already established welfare plans financed by employer contributions which provide medical and dental care for seafarers and/or their dependents. These welfare plans could provide a mechanism for reimbursing the Federal Government for all or a substantial part of the cost of care furnished members of the employee organizations. It should be recognized that this approach would probably increase the amount of Federal subsidy now paid to certain ship operators, since an estimated 20 percent of the seamen currently eligible for medical care from the Public Health Service are employed on subsidized vessels. However, such an increase would be preferable to attempting to distinguish between seamen on subsidized and nonsubsidized ships.

There exists a special additional problem in connection with H.R. 2108 and a somewhat similar bill, S. 978, passed by the Senate on May 28, 1963. The wording in both H.R. 2108 and S. 978 would extend coverage not only to the owner-operators of fishing vessels who devote a substantial portion of their time to seamen duties (as provided in H.R. 3873) but also to owner-operators of other types of vessels, such as tugs, ferries, and barges engaged in local traffic, subject only to the requirement that such persons be engaged in the care, preservation, or navigation of the vessel. The language proposed in H.R. 2108 tends to so broaden the definition of seamen that vessel owners, passengers, guests, or others on board could claim benefits on the basis of minimal participation in the care, preservation, or navigation of the vessel.

To summarize, the Bureau of the Budget would have no objection to enactment of H.R. 3873, if amended to provide for recovery of the cost of providing medical care for seamen, both employed and self-employed, either through an increase in the tonnage tax or, preferably, through the establishment of user charges. In the absence of any justification for extending eligibility for medical care to others than the owner-operators of fishing vessels, the Bureau would prefer the language of H.R. 3873 to that of S. 978, and would recommend against the broader authorization of H.R. 2108.

Sincerely,

KERMIT GORDON, *Director.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., October 1, 1963.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for views of this Department with respect to H.R. 2108, a bill to provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel.

Section 322(a) of the Public Health Service Act (42 U.S.C. 249(a)(1)) authorizes that Service to provide medical, surgical, and dental treatment and hospitalization without charge at hospitals and other stations of the Service to seamen "employed" on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canalboats engaged in the coasting trade. Section 2(h) of the Public Health Service Act (42 U.S.C. 201(h)) presently defines the term "seamen" as including any person "employed" on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation.

H.R. 2108 would extend that authority to persons "engaged" on board such vessels in the care, preservation, or navigation of the vessel.

We understand that the purpose of the bill is to restore to owner-operators of small vessels the right to public health services which they enjoyed prior to an administrative ruling of the Department of Health, Education, and Welfare in

1954 which interpreted the statute as not authorizing such services for such owner-operators. We look with favor on this purpose. The bill, however, might be construed more broadly than this. It might be construed to apply to passengers, guests, and others abroad the vessel who provide only some incidental service relating to the care, preservation, or navigation of the vessel. We recommend favorable consideration of the bill if it is amended so as to be limited to the foregoing purpose and to exclude those who furnish only incidental services.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., October 29, 1963

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Your request for comment on H.R. 2108, a bill "To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel," has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

This bill would amend sections 2(h) and 322(a)(1) of the Public Health Service Act so as to include among the persons entitled to medical care in Public Health Service facilities persons engaged on board American merchant vessels in the care, preservation, or navigation of the vessel. These sections as presently worded limit this medical care to persons "employed" in these activities.

As this bill does not relate to persons entitled to medical care in military medical facilities, the Department of Defense defers to other interested departments and agencies.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

C. R. KEAR, Jr.,
Captain, U.S. Navy, Deputy Chief
(For the Secretary of the Navy).

THE GENERAL COUNSEL OF THE TREASURY,
Washington, October 15, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to the request of your committee for the views of this Department on H.R. 2108, "To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel."

The proposed legislation would extend the benefits of the Public Health Service Act to certain persons not now entitled to such benefits because they have not been considered as being "employed" on board vessels. The broader term "engaged" used in the bill would include individuals serving on board who contribute to the vessel's operation.

Since the subject matter of the bill is not of primary interest to the Treasury Department, we make no recommendation as to its enactment.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

G. D'ANDELOT BELIN, *General Counsel.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 12, 1963.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. HARRIS: Your committee has requested this Department's report on H.R. 3873, a bill "To amend section 322 of the Public Health Service Act to permit certain owners of fishing boats to receive medical care and hospitalization without charge at hospitals of the Public Health Service."

While we agree with the objectives of H.R. 3873, we believe that these can best be accomplished through our draft bill enclosed herein. Accordingly, we recommend the enactment of H.R. 3873 in the form of our suggested draft bill.

Section 322 of the Public Health Service Act, as amended (42 U.S.C. sec. 249) authorizes the Public Health Service to provide medical care and treatment of certain persons, including seamen "employed" on vessels of the United States. Prior to 1954 self-employed fishermen were eligible for medical care in hospitals, outpatient clinics, and other medical facilities of the Public Health Service. An administrative ruling of that agency in 1954 held that the term "employed" as used in the Public Health Service Act, supra, may not be reasonably interpreted as synonymous with "occupied" or "engaged in," but must be understood to refer to services rendered in an employee status under a contract of hire, either expressed or implied. Subsequently, section 32.1(d) of the Public Health Service regulations (42 CFR sec. 32.1(d)) was amended to exclude the owner or joint owners of a vessel or the spouse thereof from receiving such medical benefits. Thus, section 32.1(d) of the regulations defines the term "seamen" to include "* * * any person employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation, *but does not include the owner or joint owners of a vessel or the spouse of any such owner;*". [Italic supplied.]

Generally, owner-fishermen perform the same duties and engage in the same activities as do employee fishermen under a contract of hire, either expressed or implied. They face the same dangers and are subject to the same injuries and sicknesses as employee fishermen. Frequently, adequate community hospital facilities are not available to them because of the transient nature of their work which takes them away from their home community health and welfare facilities. The Atlantic menhaden fishery, for example, extends from New England to Florida and such fishermen frequently follow the schooling fish, often landing their catch in ports distant from their home ports. The Gulf of Mexico shrimp fishermen extend their operations to waters off the coast of Mexico; and on the west coast, the tuna vessels, while based principally in San Diego, fish as far south as Peru. The latter put into ports frequently in foreign countries to obtain licenses, supplies and other materials.

The legislative history of the hospital and medical care program for seamen suggests that the participation of the Federal Government in providing medical care to seamen rests primarily on a national interest in assuring an effective labor force which is necessary for an adequate merchant marine. Self-employed fishermen also add to this maritime labor force, since they have developed maritime skills necessary to all good seamen.

H.R. 3873 would expand the authority of section 322 of the act, supra, to include commercial fishing vessel owners who accompany their vessels on fishing operations and substantially perform services comparable to seamen employed on such vessels or on vessels engaged in similar operations. We believe that the provisions of this bill are too restrictive. The bill would limit the benefits of the act to commercial fishermen alone and not include other self-employed persons who may be engaged on board a vessel in the care, preservation, or navigation thereof. Further, H.R. 3873 would require a finding that the self-employed person is engaged substantially in the care, preservation, or navigation of a vessel before receiving the benefits of the act. We believe that such a test would be difficult to meet in every instance and even more difficult to administer.

Our proposal would amend subsection (h) of section 2 of the act (42 U.S.C. sec. 201(h)) in a manner that would clearly provide that "seamen" include owners or joint owners of vessels. Section 2 of our draft bill would amend section 322(a)(1) of the act, supra, to include "self-employed" seamen among those eligible presently to receive medical benefits under the act, supra. Thus, the principal effect of our proposal, and we believe the intended purpose of H.R.

3873, is to restore to all self-employed seamen the medical benefits enjoyed prior to 1954. Accordingly, we again recommend the enactment of H.R. 3873, if amended as provided herein.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

FRANK P. BRIGGS,
Assistant Secretary of the Interior.

A BILL To provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (h) of section 2 of the Public Health Service Act (42 U.S.C. 201(h)) is amended to read as follows:

"(h) The term 'seamen' includes any person employed or self-employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation;"

SEC. 2. Section 322(a)(1) of such Act (42 U.S.C. 249(a)(1)) is amended by inserting immediately after the word "employed" the following: "or self-employed".

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, September 12, 1964.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your requests for reports on H.R. 3873, a bill to amend section 322 of the Public Health Service Act to permit certain owners of fishing boats to receive medical care and hospitalization without charge at hospitals of the Public Health Service, and H.R. 2108, a bill to provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel.

Under present law seamen employed on vessels registered, enrolled, and licensed under the maritime laws of the United States, other than canal boats engaged in the coasting trade, are entitled to medical, surgical, and dental treatment and hosiptalization without charge at hospitals and other stations of the Public Health Service (Public Health Service Act, sec. 2(h), 322, 42 U.S.C. 201, 240). In view of the use of the term "employed" in the definition of "seamen" we have interpreted these provisions to limit entitlement to medical care to those who are employees and to exclude those who are self-employed even when they are engaged in the care, preservation, or navigation of the vessel.

The legislative history of this program suggests that the participation of the Federal Government in providing medical care to merchant seamen rests primarily on a national interest in assuring the effectiveness of the labor force required for an adequate American merchant marine. A self-employed owner who performs duties related to the care, preservation, or navigation of a documented vessel of the United States is, in effect, fulfilling the same purpose as the employed seamen on board the vessel. Since such persons are in fact applying their maritime skills, they are essentially adding to the maritime labor force.

Although statistics are not available on the additional number of persons who would come within the provisions of the law under the present bills, we believe that neither the number nor cost would significantly affect the present program, and that enactment of the legislation with the revisions suggested below would pose no serious difficulties for this Department as a provider of services.

The purpose of the bills, as we understand it, is to remove an apparent inequity in present practice by amending the act to include a certain class of self-employed seamen who formerly, de facto, enjoyed the privilege of receiving medical care in Public Health Service hospitals, and not to expand the program in any substantial manner. Speaking solely as a provider of services, this Department has no objection to the passage of appropriate amendments to that end.

We have certain reservations, however, as to the limitation of H.R. 3873 to self-employed fishermen, a limitation that would create a new inequity by discriminating against self-employed seamen other than fishermen. If the legislation is favorably considered, we would therefore prefer the language of S. 978, now pending before your committee, which would simply broaden present law to

include self-employed persons as seamen if they perform the same tasks as are performed by seamen within the meaning of the present law.

We also have reservations concerning the language of H.R. 2108, which, by extending entitlement to medical care to all persons engaged on board a vessel in its care, preservation, or navigation, seems broad enough to include even passengers and guests who may perform on board some useful service related to the care, preservation, or navigation of the vessel, though this was probably not intended by the bill's author. Here, again, amendment of the bill so as to conform to the language of S. 978—which simply extends the definition of "seamen," and the operative provision conferring entitlement to medical care, under the Public Health Service Act to self-employed seamen—would render the bill unobjectionable from the viewpoint of this Department.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

Mr. ROBERTS. Our first witness today will be our colleague, Representative Ralph J. Rivers of Alaska.

I believe, Mr. Clerk, the statements have been passed up to the members.

Mr. Rivers.

STATEMENT OF HON. RALPH J. RIVERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. RIVERS. Mr. Chairman and members of the committee, I appreciate the opportunity to be heard here in behalf of S. 978, which is similar to my own bill, H.R. 2108, also under consideration by this committee, but I wish to indicate that I am supporting the Senate bill.

The purpose of this legislation is to enable fishing vessel owner-operators who work aboard their vessels to receive the same medical benefits as are afforded by the Public Health Service to seamen employed on board in the care, preservation, or navigation of any vessel.

As the members of this committee will recall, the need for this legislation arose in 1954 when the Surgeon General of the United States ruled in respect to medical benefits that the Public Health Service Act applies only to fishermen holding a contract of employment on a fishing vessel. The Surgeon General based his decision on the definition of the term "seamen" which is set out in the Public Health Service Enabling Act. There a "seaman" is defined as "* * * any person employed on board in the care, preservation, or navigation of any vessel * * *." From this definition, the Surgeon General reasoned that unless a seaman held a contract of employment, he was precluded from being a beneficiary of the Public Health Service benefits. Thus, since 1954, an owner-operator working aboard a vessel on a self-employed basis has been denied free care at Public Health Service facilities.

In Alaska alone there are more than 2,000 small fishing boatowners, most of whom—in the course of ranging hundreds of miles from home—earn less than $5,000 per annum, and occasionally make no profit at all. These owner-operators are as much in need of care in Public Health Service facilities during voyages as are employees who work aboard their vessels. Thus, the very reason which led to inclusion of boat owner-operators in the benefits of the program, during all those years prior to 1954 still pertains.

As was brought out in the hearings before this committee last year, the legislation now under consideration would restore to self-employed fishermen the eligibility for care in Public Health Service facilities which they enjoyed prior to 1954.

I am pleased to note that S. 978 is supported by the Department of Health, Education, and Welfare, the Bureau of Commercial Fisheries of the Department of the Interior, the Alaska State Legislature, and various maritime organizations and fishermen's associations.

I urge that the measure be approved.

I might state that I have kept my remarks brief because many of my colleagues who are conversant with the subject are here to testify along with specialists in this field, and I thank you, Mr. Chairman.

Mr. ROBERTS. Thank you, Mr. Rivers.

If I recall correctly, one of the witnesses who appeared in favor of this bill was the late Clem Miller, of California, and one of the bills we considered, I believe, was introduced by him. Is that not correct?

Mr. RIVERS. That is correct, and I was associated with him in hearings before this committee last year on the same legislation.

Mr. ROBERTS. It seems that the trouble arises here with an administrative ruling on section 2(h) where the term "seamen" under that definition—and I am reading from the Public Health Service Act, as amended—includes:

> * * * any person employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation.

What the Senate bill did was to add to that subsection (h) the words "or self-employed."

I believe that is the change that the Senate made which they believe would include these owner-operators.

Mr. RIVERS. That is correct, Mr. Chairman.

Mr. ROBERTS. I believe that is clear enough and I appreciate your appearance.

I have no questions except to compliment you on your support of this legislation.

Any questions, gentlemen? Mr. Schenck.

Mr. SCHENCK. I just have two questions, Mr. Chairman.

I would like to ask our colleague, and I do so as a matter of developing information, what is the basic justification for Public Health Service facilities being available to either seamen employed or owner-operators of boats any more than any other field of commercial activity?

Mr. RIVERS. I would say to my colleague that this is historical. It is a matter of policy. Seamen lead topsy-turvy lives, and travel on voyages a long, long way from home plying the seven seas. As a matter of policy and to encourage Americans to be seamen, our forefathers decided to extend Federal health benefits as one of the fringe benefits of being a seaman. Fishing vessels are also frequently taken for use in time of war to bolster our merchant marine. Seamen a long way from home without much money or credit often need to be taken care of when injured in the course of their hazardous occupation.

The thing is that this whole thing has pertained to seamen for a century and a half and whether or not you wish to include fishermen, who are included right now as long as they are working as em-

ployees of the skipper of the fishing boat, is another policy consideration, and whether you want to include the skippers of these small vessels who barely make a living any more than their employees do, is also a matter of policy.

I am supporting the policy as stated.

Mr. SCHENCK. I would like to say to my colleague that I did not ask the question critically but I felt that it might be very helpful to have some background information in the record because, as you have indicated, this has been a long time and perhaps many who are now considering it are not aware of that background.

Mr. RIVERS. I would say that I was not planning on making the record very complete from my own testimony. I am here primarily to express my suppport of the bill. The specialists present from the Bureau of Commercial Fisheries, and the Public Health Service, will, I am sure, answer the gentleman's questions.

Mr. SCHENCK. I just wanted to get that in the record and I also wondered, Mr. Chairman, who might give an estimate of cost.

Mr. RIVERS. There is one in the Senate report here. It says $1,733,000 per year.

Mr. SCHENCK. That is all the questions I have, Mr. Chairman.

Mr. ROBERTS. I would like to add at this point—I would like the staff to correct me if I am wrong—I think this was probably the first piece of legislation that brought the Public Health Service within the jurisdiction of this committee. It was advocated, I believe, by President Adams. I think that is correct.

If I could find that with the help of our able staff member, I will try to insert that in the record.

Mr. ROBERTS. I might observe the Senate has a report which is available and gives quite a bit of the background.

Mr. Rogers of Florida?

Mr. ROGERS of Florida. Mr. Chairman, I do not have any particular questions at this time.

I will wait until we have other witnesses. I just want to say it is always good to see our distinguished colleague from Alaska here. We are always delighted to have his testimony.

Mr. ROBERTS. I would like to say that our chairman's wife has just gone out the door.

Mrs. Harris, we are pleased that you would come to our meeting this morning and would be glad if you cared to stay.

Mr. Nelsen?

Mr. NELSEN. I thank my colleague from Alaska for his testimony.

I wondered, Ralph, if you recall any real reason why this act was changed. Prior to 1954, the owner of the vessel, as I recall, was covered.

Was there any controversy that developed that led to the change, to your recollection?

Mr. RIVERS. Yes, sir. From the history that I have read to refresh my memory, the Suregon General in 1954 interpreted the provision of the act referred to by the chairman to the effect that to be a seaman one had to be employed as such under a contract of employment, and could not qualify for the purpose of care at Federal health facilities if self-employed.

Thus the owner-operators got excluded on the Surgeon General's administrative ruling after sharing the benefits in question for 125 years or so.

Mr. NELSEN. Would the owner of the vessel that goes out for king crab be considered a fisherman?

Mr. RIVERS. Yes, he would.

Mr. NELSEN. Because I want to be sure they are covered.

Mr. RIVERS. This all applies to being away from home ports, and with respect to the fishermen that are fishing for king crab 20 miles off the coast of Kodiak, their nearest port is their home port, so I do not suppose that they would be included.

Mr. NELSEN. I am sure that you would have no objection if I referred to the king crab at Homer, Alaska. I remember being up there, Mr. Chairman, and king crab when stretched out were about that long [indicating]. They looked as if they would be tough to wrestle with. Thank you very much.

Mr. RIVERS. Thank you for the honorable mention of the great king crab of Alaska.

Mr. ROBERTS. Thank you, Mr. Rivers.

Mr. RIVERS. Thank you.

Mr. ROBERTS. Our next witness will be our colleague from Washington, Congressman Tollefson.

STATEMENT OF HON. THOR C. TOLLEFSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. TOLLEFSON. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to testify in support of H.R. 2108 and the similar House and Senate bills.

The committee heard testimony on similar bills in the last Congress and is familiar with the objectives which the chairman of the committee stated at the outset. I have mentioned these purposes in my statement. There is no reason for repeating them.

It seems a little odd to me that because of the interpretation of a mere word a category of people have been thrown out of the privileges of medical care under the Public Health Service Act.

As has already been stated, the Surgeon General apparently based his ruling upon the interpretation of the word "seaman," and under the original act, a seaman was one who was employed in the care, preservation, or navigation of a vessel and, apparently, the Surgeon General felt that because the self-employed did not have a contract of employment he was not entitled to benefits of the act. It is that simple a thing and these bills are seeking to restore the privileges that these people had prior to 1954.

I trust that the committee will take the same kind of action it did last year and approve the bill.

Thank you very much.

Mr. ROBERTS. Thank you, Congressman. I appreciate very much your appearance here.

Mr. TOLLEFSON. Do you have any questions?

Without objection, your statement may be [illegible] record.

Mr. TOLLEFSON. Thank you.

(The statement referred to follows:)

STATEMENT OF THOR C. TOLLEFSON, REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to testify in support of H.R. 2108 and the similar House and Senate bills which are being considered this morning. The members will recall the hearings on similar bills in the last Congress and are familiar with their objectives. They seek to restore medical and hospital care to owners, or part owners, of fishing boats who, prior to 1954, received such care in Public Health Service hospitals. This class of persons was ruled ineligible for such care by administrative action following an opinion by legal counsel in the Department of Health, Education, and Welfare. Historically, prior to this action, these people had been eligible for and received such care. The ruling of the Surgeon General deprived them of the services, and these bills seek to restore their historic privileges.

The Surgeon General based his decision on the definition of the term "seaman" which is set out in the Public Health Service Enabling Act. A seaman is there defined as "* * * any person employed on board in the care, preservation, or navigation of any vessel * * *." The Surgeon General apparently reasoned that unless a seaman held a contract of employment, he was not entitled to receive Public Health Service benefits. The owner-operator of a vessel not having a contract of employment was excluded.

There are a great many small fishing boat owners whose annual income is relatively small. At the earlier hearings, it was testified that in Alaska alone there were 2,500 small boat owners whose income was less than $4,000 per year. With such small income they are as much in need of care in Public Health Service facilities as are their employees. Indeed, prior to 1954 no distinction was made as to whether persons working aboard the vessel owned or held a part interest in the vessel. These self-employed fishermen essentially fulfill th same purpose as employed seamen on the vessels, and should receive the same health benefit. They should not be excluded by a mere technical interpretation of a word.

I urge the subcommittee to act favorably on the proposal pending before it. In doing so you would only be restoring a traditional and historic right.

Mr. ROBERTS. Our next witness is our colleague from California and a member of the Committee on Interstate and Foreign Commerce, the Honorable Lionel Van Deerlin. Mr. Van Deerlin, we will be glad to hear you at this time.

STATEMENT OF HON. LIONEL VAN DEERLIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. VAN DEERLIN. Mr. Chairman, I am happy to join my colleagues from the Pacific Northwest in support of H.R. 2108, for extending medical benefits to self-employed fishermen.

This measure, if enacted, will close a serious gap in the protection of men engaged in hazardous, yet extremely important work. As the world's nutritional needs turn our attention evermore to the oceans for protein, we must strive to make fishing a desirable occupation. Medical protection and a cushion against disabling injury are vital to that end.

While at sea, owners skippering their own vessels perform the same duties as crewmen, and are exposed to the same perils. Thus they appear to come within the intended meaning of the law on public health coverage from which an administrative ruling excluded them 9 years ago.

H.R. 2108 has support of the American Tunaboat Association, representing a great southern California industry. In recent international disputes over territorial fishing rights, the various segments of

American commercial fishing have been drawn together as never before. And though the tuna fleet characteristically operates with fewer owner-crewmen than some other branches of fishing, its organization feels strongly the need for this legislation.

Mr. Chairman, I hope the subcommittee will give approval to this legislation, and that its enactment into law will follow quickly.

Mr. ROBERTS. Are there any questions? If not, we appreciate your appearance and testimony, Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. ROBERTS. Congressman Pelly, I believe I will call Mrs. Hansen next, because I believe you wanted to introduce a witness.

Mrs. Hansen, the gentlelady from Washington.

STATEMENT OF HON. JULIA BUTLER HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HANSEN. Mr. Chairman and members of the committee, it is a real pleasure to appear here this morning and I want to express my appreciation for the courtesy.

I had the pleasure of appearing last year and I think my remarks are still before you and are just as true today as they were a year ago.

I do want to join my very distinguished colleagues from the west coast and from the east coast who are supporting S. 978 and some of our own bills.

I come from a district, parts of which are largely made up of fishing people and this historic right, which was the privilege which was given to the shipowners throughout the years, I feel should be restored. I am sure that you realize that the fishing industry has been severely hurt and crippled during the last few years. There has been a scarcity of runs.

We have a great deal of difficulty with some international problems on fisheries and these have all increased the problems, and I think this is one place where we might rectify an injustice, and certainly the shipowners, the masters of the vessels, are competent seamen and are on the same par as their employees, so I do urge the committee's favorable action on behalf of the bill.

Mr. ROBERTS. Thank you very much, Mrs. Hansen. We appreciate your statement.

Any questions, gentlemen?

Thank you again for your appearance.

Mrs. HANSEN. Thank you, sir.

(Mrs. Hansen's statement follows:)

STATEMENT OF HON. JULIA BUTLER HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman, it is a pleasure to submit to you and the members of the subcommittee this statement in support of the bills before you today, which include my bill, H.R. 2669. All have been introduced for the purpose of correcting an injustice to the fishing boatowners of our country.

The district I represent includes a large number of fishing boatowners who serve on board their vessels, along with the men they employ. I know, because I have been on these boats many times. They fish in the Columbia River, in the waters of Grays Harbor, and all the way up to Alaska. Their skill as seamen is a source of great pride to these men. Theirs is a demanding way of making a living, and the owners share the duties and the hardships equally with their employees.

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The men employed on board fishing vessels have been eligible for medical and hospital care at Public Health Service facilities, without question and without interruption, from 1798 to the present. Yet the shipowners, who travel as far from their home ports as the men they employ, face the same dangers, and are prey to the same illnesses and injuries, were denied eligibility by administrative ruling in 1954. My bill, H.R. 2669, and the other bills under consideration by this subcommittee today are intended to restore eligibility to the owners, thus ending the unfair discrimination to which they have been subject for the past 9 years and restoring their historic right to the medical and hospital services of the Public Health Service.

I would like to quote from some typical letters I have received from constituents of my district in support of this legislation. One writes, "The American fishing industry is an important one to our country and should be protected in every way that can make it profitable, but the opposite has been true. * * * Our self-employed seamen don't have a pension or unemployment benefits."

Another wrote, "The boatowners have been hit wth diminishing returns of fish and foreign competition and would appreciate the return of eligibility for medical care."

The fishing industry is a most important one to the economy of the country and to that of districts like mine, as these letters point out. In addition to its primary function, the fishing fleet provides an important source of experienced seamen in times of national crisis. In their day-to-day work the owners and crews provide valuable services to the Government. These men, therefore, deserve every encouragement and incentive to ply their trade and to buy their own boats, either individually or as co-owners, as they are able.

The legislation I have sponsored seeks only to reestablish fair and equitable treatment for the fishing vessel owner-operators. It does not seek coverage for any other groups. I feel sincerely that these men deserve the favorable consideration of the committee in this matter, as it seems apparent to me that the original intent of Congress was that they should be included. The fact that they enjoyed entitlement to Public Health Service care for 156 years is convincing evidence in their behalf.

Thank you for this opportunity to speak in behalf of this legislation.

Mr. ROBERTS. Next I would like to call our distinguished colleague from Maine, the Honorable Clifford G. McIntire. We shift from one coast to another.

STATEMENT OF HON. CLIFFORD G. McINTIRE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. MCINTIRE. Mr. Chairman and members of the committee, I ask unanimous consent that my statement may be filed for the record.

Mr. ROBERTS. Without objection.

(The statement referred to follows:)

STATEMENT OF HON. CLIFFORD G. MCINTIRE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. Chairman, my bill, H.R. 7002, would restore to self-employed boat-owning fishermen and other self-employed seamen eligibility for medical care in hospitals, as well as other medical facilities of the Public Health Service, these in the event of illness or injury incurred while engaged in at-sea operations.

For some 156 years—from 1798 to 1954—such eligibility did exist. During this period the Federal Government recognized that the fisheries industry is made up largely of fishermen who own fishing craft individually or jointly and who share the same toil and dangers at sea as do those working with them and receiving wages.

This eligibility, however, ceased to exist in 1954. At that time an administrative ruling differentiated between wage-earning fishermen and their coworkers who held ownership or part ownership in the crafts they used for fishing. Under this ruling, medical benefits formerly enjoyed by workmen fishermen were retained, but those that had been extended to fishermen who owned their own fishing boats and were self-employed were discontinued.

Such a ruling imposes a present or potential hardship on perhaps as many as 10,000 industrious men who—in their own or cooperatively owned small craft—gain a livelihood from the sea. The pertinent ruling poses as an inequity that should be corrected, and my legislation would serve to accomplish this end.

In addition, my legislation would provide a very valuable assist for the American fishing industry. Restoring these pre-1954 benefits to self-employed fishermen and seamen would have the effect of furnishing an inducement for vessel ownership. Many who are now employed as fishermen and seamen would aspire to acquiring and owning vessels, thereby adding strength and dimension to the American fishing fleet in particular and the fishing industry in general.

We are all mindful, of course, that legislation similar to that which is before this committee was passed by the Senate in the last Congress; however, it was not brought to a vote in the House of Representatives.

Some Members of the House of Representatives registered a concern over the definition of the term "seamen" in that Senate-passed legislation, wondering whether it might not be so broad in scope as to include other than bona fide self-employed fishermen and seamen.

I want to make it clear for the record that my principal interest is centered in extending to owner-operator fishermen and other self-employed seamen the medical benefits that had been provided them prior to 1954 through the Public Health Service.

I would like the record of hearings on this legislation to show clearly that it was not the design of my legislation to encompass either passengers or others aboard vessels who provide only some incidental service relating to the care, preservation, or navigation of the vessel. Neither do I feel that these benefits should be provided for those associated with vessels employed in local traffic, such as tugs, ferries, and barges.

I want to say, too, that I would heartily concur with any change in legislative language that would establish clearly and precisely that this legislation had application only to fishing boat owners and self-employed seamen.

I would not, however, favor any amendment of this legislation which would provide for recovery of the cost of providing medical care for seamen and fishermen, either through an increase in the tonnage tax or through the establishment of user charges.

Mr. Chairman, I want to say that I deeply appreciate having the opportunity of presenting my testimony to the members of this committee.

Mr. McINTIRE. There is little more perhaps that I could add except to say that this legislation has a very deep bearing to the east coast in our fishing industry, as well as to the interests of the west coast. The same principles apply; the same traditions are there; and I am happy to join with my colleagues this morning in urging the committee's favorable consideration of the legislation. I appreciate the opportunity to appear and I am pleased that the committee is taking this matter, which has already passed the other body, under legislative consideration this morning.

Mr. ROBERTS. Would you consider the Senate bill to do the job? Would that be your recommendation?

Mr. McINTIRE. Indeed I do.

Mr. ROBERTS. Very well.

Any questions, gentlemen?

Thank you, sir.

Mr. McINTIRE. Thank you very kindly.

Mr. ROBERTS. Our next witness is our colleague from New York, the Honorable Otis G. Pike.

Mr. Pike, we are glad to have you before the subcommittee, and you may proceed.

STATEMENT OF HON. OTIS G. PIKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. PIKE. Mr. Chairman, I appreciate the opportunity to make a brief statement in support of the proposal to provide medical care for fishing boat owners. This bill is designed to restore to the self-employed fishermen of this country a right which our forefathers saw fit to grant them over 150 years ago—and which, by administrative ruling 9 years ago, was taken away.

While this ruling was promulgated to eliminate certain abuses—and it probably has—it has at the same time denied medical benefits to a large segment of our commercial fishing industry, the owners or part-owners who perform the same hazardous work as their employees.

Fishing is a very important factor in the economy of my district—located in Suffolk County, at the east end of Long Island, and almost the entire industry is made up of small fishing vessels, owned in whole or in part, by one or two of the working fishermen, and frequently operated exclusively by the owners without any other crew. In my opinion there is no real distinction between employees and the self-employed in the commercial fishing industry. For one classification (the employee) to be eligible for Public Health Service benefits, and to deny these same benefits to the other (the owner-fishermen) is inconsistent.

We are well aware of the problem currently facing the commercial fishing industry in this country. The enactment of this legislation would be an indication that the Congress recognizes the significant contribution this small but important segment of our working population contributes to the national welfare.

This legislation is designed to correct an inequity. The departmental reports are favorable. I recommend enactment of this legislation and am in agreement with the language contained in S. 978, as passed by the Senate.

Mr. ROBERTS. Thank you, Mr. Pike. Any questions? Thank you again, Mr. Pike.

Mr. PIKE. Thank you, Mr. Chairman.

Mr. ROBERTS. The next witness is another colleague of ours, the Honorable Jack Westland from the State of Washington.

Mr. Westland, we are happy to have you before the subcommittee. you may proceed.

STATEMENT OF HON. JACK WESTLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. WESTLAND. Mr. Chairman, thank you for this opportunity to present this statement in support of H.R. 2108 and similar bills which would restore to self-employed fishermen their eligibility for certain medical benefits through the Public Health Service.

This is elgislation that has bipartisan support. It is legislation with a history of little if any opposition. As you recall S. 367 was passed by the Senate without a dissenting vote last year. Unfortunately, the House did not have the opportunity to consider the bill before adjournment. Nevertheless, I believe an overwhelming number of Members in the House would vote for this legislation if given an opportunity.

Those of us who are familiar with the fisheries of the Pacific Northwest and my State of Washington know that the self-employed fishermen, that is the fishermen who own their own boats, in practice carry out the duties and functions similar to those engaged in by employed crewmembers. I emphasize this point because the administrative ruling that that excluded them from eligibility was based on language in the law that required eligible seamen to be employed on board in the care, preservation, and navigation of a vessel. These are the duties that self-employed fishermen are engaged in. These duties and functions expose them to the same perils at sea as their crewmembers. I believe that the self-employed fisherman is fulfilling the same purpose as an employed seaman on board a vessel.

Anyone who has sailed the waters around the Aleutians, has crossed the Gulf of Alaska, or has weathered the sudden winds of the Inland Passage and Puget Sound recognizes the dangers involved in fishing these waters.

Mr. Chairman, such dangerous work necessarily mean that insurance rates are high for the self-employed fisherman. It is common knowledge that many boatowners and self-employed fishermen fail to survive the economic blows sustained when they become ill or have an accident.

The precedent for this legislation is obvious. Between 1798 and 1954, a period of 156 years, self-employed fishermen received benefits of medical care through the Public Health Service. Then, after all these years, an administrative order put an end to their eligibility. I think it is time for the Congress to restore that eligibility.

Mr. ROBERTS. Thank you, Mr. Westland.

Are there any questions? If not, thank you again, Mr. Westland.

Mr. WESTLAND. Thank you, Mr. Chairman and gentlemen.

Mr. ROBERTS. Mr. Pelly.

Congressman Pelly, it is a pleasure to welcome you back to the committee which you served on for some time. We are always happy to have you and to have your contribution.

STATEMENT OF HON. THOMAS M. PELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. PELLY. Thank you, Mr. Chairman. It is a real privilege for me to appear again before this great committee to reaffirm my support for this legislation and, with my colleagues, I support the Senate-passed bill, S. 978, in lieu of any of the other bills. It is quite similar to my own. I think to save the committee's time, I will ask that my statement be placed in the record and then, if I may have the privilege, I would like to present one of my constituents who has come from Seattle to testify in favor of this bill. He is Mr. John Wedin, the editor of the Fishermen's News, a well-known fishing paper on the West Coast.

I would like then to present him to the committee, if I may, and I think that he represents probably the most objective and broad viewpoint of the fishing industry itself.

Mr. ROBERTS. Without objection, I will be happy for your statement to be filed for the record and would be glad for you to introduce Mr. Wedin.

(The statement referred to follows:)

STATEMENT OF HON. THOMAS M. PELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman, it is a privilege to again appear before your subcommittee in support of my bill, H.R. 3338, as well as related or similar bills under consideration, which would provide medical care for certain persons engaged on board vessels, who are engaged in the care, preservation, or navigation of such vessels.

The Senate has already passed a bill, S. 978, which is almost identical to my bill, and which I understand is also being considered at this time. Inasmuch as the Senate-passed version, S. 978, carries the recommendations of various interested Government agencies, including an enthusiastic endorsement from the Department of the Interior, I would hope that this subcommittee would accept the Senate version, in the interest of expediting enactment of this sorely overdue legislation.

In this connection, it will be recalled that I testified before this committee in August of 1962 in support of a similar bill. Unfortunately, time ran out on this legislation in the 87th Congress, and I sincerely hope that it will not meet a similar misfortune in the 88th Congress. As you know, the purpose of the legislation is to restore the historic health benefits to those seamen who had them taken away by Executive order in 1954. Specifically, the legislation would extend hospital, medical, and dental benefits to persons who are on board fishing and other small vessels which are registered, enrolled, and licensed under the maritime laws of the United States.

Certain seamen were eliminated from these benefits due to their reclassification as owners or part owners under the Executive order of 1954. It is conceded that under existing law, the executive ruling is certainly in order and it would require specific legislation to rectify it. This Executive order denies owner-masters of fishing vessels the use of Government maritime care and facilities, reserving this service solely to seamen employed aboard ship—this in spite of the fact that such fishing vessel owners perform the same duties, as defined in 42 U.S.C. 201(h).

Mr. Chairman, there is little that can be added to the exhaustive testimony relative to this legislation which was submitted to this subcommittee last year. Consequently, I shall sum up by reaffirming my strong support of H.R. 3338, or any similar legislation to accomplish the same purpose, and reemphasize my previous recommendation that in the interest of time, the Senate-passed bill, S. 978, be reported out by this subcommittee. In conclusion I wish to thank the subcommittee for allowing me to present my views at this time.

Mr. PELLY. Mr. Chairman, I think you may remember that Mr. Wedin was back here and appeared before the committee last year.

Mr. ROBERTS. We are happy to have you again here, sir.

Mr. PELLY. He is very well thought of in our community on the west coast.

STATEMENT OF JOHN H. WEDIN, SECRETARY, COMMITTEE FOR RESTORATION OF MARINE HOSPITAL SERVICES FOR SELF-EMPLOYED SEAMEN

Mr. WEDIN. Mr. Chairman, I know your committee is a busy one and I know there is no particular reason in going through the statement of last year, but I think it is important to note the fact that the representation which we have here today, as far as the Pacific coast and, as a matter of fact the Nation, on this particular legislation is quite extensive. It is very seldom on fishery legislation that we have this unanimity of thinking. This applies not only to the people who would be covered by this bill but also, for example, to the crewmen, the Alaska Fishermen's Union here, who perhaps would not benefit, and many other groups who now enjoy this facility and who see no

reason why the captain of the vessel who serves in exactly the same manner as the crewmen, or very much so the same at least, is denied this since the administrative ruling.

I would like to say something very briefly about the kind of conditions we have out in the North Pacific right now.

We are inclined to feel that as far as our vessels are concerned, we are competing with the Russians; we are competing with the Japanese.

We feel that we are entitled to whatever sort of support possible to try to compete properly with them.

The Japanese and Russians, as you know, are certainly covered from the standpoint of hospitals, from the standpoint of subsidy, and all sorts of things, and we have to go out and try to do the same things that they do and make a living at it.

In another sense, our people are in the business and are required to make a profit. For example, the king crab fishery up north is limited by conservation measures placed upon it by the United States. We are not able to use the same kind of gear which might be more efficient in the taking of the fish of the North Pacific and certainly in this manner we are limited.

We feel that the American fishing industry is an important one, not only from the standpoint of producing food, but also from the standpoint of defense, and I think that if the Coast Guard were testifying here today, they would certainly go along with the statement that we are perhaps the first line of defense—at least as far as the waters are concerned in the North Pacific—and I think perhaps this may be true throughout the United States, throughout the perimeters.

Fishermen on small vessels comprise very often one- and two-man vessels. Here is one man who is allowed marine hospitalization, whereas the captain of the vessel, and you certainly can't say the captain is not a seaman, is denied marine hospital privileges.

We are running into a thing from time to time in an industry that is sort of on the edge of bankruptcy in many cases, where there is very little desire on the part of a crewman to become a boatowner, and on the question of losing marine hospitalization—which he would if he became a boatowner, he would automatically then lose his marine hospital privileges—this might be enough to keep him from wanting to be a boatowner, and this actually happens.

We have people working on vessels who have the experience necessary—and this is not the kind of a business where a farmer, for example, or a worker in a manufacturing plant can suddenly step on a boat and go out and make a living—who fall into this category. It is something that you have to learn. It takes time. A crewman here suddenly decides that he wants to become a boatowner and he weighs all of these things and the first thing you know he goes to the bank and the bank says, "No, because you are in an industry which is certainly not productive or has had a good financial return at this time." And then he takes a look at the fact that he suddenly loses his marine hospital privileges, and I think in many cases our crewmen are not going into that for that same simple reason.

I have wanted to just brief my statement. I have a formal statement here for the record, and I think this is sufficient at this time, unless you have questions.

Mr. ROBERTS. Thank you, Mr. Wedin. I think your statement is fully adequate.

I would like to ask just one or two questions.

You mentioned the main competitors of the fishing industry. For instance, let us pick out the Japanese.

What are some of the advantages which they enjoy that the self-employed owners would not enjoy?

Mr. WEDIN. Advantages, did you say?

Mr. ROBERTS. Yes.

Mr. WEDIN. First of all, I am not only referring to hospitalization, but, of course, in our overall fishing industry problems we look at the question of markets, and certainly as far as the Japanese are concerned it is very difficult for us to compete.

I think you recognize as far as the Russian fleets are concerned that up in the North Pacific today it is very difficult for us to compete.

If a Russian seaman is injured, it doesn't make any difference whether he is a captain or a crewman, we certainly turn out the very finest facility we can; we fly planes out there and take care of him and return him immediately to a hospital. If one of our skippers becomes ill in the North Pacific, let's say, Adak or somewhere, I don't think we would enjoy that same courtesy and privilege.

Mr. ROBERTS. Is it also true that in the case of the corporate-owner ship, the officers and crewmembers aboard that type of vessel would automatically be covered by benefits that are not enjoyed by the self-employed operators?

Mr. WEDIN. Mr. Chairman, I believe that is true.

I personally represent some 65 trawl vessels, bottom-fish draggers, who fish off the coast of Washington and off the west coast of Vancouver Island, and in these cases if these vessels were to incorporate the captain would become an employee. Then he would perhaps be eligible under the act, but it doesn't seem quite proper to me that they should have to do this in order to become eligible for something for which they are qualified.

Certainly during the last war, there is no question our people came to the front. Our vessels entered war service.

I think it is fairly obvious where our fish were coming from. For example, Japan was not available at that time and we provided the fish and it just seems only fair somehow or other that consideration should be given for past service.

Mr. ROBERTS. That is all I have.

Mr. Rogers?

Mr. ROGERS of Florida. Mr. Chairman, just a question or two.

As I understand it, Mr. Wedin, this change was brought about by an administrative ruling. Why is it that you cannot go back to HEW now and ask that that ruling be changed? Have you tried this?

Mr. WEDIN. Mr. Rogers, if we went back and restored by administrative ruling the privilege that we enjoyed before, then we would once again be subject to another administrative ruling, and it seems like legislation is necessary to get the proper interpretation.

I mean that is our feeling, that we would rather do it thas way.

Mr. ROGERS of Florida. Does this just pertain to fishing boats?

Mr. WEDIN. Commercial fishing vessels.

Mr. ROGERS of Florida. What about captains who own their boats and take fishing parties out?

Mr. WEDIN. Mr. Chairman, I don't believe the law would apply. As I interpret it, at least, it would not apply to sports charter vessels. All we have sought to do here is not to increase the traffic in marine hospitals, but merely to restore the people that were removed by the administrative ruling, which were the captains in this particular case, the captains who also own part of the vessels. In other words, they have been discriminated against.

If you were a captain of a vessel (and we have many of those in our fleet, who merely operate the vessel from their experience and ability but do not have an ownership) you would be eligible, and suddenly a man acquires an ownership in a vessel and he is no longer eligible, and this doesn't seem quite fair.

Mr. ROGERS of Florida. Why would you distinguish between the captain of a charter boat and the captain of some other kind of fishing boat?

Mr. WEDIN. Congressman Rogers, I am not sure what sort of charter boat you are talking about, but in our country, and I am speaking about the Pacific Northwest right now, a charter boat operator is one who is operating inshore or not a great distance off the coast. He is taking people out for hire.

Our trawlers are out for 10-day trips and they are out catching fish and producing food from the sea, and they are in a position, from the defense standpoint, for example—certainly this would apply to the king crab fisheries way up off Adak and in areas of this kind—where they are in contact with foreign vessels.

It is a good deal different.

Take charter boat out of Westport, Wash., for example, and they are fine people and most of them are ex-commercial fishermen who couldn't stay in the business. I talked to one the other day in Seattle. I asked him, "Why aren't you still in the troll salmon fishing business?"

He said, "I can't afford to troll and I have to take"—and I won't use the word he used—but you have to take these people out to do this sort of thing because you can't afford to stay in the trolling business. He can still fish crab, but even that has become almost uneconomical today. It is a different kind of circumstance entirely.

Mr. ROGERS of Florida. What is the distinguishing feature? Is it the size of the boat, or is it entirely the activity? Must it be one that goes out and stays overnight, or for a week? How do you distinguish the type of vessel that would have its employees qualified here?

Mr. WEDIN. I think we go in this particular case to what we call 5-ton vessels, in other words, a documented vessel, which isn't a question of size, length, or how many days they may stay out. This is what is set up in the bill, 5 ton.

Mr. ROGERS of Florida. Five ton?

Mr. WEDIN. I believe so.

Mr. ROGERS of Florida. As commercial fishing?

Mr. WEDIN. Yes, sir.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. ROBERTS. Thank you, Mr. Rogers.

Thank you, Mr. Wedin.

Mr. WEDIN. Thank you.

Mr. ROBERTS. Your statement may be filed for the record without objection.

Mr. WEDIN. Thank you.

(The statement referred to follows:)

STATEMENT OF JOHN H. WEDIN, SECRETARY, COMMITTEE FOR RESTORATION OF MARINE HOSPITAL SERVICES FOR SELF-EMPLOYED SEAMEN

My name is John Wedin, I am appearing today as secretary of the Committee for Restoration of Marine Hospital Services for Self-Employed Seamen. I also serve as legislative representative for the Fishermen's Marketing Association of Washington, a member of this specific group. Other members in support of the Senate-passed bill, S. 978, include the following:

Purse Seine Vessel Owners Marketing Association, Inc., representing 225 vessel owners in the States of Washington and Alaska.

Humboldt Fishermen's Marketing Association of California representing 145 fishing vessel owners.

Fishermen's Cooperative Association, Seattle, representing 1,720 Pacific coast member vessels.

Petersburg Vessel Owners Association, Petersburg, Alaska, representing 65 vessel owners.

Fishermen's Marketing Association, Inc., Eureka, Calif., representing 90 trawl vessel owners.

Bay Fish Exchange, Seattle, representing independent troll salmon vessel owners of Washington, numbering approximately 350 boats.

Association of Pacific Fisheries, Seattle, representing 33 member canning firms on the Pacific coast.

Puget Sound Canners Association, representing 11 salmon canneries in the State of Washington.

Fishermen's Marketing Association of Washington, Inc., representing 65 trawl vessel owners.

Halibut Producers Cooperative, Seattle, Wash., representing 250 Pacific coast fishing vessel owners.

American Tunaboat Association, San Diego, Calif., representing 65 fishing vessel owners.

Fishermen's Marketing Association of Oregon, Inc., representing 25 fishing vessel owners.

Fishermen's Cooperative Association of San Pedro, Calif., representing 85 member vessel owners.

Washington Crab Producers, Inc., representing 50 member vessel owners, Westport, Wash.

Washington Crab Association, representing 80 member vessels, Westport, Wash.

Alaska Fishermen's Union, 2,700 members, residents in the Pacific Coast States with headquarters in Seattle, Wash.

Juneau Halibut Fishermen's Association, 30 fishermen and vessel owners, Juneau, Alaska.

Ronald W. DeLucien, director, Fisheries Products & Program, National Canners Association, Washington, D.C.

I.L.W.U., Local 33, San Pedro, Calif., 400 members.

Seine & Line Fishermen's Union, AFL–CIO, San Pedro, Calif., 400 members.

San Pedro Independent Fishermen's Union, 250 members, San Pedro, Calif.

National Fisheries Institute, Washington, D.C., 500 firms throughout the United States.

California Fish Canners Association, representing 10 canneries which produce 85 percent of the Nation's tuna requirements, in addition to mackerel and other species.

Butts & Pattison, La Push, Wash., individually, and representing 45 fishermen.

43 Boat Operators, Ilwaco, Wash.

18 Independent Boat Operators, Seattle, Wash.

Mr. Chairman, it is a pleasure to represent such a widespread list of organizations in behalf of the marine hospital legislation for self-employed seamen. There are, of course, many others who would willingly participate in support of this needed legislation.

As we stated before the Senate Commerce Committee on April 24 of this year and in August of 1962 before this subcommittee, this is not new legislation in a sense. Rather, it is designed to correct an injustice caused by the 1954 administrative ruling by the Department of Health, Education, and Welfare.

The working captains of the U.S. fishing fleets work in the same manner as crew members—who are eligible for marine hospital care—aboard their vessels. They share the conditions, the hazards, and uncertainties along with the crew. As such, we feel they are entitled to be reinstated to equal hospital privileges.

For 20 years or more prior to the 1954 ruling by the General Counsel of the Department of Health, Education, and Welfare, self-employed seamen or those who had financial interests in the vessels had been entitled to medical care at the facilities of the U.S. Public Health Service. This medical care was given to all persons working on board these vessels irrespective of whether they were working for themselves as owners or part owners of vessels or whether they were employees working for others just as long as they were employed in the "care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation." The word "employed" in this connection was given a broad interpretation similar to the word "used."

In May 1954, the General Counsel of the Department of Health, Education, and Welfare issued an opinion stating that the term "employed" would thereafter be interpreted in the narrow sense to mean only those persons working for someone else in an employer-employee relationship.

This interpretation had the effect of denying medical care to the thousands of self-employed seamen all over the country, particularly in the fishing industry. It had the effect of dividing the crews on these vessels into two parts: one consisting of those who had no ownership in a vessel and who were eligible for medical care at facilities of the Public Health Service, and the other consisting of those who had an interest in the vessel no matter how small and who were excluded from receiving medical care at the Public Health Service facilities.

There was no justification for this ruling. It should be corrected as soon as possible.

The hospitals of the U.S. Public Health Service, or marine hospitals as seafaring people call them, have long performed an extremely useful service for the U.S. maritime industry. The justification for providing medical facilities for seamen is well established in our history. Some of the reasons why these facilities were provided are as follows:

1. The roving nature of the seaman's work requires special consideration. The seaman finds himself often in distant parts of the world where he is out of touch with the medical facilities to which the shoreworker has easy access.

2. The hazardous nature of his work merits primary attention. The seaman is often exposed 24 hours a day to exceptional hazards due to extraordinary weather conditions not faced by the shoreworker or from which the seaman cannot escape as can the worker on land.

3. The seaman's work is seasonal. This seasonality is often caused by decisions of the U.S. Government. The marine worker is affected to a greater degree by actions of the Government than is his land counterpart.

4. The seafaring industry provides an outpost for the United States of value for military purposes. Seamen are usually the first to provide surveillance for their country in time of crisis.

5. The seafaring industry is characterized by economic insecurity due to its transient nature and to its seasonal cycles. Again this insecurity is caused in large part by governmental decision.

6. The seafaring industry is of extreme importance to the Nation in times of crisis. It provides trained and experienced personnel for the Navy and merchant marine in wartime.

7. The Government is dependent upon the maritime industry in so many ways that the Government has a special obligation in the interests of its own security to see to it that the maritime industry is kept in healthy condition at all times.

8. The seamen in our maritime industry literally work elbow-to-elbow with workers from foreign lands, giving their occupation an international character deserving of the same conisderation as that given seamen of other countries by their governments.

9. The maritime industry, and this is especialy true of the fishing fleet, serves as an auxiliary to the U.S. Coast Guard and performs many of the tasks carried on by the Government-supported service. Were it not for the vessels of the fishing fleet, the cost of operating the U.S. Coast Guard would be much higher.

10. The maritime industry vastly extends the economic and political influence of the United States into areas where the ordinary protection enjoyed by the shore citizen is not found.

The justification for providing medical facilities for seamen apply with equal force to self-employed seamen. The self-employed seaman must, of necessity, be on a small vessel, for a large vessel is usually operated by a corporation, and in such cases all men on board including officers are entitled to Marine hospital benefits.

On these small vessels, the self-employed seaman works under exactly the same conditions as do the employed seamen. The hours are the same. The roving nature of the employment, the hazards, the seasonal condition of the work, the economic insecurity and all the other conditions are exactly the same. In some cases, the economic insecurity of the self-employed seaman is greater than that of the employed seaman when cyclical conditions are unfavorable. In such cases, the self-employed seaman is bound to his vessel and employment and saddled with insurance, depreciation, and other maintenance costs which go on no matter how unprofitable the operation of his vessel may be.

S. 978 is needed to give present seamen an opportunity and incentive to improve their status. Vessel operators must come from the ranks of crewmen. No one can successfully operate a deep sea fishing vessel without first serving his apprenticeship as a crewmember. Crewmembers today hesitate to become self-employed operators as they lose their hospital benefits when they do. The effect of this condition is to contribute to the weakening of the American fishing fleet.

Our industry today has powerful competitors in its area of operation. Our American fishermen-seamen are working literally side by side with fishermen from these competing countries. Those in the North Pacific at the present time are from Canada, Japan, and Russia. The situation in the North Paciffic, therefore, merits attention from the standpoint of S. 978.

First, let us look at our neighbors, the Canadians. Their vessels are like ours in the main. They are the same size for all intents and purposes and operate under more or less the same conditions. In Canada, however, the vessels may pay to the Canadian Government's Sick Mariners Fund a sum comparable to the tonnage tax charged American merchant vessels and which up to a few years ago was also charged American fishing vessels. But, for this Canadian charge, the crews of the Canadian vessels, including any self-employed seaman on board, are entitled to medical and hospital benefits without further charge.

The Japanese vessels are quite unlike ours. They are mostly owned by large companies and, as far as I now, have no self-employed persons on board. It is presumed that all personnel on board are furnished medical services.

The Russian vessels are large and modern and in a class by themselves. They are government owned and operated and their number is being expanded rapidly. Cost apparently is not a factor in their operation or deployment. Without doubt the crews on Russian vessels, who are government employees from every standpoint, receive full medical and hospital care.

These are the vessels among whom our fishermen-seamen are working and with whom our seamen are attempting to compete. It is an unequal struggle. For its own welfare our Government should set about to improve the competitive position of its marine industry, including both large and small vessels.

These vessels in this atomic age could become indispensable in the event of atomic warfare. With land areas and our population centers the target of enemy attack, and with our food supply from our agricultural heartland contaminated by the byproducts of atomic war, the merchant marine of the country, including the fishing fleet, could well become a means of survival for many of our citizens through the movement of people out of danger areas and for production of food from the sea.

It is our considered opinion that if the U.S. fishing industry is to survive, it must have assistance from the U.S. Government. Our private industry cannot compete with fishing fleets operated as arms of foreign governments or subsidized by them. S. 978 is not the sole solution to the dilemma, but its adoption is a step in the right direction. We urge its passage with utmost haste.

Mr. ROBERTS. Our next witnesses are Dr. David E. Price, Deputy Surgeon General, and Dr. Myron D. Miller, Chief, Division of Hospitals, Public Health Service.

I assume you gentlemen want to appear together?

STATEMENTS OF DR. DAVID E. PRICE, DEPUTY SURGEON GENERAL, AND DR. MYRON D. MILLER, CHIEF, DIVISION OF HOSPITALS, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Dr. PRICE. Thank you very much, Mr. Chairman.

I do not have a prepared statement. I could read the report which the Department has sent to the committee if you wish and then Dr. Miller and I would be pleased to attempt to answer any questions you may have.

Mr. ROBERTS. Has the Department approved this bill?

Dr. PRICE. Yes.

Mr. ROBERTS. I was going to say that is filed for the record under our procedure, anyway, so if you just want to make some comments, I think the committee would be interested in the cost factor, if you have any figures on that.

Dr. PRICE. In the Department's report on this bill, sir, we have said that statistics are not available on the additional number of persons who would come within the provisions of law under these bills, but we believe that neither the number nor the cost would significantly affect the present program and that the enactment of the legislation, such as that of S. 978, would pose no serious difficulties for the Department as a provider of services.

I believe the best basis for an estimate of the possible cost of this is provided in the testimony which was given to the Senate by representatives of the Bureau of Commercial Fisheries when it was estimated that not more than 10,000 additional fishermen who are owner-operators on documented vessels would become eligible under the enactment of this bill.

If one ascribes to them the same per capita cost for these services that one ascribes to the merchant seamen for whom we now are caring, it would appear that the maximum cost would be $1,733,210 per annum.

Mr. ROBERTS. Thank you, Dr. Price.

Dr. Miller, do you have anything to add?

Dr. MILLER. Thank you, sir. I have nothing further to add.

Mr. ROBERTS. Any questions, gentlemen?

Mr. SCHENCK. I have no questions.

Mr. ROBERTS. Mr. Rogers?

Mr. ROGERS of Florida. Yes.

Dr. Price, I want to see if your interpretation of some of the questions I asked is the same as the previous witness, and I presume you heard the questions I asked.

Do you have any contrary views?

Dr. PRICE. With respect to the type of beneficiary?

Mr. ROGERS of Florida. Yes.

Dr. PRICE. It is my understanding, sir, that under the language of the Senate bill, the additional beneficiaries would not be solely fishermen, but that any individual who was self-employed on a documented vessel would be covered.

Mr. ROGERS of Florida. So it would be any type vessel that the man owns who works on it; is that correct?

Dr. PRICE. Yes.

Mr. ROGERS of Florida. Any kind of activity?

Dr. PRICE. This is correct. The way in which the act now defines "seamen" it includes any person employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation, and the term "vessel" includes every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on the water, exclusive of aircraft and amphibious contrivances.

Mr. ROGERS of Florida. Does it have a 5-ton limitation?

Dr. PRICE. This is the limitation which I understand is the factor which determines the documentation of the vessel, 5 net tons.

Mr. ROGERS of Florida. So you feel that the interpretation, if this were passed, would be quite a bit more broad than the previous witness had indicated?

Dr. PRICE. I believe it would be considerably broader than just commercial fishermen. I might say, sir, that prior to the ruling of 1954, all individuals of this class had been included as eligible for care for a very great many years and so at the time the 1954 ruling was made by our General Counsel, we excluded not only the fishermen owner-operators but a variety of other individuals who had been beneficiaries prior to this time.

Mr. ROGERS of Florida. What type of vessel, for instance, would you say? Cargo?

Dr. PRICE. Any kind of vessel, sir.

Mr. ROGERS of Florida. As long as he was an owner and actually worked the vessel himself?

Dr. PRICE. That is correct.

Mr. ROGERS of Florida. Are you in favor of this legislation? Is the Department in favor of this legislation?

Dr. PRICE. The Department feels that the legislation would correct an inequity which was created at the time of the 1954 ruling.

Mr. ROGERS of Florida. Has the Department done anything to correct it themselves?

Dr. PRICE. There is nothing we feel that the Department could do other than to propose a modification of law, and the Department has not seen fit to propose a legislative remedy.

Mr. ROGERS of Florida. I understood that this change was brought about not by an act of Congress but by an interpretation made by your General Counsel. Is that true?

Dr. PRICE. That is correct, sir.

Mr. ROGERS of Florida. Why could that change not be brought about by a single ruling made by him at any time? It could, could it not?

Dr. PRICE. I am sure that it could have been. However, we were confronted with a situation at the time this ruling was made where there were two specific cases seeking to demonstrate eligibility, one on the basis of ownership of a pleasure yacht, and the other on the basis of residence on a houseboat, in which case it was alleged that duties comparable to those of a seaman were rendered by the necessity for turning the navigational lights off and on at night, and it was when the eligibility of these cases was explored that the General Counsel of our Department concluded that the terms of the act required that there be a bona fide employment relationship.

Mr. ROGERS of Florida. What if we pass this legislation? Would that allow those people to come in and qualify?

Dr. PRICE. We believe that it would.

Mr. ROGERS of Florida. The two cases you just cited?

Dr. PRICE. No; I beg your pardon, sir.

No; we are certain that it would not include such individuals.

Mr. ROGERS of Florida. Why would it not? What would be the distinguishing factor that keeps them from being included?

Dr. PRICE. Because they are not self-employed doing the work of seamen.

Mr. ROGERS of Florida. You mean if a man keeps his own houseboat there and keeps it up and that is all he does, he does not have a seaman on it, he would not be included?

Dr. PRICE. We would not consider this, sir.

Mr. ROGERS of Florida. That would still be an interpretation of the General Counsel, would it not?

Dr. PRICE. Dr. Miller, could you answer that question?

Mr. ROGERS of Florida. Do you have your counsel here?

Dr. PRICE. No, sir; we are not accompanied by counsel this morning.

Mr. ROGERS of Florida. Who makes the decisions? Is it in your Department? Do you make the recommendations on this, or do you leave in to the counsel, or who?

Dr. MILLER. The interpretation of the General Counsel was based strictly on the definition of "employed seamen."

Mr. ROGERS of Florida. I understand that. I am asking who makes these decisions at the Department. Is it up to you? Are you head of this particular Department?

What is your position, Dr. Miller?

Dr. MILLER. I am the Chief of the Division of Hospitals, which operates the marine hospitals.

The General Counsel in its decision said that the law as existed prior to 1954 and as now exists did not apply to seamen other than those who were employed aboard a vessel; and the law as is stated does not identify an owner-operator as an employed seaman.

Mr. ROGERS of Florida. I understand that. This is the interpretation of your General Counsel in 1954. Was that brought about through a recommendation from your Department in asking for a ruling on that, or what?

Dr. MILLER. The General Counsel still feels that their interpretation is correct and that the inequity can be corrected only by a correction of the legislation that now exists.

Mr. ROGERS of Florida. How would this change the law as it existed prior to the ruling in 1954?

Dr. MILLER. By defining the owner-operator as a self-employed seaman, it will bring him within the scope of the legislation, whereas now where it refers to those employed, and not self-employed it will not incorporate the owner-operators and their spouses.

Mr. ROGERS of Florida. You do not think that your General Counsel could interpret the word "employed" as "self-employed"?

Dr. MILLER. No, sir; the interpretation of the General Counsel was that the owner-operator was not employed in the sense that other seamen aboard vessels are employed, but with the addition of the term "self-employed," it would bring them within the scope of the legislation.

Mr. ROGERS of Flrida. I do not want to get into a case of semantics here, but it seems to me if he made an interpretation in one instance where he changed the law, in effect, the way is was administered, he could put it back in the same status simply by changing it, if you really want to do it.

Mr. ROBERTS. Will the gentleman yield?

Mr. ROGERS of Florida. Yes.

Mr. ROBERTS. I think there is more than one executive department involved. I think that is what you get into.

The next witness is accompanied by the attorney for the Legislative Division. I think he might be in a better position to answer your question.

Mr. ROGERS of Florida. I just thought it was done through the General Counsel of this Department. That was my understanding. Perhaps we can also question him. If the Department feels this change is necessary, I do not know why the General Counsel cannot make this change and see how it works. Then if you needed the law, come up and do something about it, but I am surprised that the Department thinks an inequity has been done but does not take any administrative action to change it when it was administrative action that brought the injustice.

Mr. ROBERTS. The chairman does not believe that Dr. Price or Dr. Miller would tell the General Counsel what he had to do.

Mr. ROGERS of Florida. But I would think the gentlemen might request the General Counsel to do it if it is in his own department. Someone has to initial it.

Mr. ROBERTS. I think the General Counsel is independent in his rulings on these particular cases.

Mr. ROGERS of Florida. I agree with that.

Mr. ROBERTS. And that they could probably not in their request cover all the cases that would arise, so, therefore, I think there has to be clarification by legislation because you get into the question of pleasure craft owners, charter boats, houseboats.

As I understand it, the thing that controls here is whether or not they are engaged in commercial fishing.

Mr. ROGERS of Florida. I beg to differ with the gentleman just from the testimony these two gentlemen have given. They say it does not apply to commercial fishing alone.

That is the point I am making. They just testified to this.

Mr. ROBERTS. I will say this. I think we could very well handle the interpretation of what it does apply to by the report.

Mr. ROGERS of Florida. I would like to find out—that is what I want to question about—what the Department interprets this to be, and if we want to confine it I think we had better know ahead of time what they are going to interpret it to be, and they are giving us the interpretation. I do not know whether they are giving us the General Counsel's interpretation, or the Department's interpretation, or where it came from.

Mr. ROBERTS. I would suggest that in order to expedite this hearing we request the General Counsel to come up and testify.

Mr. ROGERS of Florida. I think that is a good suggestion.

I just think, as the chairman says, it might be helpful.

Dr. MILLER. Mr. Chairman, the administrative action that was taken was based on the decision of the General Counsel, and this has been discussed with the General Counsel, who feels that the only way in which the administrative decision could be reversed would be through a correction of the existing legislation.

Mr. ROBERTS. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman. I have one question.

I know that when my distinguished colleague from Florida asked you if you opposed or favored this legislation, your answer was that you thought it corrected an inequitable situation, which is not precisely responsive to the question that was asked you.

My question is, Are you in favor of this legislation?

Dr. PRICE. Sir, if I had been permitted to read the Department's report, I believe I might have covered this point somewhat more specifically.

The Department stated that if the legislation should be favorably considered, we would prefer the language of S. 978 now pending before your committee, which would simply broaden present law to include self-employed persons as "seamen," if they perform the same tasks as are performed by seamen within the meaning of the present law.

The report does not state that the Department favors this legislation, but rather that if the House bill were amended to conform to the language of S. 978, which simply extends the definition of "seamen," and the operative provision conferring entitlement to medical care under the Public Health Service Act to "self-employed" seamen, it would render the bill objectionable from the viewpoint of this Department.

Mr. BROTZMAN. This sounds kind of like some of the witnesses I used to have in law practice. I listened very carefully but I could not get the answer.

I was going to say from the tenor of your remarks it would sound to me like you are not in favor of the House bill.

I just want to be sure the record is clear as to what your position is. That is my only reason for asking this question.

Dr. PRICE. The Department reported on only two of the House bills, sir, H.R. 3873 and H.R. 2108.

The Department had not been asked to comment on other House bills which are worded essentially in the same way as S. 978.

Mr. BROTZMAN. I will ask the question another way. Are you in favor of any of the bills as they are written? Is the Department in favor?

Dr. PRICE. Yes.

Mr. BROTZMAN. Tell me the number.

Dr. PRICE. The Senate bill 978, and H.R. 3338, and H.R. 7002. These are essentially the same in broadening the eligibility, to restore eligibility to self-employed seamen.

Mr. BROTZMAN. These are the ones that you do favor?

Dr. PRICE. Yes, sir.

Mr. BROTZMAN. Thank you very much.

Mr. ROBERTS. Thank you, Dr. Price.

Any further questions, gentlemen?

Mr. ROGERS of Florida. No questions.

Mr. ROBERTS. Thank you, Dr. Miller.

Dr. MILLER. Thank you, sir.

Mr. ROBERTS. Our next witness is Dr. Donald L. McKernan, Director of the Bureau of Commercial Fisheries, Department of the Interior, accompanied by Mr. Walter Stolting, Chief, Branch of Economics, Bureau of Commercial Fisheries, and Mr. David Finnegan, attorney, Legislative Division.

STATEMENT OF DONALD L. McKERNAN, DIRECTOR, BUREAU OF COMMERCIAL FISHERIES; ACCOMPANIED BY WALTER STOLTING, CHIEF, BRANCH OF ECONOMICS, BUREAU OF COMMERCIAL FISHERIES; AND DAVID FINNEGAN, ATTORNEY, LEGISLATIVE DIVISION, DEPARTMENT OF THE INTERIOR

Mr. MCKERNAN. Mr. Chairman, I brought Mr. Finnegan here to the witness stand with me and, as you mentioned, I have Mr. Stolting also, who are prepared to assist in answering detailed questions should the committee desire.

I wish to thank you for this opportunity to appear before your committee in support of H.R. 3873, a bill to provide medical care for certain persons engaged on board a vessel in the care, preservation, or navigation of such vessel. As indicated in our report, our Department agrees with the objectives of H.R. 3873, but believes that these can best be accomplished through the draft bill enclosed in our statement.

I would like to review briefly the facts regarding the status of self-employed fishermen and their eligibility for medical care, dental, and hospitalization services provided by the U.S. Public Health Service.

The Federal Government provides free medical care and hospitalization to seamen, primarily because of the national interest in maintaining an effective labor force necessary for an adequate merchant marine.

Section 322 of the Public Health Service Act provides that seamen employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canal boats engaged in the coastal trade, are entitled to medical, surgical, and dental treatment, and hospitalization without charge.

Most commercial fishermen are also seamen because of the nature of the work other than the fishing operation performed on a fishing vessel relating to the navigation and maintenance of such a vessel, particularly when going to and from fishing grounds. Historically, the Public Health Service held the view that any fisherman on a documented fishing vessel, who could qualify as a seaman, was eligible for free medical care and hospitalization as a seaman.

In 1954, however, because of a case which arose out of claims for medical care in 1951 by owners of pleasure yachts and by a housewife living aboard a houseboat who was "employed on board in the care, preservation, or navigation" of the vessel to the extent of turning on the navigation lights each evening, that agency ruled that the Public Health Service Act applied only to persons under a contract of employment, expressed or implied, on a vessel.

This decision strictly interpreted the term "seamen" as it is defined in the act as "any person employed on board in the care, preservation, or navigation of any vessel * * *."

Consequently, fishing vessel owners who go out on their boats, though they work as seamen, are not considered seamen because they are not employees, and are thus excluded from the medical care and hospitalization benefits of the act.

An illustration of the nature of fishermen's working relationships will point out the inconsistencies resulting from this ruling. Fishermen may change their status in a relatively short period of time from an employee fisherman to that of a self-employed fisherman or a part owner of a fishing vessel. These changes may occur in reverse order, and they may not reflect any material change in financial standing of the individual. For example, a fisherman may be engaged early in the season as an employee fisherman and therefore be eligible for Public Health Service benefits as a seaman employed on a vessel under a contract of employment, either expressed or implied. Later in the season he may participate in fishing operations in a different fishery as a part owner of a small vessel and consequently be ineligible for Public Health Service benefits though he still conducts activities as a seaman.

It becomes apparent that there is no real distinction between employees and fishing vessel owners in the practical world of commercial fishing.

Even on the larger fishing vessels where the majority of the fishermen are employed as crewmembers, vessel owners often participate in fishing trips and perform the same duties on board the vessel in its care, preservation, or navigation as other fishermen. Such owner-fishermen or self-employed fishermen are in fact applying their maritime skills as seamen and consequently are contributing to the maintenance of an effective maritime labor force required in the national interest.

Eligibility for free medical, surgical, and dental treatment and hospitalization for persons employed in the fishing industry is stated in that section of the Public Health Service Act which lists among the types of eligible persons "Seamen employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canal boats engaged in the coasting trade."

About 32,000 employee fishermen serving aboard such documented fishing vessels are now considered to be eligible for these benefits.

About 80,000 owner-fishermen and employee-fishermen serve on undocumented vessels of limited fishing range and are not eligible for free medical benefits from the Public Health Service.

Should the proposed legislation become law, approximately 10,000 additional owner-fishermen on documented fishing vessels would be eligible.

Mr. Chairman, this concludes my statement. I will be glad to try to answer any questions of the committee.

Mr. ROBERTS. Thank you, Doctor.

I note that you say that the objectives of H.R. 3873 can best be accomplished through the draft bill enclosed in your statement. You mean the departmental statement, I believe.

Mr. MCKERNAN. Yes, Mr. Chairman.

Mr. ROBERTS. And I am advised that your draft bill is the Senate bill, S. 978.

Mr. MCKERNAN. Yes, Mr. Chairman.

Mr. ROBERTS. Is that correct?

Mr. McKernan. Yes.

Mr. Roberts. Relative to a question that has been raised here as to the administrative ruling in 1954, is it your opinion that legislation is necessary to correct this ruling?

Mr. McKernan. Yes, Mr. Chairman.

Mr. Roberts. How do you arrive at this opinion, Doctor?

Mr. McKernan. Mr. Chairman, it is my understanding that the General Counsel of Health, Education, and Welfare has interpreted the law in this essentially new way in 1954 and unless the General Counsel of the Department of Health, Education, and Welfare determined that they had misinterpreted the law this would undoubtedly rule in such a case. I am informed by our counsel, and he is here to comment further should the chairman or members of the committee so desire, that it is our understanding that the General Counsel does not now believe that he misinterpreted the law in 1954. Therefore, if some interpretation other than that now used in the Department of Health, Education, and Welfare were decided to be in the national interest, this would require legislation and that as a result the present legislation is before this committee.

Mr. Roberts. Is this the first time that the Department of the Interior has approved this legislation?

Mr. McKernan. No; we approved essentially this same type of legislation last year, Mr. Chairman.

Mr. Roberts. I might direct this question to Mr. Finnegan. Assuming, as has been mentioned here, that the General Counsel of the Department of Health, Education, and Welfare might reverse his ruling, would that necessarily control your Department?

Mr. Finnegan. This Department wouldn't have any direct concern. If the Public Health Service were to change their ruling to include self-employed fishermen, this would, of course, obviate the necessity of this legislation.

However, the problem still exists in that a later General Counsel could decide differently, if he so desired.

Mr. Roberts. I do not know that this is proper and you may not want to answer the question, but do you see any different set of circumstances that might lead the General Counsel to give an opinion in which he would say that he misinterpreted the law in 1954?

Mr. Finnegan. No, sir; I do not at the moment.

Mr. Roberts. Do you believe, Doctor, that under S. 978 there would be any difficulty in determining the persons entitled to benefits of Public Health Service treatment under the Senate bill?

Mr. McKernan. No, Mr. Chairman, I don't believe there will be any great difficulty in determining those eligible.

I am not certain that I have considered all of those who might, right at the moment, but to my knowledge I think this could be a relatively easy determination.

Mr. Roberts. Do you think, Mr. Finnegan, that we could write into the report or bring out in debate certain legislative intent that would deny these benefits to pleasure boat owners, and charter boats, and people of that kind, and say it is intended primarily for the benefit of commercial fishermen?

Mr. Finnegan. Yes, sir.

Mr. Roberts. Mr. Rogers?

Mr. Rogers of Florida. Thank you, Mr. Chairman.

I was interested in your statement that you felt there was no change now that might permit the General Counsel to make a different ruling.

What change in the circumstances was there that brought about his basis for ruling in 1954?

Mr. FINNEGAN. Maybe, sir, I didn't quite make myself clear.

Up to 1954, self-employed fishermen were included.

Mr. ROGERS of Florida. In other words, he had interpreted the word "employed" to also mean "self-employed"; did he not?

Mr. FINNEGAN. Well, as far as I know there had not been any interpretation as such by the General Counsel until 1954.

Mr. ROGERS of Florida. What I mean is those people were receiving benefits, were they not?

Mr. FINNEGAN. That is right, sir.

Mr. ROGERS of Florida. So I assume there was no interpretation to deny them that.

Mr. FINNEGAN. That is right, sir. Apparently the question had not really come up, sir, until 1954 when circumstances—the factual situation I am not exactly familiar with—did come up at that time.

Mr. ROGERS of Florida. Is it not true that in any event the General Counsel is going to be called upon in certain circumstances to make rulings even if we pass this? He is going to have to determine that certain people are self-employed, will he not?

Mr. FINNEGAN. That is right, sir.

Mr. ROGERS of Florida. You would still have to go to the General Counsel for interpretation of specific cases, would you not?

Mr. FINNEGAN. No, sir; if the legislation is clear, and this is what is intended by S. 978 and our draft bill on H.R. 3873, I think there wouldn't be any problem as far as interpretation with the General Counsel. His problem presently is the interpretation of what is meant by the word "employed" and he said that this did not include "occupied or engaged in," but it had to refer to persons who were under a contract of hire, and this did not include self-employed persons.

Mr. ROGERS of Florida. I realize that, but I am saying if anyone makes a claim and the Department contested it, it still will have to go to the General Counsel for determination, will it not?

Mr. FINNEGAN. That is right, sir.

Mr. ROGERS of Florida. Now, Mr. McKernan, do you interpret this as to apply only to commercial fishing boats?

Mr. MCKERNAN. No.

Mr. ROGERS of Florida. You do not?

Mr. MCKERNAN. No.

Mr. ROGERS of Florida. It would apply to any boats? Is your view consistent with the testimony we heard from the Department of Health, Education, and Welfare?

Mr. MCKERNAN. Yes. It would apply to self-employed men who are operating vessels over 5 net tons; that is, documented vessels. For example, it would apply to the charter boat fishermen who were operating as seamen. For example, charter boats, out of Florida, if these vessels were over 5 net tons.

Mr. ROGERS of Florida. What would you have to do with the administration of this law were it to pass?

Mr. MCKERNAN. We would not have anything to do with the administration directly, Mr. Rogers. Of course, we are extremely anx-

ious to promote the general welfare of the fishing industry of the United States.

We feel, as has been presented by the other witnesses before this committee, that there is an inequity here; that a great many small operators and owners who have exactly the same problems as employed fishermen are eliminated from these services at the present time.

We think that this is not good and that it would actually help the industry if this were corrected and corrected as speedily as possible.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

Mr. ROBERTS. Mr. Schenck?

Mr. SCHENCK. Mr. Chairman, I understand from the discussion here that this is not confined to just commercial fishing boats.

Mr. MCKERNAN. It is not in the bill which passed the Senate and it is not in the draft bill prepared by the Department of the Interior. It is confined to commercial fishing vessels in H.R. 3873. It confines this to commercial fishermen in that bill.

Mr. SCHENCK. Who is a commercial fisherman?

Mr. MCKERNAN. I beg your pardon?

Mr. SCHENCK. Who is a commercial fisherman? What are the guidelines?

Mr. MCKERNAN. A man who fishes and sells the results of his labors on the marketplace.

Mr. SCHENCK. And it is not one who takes others out for pleasure fishing, trawling, and so forth?

Mr. MCKERNAN. No, he would not be considered a commercial fisherman.

Mr. SCHENCK. What is meant by a documented vessel of 5 net tons?

Mr. MCKERNAN. The Coast Guard regulations require that all vessels of 5 net tons and over be documented and we call—and this is a matter of simply historical practice—vessels less than 5 net tons fishing boats and vessels of 5 net tons and over vessels.

Mr. SCHENCK. What is meant by the term "5 net tons"?

Mr. MCKERNAN. This is the carrying capacity of the vessel itself and it is one of the tonnage figures which is commonly used by Coast Guard and by Maritime people.

Mr. SCHENCK. So 5 net tons then refers to the fact that a vessel can safely carry 5 tons of fish or of anything?

Mr. MCKERNAN. That is correct.

Mr. SCHENCK. That is all, Mr. Chairman.

Mr. ROBERTS. Mr. Brotzman?

Mr. BROTZMAN. I have no questions, Mr. Chairman.

Mr. ROBERTS. I would like to ask you one question that troubles me a great deal.

I have just been reading the budget report. They point out that there exists a special additional problem in connection with H.R. 2108 and a somewhat similar bill, S. 978, which is the bill that you say you are for and the Department approves, passed by the Senate on May 28, 1963.

The wording in both H.R. 2108 and S. 978 would extend coverage not only to the owner-operators of fishing vessels who devote a substantial portion of their time to seamen duties (as provided in H.R. 3873) but also to owner-operators of

other types of vessels, such as tugs, ferries, and barges engaged in local traffic, subject only to the requirement that such persons be engaged in the care, preservation, or navigation of the vessel.

Is that your interpretation, or do you disagree with that?

Mr. McKernan. I do not disagree with it, Mr. Chairman. That is my interpretation.

Mr. Roberts. I cannot believe that this committee would want to extend legislation to these other types of vessels. I recognize that there may be and undoubtedly is valuable work performed by this type of vessel, but we are primarily concerned here with trying to correct an administrative ruling which we believe would serve to strengthen people engaged in commercial fishing in competition with the Russians, Canadians, Japanese, and others.

It seems to me that Interior's approval of that proposition would certainly run us into a tremendous amount of money, a lot more than is contemplated by the approach which you mention at first, I believe, H.R. 3873.

Mr. McKernan. Mr. Chairman, may I comment on this?

Mr. Roberts. Yes, sir.

Mr. McKernan. Our approval of S. 978 and our draft bill which is similar simply envisages including those people who were included before the 1954 interpretation by HEW. Essentially what that bill does and what Interior's report says is that those people who were covered before will again be covered except that it excludes vessel owners, passengers, guests, or others who are not participating in the actual operation of the fishing vessels.

Now, there is one question which hasn't arisen here, but I am sure it is one that one thinks of, and that is, What is wrong with H.R. 3873?

Mr. Roberts. Yes, sir.

Mr. McKernan. Our problem here was the interpretation of "a substantial part of whose services in connection with such fishing operations are comparable." In other words, substantiality of fishing was the thing that bothered us.

If this committee chooses to limit participation to owner-fishermen engaged in commercial fishing, then perhaps an interpretation of the word "substantial" in the bill which is being heard before this committee today might well take care of the problems which Interior had with this bill.

Mr. Roberts. If the budget is correct in its interpretation of the bill that you endorse, I think this committee would certainly not desire, or at least this is my personal feeling—I am not speaking for the other members—to extend this to tugs, ferries, and barges engaged in local traffic.

That certainly would not be in my opinion a thing that this committee would want to lend itself to.

If you feel that the budget is wrong in this interpretation and you would like to amend your statement to cover this situation, I would be glad to have you supply it for the record.

Mr. McKernan. I didn't understand your last statement, Mr. Chairman.

Mr. Roberts. I would not think that your Department would want to approve a bill that would extend it to vessels engaged in local traffic.

Mr. McKernan. Mr. Chairman, the Department's position here was

that we wanted it extended to cover commercial fishing vessel owners in documented vessels.

The result of our suggestion, it is true, extends it to all of those people who had such coverage before 1954. It is true that the Department's suggestion has that effect also.

What the effect of our recommendation was was simply to put this back where it was before 1954. In doing so, it also does include some other groups of people, and the Department's interest, of course, is confined to owner-fishermen. Should the committee wish to limit it to those people they could quite easily do so, either by providing greater limitation to S. 978 or by perhaps a rather simple alteration to the bill which is before you here.

Mr. ROBERTS. Of course, I know that there are seagoing tugs and it could be that a vessel built to be a tug could be converted into a fishing vessel. Is that not true?

I do not know of any ferries that possibly could be engaged in commercial fishing. I guess that would be possible, but, generally speaking, I do not know of any ferries that are so engaged. If there are some that you know about, I would be glad to hear about it.

Mr. ROGERS of Florida. Mr. Chairman.

Mr. ROBERTS. Mr. Rogers.

Mr. ROGERS of Florida. I would be hopeful that the various governmental departments would get together so we will know what this legislation will do. I realize you have an interest in just the commercial fishing, but if this bill goes farther than that, I would hope your counsel would also be aware of this. I presume he is.

Also, now, do you take a similar view as the budget does that there should be additional user charges or additional tonnage charge?

What is the Department's view on that, sir?

Mr. MCKERNAN. No; we do not take that point of view. In other words, the Department feels that this is in essence a different problem, that if Congress wishes to consider this matter, this perhaps should be considered in the whole area, that is, this policy of helping or assisting in the medical care of seamen. In other words, the Department's position on this is as stated in their submission to this committee, that we haven't specifically studied this particular problem, but we feel that it is not the question which is before us in this legislation.

Mr. ROGERS of Florida. You have not considered whether it will put an additional tax or tonnage tax to take care of this even though the Budget has recommended it?

Mr. MCKERNAN. That is true, Mr. Rogers, we have not considered that in connection with this legislation because we felt that this particular matter is a matter which would apply clear across the board as a matter of general public policy as to whether or not the country should, in a sense, support medical care to seamen in general.

It is the Department's position that this legislation deals with an inequity, that fishermen and small vessel owners have not been treated the same way that other seamen and fishermen employees have been treated.

We are interested right at the moment in attempting to see that that is corrected.

Mr. ROGERS. I thought you just told me now that this proposed legislation also goes beyond that.

Mr. McKernan. This proposed legislation does include——

Mr. Rogers of Florida. Additional people.

Mr. McKernan (continuing). Some other people, that is correct.

Mr. Rogers of Florida. What is going to be the effect on commercial fishing if you have to raise rates here to pay for this as recommended by the Bureau of the Budget? Is that going to affect your people or not?

Mr. McKernan. That would affect our people if they took advantage of those services; yes.

Mr. Rogers of Florida. Should that be considered by you and should we know what effect your Department thinks it would have on commercial fishing to have increased rates?

Mr. McKernan. Ultimately if that particular problem comes up, our Department certainly would want to ascertain what effect this would have on the individual fisherman.

Mr. Rogers of Florida. Has your counsel checked with the Bureau of the Budget for their views on this?

Mr. McKernan. No; we haven't been asked about that particular facet of this problem.

Would you like further comment from the counsel?

Mr. Rogers of Florida. Do you coordinate? In other words, it is confusing to the committee, it seems to me—it is to me—to have one department come in and not be concerned with any other problem and yet it may affect your Department. I do not know why you cannot get coordinated here and let us have a view where you have considered all of these things. That is the point I was making.

Mr. McKernan. Mr. Chairman, in the departmental report we indicate that we feel that this is another problem, perhaps an important one, but it is another problem. It is not the problem before us here and so, in considering this, we considered that what we would like to do is to resolve this particular problem first.

When legislation is proposed to change, for example, the charge of seamen, and in this case fishermen as well, for their medical and dental expenses, then obviously the various departments of Government should coordinate any report that comes forward to this committee on that question.

Mr. Rogers of Florida. However, where the Bureau of the Budget made a positive recommendation tying it into the consideration of this legislation as the only way to have it approved, then I thought you might have considered it. That's the point I was making.

Mr. McKernan. We did consider it, Mr. Rogers, but we considered really it wasn't very germane to this particular question. We wanted to correct an inequity.

Mr. Rogers of Florida. How we pay for it is not germane?

Mr. McKernan. Well, no; I wouldn't want to say that, but we felt that first we wanted to correct an inequity and then if the Congress felt that seamen and fishermen should pay for this then, obviously, there would have to be very careful and considered study of that particular problem.

Mr. Rogers of Florida. Would it be your Department's feeling that this should be confined to commercial fishing operations?

Mr. McKernan. The interest of our Department is in correcting this inequity in commercial fishermen, vessel owners, so the answer to your question, then, is "Yes."

Mr. ROGERS of Florida. You want it confined to that?

Mr. MCKERNAN. We haven't specifically said so in our present report, but our interest is in commercial fishermen.

Mr. ROGERS of Florida. Thank you very much.

Thank you, Mr. Chairman.

Mr. ROBERTS. Thank you, Mr. Rogers.

Anything further, gentlemen?

Mr. BROTZMAN. No further questions.

Mr. ROBERTS. Thank you very much, gentlemen, for your statements.

(The following information was later submitted for the record:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 8, 1963.

HON. KENNETH A. ROBERTS,
Chairman, Subcommittee on Public Health and Safety, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We have had an opportunity to review the proposed amendments to sections 1 and 2 of S. 978 which recently passed the Senate and the proposed explanation of these amendments, both of which were prepared by the Department of Health, Education, and Welfare with the assistance of the committee staff. A copy of these proposals is enclosed herein.

In our opinion, these changes would accomplish the objectives of this Department which are to restore to self-employed commercial fishermen the benefits they enjoyed prior to 1954.

Sincerely yours,

ROBERT M. PAUL,
Deputy Assistant Secretary of the Interior.

PROPOSED LANGUAGE FOR INCLUSION IN COMMITTEE REPORT ON S. 978

The committee amendments strike out the words "or self-employed" in sections 1 and 2 of the bill and insert in lieu thereof, "(or, in the case of a commercial fishing vessel, self-employed)".

The purpose of this bill, as modified by the committee amendments, is to restore to owners and coowners of U.S.-flag commercial fishing vessels, who perform seamen's services onboard, the eligibility for medical care in hospitals, outpatient clinics, and other medical facilities of the Public Health Service which was provided to them before a 1954 amendment to the regulations under the Public Health Service Act.

An opinion of the Office of the General Counsel of the Department of Health, Education, and Welfare, issued in 1951, had interpreted the term "employed" in section 2(h) and section 322(a)(1) of the Public Health Service Act[1] as excluding persons who are self-employed. After the General Counsel's Office, upon request for reconsideration, had adhered to its earlier opinion, the regulations were amended in 1954 so as to exclude from the term "seamen" "the owner or joint owners of a vessel [and] the spouse of any such owner".

Under the committee amendments, self-employed individuals engaged onboard a commercial fishing vessel in the types of activity described in section 2(h) of the Public Health Service Act will be considered "seamen," whether or not they are owners or coowners of the vessel. At the same time, self-employed persons on pleasure boats and other vessels that are not commercial fishing vessels would be excluded from coverage, whether or not such vessels are owned or chartered by such persons. Thus, self-employed persons on vessels used for sport fishery, even thought the vessel be one owned by a person commercially engaged in chartering such vessels to sport fishermen or taking sport fishermen on fishing trips for pay, would be excluded. The phrase "commercial fishing vessel" is, on the

[1] Sec. 2(h) defines "seamen" as including "any person employed onboard in the care, preservation, or navigation of any vessel, or in the service, onboard, of those engaged in such care, preservation, or navigation." Sec. 322(a)(1) provides that "Seamen employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canal boats engaged in the coasting trade" shall in accordance with regulations be entitled to medical, surgical, and dental treatment and hospitalization from the Service.

other hand, intended to include vessels engaged in the gathering of any form of either fresh water or marine animal life for commercial purposes, and will thus include vessels engaged in the commercial catching or harvesting of shrimp, lobsters, oysters, etc., as well as fish, if, as required by section 322(a)(1) of the Public Health Service Act, the vessel is a U.S.-flag vessel "registered, enrolled, and licensed under the maritime laws of the United States, other than canal boats engaged in the coasting trade." (The bill would not enlarge the coverage of section 322(b) of the Public Health Service Act which authorizes medical, surgical, dental, and hospital services to seamen on foreign-flag vessels on a user-charge basis.)

Mr. ROGERS of Florida (presiding). The next witness will be Mr. Jeff Kibre.

STATEMENT OF JEFF KIBRE, WASHINGTON REPRESENTATIVE, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

Mr. KIBRE. Mr. Chairman, my name is Jeff Kibre. I am the Washington representative of the International Longshoremen's and Warehousemen's Union, and I appear here today in behalf of our fisheries division, comprising some 3,500 west coast fishermen and related workers.

I welcome the opportunity to support legislation to restore to self-employed fishermen eligibility for medical care benefits under the Public Health Service Act.

This legislation does not call for breaking any new ground. It would simply return to a particular class of fishermen a service they were accorded from 1798 to 1954, a period of 156 years. The interruption of medical and hospital care in 1954 came as the result of an administrative ruling which was directed primarily at persons other than the fishermen in question.

Employee fishermen were not affected by the 1954 ruling. They have continued to receive Public Health Service care. What we are concerned about, then, is the denial of service to self-employed fishermen—a work force of some 10,000 men. This group, of course, feels that they are the victims of an obvious inequity.

Legislation to cure the problem passed the Senate last June. Similar bills were subsequently considered by this subcommittee. The legislation failed to move further largely because of an objection—as I understand the situation—over the definition of the term "seamen." That objection, I am sure, has been corrected in S. 978, the bill that recently passed the Senate.

Considering the legislative history, we definitely favor S. 978. This bill, in our judgment, meets most precisely the inequity created by the 1954 ruling.

The facts involved in the proposed amendment were substantially developed in the hearing of last August 13. I merely want to review the highlights of my previous testimony, which may be found on pages 34 to 36, inclusive, of the printed record.

Under existing provisions of the act, medical services are available to fishermen employed on board documented vessels if they are substantially engaged in the care, preservation, or navigation of the vessel. The great majority of the fishermen I represent meet these qualifications and, therfore, enjoy the services of the marine hospitals.

The need for the amendment arises from the fact that many fishermen are owner-operators of fishing craft, and are held to be self-employed. This is particularly true on small boats where one or more fishermen share ownership of a boat. Although these men may technically be defined as self-employed, they perform the same essention seamen services as employee fishermen. Except for the element of ownership in a vessel, they cannot be distinguished from employee fishermen. It is manifestly unfair, therefore, that they be barred from Public Health Service care.

S. 978 would restore this service by expanding the definition of the term "seamen." The existing language refers only to persons "employed" on board a vessel in the care, preservation, or navigation of such vessel. The amendment would extend the definition to include persons "self-employed" on board a vessel.

The effect of this change would be quite modest. It would only make eligible for service those self-employed fishermen who are engaged in the care, preservation, or navigation of a vessel, or in the service of those engaged in such care, preservation, or navigation. The door would not be opened for those persons against whom the 1954 ruling was primarily directed—casual fishermen, owners of pleasure yachts, or women living aboard houseboats.

One other point bears mention. In the Senate Commerce Committee hearing, the Bureau of the Budget raised the question of a user charge, not only with regard to self-employed fishermen but also for all such service to seamen generally.

We feel that such an issue is highly improper at this time. The subject of congressional policy toward the financing of the medical care program for seamen is not at stake here. We are dealing solely with an amendment which strikes at an inequity arising out of the 1954 administrative ruling. This amendment, therefore, should not be used as a vehicle to change a longstanding policy of Congress, a policy in effect since 1905.

One final consideration should be taken into account in appraising this legislation. The Nation's fishing fleet, for a variety of reasons, has been hard hit during the last decade. The details need hardly be recited. Suffice it to say that the average fisherman desperately needs a little encouragement from his Government, from this Congress.

Speedy action in approving S. 978 will be more than welcomed by thousands of fishermen, on small and big boats alike. It would be taken as a sign that they are not forgotten, that they are remembered from time to time as men who fulfill an important service for their country.

Mr. ROGERS of Florida. Thank you very much, Mr. Kibre.

Any questions?

Mr. BROTZMAN. Mr. Kibre, just one question: What is the specific longstanding policy of Congress that you allude to?

Mr. KIBRE. I allude to this fact: That since 1884, as I recall, there has been no user charge as such applied to seamen and since 1905 the cost of operating the marine hospitals has been met annually out of appropriations for that specific purpose. In other words, as far back as 1884, Congress removed the so-called head tax which had previously applied to seamen and substituted a tonnage tax.

The tonnage tax, however, was revised in 1905 and direct appropriations were substituted for the financing of the marine hospitals.

Of course, the tonnage tax does continue, but it goes into the Treasury as a part of the general receipts.

Mr. BROTZMAN. With regard to this original determination in 1884, what was the purpose of Congress or what is the legislative history behind the provision for this medical care, as you understand it?

Mr. KIBRE. As I understand it, medical care for the merchant marine, which was first provided for in 1798 was directed toward serving the national interest.

The national interest at that time was defined as having a strong merchant marine, and in order to preserve a substantial work force in the merchant marine, it was felt that the Government should provide medical service.

As I recall, that was the original basis for the national policy.

Mr. BROTZMAN. This is a general question. Does the same need exist today, as far as taking care of the national interest, that calls for this particular medical assistance to be provided?

Mr. KIBRE. Yes; I think that the same basic national interest prevails at the present time. Certainly it has been said time and time again that it is in the national interest to have a strong, healthy merchant marine, and, of course, the seamen are an integral part of that merchant marine and fishermen who are regularly employed aboard vessels or self-employed are certainly a part of the merchant marine. This has been historically so.

Mr. BROTZMAN. I take it from your comment that you predicate this statement upon the basis that at that time this was a fringe benefit or something to attract people to enlist in or become a part of the merchant marine. Would that be correct?

Mr. KIBRE. I wouldn't describe it as a fringe benefit.

Mr. BROTZMAN. How would you describe it?

Mr. KIBRE. I would describe it as an integral part of the service that was essential to having an effective body of seamen.

Bear in mind that the seaman employed aboard a vessel is not in the same situation as a person living or employed ashore. He is generally away from his home, goes long distances, and when he needs medical care he may be in a strange place and he needs that care quickly. It is important then to provide this extra service for the merchant marine in order to have and attract the men necessary to operate the merchant marine.

Mr. BROTZMAN. Let us assume you have a merchant marine that is on a ship. Would he be able to get service any more rapidly because he got it under the auspices of the Public Health Service than he would from some other source?

Mr. KIBRE. That would depend on circumstances.

Mr. BROTZMAN. Obviously, he would have to find a doctor or medical care whether it comes from the Public Health Service or from some private source, is that not correct?

Mr. KIBRE. That would be substantially correct.

Mr. BROTZMAN. So that, in fact, it does not assist him in getting medical assistance any more rapidly—the mere fact that it comes under the Public Health Service Act?

Mr. KIBRE. It might under some circumstances.

Mr. BROTZMAN. How would that occur?

Mr. KIBRE. It might help him to get the kind of expert medical care that he needs.

Mr. BROTZMAN. I said it would not help him get it any more rapidly, would it?

Mr. KIBRE. It might not. Under present circumstances, it might not, not necessarily.

Mr. BROTZMAN. Logically, it seems to me that you have to find a doctor and it does not make much difference whether he comes from the Public Health Service or from some private source, is that not correct?

Mr. KIBRE. That would be generally true.

Mr. BROTZMAN. You seem to have some reservation in your answer that I do not understand. I mean, is that not true?

Mr. KIBRE. The point is this, sir; that a man is hurt or he becomes sick; he is in need of quick medical care; he is in a strange port; he has to go shopping around for a doctor or he has to go shopping around for a hospital.

If the marine hospital is available, a hospital which has been caring for merchant marine people, which understands a number of their disabilities, he then certainly is going to get expert care immediately without having to shop around.

Mr. BROTZMAN. How many of these hospitals are there?

Mr. KIBRE. They are located in the principal ports.

Mr. BROTZMAN. So that he does not have to find a doctor. He can go to that specific place. Is that what you are saying?

Mr. KIBRE. Precisely. He is always aware that that marine hospital is there.

Mr. BROTZMAN. It puts it up to the seaman, then. What you are saying is that he has to find a doctor like everybody else does and it makes it more difficult for him to find a doctor?

Mr. KIBRE. I am sure that you are generally aware, sir, that if you are in a strange city, locating a doctor in whom you have confidence might sometimes be a problem.

Mr. BROTZMAN. I suppose the same thing applies to very other citizen of this country.

Mr. KIBRE. Exactly.

Mr. BROTZMAN. Is that not right?

Mr. KIBRE. That's true.

Mr. BROTZMAN. If you have doctors in every town that you are going to visit on the trip, it might be nice in the event you got sick, but that is not the way our country really operates.

Let me ask you this. I think my first question of you was, "Is this a fringe benefit that would attract people to being in the merchant marine," and I think, as you said, to preserve the national interest.

Mr. KIBRE. That is correct.

Mr. BROTZMAN. You seemed to disagree with my choice of terminology when I said "fringe benefit." You said it is an integral part. Let me ask you this question: Is it your position that the national interest would suffer because we would not have a merchant marine if the Public Health Service medical care was not provided?

Mr. KIBRE. I think it has been well established that the national interest would suffer if our merchant marine would wither away or if it becomes inefficient. I think this has been well established.

Mr. BROTZMAN. Let us go back now. The point I asked you was, "Do you think they would not become merchant marines if they did not have this Public Health Service entitlement?"

Mr. KIBRE. I certainly couldn't give a flat answer to that, but I would say that the existence and the availability of the marine hospitals certainly helps to keep the men in the merchant marine.

I know that it is an important element in the thinking of the average fisherman.

I am much better acquainted with the fishermen than I am with the members of the merchant marine, that is, the seagoing men.

Mr. BROTZMAN. There is one more question I have, and I was leading up to this. In your statement you say you feel that such an issue is highly improper at this time. That means how to pay for it; is that correct?

Mr. KIBRE. Let me put it this way: What we are dealing with, as I say here, is with the question of service that was provided to a particular class of fishermen for 156 years and which was removed by an administrative ruling in 1954.

What we are dealing with here is the question of restoring that service, restoring the situation that prevailed prior to 1954.

If the question of user charges is going to come up, it seems to me that it should come up as a separate issue dealing with the broad problem of financing of the Public Health Service care for seamen.

Mr. BROTZMAN. All right. Let us take your thesis as being correct. Do you think that the question of how to pay for this should come up as an issue?

Mr. KIBRE. It seems to me that Congress has already resolved that question.

If Congress wants to reopen it, certainly it can always be reopened.

Mr. BROTZMAN. I do not think it has been resolved as to the additional group of people that might come under the terms of the act; has it?

Mr. KIBRE. This amendment brings in primarily a class of fishermen who were under the act prior to 1954. It might, as the discussion indicated a few moments ago, bring in some self-employed seamen aboard other vessels.

As to how many, no figures can be advanced, but in the main the bill takes in a class of fishermen or a class of seamen beneficiaries who were covered prior to 1954.

Mr. BROTZMAN. Thank you very much.

Mr. ROGERS of Florida. Thank you very much, Mr. Kibre.

Mr. KIBRE. Thank you.

Mr. ROGERS of Florida. We appreciate it.

Mr. KIBRE. Thank you, sir.

Mr. ROGERS of Florida. Our next witness is Mr. Earl W. Clark.

Mr. Clark, we are glad to have you before the committee.

STATEMENT OF EARL W. CLARK, CODIRECTOR, LABOR-MANAGEMENT MARITIME COMMITTEE, AFL–CIO MARITIME COMMITTEE, AND AMERICAN MERCHANT MARINE INSTITUTE

Mr. CLARK. Thank you, Mr. Chairman.

Mr. ROGERS of Florida. Would you like to file your statement for the record, Mr. Clark?

Mr. CLARK. Yes; I would.

I testified at length for the group I represent both in the Senate and in the House last year and testified at length in the Senate this year, and I think, to save the committee's time, I would like to file it and then comment, please.

Mr. ROGERS of Florida. Thank you very much.

Without objection, the statement by Mr. Clark will be made a part of the record at this point, and we are delighted to have your comments, Mr. Clark.

(The statement referred to follows:)

STATEMENT OF THE LABOR-MANAGEMENT MARITIME COMMITTEE, AFL-CIO MARITIME COMMITTEE AND AMERICAN MERCHANT MARINE INSTITUTE ON S. 978 AND COMPANION HOUSE BILLS

The Labor-Management Maritime Committee, representing some of the major American-flag steamship lines and seagoing labor unions, the AFL-CIO Maritime Committee, consisting of the largest segment of maritime unions within the AFL-CIO, and the American Merchant Marine Institute, comprising a broad membership in the maritime industry, desires to jointly support the general intent and purpose of S. 978 and companion House bills. We believe that Public Health Service hospital and medical care should be made available to a certain class of seamen-fishermen now denied this service because they are owners, or part owners, of fishing vessels.

It should be pointed out that, prior to 1954, this class of persons was receiving such hospital and medical care, but was excluded during that year following a legal opinion by the General Counsel of the Department of Health, Education, and Welfare. We understand the occasion for such ruling arose in 1951 out of claims for medical care by certain parties occupying residential yachts and houseboats. The claims were based on the general language of the law. In the cases in point, the attempt was to include even a housewife, who was allegedly engaged in the care or preservation of the vessel under the literal wording of the act. It seems obvious that such persons were not intended to fall under the classification of seamen as set forth in 42 U.S.C. 201 (h).

In November of 1953 Public Health Service officials referred the matter to the General Counsel of that agency for review and advice. His opinion resulted in the issuance of regulations which had the broad effect of barring, among certain other beneficiaries, the owners, or part owners, of small fishing vessels to whom such medical and hospital care had been traditionally extended. The new regulations were first published in the Federal Register on March 24, 1954, revised and republished on May 26, 1954, and became effective June 26, 1954.

While no one could quarrel with the necessity for proper interpretation of the law and its appropriate application to the type of cases giving rise to the new regulations, the net effect upon certain of those in the fishing trade was unfortunate.

Seamen employed on vessels registered, enrolled, or licensed under the maritime laws of the United States are now entitled to Public Health Service care. This is clearly established in 42 U.S.C. 249(a)(1). The essence of the term "seamen" as defined in the statute is found in the words "care, preservation, or navigation" of vessels.[1] Fishermen are not entitled to Public Health Service medical and hospital care by virtue of being fishermen—quite the contrary. They are not covered under the statute at all unless their activities encompass the care, preservation, or navigation of vessels. In such case, they qualify because they are, in fact, seamen, and not because they may also engage in fishing. Fishing is incidental to eligibility for medical and hospital care and is not governing.

The fact that a person enjoys an ownership, or part ownership, of a small fishing boat in which he pursues his occupation does not appear to change the complexion of his occupation as a seamen-fisherman. Furthermore, his occupation is for the most part comparable to the many other types of seamen. In fact, many of these seamen-fishermen have been readily adjusted to other types of seamen's duties during wartime, or in periods of national emergency. Certainly,

[1] 42 U.S.C. 201(h).

their normal duties on board a vessel are not changed by virtue of the fact that they have an interest in some fishing boat.

We subscribe to modification of the law to the extent that it can be interpreted to reinstate, as recipients of Public Health Service hospital and medical care, owner-operators of fishing boats (documented under the laws of the United States).

The wording of S. 978, and companion House bills, includes the language "any person employed or *self-employed* on board in the care, preservation or navigation of any vessel." (42 U.S.C. 201(h), italic supplied.) The use of the word *self-employed* is new and would reinstate the owners of fishing boats to Public Health Service medical and hospital care, from which they were excluded on June 26, 1954.

The report of the Public Health Service, submitted on S. 978 this year, contains the following language:

"The legislative history of this program suggests that the participation of the Federal Government in providing medical care to merchant seamen rests primarily on a national interest in assuring the effectiveness of the labor force required for an adequate American merchant marine. A self-employed owner who performs duties related to the care, preservation, or navigation of a documented vessel of the United States is, in effect, fulfilling the same purpose as the employed seamen on board the vessel. Since such persons are in fact applying their maritime skills, they are essentially adding to the maritime labor force.

"Although statistics are not available on the additional number of persons who would come within the provisions of the law under the present bill, we believe that neither the number nor cost would significantly affect the present program, and that enactment of this bill would pose no serious difficulties for this Department as a provider of services.

"The purpose of the bill is to remove an apparent inequity in present practice by amending the act to include a certain class of self-employed seamen who formerly enjoyed the privilege of receiving medical care in Public Health Service hospitals, and not to expand the program in any substantial manner. Speaking solely as a provider of services, this Department has no objection to the enactment of the bill."

The insertion of the word "self-employed" in section 322(a)(1) of the Public Health Service Act (U.S.C. 249(a)(1)), is chiefly for the purpose of making this section consonant with 42 U.S.C. 201(h).

We support S. 978, and companion House bills, for several reasons:

(*a*) The bill maintains the integrity of the term "seamen" as defined in current statutes.

(*b*) The bill will not floodgate the Public Health Service by unduly increasing the number of recipients otherwise not entitled to its service.

(*c*) The bill reinstates only those who legitimately should receive medical and hospital care and who were excluded by a legal interpretation based on technicalities of the law, rather than upon the merits.

This is appropriate legislation and should be passed by the Congress.

Mr. CLARK. Thank you, sir.

I would like to state that the filing of this document covers the position taken by the Labor-Management Maritime Committee, which is composed of major shipping lines and seagoing unions.

It is also subscribed to by the AFL–CIO Maritime Committee, of which Mr. Haddock is a codirector and who is here present.

It is subscribed to by the American Merchant Marine Institute through its vice president, Mr. Alvin Shapiro.

These three bodies comprise the great bulk, I would say, of shipping in this country, both of labor and management, so that the position is well supported from private industry.

Since I am filing this statement on behalf of these committees, I should like, with the permission of the Chair, to address myself to some of the problems that have been raised here today.

I think you will find that the persons on tugboats and barges who are engaged in the care, preservation, and navigation of vessels are already covered and, therefore, are not involved with this legislation.

I would like to say with reference to the Bureau of the Budget statement on user charges or tonnage taxes that no tonnage taxes have been levied against fishing vessels, so that that problem here would seem to be separate from the one that is being considered.

What is being considered here is the elimination of an inequity to these people who were taken out of the program in 1954, not the tonnage tax, and I think that falls perhaps under a completely different category.

I would say for the groups that I represent we do not favor the imposition of a tonnage tax on the fishing boat industry in connection with this bill.

Tonnage taxes have been levied against ships in the foreign commerce and in the domestic commerce of this country since 1884. Here you have a very high degree of commercial enterprise dealing with large ships which carry large amounts of cargo for this country.

In the case of these little fishing boat operators they may have just a small little boat. Most of them do not earn a large amount of income. They do not have a large amount of capital invested, and a great many of them I think have a struggle to get along.

You are dealing with an entirely different proposition here than you are dealing with in relationship to broader phases of the foreign and domestic commerce of the United States.

It is an entirely different problem, and to levy a tax against these people when it has not been traditional to do so, I think would be unreasonable.

I just want to comment as to the general proposition which I believe you read in the comments of the Bureau of the Budget which implied that the whole question of tonnage taxes, not only for seamen but across the board, might be involved here.

I would like to say that this, again, is an entirely different matter from the subject that is being brought up. This came up in the last three sessions of the Congress, and points up some of the things which the shipping industry is up against.

The shipping industry is an industry unique in itself with regard to this problem. Let me say that no industry in this country is under the type of regulation and law or the extent of regulation and law as is the merchant marine.

Under the admiralty clause of the Constitution seamen are considered wards of the state. They are treated differently from other types of employees and they have been treated by the courts differently down through the years in the claims which devolve upon the shipping industry.

We have other statutes, such as the statutes requiring maintenance and cure on the part of the operators for seamen all over the world who become sick at sea and who have to be kept on a certain allowance by the shipping lines until they recover. There is the doctrine of unseaworthiness, the Jones Act, and all of the other laws that apply, so the shipping industry is contributing its share through the application of a number of maritime laws.

The presumption of the Bureau of the Budget here would be that we are like any other normal industry and, therefore, we should have an imposition of user charges to accomplish this.

Gentlemen, let me say this with all due respect. We feel in our industry that the Bureau of the Budget is leading in the direction of wanting to do away with these marine hospitals. If they succeed in this thing it will be one of the worst things that has happened to the merchant marine of this country in its ability to help defend this Nation in case of war.

I think that the gentleman who testified before me made a very good point, Mr. Wedin, in connection with these fishing boats, when he said, and I will turn to his statement:

> The seafaring industry provides an outpost for the United States of value for military purposes. Seamen are usually the first to provide surveillance for their country in time of crisis.

He also made the point that the maritime industry, and this is especially true of the fishing boats, serves as an auxiliary to the Coast Guard, and related that to the present Russian fishing problem.

I am certain that if some of things which are known in this industry could be made available, and which can't, perhaps, because of security regulations, you would find that there is a close tie between the fishing boats and the defense of this country.

When you come to the overall merchant marine, we are the only industry in this country that is taken over, lock, stock, and barrel when war is declared. All our ships are taken over. They are operated for Government account and our shipping lines run their operations for Government account.

At the Normandy invasion, these ships backed up General Eisenhower. They were all running under Government account. After the war is over ships of the American merchant marine are returned back into private hands.

Some folks have said, "Well, we are no different from United States Steel, and a lot of other corporations."

This is not so. The Merchant Marine Act of 1936, section 101, provides that it is the policy of the Congress of the United States and of this country that we have seamen capable of serving as an auxiliary force to the military in case of war and they must be trained and efficient at all times. No other industry must keep its men fit at all times, ready for immediate conflict. So I offer this to show that the Government itself has a stake in the health of seamen. It is not aside from the question, gentlemen; it is right to the point, with reference to the Bureau of the Budget's proposal, when we forget that the Government has a great stake in this merchant marine. The Government is paying out millions of dollars to keep it alive and the steamship lines are putting up over two and a half billion dollars within the next several years in order to replace all their fleets and every one of those ships has to meet the Nation's defense purposes.

Let it not be said that the merchant marine, including these fishing boats, is just another industry and the Government has no interest in the health of seamen. The very Government policy under which the Congress is now supporting the merchant marine and which has existed since 1936, sets forth clearly the position of the U.S. Government on it, and I think the Bureau of the Budget is far afield on this. I think if its proposal ever gets to the Congress, we will want certainly to speak out very decidedly upon it.

I think it is a mistake to raise it in connection with these little fishing boats. They don't make a whole lot of money. I know a lot of those people who have little boats. Some of them just eke out an existence. To throw a tonnage charge on them is improper. You might as well throw a tax upon the Coast Guard, and the Coast and Geodetic Survey, and the other recipients of the public care in the Public Health Service hospitals. They are in there, too, and I am for them, but there are some things here that don't meet the eye unless they are brought out. I hope what I have said may be of some benefit to the committee.

I think the Government's interest transcends just the mere matter of who gets public care. Certainly, I say to you it is not a fringe benefit and we don't consider it so.

The industry is putting up money; the Government is putting up money. Each puts it up on the basis of its own interest in the matter of keeping a strong, healthy merchant marine, and, as the act says, not only to carry a substantial portion of the commerce of this country, but also to serve this Nation in case of defense, and we are usually the first to be called.

I would like to just clarify one other thing.

A question was asked by one of the gentlemen about the number of hospitals. There are 12 general service Public Health Service hospitals in the country. They are located on the coastline with three exceptions—Detroit, Memphis, and Chicago.

In addition to those 12, there are three special hospitals, one located at Lexington, Ky., one at Fort Worth, Tex., and one at Carville, La.

Aside from that, there are 25 outpatient clinics in the country and 115 outpatient offices. These are offices to care for people that are far distant from the hospitals and, also, to take care of the overload in the area of the hospitals.

As far as the legal interpretation by the General Counsel of the Public Health Service or the Health, Education, and Welfare Department is concerned, the recommendation of the groups that I represent would be this: Unless you pass this legislation you will have no assurance that this will be carried out. I myself used to be in the Government. I was in the Maritime Administration for a number of years, during the Korean war. I have the highest degree of respect for the Federal service. I couldn't have worked for it as long as I did before I went into private employment if I hadn't, but I know there are certain overall policies that emanate from the Bureau of the Budget. And these Government people who testified before you here today have to reconcile their answers in terms of that overall policy.

I oppose some of these overall policies, as I think a great many people do.

I have made comments on the essential issues that have been raised with the thought that I might be helpful to your thinking. I should like to leave it there and if you have any questions, I will be happy to respond.

Mr. ROGERS of Florida. Thank you very much, Mr. Clark.

Some of the points you have made have been most helpful.

Any questions?

Mr. BROTZMAN. No questions.

Mr. ROGERS of Florida. Just one question. I notice that the Bureau of the Budget again differs with you one the extension of coverage

and I think it might be helpful if you could furnish the committee with information about present coverage on tugs and this sort of thing, if you could just submit it to the committee.

Mr. CLARK. I would be glad to do this.

Mr. ROGERS of Florida. I think it would be helpful in our further consideration.

Mr. CLARK. I would be happy to do that.

(The information referred to follows:)

STATEMENT FOR THE RECORD

The statement that "Persons on tugboats and barges who are engaged in the care, preservation, and navigation of vessels are already covered" by medical and hospital care in the Public Health Services hospitals is correct and referred to the employees on such vessels which are engaged in local traffic. It was not intended to refer to owner-operators of such vessels. If the context of the Bureau of the Budget's reference was solely to owner-operators of such vessels, the reference would be correct, and such owner-operators, not now eligible, would be covered under the provisions of S. 978, if engaged in the care, preservation, and navigation of the vessels.

Mr. ROGERS of Florida. All right.

Thank you very much for giving us the benefit of your views, Mr. Clark. You have been most helpful.

Mr. CLARK. I thank the committee.

Mr. ROGERS of Florida. At this point in the record, I have a few statements and communications received by the committee that will be placed in the record.

(The documents referred to follow:)

SEATTLE, WASH., *October 14, 1963.*

Representative KENNETH A. ROBERTS,
Chairman, Subcommittee on Public Health and Safety,
House Office Building, Washington, D.C.:

We strongly urge you and your committee to please accept S. 978, marine hospitalization bill, favorably.

ASSOCIATION OF WIVES OF COMMERCIAL FISHERMEN,
MRS. THOMAS L. WARREN, *President.*

SEATTLE, WASH., *October 13, 1963.*

Representative KENNETH ROBERTS,
House Office Building,
Washington, D.C.:

Pacific Northwest fishing industry urges you to support Senate bill 978 now before Public Health and Safety Committee. This or similar House bill needed to correct previous injustice when longstanding medical care for self-employed seamen was terminated and to give support to U.S. fishing industry now struggling for existence in hand-to-hand competition with vast Japanese and Russian fishing fleets whose fleets have complete support from their governments. Your support will be appreciated.

FISHING VESSEL OWNERS ASSOCIATION.

ANACORTES, WASH., *October 13, 1963.*

Representative KENNETH ROBERTS,
Washington, D.C.:

I am in favor of restoring rights of self employed commercial fishermen to the marine hospital.

BOAT "FRITZIE MARIE,"
LLOYD WOOLFEY.

OCTOBER 10, 1963.

Representative KENNETH A. ROBERTS,
Chairman.

DEAR SIR: Would be most grateful for your support on the bill S. 978. I am a fisherman's wife and the rest of them in the industry are waiting for the restoration of Public Health Service benefits.

Sincerely,

Mrs. ROBERT BASSETT,
Boat "Astrid."

AMERICAN MEDICAL ASSOCIATION,
Chicago, Ill., October 14, 1963.

HON. KENNETH A. ROBERTS,
Chairman, Subcommittee on Public Health and Safety, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN ROBERTS: I should like to take this opportunity on behalf of the American Medical Association to submit respectfully for your consideration our views on H.R. 2108, S. 978, and related bills of the 88th Congress which are now being considered by the Subcommittee on Public Health and Safety of the Committee on Interstate and Foreign Commerce.

It is our understanding that the proposed bills would amend the Public Health Service Act in such manner so as to provide that self-employed individuals on board commercial fishing vessels and other ships of U.S. registry would be eligible for medical, surgical, and dental treatment and hospitalization without charge at Public Health Service hosiptals.

Although we shall not comment on the fundamental issue of provision of medical care to merchant seamen as a matter of public policy, I would like to direct your attention to certain portions of the 1955 Hoover Commission Task Force Report on Federal Medical Services, which stated, in part:

"It is difficult to understand what substantial reasons may be advanced today to support the singular claims of seamen for medical services at Government expense. * * * Though the actual beneficiaries of the medical services are the seamen themselves, this practice is, nonetheless, a form of subsidy for the shipping industry. As such it is a precedent that might well inspire similar demands from employees of other industries. * * * Merchant seamen as an identifiable group within the Nation's total population are insurable. * * * Voluntary health insurance can provide medical and hospital care for merchant seamen to the same extent and degree as it does for employees of other industries."

The master or owner aboard a commercial vessel is an entrepreneur. The legislative history of the program whereby seamen are furnished medical and dental services at taxpayers' expense suggests that the participation of the Federal Government in providing medical care to merchant seamen rests primarily on a national interest in assuring the effectiveness of the labor force required for an adequate American merchant marine. The extension of this doctrine to self-employed individuals and owners of documented vessels is not, in our opinion, in the public interest nor a necessary or desirable expenditure of public funds. These are individuals who can, and should, as do millions of other Americans who are self-employed in other industries, provide for their medical and dental care and hospitalization from their own resources or through the purchase of one of a myriad of plans of private health insurance.

The American Medical Association, as spokesman for this country's physicians, believes, as a matter of policy, that personal medical care is primarily the responsibility of the individual. It is only when the individual is unable to provide such care for himself that payment for such care may become a public responsibility. The proposals embodied in the legislation before your subcommittee to provide medical and dental care to the self-employed is not justified by either need or any special relationship to the Federal Government. Such owner-seamen are not wounded in the service of our Nation as are veterans with service-connected disabilities; they are not employees of the Federal Government, participating in a voluntary, contributory health insurance program, as are civil service employees; they are not members of the Armed Forces or their dependents, who have voluntarily, or by command of the Government, relinquished for a period of time their right of movement from job to job.

Accordingly, we respectfully request that this proposal now before your subcommittee not be given favorable consideration. We urge that the subcommittee and the Congress jealously guard against unwarranted expenditures of public funds for individuals who are capable of providing for their own needs and who cannot be classified as wards or employees of our Nation's Government.

Thank you for this opportunity of presenting the views of the Nation's physicians on this legislative proposal pending before your subcommittee. I respectfully request that this statement be made a part of the record of your hearings on this bill.

Sincerely yours,

F. J. L. BLASINGAME, M.D.

Mr. ROGERS of Florida. The committee will now stand in recess subject to the call of the Chair to hear further testimony from the General Counsel of HEW.

(Whereupon, at 12:10 p.m., the subcommittee recessed subject to the call of the Chair.)

MEDICAL CARE FOR SELF-EMPLOYED SEAMEN

THURSDAY, OCTOBER 24, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC HEALTH AND SAFETY
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
Washington D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Kenneth A. Roberts (chairman of the subcommittee) presiding.

Mr. ROBERTS. The subcommittee will please be in order.

We are meeting today to hear from the Department of Health, Education, and Welfare. With reference to certain language in Senate bill 978 and related bills with reference to providing medical care for certain persons engaged onboard a vessel in the care, preservation, or navigation of such vessel.

At the last meeting we had several of our colleagues testify on these bills and the representative, I believe from the Department of the Interior, testified that under the language of S. 978 the benefits sought to be derived under these bills could be extended to persons engaged in the care, preservation, or navigation of such vessels as ferries, tugboats, houseboats I believe, and some other charter boats, and this interpretation gives this subcommittee a great deal of trouble.

It is our understanding that prior to the 1954 administrative ruling which eliminated owner-operators, these benefits were not extended to these classes, but that probably one thing that brought about that ruling, I believe, was the fact that the wife of a houseboat owner sought these benefits at a Public Health Service hospital. Therefore, this morning we had set aside for hearing the representatives of the Department of Health, Education, and Welfare, and it is my pleasure to welcome Mr. Sydney Edelman, assistant chief, Public Health Division, Office of the General Counsel.

We are glad to have you, Mr. Edelman. We would be happy to have your comments.

STATEMENT OF SIDNEY EDELMAN, ASSISTANT CHIEF, PUBLIC HEALTH DIVISION; ACCOMPANIED BY THEODORE ELLENBOGEN, DEPUTY CHIEF, LEGISLATION DIVISION, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. EDELMAN. Thank you, Mr. Chairman.

As the chairman just said, the question of the employment status of persons living on houseboats came up prior to 1954. If the act is amended as proposed by S. 978, it will include individuals who are self-employed aboard documented vessels of the United States as sea-

men if they perform the customary activities of a seaman in the care, preservation, or navigation of the vessel.

Mr. ROBERTS. You agree then with the opinion of the witness for the Department of the Interior?

Mr. EDELMAN. Yes, sir. I read that in the record and I agree with it.

Mr. ROBERTS. Let me ask this further question: Do you think it would take an amendment of an exclusive nature to cure this situation and to limit it to fishing vessels engaged in commercial fishing, that is, exclude charter boats, exclude ferries, excluding tugboats, possibly by naming those types of vessels that the committee would desire to exclude? Would it be your recommendation that language in the form of an amendment would be the proper way to cure it, or do you think we could cure it by spelling out the legislative intent in the form of a report?

Mr. EDELMAN. Mr. Chairman, I think the question of spelling out legislative intent in a report is always a hazardous operation. The language of the statute is so broad that the legislative intention as expressed in a report may not be sufficient to furnish a legal basis for restriction.

I think if the committee intends to restrict the remedial effect of this amendment to a category of seamen it should specify in the bill exactly what kind of restriction it intends to be applied.

Mr. ROBERTS. May I suggest then that the Department submit language to us that would acomplish the exclusion of the group that you say would be excluded in the broad language of the Senate bill?

Mr. EDELMAN. Do I understand it is the intention of the committee to restrict the effect of this amendment to owner-operators of commercial fishing vessels?

Mr. ROBERTS. That is correct.

Mr. EDELMAN. We will be glad to prepare such an amendment for the committee.

Mr. ROBERTS. Thank you, Mr. Edelman.

Mr. Schenck?

Mr. SCHENCK. My only question, Mr. Chairman, is that it would be confined then entirely to fishermen on fishing vessels whose purpose is to sail and work in the collection of fish for sale on the open market and not a pleasure boat or pleasure vessel?

Mr. EDELMAN. If this is the intention of the committee, I think language can be drafted to accomplish that purpose, though I would like to offer my personal views. It would be very difficult to draft a definition which will include only vessels actually engaged, because vessels do tie up for repairs and they do have crews aboard, even though they are not actually engaged in fishing operations, but I think the language can be drafted to accomplish this purpose.

Mr. SCHENCK. Well, the purpose, as I understand the chairman's idea, is that it be confined to only those vessels which are engaged in commercial fishing, not just when they are engaged, but which are so engaged full time except when being repaired as their reason of operation, and not any commercial type charter boat service which takes people out for pleasure fishing. Can that be done?

Mr. EDELMAN. I think we can put the words together to accomplish that, Mr. Schenck.

Mr. ROBERTS. Mr. Nelson?

Mr. NELSON. No questions. Thank you.

Mr. ROBERTS. One other question, Mr. Edelman. I ask this for Mr. Rogers of Florida, who is really the one who originated this line of inquiry. Have there been any requests for reconsideration of the 1954 opinion?

Mr. EDELMAN. Yes, Mr. Chairman, there was a request and I would like to just briefly go back and give the chronology of this. Two opinions were written in 1951 in the month of October, one dealing with the owner of a vessel in Florida who was listed as the master.

The vessel had been tied up in port for 5 years. The woman worked in town at Food Fair and various grocery stores and said she was engaged every night and weekends in the preservation of the vessel in order to get it ready for navigation, but because of the lack of time she was falling behind and the vessel was falling into a worse and worse state of preservation, and it looked as though she would never be able to get it out to navigate it.

The other one involved a houseboat in Washington where the wife of the owner of the boat came in for medical care. In both those cases we held in the light of the legislative history that Congress intended that the medical services be available only to seamen who occupied the status of employees.

In 1953 we were asked to reevaluate that opinion by the Public Health Service to determine whether there was any basis for changing our views. At that time, on December 29, 1953, we advised the Service in writing that we had reexamined the previous opinions and saw no reason to change our views. We suggested that if there was any confusion it might be desirable to amend the regulations in order to specify that individuals who were not actually employed as employees were not eligible.

This was done by a notice of proposed rulemaking published in the Federal Register on March 24, 1954. Thirty days notice was given. No comments or protests of any kind were received. The regulation was then promulgated and went into effect 30 days after publication on May 26, 1954, so the interpretation of the provision is now embodied in regulations.

I have a copy which I will submit. It is section 32.1(d) of the Public Health Service Regulations, as amended, which contains the definition of "seaman."

This now has the force and effect of law. It has never been challenged in court. No one has ever brought a suit contending that he had been denied care illegally because the regulation was invalid or beyond the authority of the Surgeon General and the Secretary to promulgate. As far as the Office of General Counsel is concerned, we have from time to time informally been asked whether our views have changed or are subject to change, and each time we have reviewed the original opinions and have indicated that we saw no basis for a change in our views.

Mr. ROBERTS. That answers the question that I think Mr. Rogers of Florida would like to have in the record. Also, without objection, the regulation which you submitted will be included in the record.

Mr. EDELMAN. I have copies of the opinions referred to, Mr. Chairman, if you would like them to be submitted for the record.

Mr. ROBERTS. I would like to have those opinions too, please.

(The information referred to follows:)

FEDERAL SECURITY AGENCY,
OFFICE OF THE ADMINISTRATOR,
OFFICE OF THE GENERAL COUNSEL,
October 12, 1951.

Office memorandum—U.S. Government.

To: Mr. Robert T. Hollinger, Chief, Regulations and Procedures Section, Division of Administrative Management, BMS.

From: Office of the General Counsel.

Subject: Medical services—Eligibility for medical care of owner of vessel—Mrs. Hermia Sobraski.

Your memorandum of August 14 on the above case forwards a copy of a memorandum from the Medical Officer in Charge of the Outpatient Clinic, Miami, Florida, concerning the eligibility of Mrs. Sobraski for treatment as a statutory beneficiary of the Service and requests our views on the subject.

It appears that Mrs. Sobraski is the master and owner of the "Virginia Dare," a vessel documented under the laws of the United States. The vessel, however, has been tied up for the past five years and has been used as Mrs. Sobraski's home while she has been employed ashore. Apparently she returns to the vessel each evening and, according to her statement, engages in the preservation and care of the vessel for the balance of the evening. The questions presented are whether, under these facts, Mrs. Sobraski is a "seaman" and whether the vessel is "temporarily laid up in port" within the meaning of Part B, Chapter I, section 2.22 of the Division of Hospitals Operation Manual.

It is unnecessary to answer these specific questions as we have concluded that Mrs. Sobraski as owner of the vessel is not "employed on board" such vessel and is therefore not entitled to benefits under the Public Health Service Act.

Section 2(h) of the Act defines the term "seamen" as including "any person *employed* on board in the care, preservation or navigation of any vessel, or in the service on board of those engaged in such care, preservation or navigation." (Emphasis added.) This definition has been retained without substantial change since its original enactment in 1875 (18 Stat. 485), apparently in response to recommendations by the Supervising Surgeon.[1] Prior to 1875 the term "seamen" had not been defined in the statute.

Under section 322(a)(1) of the Act, applicable to Mrs. Sobraski's claim, medical care is authorized for seamen "employed on vessels of the United States . . ." [Emphasis added.]

In order to be eligible for medical benefits in accordance with the provisions of the statute, therefore, an individual must not only be a "seaman," but must also be "employed" aboard a vessel as such. The term "employed" as used in the statutory language quoted above may not, in the light of legislative history, reasonably be interpreted as equivalent to "occupied" or "engaged in" but must be taken to refer to services rendered in an employment relationship under a contract of hire, express or implied.[2]

The history of the provisions for the medical care of seamen discloses that, apart from any question as to the nature of the duties which bring an individual within the class of persons considered as seamen, the statute was intended to benefit those merchant seaman who received an economic return for their services in the form of wages (not as a profit on an investment of capital), and thus fell into a generic classification of "employees." One of the purposes of the early statutes here discussed was to provide means for the relief of seamen "by withdrawing a small fund from time to time from their maritime earnings." Seamen were traditionally considered a reckless and "improvident class of men" who would not make provision for their future needs unless compelled to do so.[3]

[1] A definition was recommended to assist in the collection of hospital dues and the determination of eligibility for care. United States Marine Hospital Service, Annual Reports 1873, p. 14; 1874, p. 7.

[2] In view of the requirement of section 322 (a) (1) quoted above, it is immaterial in this case whether the definition of the term "seaman" in section 2 (h) is to be considered as an open or restrictive definition. See our memorandum of August 5, 1944 on the eligibility of lunchroom employees of ferry concessions.

[3] *Reed* v. *Canfield*, 20 Fed. Cas. 426 (1832).

The limitation of benefits to individuals whose maritime earnings were derived from their services rendered as employees is accordingly understandable "in the light of the mischief to be corrected and the end to be attained." [4]

The first Federal legislation providing medical care for seamen (1 Stat. 605, Act of 1798) entitled "An Act for the relief of sick and disabled seamen" required the "master or owner of every ship or vessel of the United States" to pay to the collector 20 cents per month for every seaman "*employed* on board such vessel," which sum he was authorized "to retain out of the *wages* of such seaman." [Emphasis added.] That the seaman's status as an empolyee was one of the elements on which liability for the tax depended is made even clearer by the Act of June 29, 1870 (16 Stat. 169). That Act raised the hospital dues to 40 cents per month for every seaman "*employed* on sail vessel" and authorized the master or owner to "collect and retain [such sum] from the wages of said *employees*." [Emphasis added.] Significantly, section 5 of the Act of 1870, the forerunner of section 322 (a) of the present act, provided for the disbursement of the fund so collected for the "care and relief of sick and disabled seamen *employed* in . . . vessels of the United States." [Emphasis added.]

At the time the definition of "seaman," referred to earlier, was adopted by the Act of 1875, the funds for the maintenance of what were then known as the Marine Hospitals were still derived from taxes laid upon the wages of seamen *employed* on vessels of the United States. That Act, which again authorized the withholding of hospital dues from "each seaman's wages," also provided a penalty for the failure to keep accurate records of seamen "employed" on board vessels subject to the payment of hospital dues.

The statutes have thus uniformly recognized and required as an essential element for liability for the hospital tax and for eligibility for benefits that the seamen here considered be "employed" on vessels or, as stated in the Act of 1870, supra, be "employees."

By the Act of June 26, 1884 (23 Stat. 57) all provisions for the assessment and collection of a hospital tax for seamen were repealed and it was provided that the expense of maintaining a Marine Hospital Service was thereafter to be borne by the United States out of the receipts of duties on tonnage. The statute, however, both in its definition of seamen (now section 2 (h)) and in its conditions of eligibility for care, (now section 322 (a)(1)) continue to require that the seamen be "employed" on vessels of the United States.

The current regulations of the Public Health Service, in accordance with sections 2(h) and 322(a)(1) of the Public Health Service Act, make plain that the economic status of a seaman as an employee [5] is a necessary element for his classification as a person entitled to benefits under the Public Health Service Act. Specifically, section 32.14 requires, among other things, evidence that the applicant "has been employed on a * * * vessel of the United States." Again, section 32.15 refers to the eligibility of seamen taken sick or injured ashore "while actually employed on a vessel." Finally, this economic dependence of the seaman on the business of others is underscored by section 32.17 which preserves the eligibility of a seaman where more than 90 days have elapsed since his last service if, among other things, such lapse of time was "due to closure of navigation or economic conditions resulting in decreased shipping with consequent lack of opportunity to ship." "Lack of opportunity to ship" in this context is meaningful only to an employee looking for employment and not to an employer who performs services on his own vessel.

In the light of this discussion, the decisive question in this case is not the condition of the vessel or the nature of the work done by Mrs. Sobraski, but whether she is "employed" aboard the vessel owned by her. It seems to us that where an individual is the sole owner of a vessel, as a matter of law he cannot be said to be "employed" aboard such vessel as a seaman, regardless of whether he actually performs the services traditionally rendered by seamen. The employment relationship, including employment as a seaman, is essentially a contractual one, either express or implied,[6] and an individual cannot contract with himself so as to make himself his own employee. Accordingly, since Mrs. Sobraski is the owner of the *Virginia Dare*, she is not "employed" aboard such vessel within the meaning of the Public Health Service Act, and she is not therefore entitled to benefits under that Act.

SIDNEY EDELMAN.

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[4] *Warner* v. *Goltra*, 293 U.S. 155; *N.L.R.B.* v. *Hearst Publications*, 322 U.S. 111; *U.S.* v. *Silk*, 331 U.S. 704.

[5] Cf. *Bartels* v. *Birmingham*, 332 U.S. 126, 130, *United States* v. *Silk*, 331 U.S. 704, 712.

[6] 48 Am. Jur. Shipping 140; 56 C.J. 931; the *Joseph B. Thomas*, 148 F 762.

FEDERAL SECURITY AGENCY,
OFFICE OF THE ADMINISTRATOR,
OFFICE OF THE GENERAL COUNSEL,
October 30, 1951.

Office memorandum—U.S. Government.

To: Mr. Robert T. Hollinger, Chief, Regulations & Procedures Branch, Division of Administrative Management, BMS.

From: Sidney Edelman.

Subject: Medical services—Eligibility for medical care of spouse of owner of vessel—Mrs. Claude C. Ham.

The material transmitted with your memorandum requesting our views on the eligibility of Mrs. Ham supplies a basis for finding the following facts:

Mrs. Claude C. Ham claims status as a seaman entitled to medical care because of services performed by her aboard the "Suzy Too," a vessel documented under the laws of the United States. The "Suzy Too" is owned by Mrs. Ham's husband, who is also the master of the vessel, and is used by them as their home. Mr. Ham has been a full-time employee of the Department of the Army for the past year, while Mrs. Ham is employed full time by the Veterans' Administration. The vessel is docked at 1300 Maine Avenue, Washington, D.C., and has not been used in trade or fishing for over six months. There is no evidence that the owner uses the vessel for anything other than a residence, except the master's certificate submitted by Mrs. Ham, dated July 27, 1951, which states that the vessel is used "for the coastal trade and mackerel fisheries." On July 31, 1951, the Bureau of Medical Services advised Mr. Ham that his wife was not eligible for medical care as a seaman beneficiary of the Service and agreed to consider any additional evidence submitted.

In support of the claim for benefits, Mr. Ham then furnished the additional information[1] that on weekends and evenings, Mrs. Ham engages in work connected with the care and preservation of the vessel, such as preparation and serving of food aboard, cleaning, painting, maintenance of records and charts and the handling of correspondence relating to the vessel. According to her husband, Mrs. Ham maintains "a constant watch over the craft" to protect against loss or damage, standing "ten to twelve hours of watch service everyday." He admits that her watch period "includes the time normally devoted to sleep" but asserts that "asleep or awake she is alert to conditions affecting the vessel's welfare." There is no evidence that Mr. Ham paid or agreed to pay his wife for these services.

It is unnecessary to determine whether, on the basis of these facts, Mrs. Ham is a "seaman," as that term is defined in section 2(h) of the Public Health Service Act, as we have concluded that she is not "employed on board" the vessel and is therefore not entitled to benefits under the Public Health Service Act.[2]

The services performed by Mrs. Ham, such as cleaning, painting, cooking, handling of correspondence and records relating to her home, and watchfulness to protect her home against harm, are duties traditionally incident to the marital relation, whether performed by the wife on a vessel used as a home or ashore in a more conventional home. In the absence of statute, a wife cannot contract with her husband for the performance by her of services incident to the marital status. It would, indeed, be a rare case in which a claim could successfully be made on alleged contract of employment between a wife and her husband for the performance of domestic duties in their home.[3]

In this case, however, no claim is made that Mrs. Ham's services were performed under a contract of employment nor has any evidence been submitted which would tend to support such a claim if one were made. Under the facts submitted, it may reasonably be found that Mrs. Ham's services were not rendered in "employment" but as an incident to the marital relation, and that she was not, therefore, "employed on board" the vessel as required by the Public Health Services Act. Accordingly, we concur in the holding of the Bureau of Medical Services that Mrs. Ham is not eligible for benefits under section 322(a)(1) of the Public Health Service Act.

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[1] Letter dated Aug. 2, 1951.

[2] See our memorandum of Oct. 12, 1951, entitled, "Medical Services—Eligibility for Medical Care of Owner of Vessel—Mrs. Hermia Sobraski."

[3] Cf. In re *Straka's Estate*, 275 N.W. 919; *Frame* v. *Frame*, 36 S.W. (2d) 152; see also sec. 3, "Property Rights of Husband and Wife," Selected Essays on Family Law, pp. 441–502.

DECEMBER 29, 1953.

Office Memorandum—U.S. Government.

To: Mr. Robert T. Hollinger, Legislative Legal Liaison Officer, BMS.
From: Office of the General Counsel.
Subject: Division of Hospitals—Medical care for seamen—Eligibility of master-owner and spouse of owner as "seamen."

Reference is made to your memorandum of November 19, 1953, which requests our review of the conclusions expressed in our memoranda of October 12 and October 30, 1951.

In our memorandum of October 12, 1951,[1] we concluded that "where an individual is the sole owner of a vessel, as a matter of law he cannot be said to be 'employed' aboard such vessel as a seaman [2] regardless of whether he actually performs the services traditionally rendered by seamen."

Our memorandum of October 30, 1951,[3] dealing with the eligibility of the spouse of the owner of a vessel, advised that where it could reasonably be found (as the facts submitted to us in that case indicated), that the services rendered by the wife "were not rendered in 'employment' but as an incident to the marital relation, . . . she was not . . . 'employed on board' the vessel as required by the Public Health Service Act."

We have reexamined the rationale of these opinions, and upon such reexamination, our conclusions are reaffirmed. It is our view, as we stated in our memorandum of October 12, 1951:

"In order to be eligible for medical benefits in accordance with the provisions of the statute, therefore, an individual must not only be a 'seaman,' but must also be 'employed' aboard a vessel as such. The term 'employed' as used in the statutory language quoted above may not, in the light of legislative history reasonably be interpreted as equivalent to 'occupied' or 'engaged in' but must be taken to refer to services rendered in an employment relationship under a contract of hire, expressed or implied."

The present regulations of the Service are, as pointed out in our memoranda referred to above, consistent with this view. It may, however, be desirable, if administrative decisions in the past are not in accord with our conclusion, to clarify the matter by an appropriate revision of the regulations. We shall be pleased to discuss this question with you at your convenience.

DARRELL T. LANE,
Assistant General Counsel.

OCTOBER 25, 1954.

Office memorandum—U.S. Government.

To: Mr. R. T. Hollinger, Legislative Legal Liaison Officer, BMS.
From: Office of the General Counsel.
Subject: Medical care—Seamen—Eligibility of coowners employed on vessel leased to employer.

Your memorandum of October 19 requests our advice with respect to the eligibility for medical care as a seaman of a coowner of a diving boat which has been leased to the Pacific American Fisheries and for the period of the lease was being operated by the coowners, a husband and wife, as employees of the lessee.

We have concluded that the owners under the circumstances you set forth would be eligible for medical care under section 322(a)(1) of the Public Health Service Act, as amended, even though the regulation (sec. 32.1(d)) was amended June 1954 to exclude the owner or joint owners of a vessel.

You will note that the statute declares seamen eligible if "employed on" certain vessels. The amendment to the regulation which excluded owners or joint owners was based on the assumption that such an owner when actually engaged in the operation of his own vessel would necessarily also be the employer of the crew and the entrepreneur of the enterprise. On such an assumption, he could not possibly have been "employed" since as employer he could not be his own employee.

The situation you present, however, makes quite clear that an owner can also be an employee with respect to the operation of his own vessel for the period of

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[1] "Medical services—Eligibility for medical care of owner of vessel—Mrs. Hermia Sobraski."

[2] Section 2(h) of the Public Health Service Act defines the term "seamen" as including "any person employed on board in the care, preservation or navigation of any vessel or in the service on board of those engaged in such care, preservation or navigation."

[3] "Medical services—Eligibility for medical care of spouse of owner of vessel—Mrs. Claude C. Ham."

time in which control of the vessel is vested in another person either by charter, lease, or other contract if the other person who thus acquired control of the vessel enters into an employment relation with the owner to operate it. Such owner then becomes in fact "employed on" the vessel within the meaning of the statute. Since the regulation would be legally questionable if it were construed to make ineligible any persons clearly eligible by the terms of the statute, we think the regulation should be construed as not intending to deny care to owners if they are in fact employed on board as in the case you present.

The regulatory exclusion of the spouse of an owner involves a slightly different aspect of the same problem. The spouse's disqualification should rest not merely on being the spouse of the owner but first on being the spouse of the alleged employer and second on performing services that relate to the matrimonial or familial duties rather than those of a bona fide employment relationship. In the particular case you present, being spouse of an owner does not prevent the wife having a bona fide employment relationship with the Pacific American Fisheries any more than being a co-owner.

It would be appropriate to issue a clarifying memorandum to your facilities on the proper interpretation of the regulation and to schedule this provision for early revision. We will be glad to review any proposals along these lines.

EDWARD J. ROURKE.

[HEW–PHS–SG—PHS regulations, pt. 32]

PART 32—MEDICAL CARE FOR SEAMEN AND CERTAIN OTHER PERSONS

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MARITIME SERVICE ENROLLEES AND MERCHANT MARINE CADETS

32.61 Use of Service facilities.
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PERSONS AFFLICTED WITH LEPROSY

SEAMEN ON OTHER FOREIGN-FLAG VESSELS

NONBENEFICIARIES; TEMPORARY TREATMENT IN EMERGENCY

RED CROSS PERSONNEL

AUTHORITY: §§ 32.1 to 32.116 issued under sec. 215, 58 Stat. 690, as amendment; 42 U.S.C. 216. Interpret or apply sec. 322, 58 Stat. 696, as amended; 42 U.S.C. 249. Other statutory provisions interpreted or applied are cited to text in parentheses.

DEFINITIONS

§ 32.1 *Meaning of terms.* When used in this part:

(a) "Act" means the act approved July 1, 1944, 58 Stat. 682, entitled "An act to consolidate and revise the laws relating to the Public Health Service, and for other purposes";

(b) The term "Service" means the Public Health Service;

(c) The term "Surgeon General" means the Surgeon General of the Public Health Service;

(d) The term "seamen" includes any person employed on board in the care, preservation or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation, but does not include the owner or joint owners of a vessel or the spouse of any such owner;

(e) The term "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, exclusive of aircraft and amphibious contrivances;

(f) "Medical relief station" mean a first-, second-, third-, or fourth-class station of the Service;

(g) "First-class station" means a hospital operated by the Service;

(h) "Second-class station" means a medical relief facility, other than a hospital of the Service, under the charge of a commissioned officer;

(i) "Third-class station" means a medical relief facility, other than a hospital of the Service, under the charge of an acting assistant surgeon;

(j) "Fourth-class station" means a medical relief facility, other than a first-, second-, or third-class station, under the charge of an authorized Government representative;

(k) "Active duty", with respect to an enrollee of the United States Maritime Service, means that the enrollee is on the active list of that service, as distinguished from being on inactive status, and includes absence on authorized leave or liberty.

(Secs. 2, 321, 58 Stat. 682, as amended, 695, as amended; 42 U. S. C. 201, 248)

BENEFICIARIES

§ 32.6 *Persons eligible.* (a) Under this part of the following persons are entitled to care and treatment by the Service as hereinafter prescribed:

(1) Seamen employed on vessels of the United States registered, enrolled, or licensed under the maritime laws thereof, other than canal boats engaged in the coasting trade, hereinafter designated as American seamen;

(2) Seamen employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration;

(3) Seamen, not enlisted or commissioned in the military or naval establishments, who are employed on State school ships or on vessels of the United States Government of more than five tons' burden;

(4) Seamen on vessels of the Mississippi River Commission;

(5) Officers and crews of vessels of the Fish and Wildlife Service;

(6) Enrollees in the United States Maritime Service on active duty and members of the Merchant Marine Cadet Corps;

(7) Cadets at State maritime academies or on State training ships;
(8) Employees and noncommissioned officers in the field service of the Public Health Service when injured or taken sick in line of duty;
(9) Persons afflicted with leprosy.
(10) Seamen on foreign-flag vessels other than those seamen employed on foreign-flag vessels specified in subparagraph (2) of this paragraph;
(11) Nonbeneficiaries for temporary treatment and care in case of emergency.

NOTE: § 32.6 does not list all the persons entitled to care and treatment by the Public Health Service.

(b) Separate regulations govern: (1) The medical care of certain personnel, and their dependents, of the Coast Guard, Coast and Geodetic Survey, and Public Health Service (see Part 31 of this chapter); (2) physical and mental examinations of aliens (see Part 34 of this chapter); (3) care and treatment of narcotic addicts (see Part 33 of this chapter); and (4) Medical Care for Indians. (See Part 36 of this chapter.)
(c) While regulations of the Public Health Service are not required with respect thereto, circular instructions by the Service cover the care and treatment or physical examination of the following:
(1) Persons not otherwise eligible for treatment, for purposes of study;
(2) Persons detained in accordance with quarantine laws;
(3) Persons detained by the Immigration and Naturalization Service, for treatment at the request of that Service;
(4) Persons entitled to treatment under the Employees' Compensation Commission Act and extensions thereof;
(5) Beneficiaries of other Federal agencies on a reimbursable basis;
(6) Medical examinations of:
(i) Employees of the Alaska Railroad and employees of the Federal Government for retirement purposes;
(ii) Employees in the Federal classified service, and applicants for appointment, as requested by the Civil Service Commission for the purpose of promoting health and efficiency;
(iii) Seamen for purposes of qualifying for certificates of service; and
(iv) Employees eligible for benefits under the Longshoremen's and Harbor Workers' Compensation Act, as amended, as requested by any deputy commissioner thereunder.

AMERICAN SEAMEN

§ 32.11 *Use of Service facilities.* American seamen (hereinafter referred to in §§ 32.11 to 32.23, inclusive, as seamen) shall, on presenting evidence of eligibility, be entitled to medical, surgical, and dental treatment and hospitalization at medical relief stations of the Service.
§ 32.12 *Use of other than Service facilities.* (a) When a seaman requires medical, surgical, or dental treatment or hospitalization and the urgency of the situation does not permit treatment at a medical relief station, arrangements for necessary treatment or hospitalization at the expense of the Service from public or private medical or hospital facilities other than those of the Service may be made by the officer in charge of a medical relief station or a quarantine station or by the director of a Service district. When such emergency treatment is necessary preference shall be given to other Federal medical facilities when reasonably available and when conditions permit.
(b) If eligibility cannot be established at the time of application by the seamen or by the person who applies in his behalf, the applicant shall be notified that the authorization for treatment is conditional and that the payment of reasonable expenses by the Service for such treatment shall be subject to proof by eligibility.
(c) In every such case of emergency treatment or hospitalization, authorized either conditionally or unconditionally, a full report shall be submitted promptly by the authorizing officer to the Surgeon General. The authorizing officer shall keep himself informed regarding the progress of the case to the end that treatment or hospitalization shall not be unduly and unnecessarily prolonged. As soon as practicable, unless the interests of the patient or the Government require otherwise, treatment or hospitalization shall be continued at a medical relief station or at another appropriate Federal medical facility.
(d) Expenses for consultants or special services, or for dental treatment other than emergency measures to relieve pain, shall not be allowed except when authorized in advance by the headquarters of the Service or, in extraordinary

cases, when subsequently approved by such headquarters upon receipt of report and satisfactory explanation as to the necessity and urgency therefor.

(e) Certified vouchers on proper forms covering expenses for emergency treatment or hospitalization shall be forwarded to the Surgeon General by the authorizing officer, and each such voucher shall contain a statement of the facts necessitating the treatment or hospitalization.

§ 32.13. *Application for treatment.* A sick or disabled seaman, in order to obtain the benefits of the Service, must apply in person, or by proxy if too sick so to do, at a medical relief station or to an officer of the Service as specified in § 32.12 and must furnish satisfactory evidence of his eligibility for such benefits.

§ 32.14. *Evidence of eligibility.* (a) As evidence of his eligibility an applicant must present a properly executed master's certificate or a continuous discharge book or a certificate of discharge showing that he has been employed on a registered, enrolled, or licensed vessel of the United States. The certificate of the owner or accredited commercial agent of a vessel as to the facts of the employment of any seaman on said vessel may be accepted in lieu of the master's certificate where the latter is not procurable. When an applicant cannot furnish any of the foregoing documents, his certification as to the facts of his most recent (including his last) employment as a seaman, stating names of vessels and dates of service, may be accepted as evidence in support of his eligibility. Documentary evidence of eligibility, excepting continuous discharge books and certificates of discharge, shall be filed at the station where application is granted. Where continuous discharge books and certificates of discharge are submitted as evidence of eligibility, the pertinent information shall be abstracted therefrom, certified by the officer accepting the application, and filed at the station.

(b) Except as otherwise provided in §§ 32.11 to 32.23, inclusive, documentary evidence of eligibility must show that the applicant has been employed for 60 days of continuous service on a registered, enrolled, or licensed vessel of the United States, a part of which time must have been during the 90 days immediately preceding application for relief. There may be included as a part of such 60 days of continuous service as a seaman time spent in training as (1) an active duty enrollee in the United States Maritime Service, (2) a member of the Merchant Marine Cadet Corps, (3) a cadet at a State maritime academy, or (4) a cadet on a State training ship. The phrase "60 days of continuous service" shall not be held to exclude seamen whose papers show brief intermissions between short services that aggregate the required 60 days: *Provided*, That any such intermission does not exceed 60 days. The time during which a seaman has been treated as a patient of the Service shall not be reckoned as absence from vessel in determining eligibility. When the seamen's service on his last vessel is less than 60 days, his oath or affirmation as to previous service may be accepted.

§ 32.15. *Sickness or injury while employed.* A seaman taken sick or injured on board or ashore while actually employed on a vessel shall be entitled to care and treatment without regard to length of service.

§ 32.16. *Seamen from wrecked vessels.* Seamen taken from wrecked vessels of the United States and returned to the United States, if sick or disabled at the time of their arrival in the United States, shall be entitled to care and treatment without regard to length of service.

§ 32.17 *Lapse of more than 90 days since last service.* Where more than 90 days have elapsed since an applicant's last service as a seaman and he can show that he has not definitely changed his occupation, such period of time shall not exclude him from receiving care and treatment (a) if due to closure of navigation or economic conditions resulting in decreased shipping with consequent lack of opportunity to ship or (b) in the event the applicant has been receiving treatment at other than Service expense.

§ 32.18 *Procedure in case of doubtful eligibility.* When a reasonable doubt exists as to the eligibility of an applicant for care and treatment, the matter shall be referred immediately to the headquarters of the Service for decision. If, in the opinion of the responsible Service officer, the applicant's condition is such that immediate care and treatment is necessary, temporary care and treatment shall be given pending receipt of the decision as to eligibility.

§ 32.19 *False document evidencing service.* The issuance or presentation of a false document as evidence of service with intent to procure the treatment of a person as a seaman shall be immediately reported to the headquarters of the Service.

§ 32.20 *Treatment during voyage; treatment when not arranged for.* The Service shall not be liable for the expense of caring for sick and disabled seamen

incurred during a voyage, nor when the care of a seaman has not been arranged for by a responsible officer of the Service.

§ 32.21 *Injury while committing breach of peace.* Seamen injured in street brawls or while otherwise committing a breach of the peace shall not receive treatment at the expense of the Service while in jail or in a hospital other than a hospital belonging to our under contract with the Service.

§ 32.22 *Communicable diseases.* The Service shall not be liable for the expense of caring for seamen who are suffering from communicable diseases and who, in accordance with State or municipal health laws and regulations, are taken to quarantine or other hospitals under charge of local health authorities, unless such patients were admitted at the time at the request of a responsible officer of the Service.

§ 32.23 *Certificate of discharge from treatment.* A certificate of discharge from treatment may, at the discretion of the officer in charge, be given to a hospital patient, but such certificate, when presented at another medical relief station, shall not be taken as sufficient evidence of the applicant's eligibility for care and treatment, but may be considered in connection with other documentary evidence submitted by the seamen.

SEAMEN; EMPLOYEES OF THE UNITED STATES THROUGH WAR SHIPPING ADMINISTRATION

§ 32.41. *Conditions and extent of treatment.* Seamen employed on United States- or foreign-flag vessels as employees of the United States through the War Shipping Administration shall be entitled to care and treatment by the Service under the same conditions, where applicable, and to the same extent as is provided for American seamen.

SEAMEN; STATE SCHOOL SHIPS AND VESSELS OF THE UNITED STATES GOVERNMENT

§ 32.46. *Conditions and extent of treatment.* Seamen, not enlisted or commissioned in the military or naval establishments, who are employed on State school ships or on vessels of the United States Government of more than five tons' burden, shall be entitled to care and treatment by the Service under the same conditions, where applicable, and to the same extent as is provided for American seamen.

SEAMEN; MISSISSIPPI RIVER COMMISSION

§ 32.51 *Conditions and extent of treatment.* Seamen on vessels of the Mississippi River Commission shall be entitled to care and treatment by the Service under the same conditions, where applicable, and to the same extent as is provided for American seamen.

SEAMEN; FISH AND WILDLIFE SERVICE

§ 32.56 *Conditions and extent of treatment.* Seamen on vessels of the Fish and Wildlife Service shall be entitled to care and treatment by the Service under the same conditions, where applicable, and to the same extent as is provided for American seamen.

MARITIME SERVICE ENROLLEES AND MERCHANT MARINE CADETS

§ 32.61 *Use of Service facilities.* Enrollees in the United States Maritime Service on active duty and members of the Merchant Marine Cadet Corps shall, upon written request of the responsible officer of the station or training ship to which such enrollees or cadets are attached, identifying the applicant, be entitled to medical, surgical, and dental treatment and hospitalization at medical relief stations of the Service. Whenever an enrollee or cadet applies for relief without the above-mentioned written request and in the opinion of the responsible Service officer the applicant's condition is such that immediate care and treatment is necessary, temporary care and treatment shall be given pending verification of the applicant's status as an enrollee or cadet.

§ 32.62 *Use of other than Service facilities.* (a) When an enrollee on active duty or a cadet requires medical, surgical, or dental treatment or hospitilization for an emergency condition and the urgency of the situation does not permit treatment at a medical relief station or at a Maritime Service medical facility, arrangements for necessary treatment or hospitalization at the expense of the

Service from public or private medical or hospital facilities other than those of the Service may be made by the officer in charge of a medical relief station or a quarantine station, by the director of a Service district, or by the responsible officer of the Service assigned to a Maritime Service station, to a Merchant Marine Cadet Corps school, or to a State maritime academy. When such emergency treatment is necessary preference shall be given to other Federal medical facilities when reasonably available and when conditions permit.

(b) If eligibility cannot be established at the time of application by the enrollee or cadet or by the person who applies in his behalf, the applicant shall be notified that the authorization for treatment is conditional and that the payment of reasonable expenses by the Service for such treatment shall be subject to proof of eligibility.

(c) In every such case of emergency treatment or hospitalization, authorized either conditionallly or unconditionally, a full report shall be submitted promptly by the authorizing officer to the Surgeon General. The authorizing officer shall keep himself informed regarding the progress of the case to the end that treatment or hospitalization shall not be unduly and unnecessarily prolonged. As soon as practicable, unless the interests of the patient or the Government require otherwise, treatment or hospitalization shall be continued at a medical relief station or at another appropriate Federal medical facility.

(d) Expenses for consultants or special services, or for dental treatment other than emergency measures to relieve pain, shall not be allowed except when authorized in advance by headquarters of the Service or, in extraordinary cases, when subsequently approved by such headquarters upon receipt of report and satisfactory explanation as to the necessity and urgency therefor.

(e) Certified vouchers on proper forms covering expenses for emergency treatment or hospitalization shall be forwarded to the Surgeon General by the authorizing officer, and each such voucher shall contain a statement of the facts necessitating the treatment or hospitalization.

§ 32.63 *Injury while committing breach of peace.* Enrollees on active duty or cadets injured in street brawls or while otherwise committing a breach of the peace shall not receive treatment at the expense of the Service while in jail or in hospital other than a hospital belonging to or under contract with the Service.

§ 32.64 *Communicable diseases.* The Service shall not be liable for the expense of caring for enrollees on active duty or cadets who are suffering from communicable diseases and who, in accordance with State or municipal health laws and regulations, are taken to quarantine or other hospitals under charge of local health authorities, unless such patients were admitted at the time at the request of a responsible officer of the Service.

§ 32.65—*Absence without leave.* Enrollees on active duty or cadets who are absent without leave shall not be entitled to receive treatment by the Service except at a medical relief station.

CADETS AT STATE MARITIME ACADEMIES OR ON STATE TRAINING SHIPS

§ 32.76 *Conditions and extent of treatment.* (a) Cadets at State maritime academies or on State training ships while they are enrollees in the U.S. Maritime Service shall be entitled to care and treatment by the Service under same conditions and to the same extent as is provided for enrollees in the U.S. Maritime Service on active duty: *Provided, however,* That the written request of the superintendent or other responsible officer of an academy, including the master of a training ship, shall be acceptable in lieu of the written request of the responsible officer of the Maritime Service.

(b) Cadets at State maritime academies or on State training ships when not enrolled in the U.S. Maritime Service shall be entitled to care and treatment by the Service under the same conditions, where applicable, and to the same extent as is provided for American seamen: *Provided, however,* That the written request of the superintendent or other responsible officer of an academy, including the master of a training ship, shall be acceptable in lieu of the documentary evidence of eligibility required of American seamen.

FIELD EMPLOYEES OF THE PUBLIC HEALTH SERVICE

§ 32.81 *Use of Service facilities.* Employees and noncommissioned officers in the field service of the Public Health Service when injured or taken sick in line of duty shall, upon presentation of satisfactory evidence of their status, be en-

titled to medical, surgical, and dental treatment and hospitalization at medical relief stations.

§ 32.82 *Use of other than Service facilities.* (a) Employees and noncommissioned officers in the field service of the Public Health Service when injured or taken sick in line of duty shall be entitled to the same care and treatment under the same conditions and to the same extent as is provided for American seamen in § 32.12.

(b) When employees or noncommissioned officers in the field service of the Public Health Service on duty in any foreign place are injured or taken sick in line of duty, the officer in charge shall make the necessary arrangements for treatment or hospitalization. If the patient himself is the only employee or noncommissioned officer of the Service on duty at a foreign place, the treatment or hospitalization may be obtained by or on behalf of the patient. In every such case, a full report shall be submitted to the Surgeon General by the officer in charge or by the patient himself where there is no superior on duty at the foreign place. In all other respects the provisions of § 32.12 shall govern where applicable.

PERSONS AFFLICTED WITH LEPROSY

§ 32.86 *Admissions to Service facilities.* Any person afflicted with leprosy who presents himself for care, detention, or treatment or who may be apprehended pursuant to regulations prescribed under section 332 or 361 of the act and any person afflicted with leprosy who is duly consigned to the care of the Service by the proper health authority of any State, Territory, or the District of Columbia shall be received into the Service hospital at Carville, Louisiana, or into any other hospital of the Service which has been designated by the Surgeon General as being suitable for the temporary accommodation of persons afflicted with leprosy.

(Sec. 331, 58 Stat. 698, as amended; 42 U. S. C. 255)

§ 32.87 *Diagnostic board for arriving patients.* At the earliest practicable date, after the arrival of a patient at the Service hospital at Carville, Louisiana, the medical officer in charge shall convoke a board of not less than three medical officers of the Service, who shall confirm or disapprove the diagnosis of leprosy.

(Sec. 332, 58 Stat. 698; 42 U. S. C. 256)

§ 32.88 *Detention or discharge according to diagnosis.* If the diagnosis of leprosy is confirmed, the patient shall be detained in the hospital as provided in this part; if the diagnosis is not confirmed, the patient shall be discharged.

(Sec. 332, 58 Stat. 698; 42 U.S.C. 256)

§ 32.89 *Examinations and treatment.* Patients shall undergo the usual routine clinical examinations which may be required for the diagnosis of primary or secondary conditions, and such treatment as may be prescribed.

(Sec. 332, 58 Stat. 698; 42 U.S.C. 256)

§ 32.90 *Restrictions on movement within reservation.* No patient shall be allowed to proceed beyond the limits set aside for the detention of patients suffering from leprosy except upon authority from the headquarters of the Service and under prescribed conditions applicable to the individual patient. Should any patient violate his instructions in this regard, he shall upon his return, be properly safeguarded to prevent a repetition of the offense, or, at the discretion of the medical officer in charge, be permitted to give bond to the United States of America in a penal sum not exceeding $5,000 conditioned upon his faithful observance of this part.

(Sec. 332, 58 Stat. 698; 42 U.S.C. 256)

§ 32.91 *Isolation or restraint.* There shall be provided the necessary accommodation, within the limits set aside for persons afflicted with active leprosy, for isolation or restraint of patients when in the judgment of the medical officer in charge such action is necessary for the protection of themselves or others. The medical officer in charge shall maintain a separate register in which shall be recorded the names of patients who have been placed in isolation or restraint, and all circumstances attendant upon such isolation or restraint.

(Sec. 332, 58 Stat. 698; 42 U.S.C. 256)

§ 32.92 *Discharge.* The medical officer in charge of the Service hospital at Carville, Louisiana, shall convoke, from time to time, a board of three medical officers for the purpose of examining patients with a view to recommending

their discharge. When in the judgment of the board a patient may be regarded as no longer a menace to the public health, he may be discharged, upon approval of the headquarters of the Service, as being either cured or an arrested or latent case.

(Sec. 332, 58 Stat. 698; 42 U.S.C. 256)

§ 32.93 *Notification to health authorities regarding discharged patients.* Upon the discharge of a patient the medical officer in charge shall give notification of such discharge to the proper health officer of the State, Territory, District of Columbia, or other jurisdiction in which the discharged patient is to reside. The notification shall also set forth the clinical findings and other essential facts necessary to be known by the health officer relative to such discharged patient.

(Sec. 332, 58 Stat. 698; 42 U.S.C. 256)

SEAMEN ON OTHER FLAG VESSELS

§ 32.106 *Conditions and extent of treatment; rates; burial.* (a) Except as provided in § 32.41 for seamen on certain foreign flag vessels, seamen on foreign flag vessels may, when suitable accommodations are available and on application of the master, owner, or agent of the vessel, be hospitalized at first-class stations or furnished out-patient treatment, including physical examinations, at first-, second-, and third-class stations at rates prescribed by the Surgeon General with the approval of the Administrator.

(b) Upon similar application, hospitalization of such seamen or private services in connection with their treatment may be arranged for at second- and third-class stations, with the understanding that all expenses shall be paid directly to the vendors by the master, owner, or agent of the vessel. For any professional services which may be furnished by Service personnel in connection with such hospitalization or treatment, the rates charged shall be those prescribed by the Surgeon General with the approval of the Administrator.

(c) If any such seaman dies while receiving treatment by the Service, the expenses of burial shall be paid directly to the vendors by the master, owner, or agent.

NONBENEFICIARIES; TEMPORARY TREATMENT IN EMERGENCY

§ 32.111[1] **Conditions and extent of treatment; charges.**

(a) Persons not entitled to treatment by the Service may be provided temporary care and treatment by the Service in case of emergency as an act of humanity. Such temporary care and treatment shall be limited to hospitalization at first-class stations and to outpatient treatment at firs- and second-class stations.

(b) Persons referred to in paragraph (a) of this section who, as determined by the medical officer in charge, are able to defray the cost of their care and treatment shall be charged for such care and treatment at the following rates (which shall be deemed to constitute the entire charge in each instance): In the case of hospitalization, at the current interdepartmental reimbursable per diem rate as established by the Bureau of the Budget; and, in the case of outpatient treatment, at rates established by the Surgeon General.

(Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216. Interpret or apply sec. 321, 58 Stat. 695, as amended, sec. 322(d), 58 Stat. 696, as amended, sec. 501, 65 Stat. 290; 42 U.S.C. 248, 42 U.S.C. 249(d), 5 U.S.C. 140).

RED CROSS PERSONNEL

§ 32.116 *Emergency medical care when serving with United States Coast Guard.* Red Cross uniformed personnel serving with the United States Coast Guard may be admitted upon proper evidence of their status with the United States Coast Guard to hospitals and second-class medical relief stations of the Public Health Service for emergency medical care and treatment. Hospitalization will be furnished at Service hospitals only and, provided suitable accommodations are available, at a per diem charge to each patient admitted under this regulation equivalent to the uniform per diem reimbursement rate for Government hospitals as approved by the President for each fiscal year.

[1] Sec. 32.111 amended December 15, 1959, 24 FR 10108, applicable to patients admitted on or after January 15, 1960.

Mr. ROBERTS. Mr. Schenck has another question.

Mr. SCHENCK. Mr. Chairman, in view of counsel's comment on this vessel which was tied up for an extended period of time, how can you reach that problem of the extended period of the inoperation of the boat or the vessel?

Mr. EDELMAN. This is one of the reasons, Mr. Congressman, that I said there were some difficulties in restricting it to vessels which are actually engaged.

The problem is one of a vessel laid up for an appreciable period of time. Here I think it becomes a question of fact of whether there is ever any intention to return that vessel to the trade of commercial fishing.

Mr. SCHENCK. Such as some evidence as to what repairs were being done and what other action was being taken to prepare the vessel, is that right?

Mr. EDELMAN. This would be part of the picture on which a determination would have to be made. I would anticipate that questions of this kind would be rare, but I think it is possible that they may occur and each one of these cases will have to be determined on its own facts.

Mr. SCHENCK. Thank you very much.

Mr. ROGERS of Florida. Mr. Edelman, I am sorry I am a little late here and have not heard all of your testimony. It is your interpretation then that this bill does cover more than just commercial fishing boats?

Mr. EDELMAN. Yes, sir.

Mr. ROGERS of Florida. And did you define what it would cover in your opinion?

Mr. EDELMAN. It would cover every person aboard a registered, enrolled, or licensed vessel of the United States who performs the duties of a seaman on board, and a vessel of the United States would include any vessel which is so registered, whether it is a pleasure yacht, a houseboat, or any contrivance capable of floating on water.

Mr. ROGERS of Florida. So it is not confined to fishing by any means?

Mr. EDELMAN. No, sir.

Mr. ROGERS of Florida. Is there any reason why you can't change the former opinion that was rendered by the Counsel of HEW to have the law interpreted as it had been before if you think that is the way the law should be interpreted?

Mr. EDELMAN. Mr. Congressman, if we were convinced as lawyers that the earlier opinions weren't correct we would have no difficulty in reversing them. We have considered the question for a period of about 12 years and our continued consideration of it has convinced us that legally the 1951 opinions are sound.

Mr. ROGERS of Florida. How long had the law been applied previous to that time?

Mr. EDELMAN. Well, the original act for the medical care of seamen was enacted in 1798, as I recall, and there it provided for a tax upon the wages of seamen employed on board vessels of the United States, so since 1798 medical service has been rendered to seamen.

Mr. ROGERS of Florida. What I was thinking about was the interpretation that was more broad than the change in 1951.

Mr. EDELMAN. That is difficult to say, Mr. Congressman, but I would think that the possibility of the application of a broader interpretation existed since about 1885 because prior to that time the Public Health Service took the view that only those seamen who were subject to the withholding tax on wages were eligible for medical care.

Now, in 1884 the withholding tax was repealed and therefore it would be possible since 1885, when the regulations were changed, that self-employed persons might have been given care by the Service.

Mr. ROGERS of Florida. Is this in fact true? What is the history?

Mr. EDELMAN. I understand that certainly within the recent past, that is, prior to 1951, self-employed persons were given care by the Service.

Mr. ROGERS of Florida. What made that opinion wrong? What made it necessary to change it?

Mr. EDELMAN. I don't know that there was an opinion at that time. I think it was something that just happened. In 1951 the Service was confronted with two situations which raised the question in its mind as to whether the people involved were entitled to care under the law.

They asked the Office of the General Counsel for legal advice and we advised them that in these two cases the individuals were not entitled under the law.

Mr. ROGERS of Florida. Is that a sufficient reason to change the whole application of the law on two specific cases?

Mr. EDELMAN. The question of whether these two cases were sufficient reason is a difficult one to answer. All I can say, Mr. Congressman, is that the legal advice we gave in these two cases could not be confined to the facts in these two cases alone, but involved a broader interpretation of the law and what it meant when it said "employed on board."

Mr. ROGERS of Florida. Had Congress made any change in the law that brought that interpretation about?

Mr. EDELMAN. No, sir.

Mr. ROGERS of Florida. What brought the Department to change the interpretation, if it had been interpreting the law in such a way, so broadly? Why did you change it so broadly?

Mr. EDELMAN. Perhaps the best way to answer that, Mr. Congressman, is that there was no official interpretation prior to 1951.

Mr. ROGERS of Florida. Other than the application of the law itself?

Mr. EDELMAN. Other than the fact that individuals were treated.

Mr. ROGERS of Florida. Well, that is all they are asking for now, I think, to have individuals treated, isn't it?

Mr. EDELMAN. I guess that is what they are asking for, Mr. Congressman.

Mr. ROGERS of Florida. Well, there is no point in us getting into this. The Department does not feel it can change administratively what it did change administratively before? Is that the position of the Department?

Mr. EDELMAN. Speaking as a member of the Office of General Counsel, I would say that the Office of General Counsel is not prepared to advise the Department that its legal opinion was wrong, and I understand that the Department is not willing to overrule the legal advice it has received from the Office of General Counsel.

Mr. ROGERS of Florida. Now, this makes me wonder, Mr. Chairman, if we hadn't better look into some of the legal opinions that have been rendered, because it seems to me that very broad administrative changes are coming about without legislative approval, that this is over the dam now, but I think we better look into this some because this causes me concern to have a law that is being administered completely changed by administrative interpretation years after it has been applied in another manner.

I can understand how in specific cases you could say, "Well, you don't fall within this interpretation," but to make broad, sweeping changes is a little beyond administrative interpretation of the law after it has been administered for so many years, I would think.

However, let me ask you specifically: Would the Department submit to the committee changes in the legislation that would comply with what is hoped to be done?

Mr. EDELMAN. The chairman has asked that the Department submit language which would insure that, if an amendment were made to include self-employed seamen, such amendment be restricted to the owner-operators of commercial fishing vessels, and we have agreed to do that.

Mr. ROGERS of Florida. What did your previous report say to the committee from the Department?

Mr. EDELMAN. The report on the legislation?

Mr. ROGERS of Florida. Yes.

Mr. EDELMAN. On which of the bills, Mr. Congressman? As I recall, we reported only on two bills.

Mr. ROBERTS. S. 978. That is the one that gives us the trouble.

Mr. EDELMAN. As I recall, the Department took the position, if I may consult with Mr. Ellenbogen, that we did not object to S. 978. Is that correct?

Mr. ELLENBOGEN. Yes, sir. As I recall our report, it included S. 978 as well as the House bills pending before your committee and, as I recall, we did not object to the inclusion of self-employed seamen insofar as our Department was concerned.

It did seem to us that if self-employed seamen were to be included it would be inequitable to distinguish between seamen who were fishermen and seamen who were not, but, of course, we would defer to the wisdom of the committee on that question.

Mr. ROGERS of Florida. Has the history been since the interpretation of 1951 that it was confined to fishermen?

Mr. ELLENBOGEN. I don't think so. There would be no legal basis, would you agree, Mr. Edelman, that if self-employed seamen were covered under existing law—if it were so interpreted—for drawing any distinction between fishermen and others?

Mr. EDELMAN. No, sir; there would not. The requirement that a seaman be employed on board in the status of an employee would be equally applicable to all persons regardless of the nature of their calling.

Mr. ROBERTS. Would the gentleman yield?

Mr. ROGERS of Florida. Yes, sir.

Mr. ROBERTS. That sort of an interpretation, with the vast increase in pleasure craft that we have seen in the last few years, many of them oceangoing types, it seems to me would be a very expensive operation for the Public Health Service, would it not, Mr. Edelman?

Mr. EDELMAN. I have no idea of the number of master owners that would be involved, because this would just involve the question of the owner of the vessel.

If it were extended beyond the commercial fishing industry I have no idea how many people would be involved.

Mr. ROBERTS. There would be a tremendously larger number than would be involved if you restricted it to ships or boats engaged in fishing, would there not?

Mr. EDELMAN. Undoubtedly, I think it would be much larger.

Mr. ROGERS of Florida. I thought you said you were not now interpreting the law and confining it to fishing vessels?

Mr. EDELMAN. That is correct, sir. We apply it to all vessels regardless of the purpose for which they are used.

Mr. ROGERS of Florida. Right now this is true?

Mr. EDELMAN. That is right.

Mr. ROGERS of Florida. So that anyone who works on a vessel of what size would be included?

Mr. EDELMAN. Well, a vessel must be registered which is 5 tons or over.

Mr. ROGERS of Florida. One on any type of vessel now may receive free medical services?

Mr. EDELMAN. If he is a seaman employed on board as an employee.

Mr. ROGERS of Florida. So there is no present restriction to commercial fishing vessels?

Mr. EDELMAN. That is right, sir.

Mr. ROGERS of Florida. As I understand it then, the Department doesn't think there should be any distinction?

Mr. EDELMAN. I think on that I would like to read from the Department's official report which comments on H.R. 3873, and which does make a distinction. We said:

> We have certain reservations, however, as to the limitation of H.R. 3873 to self-employed fishermen, a limitation that would create a new inequity by discriminating against self-employed seamen other than fishermen.
>
> If the legislation is favorably considered we would, therefore, prefer the language of S. 978 now pending before your committee which would simply broaden present laws to include self-employed persons as seamen if they perform the same tasks as are performed by seamen within the meaning of the persent law.

Mr. ROGERS of Florida. Does the Department have any estimate of how many people would be affected?

Mr. EDELMAN. I understand there was testimony before this committee by Dr. Price which indicated that if the bill were restricted to commercial fisheries——

Mr. ROGERS of Florida. You are not recommending that, as I understand. I know that. I think we know that figure. I am saying how many would be affected under what the Department is recommending?

Mr. EDELMAN. Mr. Chairman, if the might just say, I did not participate in the legislative recommendation on this. I have no idea how many people would be affected if the position taken on S. 978 were adopted.

Mr. ROGERS of Florida. Is anyone from the Department here who might?

Mr. EDELMAN. There are other people from the Department here, but they have no idea either. I think we can arrive at an estimate if you would like it.

Mr. ROGERS of Florida. If you could furnish the committee with an estimate of how many and the aproximate cost of what would be involved here, we would apreciate it.

Mr. ELLENBOGEN. Mr. Chairman, if I may say so, our report did say, I believe, that the extension of coverage under any of the bills would not substantially affect the cost in the opinion of the service.

Mr. ROGERS of Florida. I think it might be good to have something a little more specific than that, because if all of these pleasure boats are going to be covered I would think this could result in quite a large sum of money.

Mr. EDELMAN. Mr. Congressman, I would like to suggest that the question of pleasure boats has to be considered in the light of the limitation on entitlement. A person must not only be a seaman; he must be employed on a vessel of 5 tons or more which is registered, licensed, or enrolled.

I have no idea how many pleasure boats fit into that category. I imagine they would be rather large vessels beyond the reach of the average person.

Mr. ROGERS of Florida. I think it would be good for us to have the number and approximate cost submitted.

Mr. ROBERTS. I think that possibly there could be some consideration given to the fact that generally in time of national emergency we bring vessels into the service of the Coast Guard and Navy; that is, most all of these vessels are seaworthy and we just blanket them into the service.

That is the way we did it in World War II. There might possibly be some consideration given to people on that score, but it would seem to me that what we are interested in primarily in this committee is trying to restrict this pretty much to fishing operations.

It is recognized facet of the jurisdiction of this committee, as has been pointed out, since 1798, and I think that the idea of trying to extend it to seamen on pleasure craft and charter boats and tugs and ferries would greatly increase the cost of this thing beyond any hope of getting the bill through.

The figure that I recall, and I would like to be checked on it by some departmental witnesses, was that if we restricted to vessels engaged in fishing operations the additional cost would probably be about $1,700,000 a year. That is the figure that I had in mind.

Mr. EDELMAN. That is my recollection, Mr. Chairman.

Mr. ROBERTS. I don't know which witness gave that testimony. It seems like it was somebody from HEW.

Mr. EDELMAN. I think it was Dr. Price, sir.

Mr. ROBERTS. That was my recollection.

Mr. ROGERS of Florida. Mr. Edelman, what is the Department's view on the Bureau of the Budget's suggestion of an additional tax?

Mr. EDELMAN. I will have to ask Mr. Ellenbogen to speak to that, sir.

Mr. ELLENBOGEN. Insofar as the seamen's medical care program as a whole is concerned, we are still studying the report of the Budget Bureau on these bills as well as a similar report the Budget Bureau

made in commenting on S. 978 when it was pending before the Senate committee. As our report indicates, we do not condition our no-objection position on this bill on a basic change in financing the medical care program for seamen. This is what in my opinion the Budget Bureau's report amounts to.

As I understand the Budget Bureau's report, it amounts to a statement that they would not object to the extension of coverage of the law to self-employed fishermen, if at the same time user charges were imposed on all seamen or the tonnage tax were increased to cover the cost of the whole medical care program for all seamen.

We do not believe that this bill needs to be tied into the question of financing for the whole medical care for seamen program, and so we are not in agreement with the Budget Bureau that the consideration of this bill involves the other question.

Mr. ROGERS of Florida. You are not in agreement with the Bureau of the Budget?

Mr. ELLENBOGEN. On this question.

Mr. ROGERS of Florida. Yes. All right. Thank you, Mr. Chairman.

Mr. ROBERTS. Anything further, gentlemen?

Mr. NELSEN. No questions.

Mr. ROBERTS. Then the subcommittee will be in recess, subject to the call of the Chair and we wish to thank you, Mr. Edelman, and your associates, for your attendance here today.

Mr. EDELMAN. Thank you, sir.

(The following information was submitted for the record:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
December 11, 1963.

HON. KENNETH A. ROBERTS,
Chairman, Subcommittee on Health and Safety, Committee on Interstate and Foreign Commerrce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed herewith is draft language for committee amendments to S. 978 as requested at the recent hearing before your subcommittee on that bill and certain House bills.

There are also enclosed herewith an explanation of the bill as thus amended and, in accordance with a request made at the hearing, estimates as to the cost of extending eligibility to owners and coowners of vessels. The figures are broken down as between owners of fishing boats and owners of other boats.

Sincerely yours,

WILBUR J. COHEN, *Assistant Secretary.*

ENCLOSURE 1

PROPOSED COMMITTEE AMENDMENTS TO S. 978

On line 6, strike out "or self-employed" and insert in lieu thereof "(or, in the case of a commercial fishing vessel, self-employed)".

On line 11, strike out "'or self-employed'" and insert in lieu thereof "'(or, in the case of a commercial fishing vessel, self-employed)'".

ENCLOSURE 2

EXPLANATION OF PROPOSED COMMITTEE AMENDMENTS TO S. 978

The proposed committee amendments would strike out the words "or self-employed" in the first section and section 2 of the bill and insert in lieu thereof, in each section "(or, in the case of a commercial fishing vessel, self-employed)".

The purpose of this bill, as modified by the proposed committee amendments, is to restore to owners and coowners of U.S.-flag commercial fishing vessels, who perform seamen's services on board, the eligibility for medical care in hospitals,

outpatient clinics, and other medical facilities of the Public Health Service which was provided to them, de facto, before a 1954 amendment to the regulations under the Public Health Service Act.

An opinion of the Office of the General Counsel of the Department of Health, Education, and Welfare, issued in 1951, had interpreted the term "employed" in section 2(h) and section 322(a)(1) of the Public Health Service Act[1] as excluding persons who are self-employed. After the General Counsel's Office, upon request for reconsideration, had adhered to its earlier opinion, the regulations were amended in 1954 so as to exclude from the term "seamen" "the owner or joint owners of a vessel [and] the spouse of any such owner."

Under the proposed committee amendments, self-employed individuals engaged on board a commercial fishing vessel in the types of activity described in section 2(h) of the Public Health Service Act will be considered "seamen," whether or not they are owners or coowners of the vessel. At the same time, self-employed persons on pleasure boats and other vessels that are not commercial fishing vessels would be excluded from coverage, whether or not such vessels are owned or charted by such persons. Thus, self-employed persons on vessels used for sport fishery, even though the vessel be one owned by a person commercially engaged in chartering such vessels to sport fishermen or taking sport fishermen on fishing trips for pay, would be excluded. The phrase "commercial fishing vessel" is, on the other hand, intended to include vessels engaged in the gathering of any form of either fresh water or marine animal life for commercial purposes, and will thus include vessels engaged in the commercial catching or harvesting of shrimp, lobsters, oysters, etc., as well as fish, if, as required by section 322(a)(1) of the Public Health Service Act, the vessel is a U.S.-flag vessel "registered, enrolled, and licensed under the maritime laws of the United States, other than canal boats engaged in the coasting trade." (The bill would not enlarge the coverage of section 322(b) of the Public Health Service Act which authorizes medical, surgical, dental, and hospital services to seamen on foreign-flag vessels on a user charge basis.)

OCTOBER 28, 1963.

U.S. Government memorandum.
To: Mr. Robert T. Hollinger, legislative legal liaison officer.
From: Acting Chief, Division of Hospitals.
Subject: Estimated cost of providing medical and dental care to self-employed seamen.

In accordance with your request, attached is an analysis of the estimated additional patient load and cost of providing medical and dental care to self-employed seamen of commercial fishing boats and self-employed seamen of other than commercial fishing boats.

Mr. Walter H. Stolting, of the Bureau of Commercial Fisheries, Department of the Interior, was contacted for an estimate of the number of self-employed seamen of commercial fishing boats. The 10,000 self-employed seamen of commercial fishing boats estimated by Mr. Stolting differs from the 11,000 previously estimated in that the 11,000 included noncommercial fishing boats.

Mr. Clem Freeman, of the Bureau of Customs, was contacted for an estimate of all other self-employed seamen. He indicated that it was impossible to make an estimate of the number of self-employed seamen. He stated that there are aprpoximately 54,000 documented American-flag vessels (including fishing boats). He agreed that a figure of 5,000 self-employed seamen of other than commercial fishing boats appeared to be reasonable. Based on the above, the estimated patient loads and costs should be looked upon as only very rough estimates.

C. DUDLEY MILLER, M.D., *Medical Director.*

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[1] Sec. 2(h) defines "seamen" as including "any person employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation." Sec. 322(a)(1) provides that "Seamen employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canal boats engaged in the coasting trade" shall in accordance with regulations be entitled to medical, surgical, and dental treatment and hospitalization from the Service.

ESTIMATED COST FOR THE MEDICAL AND DENTAL CARE OF SELF-EMPLOYED SEAMEN

SELF-EMPLOYED SEAMEN OF COMMERCIAL FISHING BOATS

It is estimated that there are 10,000 self-employed seamen of commercial fishing boats. If these 10,000 self-employed seamen are made eligible for medical and dental care in Public Health Service hospitals and outpatient facilities, the number of American seamen PHS beneficiary group would increase from 117,500 to 127,500. The additional cost for their care would amount to $1,824,200. The following table shows the estimated increased patient load and cost which would result from the additional 10,000 self-employed seamen of commercial fishing boats:

Facility	Fiscal year 1963 seamen load	Additional seamen load (self-employed commercial fishermen)	Fiscal year 1963 cost per unit	Total additional annual cost
Inpatient (average daily patient load):				
PHS general hospitals	1,520	130	$27.81	$1,319,600
PHS neuropsychiatric hospitals	241	20	11.02	80,400
Federal hospitals	34	3	25.00	27,400
Non-Federal hospitals	37	3	50.17	54,900
Subtotal		156		1,482,300
Outpatient visits:				
PHS hospitals	282,491	24,000	7.90	189,600
PHS clinics	189,120	16,100	7.51	120,900
PHS offices	38,647	3,300	9.50	31,400
Subtotal		43,400		341,900
Total				1,824,200

SELF-EMPLOYED SEAMEN OF OTHER THAN FISHING BOATS

There is no information available as to the number of owners of vessels documented as American-flag ships and, therefore, it is very difficult to estimate the number of self-employed seamen on vessels other than commercial fishing boats. Based on a discussion with a representative of the Bureau of Customs, it is believed that a figure of 5,000 would be reasonable. The table below shows the estimated increase in patient load and cost which would result from the additional 5,000 self-employed seamen of other than commercial fishing boats:

Facility	Additional seamen load (self-employed other than commercial fishermen)	Fiscal year 1963 cost per unit	Total additional cost
Inpatient (average daily patient load):			
PHS general hospitals	65	$27.81	$659,800
PHS neuropsychiatric hospitals	10	11.02	40,200
Federal hospitals	1	25.00	9,100
Non-Federal hospitals	1	50.17	18,300
Subtotal	77		727,400
Outpatient visits:			
PHS hospitals	12,000	7.90	94,800
PHS clinics	8,000	7.51	60,100
PHS offices	1,600	9.50	15,200
Subtotal	21,600		170,100
Total			897,500

(Whereupon, at 10:55 a.m., the subcommittee recessed subject to the call of the Chair.)