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II

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# NAVIGATION RULES, VESSEL MEASUREMENT, OBSOLETE VESSEL DEFINITION, SHIPPING CONTAINERS

FRIDAY, AUGUST 6, 1965

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES,  
Washington, D.C.

The subcommittee met, pursuant to notice, in room 5110, New Senate Office Building, at 10 a.m., Hon. E. L. Bartlett presiding.

Senator BARTLETT. The committee will be in order.

The purpose of the hearing this morning is to consider several bills relating to the merchant marine, Customs, and the Coast Guard. These bills are as follows:

S. 906, to provide for the measurement of the gross and net tonnages for certain vessels having two or more decks, and for other purposes.

S. 2142, to simplify the admeasurement of small vessels.

H.R. 729, to amend section 510(a)(1) of the Merchant Marine Act of 1936, to redefine the term "obsolete vessel."

S. 1349, to amend the Inland, Great Lakes, and Western Rivers rules concerning sailing vessels and vessels under 65 feet in length.

H.R. 5989, to amend section 27, Merchant Marine Act of 1920, as amended. A copy of each bill and the agency comments will be placed in the record at this point.

(The bills and documents referred to follow:)

[S. 906, 89th Cong., 1st sess.]

A BILL To provide for the measurement of the gross and net tonnages for certain vessels having two or more decks, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act:*

(a) The term "uppermost complete deck" means the uppermost complete deck of a vessel exposed to sea and weather, which shall be deemed to be that deck which has permanent means of closing all openings in the weather portions thereof, provided that any opening in the side of the vessel below that deck, other than an opening abaft a transverse watertight bulkhead placed aft of the rudder stock, is fitted with permanent means of watertight closing.

(b) The term "second deck" means the deck next below the uppermost complete deck which is continuous in a fore-and-aft direction at least between peak bulkheads, is continuous athwartships, is fitted as an integral and permanent part of the vessel's structure, and has proper covers to all main hatchways. Interruptions in way of propelling machinery space openings, ladder and stairway openings, trunks, chain lockers, cofferdams, or steps not exceeding a total height of forty-eight inches shall not be deemed to break the continuity of the deck.

(c) The term "trunks" as used in the definition of second deck shall be deemed to refer to hatch or ventilation trunks which do not extend longitudinally completely between main transverse bulkheads.

(d) The term "Secretary" means the Secretary of the Treasury.

SEC. 2. In the measurement of a vessel under sections 4148, 4151, and 4153 of the Revised Statutes, as amended (46 U.S.C. 71, 75, 77), upon application of the owner and approval by the Secretary, there shall be omitted from inclusion in the gross tonnage—

(a) those spaces available for the carriage of dry cargo or stores which are located between the uppermost complete deck and the second deck, and other spaces so located which would be omitted from gross tonnage under the provisions of section 4153 if above the upper deck, provided that a tonnage mark is placed and displayed on the vessel in accordance with the provisions of this Act, so long as that tonnage mark is not submerged;

(b) those spaces which are located on or above the uppermost complete deck and which are available for the carriage of dry cargo or stores, without regard to whether a tonnage mark is placed or displayed on the vessel or, if placed or displayed, without regard to whether that mark is submerged; and

(c) those spaces which are located on the uppermost complete deck and which are used for cabins or staterooms, provided that a tonnage mark is placed and displayed on the vessel, so long as that tonnage mark is not submerged.

SEC. 3. The tonnage mark shall be a horizontal line, upon which shall be placed for identification an inverted equilateral triangle, with its apex on the midpoint of the line. The mark shall be placed and displayed on each side of the vessel, subject to such specifications as to location and dimensions as are prescribed in regulations issued under this Act.

SEC. 4. No tonnage mark shall be required to be placed or displayed above the statutory summer loadline prescribed in accordance with the applicable loadline convention, except that, when a vessel's statutory loadline is assigned on the assumption that the second deck is the freeboard deck, the tonnage mark may be permitted to be placed and displayed on a line level with the uppermost part of the loadline grid.

SEC. 5. Except when the tonnage mark is placed and displayed on the vessel at the level prescribed in section 4 hereof, an additional line may be added to the tonnage mark, subject to such specifications as to location and dimensions as are prescribed in regulations issued under this Act.

SEC. 6. The tonnage mark shall be deemed to be submerged when the upper edge of the mark is under water, except that if the vessel is marked with the additional line in accordance with section 5 of this Act and is in fresh water or in tropical waters the tonnage mark shall not be deemed to be submerged unless the upper edge of the additional line is under water.

SEC. 7. In a case in which a vessel measured under this Act and other applicable statutes has a tonnage mark placed and displayed at a place other than a line level with the uppermost part of the loadline grid, any measurement certificate or marine document reciting tonnages issued to such vessel shall show the gross and net tonnages applicable when the tonnage mark is submerged and the gross and net tonnages applicable when the mark is not submerged. In any other case in which a vessel is measured under this Act and other applicable statutes, any measurement certificate or marine document reciting tonnages issued to such vessel shall show only one set of gross and net tonnages, taking into account all applicable omissions or exemptions.

SEC. 8. In a case in which an application for omission of spaces is filed under section 2 of this Act for a vessel for which a statutory loadline is not required and is not assigned, the line of the uppermost complete deck shall be marked in the manner specified for marking the deck line in the international loadline convention in force.

SEC. 9. Section 4149 of the Revised Statutes (46 U.S.C. 72) is amended to read as follows:

"SEC. 4149. The Secretary of the Treasury shall prescribe how evidence of admeasurement shall be given."

SEC. 10. Section 4150 of the Revised Statutes (46 U.S.C. 74) is amended to read as follows:

"SEC. 4150. A vessel's marine document shall specify such identifying dimensions, measured in such manner, as the Secretary of the Treasury may prescribe."

SEC. 11. Section 4153 of the Revised Statutes (46 U.S.C. 77) is amended by inserting before the first paragraph the following:

"The tonnage deck, in vessels having three or more decks to the hull, shall be the second deck from below; in all other cases the upper deck of the hull is to be

the tonnage deck. All measurements are to be taken in feet and decimal fractions of feet."

SEC. 12. The Secretary shall make such regulations as may be necessary to carry out the provisions of this Act.

SEC. 13. Any person who makes a false, fictitious, or fraudulent statement or representation in any matter in which such statement or representation is required to be made to the Secretary in any regulation issued under this Act shall be subject to a penalty of not more than \$1,000 for each such statement or representation.

SEC. 14. If any tonnage mark required to be placed and displayed on a vessel in any regulation issued under this Act by the Secretary is not so placed or displayed or if the mark at any time shall cease to be continued on the vessel, such vessel shall be subject to a penalty of \$30 on every subsequent arrival in a port of the United States.

SEC. 15. Any penalty incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes, as amended (46 U.S.C. 7).

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THE SECRETARY OF THE TREASURY,  
*Washington, February 11, 1965.*

HON. HUBERT H. HUMPHREY,  
*President of the Senate.*

DEAR MR. PRESIDENT: There is submitted herewith a draft of a proposed bill to amend the inland, Great Lakes, and western rivers rules concerning sailing vessels and vessels under 65 feet in length.

The various sets of rules of the nautical road are generally applicable to all vessels regardless of size. In most situations, this uniform applicability of the rules does not cause serious problems. Difficulties are created, however, in some cases where small vessels insist on their right-of-way over deep-draft, oceangoing ships or tugs with tows. This is especially true in narrow channels where maneuvering ability is limited. In such cases, the larger vessel or the vessel with a tow is unable to maneuver as freely as the motorboat or other small vessel.

This problem is accentuated by the fact that the number of motorboats is rapidly increasing and that many operators of these small craft are unaware of the limitations on the maneuvering ability of large vessels and those with tows. As a result they frequently navigate in such a manner as to hamper the movement of the larger vessels and increase the possibility of collision.

The purpose of the proposed bill is to clarify the duties of small craft when operating in narrow channels in which large vessels are also navigating. The bill would amend the existing inland, Great Lakes, and western rivers rules of the road to provide that, in a narrow channel, a sailing vessel or a steam vessel under 65 feet in length shall not operate so as to hamper the navigation of larger vessels which can only navigate within the channel. This provision would apply to all vessels propelled by machinery since they are considered steam vessels under these rules.

The new rules proposed by this bill would be consistent with those adopted for international use by the International Conference on Safety of Life at Sea, 1960. They are also designed to promote uniformity among the three sets of domestic rules.

The Department believes that adoption of the proposed new rules would eliminate a potential source of collisions without interfering significantly with the operations of pleasure craft. Their adoption would also aid in educating the boating public to the dangers that exist in operations near larger, less maneuverable vessels.

Enactment of the proposed bill would not result in any increased costs.

There is enclosed a comparative type showing the changes in existing law that would be made by the proposed bill.

Identical legislation was submitted to the 88th Congress by this Department. It was sent to the Senate on September 29, 1964, but was not introduced prior to adjournment.

It would be appreciated if you would lay the proposed bill before the Senate.

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 proposed legislation to the Congress.

Sincerely yours,

DOUGLAS DILLON.

## ANALYSIS

Section 4153 of the Revised Statutes, as amended (46 U.S.C. 77), is the principal statute governing the measurement of vessels of the United States to determine gross and net tonnages for registry or documentation. Paragraph (h) of that section, after first providing for the measurement of closed-in spaces on or above the upper deck, continues as follows:

*Provided*, That nothing shall be added to the gross tonnage for any sheltered space above the upper deck which is under cover and open to the weather; that is, not inclosed.

Sections 2.45, 2.46, and 2.47 of the Customs Regulations (19 CFR 2.45, 2.46, and 2.47) spell out in detail the treatment to be accorded under the above-cited provision of law to sheltered spaces above the upper deck which are under cover, open to the weather, and not enclosed.

Those spaces which qualify thereunder as open are omitted from inclusion in gross and net tonnages whether located in the so-called shelter-deck area or in deck structures on the deck above. The exemption for the shelter-deck area is obtained by cutting or fitting openings, called tonnage openings, in the deck above such space and in bulkheads within the space which conform in size and location to the requirements set out in the regulations. The exemption for the deck structures is obtained by cutting or fitting tonnage openings in the ends or the sides of such structures, again subject to specifications for size and location. The tonnage openings may be temporarily closed in certain prescribed ways but may not be fitted with any permanent means of closure.

The theory under which the allowance is granted is that such spaces, although under cover and temporarily closed, remain open to the weather and should be regarded for tonnage purposes as though on the open deck. Nevertheless, the spaces are in fact made sufficiently weathertight by their covering and closures to permit the carriage of general cargo.

Of course, the authorities who determine the permissible depth of loading of vessels for safety and insurance purposes, the loadline authorities, have taken cognizance of these arrangements and have, in effect, required that the draft of vessels so constructed be decreased, particularly when there are openings in the shelter-deck area.

Thus, if the owner fits his vessel with openings, he will qualify for tonnage benefits in the form of reductions in tonnage but at the same time he will find that his vessel's draft, in all probability, will be reduced. If the openings are closed, he will be permitted, in the usual case, to load his vessel to a deeper level and thus take more cargo, but he will find also that the tonnage of his vessel is increased as a consequence.

The shelter-deck ship and the opening devices are not, however, peculiar to the laws and to the merchant vessels of the United States. Provisions of law and regulations which are almost identical are found in the laws of Great Britain and somewhat similar provisions may be found in the rules applicable for measurement of vessels in maritime nations generally. The practice of inserting these openings and recognizing the resulting allowances for tonnage is, as a result, accepted internationally.

In recent years, several international assemblages interested in tonnage measurement and in the safety of ships, including the 1959 Classification Society Conference, held in London, the 1960 International Conference on Safety of Life at Sea, also held in London, and the 1961 meeting of the Oslo Convention Tonnage Experts, held in Reykjavik, Iceland, have called attention to the matter and have taken the position that the practice of permitting such openings is not desirable from the standpoint of seaworthiness and safety. They have recognized the desirability of dispensing with the temporary closing appliances and allowing the use of permanent watertight closures. The Classification Society Conference urged that this be done without influencing the tonnage measurement.

As a result, in 1961, the Intergovernmental Maritime Consultative Organization (IMCO) through its Maritime Safety Committee and its Subcommittee on Tonnage Measurement undertook a study of the problem as a matter of urgency with a view to making recommendations for its solution. The United States has been represented at the meetings of these groups which have given careful study to the matter with a view to recommending a change which might permit closing the opening without influencing tonnage measurement or having an adverse effect upon the economics of the shipping industry. These studies

have been concluded and the subcommittee's report and recommendations have been given final approval by the Maritime Safety Committee as well as the required approval by the Council and Assembly of IMCO.

The Secretary General of IMCO, in a note of May 22, 1964, following such final approval, transmitted to governments members of the Organization, including the United States, these recommendations on the treatment of shelter deck and other open spaces as adopted by resolution of the Assembly of the Organization on October 18, 1963, and an appendix containing certain further recommendations in matters of detail as approved by the Maritime Safety Committee on April 20, 1964, pursuant to authorization of the Assembly. The Secretary General has expressed the hope that governments will be in a position to implement the recommendations by including the relevant provisions in their national tonnage measurement regulations, pursuant to the recommendation of the Assembly. A copy of the note of May 22, 1964, from the Secretary General, with its attachments is appended.

Those recommendations, briefly, state that provisions should be introduced into the present national tonnage measurement requirements so that those spaces of a permanent character which are regarded as open spaces, and are accordingly exempted from inclusion in gross tonnage under such rules, may be permanently closed, while retaining the present exemption of these spaces. Such provisions, under the recommendations, are to extend to all ships, whether existing or new, and permit exemption from gross tonnage of (a) certain permanently closed spaces situated on or above the uppermost complete deck exposed to sea and weather and (b) certain permanently closed spaces situated between the above-mentioned uppermost complete deck and the complete deck next below (i.e., the second deck) provided that a tonnage mark as defined in the recommendations is not submerged. The tonnage mark is to be located a certain distance below the line of the second deck, the distance being calculated by using the tonnage mark tables which are an integral part of the recommendations.

The tonnage mark, which is to be on each side of the ship slightly abaft amidships, is not to be assigned above the appropriate statutory loadline marked in accordance with the International Load Line Convention in force and the national legislation and regulations issued thereunder. However, it is specifically provided that nothing in the recommendations should prevent the assignment of a statutory loadline on the assumption that the second deck is the freeboard deck; when it is so assigned, the tonnage mark may be placed at the same level, without regard to any tabular assignment which would otherwise be required. The tonnage mark is to be regarded as placed at the same level as the appropriate statutory loadline if marked on a line level with the uppermost part of the loadline grid.

When the tonnage mark is not submerged, following these recommendations, the gross and net tonnages determined by exempting the spaces which qualify for exemption and which are situated within the uppermost 'tween deck should apply; when the tonnage mark is submerged, the gross and net tonnages determined without exempting the said spaces should be applicable.

If the spaces which qualify for exemption are situated in the detached superstructures or deck houses on or above the uppermost complete deck, they are to be exempt from inclusion in the gross and net tonnages, whether or not the tonnage mark is submerged.

The recommendations define the spaces qualifying for exemption as those spaces which are permanently closed but which, were they provided with tonnage openings, would be exempt from inclusion in the gross tonnage under the present relevant national tonnage measurement requirements.

Provision is made in the recommendations for the tonnage certificate and the marine document of a vessel which has a tonnage mark to show two sets of gross and net tonnages, except in a case in which the statutory loadline is assigned on the assumption that the second deck is the freeboard deck and in which the tonnage mark is placed at the same level as the loadline mark; in the latter case only one set of tonnages need be shown.

The draft legislation forwarded with this analysis is designed to give effect to the recommendations which have been transmitted by the Secretary General of IMCO.

Section 1 of the bill contains definitions of the terms "uppermost complete deck," "second deck," "trunks," and "Secretary." The definitions of the first three terms conform to those included in the IMCO recommendations. The term "Secretary" is defined as meaning the Secretary of the Treasury.

Section 2 provides that upon application of the owner and approval by the Secretary, there shall be omitted from inclusion in the gross tonnage, and hence

in the net tonnage, the volume of certain spaces, including principally the spaces available for the carriage of dry cargo or stores above the uppermost complete deck and between that deck and the deck next below and the spaces used for cabins or staterooms on the uppermost complete deck. When the spaces are those available for dry cargo or stores between the uppermost complete deck and the second deck or those used for cabins and staterooms on the uppermost complete deck, the omission from tonnage is to apply only upon the condition that a control device, designated a tonnage mark, is placed and displayed on the vessel and the further condition that the mark is not submerged.

The exemption of cargo space, it will be noted, has been limited to that for the carriage of dry cargo. The reference to "dry" cargo is not unique in present law, for the term is used in section 4132 of the Revised Statutes, as amended (46 U.S.C. 11). The term has been included because of the view expressed by the Subcommittee on Tonnage Measurement of IMCO as contained in its report to the Maritime Safety Committee, although not included in its formal proposals, that although the recommendations are applicable to all ships, nevertheless they relate only to those ships and spaces therein which comply with the provisions of paragraph 8 of the recommendations as later forwarded by the Secretary General of IMCO and included in the attachment to this analysis. This expression was made following a lengthy discussion of intention in which all agreed that the recommendations should not be read to permit the exemption of liquid cargo space, which could not be exempted at present since no such space could be fitted with openings because of the very nature of the cargo itself. Of course, if the openings were to be closed, the space might be made suitable for liquid cargo. It is, therefore, necessary in some way to indicate that such spaces are not within the intentment of the draft legislation. The term may require some definition in the regulations to be issued under the legislation. It is expected that the definition, if deemed necessary, will be drawn in accordance with the above-stated expression of intention in the application of the recommendations.

While, as indicated, the spaces to be exempted in the 'tween deck (that is, the space between the uppermost complete deck and the deck next below) will consist principally of spaces available for cargo or stores, there are certain other spaces in that area which today would be exempted from gross tonnage if the space were to be fitted with proper tonnage openings. An example of a space which would not be regarded as available for cargo or stores but which would be exempted in such case is the space occupied by a closed-in resistor house.

A closed-in space, of course, could not be regarded as open to the weather and not enclosed within the meaning of that portion of paragraph (h) of section 4153 which has been quoted above. However, that portion of paragraph (h) of section 4153 which immediately precedes the quoted matter and which provides for the measurement of closed-in spaces provides only for the measurement of such of those spaces as are available for cargo, or stores, or for the berthing or accommodation of passengers or crew. This Department and its predecessors in the administration of the provisions of section 4153 have construed these provisions as not requiring or providing for the measurement of any closed-in space on the upper deck other than one of those specifically named. Since the space in an open 'tween deck is regarded as space on the upper deck, it follows that a resistor house and any other similar space would not be measured and included in the tonnage of a vessel so constructed.

Having spaces such as this in mind and the difficulties of making an inclusive list of such spaces, section 2(a) has been drawn to include among the spaces exempted "other spaces so located which would be omitted from gross tonnage under the provisions of section 4153 if above the upper deck." This will in effect exempt all spaces in the 'tween-deck area other than spaces for the berthing or accommodation of passengers or crew.

In section 3, the tonnage mark is described in general terms and there is a requirement that it be marked on each side of the vessel. However, detailed specifications for location and dimensions are not included. Such specifications are reserved for inclusion in regulations to be issued under the act by the Secretary. It is expected that these regulatory requirements will follow the IMCO recommendations and that the tonnage tables included therein will be used in specifying the vertical location of the tonnage mark. However, since it may be anticipated that changes in the tables may become necessary or advisable on the basis of experience in operation or by reason of changed conditions, it has been considered advisable to avoid including these details in the legislation in order to obviate the necessity for requesting amendments to the law for the purpose of making relatively minor changes.

Section 4 provides that the tonnage mark shall not appear above the statutory summer loadline mark. This provision follows a specific recommendation in the IMCO papers to that effect. It appears that no substantial purpose would be served by placing the mark in such a location, since the loadline mark cannot lawfully be submerged. However, the section makes an exception in a situation in which a statutory loadline is assigned at a freeboard greater than the minimum, when the tonnage mark is permitted to be maintained on a line level with the uppermost part of the loadline grid. Owners of vessels who desire to retain present tonnages or to receive equivalent tonnage assignments and who are willing to operate their vessels indefinitely at a lesser draft in order to maintain a lower set of tonnages without having higher tonnages shown on their vessel documents would be permitted to do so under this section.

Section 5 provides that, except when the tonnage mark is at the level of the uppermost part of the loadline grid, an additional line may be added, subject to regulatory specifications for location and dimensions. The line is intended for use in fresh or tropical waters as an indication of the permissible depth of loading for retention of tonnage benefits. While details of location and dimensions of this line have been omitted for the same reasons as those given above for section 3, it is expected that the regulatory specifications will conform to the recommendations of IMCO.

Section 6 sets out the circumstances in which the tonnage mark is to be deemed to be submerged. This will occur when the upper edge of the horizontal line which forms the mark is under water, except that when the additional line provided under the preceding section is marked, the tonnage mark is not to be deemed to be submerged unless that line is under water. This latter provision is similar to a provision found in the loadline convention which permits deeper loading in fresh or tropical waters. The principal effect, broadly speaking, will be to permit vessels in fresh water to load the same amount of cargo as in salt water without losing tonnage benefits.

Section 7 provides in effect that if a vessel has a tonnage mark placed so that it is possible to submerge it without submerging the loadline mark, the measurement certificate or marine document shall show both the higher gross and net tonnages applicable while the tonnage mark is submerged and the lower gross and net tonnages applicable while the tonnage mark is not submerged. If the tonnage mark is so placed as to be effectively prohibited by proximity to the loadline mark from being lawfully submerged or if there is no mark, only one set of tonnages, reflecting all exemptions applicable in any specific case, is to be shown. The provisions will require the showing of all applicable tonnages and will permit enforcement authorities to select the proper tonnages in application of pertinent laws, charges, or fees.

Section 8 provides for the marking of a deckline for use in vertical location of the tonnage mark when the vessel involved is not subject to the requirements for having a statutory loadline mark and does not have one assigned.

Section 9 amends section 4149 of the Revised Statutes (46 U.S.C. 72) to omit the present detailed requirements relating to the issuance of certificates of admeasurement and the requirements for counter-signing of such certificates by the owner, the master, or the agent of the vessel. The latter provision appears to have outlived its usefulness and the specification of details appears overly restrictive and unnecessary. The new section would permit the details in such issuances to be specified by regulation.

Section 10 amends section 4150 of the Revised Statutes (46 U.S.C. 74) to delete the detailed provisions with regard to the dimensions to be shown in vessel registers and the detailed specifications with respect to determining length, breadth, depth, and height. The amended section would permit the Secretary to prescribe by regulation for taking dimensions and expressing them appropriately in any register or other marine document issued to a vessel.

Section 11 would further amend section 4153 of the Revised Statutes (46 U.S.C. 77) by inserting as a first paragraph a sentence specifying the deck which is to be deemed the tonnage deck in vessels and requiring the measurements be taken in feet and decimal fractions of feet. These provisions are taken substantially from section 4150 of the Revised Statutes. They appear to be more appropriate for inclusion in the general measurement statute.

Section 12 authorizes the Secretary to make such regulations as may be necessary to carry out the provisions of the act.

Section 13 provides a penalty for making of false, fictitious, or fraudulent statements or representations in any matter in which a statement or representation is

required in the regulations issued under the act. This penalty, for flexibility and ease of administration, would be civil in nature and subject to remission or mitigation as provided in section 15 below.

Section 14 provides a penalty if a required tonnage mark is not placed or displayed on the vessel. This penalty corresponds in nature and amount to the penalty prescribed in section 4153 of the Revised Statutes for failure to have the net tonnage marked as well as to similar penalties in other sections of law relating to the marking of official numbers and names on vessels (see 46 U.S.C. 45 and 46). It would be subject to administration in the same manner as the penalty provided in section 13.

Section 15 would provide authority for remission or mitigation of any penalty incurred under the act pursuant to the provisions of section 5294 of the Revised Statutes, as amended (46 U.S.C. 7).

The bill is, of course, not intended to repeal by implication or affect any provision of existing statute not specifically mentioned and expressly amended. Any vessel may be measured after enactment in accordance with existing law, as in the past. Accordingly, if tonnage openings are fitted or remain fitted on vessels after approval of the proposed legislation, the spaces which may be regarded as open by virtue of such tonnage openings under present law will be omitted from inclusion in gross tonnage, and consequently from inclusion in net tonnage. However, if the owner of such a vessel, whether the vessel exists at the time of enactment or is built thereafter, should elect to file an application for treatment under section 2 of the act and if that application is approved, the exemption or omission of such spaces as are described in that section will be granted subject to compliance with the other requirements.

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GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
*Washington, D.C., April 22, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Senate Commerce Committee,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 906, a bill to provide for the measurement of the gross and net tonnages for certain vessels having two or more decks, and for other purposes.

The bill would modify U.S. tonnage measurement regulations so that those spaces of a permanent character which are now regarded as open spaces, and are now exempted from inclusion in gross tonnage under such rules, may be permanently closed, while retaining the present tonnage exemption of these spaces and the maximum loadline associated with these exemptions. In effect, the reduced tonnage of shelter deck-type ships is thus directly related to the maximum draft permitted for this type ship, without the necessity for resorting to: tonnage opening in bulkheads; tonnage hatches; watertight hatch covers on the second deck; elaborate drainage systems for upper 'tween deck, etc., which are presently required. By the measures proposed in the subject bill, the tonnage and loadline of shelter deck ships are maintained while the safety of the ship is enhanced and the cost is reduced by the deletion of tonnage opening and related features.

In addition, by the provisions of the proposed bill, the shipowner is afforded an opportunity of designing his ship to qualify for both shelter deck and loadline assignment. The flexibility of this feature in the use of such vessel is, obviously, a great operating advantage.

The substance of the proposed bill is derived from studies, considerations and recommendations of several International Conferences and Entities such as: the 1960 International Conference on Safety of Life at Sea; the Maritime Safety Committee of the International Maritime Consultative Organization; the Subcommittee on Tonnage of IMCO and others. Personnel of the Maritime Administration have represented the Department in the above named organizations and have contributed to the development of the studies which have resulted in the proposed bill.

We, therefore, recommend approval of the bill.

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, *General Counsel.*

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., February 15, 1965.

XXXXXXX

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your letter of February 3, 1965, requesting our comments on S. 906, 89th Congress, 1st session, a bill to provide for the measurement of the gross and net tonnages for certain vessels having two or more decks, and for other purposes.

We have no special information or knowledge concerning the proposed legislation and, therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,  
Comptroller General of the United States.

DEPARTMENT OF JUSTICE,  
Washington, D.C., March 17, 1965.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 906, a bill to provide for the measurement of the gross and net tonnages for certain vessels having two or more decks, and for other purposes.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,  
Deputy Attorney General.

[S. 1349, 89th Cong., 1st sess.]

A BILL To amend the inland, Great Lakes, and western rivers rules concerning sailing vessels and vessels under sixty-five feet in length.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That article 20 of section 1 of the Act of June 7, 1897 (33 U.S.C. 205), is amended by adding the following sentence at the end thereof: "This rule shall not give to a sailing vessel the right to hamper, in a narrow channel, the safe passage of a steam vessel which can navigate only inside that channel."

SEC. 2. Article 25 of section 1 of the Act of June 7, 1897 (33 U.S.C. 210), is amended by adding the following paragraph at the end thereof: "In narrow channels a steam vessel of less than sixty-five feet in length shall not hamper the safe passage of a vessel which can navigate only inside that channel."

SEC. 3. Rule 19 of section 1 of the Act of February 8, 1895 (33 U.S.C. 284), is amended by adding the following sentence at the end thereof: "This rule shall not give to a sailing vessel the right to hamper, in a narrow channel, the safe

SEC. 4. Rule 24 of section 1 of the Act of February 8, 1895 (33 U.S.C. 289), is amended by adding the following paragraph at the end thereof: "In all narrow channels a steam vessel of less than sixty-five feet in length shall not hamper the safe passage of a vessel which can navigate only inside that channel." passage of a steam vessel which can navigate only inside that channel."

SEC. 5. The rule numbered 20 in section 4233 of the Revised Statutes, as amended (33 U.S.C. 345), is further amended by adding the following sentence at the end thereof: "This rule shall not give to a sailing vessel the right to hamper the safe passage of a large steam vessel or vessel with tow that is ascending or descending a river."

SEC. 6. Section 4233 of the Revised Statutes, as amended, is further amended by adding the following new rule after rule numbered 23:

"Rule twenty-three (A). A steam vessel of less than sixty-five feet in length which can maneuver easily shall not hamper the safe passage of a large vessel or vessel with tow that is ascending or descending a river."

THE SECRETARY OF THE TREASURY,  
Washington, January 14, 1965.

HON. CARL HAYDEN,  
President pro tempore of the Senate,  
Washington, D.C.

DEAR MR. PRESIDENT: A proposed bill is enclosed, to provide for the measurement of the gross and net tonnages for certain vessels having two or more decks and for other purposes.

The proposed legislation would add provisions to and amend existing law so that in measuring vessels for documentation as vessels of the United States certain spaces available for cargo and stores and certain other spaces would be excluded from gross tonnages even though such spaces are closed to the weather in a permanent manner and tonnage openings presently required for exemption are not fitted. The bill is drawn in accordance with recommendations formulated by the Intergovernmental Maritime Consultative Organization and transmitted to member nations by the secretary general of IMCO with a request that the relevant provisions be included in the national tonnage measurement regulations. Enactment will extend safety and tonnage benefits to vessels of the United States comparable to those which will be enjoyed by vessels of other nations upon adoption of the IMCO recommendations. An accompanying analysis and comparative type explain the proposed bill in more detail.

It will be appreciated if you will lay the enclosed draft bill before the Senate. A similar proposal has been transmitted to the House of Representatives.

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 proposed legislation to the Congress.

Sincerely yours,

DOUGLAS DILLON.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., March 15, 1965.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your letter of March 5, 1965, requesting our comments on S. 1349, 89th Congress, 1st session, a bill to amend the inland, Great Lakes, and western rivers rules concerning sailing vessels and vessels under 65 feet in length.

We have no special information or knowledge concerning the proposed legislation and, therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,  
Comptroller General of the United States.

FEDERAL MARITIME COMMISSION,  
Washington, D.C., March 15, 1965.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of March 5, 1965, for the views of the Federal Maritime Commission with respect to S. 1349, a bill to amend the inland, Great Lakes, and western rivers rules concerning sailing vessels and vessels under 65 feet in length.

Inasmuch as the bill does not affect the responsibilities or jurisdiction of the Commission, we express no views as to its enactment.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the administration's program.

Sincerely yours,

JOHN HARLLEE,  
Rear Admiral, U.S. Navy (Retired),  
Chairman.

[S. 2142, 89th Cong., 1st sess.]

A BILL To simplify the admeasurement of small vessels.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 4148 of the Revised Statutes (46 U.S.C. 71) is amended to read as follows:

"SEC. 4148. (a) Before a vessel is documented under the laws of the United States or issued a certificate of record it shall be admeasured by the Secretary of the Treasury as provided in subsection (b) or (c) of this section. A vessel which has been admeasured need not be readmeasured solely to obtain another document, unless it is a vessel admeasured under subsection (b) which is required to be readmeasured under subsection (c); but a vessel which is intended to be used exclusively as a pleasure vessel may at the owner's option be readmeasured under subsection (b).

"(b) Subject to the owner's option to have his vessel admeasured under subsection (c) of this section, a vessel which is intended to be used exclusively as a pleasure vessel shall be assigned gross and net tonnages which are the product of its length, breadth, and depth in feet and appropriate coefficients. The Secretary of the Treasury shall prescribe the manner in which the length, breadth, and depth shall be measured and the appropriate coefficients to be applied, taking due account of variations in vessel construction, to the end that, taken as a group and so far as practicable, the resulting gross tonnages shall reasonably reflect the relative internal volumes of the vessels admeasured and the resulting net tonnages shall be in the same ratio to the corresponding gross tonnages as the net and gross tonnages of comparable vessels if admeasured under subsection (c) of this section.

"(c) A vessel not admeasured under subsection (b) of this section, or a vessel admeasured under subsection (b) which is thereafter to be documented for use other than exclusively as a pleasure vessel, shall be admeasured as prescribed in sections 4150, 4151, and 4153 of the Revised Statutes, as amended (46 U.S.C. 74, 75, 77).

"(d) Whenever a vessel documented under the laws of the United States undergoes a change affecting tonnage, or its owner or the Secretary of the Treasury alleges error in its tonnage, it shall be readmeasured to the extent necessary and its tonnage redetermined under this section.

"(e) The tonnage of a vessel for which a document or certificate of record has been issued before the effective date of this subsection need not be redetermined solely because of amendments to Federal law enacted at the same time as this subsection; but if it is eligible for admeasurement under subsection (b) of this section its owner shall have the option of having it readmeasured under that subsection.

"(f) The Secretary of the Treasury shall make such regulations as may be necessary to carry out the provisions and intent of this section and of sections 4149, 4150, 4151, and 4153 of the Revised Statutes, as amended (46 U.S.C. 72, 74, 75, 77)."

SEC. 2. Section 4149 of the Revised Statutes (46 U.S.C. 72) is amended to read as follows:

"Sec. 4149. The Secretary of the Treasury shall prescribe how evidence of admeasurement shall be given."

SEC. 3. Section 4150 of the Revised Statutes (46 U.S.C. 74) is amended to read as follows:

"SEC. 4150. A vessel's marine document shall specify such identifying dimensions, measured in such manner as the Secretary of the Treasury may prescribe."

SEC. 4. Section 4153 of the Revised Statutes (46 U.S.C. 77) is amended by inserting before the first paragraph the following:

"The tonnage deck, in vessels having three or more decks to the hull, shall be the second deck from below; in all other cases the upper deck of the hull is to be the tonnage deck. All measurements are to be taken in feet and decimal fractions of feet."

SEC. 5. The following statutes and parts of statutes are repealed:

(a) Section 4152 of the Revised Statutes (46 U.S.C. 76).

(b) The second and third paragraphs following paragraph (i), and the first sentence of the last paragraph, reading "The register of the vessel shall express the number of decks, the tonnage under the tonnage deck, that of the between decks, above the tonnage decks; also that of the poop or other enclosed spaces above the deck, each separately.", of section 4153 of the Revised Statutes, as amended (46 U.S.C. 77).

(c) Section 4181 of the Revised Statutes (46 U.S.C. 73).

(d) Section 4331 of the Revised Statutes (46 U.S.C. 273).

(e) Section 2 of the Act of March 2, 1895 (ch. 173, 28 Stat. 743; 46 U.S.C. 78).

(f) Section 4 of the Act of March 2, 1895 (ch. 173, 28 Stat. 743), as amended (46 U.S.C. 79).

SEC. 6. This Act shall take effect upon the expiration of ninety days after the date of its enactment.

THE SECRETARY OF THE TREASURY,  
*Washington, May 22, 1965.*

HON. HUBERT H. HUMPHREY,  
*President of the Senate, Washington, D.C.*

DEAR MR. PRESIDENT: There is transmitted herewith a draft bill to simplify the admeasurement of small vessels.

The purpose of the draft bill is to substitute for the present intricate system of tonnage computation based on detailed physical measurement of the hull and deck structure a simplified method, at the owner's option and for pleasure vessels only, which would permit the assignment of tonnages on the basis of the products of a vessel's length, breadth, and depth and appropriate coefficients. The draft bill would also eliminate the statutory prescription for the form and execution of certificates of admeasurement and give the Secretary of the Treasury authority to prescribe how evidence of admeasurement shall be prepared and to eliminate unnecessary admeasurement data from vessel documents. The provisions of the draft bill are more fully set forth in the memorandum accompanying this letter.

Simplifying the measurement of pleasure vessels in the manner proposed will, since the tonnage assignment can be made on the basis of measurements readily obtainable by the ship's builder or owner, speed up the documentation of pleasure vessels, free admeasurement personnel for faster handling of commercial vessels, and save yacht owners the expense of reimbursement of an admeasurer's salary and travel expenses incident to admeasurement outside a customs port or station.

The draft bill is identical with a bill introduced at this Department's request in the 88th Congress as S. 2793.

It will be appreciated if you will lay the draft bill before the Senate.

There is enclosed for your convenient reference a comparative type showing the changes in existing law that would be made by the draft bill.

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 proposed legislation to the Congress.

Sincerely yours,

HENRY H. FOWLER.

#### ANALYSIS

Subsection 1(a) provides for the admeasurement of vessels generally, permits a consolidation of the pertinent provisions of 46 U.S.C. 71, 73, and provides that a vessel need not be readmeasured to obtain another document unless it is one assigned a formula tonnage which is to be documented for use other than exclusively for pleasure.

Subsection 1(b) provides for the admeasurement of pleasure vessels by means of assigning tonnage based on a formula. This subsection also preserves to the owner the right to choose formal admeasurement under subsection 1(c).

Subsection 1(c) provides for the admeasurement of vessels now or henceforth to be used for other than pleasure purposes, and of pleasure vessels whose owners so choose, by the procedure for formal admeasurement heretofore applicable.

Subsection 1(d) adds a new provision to existing law so as to provide for tonnage adjustments in accordance with existing administrative practice.

Subsection 1(e) gives the owner of a vessel which has already been formally admeasured the option of retaining his present tonnage outturn or of requesting a formula tonnage assignment if his vessel is a pleasure vessel. Thus any change in the tonnage of existing vessels will depend on the owners' option.

Subsection 1(f) grants regulatory authority to the Secretary superseding the authority formerly contained in section 4 of the act of March 2, 1895 (46 U.S.C. 79), which is repealed in subsection 5(f).

Section 2 eliminates the statutory prescription for the form and execution of a certificate of admeasurement and substitutes authority in the Secretary of the Treasury to prescribe how and by whom evidence of admeasurement shall be given.

Section 3 gives the Secretary of the Treasury authority to eliminate unnecessary admeasurement data from the vessel document. This is particularly neces-

sary in the case of vessels to be covered by formula admeasurement, which will use dimensions more readily ascertainable by owners and builders than register dimensions. This overrides specifications in 46 U.S.C. 25, 259, as to dimensions to be shown in vessel documents.

Section 4 restates at the beginning of 46 U.S.C. 77 the location of the "tonnage deck" and the requirement that measurements be taken in feet and decimal fractions of feet, both from 46 U.S.C. 74, as it stood before amendment by section 3.

Section 5 repeals those parts of existing law superseded by the bill. They are:

(a) 46 U.S.C. 76—Admeasurement limited to documented vessels or others specially provided for. Covered by section 1.

(b) 46 U.S.C. 77—Second and third paragraphs and first sentence of last paragraph following paragraph (i)—Statutory requirements for specific admeasurement data on vessel document repealed to permit regulation by Secretary under section 3.

(c) 46 U.S.C. 73—Provision for admeasurement of recorded vessels. Covered by section 1.

(d) 46 U.S.C. 273—Authority for admeasurement of 5 to 20 net ton licensed vessels superseded by section 1.

(e) 46 U.S.C. 78—Provisions for readmeasurement required by 1895 act. Now obsolete.

(f) 46 U.S.C. 79—Existing regulatory authority superseded by subsection 1(f).

Section 6 provides for an effective date 90 days after enactment.

While it is certain that adoption of the bill would result in substantial savings of admeasurers' time, it is impossible to project the budgetary effect with any precision.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., June 24, 196 .

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HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of June 15, 1965, invites our comments on S. 2142, a bill to simplify the admeasurement of small vessels.

We have no special information or knowledge that would assist in the consideration of S. 2142, and therefore have no comments to offer.

Sincerely yours,

FRANK H. WEITZEL,  
Assistant Comptroller General of the United States.

OFFICE OF THE CHAIRMAN,  
Washington, D.C., June 17, 196 .

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of June 15, 1965, for the views of the Federal Maritime Commission with respect to S. 2142, a bill to simplify the admeasurement of small vessels.

Inasmuch as the bill does not affect the responsibilities or jurisdiction of the Commission, we express no views as to its enactment.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the administration's program.

Sincerely yours,

JOHN HARLEE,  
Rear Admiral, U.S. Navy (Retired), Chairman.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
Washington, D.C., June 30, 1965.

HON. WARREN G. MAGNUSON,  
Chairman, Senate Commerce Committee,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 2142, a bill to simplify the admeasurement of small vessels.

The bill would consolidate in section 4148 of the Revised Statutes (46 U.S.C. 71) the existing provisions of that section and section 4181 of the Revised Statutes (46 U.S.C. 73) (both relating to the admeasurement of vessels), and in addition would provide for the admeasurement of pleasure vessels, at the option of the owner, by assignment of tonnage based on product of length, breadth, and depth and appropriate coefficients in lieu of formal admeasurement as provided by established law.

This bill was originally a proposal of the Department of the Treasury in the 88th Congress. That Department, in a letter to the House Committee on Merchant Marine and Fisheries on H. R. 81, of the 88th Congress, a bill to simplify the admeasurement of small vessels, which was a similar bill, recommended changes in that bill which were then embodied in S. 2793 of the 88th Congress. Their letter stated that simplifying the measurement of pleasure vessels in the manner recommended will, since the tonnage assignment can be made on the basis of measurements readily obtainable by the ship's builder or owner, speed up yacht documentation, free admeasurement personnel for faster handling of commercial vessels, and save yacht owners the expense of reimbursement of an admeasurer's salary and travel expenses incident to admeasurement outside a customs port or station.

The bill would also eliminate the statutory prescription for the form and execution of certificates of admeasurement and give the Secretary of the Treasury authority to prescribe how evidence of admeasurement shall be prepared and the Treasury Department believes, would eliminate unnecessary admeasurement data from vessel documents. We recommend favorable consideration of the bill.

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,  
*General Counsel.*

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U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., June 29, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2142, to simplify the admeasurement of small vessels.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,  
*Deputy Attorney General.*

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[H.R. 729, 89th Cong., 1st sess.]

AN ACT To amend section 510(a)(1) of the Merchant Marine Act, 1936

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 510(a)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160), is amended (1) by striking out of subdivision (B) before the proviso the words "in the judgment of the Commission, is obsolete or inadequate for successful operation in the domestic or foreign trade of the United States" and inserting in lieu thereof the words "in the judgment of the Secretary of Commerce, should be replaced in the public interest", and (2) by striking out the proviso.

Passed the House of Representatives July 12, 1965.

Attest:

RALPH R. ROBERTS, *Clerk.*

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., July 22, 1965.

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HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U. S. Senate.

DEAR MR. CHAIRMAN: Your letter of July 13, 1965, invites our comments on S. 2274, a bill to amend section 510(a)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160), relating to the replacement of obsolete vessels.

This bill is identical to S. 3030, 88th Congress, 2d session. For the reasons stated by the Secretary of Commerce in his letter of July 20, 1964, transmitting the earlier bill to the President pro tempore of the Senate, the enactment of S. 2274 would seem desirable to eliminate an inconsistency between sections 510(a)(1) and 605(b) of the act and to permit an orderly replacement program for war-built vessels. However, we have no special information or knowledge concerning the proposed legislation and, therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

FRANK H. WEITZEL,  
Acting Comptroller General of the United States.

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FEDERAL MARITIME COMMISSION,  
OFFICE OF THE CHAIRMAN,  
July 19, 1965.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of July 13, 1965, for the views of the Federal Maritime Commission with respect to S. 2274, a bill to amend section 510(a)(1) of the Merchant Marine Act, 1936.

Inasmuch as the bill does not affect the responsibilities or jurisdiction of the Commission, we express no views as to its enactment.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the administration's program.

Sincerely yours,

JOHN HARLLEE,  
Rear Admiral, U.S. Navy (Retired), Chairman.

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THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., August 17, 1965.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Interstate and Foreign Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2274, to amend section 510(a)(1) of the Merchant Marine Act, 1936.

Section 510(a)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160), defines an "obsolete vessel" in part as a vessel which is "obsolete or inadequate for successful operation in the domestic or foreign trade of the United States." S. 2274 would change this part of the definition of "obsolete vessel" to a vessel which "should be replaced in the public interest."

The Department would have no objection to enactment of the proposed legislation as a means for facilitating decisions on pending applications for vessel exchanges.

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,

EDWIN F. RAINS,  
Acting General Counsel.

[H. R. 5989, 89th Cong., 1st sess.]

AN ACT To amend section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), is further amended by striking out the period at the end thereof and inserting in lieu a colon and the following proviso: "*Provided further,* That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, so long as such vans or tanks are owned or leased by the owner or operator of the transporting vessels and are being transported for use in the carriage of cargo in foreign trade."

Passed the House of Representatives May 17, 1965.

Attest:

RALPH R. ROBERTS, *Clerk.*

THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., July 13, 1965.

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H. R. 5989, to amend section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883).

Section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883), prohibits the transportation of merchandise in the coastwise trade by all vessels other than those built in and documented under the laws of the United States and owned by citizens of the United States. That provision further provides that certain classes of vessels though meeting such requirements, principally those vessels which have at one time been sold alien or placed under foreign registry or which have been rebuilt without the entire rebuilding having been performed in the United States, may not engage in coastwise trade.

The proposed legislation would amend section 27 by adding a proviso thereto which would allow empty cargo vans, empty lift vans, and empty shipping tanks to be transported coastwise by vessels of the United States not qualified to engage in the coastwise trade and by vessels of foreign registry if the government of the nation of registry extends reciprocal privileges to U.S. vessels, so long as such vans or tanks are owned or leased by the owner or operator of the transporting vessel and are being transported for use in the carriage of cargo in foreign trade. The effect of the bill would be to accord to the named articles a privilege not available to other classes of articles.

The Bureau of Customs of this Department has recognized the need for extending special treatment to lift vans, cargo vans, shipping tanks, and similar instruments arriving in use or to be used in the shipment of merchandise in international traffic. Treasury Decision 55078, approved March 18, 1960, noted that "Developments in containerization practices in the shipment of merchandise back and forth between the United States and foreign countries make apparent the need for the simplification of the customs procedures with respect to cargo vans, lift vans, and similar instruments of international traffic."

As a result, section 10.41a was added to the customs regulations. This section provides that lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and similar instruments arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic may be released without entry or the payment of duty. However, the addition of section 10.41a to the customs regulations does not affect the treatment of those articles as "merchandise" within the context of section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883). Thus, present procedures are designed to facilitate their use in the lading or unloading of cargo but at the same time they nevertheless may not be transported coastwise by foreign vessels or vessels of the United States not qualified to engage in the coastwise trade once they have been landed.

If the articles are placed on the pier as an incident to the lading or unlading of a vessel and are reloaded on the same vessel on the same voyage without having been removed from the pier, they are not deemed "landed." However, unless all of these conditions are met, a "landing" is deemed to have taken place, and neither a foreign vessel nor a vessel of the United States not qualified to engage in the coastwise trade may then transport the articles to and land them at another point embraced within the coastwise laws.

The Treasury Department would have no objection to the enactment of H.R. 5989 and anticipates no unusual difficulty in carrying out its responsibilities under the proposed legislation.

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,

FRED B. SMITH,  
*Acting General Counsel.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
*Washington, D.C., June 17, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request or the views of this Department with respect to H.R. 5989, a bill to amend section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883).

Section 27 of the Merchant Marine Act, 1920, provides that no merchandise shall be transported by water, or by land and water, between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in the United States, documented under the laws of the United States, and owned by citizens of the United States.

The bill would amend this section to provide that upon such terms and conditions as the Secretary of the Treasury may by regulation prescribe, the section shall not apply to the transportation between points embraced within the coastwise laws, for use in the carriage of cargo in foreign trade, of empty cargo vans, empty lift vans, and empty shipping tanks which are owned by or leased to the owner or operator of the transporting vessel if (1) the transporting vessel is an American-flag vessel which does not have coastwise privileges, or (2) the transporting vessel is a foreign-flag vessel and the Secretary of the Treasury finds (pursuant to information furnished by the Secretary of State) that the nation of the vessel's registry extends reciprocal privileges to American-flag vessels.

Once a container movement is ended and its cargo is unloaded at destination, it becomes necessary in many cases to move the container to a different point where it is to be reloaded. However, the Bureau of Customs, Department of the Treasury, which administers section 27 of the Merchant Marine Act, 1920, interprets that section as prohibiting the transportation of containers by foreign or unqualified American vessels from one point in the United States to another, even though the transportation is not for hire and the sole purpose of the transportation is to move the empty container to a place where cargo is available for loading.

The purpose of the bill is to remove this restriction insofar as empty containers are concerned in the interest of obtaining better utilization of the containers. A most important provision of the bill is that which allows the exception on a reciprocal basis as a means of inducing similar privileges for American vessels transporting containers between points in a foreign country.

The bill guards against unwarranted competition in the protected coastwise trade by limiting the exception to the transportation of empty containers which are owned or leased by the owner or operator of the transporting vessel. We consider this a reasonable precaution.

Because the full use of containers has a potential for reducing transportation costs, we favor enactment of the bill as reasonable step in realizing this potential.

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,  
*General Counsel.*

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., June 22, 1965.

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on H.R. 5989, an act to amend section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883).

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,  
*Deputy Attorney General.*

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DEPARTMENT OF STATE,  
Washington, D.C., June 14, 1965.

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
*U.S. Senate.*

DEAR MR. CHAIRMAN: Thank you for your letter of May 19, 1965, requesting the Department's comments on H.R. 5989, an act to amend section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883).

We concur in the objectives of the act and perceive no objections from a foreign policy standpoint to its enactment.

In event of enactment by Congress of H.R. 5989, the Department of State can undertake the furnishing of information needed by the Secretary of the Treasury. This can be done by analysis of international agreements, or if necessary, by requesting from foreign governments assurances that U.S. vessels are accorded similar privileges.

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

Sincerely yours,

DOUGLAS MACARTHUR II,  
*Assistant Secretary for Congressional Relations*  
(For the Secretary of State).

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COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., May 26, 1965.

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce, U.S. Senate.*

DEAR MR. CHAIRMAN: This is in reply to your letter of May 19, 1965, requesting our comments on H.R. 5989, an act to amend section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), which was passed by the House of Representatives on May 17, 1965.

We have no special information or knowledge concerning the proposed legislation and, therefore, make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

Senator BARTLETT. It was also intended this morning to conduct a hearing on S. 1875, a bill to repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws. However, it was discovered that Senator Dominick, a member of the committee who has a very real interest in this bill, could not attend this morning because of the necessity to be in an executive meeting of another committee.

So we will put that bill over, and it is our hope and intention to bring it up on Wednesday next.

So we will consider first this morning S. 906. The first witness will be Robert V. McIntyre, Deputy Commissioner, Office of Regulation and Rulings, Bureau of Customs.

We are glad to have you here, Mr. McIntyre.

**STATEMENT OF ROBERT V. McINTYRE, DEPUTY COMMISSIONER,  
OFFICE OF REGULATIONS AND RULINGS, BUREAU OF CUSTOMS,  
TREASURY DEPARTMENT, ACCOMPANIED BY PHILLIPS S. STITT,  
ASSISTANT HEAD, ADMEASUREMENT SECTION**

Mr. McINTYRE. Thank you, Mr. Chairman.

My name is Robert V. McIntyre—

Senator BARTLETT. Pardon the interruption, but for the sake of the record will you identify the gentleman with you?

Mr. McINTYRE. Yes, I will, Senator.

My name is Robert V. McIntyre. I am Deputy Commissioner of the Office of Regulations and Rulings of the Bureau of Customs, and I have with me, Mr. Chairman, Mr. Phillips S. Stitt, who is the Assistant Head of the Admeasurement Section in the Bureau.

Mr. CHAIRMAN, I appreciate the opportunity of appearing before you to explain the views of the Treasury Department on the legislation which is now before this committee.

The Treasury Department recommends enactment of S. 906, a bill to amend the laws relating to vessel measurement, as a means of improving the seaworthiness and safety of merchant vessels without economic disadvantage to the shipping industry.

Because tonnage is an important factor in operating costs and a basis for many port and other charges, it is advantageous to the shipowner, except in rare instances, that his vessel be assigned the lowest possible register tonnage while maintaining the greatest possible carrying capacity. This economic consideration led, many years ago, to the development of the so-called shelter-deck vessel. This type of vessel is one in which 'tween-deck areas are fitted with openings which cause the spaces to be regarded as open and treated as exempt from inclusion in gross and net tonnages. Nevertheless, the same spaces remain available for carrying dry cargo and stores.

Mr. Chairman, at this point I would like to call your attention to an exhibit which is attached to our statement. It outlines the type of vessel that we are talking about and it may be helpful in an understanding of what we are dealing with.

The exhibit to which I bring your attention is the drawing of the three different types of ships.

The upper drawing is a vessel without any tonnage openings, and it is what we call today an existing full-scantling vessel.

The middle drawing relates to a shelter deck vessel, and I believe the drawing is marked to show the middle line tonnage opening at the stern, the space between the shelter deck—that is, the topmost deck and the upper deck—and the break in the bulkheads forward.

This is the space that we are talking about as a shelter deck space and space which is exempt from inclusion in gross tonnage.

Now, Mr. Chairman, the third drawing at the bottom is a representation of a vessel as it might be under this proposed bill, that is, a shelter deck or a full scantling vessel with no openings in the vessel

but with a provision for exemption for spaces in the 'tween deck area, the same area to which I referred in the middle drawing.

Those spaces would be exempted if the tonnage mark which has been added to the drawing of this ship were not submerged.

If it were submerged, then the spaces would not be exempted from inclusion.

Now, Mr. Chairman, I will explain, in some more detail, in the remainder of my statement these problems that we are dealing with. Senator BARTLETT. A little louder, please.

By the way, the exhibit and the accompanying pamphlet will be made part of the file.

Mr. McINTYRE. Thank you.

Section 77, title 46, United States Code, provides that "nothing shall be added to the gross tonnage of a vessel for any sheltered space above the upper deck which is under cover and open to the weather; that is, not enclosed." When an opening called a tonnage opening, without permanent means of closure, is cut or fitted in the upper deck, the upper deck may be deemed the shelter deck, and the deck next below, in contemplation of law, may be deemed the upper deck. The spaces in the 'tween deck—that is, between the upper deck (the former second deck) and the shelter deck (the former upper deck)—then are subject to exemption from tonnage. Tonnage openings also must be cut or fitted in bulkheads in those spaces if exemption is to extend to spaces beyond the bulkheads.

Deck structures on or above the shelter deck may also be exempted from inclusion in tonnage if openings are cut or fitted in their ends or sides.

The theory is that spaces with tonnage openings, although under cover and temporarily closed, remain open to the weather within the provisions of the statute and should be considered as though on the open deck. In practice, however, the spaces involved are sufficiently weathertight to permit the carriage of dry cargo and stores. The shelter-deck concept, which is internationally accepted and incorporated in the laws of all the principal maritime nations, therefore, permits a substantial reduction in tonnage without a corresponding reduction in carrying capacity.

The reduction in tonnage, however, usually is accompanied by a requirement under the loadline laws and regulations that the vessel shall operate at a lesser draft. For this reason, a shelter-deck vessel usually is used in a trade in which the volume of the cargo in proportion to weight is such that the vessel does not operate at a deep draft even when its cargo spaces are filled to capacity.

The International Conference on Safety of Life at Sea, held in London in 1960, recognized a safety hazard inherent in the use of tonnage openings for the purpose of reducing tonnage.

The Conference recommended that watertight closing appliances be substituted for the closing appliances currently in use and emphasized the desirability of altering present methods of tonnage measurement so as to improve vessel safety. Similar views had been expressed in a resolution of the Conference of Classification Societies in London in 1959 and were also put forward in a meeting of tonnage experts of the Oslo Convention countries in Reykjavik, Iceland, in 1961.

In this context, the Assembly of the Intergovernmental Maritime Consultative Organization (IMCO), pursuant to recommendations of its Maritime Safety Committee, has considered the problem of the treatment of shelter deck and other open spaces and has agreed upon a proposal which will enable the tonnage openings to be closed while retaining the present exemption from tonnage for those spaces now regarded as open because of the existence of such openings. IMCO has recommended that member countries, including the United States, revise their tonnage regulations to give effect to the proposal. The bill not before you has been drafted to follow the IMCO recommendations. Its enactment is necessary if the United States is to carry out those recommendations.

Mr. Chairman, the recommendations themselves are included in the blue pamphlet on tonnage measurement which is issued by IMCO and which is attached to my statement.

SENATOR BARTLETT. Yes.

MR. MCINTYRE. The principle underlying the IMCO proposal is that spaces in the 'tween deck now exempt from inclusion in tonnage of a shelter-deck vessel will continue to be exempt notwithstanding that the tonnage openings may be closed permanently, provided that a tonnage mark on the vessel's side, placed below the second deck, is not submerged.

When the tonnage mark is not submerged, gross and net tonnages determined by exempting the spaces which qualify will apply; conversely, when the tonnage mark is submerged, tonnages determined without exempting such spaces will apply.

The placement of the tonnage mark is to be controlled by a tonnage mark table evolved by IMCO which table we intend to incorporate in regulations to be issued following enactment of this bill. A copy of the IMCO recommendations, including this table, as I have said, is submitted with this statement for the record.

If this bill is enacted, vessels may continue to be measured as in the past, so that if tonnage openings are fitted or remain fitted in existing vessels or are fitted in future construction, spaces now regarded as open will continue to be excluded from tonnage.

If a shipowner elects to apply for measurement under the new procedure, however, the exemption will be granted, subject to the requirement for placement of a tonnage mark. Generally an exemption of a 'tween-deck space will be applicable only so long as the tonnage mark is not submerged.

Because vessels without tonnage openings presently are assigned higher tonnages than shelter-deck vessels of equal capacity, they are at an economic disadvantage when carrying low-density cargoes, and because shelter-deck vessels cannot be operated at sufficiently deep drafts, they are unable to carry high-density cargoes as economically as vessels without tonnage openings. The IMCO proposal, however, permits vessels without tonnage openings to compete for low-density cargoes on an equal basis, in respect to tonnage, with shelter-deck vessels and vessels which will have had their tonnage openings closed, provided only that they operate at the comparably shallow draft permitted shelter-deck vessels.

Elimination of tonnage openings, moreover, will permit shelter-deck vessels of sufficiently heavy construction to compete for high-density

cargoes on a similarly equal basis as to tonnage and draft with vessels built without tonnage openings. Shipowners thus will be able to employ their vessels with greater flexibility than heretofore.

The Soviet Union has made the IMCO proposal effective as to its vessels engaged in international voyages from April 1, 1965, and other member nations of IMCO are expected to incorporate the proposal into their tonnage measurement regulations in the near future.

I have been informed, Mr. Chairman, that recently a bill has been introduced in Parliament also in the United Kingdom, and it is expected that the bill may be enacted this year by the Parliament, so that British vessels also may enjoy the advantages of this arrangement recommended by IMCO.

We believe, therefore, that S. 906 should be enacted at an early date so that vessels of the United States may enjoy the same safety and tonnage benefits as will be enjoyed by vessels of other nations.

Thank you, Mr. Chairman.

Senator BARTLETT. Thank you, Mr. McIntyre.

Was this bill introduced by the chairman of the committee, Senator Magnuson, at the suggestion of the administration?

Mr. McINTYRE. Yes, it was, Mr. Chairman. It was forwarded by the Secretary of the Treasury to Mr. Magnuson.

Senator BARTLETT. Do you know of any opposition to it?

Mr. McINTYRE. I don't know of any; no.

Senator BARTLETT. Were consultations held with the industry, the maritime industry?

Mr. McINTYRE. Yes, Mr. Chairman, they were. And I might mention also that in the work at IMCO there was on the delegation a gentleman who is present here in the room, Mr. Robert T. Cunningham, who is a naval architect, and who represented the AMMI and PASSA and for a good part of the time the Lake Carriers Association, and I believe also for part of the time the Pacific American Tankers Association.

Mr. Cunningham attended all these meetings and participated fully, and industry was kept fully advised of all the negotiations and what went on in IMCO and contributed, I might say, materially to the advancement of this recommendation, Mr. Chairman.

Senator BARTLETT. Thank you, Mr. McIntyre.

Mr. Foster?

Mr. FOSTER. No questions. Thank you, Mr. Chairman.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. One question if I may. I was just intrigued because it called to my attention by other matters before this committee. The bill requires on page 6 that all measurements are to be taken in feet and decimal fractions of feet.

Under international practice are vessels measured in terms of feet or meters?

Mr. McINTYRE. Well, there are two methods of measurement. However, I might say that the measurement system arose under the British laws, and our laws have followed the British laws. Most maritime nations have followed the British laws.

So that most maritime nations are measuring vessels in feet.

However, some of the nations, and I believe those that have agreed to a convention known as the Oslo Convention, are measuring their vessels in meters.

Mr. KENNEY. We have a metric system bill before the committee now which occasions my inquiry.

Is it necessary to specify in the act that the measurements be made in feet?

Mr. McINTYRE. It is not necessary that they be measured in feet, but certainly that is the way we are doing it now and have been doing it for some time, and it is very satisfactory.

My colleague, Mr. Stitt, brings to my attention the fact that the Oslo nations are also measuring in feet as well as meters. They apparently do both.

Mr. KENNEY. Thank you.

Senator BARTLETT. Is there a companion bill in the House, Mr. McIntyre?

Mr. McINTYRE. Yes, there is, Mr. Chairman.

Senator BARTLETT. What is its status?

Mr. McINTYRE. It has been heard by a subcommittee of the House Committee on Merchant Marine and Fisheries and reported favorably by the subcommittee.

But as far as I know the full committee has not reported it out as yet. It is expected that they may soon.

Senator BARTLETT. Thank you.

All right, gentlemen. We appreciate your appearance.

The next witness on this bill is John N. Thurman, Pacific American Steamship Association.

#### STATEMENT OF JOHN N. THURMAN, VICE PRESIDENT AND WASHINGTON COUNSEL, PACIFIC AMERICAN STEAMSHIP ASSOCIATION

Mr. THURMAN. Good morning, Mr. Chairman.

Senator BARTLETT. Good morning, Mr. Thurman.

Mr. THURMAN. It is always a pleasure to follow Mr. Robert McIntyre to the stand, because he leaves so little left to be said that I don't think I will take up too much of the committee's time.

I have a very short statement. If you would like, I will just read it into the record.

Senator BARTLETT. All right.

Mr. THURMAN. For the record, my name is John N. Thurman. I am vice president and Washington counsel of the Pacific American Steamship Association. We represent virtually all of the U.S.-flag operators on the Pacific coast of the United States.

The Maritime Safety Committee of the International Maritime Consultative Organization of the United Nations, most other maritime safety agencies, and ship classification societies have long recognized that safety of the open shelter deck merchant ship can be improved. Under present tonnage measurement rules, exemption is granted to shelter deck space "open to the weather."

To accomplish this condition the typical shelter deck vessel has a series of nonwatertight tonnage openings in each bulkhead between the cargo holds at the upper 'tween deck or shelter deck level. An open tonnage well is located just aft of the most aftermost hatch. This chain of openings legally makes the shelter deck "open to the weather."

As a practical matter, the shelter deck spaces are safe and dry for the storage of dry cargo such as tarpaulins, coamings, and so forth, to keep out all wind and waves.

The permissible closing of the tonnage openings will however allow further minimization of any possibility of water, fumes, fire, and so forth, from spreading between the cargo holds at the upper 'tween deck level.

While IMCO recognized the advantages of this refinement in ship safety, they also recognized that the economics of merchant shipping would be disrupted by the banning or disallowing of the open shelter deck tonnage measurement exemption.

Many of the fees and dues that are assessed vessels throughout the world—such as dockage, pilotage, linehandling, tug fees, lighthouse dues, canal tolls, tonnage taxes, insurance premiums, and so forth, are based on the ship's tonnage.

Any significant increase in this figure would represent a corresponding increase in the cost of operating the ship. To facilitate the closing of all tonnage openings, the Maritime Safety Committee instructed its Subcommittee on Tonnage Measurement to devise an alternate means of shelter deck tonnage measurement exemption that did not require those spaces to be open to the weather.

After many meetings at which the views of all nations including the United States were fully expressed, the subcommittee derived a proposal based upon equivalent draft criteria instead of the present requirements. This proposal preserved the economic limitations and advantages of the shelter deck vessel and eliminated the need for the undesirable tonnage openings. S. 906 incorporates into U.S. law the proposal as passed by the IMCO assembly in October 1963.

Under this bill the shelter deck space would be exempt if the vessel did not load below a predetermined draft roughly equivalent to the existing open shelter deck vessel draft limit.

Many of the members of the Pacific American Steamship Association have also recognized this inherent disadvantage in the open shelter deck construction and, favoring safety even at the cost of higher port dues and fees based on tonnage, have sealed or built their newer vessels without these tonnage openings.

The decision to eliminate the tonnage opening has been influenced by the fact that the ideas incorporated in this bill have received international sanction through IMCO. We are aware that other owners have plans to convert as soon as Congress enacts this bill.

While we have voluntarily taken steps to increase the safety factor of our ships, we are suffering an economic disadvantage from our foreign competitors who are still running with open shelter decks. Passage of S. 906 would enable us to proceed in this direction.

The benefits of this bill to the U.S. merchant fleet are twofold:

- (1) It will promote the safety standards of the fleet; and
- (2) It will provide for a more equitable payment of worldwide dues and fees based on tonnage measurement for U.S.-flag vessels.

We respectfully urge your favorable consideration of this bill.

Senator BARTLETT. Mr. Thurman, you have been so completely explanatory I don't have a single question.

Mr. Foster.

Mr. FOSTER. No questions, Mr. Chairman.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. No questions.

Mr. THURMAN. Thank you, Mr. Chairman.

Senator BARTLETT. Thank you.

The next witness is Robert T. Cunningham, appearing on behalf of the American Merchant Marine Institute.

**STATEMENT OF ROBERT T. CUNNINGHAM, ON BEHALF OF AMERICAN MERCHANT MARINE INSTITUTE, INC.**

Mr. CUNNINGHAM. Mr. Chairman, my name is Robert T. Cunningham. I am appearing here today on behalf of the American Merchant Marine Institute, Inc., a trade association representing a major portion of the privately owned oceangoing shipping of all categories operating under the American flag. I am a naval architect, and serve in the capacity of consultant on tonnage measurement for both the institute and the Pacific American Steamship Association.

The American Merchant Marine Institute recommends enactment of S. 906, a bill which would amend the laws relating to vessel measurement.

Historically, the shelter deck vessel has had certain economic advantages when such construction was suitable for certain trades. However, to meet the requirements of tonnage measurement existing under most maritime nations' regulations, the shelter deck vessel construction required certain "openings."

Since 1959, classification societies, Safety of Life at Sea Convention 1960 and the Oslo Tonnage Convention meeting of 1961 all recommended that consideration be given to finding a way to close these openings without affecting the tonnage.

In 1964, IMCO made certain recommendations to member nations to accomplish this on a parallel basis among nations. These recommendations are incorporated in S. 906.

The American Merchant Marine Institute urges the enactment of this bill for the following reasons:

(a) It will permit construction of vessels with improved safety with no economic disadvantage;

(b) It will permit owners to obtain equal treatment with foreign vessels for those vessels not constructed as shelter deckers when conditions of operation are similar;

(c) It will permit simplifying construction of vessels and reduce maintenance and repair by eliminating the additional features required to obtain shelter deck tonnage; and

(d) It will permit eliminating constructional features such as coamings which increase cargo handling costs.

It is understood that the Soviet Union has already adopted the resolutions of IMCO permitting its vessels to obtain the desirable results indicated above. It is understood that other nations of the 57 members of IMCO including all principal maritime nations which participated in adopting the IMCO recommendation have the proposals under consideration for early adoption.

The American Merchant Marine Institute, therefore, urges the enactment of S. 906 at an early date.

Senator BARTLETT. Thank you, Mr. Cunningham.

No questions.

Mr. FOSTER. No questions. Thank you.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. No questions.

Senator BARTLETT. Thank you.

Are there further witnesses on S. 906?

(No response.)

Senator BARTLETT. Off the record.

(Remarks off the record.)

Senator BARTLETT. The next bill is S. 2142. Mr. John P. Tebeau, Acting Deputy Commissioner, Marine Division, Bureau of Customs.

**STATEMENT OF JOHN P. TEBEAU, ACTING DEPUTY COMMISSIONER, MARINE DIVISION, BUREAU OF CUSTOMS, TREASURY DEPARTMENT, ACCOMPANIED BY PHILLIPS S. STITT, ASSISTANT HEAD, ADMEASUREMENT SECTION**

Mr. TEBEAU. Mr. Chairman, my name is John P. Tebeau. I am the Acting Deputy Commissioner, Marine Division, of the Bureau of Customs.

With me again is Mr. Phillips S. Stitt, who is the Assistant Head our Admeasurement Section.

I have a prepared statement. I would like to read it in connection of with the bill.

Mr. Chairman, I appreciate this opportunity to appear before your committee to express the views of the Treasury Department on S. 2142, to simplify small vessel admeasurement.

The bill incorporates draft legislation submitted to the President of the Senate by Secretary of the Treasury Henry H. Fowler on May 22, 1965. The Department recommends its enactment.

Formal admeasurement of a vessel pursuant to statutory requirements is presently made under an intricate system of tonnage computation based on a detailed physical measurement of the hull and deck structures and the calculation of the cubic capacity of the vessel by the methods of integral calculus. From this total capacity certain spaces in the hull and superstructure are exempted to arrive at gross tonnage. Other spaces are deducted from the gross to arrive at net tonnage.

Before a vessel can be documented as a vessel of the United States it must be admeasured. While pleasure vessels are not required to be documented, under the Federal Boating Act of 1958, all vessels, if they have motive power of over 10 horsepower, must be numbered, either by the U.S. Coast Guard or a State licensing authority, unless they are documented.

This bill would permit the assignment of tonnages to a yacht without the necessity for formal admeasurement. At the option of the yacht owner, tonnages would be assigned by applying appropriate coefficients to the product of length, breadth, and depth measurements which he, the owner, is capable of taking himself. These coefficients would be determined administratively in such a way as to maximize the number of resulting tonnages equal or reasonably close to those which would result from formal admeasurement.

Any owner dissatisfied with the tonnage assigned his yacht under this simplified procedure could have his vessel formally admeasured. Since the adoption of the act of 1958, that is, the Federal Boating Act, there has been an increasing number of yacht owners applying for yacht documentation. Since safety standards for pleasure vessels depend to a very minor extent upon tonnage, and since yachts do not pay tonnage taxes, there seems to be no compelling reason for formally admeasuring them.

We estimate that formal admeasurement of a pleasure vessel now takes an average of 7½ hours of an admeasurer's time. Processing simplified admeasurement should take an average of no more than 1½ hours a vessel; 1,571 yachts were newly documented in 1963, 1,639 in 1964, and we expect an increase in this annual number for the next few years.

If only 1,200 a year—a very low estimate—were to have simplified tonnage assignments, this would amount to a yearly saving, at 6 hours a vessel, of 7,200 hours of admeasurers' time, or about 5 man-years, valued, at present salary levels, at \$45,000 a year, in addition to the saving to yacht owners of an undetermined amount in reimbursable costs for admeasurement outside customs ports or stations which is occasionally requested.

These savings in admeasurers' time would be so distributed geographically that no consequent reduction in personnel would be feasible. Instead, the benefit to the Government would lie in freeing full-time admeasurers to concentrate more intensively on commercial vessels—those vessels which are required to be documented as opposed to being merely accorded the privilege of documentation—and in permitting those employees who perform admeasurement functions as an incident to their other duties to devote more time to those other duties.

Enactment of this bill would also make unnecessary the hiring of additional admeasurement personnel to cope with the increasing number of yachts which under present law must be formally admeasured upon documentation.

Thank you, Mr. Chairman.

Senator BARTLETT. Thank you.

I have no questions.

Mr. Foster.

Mr. FOSTER. No questions.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. I have one if I may sir.

Senator BARTLETT. Yes.

Mr. KENNEY. We just heard a bill discussing the measurement of vessels. Now we have a bill dealing with the admeasurement of vessels. I understand they are the same.

Mr. TEBEAU. Yes, sir.

Mr. KENNEY. Would there be any reason why we should not make them read the same?

Mr. TEBEAU. Probably not. I assume the word would be "admeasurement" rather than "measurement."

Mr. KENNEY. Pardon?

Mr. TEBEAU. I would assume the formal word would be "admeasurement" rather than "measurement," in either case.

Mr. KENNEY. I would rather get rid of the extra two letters personally and use a word everybody would understand.

The present law uses "measurement," and I suppose I should note, Mr. Chairman, that I think some of the romance may be going out of it, because the present law says before any vessel shall be registered "she" shall be measured by a surveyor and this bill says, "it". [Laughter.]

Senator BARTLETT. Mr. Kenney, I think that you have spoken by way of suggestion. I think this bill will be amended. The romance ought to be preserved.

How did the "ad" get into the act originally? Do you know?

Mr. TEBEAU. No sir. Perhaps Mr. Stitt might know.

Mr. STITT. No, I don't know, either. The only thing is that the "ad" has to do with proportioning. It has something to do with proportioning. By definition the word "admeasurement" means breaking it up into proportions. This is all I know.

Our personnel have been called "admeasures" for a number of years.

Senator BARTLETT. Well, does it differ from "measurement" then?

Mr. STITT. No sir.

Senator BARTLETT. Mr. Kenney has checked on that too. He has looked in Webster's Dictionary. He verified what you say.

Mr. STITT. Oh, he did? Thank you.

Senator BARTLETT. I guess we have no other witnesses on this bill. There is no opposition.

H. R. 729 will be the next bill.

Thank you, gentlemen.

Mr. James W. Gulick, Deputy Maritime Administrator, is scheduled to appear on this bill.

We were just conferring on "she" and "it."

Do you have any views on this? Should we amend the bill to strike the word "it" and substitute the vastly preferable word "she"?

**STATEMENT OF JAMES W. GULICK, DEPUTY MARITIME ADMINISTRATOR, MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE; ACCOMPANIED BY CAPT. MARTIN I. GOODMAN, USN, CHIEF OF THE OFFICE OF SHIP OPERATIONS, MARITIME ADMINISTRATION**

Mr. GULICK. Oh, I am definitely in favor of preserving the romance angle, Mr. Chairman.

Senator BARTLETT. Very likely your suggestion will be followed.

Do you have a prepared statement?

Mr. GULICK. I do, Mr. Chairman.

My name is James W. Gulick, Deputy Maritime Administrator, and, Mr. Chairman, I am accompanied by Capt. Martin I. Goodman, Chief of the Office of Ship Operations, Maritime Administration.

Mr. Chairman, thank you for this opportunity to appear before your committee to present the views of the Maritime Administration of the Department of Commerce, and of the Department itself on H. R. 729.

We recommend favorable consideration of the bill.

When section 510 of the Merchant Marine Act, 1936, was enacted it defined an "obsolete vessel" for the purposes of the trade-in provisions of that section as a vessel which—

(A) is of not less than 1,350 gross tons,

(B) is not less than 17 years old and, in the judgment of the Commission (now the Secretary of Commerce) is obsolete or inadequate for successful operation in the domestic or foreign trade of the United States, and

(C) is owned by a citizen or citizens of the United States and has been owned by such citizen or citizens for at least 3 years immediately prior to the date of acquisition under the section.

In 1952, however, a proviso was added to this definition which provided that until June 30, 1958, the term "obsolete vessel" shall mean a vessel which—

(A) is of not less than 1,350 gross tons,

(B) is not less than 12 years old, and

(C) is owned by a citizen or citizens of the United States and has been owned by such citizen or citizens for at least 3 years immediately prior to the date of acquisition.

This proviso was extended by subsequent legislation to June 30, 1964, at which time it expired.

The difference between the original definition and the proviso is subdivision (B) of both of them. Subdivision (B) of the original definition requires that the vessel to be traded in be not less than 17 years old and in the judgment of the Secretary obsolete or inadequate for successful operation in the domestic or foreign trade of the United States. Subdivision (B) of the proviso merely required that the vessel be not less than 12 years old.

The reason for enactment of the proviso was to permit an orderly replacement program for war-built vessels, all of which were built between 1941 and 1946 and would reach the end of their statutory 20-year lives between 1961 and 1966. The purpose was to avoid such block obsolescence by permitting the trade-in of some of these vessels before they become 20 years of age and some after they reach that age.

For that reason the minimum age required for trade-in by the proviso was 12 years, and there was no requirement for a finding that the traded-in vessel is obsolete or inadequate for successful operation in the domestic or foreign trade of the United States.

Upon expiration of the proviso on June 30, 1964, the original definition again became applicable. The 17-year minimum age is not a problem, because all of the war-built vessels were at least 17 years old on the date the proviso expired. The required finding, however, is not clearly consistent with other actions which the Maritime Administration must take in connection with its replacement program.

Under the replacement program for subsidized operators, some of the war-built vessels may be operated with the aid of operating-differential subsidy until they are about 30 years of age. Section 605(b) of the act provided that operating-differential subsidy shall not be paid for the operation of vessels built before January 1, 1946, which are more than 20 years old (or for the operation of vessels built after that date which are more than 25 years old) unless the Secretary of Commerce finds that it is to the public interest to do so.

A finding that a vessel, say a C-3, is obsolete or inadequate for successful operation in the domestic or foreign trade of the United States at its age of 17 years is not clearly consistent with a finding that it is to the public interest to pay operating-differential subsidy for the operation of other vessels of the same type until they are 30 years of age.

Under the Vessel Exchange Act (sec. 510(i) of the Merchant Marine Act, 1936) vessels traded-in by subsidized operators are eligible for trade-out to upgrade the unsubsidized fleet. On the basis of current market values, we have recently—on May 12, 1964—fixed the value of two C-3's, which are, respectively, 20 and 21 years old, under the Vessel Exchange Act for trade-in purposes at approximately \$850,000 each, and we have four applicants for the trade-out of these vessels under that act.

These facts likewise are not clearly consistent with a finding that such vessels are obsolete or inadequate for successful operation in the domestic or foreign trade of the United States.

The bill would amend section 510(a)(1) to eliminate this inconsistency by striking out the required finding and substituting therefor a finding that the vessel should be replaced in the public interest. This would relate the required finding to the requirements of the replacement program.

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

This concludes my statement, sir.

Senator BARTLETT. Was this bill introduced at the suggestion of the Department and of the Maritime Administration?

Mr. GULICK. This bill was introduced, I believe, in the last Congress at the request of the Department, and this year it was introduced at least on the House side—I am not quite aware of whether it was the same situation on the Senate side—by the chairman of the committee. The Department has subsequently submitted a report favoring the bill.

Senator BARTLETT. What is the situation with reference to the bill in the House?

Mr. GULICK. The bill has passed the House, I believe, on July 12, 1965.

Senator BARTLETT. Did you testify on the House side?

Mr. GULICK. Mr. Boyd, the Under Secretary, testified. I may say the statements were the same.

Senator BARTLETT. Do you know of any opposition to the bill there?

Mr. GULICK. There was no opposition to my knowledge.

Senator BARTLETT. I am not quite clear. Where did this 17-year-old decision come from? Why 17?

Mr. GULICK. I think this was a parameter figure that was devised in 1939 when the section was first added to 510. I have no basic justification for 17 years as opposed to 15 years or 19 years.

In sum, I cannot answer you as to just why 17 years.

Senator BARTLETT. They had to arrive at some figure, and this is an arbitrary choice, perhaps not particularly meaningful in terms of a year on either side?

Mr. GULICK. I would think so; yes, sir.

Senator BARTLETT. Mr. Foster.

Mr. FOSTER. Mr. Gulick, the administration asked for this bill, as you indicated, last year, and it was not passed. Did this create any inconvenience or in any way hinder the replacement program or any other Maritime Administration program?

Mr. GULICK. It has not given us any grave difficulty, Mr. Foster. We have had several trade-ins, and we have made our findings, since the date of expiration of this provision, but we just don't like to be in the position of making a finding on the one hand that a vessel is obsolete or inadequate whereas the identical vessel in another situation is found to be proper for operation.

This is more in the nature of a clarifying amendment than a substantive proposition.

Mr. FOSTER. They are not in conflict, are they?

Mr. GULICK. If one wishes to be strictly technical, they are not in conflict. That is correct.

Mr. FOSTER. Would your program differ in the future for the replacement program if this legislation were not enacted?

Mr. GULICK. I would think not; that is, I do not think there would be any effect on our program.

Mr. FOSTER. Thank you.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. No questions.

Senator BARTLETT. Thank you, Mr. Gulick.

Mr. GULICK. Thank you, sir.

Senator BARTLETT. The next witness on this bill is Ira L. Ewers.

**STATEMENT OF IRA L. EWERS, ATTORNEY, ON BEHALF OF MOORE-McCORMACK LINES, INC.; ACCOMPANIED BY VICE ADM. ROY A. GANO, USN (RETIRED), VICE PRESIDENT, MOORE-McCORMACK LINES, INC.**

Mr. EWERS. May it please the committee, my name is Ira L. Ewers. I am an attorney representing Moore-McCormack Lines. I am accompanied by our vice president, Admiral Gano.

Mr. W. T. Moore, president of the company, had originally hoped to be present, but he has labor troubles, and he has asked us to present this paper and state the position of our company.

For the reasons given by other witnesses—Mr. Gulick—we support the enactment of H.R. 729, which would amend section 510(a)(1)(B) as he indicated.

We have an amendment suggesting that the 17-year age requirement be deleted.

Since the Secretary must find that the replacement must be in the public interest, there would seem to be no reason for retaining any arbitrary age limitation.

The problem has not arisen with respect to conventional cargo vessels up to this time. It does, however, present quite a problem in connection with the studies being conducted on the passenger ships.

As you know, the operation of a passenger ship is marginal, to say the least. There have been many ideas about what can or should be done including suspension of operation. All of these discussions beg the question on what can be done with the ships themselves.

There is apparently no domestic market, and they cannot be sold alien because of section 503.

The industry, the Department of Commerce, and the individual companies are all actively reviewing this problem.

Where we had an analogous case some years ago, the answer was to trade in the vessels on new constructions. That is, the formula of the

1936 act. And that may be the answer as to the passenger ships. However, many passenger ships cannot meet the 17- or even 12-year age requirement.

Our *Argentina* and *Brasil* were built in 1958. According to the Casl studies, some 10 other passenger ships cannot meet the age requirement.

Since the finding that the trade-ins must in any event be in the public interest, it seems unnecessary to impose any arbitrary age limitation which might make impossible the trading in of passenger vessels should it develop that that is the logical solution.

Accordingly, it is suggested that section 510(a)(1)(B) be further amended by deleting any age requirement, leaving the matter simply to the judgment of the Secretary of Commerce that it would be in the public interest.

This may be of considerable assistance in solving the passenger ship problem.

While at the moment there is no urgent cargo ship problem, the many advances being made in ship design may make desirable the replacement of cargo ships before they become 17 years of age if our fleet is to be kept modern and efficient.

We therefore urge the favorable reporting of the bill as outlined by Mr. Gulick with a committee amendment deleting the 17-year age requirement.

Now, I don't know what is going to be the answer to Moore-McCormack's passenger ships. There they have consistently lost money. As long as our revenues from cargo ships were adequate, we have not minded absorbing that loss. However, our earnings are such for this year particularly, and other recent years, that it is very questionable whether management and our directors will desire to continue to operate these passenger ships, in which event we will have to find some way of disposing of them.

I might say that on our two passenger ships, both of our passenger ships, we have guaranteed title 11 mortgages, one of which is without recourse and one of which is with recourse. We are receiving on the ships today in subsidy almost \$6 million a year. Our annual loss in 1964 on the passenger ship operation was a million and a half. It will be much greater this year.

Now, as I say, this is by no means a preordained solution to the problem. We are looking for solutions and assistance. But in studies which have been prepared by CASL and others, including the individual companies, the one question, if we do phase out as Mr. Nick Johnson says, the passenger ship operations: What are we going to do with the ships?

As I say, in previous instances where that question was raised, it has been suggested that the formula of the 1936 act takes care of that by permitting them to be traded in upon new construction.

We ask the committee's sympathetic consideration of this amendment. Even if it is never availed of, it nevertheless simplifies in some respects the studies now being conducted into the passenger ship problem.

I am sorry that I am so late in bringing this in. One of the reasons is that I have been in Europe. Another reason why we are so late in bringing this to the attention of the committee is our industry is

tied up in a strike now approaching some 50 days. It is very, very difficult to get anyone to sit down and talk to you about anything but the strike.

While this presentation is made on behalf of Moore-McCormack alone, I have served as counsel for CASL and other members, and I believe that, had time permitted, they would have joined in making this recommendation.

Senator BARTLETT. Frankly, I can't quite understand that, Mr. Ewers. There has been lots of time for CASL to make its case, time before the House, time today. This bill has been before the Congress quite some time.

Mr. EWERS. Some of us are not very smart, Mr. Chairman, in these various—

Senator BARTLETT. I am puzzled why CASL isn't here in behalf of these 10 other ships.

Mr. EWERS. We just didn't have time to process it.

Senator BARTLETT. Now, Mr. Ewers, that can't be so.

Mr. EWERS. That is so, sir.

Senator BARTLETT. CASL is a going organization whether or not you are in Europe.

Mr. EWERS. Let me put it to you this way. Regardless of CASL we urge this very seriously on behalf of Moore-McCormack. I have no authority at this time to commit CASL but I do believe that they would join in this.

Senator BARTLETT. You did not present this amendment to the House?

Mr. EWERS. No, sir.

Senator BARTLETT. What routes do the *Argentina* and *Brasil* serve?

Mr. EWERS. Our basic route, sir, is route 1, from the Atlantic coast of North America to the Atlantic coast of South America. That is a berth service on which we make today approximately nine sailings.

In an effort to attempt to solve this problem—and we have lost a lot of money, no matter how we operated—we first asked Maritime to permit us to make voyages to Scandinavia, in the off season, and South America. They kindly cooperated so that we now make three voyages to Scandinavia, one of which I just sailed. That helped some.

Those voyages have done very well. But they did not solve the problem.

So, we next obtained permission to make up to two voyages a year down to Buenos Aires, across to Capetown, up the east coast of Africa, back home through the Mediterranean. Two voyages a year. We have made one voyage each year on that route. And the results have been helpful.

This committee and Congress, a few years ago, in an effort to try and assist the passenger-ship problem, granted us permission to cruise anywhere in the off season not in excess of one-third of the year. Taking advantage of that, we have, in recent years, conducted a number of short cruises into the Mediterranean and to the Caribbean areas. I would like to give you the financial result of those operations as they have been furnished me by our controller.

On the nine voyages which we made in 1964 on route 1, we lost \$1,072,000.

On the North Cape cruises, cruises to Scandinavia, we had a profit of \$443,000.

On the sea-safari cruises, we had a profit of \$279,000.

On the Caribbean cruises, which we had hoped would produce much better results, we had a loss of \$956,000.

This was a net loss on all operations of the passenger ships for that year, 1964, of \$1,406,000.

Senator BARTLETT. Are these sister ships?

Mr. EWERS. Yes, sir.

Senator BARTLETT. And how many passengers will they carry?

Mr. EWERS. They have a berth capacity of about 550 and a salable capacity in the upper 400's. The ship on which I sailed had no empty rooms and had 384 passengers.

Senator BARTLETT. Do you know what percentage of occupancy there has to be before loss is turned into a profit?

Mr. EWERS. It would have to be very high, Mr. Bartlett. We have figures here, if you would care to get them—

Senator BARTLETT. No—

Mr. EWERS (continuing). As to the percentage of utilization of our fleet.

Senator BARTLETT. I would not ask you to—

Mr. EWERS. I am sure the committee has received it, but I would like to leave copies of a CASL study in which we participated, giving most of the data which is pertinent to these studies, including the percentage of utilization.

In 1964, speaking for Moore-Mac, we had 68.3-percent occupancy. The figures for the other companies are shown in appendix 12 to the CASL study on the passenger ships.

I might say that there is under consideration on the House side, and a similar bill has been introduced on the Senate side, to try and limit the number of foreign ships which make cruises into the Caribbean in the off season. I understand that in the House a bill has been introduced by Congressman Mailliard, and I believe he hopes to have hearings on it sometime around August 24.

So, we have not entirely given up the ships yet, but we are exploring any number of suggestions that have been made.

We have one suggestion which has been made by the Maritime Administration, that all of these passenger ships be consolidated in one company for operation so as to reduce, as far as possible, administrative overhead and similar expenses. That study has not been completed.

What it will show I cannot predict, except the discussions I have heard indicate that the savings would not be meaningful.

It is a very serious problem, and these are beautiful ships.

Senator BARTLETT. I am very disappointed to learn of your experiences in the Caribbean, because we held out great hopes that that would—

Mr. EWERS. We had great hopes. And the chairman was instrumental in passing the cruise bill. And we have made quite a number of short cruises, from 5 to 15 days, into the Caribbean to various ports. Unfortunately, the foreign competition for this business is very acute.

The number of such cruises that the foreign ships make is in excess of the predictable patronage, so that in 1964 Moore-Mac had to cancel, I think it was six, cruises scheduled for the Caribbean area for lack of supporting patronage.

In addition to that, when the competition gets so keen, the rates are reduced to a level which produces the losses in the case of Moore-Mac which I have just described to you.

Senator BARTLETT. Are rates on a dead level, or do some foreign companies offer lower rates than the American?

Mr. EWERS. There is no rate regulation in ocean passenger traffic. They charge whatever they want. They publish tariffs or advertisements to which they need not adhere, if it is necessary to reduce in order to get a respectable patronage.

Now, this is bad, too, for the foreign lines, because any number of ships can schedule cruises out of the same port to the same area at the same time. While the numbers of persons making these cruises is large, and increasing, it is not without limit.

In the study which we have been conducting on the Mailliard bill and similar problems, we find this situation of a ship, which sails on a cruise today, maybe carries 800 passengers. She sails again a month from now, and she only has 200. Well, it is very obvious that the 200 cruise is going to reflect a substantial loss.

Congressman Mailliard says that he is looking for some solution to this. He has some legislation which was suggested, but which he says is only for the purpose of study, and if anyone has any better ideas he would like to have them—and I would like to have them, too.

Senator BARTLETT. Did you go to Europe on one of these ships?

Mr. EWERS. I went over on the *Brasil*. It was a beautiful trip. It is a beautiful ship.

Senator BARTLETT. Where all did you go?

Mr. EWERS. We started at Iceland, in Reykjavik, and we then went over to some town with an unpronounceable name which goes up to the North Cape—"Hagges"—something. Then we went down through Norway, called at four or five ports, went up to Durangesfjord, which is a beautiful site. It was spring over there, and the water was falling off of the mountains into the fjords in beautiful waterfalls.

We called at four or five Norwegian ports, three or four Swedish ports, then went over to Poland, visited Gdynia, Gdansk, then came back to Stockholm, then went back to Leningrad in Russia, stayed there a couple of days.

From Leningrad we went to Copenhagen, from Copenhagen to Amsterdam, and from Amsterdam home.

Senator BARTLETT. What is the round trip fare first class? New York is the port of —

Mr. EWERS. New York.

Senator BARTLETT. What is the round trip fare first class?

Mr. EWERS. The minimum round trip first class is about \$1,200. Most of the desirable cabins would be in the magnitude of \$1,700 or \$1,800 or \$1,900 per person.

Senator BARTLETT. And how many days does that include?

Mr. EWERS. Thirty-six days.

We came home to New York in the midst of the strike, and the boys from downtown in the office had to work the baggage. But it seemed to present no problem to them at all. They got it off there in jig time. The vessel came in 7 or 8 o'clock in the morning. By 10 o'clock, Margaret and I were in the car driving home. It is a beautiful trip.

Senator BARTLETT. Mr. Ewers, do you know if these 10 other passenger vessels to which you alluded are also losing money, or some of them?

Mr. EWERS. Mr. Chairman, I know in a general way, because I have been serving on committees making these joint studies. I would say there isn't any question that the three Export Line ships, the *Atlantic*, the *Constitution*, and the *Independence*, are losing money. Their representative told the Maritime Commission conference they would like to get rid of them.

The United States is just about nip and tuck. They would like to try and keep on if they could.

The other Atlantic coast operator, the Grace Line, does not present a comparable situation because over 50 percent of their revenues are derived from cargo which the Moore-Mac ships do not carry, which the Export ships do not carry, which the United States do not carry.

We have done an awful lot of work on this, and, as I say, there have been any number of ideas at the Maritime Administration conference. Admiral Will, speaking for Isbrandtsen, would like to get out from under the three passenger ships. Moore-Mac at that time and now have reached no final decision.

Grace was not interested in the problem because, as I say, their ships are generally profitable because 50 percent of their revenue comes from cargo.

Now, I would like to say also this would make possible trading in these ships against future fleet of cargo vessels.

The Moore-Mac fleet with capital improvements cost us \$33 million. Present net book value of December 31, 1964, is \$25 million, against which title II mortgages are outstanding of \$16,300,000, making Moore-Mac's equity in the vessels \$8,700,000.

I pointed out before that on this operation the annual subsidy was, in 1964, \$5,864,000, and the operating results reflected an annual loss for 1964 of \$1,406,000.

It is a perplexing problem. We don't purport to have a final answer. But in the various studies which have been made the question constantly recurs: All right; what are we going to do with the ships?

Going back to a hearing in 1955 where a similar problem was presented, the Maritime Administration says the formula of the 1936 act is you trade them in. Then we find that we have reverted to the 17-year age requirement, and our vessels are only 7 or 8 years of age.

Senator BARTLETT. Admiral Gano, do you have anything to add?

Admiral GANO. No; I have no statement.

Senator BARTLETT. Mr. Foster?

Mr. FOSTER. No questions.

Senator BARTLETT. Thank you, gentlemen.

Off the record.

(Discussion off the record.)

Senator BARTLETT. On the record. Will you, Mr. Gulick, at a reasonably early date, since you have informed the committee that you learned of the proposed amendment only this morning and have no comments to make on it now, submit a written statement regarding the amendment?

Mr. GULICK. We will be glad to do this, sir.

Senator BARTLETT. Thank you.

The committee will be in recess briefly.

(Whereupon, a short recess was taken.)

Senator BARTLETT. The committee will be in order.

The next bill is S. 1349. The first witness will be Capt. William C. Foster of the Coast Guard.

Do you have a prepared statement?

**STATEMENT OF CAPT. WILLIAM C. FOSTER, USCG, CHIEF, MERCHANT VESSEL INSPECTION DIVISION, OFFICE OF MERCHANT MARINE SAFETY, U.S. COAST GUARD, ACCOMPANIED BY LT. COMDR. RICHARD M. THOMAS**

Captain FOSTER. Yes, sir.

Senator BARTLETT. You are accompanied by?

Captain FOSTER. Lieutenant Commander Thomas, who is the Chief of the Rules of the Road Branch in my Division.

Senator BARTLETT. Right.

Captain FOSTER. I am Capt. William C. Foster, Chief of the Merchant Vessel Inspection Division, Office of Merchant Marine Safety, U.S. Coast Guard. I appreciate the opportunity to be here and to speak to you about S. 1349.

S. 1349 would amend the Inland, Great Lakes, and Western Rivers rules of the road by providing that in narrow channels power-driven vessels less than 65 feet in length shall not hamper, and all sailing vessels shall have no right to hamper, the safe passage of larger vessels that can navigate only within these channels. By a narrow channel is meant one in which the commercial traffic moves up and down along its course and no comparable sized cross-traffic is found. S. 1349 would also provide that the same classes of vessels shall not interfere with the safe passage of vessels with tows that are ascending or descending any of the western rivers.

The primary purpose of this bill is to clarify the duties of the operator of a small vessel or a sailing vessel when approaching a large deep-draft vessel proceeding along a narrow channel. The Rules of the Road universally provided that in a crossing situation; that is, when vessels are approaching at right angles or nearly so, the vessel having an approaching vessel on his own port side has the right-of-way.

The Rules of the Road also generally state that vessels shall be operated with due regard to all dangers and to any special circumstances, including limitations of the craft involved, which may render a departure from the rules necessary, and add that no vessel owner or master will be exonerated from the consequences of the neglect of any precaution required by the special circumstances of the case.

Often it becomes apparent that many recreational boatsmen are well schooled in the crossing rule, but have not been given definite guidelines for their duties with respect to special circumstances. This is especially true whenever a deep-draft vessel is proceeding along a channel and a small, shallow-draft vessel approaches from the deep-draft vessel's starboard side.

The crossing rule alone gives the small vessel the right-of-way, but commonsense and good seamanship should give the deep-draft vessel

the right-of-way whenever the deep-draft vessel maneuvers less easily, is more difficult to stop, and cannot turn out of the channel, all of which conditions are generally found in this sort of a situation.

Sailing vessels normally have the right-of-way over deep-draft vessels in any crossing situation, but, again, commonsense says that a small, shallow-draft sailing vessel should not have the right-of-way over a deep-draft vessel in a narrow channel.

S. 1349 removes from a small-vessel operator the exercise of judgment as to what constitutes a commonsense rule in the limited narrow-channel and crossing situation.

It is needed to provide a clear, positive obligation for the growing number of small-craft operators, and should help make our waters safer for them.

The substance and effect of the provisions applicable to vessels less than 65 feet in narrow channels were included within the U.S. position drafted prior to the 1960 conference in London. The provisions applicable to sailing vessels were supported by the United States at London after their introduction. The wording of the Inland proposal follows very closely the wording of international rules 25(c) and 20(b), which become effective September 1, 1965.

The language employed in S. 1349, while somewhat unfamiliar sounding and vague, appears more effective than any other choice. The phrase "shall not hamper" will be construed in the light of all surrounding circumstances at any given time. Of course, if the troublesome situation arises wherein a 12-foot motorboat is crossing from the starboard bow of a deep-draft vessel in a narrow channel, and forces the deep-draft vessel to back down, the motorboat unquestionably "hampers" the other vessel.

When a motorboat runs parallel to, and a reasonable distance from, a deep-draft vessel, it does not hamper the other vessel. If it cuts across the bow, it may or may not hamper, depending upon relative size, speed, distance, and other factors. The term "hamper" has the needed flexibility to alert the small boatsman to use care when navigating around large vessels in narrow channels.

The arbitrary cut-off at 65 feet will make this provision apply to small, shallow-draft vessels, and will automatically include the necessary large portion of recreational boats. Any application of this proposed rule to a 64-foot vessel that can navigate only inside a narrow channel is impossible, for that vessel cannot approach the channel from either side to establish herself as privileged over a deep-draft vessel in the channel. A deep-draft, 64-foot vessel would be obliged to proceed along her own starboard side of a narrow channel.

A big factor in favor of the wording in S. 1349 is that it follows the international wording, and eliminates the possibility of different interpretations between U.S. and neighboring waters. The subcommittee that drafted international rules 20(b) and 25(c) at London in 1960 considered many different forms of these rules and some substitutes for the word "hamper." All were considered too definite and not as adaptable.

Provisions similar to those of S. 1349 will become effective next month on the Canadian side of the St. Croix and St. John Rivers, which form part of the border between Maine and New Brunswick. This is also true of the Mexican half of the Rio Grande, and of other

boundary waterways. It may be noted that this country approved the change in the international rules affecting these waters through the Executive action authorized by Public Law 131 of the 88th Congress.

This bill is strongly recommended for its prospective beneficial effect upon maritime safety because it will, in general, encourage recreational boatsmen to respect the passage of less maneuverable vessels in narrow channels. Thank you.

Senator BARTLETT. Is this an administration bill, Captain Foster?

Captain FOSTER. Yes, sir.

Senator BARTLETT. Has it been cleared by the Bureau of the Budget?

Captain FOSTER. Yes, sir. It is also before a subcommittee of the House Merchant Marine and Fisheries Committee.

Senator BARTLETT. Would the Coast Guard be the agency required to make determinations in the event of lack of agreement on who hampered whom?

Captain FOSTER. Insofar as citing for a violation of rules of the road—that is, citing an uninspected vessel that does not require licensed personnel—and insofar as charging the master or the deck officer on watch of an inspected vessel that requires licensed personnel, that statement is correct.

We also assume that the matter would come before various of the courts in the country at some time in the future.

Senator BARTLETT. I can believe that, because you said that the language is necessarily vague. I imagine many situations will wind up in court, because the Coast Guard is not going to be on hand on every occasion when there is a disagreement as to what hampering is.

Captain FOSTER. Well, sir, as was stated in the statement that was given, much attempt was made in London, preparatory to the acceptance of the final wording of the 1960 international rules, to arrive at a particular word or series of words that would best describe what was desired. And this was the end result. The word "hamper" was used and is used in the international rules.

Senator BARTLETT. I suppose the hope and intention is that people who operate boats or ships will adopt this as a way of eventually following the rules.

Captain FOSTER. Yes, sir.

Senator BARTLETT. Mr. Foster.

Mr. FOSTER. Yes, please. Just one question. In the second to the last paragraph, you make the point that provisions similar to those that you have in this bill will become applicable in the Rio Grande, and in certain areas in the waters between the United States and Canada, very soon.

Now, what you are saying there, as I understand it, is that the new international rules will become effective and it is those international rules that will apply to the Rio Grande, and to those waters between the United States and Canada.

What this bill will do is to bring into line our western-rivers rules with those international rules that would apply on those bodies of water? Is that true or not?

Captain FOSTER. That is correct. In actuality, it would be our inland rules rather than our western-rivers rules.

There also would be areas wherein, let's say, in the northern end of Puget Sound, the situation will exist around the large series of islands up there north of Seattle.

Senator BARTLETT. How about Icy Straits, Alaska?

Captain FOSTER. Which one, sir?

Senator BARTLETT. Icy Straits.

Captain FOSTER. The same thing should apply.

Mr. FOSTER. What you are saying is that the international rules will soon apply? Is that what you are saying?

Captain FOSTER. Yes, on September 1.

Mr. FOSTER. And, if they apply in one place and in another place you have got another set of rules, that might create uncertainty. And this generally would have the same rules for our rivers as we have in those instances where we have the international rules applying?

Captain FOSTER. That is correct. Of course, as you know, Canada does not have similar rules to ours, except on the Great Lakes. They do have some local rules which are modifications of the international rules, but, generally speaking, all of their rules are international rules.

So, obviously, on September 1, when the international rules are adopted, these will become effective in Canada.

Now, in some areas of Canada the division line between Canada and the United States is down the middle of the river. On the Canadian side this particular rule has been adopted and will become effective, and unless a similar action is taken on the American side we have a very difficult situation.

Mr. FOSTER. Do you mean to tell me then that if we had an admiralty problem arising as to a collision, one question would be whether it is in U.S. jurisdiction or Canadian jurisdiction, and if it was in U.S. jurisdiction then one set of rules might apply as to negligence, and if it was in Canadian jurisdiction another set of rules would apply in terms of negligence unless we do adopt something similar to what is in this bill?

Captain FOSTER. Yes, I would say so. It is comparable to what has existed for many years at the entrances to most of our inland waterways in the United States, the borderline between international and inland rules. This is the first determination as to exactly where each of the two vessels were and where the collision, if there were one, took place.

Mr. FOSTER. Thank you, Mr. Chairman.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. Just a clarification. I assume then that your description of the Canadian rules applies, for instance, in the Detroit River, that as of September 1 the international rules will apply?

Captain FOSTER. No, that is an exception, because the Canadian and the U.S. Great Lakes rules are basically identical. We have presently under study, and we have discussed this rather extensively with shipping interests on the Great Lakes, both American and Canadian, a proposed unification of all of the rules of the road in the United States. This would include the Great Lakes area, inland, western rivers, and so forth.

This proposal is quite far along, but we felt that in view of the pending effective date of September 1, 1965, for the new international rules,

and also the fact that we have previously stated that the same proposal that we have here has already been adopted in some Canadian areas, that action was required at this time on these particular provisions rather than waiting for our unification proposal.

As a matter of interest, our unification proposal has the same identical statement in it that we are asking be passed now.

Mr. KENNEY. Well, is this bill, S. 1349, applicable on the U.S. side of the Detroit River, for instance, or in the Great Lakes?

Captain FOSTER. Yes, it would be.

Mr. KENNEY. It would?

Captain FOSTER. It would be.

Mr. KENNEY. Would it then place the rules at variance in the Detroit River as between the U.S. and Canadian side?

Captain FOSTER. From talking to Lieutenant Commander Thomas, who has been working directly with this subject, we have a complete liaison with the Canadians in the Department of Transport, and we would intend to talk with them on this matter.

And when we discussed it with them in our unification proposal discussions, they concurred with this. They favor the adoption of as many international rules as possible in our unification proposal. And we have no doubt at all about action that they would take to place it into effect in such areas as the Detroit River at the same time that we would.

Mr. KENNEY. Thank you.

Senator BARTLETT. Thank you, gentlemen. That is all.

The next witness on this bill is Scott Elder, counsel for Lake Carriers' Association.

#### STATEMENT OF SCOTT H. ELDER, COUNSEL FOR LAKE CARRIERS' ASSOCIATION

Mr. ELDER. Good morning.

I have a very short statement. I think perhaps it would be easier to read than summarize it.

Senator BARTLETT. All right.

Mr. ELDER. For the record my name is Scott H. Elder. I appear here as counsel for Lake Carriers' Association for the sole purpose of urging enactment of S. 1349 insofar as it pertains to amendment of rules 19 and 24 of the Navigation Rules for the Great Lakes, Their Connecting and Tributary Waters (33 U.S.C.A., secs. 284, 289).

Lake Carriers' Association is an organization of vessel companies engaged in the transportation of bulk commodities between ports on the Great Lakes. In all, the association has 25 members owning and operating a total of 226 merchant vessels under U.S. flag. Vessels enrolled in the association aggregate more than 1,784,000 gross tons of shipping and constitute better than 96 percent of all commercial vessels under American flag now engaged in trade and commerce on the Great Lakes.

In 1964 the registered tonnage of commercial vessels on the Great Lakes was 3,384,545 gross tons represented by 508 vessels. Of these totals 2,030,346 gross tons, or 287 vessels, were of U.S. registry and 1,354,199 gross tons, or 221 vessels, were of Canadian registry. Conservatively estimated, the combined lifting capacity of the American

and Canadian Great Lakes fleet today is more than 5,038,045 gross tons of cargo.

Vessels moving between Montreal and Chicago travel a total distance of 1,241 miles, of which 320 miles, or 26 percent, are in restricted water. The sailing distance on the Great Lakes from Duluth to Montreal is 1,334 miles of which 363 miles, or 27 percent, consists of restricted waters in canals, channels, and rivers. On such a voyage a vessel must also pass through 48 bridges and 21 locks. The improved navigation channels of the Great Lakes vary in width from slightly less than 100 feet to 1,000 feet.

In terms of volume of cargo and the density of traffic, the shipping lanes of the Great Lakes are the busiest in the world. It is estimated that through the Detroit and St. Clair Rivers alone, which account for the longest single stretch of restricted channels in the Great Lakes system, there were, in 1964, at least 14,106 upbound and downbound passages of Great Lakes vessels, both American and Canadian. In addition, overseas-flag vessels entering the Great Lakes through the St. Lawrence Seaway made as many as 1,950 upbound and downbound passages through the Detroit River in 1964. Thus, it will be readily seen that throughout the connecting channels of the Great Lakes there is a continuous procession of upbound and downbound vessels day and night from the opening of the navigation season to the end.

The U.S. Coast Guard in its annual report on recreational boating in the United States for the year 1964 indicates that there were in Michigan alone that year 361,049 motorboats numbered or registered under the laws of that State. This represents 9.59 percent of all motorboats numbered throughout the United States under the provisions of the Federal Boating Act of 1958.

We have been advised that more than half of the motorboats or pleasure craft in Michigan are located in the area between Point Huron, Mich., at the head of the St. Clair River, and Point Mouillee, at the foot of the Detroit River.

In other words, commercial vessels transiting the narrow reaches of the Detroit and St. Clair Rivers and Lake St. Clair encounter about 5 percent of all recreational craft in the United States. The resultant congestion and danger of collision if the navigation channels are not kept clear for large commercial vessels is obvious.

One need only be upon the bridge of a large lake vessel on a Sunday afternoon while descending the St. Clair or Detroit River to realize the utter disregard that some boat operators have for the danger attendant upon maneuvering too close to a Great Lakes freighter.

The amendments proposed by S. 1349 to rules 19 and 24 of the Navigation Rules for the Great Lakes would prohibit sailing vessels and other vessels less than 65 feet in length from hampering the safe passage of a vessel which can navigate only inside a channel. Such amendments are indeed in the interest of safety. The amendments will particularly benefit small boat operators because they are the ones that suffer most in the event of collision or other casualty.

The matter of these amendments has been accorded earnest study by the Shore Captains Committee of the Lake Carriers' Association, assisted by the Navigation Committee comprised of masters in active service. Needless to say, the amendments have received the unanimous endorsement of these committees.

It is earnestly hoped that these much needed safeguards for small boats and vessels engaged in lake navigation will be adopted this session of the Congress

Senator BARTLETT. Thank you, Mr. Elder.

I have no questions.

Mr. Foster?

Mr. FOSTER. No questions.

Mr. ELDER. Thank you.

Senator BARTLETT. The next and final bill is H.R. 5989. John N. Thurman will be the first witness.

**STATEMENT OF JOHN N. THURMAN, VICE PRESIDENT AND  
WASHINGTON COUNSEL, PACIFIC AMERICAN STEAMSHIP  
ASSOCIATION**

Mr. THURMAN. Thank you for the opportunity to appear again, Mr. Chairman.

For the record my name is John N. Thurman, vice president and Washington counsel of Pacific American Steamship Association.

The Pacific American Steamship Association representing the major U.S.-flag steamship operators on the west coast favor enactment of this bill.

At the outset, let me state that we feel that in no way does this bill compromise our longstanding position of opposition to any encroachment upon the coastwise laws. It is our position that the empty cargo containers called for in the bill are vessel's equipment and not cargo per se. Consequently, a legislative interpretation of a Bureau of Customs ruling is necessary.

At the present time, Japanese-flag vessels are off-loading filled containers in the Pacific Northwest, then shift the empty containers to California ports to be reloaded for a return voyage. The empty vans are now shipped south by truck or rail since it is not feasible to carry them down on U.S.-flag vessels. An empty container could only be lifted as deck cargo and would interfere with the loading and discharging of the cargos we now carry.

We are particularly pleased with the reciprocal privileges provisions in this bill. At the present time in many foreign nations served by PASSA member lines, such as Japan, the Philippines, and Italy, we enjoy the benefits of shifting our empty containers from port to port on ships of a company other than the vessel the loaded container arrived on. I feel quite certain that if this legislation is denied we will find U.S.-flag steamship operators running into serious impediments abroad.

Additionally, the bill as drafted will be to the advantage of some U.S.-flag operators. Many American vessels do not have coastwise privileges since they are registered and not enrolled. Under the terms of this bill a U.S.-flag vessel without coastwise privileges would be authorized to carry empty vans between two U.S. ports if they were owned by the company or leased from another operator.

It is our belief that H.R. 5989 if enacted will not in any way result in loss of cargo or interfere with the operations of U.S.-flag operators.

Mr. Chairman, to clarify that statement, I might say that I assisted in drafting this bill, and numerous provisions put in there were at our

request, and we feel that there will be no serious objections to any of the provisions in it.

The group that worked this out sat down and informally discussed this with various government agencies, particularly the Bureau of Customs, who would administer it. I understand the government agencies in reporting on the bill to both the Senate and House have reported favorably.

Senator BARTLETT. Well, why, Mr. Thurman, is the Pacific American Steamship Association interested in this bill?

Mr. THURMAN. Because we have reciprocal privileges abroad right now, not by statute, and we are running into a few little problems. And I wouldn't call it coercion but we are shifting these containers in foreign areas and we feel that if we oppose this bill we would find foreign nations giving us the same treatment. In other words, we couldn't shift our containers.

We have nothing to lose in this and a lot to gain.

Senator BARTLETT. What is the measure of importance of doing this?

Mr. THURMAN. Would you repeat that, sir?

Senator BARTLETT. What is the measure of importance of doing this? Is this really an important element?

Mr. THURMAN. Yes, I think so, Senator. We on the west coast, as you well know, are leading the field in containerization. We have been quite successful in it. And our hopes are when a standard container is developed that we will be able to go forward much more extensively.

In fact, we anticipate in the Pacific trades to carry most all of our break-bulk cargo in containers.

So we are looking to the future now, and we want to make sure that if we do go into a container program on all of our modern vessels that we won't find any impediments in shifting containers from port to port.

Maybe I can explain this by graphically drawing a picture. Let's say vessel A of steamship company Z sails from Japan to our coast, arrives in the Pacific Northwest, offloads his cargo containers. These containers are then broken open, and the cargo is dispersed to whoever it goes to.

He doesn't wait for his containers, of course. He goes on south. They generally load in the San Francisco area for return back to Japan. He wants to put his containers loaded aboard. To do this he has got to shift empty containers down from the Northwest, or, conversely, if he came in to Los Angeles first, he would have to shift them north to the bay area where the loading is to take place.

Now, he can't do this because of a customs interpretation of the coastwise laws that these containers are cargo. We disagree with customs. We don't think they are cargo.

And there is another little facet to that. We have had many discussions with the Maritime Administration as to whether or not containers are cargo for subsidy purposes, and so forth, and we have been fairly successful.

So our position on containers is they are not cargo but they are ship's gear.

Now, here are the containers in the Northwest. Ship A of this company has dropped them off. Ship B comes along and unloads his

containers. He has deck spaces going south or north to load again. It's obviously feasible that these containers be placed aboard ship B of the same company and taken to the bay area for loading. Then he departs with loaded containers. Ship C comes along. He is ready. The containers are on the dock. They are loaded aboard ship C.

So it takes three ships in a triangle trade and your reverse. Our trades to the Philippines. Our trades to Japan. Our trades to Italy.

Senator BARTLETT. You are absolutely convinced this would not constitute any impairment of the coastwise laws?

Mr. THURMAN. Yes, sir. I would not be here today if I did, because you know the very strong position our companies have taken regarding coastwise laws.

Senator BARTLETT. It wouldn't be a little tiny opening even, in your opinion?

Mr. THURMAN. Not as long as I can convince the chairman that this is ship's gear and not cargo.

Senator BARTLETT. You don't think this possibly would lead to introduction of a bill some day permitting a Japanese-built trading ship, we'll say, to locate at Seattle and serve San Francisco?

Mr. THURMAN. We would have to face that if the bill was introduced of that nature.

Senator BARTLETT. But you stand upon your statement that this is no violation of coastwise shipping laws?

Mr. THURMAN. That is right, sir.

Senator BARTLETT. Mr. Foster.

Mr. FOSTER. As I understand it, then, this is just an amendment to the coastwise shipping laws? It is really not a change?

Mr. THURMAN. That is correct. It is a clarification.

Mr. FOSTER. Your position is that vans should not be considered as cargo but should be considered as equipment or vessel gear? Is that correct?

Mr. THURMAN. Yes. I think that is a logical interpretation of the van. The van is of no value unless it has cargo in it.

Mr. FOSTER. As I understand it, under the Merchant Marine Act of 1936, section 607—

Senator BARTLETT. As amended.

Mr. FOSTER. As amended. The law provides that capital reserve funds can be used for the construction of new vessels or reconstruction and also be used for the construction or the acquisition of vans. Is that true?

Mr. THURMAN. That is true, and that is the basis for my opinion that this is ship's gear.

Mr. FOSTER. In other words, the 1936 act itself considers vans as gear of the vessel and this is acknowledged by the fact that this capital reserve fund can be used for the purchase of vans and obviously they are not permitting it to be used for the purchase of cargo?

Mr. THURMAN. That is correct.

Mr. FOSTER. I have no further questions.

Senator BARTLETT. Mr. Kenney?

Mr. KENNEY. No questions.

Senator BARTLETT. Thank you, Mr. Thurman. You have made your position very clear.

Mr. THURMAN. Thank you, Mr. Chairman.

Senator BARTLETT. Mr. Charles F. Warren.

STATEMENT OF CHARLES F. WARREN, ATTORNEY, ON BEHALF OF  
FOREIGN SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST

Mr. WARREN. Mr. Chairman, my name is Charles F. Warren. I am an attorney in town with a law firm, Graham, James & Rolph. I am appearing this morning on behalf of an organization known as the Foreign Shipowners Association of the Pacific Coast. This consists of 41 foreign-flag lines that operate in foreign commerce to and from Pacific coast ports.

Mr. Ramond Burley, the association's executive secretary, unfortunately was unable to be here from San Francisco this morning. He has a prepared statement, however, and with the chairman's permission I respectfully request that it be made a part of the record without my reading it.

Senator BARTLETT. Without objection.

(The prepared statement of Mr. Burley follows:)

STATEMENT OF RAMOND F. BURLEY, EXECUTIVE SECRETARY, FOREIGN SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, ON THE BILL, H.R. 5989

My name is Ramond F. Burley. I appear this morning as executive secretary of the Foreign Shipowners Association of the Pacific Coast. My appearance on behalf of the association is in addition to, and independent of, my primary work as chairman of several shipping conferences which serve our foreign commerce in the trades between the Pacific coast and Central and South America.

The Foreign Shipowners Association is a voluntary association, with offices in San Francisco, and is composed of 41 foreign-flag steamship companies whose vessels are engaged as carriers by water in the various foreign trades to and from ports on the Pacific coast of North America. The association's letterhead showing its membership is attached to this statement.

The association was founded in 1934, and according to its constitution, copy of which is attached, was organized to promote equitable business principles. The association is not a conference of carriers subject to the provisions of the Shipping Act, 1916, as amended, since it does not engage in any activity which is proscribed under the terms of that act. The association serves principally as a forum for the discussion of diverse marine subjects in respect to which it acts frequently as a coordinating vehicle with other west coast maritime associations, such as the Pacific Maritime Association (PMA) and the Pacific American Steamship Association (PASSA).

The members of the association support unanimously the enactment of the bill, H.R. 5989, to amend section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883). As previous witnesses have detailed, this section of the 1920 act is a part of our coastwise laws and prohibits the transportation by water of "merchandise" between points in the United States "in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States." In effect, therefore, the provision is designed essentially to prohibit foreign built, owned, and controlled vessels from transporting "merchandise" for hire in the domestic coastwise trades.

The association believes that H.R. 5989 is necessitated as a remedial measure because of the construction which the Bureau of Customs has placed upon the aforesaid statutory provision. Essentially, the Bureau's construction classifies the various articles enumerated in the bill (i.e., empty cargo vans, lift vans, and shipping tanks) as "merchandise" which, of course, cannot be transported by foreign-flag vessels between American ports. The measure, if enacted, would clarify the law in this respect, as it would expressly exclude from the operation of the provision the transportation of these articles, and thus permit them to be transported as ship's equipment between American ports for the purpose of facilitating their redistribution for use in the lading or unlading of cargo in our foreign commerce.

At present, the association's members collectively utilize approximately 10,000 of these vans and tanks which they either own or lease. However, as the law is

being interpreted, the members find that they are unable to utilize them as effective instruments of international trade. The dilemma which they face may be illustrated by the following representative example: Assume that one of their vessels, i.e., vessel A, having departed a foreign port, calls directly at Los Angeles as its first U.S. port of call. Assume further that it has aboard a supply of cargo-laden vans which it discharges at this port. This vessel, after completing its discharging and loading operations, departs for another port of call before the vans have been unloaded and returned to the carrier. In the meantime, vessel B of the same company arrives, also making its first call at Los Angeles, and takes aboard some of the vans, which by this time have been emptied, and transports them to San Francisco where they are discharged. Vessel C of the same company thereafter makes a call at San Francisco and loads them aboard—this time cargo laden for shipment to a foreign port. The carriage by vessel B of the empty vans is the leg of the transportation which the Bureau feels is violative of the coastwise laws, even though the empty vans were being carried as ship's equipment for the purpose of redistribution and not as cargo for hire. The pending bill would ameliorate this situation and enable foreign carriers to make use of this equipment in a way which would satisfy the needs of both shippers and carriers.

Enactment of this measure would not undermine the longstanding principle underlying the coastwise laws which prohibits foreign vessels from transporting "merchandise" between U.S. ports, since the relief which it affords would not do violence to those enterprises which engage in the coasting trades. To insure the preservation of this principle, therefore, the association supports fully the several amendments which the Treasury and Commerce Departments have suggested in their reports which were filed with the House Merchant Marine and Fisheries Committee during the 88th Congress in respect to the earlier bill, H.R. 4556. These amendments, which have been incorporated in the House passed bill, would limit such transportation, subject to such regulations as the Secretary of Treasury may prescribe, to those vans and tanks that are either owned or leased by the owner or operator of the transporting vessel, and would extend the privilege only upon the assurance of the extension of reciprocal privileges to vessels of the United States.

With these safeguards, it is believed that the bill would serve to facilitate the flow of international trading with just and equal treatment to all regardless of flag. On the association's behalf, I respectfully urge its favorable consideration. In closing, may I express appreciation for this opportunity to present this statement.

REVISED CONSTITUTION AND BYLAWS (MARCH 3, 1964) OF FOREIGN SHIPOWNERS  
ASSOCIATION OF THE PACIFIC COAST

ARTICLE I

The title of this association shall be Foreign Shipowners Association of the Pacific Coast, and its headquarters shall be in San Francisco, Calif.

ARTICLE II

The purpose is to provide a nonprofit organizational medium as a forum for the handling of matters that are of general interest and promote equitable business principles among the steamship lines engaged in the offshore trade to and from Pacific coast ports of the United States.

ARTICLE III

*Membership*

(a) Any person, firm, or corporation owning, operating, chartering, or managing foreign-flag vessels, within the area described in article II, may become a member of this association upon being elected in the manner prescribed herein and signing the constitution and bylaws signifying full understanding and compliance.

(b) Applicants for membership shall apply in suitable manner to the executive secretary who shall promptly present same to the membership for their consideration. Upon election, such member shall furnish the executive secretary with the names of its representative and alternate who are empowered to act on its behalf, and such member is to be bound by the acts of the said representatives in all actions taken by this association.

(c) Any member may resign at any time upon notice in writing to the executive secretary, who shall promptly notify the membership. If, at the expiration of 30 days from the time such notice is received, all proper assessments have been paid in full, the membership shall be terminated. In the event of resignation, such member forfeits all benefits, profits, and privileges of the association and all right of claim to any of its property.

#### ARTICLE IV

##### *Government*

(a) The government of the association shall be vested in its members, and its business conducted by its duly elected directors and officers. The members will appoint an executive secretary who shall conduct all the business affairs of the association subject to the approval of the board of directors and its officers, who shall prescribe his duties and determine his compensation.

(b) There shall be five directors of the association, all of whom shall be representatives of members thereof. Said directors shall serve for 2 years or until their successors shall have been elected. Upon election, the membership shall designate among the five a president and a vice president. In the event of a vacancy, same shall be filled by election among the remaining directors of a member to serve for the completion of the term of the director vacating. No officer director shall be eligible for reelection to immediately succeed himself.

(c) The directors shall appoint such standing and temporary committees as from time to time they may deem necessary or desirable to carry out the purposes of the association. Subject to the approval of the membership, they shall appoint a general counsel and employ such other persons and determine their compensation, as may, in their opinion, be necessary or convenient for the conducting of association affairs.

(d) In the absence of the executive secretary, the president shall preside at all meetings, or, in his absence, the vice president.

(e) Neither the directors nor officers shall receive any compensation for serving as such but, if required to make expenditures on behalf of the association, they shall be reimbursed therefor by the association.

#### ARTICLE V

##### *Meetings*

(a) All meetings shall be held at the office of the association in San Francisco or at a place selected by the members and shall be called as circumstances require, except that there shall be an annual meeting each February. The president or executive secretary may call meetings on his own initiative, or shall call a meeting upon the written request of any three members at any time.

(b) Written notice of meetings, whenever feasible, shall be sent to the members' representatives prior to the meeting date, with a docket of the subjects for consideration. Matters not docketed may only be discussed at such meeting upon the approval of three-fourths of the members present and in good standing. Election of directors and officers shall be held at alternate annual meetings commencing February 1963.

(c) Meetings of the directors shall be at the call of the president, executive secretary or any three directors. A majority of the directors shall constitute a quorum and a majority is necessary to pass any resolution or other determination.

#### ARTICLE VI

##### *Voting*

At all meetings of the association, each member who has paid all assessments and performed all other obligations to the association shall be entitled to one vote. Two-thirds of the members of the association in good standing shall constitute a quorum for the transaction of business. A three-fourths vote of the members in good standing present at any meeting shall be necessary to pass any resolution or other determination.

#### ARTICLE VII

##### *Assessments*

(a) Each member shall be assessed an equal monthly sum, payable semi-annually, in such amount as may be determined by the members from time to time, from and after the date of admission and until its membership shall have properly ceased in accordance with these bylaws, the total of such monthly sum being the

estimated amount required for the business operating expenses of the association for such monthly periods as covered by the assessment.

(b) Such additional assessments as may be necessary to defray the business operating expenses of the association shall be levied in a manner and as and when, in the opinion of the board of directors, such additional assessments are necessary. All such assessments shall be paid by all members on or before the 15th day after the notice of levy and the amount thereof shall have been sent by prepaid mail. The failure to pay any such assessment when due shall cause loss of voting rights until paid, and shall render any member so failing to pay liable to expulsion by resolution of members of the association duly passed at the next meeting. Such expulsion shall not relieve any member from any such assessment made upon such member prior to the effective date of such expulsion, and the association shall have full power to sue any such member for any such unpaid assessment. In case a member is expelled, he shall forfeit all benefits and privileges of the association and all right of claim to any of its property.

#### ARTICLE VIII

##### *Nominating committee*

The directors shall elect a nominating committee composed of three members of the association which, when elected, shall choose its own chairman and which shall, at least 30 days preceding the succeeding annual meeting, submit to the association executive secretary for submission to the members, the names of the directors and officers selected by it to be voted by the members for the ensuing 2-year period. Any 10 members, by petition, may present the name of any director or officer for election at such time, save and except that no member shall propose more than one officer or director.

#### ARTICLE IX

##### *Amendments*

This constitution and these bylaws may be amended by three-fourths vote of the members of the association present at any meeting of the association, providing written notice of the proposed amendment shall be mailed by the executive secretary to the members at least 10 days prior to the date upon which the vote on the proposed amendment shall be taken.

#### ARTICLE X

This association shall have perpetual existence.

Mr. WARREN. With the chairman's further permission, may I address myself to a few additional points?

Senator BARTLETT. Surely.

Mr. WARREN. Well, first of all, obviously the association unambiguously supports this measure because the bill is largely for its benefit, aside from also the benefit of certain U.S.-flag vessels which are not registered.

We under no circumstance intend this measure to, nor do we think that it does, encroach upon the principles underlying the coastwise laws.

We think that the bill will accomplish one principal purpose; namely, to facilitate the positioning of ship's equipment between American ports but for ultimate use in foreign commerce, in foreign trade.

We certainly say that this is ship's equipment. The statute, section 27, of course, refers to the term "merchandise." We do not believe that empty cargo containers are merchandise.

I had occasion to be in the Library of Congress. You have to go to the Library of Congress because the original measure, section 27, I think was introduced or passed Congress in the 1800's—a very old statute. It is difficult to find the legislative history on it.

In connection with an amendment to the coasting laws it was said during the 49th Congress, 1st session, at page 1108 of the Congressional Record:

This has been rendered necessary by a construction which has been given to our laws imposing a penalty on foreign vessels for transporting merchandise between ports of the United States. "Merchandise" has been construed by the Department—

speaking of the Department of the Treasury—

to cover simply goods transported.

Well, I do not think empty cargo containers are simply goods transported. I think the statutes, coasting laws, were aimed at merchandise for hire, to anything that was in that category that might encroach upon the U.S.-flag monopoly.

I don't put, and I don't think the Association that I am representing this morning places, the objective here on the basis that foreign nations may retaliate against the United States. I rather look upon this measure—or look upon the current interpretation—as a penalty, an unwarranted penalty, that really is not supported by statute.

Of course, we would have a course of action. We could litigate the matter in the courts. But, inasmuch as following discussions with the appropriate departments, including the Bureau of Customs, it was felt that this was a proper objective without jeopardy of the coastwise laws, we felt the clean, the best, way to do it was through legislation.

One final point. I might say that there are certainly ample safeguards in the bill as it passed the House: those safeguards being that the empty vans must be owned or leased by the transporting vessel, which means that the vans cannot be carried for hire or getting into the merchandise connotation.

Secondly, there is a reciprocity provision which the Department of State has stated that it supports and can implement, assuming the measure is enacted.

Under this provision, no foreign-flag line would be accorded any such privilege if a determination has not previously been made that the same privilege is accorded American-flag vessels abroad.

And, thirdly, the Bureau of Customs is enabled, under this provision, to prescribe appropriate regulations.

We respectfully urge its passage, and I thank you for the opportunity to appear here this morning.

Senator BARTLETT. Thank you, Mr. Warren. From a remark you made, I inferred that the Foreign Shipowners Association of the Pacific Coast stands solidly in support of the integrity of the U.S. coastwise-shipping laws. Is this correct?

Mr. WARREN. I would say this, Senator Bartlett: That, let us say, a practical shipping man—be he foreign or American—wants all the cargo that he can get hold of; and, therefore, if there were a possibility that the coastwise laws were to be repealed overnight, I would be less than candid in stating that foreign lines would be delighted.

On the other hand, seriously, I do say that, by this measure, it is not believed—certainly I as an attorney do not believe—that this measure would encroach upon that principle in any manner. And I can further say that this association has no plans whatsoever to sponsor any legislation along this line of encroaching upon such.

Senator BARTLETT. Mr. Warren, I can quite understand why, in the absence of Mr. Burley, the Foreign Shipowners Association of the Pacific Coast chose you to appear. Thank you very much.

Mr. WARREN. Thank you, sir.

Senator BARTLETT. Mr. Foster.

Mr. FOSTER. What foreign-flag operations are included in your association? What nations?

Mr. WARREN. Mr. Foster, the nations are Britain, Canada, France, Holland, Germany, Sweden, Japan, Italy, Taiwan, Israel. I think that is about it.

But, I might say, every foreign-flag liner operating to or from the Pacific Coast of the United States is included as a member, to my knowledge, in the association.

Mr. FOSTER. As you know, the United States has the so-called Jones Act, which you are amending here, that restricts the movement of cargo from one place to another in the United States, involving water transportation, to U.S.-flag vessels. Does Britain have a similar law?

Mr. WARREN. My impression is that most foreign nations do not have similar laws.

In regard to Britain, I can only say that I am of the impression that it does not, but I would be happy to supplement the record.

Mr. FOSTER. That was my impression, too. I raise the point because it would appear, if it is true, that the foreign nations would have a little difficulty, perhaps, applying any retribution, because they don't have the same policy.

Senator BARTLETT. It appears Mr. Thurman wants to make a statement. Do you mind, Mr. Warren?

Mr. THURMAN. If I could break in for a minute, Mr. Chairman, I made a study on this just recently for a newspaper article for my friends from the Journal of Commerce, and, in searching back into the early coastwise-law days, you will find all emerging nations developing their merchant fleets had coastal laws.

England had not only a law protecting the coast of England but they had all the United Kingdom. No vessel could even go to India, say, or some other place. And, as these broke down, it ends up now that only the nations that have a coast that is amenable to the coastwise laws have it.

For example, France today has a very strong coastal law. Now, as to the others, where their ports are so close together, there is no profit to be made by a foreigner coming in and moving it. They just don't have it.

And this is the reason we, as a nation with the greatest coastline, have more of a need for coastwise law today.

Mr. FOSTER. Thank you.

How do the companies you represent today get their vans, in the example given before, from one port on the Pacific coast to another?

Mr. WARREN. It is my understanding that the association members, those that have such problems as would be encompassed in the bill, are now in the trucking—or possibly by rail; as Mr. Thurman pointed out, at a charge to them—of such vans.

I understand that, altogether, the association members own about 10,000 or so of these vans and that, in terms of the utilization of

vans in foreign commerce, it is quite minimal, although with great possibilities, but a lot of problems must be solved first.

Mr. FOSTER. A foreign vessel can come into a port on the west coast and then go to a second port on the west coast and, provided it meets with the Coast Guard requirements and other requirements, and does not discharge cargo from one port to another, there is no violation of the coastwise law?

Mr. WARREN. That is correct. So, if it at the first port took on cargo, it certainly could not discharge that cargo at the second American port.

Mr. FOSTER. Now, if that vessel itself were transported, not by water by itself but was transported by rail or some other means to another port, this would have to be accomplished by U.S. transportation facilities? Is that correct?

Mr. WARREN. You mean the empty cargo van?

Mr. FOSTER. No; I am talking about the vessel.

Mr. WARREN. The vessel transported by railroad?

Mr. FOSTER. Yes. That would have to be done by some means of U.S. carrier?

Mr. WARREN. Yes.

Mr. FOSTER. The point I am making there is that either a vessel or a van might for one purpose be a vessel, or gear on a vessel, and for other purposes might be cargo.

Mr. WARREN. I would assume in the instance that you pose that the transporting vessel would obtain a fee, or transportation charge would be for a fee.

Mr. FOSTER. Yes.

Mr. WARREN. And, in that sense, it seems a little analogous to the cargo situation.

Mr. FOSTER. Thank you, Mr. Chairman.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. No questions.

Senator BARTLETT. Thank you very much, Mr. Warren.

Mr. WARREN. Thank you, sir.

Senator BARTLETT. The committee will be in recess.

(Whereupon, at 12:08 p.m., the subcommittee recessed, subject to the call of the chairman.)