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GOVERNMENT

MERCHANT MARINE MISCELLANEOUS—PART 2

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HEARINGS

BEFORE THE

COMMITTEE ON MERCHANT MARINE

AND THE

COMMITTEE ON

ANT MARINE AND FISHERIES

USE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

ON

SALE OF OBSOLETE VESSELS—H.R. 3094, H.R. 3315, H.R. 4088
JUNE 18, NOVEMBER 29, 1979

PASSENGER VESSELS—H.R. 4416, H.R. 4688, H.R. 4814, H.R. 4886
JULY 23, 1979

SHIPPING ACT AMENDMENTS—H.R. 1715
OCTOBER 30, 1979

STATUTE OF LIMITATIONS—H.R. 3748
DECEMBER 3, 1979

WAR RISKS INSURANCE—H.R. 5784, H.R. 5913
DECEMBER 3, 1979

U.S.-SOVIET MARITIME AGREEMENTS—H. Con. Res. 269, H.R. 6424
FEBRUARY 25, 1980

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SALE OF OBSOLETE VESSELS—H.R. 3094, H.R. 3315

MONDAY, JUNE 18, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 1334, Longworth House Office Building, Hon. John M. Murphy, chairman of the subcommittee, presiding.

Present: Representatives Murphy, McCloskey, Anderson, and Lowry.

Staff present: Ernest Corrado, Carl Perian, Martin Howell, Jack Sands, Steve Little, Frances Still, and Taddy McAllister,

The CHAIRMAN. The subcommittee will please come to order. This morning, we are conducting a hearing on H.R. 3094, a bill to authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Co., a California corporation, introduced by the Chair, and an identical bill, H.R. 3315, introduced by our colleague, Mr. Glenn Anderson from California.

The five vessels—AF-28 *Hyades*, AF-49 *Zelima*, AF-52 *Arcturus*, AF-54 *Pictor*, and AF-61 *Procyon*, surplus reefer ships—are currently located at James River, Va. and San Francisco, Calif.

Inter-Ocean Management Co. desires to purchase these vessels to refit and refurbish them in the United States, document them as fishing vessels and operate them as mother ships and/or factory processing vessels, fish reefer vessels or factory trawlers under the laws of the United States.

Section 203 of the Federal Property and Administrative Services Act, 40 U.S.C. 484, provides that surplus vessels may be disposed of only in accordance with the provisions of the Merchant Marine Act, 1936, as amended. Section 510 of the Merchant Marine Act, 46 U.S. 1160, prohibits the commercial operation of obsolete or other vessels acquired by the Secretary of Commerce. Thus, it is necessary to enact this legislation which authorizes the use of the five vessels in the fisheries of the United States.

[The bills and departmental reports follow:]

96TH CONGRESS
1ST SESSION

H. R. 3094

To authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 1979

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That notwithstanding any other provisions of law, the Secre-
4 tary of Commerce is authorized, within two years after en-
5 actment of this Act, to sell, subject to such conditions she
6 deems are appropriate in the national interest, the five obso-
7 lete vessels, AF-28 Hyades, AF-49 Zelima, AF-52 Arc-
8 turus, AF-54 Pictor, and AF-61 Procyon, for the purpose of

III—E

1 conversion and operation in the fisheries of the United States
2 to Inter-Ocean Management Company, a corporation orga-
3 nized under the laws of the State of California, for their ap-
4 praised value for operation or their scrap value in the domes-
5 tic market, whichever value is greater, as of the date of the
6 sale: *Provided*, That (1) any conversion work shall be per-
7 formed in the United States; (2) the vessels shall be docu-
8 mented as fishing vessels and operated under the laws of the
9 United States; (3) the vessels shall be operated in conformity
10 with all international fishery conventions to which the United
11 States is a signatory; and (4) if the vessels are scrapped
12 within five years after the date of sale, they shall be scrapped
13 in the domestic market.



DEPARTMENT OF THE NAVY
OFFICE OF LEGISLATIVE AFFAIRS
WASHINGTON D. C. 20350-1

IN REPLY REFER TO:

LA-62A:rj

JUN 14 1979

13 JUN 1979

COMMITTEE ON MERCHANT MARINE
AND FISHERIES

Dear Mr. Chairman:

Your request for comments on H.R. 3094, a bill "To authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The purpose of the bill is to authorize the Secretary of Commerce to sell five ex-Navy vessels to the Inter-Ocean Management Company, a California corporation. The vessels would be converted and operated in the fisheries of the United States by the Inter-Ocean Management Company.

The ships HYADES (ex-AF-28), ZELIMA (ex-AF-49), ARCTURUS (ex-AF-52), PICTOR (ex-AF-54) and PROCYON (ex-AF-61) were stricken from the Naval Vessel Register in 1976 after having been inspected and found unfit for further service by the Board of Inspection and Survey. They have all been authorized by the Secretary of the Navy for disposal.

Three of the ships, ZELIMA, PICTOR and PROCYON, have been referred to the Maritime Administration (MARAD) for sale in accordance with 40 U.S.C. 484(i). The remaining two ships, HYADES and ARCTURUS, will be so reported upon completion of Navy stripping in approximately six months, at which time the Navy will have no further interest in any of these vessels.

Accordingly, the Department of the Navy, on behalf of the Department of Defense, has no objection to enactment of H.R. 3094.

This report has been coordinated within the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 3094 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely,

L. C. LAITSCH
Captain, JAGC, U. S. Navy
Director, Legislation

The Honorable John M. Murphy
Chairman, Merchant Marine and
Fisheries Committee
House of Representatives
Washington, D. C. 20515

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COMMITTEE ON MERCHANT
MARINE AND FISHERIES
JUN 22 1979

Dear Mr. Chairman:

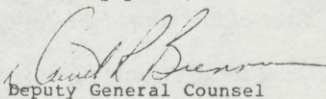
This responds to your request for the views of this Department on H.R. 3094, "To authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes."

The bills would authorize the Secretary of Commerce to sell to the Inter-Ocean Management Company five obsolete vessels, AF-28 Hyades, AF-49 Zelima, AF-52 Arcturus, AF-54 Pictor, and AF-61 Procyon, for the purpose of conversion and operation in the fisheries of the United States. This legislation provides that the vessels shall be documented as fishing vessels and operated under United States laws, that the vessels shall be operated in conformity with all international fishery conventions to which the United States is a signatory, and that any conversion work must be performed in the United States. In addition, if the vessels are scrapped within five years after the date of sale, they must be scrapped in the domestic market.

The Department has no independent knowledge of the need for, or merits of this legislation. Consequently, we defer to the Department of Commerce since that Department has primary responsibility for carrying out the provisions of this bill.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,


Deputy General Counsel

The Honorable
John M. Murphy, Chairman
Committee on Merchant Marine
and Fisheries
House of Representatives
Washington, D. C. 20515

96TH CONGRESS
1ST SESSION

H. R. 3315

To authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1979

Mr. ANDERSON of California introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That notwithstanding any other provisions of law, the Secre-
4 tary of Commerce is authorized, within two years after en-
5 actment of this Act, to sell, subject to such conditions she
6 deems are appropriate in the national interest, the five obso-
7 lete vessels, AF-28 Hyades, AF-49 Zelima, AF-52 Arc-
8 turus, AF-54 Pictor, and AF-61 Procyon, for the purpose of

1 conversion and operation in the fisheries of the United States
2 to Inter-Ocean Management Company, a corporation orga-
3 nized under the laws of the State of California, for their ap-
4 praised value for operation or their scrap value in the domes-
5 tic market, whichever value is greater, as of the date of the
6 sale: *Provided*, That (1) any conversion work shall be per-
7 formed in the United States; (2) the vessels shall be docu-
8 mented as fishing vessels and operated under the laws of the
9 United States; (3) the vessels shall be operated in conformity
10 with all international fishery conventions to which the United
11 States is a signatory; and (4) when the vessels are scrapped,
12 they shall be scrapped in the domestic market.

The CHAIRMAN. Since we have a rather crowded schedule today, I would ask the witnesses to submit their statements for the record and give a summary of their statements for the members present. Following the hearing, I intend to discharge the subcommittee and move immediately into a full committee markup on this legislation.

Our first witness will be our colleague and a distinguished member of this committee, Mr. Glenn Anderson of California.

STATEMENT OF HON. GLENN M. ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ANDERSON. Mr. Chairman, I appreciate your sponsoring and scheduling hearings today on H.R. 3094, which authorizes the Secretary of Commerce to sell five obsolete reefer ships to the Inter-Ocean Management Co., a corporation based in my congressional district, and this legislation is similar to a measure that I introduced, H.R. 3315.

This company simply wants to purchase five ships which have been mothballed by the Federal Government and which will most probably be scrapped if this bill is not enacted. These ships are the *Hyades*, *Zelima*, *Arcturus*, *Pictor*, and *Procyon*, which were all built in the late 1940's and have been inactive since the early 1970's.

Yet, after a thorough inspection, this company believes that they can revitalize these steamships of a bygone era into productive ships which will enhance the U.S. fishing industry. Mr. Chairman, it is ingenuity such as this which has made America great and which the Government should not stifle. This project is being totally financed by private industry; they are not going to receive any Government loans or subsidies for conversion or operation.

When these five ships are converted to fish trawler/factory ships, they will be a tremendous asset to the U.S. fishing fleet. With their cruising range and capacity, they will greatly add to the operational range of the current fishing boats. No longer will they need to shuttle between fishing grounds and shore facilities with their full holds; now they will be able to stay on the fishing grounds and deposit their catch in these mother ships.

Mr. Chairman, I do not think anyone will dispute the fact that these ships will greatly help our fishing industry, but I would like to pose a simple question. Why was it necessary for this company to come to the Congress for its assistance? Last year, a similar request came before the Congress for the purchase of two Navy ships.

The answer is, the present law is outdated and needs to be rewritten. As presently stated, these ships can only be used for scrap and cannot be used for transportation for hire. We have been dealing with this issue on a piecemeal approach, granting special exemptions.

As I understand its history, this policy was instituted after World War II when a tremendous number of ships which were constructed specifically for the war were returned to the United States. In order to protect the domestic shipbuilding industry, restrictions were placed on the sale of these ships. In this way, they could not be converted for other uses, taking jobs away from U.S. shipworkers.

This is an applaudable goal, but it offers no flexibility for conversion of those ships which would not otherwise be built. As has been seen, the U.S. fishing industry could not build ships of this size and capacity. If we are to compete with foreign fish processing ships, the only alternative available is to revitalize these old, all-but-forgotten ships.

We should make it easier for this company and others like it to purchase mothballed ships in the future. Instead of having a blanket prohibition on the selling of these ships for transportation for hire, we should have a flexible program for ship disposal. In this way, ingenious businessmen all over the country can try to put these ships to productive use. And they should not be limited only to fishing operations.

Possibly out there somewhere is a company which would like to use a ship for sending water to drought-stricken islands, or some other exotic purpose, and why should they not be allowed to try? The only limitation that should be placed upon them should be a determination that they are not taking jobs away from new ship construction or present shipping trades. If they have met these basic requirements, let the company use them for their own imaginative ideas.

At the same time, we should make sure that these companies do not get so bogged down in redtape and disposal scheduling at the Maritime Administration that it would be simpler for them to get a private law passed by the Congress.

Mr. Chairman, I would like to look into this whole prospect with you, and if it looks feasible, I think we as a committee should rewrite the ship disposal laws to enable companies like Inter-Ocean Management Co., to purchase more ships like these and add to our maritime economy.

In the meantime, I believe we should enact H.R. 3094 and allow these ambitious men to purchase these ships and begin on a landmark venture. I want to thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Anderson. Are there comments by the members of the committee?

[No response.]

The CHAIRMAN. Our next witness will be Mr. Robert Garske, Assistant General Counsel for Maritime Aids, on behalf of the Maritime Administration, Department of Commerce. Mr. Garske, if you would identify the gentleman with you for the record.

STATEMENT OF ROBERT A. GARSKE, ASSISTANT GENERAL COUNSEL FOR MARITIME AIDS, MARITIME ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, ACCOMPANIED BY ROBERT BRYAN, CHIEF, DIVISION OF RESERVE FLEET, MARITIME ADMINISTRATION

Mr. GARSKE. Yes, sir. The gentleman with me is Robert Bryan; he is the Chief, Division of Reserve Fleet of the Maritime Administration.

I believe, Mr. Chairman, that you have the statement of the Maritime Administration, Department of Commerce, on this legislative proposal. I do not believe it is necessary to read it. It indicates generally that, as has been said, under existing law sales of surplus vessels for commercial uses are prohibited. There has been

one instance in the past of private legislation to authorize the sale of two vessels; that has been consummated.

The Department of Commerce has no objection to the present legislation. There also have been indications that consideration should be given to legislation which would liberalize the authority to sell surplus vessels to include at least objectives such as fishing and associated activities, pollution control, and research.

Mr. Chairman, if there are any questions, I would be happy to answer them.

The CHAIRMAN. Are there questions? The gentleman from California has a question.

Mr. McCLOSKEY. Reading the last paragraph of your testimony, Mr. Garske, why should we not just permanently remove this section from the law? What benefit do you see to the United States to having any restrictions at all on your ability to sell obsolete vessels?

Mr. GARSKE. I believe the Agency has not really been prepared to deal with that particular issue at this time.

Mr. McCLOSKEY. Why not?

Mr. GARSKE. Well, because the proposal is on the private law. In general, I believe the Agency is sympathetic to expanding the authority under the sales law. The Agency also believes that—

Mr. McCLOSKEY. The Agency is amorphous and I am glad to know that it believes something, but your testimony is what I am speaking to. You say here, "The Department believes that existing law impedes the Secretary of Commerce." If it impedes, why not remove the law?

Mr. GARSKE. The present bill is related to special-purpose vessels. All we are saying is we believe that some additional consideration should be given to expanding the sales law to cover commercial activities and there should be some coordination with other surplus disposal programs in other Government departments, such as the Navy, in order that it be done in an orderly manner.

Mr. McCLOSKEY. Mr. Garske, I do not object to that at all. It seems to me that it is wrong to come before the Congress and ask for a specific piece of legislation to permit a specific sale when you agree that the law basically is bad and outdated. The Department of Commerce owes a little more to the Congress than to come before us and ask for a specific authority under a bad law to sell five ships.

Mr. GARSKE. Sir, we did not ask for this.

Mr. McCLOSKEY. Well, your view is stated here very accurately that you believe that the law impedes the Secretary of Commerce in administering the NDRF.

Mr. GARSKE. Yes. All I am saying is that we were asked to comment on this proposed legislation on the private law matter. Otherwise, it is true that we believe that, in general, our existing legislation impedes the Secretary.

Mr. McCLOSKEY. I agree with you completely, Glenn. It just seems to me that if this is a bad law, instead of being in a position of cursorily passing something to change a bad situation, we ought to give it careful attention and do it right.

Mr. ANDERSON. Would the gentleman yield?

Mr. McCLOSKEY. I would be glad to yield.

Mr. ANDERSON. That is why I asked the chairman if he would have our committee look into this, with the possible idea of re-vamping this entire law.

The CHAIRMAN. Would the gentleman from California yield?

Mr. McCLOSKEY. I would be glad to yield.

The CHAIRMAN. We are in the process of drawing up an omnibus bill. In the omnibus bill one of the problems we are going to look at and address ourselves to is going to be this question of the reserve fleet.

Our good friend, Mr. Bryan, sitting right here in front of us, is an endangered species, because the reserve fleet is an endangered species. I am going to ask unanimous consent that the letter of the Department of the Navy be included in the record at the conclusion of the testimony of the Department of Commerce, Maritime Administration.

I will just quote from that letter. It says, "The ships *Hyades*, *Zelima*, *Arcturus*, *Pictor*, and *Procyon* were stricken from the Naval Vessel Register in 1976 after having been inspected and found unfit for further service by the Board of Inspection and Survey. They have all been authorized by the Secretary of the Navy for disposal."

We will also place in the record, after the letter, the very terse comment from the Department of the Treasury, which was settled with a phone call; they did not even want to waste paper to tell us that they had no comment on the legislation. That is the degree of interest registered by the Treasury Department and the Navy Department in the reserve fleet.

We are going to take this up in detail as far as our ready reserve fleet is concerned and the national defense reserve fleet. I would think that in order to expedite the movement of these vessels that probably can perform a vital function in conjunction with the 200-mile limit legislation that we have passed in which we have been trying to get the attention of private industry in the United States to exploit the resources of America, we in this committee, of course, have taken the lead.

I think it is obvious to the people on this committee that capital is not going to flow into new vessels of this size and this dimension until the marketability has been proven and the fact that American seamen, American merchantmen, American capital investors, and American shoreside industry will fully cooperate.

I think that the people who are making this request are willing to invest a substantial amount of money into these old ships which will probably be used in the Alaska fisheries area. We will have specific testimony coming later. We will address this question on granting MarAd greater authority to dispose of old ships specifically when we get into the omnibus maritime bill. We are going to have one more session with the gentleman from California and his colleagues before we go into a final writeup on that legislation.

Mr. McCLOSKEY. I thank the Chairman. I just did not want Mr. Garske, in his first appearance before us, off the hook too easily. I would like to say, Mr. Garske, that I want to read a section of the law that we have been reading to Maritime Administrators over the last 4 years, asking—in fact, almost praying—for a response.

It is section 212 of the 1936 act and it imposes a duty, which Mr. Blackwell acknowledged to be that of the Assistant Secretary for Maritime Affairs under section (g), to "make recommendations to Congress, from time to time, for such further legislation as it deems necessary better to effectuate the purpose and policy of this act."

It is against the background of that sentence that we wonder why, if there is a law that inhibits the administration of the act, we have not had a recommendation from the Assistant Secretary, particularly when testimony has been requested on that specific subject.

Mr. GARSKE. Yes, sir.

Mr. McCLOSKEY. That is not intended to be a personal slap, but it is intended to perhaps express the view that the failure of the Interagency Task Force on Maritime Policy to address the Congress probably represents a violation of law, if this law imposes on the Secretary of Commerce the obligation to recommend changes in maritime policy and law.

May I ask one other question? In your testimony, you recommend that if we do amend the law, it require competitive bidding. Has there been competitive bidding for these five ships?

Mr. GARSKE. No, sir, there has not.

Mr. McCLOSKEY. Why do you recommend the sale, then, but not recommend competitive bidding in this instance?

Mr. GARSKE. Well, we indicated no objection to this, as we did to the previous proposal, on the basis that these were isolated instances. What we are suggesting, however, is that there is a reason for changing the law so that surplus vessels could be disposed of on a more liberal basis.

Mr. McCLOSKEY. Well, you see, the very recommendation you make indicates that there is a danger of somebody being accused of a sweetheart act of Congress to benefit some particular constituency when you recommend that there be competitive bidding, but there has been no competitive bidding in this case.

Of course, there could not be competitive bidding, because until the law is changed, who could bid for what?

Mr. GARSKE. I think, sir, one significant reason for the competitive bidding is in order to avoid the timing problem and the question of who will get the vessels. We believe that in this case, the Maritime Administration can find a fair market value in terms of pricing.

Of course, pricing is taken care of in competitive bidding too, but I think that just the scheduling of disposal and the timing of it and the understanding of what kind of vessels would be available to the public.

The CHAIRMAN. Would the gentleman yield?

Mr. McCLOSKEY. I would be glad to yield.

The CHAIRMAN. We just read the Navy's letter into the record which indicates these vessels were unfit since 1976. The Maritime Administration was open at any time to bids from anybody for these vessels. Have any been forthcoming?

Mr. GARSKE. No.

The CHAIRMAN. It has been open for this period of time.

Mr. McCLOSKEY. I have no problem, except that now we pass a law saying you can dispose of them. What are you going to do if somebody comes in and bids over what the present bidders have proposed; what are you going to do?

Mr. GARSKE. If we have the legislation enacted, then I would say that these vessels would not be offered in our regular competitive bidding program for scrap or nontransportation.

Mr. McCLOSKEY. Assume we pass this legislation to permit these ships to be sold.

Mr. GARSKE. Yes, sir.

Mr. McCLOSKEY. What do you do then if somebody, besides these enterprising individuals who have forced the issue, comes in and bids a higher price than they have for these ships? What is the procedure you would follow?

Mr. GARSKE. What we would do here, I believe, is retain these vessels for disposal under this private legislation and not offer them under the other law.

Mr. McCLOSKEY. Say that again.

Mr. GARSKE. We would hold these vessels and sell them under the private legislation.

Mr. McCLOSKEY. In other words, the legislation that you have no objection to is legislation that sells these ships at a specific price to this specific bidder. Is that what this legislation does?

Mr. GARSKE. Yes. It is at a fair price determined by the agency; it is not a specified price.

Mr. McCLOSKEY. Yes, but what I would like to know is if, in enacting this legislation, we have authorized that they may be sold subject to such conditions as you put on them for the purpose of conversion in the fisheries to a specific person, are we, in effect, passing private legislation for one company who has offered to buy them?

Mr. GARSKE. Yes, sir.

Mr. McCLOSKEY. Have you fixed the price?

Mr. GARSKE. Not yet, sir.

Mr. McCLOSKEY. And the conditions will be that which is fixed by this legislation?

Mr. GARSKE. Yes, sir.

Mr. McCLOSKEY. My only problem with it is, how does the committee avoid the obvious inference that we are approving a sweetheart deal here?

The CHAIRMAN. Would the gentleman yield?

Mr. McCLOSKEY. I would be glad to yield. I am just curious.

The CHAIRMAN. On lines 3 and 4 of page 2 of the bill, it clearly states that these vessels will be disposed of for their appraised value for operation or their scrap value in the domestic market, whichever is greater. So there is a clear statement to MarAd as to what a bottom price is.

Mr. GARSKE. The Maritime Administration feels confident that it can establish a fair price. It feels confident that with its experience in this area, it can establish a fair price.

Mr. McCLOSKEY. Well, I raise these questions, Mr. Garske, because I think that they pose the fact that it is a lot more difficult for you to come to us and say you favor a specific sale to a specific buyer than it would be for you to come and say, "We would like to

amend the law so that we can sell these vessels to the highest bidder."

We look in this case, it seems to me, as if we are responding to a private citizen's request for private legislation, rather than passing a public law in the best interests of the United States. I just do not like as a Member of Congress to be put in that position.

I see no objection to this sale. It seems to me you have got an entrepreneur that has come up with an imaginative way to use something that otherwise has less value than it does. But it seems to me a little outrageous for the Congress to have to be passing special legislation of this kind when we could do the same thing with general legislation which would be free of the suggestion that we are benefiting somebody.

Mr. GARSKE. Yes, sir.

[Whereupon, Mr. Anderson assumed the chair.]

Mr. McCLOSKEY. Again, of all of the laws in this country that need revamping, as conceded in your testimony, this law does. I am not going to oppose this legislation because I have no reason to oppose it, but it seems to me that it points up a gap in the Maritime Administration's dealings with the Congress. We should have long since had a recommendation of this kind, rather than be placed in a situation where the public, now sees the Congress once again passing a specific piece of legislation to benefit a specific individual or corporation.

As I say, I know no reason to oppose it, but it just seems to me it is a bad way to legislate. Thank you, Mr. Chairman.

Mr. ANDERSON. Are there any further comments?

[No response.]

Mr. ANDERSON. A moment ago, the chairman inquired as to where these ships were going to be located, for the record I would like to clarify the possible uses, Pete. They are going to be used:

As trawlers for cod and halibut in the Bering Sea;

Trawling for other types of school fish south of the Aleutian Islands;

Receiving, freezing, holding and purchasing herring, salmon, halibut, tanner and king crab, and shrimp, in and around such areas of the State of Alaska;

Floating refrigerated warehouses in various areas of the State of Alaska and the west coast of the United States;

Freezing, storing, and transporting fish at various areas of the Western Pacific, including Melanesia, Micronesia, and Polynesia, and returning to the west coast of the United States;

Receiving, freezing, and storing fish along areas of the Eastern Pacific, including the west coast of South America.

Freezing and transporting frozen tuna from the west side of Panama to canneries in Puerto Rico; and

Other operations which will be reviewed for refrigerated use as vessels are ready for operation under the aegis of the Inter-Ocean Management Co. Areas of operation will change from time to time, depending upon fishery demand.

So the answer, originally, was Alaska for the most part, but it is going to eventually develop, hopefully, in every fishing area.

[The following was received for the record:]

STATEMENT OF ROBERT A. GARSKE, ASSISTANT GENERAL COUNSEL FOR MARITIME
AIDS, MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. Chairman and members of the Committee, I am pleased to appear before you today to testify on behalf of the Department of Commerce on H.R. 3094, a bill—

“To authorize the Secretary of Commerce to sell five obsolete vessels to the Inter-Ocean Management Company, a California corporation, and for other purposes.”

The bill would authorize the sale of five C-2 reefer vessels which are now in the National Defense Reserve Fleet (NDRF). The NDRF was established and is maintained by the Maritime Administration under authority of section 11, Merchant Ship Sales Act of 1946 (46 U.S.C. App. 1744). That authority provides that a vessel placed in the NDRF “shall in no case be used for any purpose whatsoever”, except for the use or account of any U.S. agency or department during a period when vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, and under a bare-boat charter entered into under authority granted to the Secretary of Commerce.

Section 510 of the 1936 Act provides for the acquisition and disposal of “obsolete” NDRF vessels, defined in subsection (a). The authority vested in the Secretary by this statute has been delegated to the Assistant Secretary for Maritime Affairs, the Maritime Administration has interpreted this to authorize the disposal of NDRF vessels only for scrapping or for non-transportation use. The general prohibition in subsection (g) against using such an obsolete vessel for commercial operation was intended to prevent the disposal of vessels, which had previously been determined to be obsolete for commercial operation, at times when they might be operated in competition with other U.S.-flag vessels.

Although the five reefer vessels are obsolete for use in commercial cargo carriage, they would be valuable if sold for conversion and operation in the fisheries of the United States, as authorized by the bill. Their value for this use is greater than if they were disposed of for scrapping. The conditions for the sale imposed by the bill are:

- (1) conversion work shall be performed in the United States;
- (2) the vessels shall be documented under United States law;
- (3) the vessels shall be operated in conformity with all international fishery conventions to which the United States is a signatory; and
- (4) if the vessels are scrapped within five years after the date of sale, they shall be scrapped in the domestic market. Mr. Chairman, the Department of Commerce believes that existing law, which absolutely prohibits the commercial use of NDRF vessels, impedes the Secretary of Commerce in administering the NDRF in a manner that balances our national defense and commercial needs. There is precedent for the type of sale contemplated by H.R. 3094. Private Law 95-20 authorized the sale of two obsolete Navy tankers for conversion and operation in the fisheries of the United States.

Accordingly, this Department is not opposed to enactment of H.R. 3094.

Furthermore, we believe that consideration should be given to the enactment of general legislation that would authorize the Secretary to dispose of NDRF vessels for limited types of commercial operation. This might include, but not necessarily be limited to, operation in the fisheries of the United States, as well as for pollution control and research purposes. Such authority should also require that competitive bidding be used for these sales. The enactment of such general legislation would obviate the need to introduce numerous private bills intended to authorize the Secretary to sell, only to specified parties, a limited number of suitable vessels in the NDRF that are available for allowable commercial operation.

Mr. Chairman, this concludes my prepared statement. I will be happy to address any questions you or any members of your Committee may have.

Mr. ANDERSON. Our next witness is Mr. Anthony Nizetich, representing Inter-Ocean Management Co.

STATEMENT OF ANTHONY V. NIZETICH, INTER-OCEAN
MANAGEMENT CO.

Mr. NIZETICH. Thank you, Mr. Chairman. I have to submit for the record “A Fully Integrated Fishing Project for Underutilized Species under the Fisheries Conservation and Management Act of 1976.” I prepared this for the record; it is quite lengthy. I will just make a few comments.

I really cannot say much more about our project other than what our good Congressman Anderson and also Congressman Murphy have said about it. It is a new venture; it is a bold opportunity to take advantage of our underutilized species in the Bering Sea and the Aleutian Islands.

We are going very slowly; we do not know in which direction we are going to go completely. We are trying out all options. This particular document that I am submitting for the record is a justification of the reasonableness of the project.

It deals with those particular species that are presently being fully utilized primarily by Japanese, Soviets, and Koreans. It is our hope that we will be able to compete in this remote area to take advantage of these species that are within our 200-mile limit and give us an opportunity to compete in the world market for these species.

Mr. ANDERSON. I want to congratulate you, Tony, for the ingenuity the company you represent is demonstrating. For many years, I know I have been one of those who has listened to the fishermen in my district talking about the mother ships of other countries and how our fishermen have a difficult time competing.

I have often wondered, why do foreign fishermen have refrigerated ships, taking all of the catch from our fishermen, and why don't we have domestic fish processing ships. Here I see your group is starting an ambitious endeavor to fill this void. I want to congratulate you on it. I think it may develop into something very, very big, and I certainly hope it does.

Mr. NIZETICH. Thank you, sir.

Mr. ANDERSON. I have no further questions. Mr. McCloskey?

Mr. McCLOSKEY. Can you describe who the shareholders of this corporation are?

Mr. NIZETICH. At the present time, Congressman, this particular company was organized for the purpose of acquiring these vessels. At the present time, no stock has been issued as of yet. We just incorporated this year and it is for the purpose of acquiring these vessels. Once we acquire the vessels or have the opportunity to acquire them, then we will be getting—

Mr. McCLOSKEY. I frankly do not understand that. Do you mean to tell me that you have issued no capital yet; that the capital that you do issue will be dependent upon an act of Congress? How do you know what capital you are going to have to raise?

Mr. NIZETICH. We do not know yet.

Mr. McCLOSKEY. Well, why should we pass a law for a company that has no capital and has no commitment to do anything?

[Whereupon, Mr. Murphy resumed the chair.]

Mr. NIZETICH. Well, this is a new venture, Congressman, and we are organizing for this purpose. If we get the vessels, then we go out and we raise the capital to buy the vessels from MarAd.

Mr. McCLOSKEY. And suppose we then find that all your shareholders are Japanese fishermen?

Mr. NIZETICH. Well, I do not think you have to worry about that, sir.

Mr. McCLOSKEY. Well, we have no guarantee that it will not happen, though, do we?

Mr. NIZETICH. Pardon?

Mr. McCLOSKEY. We have no guarantee that it will not happen. The whole point of my concern is not that this is a bad project or a bad plan. But it is a little unique to pass an act of Congress as the first step and to have a group of promoters getting together to promote a new venture when we do not even know who the promoters are.

Mr. NIZETICH. Well, they will be U.S. citizens; that is one thing. And they will be manned by U.S. fishermen; they will be converted by U.S. workmen. It will be a full U.S. project, and this is the whole purpose of it.

Mr. McCLOSKEY. Well, how do we know that it is not going to be owned by the Arabs?

Mr. NIZETICH. Well, I guess we do not.

Mr. McCLOSKEY. Who are the owners of the corporation; who are the incorporators?

Mr. NIZETICH. Right now, I am.

Mr. McCLOSKEY. Just you personally?

Mr. NIZETICH. No; I have two others.

Mr. McCLOSKEY. Well, who are they?

Mr. NIZETICH. Mr. Robert Rados from Rados Engineering.

Mr. McCLOSKEY. Rados?

Mr. NIZETICH. Rados, R-a-d-o-s.

Mr. McCLOSKEY. And who is the third person?

Mr. NIZETICH. Frank Mateljan.

Mr. McCLOSKEY. Do any of you have any money in this corporation?

Mr. NIZETICH. Just the organization cost.

Mr. McCLOSKEY. \$300 or \$400 for forming a shell corporation, but with no money?

Mr. NIZETICH. Yes, sir. You see, Congressman, the problem that we are faced with here is that these vessels were on the nonretention list. You could only use them for nontransportation or for salvage. In order for us to do this project, we had to come into Congress to get a private piece of legislation in order to use them for operational reasons.

Now, we do not know whether we are going to get these; it all depends on how you gentlemen vote. We are putting together the project. I think that is why one of the restrictions in here is that we must purchase these or scrap them within 2 years.

Mr. McCLOSKEY. Mr. Garske, could you step back to the witness table?

The CHAIRMAN. Mr. Garske, if you could come up, please.

Mr. GARSKE. Yes, sir.

Mr. McCLOSKEY. Mr. Garske, I have a little problem with this whole procedure. You have agreed to sell these five ships to a corporation that has no money for a value which you say your expertise will permit you to determine is higher than their scrap value, is this correct?

Mr. GARSKE. The terms of sale in a situation like this would be cash on delivery.

Mr. McCLOSKEY. Well, how much cash?

Mr. GARSKE. Well, whatever the appraised value comes to.

Mr. McCLOSKEY. Do you know of a single instance where the Maritime Administration has gone through a process of this kind

before where you have made an agreement and asked for a piece of legislation to sell to a corporation without any money and with no knowledge as to who the shareholders are going to be?

Mr. GARSKE. Sir, we have made no agreement.

Mr. McCLOSKEY. Do you know of any situation even remotely approaching the one that you come before us on today?

Mr. GARSKE. Well, the previous private law under which the *Kishwaukee* and the *Patapsco* were authorized.

The CHAIRMAN. Would the gentleman yield?

Mr. McCLOSKEY. I would be glad to yield.

The CHAIRMAN. Would you answer the question of the gentleman from California? Who previously have made purchases such as this? That is what you asked, was it not?

Mr. McCLOSKEY. Yes, if there is any precedence for it.

Mr. GARSKE. Yes, Mid-Pacific Sea Harvesters, Inc.

The CHAIRMAN. That is right.

Mr. McCLOSKEY. When did that happen? I may be wholly all wet about this, Mr. Chairman, but I have just never seen it.

The CHAIRMAN. We usually have difficulty getting direct answers from the Maritime Administration, and I am going to be sure you get a direct answer. Would you respond to the gentleman from California's question?

Mr. GARSKE. I do not remember the private bill number.

Mr. NIZETICH. May I answer that, Congressman? I have it here.

Mr. GARSKE. I have it here. The previous private law was 95-20. As I recall, the hearing was held in October of 1977. The sale was consummated by a sales contract entered into on December 18, 1978, and the vessels were delivered on January 15, 1979.

Mr. McCLOSKEY. What were the vessels involved?

Mr. GARSKE. The two vessels were the *Patapsco* and the *Kishwaukee*, two Government-owned tankers.

Mr. McCLOSKEY. Two Government-owned tankers, and were sold to whom?

Mr. GARSKE. To a firm entitled Mid-Pacific Sea Harvesters, Inc.

Mr. McCLOSKEY. And what is the use of the ships today?

Mr. GARSKE. They will be used in the fisheries as transport and processing vessels.

Mr. McCLOSKEY. And what was the price to the Government?

Mr. GARSKE. Each vessel was appraised at \$56,480.

Mr. McCLOSKEY. And do you have an appraisal for these five ships that you propose to sell?

Mr. GARSKE. No, we do not at the present time. Approximately, the going price is in the area of \$50 a ton, and each of these five is—

Mr. McCLOSKEY. That is the scrap price?

Mr. GARSKE. Yes, the scrap price.

Mr. ANDERSON. Would the gentleman yield?

Mr. McCLOSKEY. I would be glad to yield.

Mr. ANDERSON. Just to clarify a little bit, Pete, I was trying to follow up on your question as to why we should sell these ships to a company that has not organized. Of course, had they organized, we might have asked them the same question; how come you organized a company to sell stock when there is no law allowing you to use these ships for commercial use?

Now, I just wanted to verify, because our colleague, Mr. Lowry, asked me, are these good, solid citizens. Of course, I think all of us know Tony Nizetich. He has been very, very much involved in the maritime as a representative for the Star Kist and the Heinz companies.

This law is not passed yet, but if it passed, I would assume Tony would have no problem involving some of the biggest fishing interests in my area. Robert Rados' company is a recognized marine design company. Would that not be it, Tony?

Mr. NIZETICH. They are an architectural firm.

Mr. ANDERSON. They are a big name in the area. The fact is, once they get the authority to purchase these five ships under the law, there will be no problem with getting any number of people in the fishing and maritime industry involved. But to buy something that there is not even a law for would be questionable, too.

Who was the third person in this venture?

Mr. NIZETICH. Frank Mateljan; he is a fish broker. He has been in the fish business for about 30 years; he is located in Wilmington, Calif.

Mr. ANDERSON. Thank you, Mr. Chairman. I just wanted to bring out that these are not strangers to the business.

Mr. McCLOSKEY. Not a fly-by-night front for Japanese fishermen.

Mr. ANDERSON. No, and I do not think that they are going to sell out to the Arabs.

Mr. McCLOSKEY. I want to say for the record, I have no reason to oppose this sale, and because we are finally examining the comprehensive law that affects it, I do not see any further reason to berate the Maritime Administration for coming to us for the second such bill in 2 years. There has been a precedent for it, apparently, in what we did in the last Congress.

I see no problem with it, except the predictable, I think, public distrust that the Congress is acting to benefit specific people instead of enacting a law to cover a general situation. I think what I would like to say is that we should not do this again. As the Chairman is leading us now to a comprehensive maritime law, I expect we will not have to, and I will withdraw any further objections.

The CHAIRMAN. Does the gentleman from California have any questions?

Mr. ANDERSON. No.

The CHAIRMAN. Are there any other questions?

[No response.]

The CHAIRMAN. Counsel?

Mr. HOWELL. Mr. Nizetich, a reference was made to processing of crabs in the Alaskan waters. I think that you made a commitment to Congressman Young that you would not impinge whatsoever on the existing processing facilities up there; that you were just taking the surplus which they could not handle. Is that correct?

Mr. NIZETICH. That is right.

The CHAIRMAN. There are no further questions, Mr. Nizetich.

Mr. NIZETICH. Thank you very kindly, Mr. Chairman.

[The following was received for the record:]

A FULLY INTEGRATED FISHING PROJECT FOR
UNDERUTILIZED SPECIES UNDER F.C.M.A. (1976)

Prepared by: INTER-OCEAN MANAGEMENT COMPANY

T A B L E O F C O N T E N T S

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TARGET SPECIES

SUMMARY AND CONCLUSIONS

1. THE GROUND FISH (TRAWL FISHERY) INDUSTRY HAS DEVELOPED OVER THE YEARS IN U.S. WATERS BY REASON OF FOREIGN TECHNOLOGY, OF VESSEL CONSTRUCTION, HARVESTING TECHNIQUES AND PROCESSING CAPABILITIES. THE FISHERMEN AND U.S. FISHING INTERESTS HAVE NOT EXPERIENCED THIS REVOLUTION OR HAVE THEY TO DATE TAKEN SERIOUS ADVANTAGE OF ITS LATENT POTENTIAL.
2. THE U.S. IS ONE OF THE MAJOR DEVELOPING MARKETS FOR FISH BLOCKS. THE CONSUMPTION OF THIS PRODUCT IN REFERENCE TO OTHER SEAFOODS IS INCREASING AT A RAPID RATE DUE TO THE INSTITUTIONAL TRADE OPPORTUNITIES.
3. THE COMPARATIVE LANDINGS OF U.S. CAUGHT TRAWL FISH VIS A VIS FOREIGN LANDINGS INDICATES THE GROWTH POTENTIAL FOR THE U.S. INDUSTRY.
4. THE LANDINGS BY OTHER COUNTRIES SHOULD DECLINE DUE TO THE PASSAGE OF THE F.C.M.A. IF THE U.S. FISHING INDUSTRY ENTERS THIS FISHERY.
5. THE UNDER-UTILIZED SPECIES SHOW TREMENDOUS PROMISE FOR GROWTH.
6. THE EXPANDING USE OF THESE PRODUCTS, BOTH DOMESTICALLY AND FOREIGN, OPENS UP NEW MARKETS TO U.S. PRODUCTION OF THE RAW PRODUCT.

SUMMARY AND CONCLUSIONS - CONTINUED

7. JAPAN, KOREA, SOVIET RUSSIA, EUROPE, AFRICA AND THE UNITED STATES CAN ABSORB ANY NEW PRODUCTION AND/OR PRESENT PRODUCTION BEING HARVESTED BY FOREIGN INTERESTS.
8. PRESENT AREAS OF HARVESTING FOR THESE SPECIES HAVE FAR FROM REACHED ITS FULL POTENTIAL WITHIN RANGE OF U.S. FLEET CAPABILITIES.
9. PRESENT PROCESSING AND/OR HARVESTING CAPABILITIES ARE TOTALLY INADEQUATE TO MEET THE DEMAND FOR THESE SPECIES.
10. THE STEADY INCREASE IN PRICES OVER THE PAST FIVE YEARS IS INDICATIVE OF THE STEADY GROWTH AND PROFIT INCENTIVE.
11. THE MOST LOGICAL APPROACH TO MEET THE STEADY POPULATION INCREASE, THE RISING CONSUMER MARKET AND THE PROJECTED EXPANDED GROUND FISH CONSUMPTION IS TO BRING THE RAW PRODUCT TO MARKET THROUGH MODERN, EFFICIENT HARVESTING AND AT SEA PROCESSING METHODS.

I. INTRODUCTION

THE PROPOSED PROJECT SCHEDULE IS ENVISIONED TO TAKE PLACE AS FOLLOWS:

1. ACQUISITION OF FIVE C-2 REEFER CARRIERS FROM THE U.S. GOVERNMENT THROUGH CONGRESSIONAL ACTION.
2. VESSEL CONVERSION.
3. OUTFITTING FOR SEA AND FISHERY HARVESTING/PROCESSING OPERATION.

IN ORDER TO MEET THE CHALLENGE AS FULLY OUTLINED IN THIS PROJECT IT IS NECESSARY AND PRUDENT TO ACQUIRE U.S. SURPLUS LARGE REEFER TYPE CARRIERS. THESE VESSELS MUST BE CONVERTED TO A VARIETY OF USES OR A COMBINATION OF USES, SUCH AS, FACTORY/TRAWLERS, A SINGLE UNIT PROCESSING VESSEL, TRAWLERS, ONLY AND OR VARIOUS TYPE SUPPORT OR MOTHERSHIP VESSELS. THE ESTABLISHMENT OF THIS VIABLE GROUND FISH FISHERY IS DEPENDENT ON VOLUME HARVESTING (WITHIN CONSERVATION LIMITS) OF THOSE FISHERIES THE U.S. FISHING INDUSTRY IS NOT UTILIZING. THE CONCEPT HOWEVER MUST BE THE MOST EFFICIENT AND ECONOMICAL IN THOSE AREAS OF VESSEL OPERATION, VESSEL HARVESTING, PROCESSING AND MARKETING.

THE CONTINUATION OF THIS FISHERY AND THE CONTINUED EXPANSION OF THIS FISHERY IS ONLY POSSIBLE IF THE U.S. FISHERMEN TAKES FULL ADVANTAGE OF THOSE TARGET SPECIES THAT ARE PRESENTLY BEING FULLY UTILIZED BY FOREIGN FLEETS.

II. G E N E R A L

THIS PROPOSAL CONCERNS ITSELF WITH THE ACQUISITION OF 5 C-2 REEFER CARRIERS PRESENTLY ON THE NON-RETENTION LIST UNDER THE JURISDICTION OF THE MARITIME ADMINISTRATION. THE FOLLOWING VESSELS ARE AF-28 HYADES, AF 49 ZELIMA, AF-52 ARCTURUS, AF-54 PICTOR, AND AF-61 PROCYON LOCATED ON THE ST. JAMES RIVER, VA. AND SAN FRANCISCO, CALIFORNIA.

UNDER THE PRESENT LAW, A U.S. CITIZEN MAY REQUEST PERMISSION TO BID ON THOSE SURPLUS VESSELS AVAILABLE FOR DEPOSITION AS SCRAP OR FOR NON-TRANSPORTATION USE. THIS METHOD IS NOT SATISFACTORY IN VIEW OF THE NON-TRANSPORTATION REQUIREMENT. THE PROJECT CALLS FOR A LARGE MOBILE-SELF PROPELLED FISHING TRAWLER/FACTORY SHIP. CONGRESS CAN GRANT THIS EXCEPTION. AS THE DEMAND FOR GROUND FISH INCREASES BOTH DOMESTICALLY AND WORLDWIDE, AS THE U.S. SHARE OF HARVEST CONTINUES TO FORCE FOREIGN FISHING FOR THESE SPECIES TO OUTSIDE THE F.C.S., LARGE, MODERN, EFFICIENT COMBINATION TRAWLER-FACTORY VESSELS WILL BE NEEDED. THESE VESSELS WILL HAVE THE CAPACITY, CRUISING RANGE, HOLDING AND PROCESSING CAPACITIES TO FISH, EXPLORE AND RESEARCH THE NORTHWEST AND NORTHEAST FISHING GROUNDS.

DUE TO THE CONSTANTLY EXPANDING WORLD MARKET FOR FISH FILLETS, FISH BLOCKS, MINCED FISH AND OTHER GROUND FISH

G E N E R A L - C O N T I N U E D

FISH PRODUCTS, IT IS NECESSARY THAT EFFICIENT VESSELS OF LIKE SIZE AND MAGNITUDE BE CONSTRUCTED IN ORDER TO REPLACE THOSE FOREIGN FLEETS PRESENTLY EXPLOITING OUR RESOURCES.

THE DEVELOPMENT OF AN INTEGRATED FISHING COMPANY, I.E., HARVESTING, PROCESSING AND MARKETING AND THE RE-CONSTRUCTION OF THIS NEW SUPER-TRAWLER/FACTORY SHIP WILL PLACE THIS VESSEL IN COMPETITION WITH OTHER FLEETS OF THE WORLD. IT'S DESIGN, HARVESTING CAPABILITIES AND PROCESSING EFFICIENCY WILL BE MOST IMPRESSIVE AND WILL GENERATE THE LOWEST UNIT OF COST PER TON OF PRODUCTION.

THE GROUND FISH INDUSTRY IN THE U.S. HAS NO SIGNIFICANT STANDING INDICATING AN IMMEDIATE NEED TO EXPAND IN ORDER TO MEET THE CHALLENGE OF FUTURE....

III. THE PROJECT

THE PRINCIPLES IN THIS PROJECT - INTER-OCEAN MANAGEMENT COMPANY, A CALIFORNIA CORPORATION, WILL BE THE OWNERS OF FIVE U.S. NAVY SURPLUS REEFER VESSELS, AF-28 HYADES, AF-49 ZELIMA, AF-52 ARCTURUS, AF-54 PICTOR, AND AF-61 PROCYON. THESE VESSELS ARE FULLY REFRIGERATED C-2 TYPE VESSELS, 459 FEET IN LENGTH, 63 FEET IN WIDTH POWERED BY STEAM TURBINE ENGINES, 6000 H.P. OF STEEL CONSTRUCTION, WITH MAXIMUM STORAGE AND FREEZING CAPACITY.

IT IS ANTICIPATED THAT THE LONG RANGE CONVERSION PROGRAM CONSISTING OF FACTORY/TRAWLERS, FACTORY SHIPS AND/OR REEFER CARRIERS WILL BE TAILORED TO MEET THE DEMANDS AS THE INDUSTRY SO DICTATES. IT IS TOO EARLY TO DETERMINE THE PRESENT SCHEDULE OF CONVERSION BUT THE ENTIRE PROJECT CALLS FOR COMPLETION BY THE END OF 1983. THIS SCHEDULE, HOWEVER, COULD CHANGE DEPENDING ON ACQUISITION FROM THE U.S. GOVERNMENT AND YARD CAPABILITIES AS WELL.

THE PROPOSED ESTIMATED FINANCIAL COMMITMENT FOR ONE OF EACH OF THE FIVE VESSELS IS EVIDENCED BY THE FOLLOWING FORMULA FOR A SINGLE VESSEL:

T H E P R O J E C T - C O N T I N U E D

VESSEL ACQUISITION AND TRANSPORTATION COST	\$ unknown (scrap value)
SHIP CONVERSION COST	7,800,000
PROCESSING EQUIPMENT	<u>2,500,000</u>
	<u>\$ 10,300,000</u>

THE PRINCIPLES HAVE THE HARVESTING, PROCESSING, MARKETING AND ADMINISTRATIVE CAPABILITIES TO MAINTAIN THIS PROJECT ON A LONG TERM PROFITABLE BASIS.

TO INSURE A SUCCESSFUL VENTURE THE PRINCIPLES WILL BE IN A POSITION TO SUPPLY WRITTEN COMMITMENTS FOR THE PURCHASE OF ADDITIONAL PRODUCTS FROM OUTSIDE PRODUCERS AT THE GOING U.S. EX-VESSEL PRICES AND WRITTEN COMMITMENTS FROM END USE BUYERS THROUGH OUR MARKETING DIVISION.

IT HAS NOT BEEN DECIDED AT THIS POINT WHETHER EACH VESSEL WILL BE OWNED AND OPERATED BY A SEPARATE CORPORATION ESTABLISHED IN THE STATE OF CALIFORNIA OR ALASKA FOR THE PURPOSE OF TAKING ADVANTAGE OF THE CAPITAL CONSTRUCTION FUND OR BY THE PARENT COMPANY INTER-OCEAN MANAGEMENT COMPANY. IT IS ANTICIPATED THIS PROJECT WILL ADD IMMEDIATE EMPLOYMENT OPPORTUNITIES FOR SHIP CONSTRUCTION AND SHIP CONVERSION PERSONNEL AS WELL AS U.S. CANNERY WORKERS, SEAMEN AND FISHERMEN.

IV. THE GROUND FISH INDUSTRY

WITH THE PASSAGE OF THE F.C.M.A. IN 1976, IT HAS BEEN APPARENT THAT VERY FEW PROPONENTS OF THE LEGISLATION REALIZED THE IMPACT AND IMPLICATIONS IT CREATED ON THE U.S. FISHERMEN AND INDUSTRY. IT WAS ENVISIONED AT THAT TIME THE EXCLUSION OF OR THE CURTAILMENT OF FOREIGN FISHING OFF OUR COASTS WOULD SOLVE ALL THEIR PROBLEMS, CREATE A BONANZA AND ALLOW THEM TO SATISFY THE CONSUMERS DEMAND FOR FISH PRODUCTS. WE IN THE FISHING INDUSTRY REALIZE NOW THAT THIS WAS NOT TRUE. WE WERE NOT EQUIPPED TO MEET THIS CHALLENGE. WE HAD NO FISHERMEN, WE HAD NO VESSELS, WE LACKED MODERN TECHNOLOGY AND WE LACKED MODERN, EFFICIENT PROCESSING UNITS AND KNOW HOW. THIS PROJECT AS SETFORTH IS ONE OF THE MOST FARSIGHTED AND BOLD APPROACHES TO MEET THIS CHALLENGE IN THE GROUND FISHERY OF THE NORTHWEST, ALASKA, AND WORLDOVER.

A NARRATIVE OF THE AREA AND STOCK STRUCTURE OF THIS FISHERY IS ADEQUATELY DESCRIBED IN THE FINAL ENVIRONMENTAL IMPACT STATEMENT...P.M.P. TRAWL AND HERRING GILLNET FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS, SECTIONS 2:1 AND 2.1.1.

"THE BERING SEA IS CHARACTERIZED BY AN EXTENSIVE AREA OF CONTINENTAL SHELF (APPROXIMATELY $1,000,000\text{km}^2$) AND OTHER FEATURES WHICH FAVOR THE DEVELOPMENT OF LARGE

THE GROUND FISH INDUSTRY - CONTINUED

BOTTOMFISH RESOURCES. COMPREHENSIVE RESOURCE SURVEYS BY THE SOVIET UNION (MOISEEV, 1964), THE HISTORY OF COMMERCIAL FISHERIES (PRUTER, 1973), AND RESOURCE SURVEYS BY THE NATIONAL MARINE FISHERIES SERVICE HAVE SHOWN THE BERING SEA TO BE AMONG THE MOST PRODUCTIVE FISHING AREAS IN THE WORLD. OVER 300 FISH SPECIES ARE KNOWN TO OCCUR IN THE BERING SEA (WILIMOVSKY, 1974), OF WHICH LESS THAN 15 SPECIES (EXCLUDING SALMON, SHRIMP, AND CRAB) HAVE BEEN THE TARGET OF THE COMBINED FISHERIES OF JAPAN, THE REPUBLIC OF KOREA, THE SOVIET UNION, AND THE UNITED STATES. IN TERMS OF COMMERCIAL PRODUCTION, HOWEVER, THE ANNUAL TOTAL CATCH BY ALL NATIONS FROM THE EASTERN BERING SEA APPROACHED OR CONSIDERABLY EXCEEDED 2 MILLION MT DURING THE 5 YEARS 1969-1973, REPRESENTING 76 TO 86 PERCENT OF THE GROUND FISH AND HERRING CATCH FOR THE ENTIRE REGION FROM THE BERING SEA TO CALIFORNIA.

THERE ARE IMPORTANT DIFFERENCES BETWEEN THE BOTTOMFISH COMMUNITY WITHIN THE BERING SEA AND THOSE TO THE EAST AND SOUTH IN THE GULF OF ALASKA AND WASHINGTON-CALIFORNIA AREAS. IN TERMS OF BIOMASS, THE BOTTOMFISH COMMUNITY WITHIN THE BERING SEA, THE RESULT IS THAT CERTAIN SPECIES INHABITING THE BERING SEA COMPRISE SOME OF THE LARGEST BOTTOMFISH RESOURCES FOUND ANYWHERE IN THE WORLD.

THE GROUND FISH INDUSTRY - CONTINUED

ALTHOUGH IN TERMS OF BIOMASS ALASKA POLLOCK DOMINATES THE COMMUNITY OF DEMERSAL ROUNDFISHES WITHIN THE EASTERN BERING SEA, THERE ALSO ARE SEVERAL OTHER ROUNDFISHES WHICH FORM LARGE COMMERCIAL AGGREGATIONS. THEY INCLUDE PACIFIC COD (*GADUS MACROCEPHALUS*): PACIFIC OCEAN PERCH (*SEBASTES ALUTUS*): SABLEFISH, OR BLACKCOD (*ANOPLOPOMA FIMBRIA*): AND GRENADIERS, OR RATTAILS (*CORPHAENOIDES* SP.). PACIFIC COD MOSTLY OCCURS ON THE CONTINENTAL SHELF AND OFTEN IN CLOSE ASSOCIATION WITH WALLEYE, OR ALASKA, POLLOCK (*THELAGRA CHALCOGRAMMA*). THE BERING SEA IS CHARACTERIZED BY A GREAT REDUCTION IN NUMBER OF ROCKFISH SPECIES, COMPARED TO REGIONS TO THE EAST AND SOUTH, AND A VIRTUAL ABSENCE OF SHALLOW-WATER FORMS. THE THREE OTHER ROCKFISHES BESIDES PACIFIC OCEAN PERCH WHICH ARE FAIRLY ABUNDANT IN THE EASTERN BERING SEA ARE SEBASTES ALEUTIANUS AND SEBASTES MYSTINUS AND MEMBERS OF THE GENUS SEBASTOLOBUS. ALL ARE RESIDENTS OF RELATIVELY DEEP WATERS OF THE OUTER SHELF AND UPPER CONTINENTAL SLOPE. SABLEFISH AND GRENADIERS ARE AMONG THE DEEPEST-DWELLING OF THE BOTTOMFISHES WITH COMMERCIAL QUANTITIES OCCURRING TO DEPTHS OF PERHAPS OVER 1,000 METERS. SABLEFISH MIGRATE RATHER FREELY BETWEEN THE DEEP WATERS OF THE SLOPE AND THE SHALLOWER WATERS OF THE SHELF: HOWEVER, GRENADIERS ARE PERMANENT RESIDENTS OF THE DEEP, SLOPE WATERS.

THE GROUND FISH INDUSTRY - CONTINUED

WHEREAS COMPARATIVELY FEW SPECIES OF COMMERCIALY EXPLOITED ROUNDFISHES INHABIT THE EASTERN BERING SEA, THERE IS NO SIMILAR REDUCTION IN DIVERSITY OF THE FLATFISH COMMUNITY COMPARED TO THE OTHER AREAS TO THE EAST AND SOUTH. AMONG THE SPECIES WHICH ARE KNOWN TO OCCUR IN COMMERCIAL AGGREGATIONS ARE YELLOWFIN SOLE (LIMANDA ASPERA), ROCK SOLE (LEPIDOPSETTA BILINEATA), STARRY FLOUNDER (PLATICHTHYS STELLATUS), ALASKA PLAICE (PLEURONECTES QUADRITUBERCULATUS) FLATHEAD SOLE (HIPPOGLOSSOIDES ELASSODON), PACIFIC HALIBUT (HIPPOGLOSSUS STENOLEPIS), GREENLAND TURBOT (REINHARDTIUS HIPPOGLOSSOIDES), AND ARROWTOOTH FLOUNDER (ATHERESTHES STOMIAS). STARRY FLOUNDER IS CONFINED TO COASTAL WATERS INCLUDING THOSE AROUND THE MOUTHS OF RIVERS. YELLOWFIN SOLE, ROCK SOLE, AND ALASKA PLAICE MOSTLY OCCUR ON THE CONTINENTAL SHELF AND, IN SUMMER PARTICULARLY, ON THE INNER SHELF. FLATHEAD SOLE, PACIFIC HALIBUT, GREENLAND TURBOT, AND ARROWTOOTH FLOUNDER CAN BE FOUND IN BOTH SHELF AND SLOPE WATERS WITH PACIFIC HALIBUT OCCUPYING THE GREATEST BATHYMETRIC RANGE OF ALL--FROM SHALLOW BAYS TO SLOPE WATERS OF OVER 500 METERS IN DEPTH.

ELASMOBRANCHS ARE RELATIVELY SCARCE IN THE EASTERN BERING SEA. ONLY SKATES (RAJIDAE) OCCUR IN SIGNIFICANT QUANTITIES, BUT LESS SO THAT IN WATERS TO THE EAST AND SOUTH.

THE GROUND FISH INDUSTRY - CONTINUED

IN WINTER MOST OF THE BOTTOMFISHES RETREAT TO WATERS OVERLYING THE OUTER SHELF OR UPPER SLOPE IN ORDER TO AVOID BELOW ZERO TEMPERATURE ASSOCIATED WITH THE ICE WHICH AT THAT TIME OF YEAR COVERS MOST OF THE BERING SEA. THE ONSET OF SPRING BRINGS WARMER TEMPERATURES, A NORTHWARD RECESSION OF ICE, AND THE MOVEMENT OF MANY SPECIES OUT OF THE DEEP AND ONTO THE SHELF TO COMMENCE FEEDING MIGRATIONS. HYDROGRAPHICAL CONDITIONS, EVEN IN SUMMER, ARE CONDUCIVE TO FORMATION OF SURFACE LENSES OF COLD WATER (SO-CALLED "COLD SPOTS") WHOSE LOCATION VARIES FROM YEAR TO YEAR AND EVEN FROM SEASON TO SEASON. KNOWLEDGE OF THE LOCATION OF THESE COLD SPOTS AND BEING ABLE TO PREDICT THEIR EFFECTS ON FISHES ARE OF GREAT PRACTICAL IMPORTANCE TO THE FISHING FLEETS.

ALTHOUGH THE PICTURE IS NOT CLEAR, EVIDENCE SUGGESTS THAT MOST OF THE BOTTOMFISH IN THE EASTERN BERING SEA CAN BE VIEWED AS BEING PERMANENT RESIDENTS OF THAT AREA. SOME EXCHANGE WITH GROUNDS OFF SIBERIA, THE GULF OF ALASKA, AND AS FAR SOUTH AS OFF CALIFORNIA HAS BEEN NOTED FOR PACIFIC HALIBUT AND SABLEFISH. THE SIGNIFICANCE OF THESE MOVEMENTS CANNOT YET BE QUANTIFIED, BUT IT APPEARS THAT THE DISPLACEMENT OF PACIFIC HALIBUT AND SABLEFISH POPULATIONS BY EMIGRATION AND IMMIGRATION IS A SLOW PROCESS.

THE GROUND FISH INDUSTRY - CONTINUED

AN ASPECT WHICH COULD VOID THE USEFULNESS OF THIS APPROACH IS THE UNKNOWN EXTENT TO WHICH THE EASTERN BERING SEA MAY SERVE AS A NURSERY GROUND FOR OTHER REGIONS. LARGE NUMBERS OF JUVENILE HALIBUT ARE FOUND IN THE SOUTHERN EASTERN BERING SEA BUT HOW IMPORTANT THEY ARE FOR REPLENISHMENT OF POPULATIONS ELSEWHERE IS NOT CLEAR. LITTLE IS KNOWN ABOUT THE IMPORTANCE OF THE BERING SEA AS A SPAWNING AND NURSERY AREA FOR SABLEFISH, LET ALONE WHETHER JUVENILES FROM THERE CONTRIBUTE AS RECRUITS TO POPULATIONS OUTSIDE THE BERING SEA."

THE VAST RESOURCES AVAILABLE AND ITS EXPLOITATION BY FOREIGN NATIONS IS INDICATIVE OF THE LACK OF U.S. PARTICIPATION IN THIS FISHERY. THE UNITED STATES HAS TRADITIONALLY DIRECTED THEIR EFFORTS TOWARD THE HALIBUT RESOURCE. OTHER NATIONS, HOWEVER, CARRY OUT DISTANT WATER OPERATIONS WITH LARGER AT SEA COMBINATION TRAWLER/FACTORY SHIP OPERATIONS FOR ASSORTED SPECIES. LAND BASED PROCESSING IS TRADITIONAL WITH THE UNITED STATES FISHERMEN, A DIRECT CONTRACT WITH OUR FOREIGN NEIGHBORS.

A COMPARATIVE ANALYSIS OF THE COMPOSITION OF FLEETS, OF SIZE AND TYPE OF VESSELS IS EVIDENCED BY THE EXHIBITS ATTACHED TO THIS PROJECT REPORT. THE DISCERNING FACT IS

THE GROUND FISH INDUSTRY - CONTINUED

THAT OUR (U.S.) OPERATIONAL DIFFERENCES IN THE HARVESTING AND PROCESSING OF THESE UNDER-UTILIZED SPECIES IS IN THIS WRITERS OPINION, APPAULING AND DEPRESSING. AS A PASSING NOTE IT IS WELL TO REMIND OURSELVES THAT OUR U.S. FLEET CONSISTS OF SINGLE PURPOSE SMALL OUTMODED LAND BASED VESSELS, WHEREAS THE ARMADA'S OF JAPAN, SOVIET RUSSIA AND KOREA FLEETS EXPLOIT THE NORTHWEST WITH SPEED EFFICIENCY AND SEMI-CONTROLLED PRODUCTION.

WITH A CLOSE ANALYSIS OF THE FOLLOWING CHARTS AND TABLES ONE CAN EASILY COME TO THE CONCLUSION THAT OUR ONLY ANSWER IN RESPONSE TO THE PASSAGE OF THE F.C.M.A. IS TO REDUCE THE TALFF AND REPLACE THEIR CAPABILITIES AND CAPACITIES WITH MODERN, EFFICIENT, LONG RANGE FACTORY/TRAWLER OF U.S. ORIGINS.

THE PROJECT AS SETFORTH HEREIN IS OUR ANSWER AND GOAL TO MEET THIS CHALLENGE.

IV(A) HISTORY OF EXPLOITATION OF GROUND FISH

U.S. VESSELS OPERATED IN THE BERING SEA AREA SINCE THE EARLY 1880'S. IT WAS A MEAGER COD FISHERY WHICH ENDED IN 1950. THE OTHER SPECIE, NAMELY HALIBUT, CAME INTO PROMINENCE IN 1928. IT HAD ITS UPS AND DOWNS UNTIL 1972 WHEN THERE OCCURED A SHARP DECLINE. COMBINED CATCHES OF HALIBUT BY CANADIAN AND U.S. FLAG VESSELS OPERATING IN THE BERING SEA AND ALEUTIAN ISLANDS (METRIC TONS) FROM 1972 TO 1977:

	<u>CANADA</u>	<u>U.S.</u>	<u>TOTAL</u>
1972	156	305	461
1973	86	115	201
1974	161	165	326
1975	105	215	320
1976	93	289	382
1977	246	382	628

FOR ALL INTENTS AND PURPOSES THE U.S FLEET DID NOT COMPETE WITH THE COUNTRIES OF JAPAN, SOVIET RUSSIA AND KOREA FOR THE EXPLOITATION AND HARVESTING OF THOSE GROUND FISH, THE SUBJECT OF THIS PROJECT. REFERENCE IS MADE TO THE READER TO REVIEW THE P.M.P. REFERRED TO IN THE BIBLIOGRAPHY TO APPRECIATE THE GROWTH, HISTORY, AND FOREIGN VESSEL PARTICIPATION IN THIS FISHERY.

IV(A) - CONTINUED

SHOWN BELOW IS A THUMBNAIL SKETCH OF THE FOREIGN ACTIVITY
IN THIS FISHERY:

ALL FOREIGN VESSELS FISHING FOR GROUND FISH

	1) <u>JAPAN</u>	2) <u>U.S.S.R. (B/S)</u>	3) <u>U.S.S.R. (AI)</u>	4) <u>KOREA</u>
1972	274	3-115 (feb.)	4-21 (dec.)	6
1973	270	7-82 (feb.)	6-20 (apr.)	22
1974	274	14-79 (feb/apr)	0-24 (mar.)	41
1975	260	13-51 (june)	2-23 (sept.)	23
1976	284	13-86 (apr.)	0-32 (may)	58

- 1) INCLUDES FREEZING FLEET, MEAL AND MINCE MEAT FLEET,
LONGLINE, GILLNET, AND TRAWL.
- 2)3) CHART INDICATES HIGHEST OF THE RANGE OF VESSELS
PRESENT DURING THE MONTH INDICATED, VESSELS INCLUDED
ALL FACTORY SHIPS, FACTORY STERN TRAWLER, OTHER
TRAWLERS AND SUPPORT VESSELS.
- 4) VESSELS INCLUDE ARE PAIR TRAWLERS, STERN TRAWLERS,
LONG-LINERS, DANISH SEINERS, FACTORY SHIPS, PROCES-
SORS AND TRANSPORT VESSELS.

V. THESE FIRST SERIES OF CHARTS WILL ILLUSTRATE THE CATCHES OF THOSE TARGET SPECIES, THE SUBJECT OF THIS PROJECT.

APPENDIX 1

THIS APPENDIX ILLUSTRATES THE BOTTOM FEATURES OF THE BERING SEA AND ALEUTIAN ISLANDS REGIONS. THIS AREA WILL BE THE MAJOR FISHING GROUNDS FOR THE PROPOSED PROJECT.

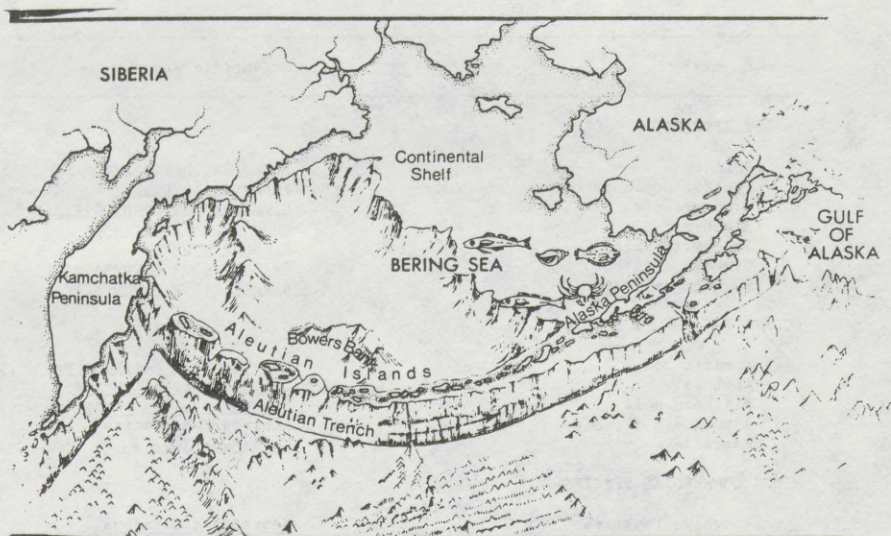


Figure 1.--Bottom features of Bering Sea and Aleutian Islands regions

APPENDIX 2

THIS APPENDIX ILLUSTRATES THE COMMERCIALY UTILIZED SPECIES IN THE EASTERN BERING SEA AND ALEUTIAN ISLANDS THAT WILL BE THE MAJOR TARGET SPECIES OF THIS PROJECT (SEE TARGET SPECIES ON EXHIBIT).

Table 1.--Commercially utilized demersal fishes in the eastern Bering Sea and Aleutian Island region.

Common name	Scientific name
TARGET SPECIES	
Pollock	<u>Theragra chalcogramma</u>
Pacific ocean perch	<u>Sebastes alutus</u>
Atka mackerel	<u>Pleurogrammus monopterygius</u>
Blackcod	<u>Anoplopoma fimbria</u>
Yellowfin sole	<u>Limanda aspera</u>
Greenland turbot	<u>Reinhardtius hippoglossoides</u>
Pacific halibut	<u>Hippoglossus stenolepis</u>
OCCASIONAL TARGET SPECIES	
Pacific cod	<u>Gadus morhua macrocephalus</u>
Rock sole	<u>Lepidopsetta bilineata</u>
Flathead sole	<u>Hippoglossoides elassodon</u>
Arrowtooth flounder	<u>Atheresthes stomias</u>
Rattails	<u>Coryphaenoides</u> sp.
MINOR COMMERCIAL SPECIES ^{1/}	
Rougheye rockfish	<u>Sebastes aleutianus</u>
Dusky rockfish	<u>Sebastes ciliatus</u>
Northern rockfish	<u>Sebastes polyspinis</u>
Shortspine thornyhead	<u>Sebastolobus alascanus</u>
Shorttraker rockfish	<u>Sebastes borealis</u>
Dark botched rockfish	<u>Sebastes crameri</u>
Yelloweye rockfish	<u>Sebastes ruberrimus</u>
Blue rockfish	<u>Sebastes mystinus</u>
Alaska plaice	<u>Pleuronectes quadrituberculatus</u>
Rex sole	<u>Glyptocephalus zachirus</u>
Butter sole	<u>Isopsetta isolepis</u>
Longhead dab	<u>Limanda proboscidea</u>
Dover sole	<u>Microstomus pacificus</u>
Starry flounder	<u>Platichthys stellatus</u>
Skates	<u>Rajidae</u>

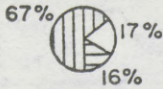
^{1/} Includes species that may be marketable, but have low abundance.

APPENDIX 3

THIS APPENDIX ILLUSTRATES THE AVERAGE ANNUAL CATCHES OF GROUND FISH IN THE ALEUTIAN ISLANDS AREA AND THE EASTERN BERING SEA... TOTAL FOUR YEAR AVERAGE EQUALS 2,091,000 MT.

ALEUTIAN ISLANDS AREA

59,000 mt



EASTERN BERING SEA

2,032,000 mt

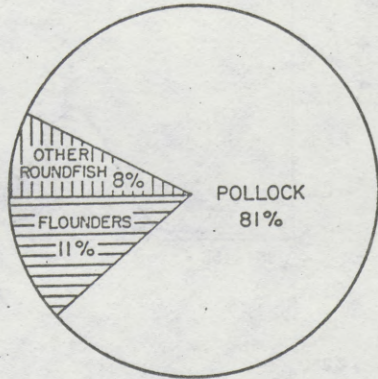


Figure 3.--Average annual catches of groundfish in the Aleutian Island area and the eastern Bering Sea, 1971-75.

APPENDIX 4

THIS APPENDIX ILLUSTRATES THE FOREIGN CATCHES OF GROUNDFISH IN THE EASTERN BERING SEA BY NATION AND BY SPECIES.

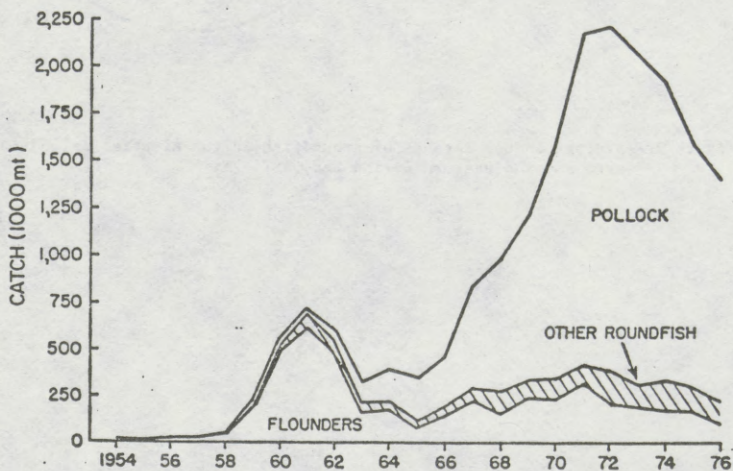
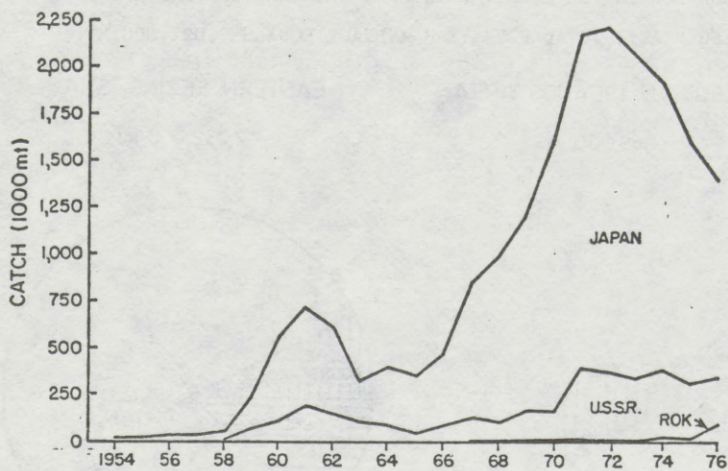


Figure 12.--Foreign catches of groundfish in the eastern Bering Sea (east of 180°) by nation (upper panel) and by species or species group (lower panel), 1954-76.

APPENDIX 5

THIS CHART ILLUSTRATES FOREIGN CATCHES OF GROUNDFISH IN
THE ALEUTIAN ISLAND AREA BY NATION AND BY SPECIES.

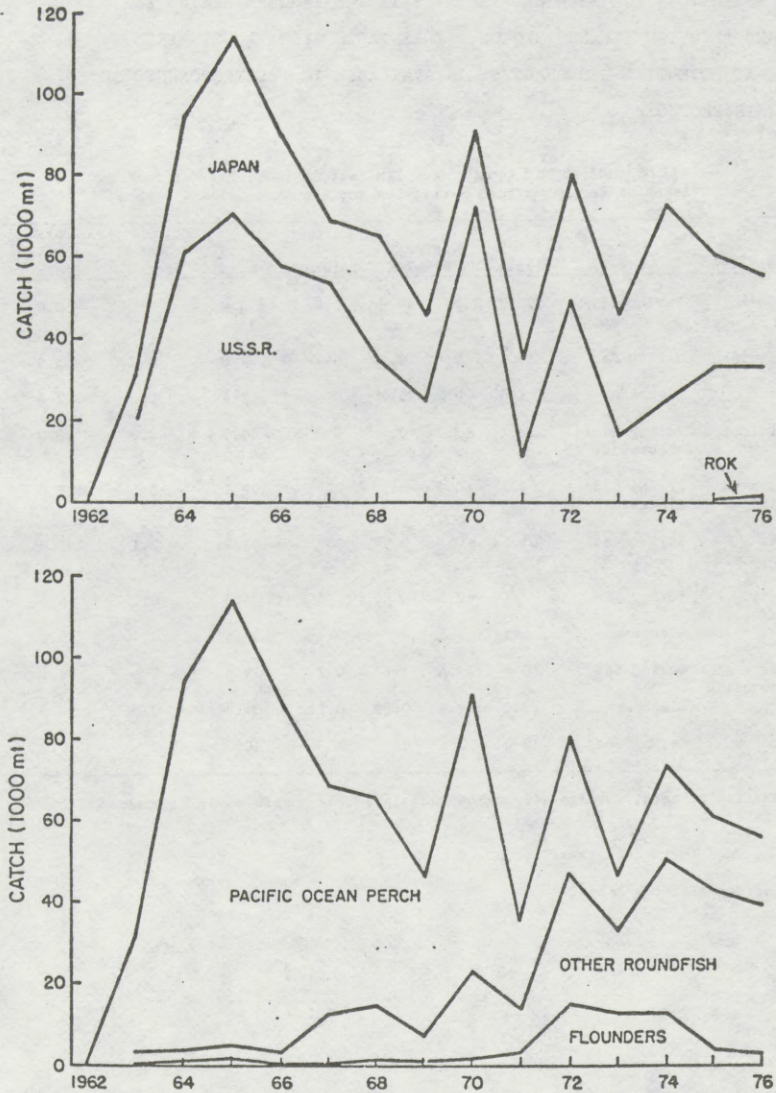


Figure 15.--Foreign catches of groundfish in the Aleutian Island area (170°W - 170°E) by nation (upper panel) and by species or species group (lower panel), 1962-76.

APPENDIX 6

THIS TABLE ILLUSTRATES THE 1977 GROUND FISH AND SQUID CATCH LIMITATIONS FOR FOREIGN FISHERIES IN THE EASTERN BERING SEA AND ALEUTIAN ISLANDS REGION. THIS TABLE ALSO ILLUSTRATES WHAT POTENTIAL U.S. HARVEST IS AVAILABLE TO THE PROPONENTS OF THIS PROJECT.

--1977 Groundfish and squid catch limitations (1000 mt) for foreign fisheries in the eastern Bering Sea and Aleutian Islands region.

Species	Area	Nation				Total assigned	Unassigned/	Total foreign allocation
		Japan	USSR	ROK	Taiwan			
Pollock	Bering Sea/ Aleutians	792.3	112.7	40.0	5.0	950.0	0	950.0
Sablefish	Bering Sea	3.6 ^{2/}	0.6 ^{3/}	0.4 ^{2/}	0.2 ^{2/}	4.8	0.2	5.0
	Aleutians	2.0 ^{2/}	0.2 ^{3/}	0.2 ^{2/}	0	2.4	0	2.4
Pacific cod	Bering Sea/ Aleutians	38.1	17.2	0	0	55.3	2.7	58.0
Yellowfin sole	Bering Sea/ Aleutians	62.1	40.8	0	0	102.9	3.1	106.0
Other flounders	Bering Sea/ Aleutians	61.5	40.4	0	0	101.9	3.1	105.0
Pacific ocean perch	Bering Sea	2.8	3.5	0	0	6.3	0.2	6.5
	Aleutians	6.5	8.1	0	0	14.6	0.4	15.0
Other groundfish	Bering Sea	40.4	17.4	1.6	0.2	59.6	0	59.6
	Aleutians	23.1	9.9	0.89	0.11	34.0	0	34.0
Squid	Bering Sea/ Aleutians	10.0	0	0	0	10.0	0	10.0

^{1/} Portion of total foreign allocation unassigned for possible use by a domestic fishery.

^{2/} Includes incidental trawl catch.

^{3/} Incidental catch only.

APPENDIX 7

THIS CHART ILLUSTRATES THAT 20% OF THE WORLD WIDE CATCH
OF POLLOCK AND SAITH IS CAUGHT IN THE NORTHEAST PACIFIC.

	World Total	Northeast Pacific (FAO Area 67)	Percentage Produced in Northeast Pacific
Pollock and Saith	5709117	1117858	20
Flounders	1146276	179145	16
Atlantic and Pacific Cod	2589086	70815	3

Table 18. 1975 World and Northeast Pacific production of selected groundfish (metric tons).

VI. THIS SERIES OF CHARTS WILL BE HELPFUL IN UNDERSTANDING THE STOCK STRUCTURE AND THEIR HISTORY.

APPENDIX 8

THIS CHART ILLUSTRATES FOR THE LAYMAN WHEN, WHERE AND HOW TO HARVEST WHAT SPECIES. THIS CHART ALSO ILLUSTRATES THE REQUIRED FISHING PATTERN NECESSARY TO ESTABLISH A VIABLE FISHERY.

Table 2Q.—Life history characteristics of principal groundfish species in the eastern Bering Sea and Aleutians.

Life history characteristics	SPECIES									
	Pollock	Cod	Sablefish	Ocean perch	Halibut	Northern flounder	Tylenchus turbot	Waters sole	Rock sole	Yellowfin sole
Bottom depths of common occurrence (fath.)	30-200	10-150	50-450	50-150	10-250	30-200	50-350	20-200	10-100	10-200
Depth of high availability by season (fath.)	100-200 (winter)	50-150 (winter)	200-100 (winter)	150-150 (winter)	50-350 (winter)	150-300 (winter)	300-500 (winter)	100-200 (winter)	20-100 (winter)	50-150 (winter)
Spawning period	March to July	Jan. to May	Dec. to April	March to June	Nov. to March	80-200 (summer)	80-400 (summer)	50-150 (summer)	20-50 (summer)	20-50 (summer)
Maximum age	17 years	12 years	20 years	30 years	42 years	Dec. to Feb.	Oct.-Dec.	March to June	March to June	June to August
Average age at maturity (female)	3 years	4 years	7 years	7 years	12 years	9-11 years	13-14 years	6 years	4-5 years	9 years
Average size at maturity (female)	30 cm	75 cm	71 cm	27 cm	125 cm	55 cm	70 cm	29 cm	32 cm	26 cm
Instantaneous natural mortality rate, M	0.43	0.30-0.45	0.22	0.27	0.17	0.2	1	0.2	0.26	0.25
Growth completion rate, K (female)	0.28	0.30	0.142 ^{1/2}	0.11	0.10	0.10	0.10	0.15 ^{1/2}	0.15	0.11-0.18
Fecundity at average size at maturity	100,000	1,000,000 to 2,000,000	400,000	10,000	700,000	?	25,000	50,000	200,000	800,000
										100,000
										9,000

^{1/2} Values and time periods given to this table are approximations.

^{2/2} Same combined.

--Annual catch (metric tons) of pollock in the eastern Bering Sea,
1974-76 (INPFC proceedings, 1977).

Year	Nation			Total
	Japan ^a /	USSR ^b /	ROK ^c /	
1964	174,792			174,792
1965	230,551			230,551
1966	261,678			261,678
1967	550,362			550,362
1968	700,981		1,200	702,181
1969	830,494	27,295	5,000	862,789
1970	1,231,145	20,420	5,000	1,256,555
1971	1,513,923	219,840	10,000	1,743,763
1972	1,651,438	213,896	9,200	1,874,534
1973	1,475,814	280,005	3,100	1,758,919
1974	1,252,777	309,613	26,000	1,588,390
1975	1,136,731	216,567	3,438	1,356,736
1976	989,670	179,212	85,331	1,254,213
1977	868,732	63,467	45,227	977,426

a From Japan Fisheries Agency (Conservation areas A, B, C, D_e, D_w, & E).

b USSR trawl fishery east of 180° longitude in the Bering Sea.

c Estimates based on U.S. surveillance of ROK fishing activities.

APPENDIX 9

THIS CHART ILLUSTRATES HIGHLIGHTS MAXIMUM SUSTAINABLE YIELD
OF THOSE TARGET SPECIES, THE SUBJECT OF THIS PROJECT.

Table I.1--MSY, EY, and ABC Values for Groundfish in
the Bering Sea/Aleutian Region during 1979 (1000's mt)

Species	Sub-area ^{1/}	MSY	EY	ABC=OY	(1978 OY)	(1978-79 change)
Pollock	--	1,100-1,600	1,000	1,000	(950)	(+50)
Yellowfin sole	--	169-260	117	117	(106)	(+11)
Turbots	--	100	90-95	90	} (139)	(139)
Other flatfishes	--	44.3-76.8	=MSY	61		
Cod	--	58.7	=MSY	58.7	(58)	(+0.7)
Rockfishes	BS	75	6.5 ^{2/}	6.5 ^{2/}	(6.5--perch only)	
	AL	32	15	15	(15--perch only)	
Sablefish	BS	11.35	3.5	3.5	(5)	(-1.5)
	AL	1.85	1.5	1.5	(1.5)	(0)
Atka mackerel	--	33	Unknown	24.8	(24.8)	(0)
Squid	--	≥10	≥10	10	(10)	(0)
Pacific halibut	--	5	0.3	<u>2/</u>	--	--
Other included species	--	67	67	55.5	(93.6)	(-38.1)
Total ^{3/}	--	1,702.2- 2,325.7	1,446.5- 1,484.0	1,443.5	(1,409.4)	(+34.1)

^{1/} BS = Eastern Bering Sea Area (Statistical Areas I, II, III combined).
AL = Aleutian Area (Statistical Area IV).

^{2/} Determined by International Pacific Halibut Commission.

^{3/} Excluding Pacific halibut.

^{4/} PoP only

^{5/} All rockfishes including PoP

APPENDIX 10

THIS CHART ILLUSTRATES THE ANNUAL CATCH OF FOREIGN FISHING
NATIONS OF POLLOCK (PRIMARY TARGET SPECIES OF THIS PROJECT)
IN THE EASTERN BERING SEA.

--Annual catch (metric tons) of pollock in the eastern Bering Sea,
1974-76 (INPFC proceedings, 1977).

Year	Nation			Total
	Japan ^{a/}	USSR ^{b/}	ROK ^{c/}	
1964	174,792			174,792
1965	230,551			230,551
1966	261,678			261,678
1967	550,362			550,362
1968	700,981		1,200	702,181
1969	830,494	27,295	5,000	862,789
1970	1,231,145	20,420	5,000	1,256,555
1971	1,513,923	219,840	10,000	1,743,763
1972	1,651,438	213,896	9,200	1,874,534
1973	1,475,814	280,005	3,100	1,758,919
1974	1,252,777	309,613	26,000	1,588,390
1975	1,136,731	216,567	3,438	1,356,736
1976	989,670	179,212	85,331	1,254,213
1977	868,732	63,467	45,227	977,426

a From Japan Fisheries Agency (Conservation areas A, B, C, D_e, D_w, & E).

b USSR trawl fishery east of 180° longitude in the Bering Sea.

c Estimates based on U.S. surveillance of ROK fishing activities.

APPENDIX 11

THIS CHART ILLUSTRATES THE ANNUAL CATCH OF YELLOWFIN SOLE,
ANOTHER TARGET SPECIES OF THIS PROJECT.

—Annual catch (metric tons) of yellowfin sole in the
eastern Bering Sea (east of 180° and north of 54°N).
(INPFC proceedings, 1977).

Year	Japan	U.S.S.R.	Total
1954	12,562	0	12,562
1955	14,690	0	14,690
1956	24,697	0	24,697
1957	24,145	0	24,145
1958	39,153	5,000	44,153
1959	123,121	62,200	185,321
1960	360,103	96,000	456,103
1961	399,542	154,200	553,742
1962	281,103	139,600	420,703
1963	20,504	65,306	85,810
1964	48,880	62,297	111,177
1965	26,039	27,771	53,810
1966	45,423	56,930	102,353
1967	60,429	101,799	162,228
1968	40,834	43,355	84,189
1969	81,449	85,685	167,134
1970	59,851	73,228	133,079
1971	82,179	78,220	160,399
1972	34,646	13,010	47,856
1973	75,724	2,516	78,240
1974	37,947	4,288	42,235
1975	59,715 ^b	6,060 ^a	65,775 ^a
1976	61,082 ^b	5,133 ^c	66,347 ^a

^a Preliminary data.

^b Fishing year data from mothership, North Pacific longline-gillnet, and North Pacific trawl fisheries. Calendar year data for landbased dragnet fishery.

^c Includes catches of all small flounders.

APPENDIX 12

THIS CHART ILLUSTRATES THE ANNUAL CATCHES OF OTHER SPECIES
THE SUBJECT OF THIS PROJECT.

Annual catch of Greenland turbot and arrowtooth flounders in
the eastern Bering Sea in metric tons (INPFC proceedings, 1977).

Year	Japan			U.S.S.R.	ROK	Total
	MS-LG-NPT ^b	LBD ^c	Total			all nations
<u>Turbots (Greenland turbot and arrowtooth flounder)</u>						
1960	36,843	0	36,843	-	0	36,843
1961	57,348	2	57,350	-	0	57,350
1962	58,226	84	58,310	-	0	58,310
1963	31,565	69	31,634	-	0	31,634
1964	34,493	49	34,542	-	0	34,542
1965	7,970	307	8,277	1,800	0	10,007
1966	10,938	97	11,035	2,200	0	13,235
1967	20,741	1,733	22,474	2,639	0	25,113
1968	17,808	4,789	22,597	15,252	-	37,849
1969	13,582	9,674	23,256	16,798	-	40,054
1970	14,509	16,003	30,512	8,220	-	38,732
1971	30,690	20,801	51,491	17,460	-	68,951
1972	27,038	59,823	86,861	24,265	-	111,126
1973	33,485	39,568	73,053	16,576	-	89,629
1974	42,096	43,170	85,266	29,509	-	114,775
1975	38,386	37,364	75,750	31,928	-	107,678
1976	43,162 ^d	35,620 ^e	78,782 ^e	25,111	-	103,893 ^e
<u>Greenland turbot</u>						
1970	5,188	15,696	20,884	4,976	-	25,860
1971	24,409	12,561	36,970	10,271	-	47,241
1972	25,583	54,898	80,481	14,858	-	95,339
1973	30,778	31,924	62,702	12,265	-	74,967
1974	39,334	37,549	76,883	10,862	-	87,742
1975	37,941	34,890	72,831	12,194	-	85,025
1976	42,885 ^d	27,904 ^e	70,789 ^e	8,979	-	79,768 ^e
<u>Arrowtooth flounder</u>						
1970	9,321	307	9,628	3,244	-	12,872
1971	6,281	8,240	14,521	7,189	-	21,710
1972	1,455	4,925	6,380	9,407	-	15,787
1973	2,707	7,644	10,351	4,311	-	14,662
1974	2,762	5,621	8,383	18,650	-	27,033
1975	445	2,474	2,919	19,734	-	22,653
1976	277 ^d	3,858 ^e	4,135 ^e	16,132	-	20,267 ^e

^aCatches are from data on file with the Japanese and U.S. National Sections.

^bMothership, North Pacific longline-gillnet, and North Pacific trawl fisheries.

^cLandbased dragnet fishery.

^dCatch for fishing year, November of previous year to October.

^ePreliminary.

^fDash denotes fishing but no reported catch.

APPENDIX 13

THIS CHART ILLUSTRATES THE ANNUAL CATCHES BY ALL NATIONS
OF THOSE OTHER SPECIES THE SUBJECT OF THIS PROJECT.

--All nation catches of other flatfishes in the Bering Sea in metric tons.

Year	East of 180° (INPFC area 1 + 2)				West of 180° (INPFC area 3 + 4)				Aleutians (INPFC area 5)				Total - all areas			
	Rock sole	Flathead sole	Alaska plaice	Total	Rock sole	Flathead sole	Alaska plaice	Total	Rock sole	Flathead sole	Alaska plaice	Total	Rock sole	Flathead sole	Alaska plaice	Total
1963	5,002	29,625	975	35,602	1,640	74	4	1,718	27	14	-	41	6,669	29,713	979	37,361
1964	3,238	25,288	1,818	30,364	1,306	1,287	10	2,603	132	43	45	240	4,696	26,618	1,893	33,207
1965	3,678	6,713	979	11,370	36	26	-	62	147	128	41	316	3,861	6,867	1,030	11,748
1966	9,104	11,020	4,633	24,757	-	63	-	63	82	25	-	107	9,186	11,108	4,633	24,927
1967	4,762	23,437	3,833	32,032	154	594	-	748	25	32	-	57	4,941	24,063	3,853	32,857
1968	5,250	21,575	2,619	29,444	261	586	-	847	17	186	-	203	5,528	22,347	2,619	30,494
1969	9,210	18,563	6,942	34,745	774	435	-	1,209	2	2	-	4	10,016	19,000	6,942	35,958
1970	20,123	41,152	3,402	64,677	900	932	79	1,911	2	11	-	13	21,025	42,095	3,481	66,601
1971	40,419	51,024	992	92,435	1,962	540	31	2,533	1	16	-	17	42,382	51,580	1,033	94,995
1972	60,824	15,690	290	76,804	1,714	511	40	2,265	5	4	-	9	62,543	16,205	330	79,078
1973	23,835	18,141	1,917	43,893	1,862	472	59	2,393	2	24	-	26	25,699	18,637	1,976	46,312
1974	19,975	14,917	2,368	37,260	655	234	-	889	36	41	-	77	20,666	15,192	2,368	38,226
1975	11,145	5,545	2,634	19,304	507	112	1	620	3	1	-	4	11,655	5,658	2,615	19,928

Sources: Ushakovskii, E. and B. Babitskii. 1977. Estimated Catches of Flounders by species in the Bering Sea. U.S. Natl. Mar. Fish. Serv., Northwest Fish. Center. Document submitted to Intl. North Pac. Fish. Comm. 27 p. (document 1964).

APPENDIX 14

THE FOLLOWING APPENDIX, A DERIVATION OF EXPECTED DOMESTIC ANNUAL HARVEST OF THOSE TARGET SPECIES IS TRULY INDICATIVE OF THE NEED OF THE PROPOSED PROJECT HEREIN.

THIS FULL STATEMENT WAS TAKEN FROM THE DRAFT F.M.P. AND DEIS FOR THE GROUND FISH FISHERY IN THE BERING SEA/ALEUTIAN ISLAND AREA.. JULY 27, 1978 (ERRATA ADDED OCT. 17, 1978).

ALL CHARTS HEREIN MENTIONED AS APPENDICES WERE TAKEN FROM THE SAME REPORT.

Derivation of Expected Domestic Annual Harvest (DAH)

The western Alaska Peninsula and the Aleutian Islands are two of the more expensive locations for business to be conducted in Alaska. It was not surprising to learn during the survey that most of the plant owners in the area either had no firm plans to commence groundfish operations, or were developing in-house experience and expertise at other locations on the coast where costs are considerably less.

Perhaps even more surprising was the magnitude of the amount of product anticipated by the three processors that indicated that they planned to process groundfish in 1979. Their combined^{1/} estimate of expected domestic harvest in 1979 of Bering Sea/Aleutian groundfish is as follows:

Pollock	10,000 mt
Pacific cod	7,000 mt
Rockfishes	1,100 mt (eastern Bering Sea)
	1,100 mt (Aleutian)
Yellowfin sole	1,000 mt
Turbots	1,000 mt
Other flounders	1,000 mt
Sablefish	500 mt (eastern Bering Sea)
	500 mt (Aleutian)
Others	1,400 mt
Total	24,600 mt

No plans for "joint ventures" (i.e. domestic fishing vessels delivering raw product to foreign processing vessels) are known at this time.

^{1/} Individual company projections are not given here because of the proprietary nature of that data.

The CHAIRMAN. There are no further witnesses, so the subcommittee will stand adjourned.

[Whereupon, at 10:56 a.m., the subcommittee was adjourned.]

SALE OF OBSOLETE VESSELS—H.R. 4088

THURSDAY, NOVEMBER 29, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., room 1334, Longworth House Office Building, Hon. Brian Donnelly, presiding.

Present: Representative Brian Donnelly.

Staff present: Gerry Seifert, Peter Kyros, Elizabeth A. Coker, Stephen Little.

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

This afternoon we are conducting a hearing on H.R. 4088, a bill to authorize the Secretary of Commerce to sell two obsolete vessels to Coast Line Co., and for other purposes.

The two vessels, the C1-M-AV1 *Private George Peters*, and C1-M-AV1 *Resolute* are obsolete, surplus World War II freighters currently located on the west coast as part of the California reserve fleet. Coast Line Co. desires to purchase these vessels in order to convert and operate them in the coastwise trade on the east coast as cellular container ships. Section 203 of the Federal Property and Administration Services Act (40 U.S.C. 484) provide that surplus vessels may be disposed of only in accordance with the provisions of the Merchant Marine Act, 1936, as amended. Section 510 of the Merchant Marine Act (46 U.S.C. 1160) prohibits the commercial operation of obsolete or other vessels acquired by the Secretary of Commerce. Thus it becomes necessary to enact this legislation which authorizes the use of the *Private George Peters* and the *Resolute* in the coastwise commerce of the United States.

[The bill and departmental report follows:]

96TH CONGRESS
1ST SESSION

H. R. 4088

To authorize the Secretary of Commerce to sell two obsolete vessels to Coast Line Company and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1979

Mr. DONNELLY introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize the Secretary of Commerce to sell two obsolete vessels to Coast Line Company and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That notwithstanding any other provisions of the law, the
4 Secretary of Commerce is authorized, within two years after
5 the enactment of this Act, to sell, subject to such conditions
6 he deems are appropriate in the national interest, the two
7 obsolete vessels C1-M-AV1 Private George Peters, and
8 C1-M-AV1 Resolute, for the purpose of conversion and op-
9 eration in the domestic commerce of the United States to

1 Coast Line Company, a corporation organized under the laws
2 of the State of Maine, for their appraised value for operation
3 or scrap value in the domestic market, whichever is greater,
4 as of the date of the sale: *Provided*, That (1) any conversion
5 work shall be performed in the United States; (2) the vessels
6 shall be documented and operated under the laws of the
7 United States; (3) if the vessels are scrapped within five
8 years after the date of sale, they shall be scrapped in the
9 domestic market.



**GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

18 OCT 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of this Department on H.R. 4088, a bill --

"To authorize the Secretary of Commerce to sell two obsolete vessels to Coast Line Company and for other purposes."

The two vessels, now in the National Defense Reserve Fleet (NDRF), are reefer vessels which are obsolete for use in carrying commercial cargo. They are more valuable if sold to be converted and operated in the fisheries, or for other purposes, than if sold for scrapping.

The bill would authorize the Secretary of Commerce (Secretary), notwithstanding any other provisions of the law, to sell to a specified buyer the two vessels "for the purpose of conversion and operation in the domestic commerce of the United States" for their appraised value for operation or scrap value in the domestic market, whichever is greater. The sale would be subject to such conditions that the Secretary deems are appropriate in the national interest, and upon the further conditions that: (1) any conversion work shall be performed in the United States; (2) the vessels shall be documented and operated under the laws of the United States; and (3) if the vessels are scrapped within five years after the date of sale, they shall be scrapped in the domestic market.

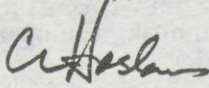
Section 510, Merchant Marine Act of 1936, as amended, controls the acquisition and disposal of NDRF vessels. It includes a prohibition against the use (including trade out or sale) for commercial transportation operation of obsolete vessels. This

prohibition was intended to prevent the sale of NDRF vessels, which had been determined to be obsolete for commercial operation, at times when they might be operated in competition with other U.S.-flag vessels.

While the Department of Commerce believes that the enactment of general legislation liberalizing the ability of the Secretary of Commerce to dispose of NDRF vessels for non-transportation uses would be beneficial, we are opposed to allowing obsolete NDRF vessels to be operated commercially in United States foreign or domestic trades without limitation. Accordingly, we would not oppose enactment of H.R. 4088 if it were amended to state that the documentation is solely for operation in the fisheries of the United States.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,



C. L. Haslam
General Counsel

Mr. DONNELLY. Our first witness will be Mr. Samuel Nemirow, Assistant Secretary of Commerce for Maritime Affairs, who will be represented by Mr. Robert Garske of the Maritime Administration, Department of Commerce.

STATEMENT OF ROBERT GARSKE, ASSISTANT GENERAL COUNSEL, MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE, PRESENTED ON BEHALF OF HON. SAMUEL NEMIROW, ASSISTANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS, ACCOMPANIED BY MRS. JESSIE C. FERNANDERS, CHIEF, FLEET DISPOSAL BRANCH, MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. GARSKE. Thank you, Mr. Chairman.

My name is Robert Garske. I am Assistant General Counsel for the Maritime Administration. I also have with me Mrs. Jessie Fernanders, division of reserve fleet, Maritime Administration.

I believe that there has been submitted to the committee the statement of Samuel B. Nemirow, Assistant Secretary for Maritime Affairs, on behalf of the Maritime Administration.

I assume that this will be incorporated into the record and that I needn't make any further statement with respect to his statement.

Therefore, I am available for any questions that you may have.

Mr. DONNELLY. Without objection, so ordered.

The statement will be included in the record at the conclusion of your testimony.

Mr. Garske, has anyone expressed interest in these two obsolete vessels?

Mr. GARSKE. From what I understand, yes, there are a couple of groups that have expressed an interest in these vessels.

Mr. DONNELLY. Do you know specifically who those groups are?

Mr. GARSKE. I don't know the particular names at this point. Frankly, I, personally, have not been involved in the day-to-day operation of this.

She, Mrs. Fernanders, knows the names if you want the names for the record now.

Mr. DONNELLY. Could you produce those records and file them with the Committee for the record?

Mr. GARSKE. Yes, I will do that.

[The following was received for the record:]

INTERESTED PARTIES IN BOATS

The 13th Regional Corporation.—For use as a king crab processor in Alaska. Job Therapy, Seattle, Washington.—For use in fish processing and research to provide job opportunities to ex-offenders.

Mr. DONNELLY. How will the Secretary of Commerce insure that these vessels will be operated only in the Coast Line trades?

Mr. GARSKE. First of all, the legislation as proposed contains that provision and, second, we would expect to enter into a contract with Coast Line which would contain provisions limiting the operation of these vessels to domestic trade as proposed.

Mr. DONNELLY. What specific use will be made of these vessels?

Mr. GARSKE. In general, as I understand it, coast line would propose to take these vessels and to purchase them from the government, and convert them into an essentially container-type vessel, and then operate along the east coast of the United States from Maine to Florida.

These vessels would be used in a form of container feeder service which would involve either picking up or discharging containers at various smaller ports, taking them, or picking them up at the larger ports, where they would have been either placed or picked up by large container vessels for line haul service.

Mr. DONNELLY. Mr. Garske, what is the value of these vessels?

Mr. GARSKE. Excuse me, I would like to ask Mrs. Fernanders for an up-to-date approximation.

Mr. Chairman, the present scrap market is in the area we assess of about \$50 a ton so these vessels reach a tonnage of a little over 3,000, we are talking in scrap market terms of about \$150,000.

Mr. DONNELLY. On page 4, in the last paragraph, on page 4, of Mr. Nemirow's statement, the Department is quoted as being opposed to H.R. 4988 as introduced. First, it should be 4088.

Mr. Nemirow goes on to say:

However, we would not oppose this bill if it were amended to authorize the Secretary of Commerce to sell the two vessels after due advertisement and upon competitive sealed bids, to the highest bidder: Provided further, that the Secretary shall not sell the vessels for less than their scrap value in the existing market.

Could you describe that procedure for us, specifically "after due advertisement"?

Mr. GARSKE. What would be expected is this: And invitation for bid will be issued to the public. This invitation would contain the conditions that are specified in the bill, assuming it were enacted, and then any member of the public could submit a bid and the highest responsible bidder would prevail in such bidding and would take the vessels subject to the conditions specified in the invitation which would include the conditions in this bill.

Mr. DONNELLY. Are you satisfied that that is a fair way to dispose of these two ships?

Mr. GARSKE. Yes, the agency is.

In general, of course, our position and this I believe has not been contested by anyone, is that the laws that presently authorize the disposal of surplus vessels limit our authority to sell to sale only for scrap or nontransportation use.

In order to sell a vessel from the reserve fleet as a surplus vessel for some other use, that is in this case, an operational and transportation use, special legislation is needed. We feel that if this exception to the laws that generally apply to the disposal of surplus vessels is to be authorized, that then it should be done by giving the public a chance to bid on these vessels on these terms and whoever is interested then will do so, presumably.

Mr. DONNELLY. Would these vessels be advertised singularly or in tandem?

Mr. GARSKE. I believe they would be advertised in tandem, at the same time, yes.

Mr. DONNELLY. Counsel?

Mr. KYROS. Mr. Garske, will you describe to the committee, what the characteristics of these two vessels are? Also tell us what is their current condition.

Mr. GARSKE. These vessels are World War II built C1-M-AV1's and they are very rugged, durable, ships. They were built in part at least for operation in the South Pacific or other places where shallow drafts were needed. The draft of these vessels is about 21 feet. They have proven over a period of time to be very useful, well-built, and even though obviously a long time has passed since the original construction, they are still considered to be useful vessels, at least for the purpose of conversion.

Mr. KYROS. What year were they constructed?

Mr. GARSKE. Just a second, please.

The *Private George Peters* was built in June of 1945 and the *Resolute* was built in May of 1945.

Mr. KYROS. Were they ever used by the U.S. Navy?

Mr. GARSKE. I assumed that they were but, frankly, I do not know that at present. I assume that they were used.

Mr. KYROS. And did the Navy declare them surplus to their needs?

Mr. GARSKE. Yes.

Mr. KYROS. What is your estimation of any further need for national defense or security purposes?

Mr. GARSKE. In our estimation, there is no further need for national defense and security purposes.

Mr. KYROS. Generally, when you come before this Committee with regard to the sale of obsolete vessels, it involves vessels disposed of by noncompetitive bids for uses other than transportation; isn't that correct?

Mr. GARSKE. In past cases, those proposals involved not a strictly conventional transportation use. As I recall, they involved a fishing use which could include harvesting, processing, and possibly also transportation, but not transportation solely.

Mr. KYROS. Do you know how much money will be required to convert these vessels for the intended need as stated in the statement by Mr. McNamara?

Mr. GARSKE. Based upon Mr. McNamara's statement, that is the analysis by Coast Line, the amount is in the neighborhood of some \$5 million to \$6 million.

Mr. KYROS. For both ships?

Mr. GARSKE. Yes. •

Mr. KYROS. Do you have any information as to any shipping company currently providing the kinds of services contemplated by the future use of these two vessels?

Mr. GARSKE. No; we do not have any knowledge of any operations similar to those that are being proposed.

Mr. KYROS. These containers may well be moving by land now?

Mr. GARSKE. Yes.

Mr. KYROS. It would be a fuel-saving operation perhaps?

Mr. GARSKE. Depending upon the economics. That is the assessment of Coast Line.

I will mention, so long as you are getting into the financial and feasibility side of this proposal that, as Mr. McNamara indicates, he or Coast Line will be seeking title XI guarantees from the Maritime Administration.

We do want to make it clear that by appearing here and commenting favorably, or at least stating no objections to this particular bill, that we are not at this time taking any position with respect to feasibility for title XI.

In connection with these private bills where, in effect, the Agency is disposing of a vessel, cash-on-the-barrelhead, we are in strict monetary terms, not concerned in detail with the feasibility of the project, because we will be getting the money for the disposal of it at the time of the transfer.

Insofar as title XI is concerned, there will have to be further exploration by the Maritime Administration as to feasibility.

That is something Mr. McNamara expects to do, and it will be developed.

Mr. KYROS. Are you stating that so far there has been no application for title XI formally?

Mr. GARSKE. Yes, sir.

Mr. KYROS. Nor are you making any prejudgment by your agency by appearing here on the sale of the vessel?

Mr. GARSKE. That is correct.

Mr. KYROS. Your final statement on page 4 indicates that you would support H.R. 4088 provided that appropriate language were included as you have indicated?

Mr. GARSKE. Yes, sir; that is correct.

Mr. KYROS. You want a specific amendment to the bill to incorporate this language?

Mr. GARSKE. Yes; that is right.

Mr. KYROS. And then the Maritime Administration, would be in favor of it?

Mr. GARSKE. Yes, sir.

Mr. KYROS. That is all.

Thank you very much.

Mr. DONNELLY. Minority counsel.

Mr. LITTLE. Thank you, Mr. Chairman.

The third condition in H.R. 4088 is "if the vessels are scrapped within 5 years after the date of sale, they shall be scrapped in the domestic market."

What is the Maritime Administration's position on this particular provision of the bill?

Mr. GARSKE. In at least one case in the past that was changed to drop the 5-year requirement or the 5-year reference so that, in other words, if at any time it was scrapped, it would have to be scrapped domestically. And in that case, yes, we favor that particular proposal, so I am not quite sure what the point of your question is, but you may want to change that to drop the 5-year provision.

Mr. LITTLE. What is the Maritime Administration's position?

Should there be a 5-year limitation, or should the vessel be scrapped in the domestic market?

Mr. GARSKE. We would say it should be scrapped at any time in the domestic market.

Mr. LITTLE. So the Maritime Administration is opposed to the 5-year limit?

Mr. GARSKE. At this point, I would have to speak personally because, as far as I know, this was not really developed so far as the basic position of the bill is concerned, and, therefore, I would say in line with the way the last bill was dealt with, I think it would make sense to deal with this bill in the same way.

I don't think that in developing the basic position, as far as the head of the agency is concerned, this particular item was dealt with one way or the other, I don't think that the Department or that the Maritime Administration would oppose it solely on the basis that the 5-year provision is there.

Mr. LITTLE. Could you submit the position of the Maritime Administration on this point to the committee?

Mr. GARSKE. Yes, I can.

Yes, sir, I will do it.

Mr. LITTLE. Thank you, Mr. Garske.

Thank you, Mr. Chairman.

[The following was received for the record:]

SUGGESTED LANGUAGE

The Maritime Administration proposes that the substantive provisions of the bill, with the changes suggested in the Assistant Secretary's testimony, would read as follows:

"That notwithstanding any other provisions of the law, the Secretary of Commerce is authorized, within two years after the enactment of this Act, to sell, subject to such conditions as he deems are appropriate in the national interest, the two obsolete vessels, C1-M-AV1 Private George Peters and C1-M-AV1 Resolute, for the purpose of conversion and operation in the domestic commerce of the United States, after due advertisement and upon competitive sealed bids, to the highest bidder: *Provided*, That (1) any conversion work shall be performed in the United States; (2) the vessels shall be documented and operated under the laws of the United States; (3) if the vessels are scrapped, they shall be scrapped in the domestic market; and *Provided further*, That the Secretary shall not sell the vessels for less than their scrap value in the domestic market."

It is our understanding that the Subcommittee wishes to require that any scrapping of the vessels will be done only in the domestic market. The language offered above accomplishes that objective.

Mr. DONNELLY. Counsel?

Mr. SEIFERT. Thank you, Mr. Chairman.

You request in your testimony, Mr. Nemirow's testimony, that the mandatory language appear in the bill in order to be in conformity with the provisions that you have testified to today.

Do you have a copy of the bill before you?

Mr. GARSKE. Yes, sir.

Mr. SEIFERT. On page 2, it provides that they be sold "for their appraised value for operation or scrap value in the domestic market, whichever is greater, as of the date of the sale."

Are you proposing that we substitute for the "appraised value" the language which you have?

Otherwise, I have some difficulty understanding whether it is a condition to the appraised value, except for the appraised value, or substituting for the appraised value?

Mr. GARSKE. Subject to my checking on it afterward, it is a substitution.

Mr. SEIFERT. Whatever would be highest, the competitive bid price of the scrap value?

Mr. GARSKE. That is right.

Mr. SEIFERT. Could you then make it easier on all of us by providing specific language amending the bill exactly as you want it amended?

Mr. GARSKE. Yes.

Mr. SEIFERT. Has there ever been a basis before, or is there any experience that provides the basis for saying that the sale of the vessel should only be for transportation use?

Have you ever conveyed a vessel for transportation use before?

Mr. GARSKE. No, sir; I believe we have not conveyed a surplus vessel for transportation use before this.

Mr. SEIFERT. So if the committee and the Congress, since this is a private bill, could transfer this vessel under any condition it wants, there would be no restriction based on any experience which would require competitive bid?

Mr. GARSKE. No, sir; that is correct.

Mr. SEIFERT. It should be just as the bill appears right now?

Mr. GARSKE. That is correct; yes.

Mr. SEIFERT. I have no further questions.

Mr. DONNELLY. Thank you, Mr. Garske, and Mrs. Fernanders.
[The following was received for the record:]

STATEMENT OF SAMUEL B. NEMIROW, ASSISTANT SECRETARY FOR MARITIME AFFAIRS,
ON BEHALF OF THE MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to present for the record further views of the Department of Commerce on H.R. 4088, a bill—

"To authorize the Secretary of Commerce to sell two obsolete vessels to Coast Line Company and for other purposes."

Notwithstanding any other provisions of law, the bill would authorize the sale of two C1-M-AV1 vessels, which are now in the National Defense Reserve Fleet (NDRF), to a specified purchaser, "for the purpose of conversion and operation in the domestic commerce of the United States" for their appraised value for operation or scrap value in the domestic market, whichever is greater. The sale would be subject to such conditions as the Secretary deems appropriate.

While this Department has not in the past opposed some legislation allowing the sale of NDRF vessels to the highest bidder for use in the fisheries and for other non-transportation uses (such as pollution control and abatement, chemical incineration, etc.), we are generally opposed to allowing obsolete NDRF vessels to be operated commercially for the purpose of carrying cargo.

Section 510 of the Merchant Marine Act of 1936 controls the acquisition and disposal of obsolete NDRF vessels, as defined in subsection (a). The authority vested in the Secretary has been delegated to the Assistant Secretary for Maritime Affairs. The Maritime Administration has consistently interpreted subsections (g), (i) and (j) to authorize the disposal of obsolete vessels only for scrapping or for nontransportation use. The general prohibition in subsection (g) against using obsolete vessels for commercial operation was intended to prevent the disposal of obsolete vessels, which the Secretary had predetermined should "be replaced in the public interest".

In our testimony of September 5, 1979 before your Subcommittee on H.R. 4769, we stated—

"A similar proposal in the Bill would eliminate the subsection of the Act that prohibits the commercial operation of obsolete ships sold by the government to U.S. citizens. This barrier to the commercial operation of obsolete ships bought from the government serves to promote the modernization of the U.S.-flag fleet and to encourage the construction of additional ships in U.S. shipyards. We continue to support these objectives.

"However, under certain circumstances, we would favor the commercial operation of old ships sold by the government and we would concur in the elimination of the absolute barrier to such operation if there were explicit provision for secretarial discretion in the matter."

With respect to the type of operation contemplated by H.R. 4088, after our original report on this bill was submitted to the Committee, we were advised informally that the vessels would be reconstructed in a U.S. shipyard and used in the coastwise trade on the East Coast as container vessels and as container feeder vessels servicing the transport of containers in the U.S. foreign trade. Although the type of operation that would be authorized by H.R. 4088 is usually not conducive to the modernization of the U.S. fleet, we believe that an exception should be recognized in this case. A coastwise/feeder service on the U.S. East Coast is virtually non-existent today. The proposed service would have little, if any, adverse impact on any existing operators.

Initiation of this service would serve to resurrect a segment of the U.S. merchant marine that has become dormant over the years due to the competitive impact of the trucking and rail industries. In view of the high cost of fuel to transport containerized goods over long distances, the use of more fuel efficient vessels in a coastwise/feeder service may now make very good economic sense. The substantial reconstruction in a U.S. shipyard of these otherwise obsolete C1-M-AV1's, now in the NDRF, would provide many shipyard and related jobs for U.S. workers. Their operation in coastwise/feeder service could provide the low capital cost and high fuel efficient vessels needed to resuscitate this segment of the U.S. flag fleet. If this venture proves profitable, we expect that it would provide the profits and stimulus necessary to attract the equity capital necessary for the construction of new vessels for this trade.

The Department of Commerce would interpose no objection to the enactment of legislation that would authorize the type of operation which this bill contemplates, or similar operations with little potential adverse economic consequences for existing operators in the coastwise trade. However, we see no reason for selling NDRF vessels, irrespective of their intended use, other than on a competitive bid basis to the highest bidder. There are presently only 26 vessels in the NDRF, available for disposal, that could be utilized for a commercial purpose. We understand that inquiries have been made by prospective purchasers other than Coast Line Company. To enact legislation authorizing the sale of such vessels for transportation use to a specified purchaser, rather than via sealed bids would be inconsistent with the strong Government preference for disposal of Government property to the highest bidder.

Accordingly, this Department cannot support the enactment of H.R. 4988 as introduced. However, we would not oppose this bill if it were amended to authorize the Secretary of Commerce to sell the two vessels, "after due advertisement and upon competitive sealed bids, to the highest bidder: *Provided further*, That the Secretary shall not sell the vessels for less than their scrap value in the domestic market." In recognition of the probability that the successful bidder will apply for Title XI guarantees to aid in the reconstruction of these vessels, we note that approval of such application would be subject to the required findings under Title XI.

Mr. DONNELLY. Our next witness is Mr. John J. McNamara, president, Coast Line Co.

The committee will be in recess for 10 minutes while we vote.
[A brief recess was taken.]

Mr. DONNELLY. I am sorry for the delay. Please proceed.

STATEMENT OF JOHN J. McNAMARA, PRESIDENT, COAST LINE CO.

Mr. McNAMARA. I am John McNamara of Wenham, Mass. I am presently the sole employee of the Coast Line Co., a Maine corporation. We incorporated in the State of Maine for marine equipment taxation reasons. When we come to operations, our principal offices will most probably be in Boston, Mass.

My marine background has been for many years as a shipbroker with Long, Quinn & McAleer—L.Q.M. Associates—in New York. My fellow shareholders in Coast Line are the senior partners of L.Q.M.; namely, S. A. Long, J. R. Quinn, J. J. McAleer, as well as Michael Mitchell on behalf of Penn Shipping Associates. All are knowledgeable shipping men with many years experience.

Counsel asked me a few minutes ago about the financing of our application. Mr. Long and Mr. Quinn are committed each to 20 percent of the capital needed. Mr. McAleer and myself are committed for 10 percent each and Mr. Mitchell for 40 percent. I have not had experience with respect to vessel ownership. Mr. Quinn, Mr. Long, and Mr. Mitchell have had considerable operating experience on vessel ownership in times past.

To continue with my testimony, the two vessels within this bill were designed to the requirements of Gen. Douglas MacArthur. Upon his request, and in support of the Pacific Island hopping campaign, the wartime Maritime Commission built 222 of this C1-M-AV1 class. Some call them "Knot Ships" as many were named after knots and splices, other call them "SeaMavis."

The "SeaMavis" are a 338-foot diesel motorship, 5,000 tons of cargo on 21 foot draft, a three hatch between decker with 40 ton self discharge gear. They have a small fourth reefer hatch aft with enough capacity to feed a Marine regiment for a month. They have quarters for a Marine company and carry enough bunkers to circumnavigate the world 1½ times or, alternatively, to fuel many landing craft. They are a good rugged design that served our Nation well.

After the war, there was a tremendous overhang of surplus American tonnage. The absorption of this tonnage into the domestic or Jones Act trade would have brought the American shipbuilding industry to a very slow bell indeed. To forestall this, Congress in 1946 passed the War Surplus Shipping Act which precluded the transportation usage of many Maritime Commission hulls.

The two vessels of this bill, *Private George Peters* and *Resolute*, come within the provisions of this 1946 act and are restricted from the domestic transportation trade. Of note is that many "SeaMavis" have gone off and prospered and still prosper under foreign flags. Those that still fly the American flag were converted as the first of the oil drill ships or as fish factories.

The reserve fleet people at MarAd have told me that *Private Peters* was laid up at Suisun Bay, near Benicia, Calif., in 1947, *Resolute* in 1957. They are on the surplus list, slated for scrapping. Without domestic transportation privileges, they have little value beyond their scrap realization, unless sold foreign.

What we within Coast Line propose to do with these vessels is to totally modernize them—hull, gear, and electronics—to convert them to three-hatch cellular container vessels for 316 of 20 foot capacity. We would do this under MarAd title XI financing and estimate these conversions will create between \$5 million and \$6 million of American shipyard work.

Upon conversion, we would employ these vessels in a weekly container liner service covering the Atlantic coast from Maine to Florida. A comparable service, American Pacific Container Line (AMPAC), using Economic Development Administration funding in the employ of two old Farrell Line C-4's has recently been initiated along the U.S. west coast.

To revert for a moment to the maritime history of this Nation, prior to the Second World War we had a vigorous domestic coasting trade. Companies such as the Merchants & Miners Line and Eastern Steamship Co. come to mind. Their vessels went off to war and many were lost to enemy action. After the war, with the coastal railroads in good shape and interstate trucking riding the boom of new highways and cheap diesel, coastal shipping never came back.

Well, history has a way of coming full circle and we believe the economics of a proper ship are again there to use our coastal ocean. The principal ports all have container cranes and there exists a truck/container chassis network for regional distribution. Our proposal of returning some domestic freight to water carriage will bring additional employ to the longshoremen, business that they do not now have. If we are right, Coast Line would offer domestic shippers a third alternative at low rates on a timely basis.

Upon service entry, Coast Line would bring about 56 new maritime jobs. We would need 14 people per crew, 2 crews per vessel, 2 weeks on, 2 weeks off. Shoreside, we must fill at least 10 staff slots.

As to the implications of this bill upon organized labor, the conversion is to be accomplished under terms of MarAd title XI financing. That will require a reasonable cross section of competitive bids. The probability is high that the low bidder will be an organized yard.

As to operations, we have no commitment to any union at this time, nor is it appropriate that we initiate negotiations yet. We have no vessels nor have we had any crew bill conversations with Coast Guard as to manning. The vessels are a year from service entry, best estimate. Working the coast in our proposed trade, there are at least six marine unions with jurisdictional claims. When timely, we will initiate the appropriate negotiations and will use organized labor.

The converted vessels will offer domestic transportation of freight at the least energy consumption. In laden 40-foot truck equivalents, the following comparison can be made:

Laden truck—4.50 miles per gallon diesel.

Rail with yard marshalling—5 miles per gallon diesel.

Vessel full to 158 of 40 feet—24.75 miles per gallon diesel.

Vessel one-half full to 79 of 40 feet—12.37 miles per gallon diesel.

The source of this data is within the attached appendix.

Some might ask why go to all this trouble in converting two old timers. Why not build new? My answer is that the risk capital for

such a start up is awesome. The "SeaMavis" are about 5,000 deadweight for cargo. I don't believe you can build new self-propelled tonnage for under \$4,000 per deadweight. A modern 5,000 deadweight container vessel would exceed \$20 million. Two vessels for weekly liner coverage would be \$40 million with an ongoing \$5 million for working capital and insurance premiums. We did consider a new building program and found the entry investment prohibitive.

In researching this venture, I have visited most container ships that call Boston. The idea that foreign built means junk is dead wrong. Some are very well thought out and well built vessels. Some of our yards will be hard pressed to catch up. Our conversion program is modest indeed in the magnitude of the American yard survival problems that your committee must consider. However, it does mean some new business for an American yard, some new marine jobs, and hopefully the start of many more.

With this bill, we are asking the opportunity to start, albeit on a small scale. If we prosper, then we will build new tonnage—self-propelled tonnage—not tank barge tonnage. In our view, New England winters and Cape Hatteras anytime are best weathered in load lined self-propelled vessels. We have watched the mushroom of the tank barge and the demise of self-propelled tonnage. Sometime your committee will assess the net effect of the admeasurement rules and their commercial implications on manning and tonnage built. There may come a day when America has a need for small versatile ships. We should take cognizance of what other nations have done, the Russians most singularly, in the building of small flexible ships. By then, most probably there will be few, very few small ships under the American flag.

The two vessels of this bill are now mothballed and slated for the scrap heap. If this bill is enacted, they would be converted in an American yard and employ American seamen. If we can bring them back to operational service, they would be immediately available in time of national need.

I thank you for your time and consideration.

That is the end of my prepared testimony.

Mr. DONNELLY. Thank you, Mr. McNamara.

Between what ports do you expect to operate?

Mr. McNAMARA. The primary pattern of calls, keeping in mind these are 11-knot ships, one has to allow at least a 15 percent weather delay factor on working the coast, would be Boston, Port Elizabeth, which is really Port of New York, Norfolk, Charleston, and Jacksonville.

However, we would only hit Charleston on the southbound leg. The reason for that is that we would like to go to the east and catch the Gulf Stream coming north from Jacksonville.

Mr. DONNELLY. Which frequencies of service do you contemplate?

Mr. McNAMARA. With two vessels in service, and it is imperative to us to have two vessels, we would be giving weekly coverage in either direction.

Mr. DONNELLY. What type of cargo would be carried?

Mr. McNAMARA. Initially, we envision that half of our requirements would be the international movement in container-feeder service, and I should explain a little bit what that means. The

container-feeder concept is based on the fact that many of the international shipping companies do not have enough boxes to go into many of the small ports; it is cheaper for them to go into one great big port, say, Port Elizabeth, or Norfolk, and discharge and pay someone to redistribute to smaller ports.

It is the backbone of our flow. I am also optimistic of capturing a lot of domestic cargo, American freight.

I think in terms of paper products, newsprint, and lumber coming off the New England coast and from the other leg, citrus products, cigarettes, and various types of hardwood. My great hope is to redevelop an American domestic need, not just an international need.

Mr. DONNELLY. What are the areas in the trade you wish to enter?

Mr. McNAMARA. Sir, there is nobody offering full coastal service at this time. There are two barge services operating along the Atlantic seaboard. There is a company called NBC, Norfolk, Baltimore, and Carolina line.

There is a weekly barge service between Port Elizabeth, Portland, and Boston. Those are the only two small chunks being covered on a marine basis, but the overall coast has no coverage at this point.

Mr. DONNELLY. In regard to the Coast Line Co., how long has it been operating?

Mr. McNAMARA. Sir, it was incorporated in the State of Maine, I think, just at about the time this bill was filed.

We have no active employees, other than myself, or any active operation. It is presently a corporate shell awaiting hopefully the outcome of this particular legislative process.

Mr. DONNELLY. What is the citizenship of the board members?

Mr. McNAMARA. All are citizens of the United States.

Mr. DONNELLY. And what is the citizenship of the stockholders?

Mr. McNAMARA. All stockholders are citizens of the United States.

Mr. DONNELLY. Counsel?

Mr. KYROS. What about the financing, Mr. McNamara?

What is your plan to obtain financing for the conversion of these vessels?

Mr. McNAMARA. Sir, I would like to answer you in a very forthright way, but with an understanding that I am going to answer you in terms of percentages because I am being forced into a competitive bid and if I set forth what our budget is, somebody can extrapolate through title XI what I must have appraised the value of these vessels to be.

Mr. KYROS. What do you estimate the conversion cost of these vessels to be?

Mr. McNAMARA. \$3 million.

Mr. KYROS. Each?

Mr. McNAMARA. Yes, sir. Hopefully, I can do it better. But realistically, I am prepared that it will be \$3 million.

Mr. KYROS. What kind of repairs will be made on the hull, the navigation equipment, machinery, et cetera?

Mr. McNAMARA. On machinery, this is strange but true, one of the vessels, the *Resolute*, is powered by a 1,700 horsepower Nord-

berg, a unique diesel made in America. The company went out of business 15 or 20 years ago. It seems funny for America to chase after a slow-speed diesel when 20 years ago we made one of the best.

The *Private George Peters* is fitted with a Baldwin. The Baldwin has a reputation like the little girl with a curl; when she works, she is OK, but when she is bad, she is terrible. One of the engine-rooms would have to be completely replaced. We would replace the Baldwin with a 2,100-horsepower EMD which is a General Motors 12-645-E7. We are assuming, allowing for Murphy's law, that only one engineroom out of two will survive.

Mr. DONNELLY. Excuse me, sir, if I could break in.

The staff is not all Irish so you better explain what Murphy's law is.

Mr. McNAMARA. It is a Boston anachronism which has spread which is: If it can be screwed up, it will be screwed up. We are assuming only one of the two engines is workable.

Automationwise, we will equip the surviving two diesels with the unattended monitoring equipment so that they are bridge-operating vessels.

The containerization is going to involve four sizable pontoon hatches and the cutting away of the main deck and between deck. These cells operate in the vertical-like huge elevator shafts.

Navigationally, we will have radar, depth finders, and the usual range of radio navigation equipment.

We have not done the sonic gaging but we assume a certain amount of plating will have to be replaced and we would go to a complete modern coating system.

Mr. KYROS. Do you expect to do the conversion somewhere work in Massachusetts?

Mr. McNAMARA. Sir, I live in Massachusetts and I believe if one can oversee and view the work as it is being accomplished the work gets done better.

I would very much like to do the work in Massachusetts, but I would have to go to some competitive bidding on that.

Mr. KYROS. You have explained how fuel efficient this vessel would be.

Have you made a projection of the kind of revenues you would hope to realize under the market conditions you would encounter on the east coast?

Mr. McNAMARA. Yes, sir.

In shipping, we attempt to reduce everything to a cost per day. Now, in answering you on the public record in detail about a ship that I do not own and that I have not fully converted, I would like to give you some ball park numbers rather than some detailed numbers, because it could come back to haunt me since it is on the public record, and I wanted \$7,000 and the guy only wants to pay me \$6,000 a day. We would be very happy if the vessels earned \$6,000 a day and that is on the assumption that it is a \$3 million vessel.

Mr. KYROS. Where would you get the crews, by the way?

You said you made no commitments, have approached no unions. How do you know crew members would be available?

Mr. McNAMARA. The availability of American-flag people with the appropriate licenses and tonnages is getting skimpier and, strange as it might seem, good American officers are not in supply and surplus as one once thought.

I have had conversations with as many as 16, maybe as deep as 18, of marine personnel which had the appropriate licenses and I believe for the particular and rather unique service we are offering—2 weeks on and 2 weeks off or home with wife or girlfriend—the availability is there.

I also expect we will negotiate with the national unions so one way or another, Mr. Counsel, I do believe crewing can be adequately met.

When I said "home with the girlfriend," I want to say that we have no prejudice about using women on our vessels. I would welcome the female as well as the male employee.

Mr. KYROS. You already note, a few minutes ago that representatives of the Maritime Administration testified that the Commerce Department would be in approval of this legislation provided that competitive bidding, rather than negotiated bidding, would be utilized.

Are you prepared to go ahead with competitive bidding?

Mr. McNAMARA. I have to face the political realities in Washington. The answer is yes, we are prepared to, but I would like to ask one consideration of this committee within this request by Mr. Nemirow relative to competitive bidding.

For us, if we are to establish our service, we would need two vessels, one working the coast southbound and the other working the coast northbound.

So if the Maritime Administration wants to put the vessels out to competitive bidding, I would ask that they give strong consideration to putting them out to bid as a unit because just as a hypothetical, let us say we came along and bid \$400,000 each for two, and some guy came along and bid \$425,000, and another guy, the next bidder was \$250,000—we are going to have a terrific spread here.

I am going to be like a guy trying to fly an airplane with only one wing if I am caught being the winner on one bid.

Therefore, I would ask that the committee give serious consideration to asking the Maritime Administration to consider putting the vessels out as a unit package with two vessels.

Mr. KYROS. I believe there was a question by the chairman as to whether they were going to be put out solo or jointly. I thought the understanding was that they would be put out jointly.

Mrs. FERNANDERS. They would be put out on the same invitation.

I understood him to say they would have to be sold together, both. Our intent was to put them out on the same invitation, but not require that the bids be both only.

Mr. KYROS. What is your name, for the record, please?

Mrs. FERNANDERS. Jessie Fernanders, Chief of the Disposal Branch at the Maritime Administration.

Mr. KYROS. My understanding is that your request is that they be put out as a unit to be bid on?

Mr. McNAMARA. Mr. Kyros, that is correct.

I recognize the political realities of a competitive bid. But if we get caught in the middle and I own one ship, it would be like trying to fly an airplane with one wing.

That is the ironic part. We have laid out for you the homework of what we are trying to do.

Someone can come behind us and we will likely get zapped in the homestretch. That is where we are.

There are a couple of other comments I would like to make on the record.

Mr. DONNELLY. You are on the record.

Mr. McNAMARA. I have set forth our operational plan for you, and I have stated that there is a potential problem coming up in the disposal of surplus ships and the point about the asbestos. We are aware of the asbestos problem in any contractor we go with—with full cognizance that they would have to meet the Environmental Protection Agency and the OSHA requirements for disposal of asbestos.

I took great pleasure in reading Chairman Murphy's report on the nifty nugget exercise. One of the deficiencies in that was the total absence of smaller craft that can handle these large container-ships. If we succeeded, and if we have these vessels up to operational snuff and in conformity with the ABS, they would be available to the Government in terms of national need.

The way the ships would be reconfigured on our conversion, we would put a self-discharging truck-crane upon them and you could use them as a lighter in the event of a damaged port in a national emergency, so they could off-lighter other vessels as well.

Mr. KYROS. You will have a 40-ton capacity discharge gear?

Mr. McNAMARA. No.

They are fitted for that. For our operation, the decks would be as clean as an aircraft carrier.

Mr. KYROS. Normally, they would be off-loaded by equipment on the beach?

Mr. McNAMARA. Shoreside lift on-lift off cranes.

I want to point out the peculiar flexibility. In time of national need, we really have the flexibility. Envision that it looks like an aircraft carrier with rectangles numbered 1 through 4 hatches.

If we on-loaded a 50-foot truck-crane on top No. 3, she can discharge the No. 2 hatch and No. 4 hatch alone, and then go over to No. 2 and then discharge at No. 1 and No. 3 hatches. The point is, that the entire vessel could be made a self-discharging container-ship, in time of national need, if this Government ever needs her.

Further, she could go off to bigger ships who can't get alongside a damaged dock.

Mr. KYROS. How would she operate at Cape Hatteras?

Mr. McNAMARA. You would have to build a ramp or lift the crane on board.

Mr. KYROS. Thank you.

Mr. DONNELLY. Minority counsel?

Mr. LITTLE. Thank you, Mr. Chairman.

Mr. McNamara, the third condition in H.R. 4088 states that if the vessels are scrapped within 5 years after the date of sale, they shall be scrapped in the domestic market.

Would you have any objection if this provision in the bill were made to read so that whenever the vessels were scrapped, they were scrapped in the domestic market?

Mr. McNAMARA. No, sir. I would have no objection.

Mr. LITTLE. One other question. Getting back to the method by which the two vessels would be sold by competitive bidding; if the vessels were sold under competitive bidding with the condition that both of them had to be sold together and not separately, would not that effectively close the opportunity for another person competing for this vessel for, say, a fishing purpose, from bidding on only one of these vessels?

Mr. McNAMARA. Counsel, sir, the answer to your question is that it could close off the interest by a fishing person who has a need for one fish processing ship, but I think in the commercial realities of what we are dealing with here, the probability of these vessels going over into the fisheries, as opposed to going into the domestic cargo service, is low.

Now, if the Congress in its wisdom does give to them the privilege of domestic transportation, I think the chances are slim or none that they would go off in the fisheries.

There are four or five of these vessels that do have fisheries restrictions to them that are still kicking around on the Pacific northwest coast, which have not been converted as yet.

I expect the bidding interest will come from the commercial shipping side, rather than the fishing side.

Mr. LITTLE. So it would cut off the fishing interests and the shipping interests interested in only one vessel?

Mr. McNAMARA. Yes. But I am a startup company. I have raised a substantial amount of capital, substantial in the 15 percent money market.

There are large shipping companies that can outbid us. We are an ant on an elephant's back compared to them. We are a subway token by comparison.

Mr. LITTLE. Thank you.

Mr. SEIFERT. Mrs. Fernanders, my recollection of the testimony of Mr. Garske was that he responded to the word "tandem" in the affirmative, that they would be offered in competitive bid in tandem.

Was that your understanding, also?

Mrs. FERNANDERS. Yes.

Mr. SEIFERT. It was your understanding that they would only be offered in the same proposal, could be sold separately?

Mrs. FERNANDERS. Yes.

Mr. SEIFERT. If the legislation H.R. 4088 did not provide for the sale in one unit of two vessels, what would your objection be to that, still leaving the purchase subject to competitive bidding?

Mrs. FERNANDERS. I don't have an opinion. I don't know what the policy of the agency would be in that regard.

Generally, we offer a number of vessels on one invitation. The total unit highest return is what the Maritime Administration usually accepts.

Mr. SEIFERT. Mrs. Fernanders, do you recall any other situation where you sold obsolete vessels for transportation purposes?

Mrs. FERNANDERS. If you consider fisheries.

Mr. SEIFERT. We are excluding fisheries.

Mrs. FERNANDERS. No, sir.

Mr. SEIFERT. This is a different type of sale, is it not?

Mrs. FERNANDERS. Yes, sir.

Mr. SEIFERT. That is why it is competitive, as a matter of fact?

Mrs. FERNANDERS. We don't sell obsolete vessels for operation, we don't have the authority.

Mr. SEIFERT. That is what the Congress is doing now with this piece of legislation?

Mrs. FERNANDERS. Yes.

Mr. SEIFERT. Have you read page 3 of Mr. Nemirow's testimony which says that the purpose for which these vessels will be used is one which is needed by the United States? Or at least that is the import of that testimony?

Mrs. FERNANDERS. Page 3?

Mr. SEIFERT [reading]:

Initiation of this service would serve to resurrect a segment of the United States Merchant Marine that has become dormant over the years due to competitive impact of the trucking and rail industries. In view of the high cost of fuel to transport containerized goods over long distances, the use of more fuel efficient vessels in a coastwise feeder service may now make very good economic sense.

Correct?

Do I hear a different testimony than you do?

Mrs. FERNANDERS. I am trying to find that in here.

Mr. SEIFERT. It is in the middle of the page 3 of Mr. Nemirow's statement.

It says:

Initiation of this service would serve to resurrect a segment of the United States Merchant Marine that has become dormant over the years due to the competitive impact of the truck and rail industries.

Do you have that?

The statement by Mr. Nemirow says, in effect, that the sale of these vessels for this particular transportation purpose would be for the benefit of the United States, both in fuel savings and in reinstitution of a transportation service which has left our shores?

Mrs. FERNANDERS. Yes.

Mr. SEIFERT. Would you not assume that the venture which is being lauded by Mr. Nemirow is one which includes the proposal to have two vessels in the coastwise service, and that without that you could not provide that type of service that is considered so beneficial by the Assistant Secretary of Commerce?

Mrs. FERNANDERS. You are asking me about past things.

We have none like these. The terms of sale would be as you provide in your bill together with any—it would have to go to Mr. Nemirow for approval of the terms of the sale. If he decides that they be sold as a unit, he would approve it.

This is the way we would do it.

Mr. SEIFERT. If we are to have the sale as a unit, then I assume Mr. Nemirow would proceed to sell them as a unit?

Mrs. FERNANDERS. That is correct.

Mr. SEIFERT. All we are doing is establishing what the Secretary of Commerce has said about the sale of obsolete vessels for transportation services.

He looked at this proposal which calls for two vessels operating on the east coast of the United States, so that in trying to develop as much of the record as we can for drafting the bill that would ultimately be passed.

It is important to know that there is support, at least it is supported by the Maritime Administration for two vessels for operating in this trade.

Mrs. FERNANDERS. Yes, sir.

What I am saying is, he would approve the condition of sale.

Mr. SEIFERT. All right.

Now that Mr. Garske is back, we had some trouble construing your response to the chairman before as to the way in which the competitive bid would take place, and you answered in the affirmative to the question whether they would be sold in tandem.

I do not know whether it was an affirmative statement on your part or whether it was in response to a question.

Mr. DONNELLY. It was in response to a question.

Mr. SEIFERT. And the word "tandem" was understood by the chairman to mean the sale of two vessels as a unit?

Mr. GARSKE. That is what I understood.

Mr. SEIFERT. Thank you very much.

Mr. GARSKE. I added on at the same time because I wasn't sure what "tandem" meant.

Mr. SEIFERT. Thank you very much.

I have no further questions.

Mr. GARSKE. Excuse me.

If I may, I was asked informally here a few minutes ago about other possible proposals, and I have just consulted our staff and, if you wish us to consider other proposals for use insofar as application to this bill, we would have to reserve on that point.

Mr. SEIFERT. The proposal is the sale of obsolete vessels for transportation use.

Mr. GARSKE. Fine.

Mr. SEIFERT. So if the draft of the amendment you are preparing will direct itself to the purposes of the bill we would appreciate that.

Mr. GARSKE. Yes.

Thank you.

Mr. DONNELLY Thank you, Mr. Garske, and thank you, Mr. McNamara.

Mr. McNamara's statement, together with his appendix, will be made a part of the record.

[Mr. McNamara's statement and appendix follow:]

STATEMENT OF JOHN J. MCNAMARA, PRESIDENT, COAST LINE CO.

I am John McNamara of Wenhan, Massachusetts. I am presently the sole employee of the Coast Line Supply Company, a Maine Corporation. We incorporated in the State of Maine for marine equipment taxation reasons. When we come to operations, our principal offices will most probably be in Boston, Mass.

My marine background has been for many years as a shipbroker with Long, Quinn and McAleer (L.Q.M. Associates) in New York. My fellow shareholders in Coast Line are the senior partners of L.Q.M. namely S. A. Long, J. R. Quinn, J. J. McAleer as well as Michael Mitchell on behalf of Penn Shipping Associates. All are knowledgeable men with many years experience.

The two vessels within this Bill were designed to the requirements of General Douglas McArthur. Upon his request, and in support of the Pacific Island hopping campaign, the wartime Maritime Commission built 222 of this C1-M-AV1 Class.

Some call them "Knot Ships" as many were named after knots and splices, others call them "SeaMavis."

The "SeaMavis" are a 338 foot diesel motorship, 5,000 tons of cargo on 21 foot draft, a three hatch between decker with 40 ton self discharge gear. They have a small fourth reefer hatch aft with enough capacity to feed a Marine regiment for a month. They have quarters for a Marine company and carry enough bunkers to circumnavigate the world $1\frac{1}{2}$ times, or alternately, to fuel many landing craft. They are a good rugged design that served our nation well.

After the War, there was a tremendous overhang of surplus American tonnage. The absorption of this tonnage into the domestic or Jones Act trade would have brought the American shipbuilding industry to a very slow bell indeed. To forestall this, Congress in 1946 passed the War Surplus Shipping Act which precluded the transportation usage of many Maritime Commission hulls.

The two vessels of this Bill, "Private George Peters" and "Resolute" come within the provisions of this 1946 Act and are restricted from the domestic transportation trade. Of note is that many "SeaMavis" have gone off and prospered and still prosper under foreign flags. Those that still fly the American flag were converted as the first of the oil drilling ships or as fish factories.

The Reserve Fleet people at Marad have told me that "Private Peters" was laid up at Suisun Bay, near Benicia, California in 1947, "Resolute" in 1957. They are on the surplus list, slated for scrapping. Without domestic transportation privileges, they have little value beyond their scrap realization, unless sold foreign.

What we within the Coast Line propose to do with these vessels is to totally modernize them—hull, gear and electronics—to convert them to three-hatch cellular container vessels for 316 of 20 foot capacity. We would do this under Marad Title XI financing and estimate these conversions will create between \$5 and \$6 millions of American shipyard work.

Upon conversion, we would employ these vessels in a weekly container line service covering the Atlantic Coast from Maine to Florida. A comparable service, American Pacific Container Line (AMPAC), using Economic Development Administration funding in the employ of two old Farrel Line C-4s has recently been initiated along the U.S. West Coast.

To revert for a moment to the maritime history of this nation, prior to the Second War we had a vigorous domestic coasting trade. Companies such as the Merchants and Miners Line and Eastern Steamship Company come to mind. Their vessels went off to War and many were lost to enemy action. After the War, with the coastal railroads in good shape and interstate trucking riding the boom of new highways and cheap diesel, coastal shipping never came back.

Well, history has a way of coming full circle and we believe the economics of a proper ship are again there to use our coastal ocean. The principal ports all have container cranes and there exists a truck/container chassis for regional distribution. Our proposal of returning some domestic freight to water carriage will bring additional employ to the longshoremen, business that they do not now have. If we are right, Coast Line would offer domestic shippers a third alternative at low rates on a timely basis.

Upon service entry, Coast Line would bring about 56 new maritime jobs. We would need 14 people per crew, two crews per vessel, two weeks on, two weeks off. Shoreside, we must fill at least 10 staff slots.

As to the implications of this Bill upon organized labor, the conversion is to be accomplished under terms of Marad Title XI financing. That will require a reasonable cross section of competitive bids. The probability is high that the low bidder will be an organized yard.

As to operations, we have no commitment to any union at this time, nor is it appropriate that we initiate negotiations yet. We have no vessels nor have we had any crew bill conversations with Coast Guard as to manning. The vessels are a year from service entry, best estimate. Working the coast in our proposed trade, there are at least six marine unions with jurisdictional claims. When timely, we will initiate the appropriate negotiations and will use organized labor.

The converted vessels will offer domestic transportation of freight at the least energy consumption. In laden 40-foot truck equivalents, the following comparison can be made:

[Miles per gallon diesel]

Laden truck.....	4.50
Rail with yard marshaling.....	5.00
Vessel full to 158 of 40 ft.....	24.75
Vessel one-half full to 79 of 40 ft.....	12.37

The source of this data is within the attached Appendix.

Some might ask why go to all this trouble in converting two old timers. Why not build new? My answer is that the risk capital for such a start up is awesome. The SeaMavis are about 5000 deadweight for cargo. I don't believe you can build new self propelled tonnage for under \$4,000 per deadweight. A modern 5000 deadweight container vessel would exceed \$20 million. Two vessel for weekly liner coverage would be \$40 million with an ongoing \$5 million for working capital and insurance premiums. We did consider a new building program and found the entry investment prohibitive.

In researching this venture, I have visited most container ships that call Boston. The idea that foreign built means junk is dead wrong. Some are very well thought out and well-built vessels. Some of our yard will be hard pressed to catch up. Our conversion program is modest indeed in the magnitude of the American yard survival problems that your Committee must consider. However, it does mean some new business for an American yard, some new marine jobs, and hopefully the start of many more.

With this Bill, we are asking the opportunity to start, albeit on a small scale. If we prosper, then we will build new tonnage—self propelled tonnage—not tank barge tonnage. In our view, New England winters and Cape Hatteras any time are best weathered in load lined self-propelled vessels. We have watched the mushroom of the tank barge and the demise of self propelled tonnage. Sometimes your Committee will assess the net effect of the Admeasurement Rules and their commercial implications on manning and tonnage built. There may come a day when America has a need for small versatile ships. We should take cognizance of what other nations have done, the Russians most singularly, in the building of small flexible ships. By then, most probably there will be few, very few small ships under the American Flag.

The two vessels of this Bill are now mothballed and slated for the scrap heap. If the bill is enacted, they would be converted in an American yard and employ American seamen. If we can bring them back to operational service, they would be immediately available in time of national need.

I thank you for your time and consideration.

APPENDIX

M'NAMARA STATEMENT

Energy sensitivity.—The truck and rail fuel consumption figures came from Volume III, Page 70, "Improving Intermodal Transportation in New England," June, 1976, New England Regional Commission by Reebie Associates.

The Speed and Power Curves for C1-M-AV1 as tested in sea trials by the U.S. Navy with Maritime Commission hull No. 2160 "U.S.S. Pontotoc" reflect on 18-foot estimated container draft a service speed of 11½ Nautical Miles per hour and a daily fuel consumption of 48 barrels, diesel oil.

11½ nautical miles equals 13.155 statute miles.

48 barrels per day equals 84 gallons per hour.

13.155 statute miles divided by 84 equals 0.1566 statute miles per gallon.

6.385 gallons required to move 1 statute mile.

The converted vessels are capable of transporting 316 laden 20-foot containers or 158 of 40-foot laden truck equivalents. (57,700 lbs. cargo ea.).

If the vessel were fully laden to 158 truck equivalents, this would offer truck equivalent transportation basis 24.75 S. Miles per Gallon. If the vessels are only half utilized, i.e. 79 truck equivalents, energy consumption would be 12. 376 S. Miles per Gallon.

Professional assistance.—The Naval Architect is John W. Gilbert of John W. Gilbert Associates, Inc., 58 Commercial Wharf, Boston, MA 02110. Admiralty Counsel is Laurence J. Hoch, of Hoch, Flanagan & Snyder, 160 State Street, Boston, MA 02109.

Vessels.—The two vessels are of the C1-M-AV1 class of which 222 odd vessels were built in the last two years of the Second War. Their principal characteristics are:

Length over all (feet).....	338
Length between perpendiculars (feet).....	320
Beam (feet)	50
Moulded depth (feet).....	29
Laden summer draft (feet).....	21
Gross registered tonnage (LT).....	3,805
Deadweight for cargo (LT).....	5,087

Upon conversion to cellular container ships, the vessels will have stowage capacity for 316 of 20-foot containers (TEUs).

"Private George Peters" built as "Lock Knot" June 1945 by J. A. Jones Construction Co. of Brunswick, Georgia Yard, Hull No. 190, Maritime Commission No. 2474, Official No. 9897. Laid up Suisun Bay (near Benicia), California, September 1947.

"Resolute" built as "Pembina" May 1945 by Globe Shipbuilding Company, Superior, Wisconsin. Laid up May 1957. Maritime Commission No. 2154, Official No. 9557.

Mr. DONNELLY. Without objection, I will submit for the record a statement made by a member of this committee, Congressman Michael Lowry, from Washington.

Without objection, so ordered.

[The statement of Congressman Lowry follows:]

STATEMENT OF HON. MIKE LOWRY, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF WASHINGTON

Mr. Chairman and members of the committee, it has come to my attention within the last few months that in addition to the interest that the Coast Line Company has shown in acquiring the vessels the Private George Peters and the Resolute, two other organizations have also expressed an interest in obtaining these vessels. The two organizations are The 13th Regional Corporation of Seattle, and Job Therapy Services, also of Seattle.

I have had the opportunity to discuss with The 13th Regional Corporation their interest and need in acquiring these vessels. The 13th Regional Corporation was formed pursuant to the Alaska Native Claims Settlement Act. The Corporation is 100 percent owned by Alaska natives who no longer live in Alaska. The 13th is engaged in a number of commercial and social service activities for the benefit of its shareholders. One of the Corporation's principal commercial activities is fishing.

The enactment of the 200 mile limit has greatly enhanced the potential for the American fishing industry. This is particularly true in the coastal waters of Alaska. The 13th Regional Corporation has recognized this increased potential. The Corporation's commercial fishing activities have been greatly expanded in the last few years. However, there have been problems. During the recent season for catching Alaska King Crab in September and October, many of the crab boats had to wait up to nine days to unload their catch for processing. Adequate processing facilities were not available. During a nine day waiting period a high percentage of the crabs die which diminishes their value for commercial purposes.

The 13th Regional Corporation would like to purchase the Private George Peters and the Resolute and convert the vessels into floating seafood processors. The Russians and Japanese have had vessels of this nature for some time. The potential of the 200 mile limit will not be realized unless the American fishing industry competes on an equal basis.

The 13th Regional Corporation has spent considerable time investigating available vessels that would be suitable for conversion to fish processors. They are convinced that the two vessels in question are the most suitable for conversion.

I know that the Coast Line Company has spent considerable time and effort investigating the potential use of these vessels. After listening to the Coastal Line Company, I believe that their proposal has merit. I also believe that The 13th Regional Corporation's proposal has merit.

I am not prepared to make a judgment on which proposal is better. However, I do feel that the passage of a private bill for the exclusive sale of these vessels to one company is not the best way for Congress to resolve this problem.

Mr. Chairman, I am aware of the interest that this committee has shown in developing better procedures for the liquidation of surplus U.S. property. Such a procedure should include the principal of competitive bids. I would be willing to work with the committee to achieve this goal.

Mr. DONNELLY. The hearing is adjourned.

[Whereupon, the hearing was adjourned at 3:15 p.m., subject to the call of the Chair.]

PASSENGER VESSELS

MONDAY, JULY 23, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 1301, Longworth House Office Building, Hon. John M. Murphy (chairman of the subcommittee) presiding.

Present: Representatives Murphy and Akaka.

Staff present: Larry O'Brien, Ernest J. Corrado, Peter Kyros, Gerry Seifert, Steve Little, and Elizabeth Cocker.

The CHAIRMAN. The subcommittee will come to order. This afternoon, the subcommittee will hear legislation to clarify the status of at least three passenger vessels so that they may operate in the domestic or foreign commerce of the United States, and/or between foreign ports.

On June 11, 1979 Congressman Akaka, our distinguished colleague from Hawaii, introduced H.R. 4416, clarifying the status of the SS *United States*. On July 16, 1979, I introduced H.R. 4814, dealing with the SS *Independence*, and just the other day I introduced a bill to clarify the status of the *Santa Rosa*.

The situation regarding these three U.S. built, subsidized passenger vessels is different for each vessel. For example, the *Independence*, although U.S. built, subsidized, and operated under the U.S. flag, was subsequently sold foreign; that is, transferred to Panamanian registry. This is not the case with respect to the *United States* and the *Santa Rosa*, which have a different problem.

Although the issues regarding these three vessels are different, the common objective is to reactivate one or all of these three passenger vessels so that we may have a revitalization of the once proud U.S.-flag passenger fleet. At one time, not too long ago, the U.S.-flag passenger fleet was the pride of the U.S. merchant marine, and was one of the premier elements of the world merchant fleets. At the present time, however, there is not one pure U.S.-flag passenger vessel in operation, nor has there been for almost 10 years.

There are four combination passenger/cargo vessels in operation from the west coast of the United States to South America. This constitutes the entire U.S.-flag passenger vessel capability. While we do not have any U.S.-flag passenger vessels, as such, our Russian adversaries have 71 vessels operating in the cruise trades and sea lanes of the world. Not only do they reap tremendous economic and political benefits from this Russian-flag passenger presence,

but they have extant a tremendous ocean carrier capability in the event of a military confrontation—the United States has none.

Secretary of Defense McNamara spelled the demise of the U.S.-flag fleet in 1962 in this very hearing room when he testified that U.S.-flag passenger ships no longer serve any national security purpose; thus, subsidizing them was no longer justified, and all military personnel would henceforth be transported by air. Subsequent events have proved this patently incorrect, and we find ourselves with no ocean troop carriage capability to speak of, while our potential adversaries have a tremendous capability in this area.

It is imperative that we do whatever is necessary legislatively to permit these passenger vessels in question to once again operate under the U.S. flag with U.S. crews in the foreign and domestic commerce of the United States. What the entrepreneurs involved with these three vessels will do, I cannot say, but our obligation is to do whatever we can legislatively to permit these entrepreneurs to operate so that these excellent passenger vessels may once again operate under the U.S. flag with U.S. crews.

Last fall, the United States Cruises, Inc. entered into a contract of sale for the purchase of the SS *United States* planning to bring the vessel back into operating condition and to refit her for operation primarily in the cruise trades between the Hawaiian Islands and the mainland.

According to this cruise organization, a recent appellate court decision has the potential to undermine the company's proposed plan of operation. The case in question is the U.S. court of appeals decision in *Alaska Bulk Carriers v. Kreps*, a decision which U.S.C.I. maintains raises some question about the ability of a vessel built with CDS, as were the *United States* and the *Santa Rosa*, to operate permanently in the domestic trades even after expiration of the vessel's statutory life. The interests for the *United States* and the *Santa Rosa* contend that a careful reading of Sections 215 and 506 of the Merchant Marine Act of 1936 supports the position that once a vessel built with CDS has outlived its statutory life, any restrictions against operating in the domestic trades also expire. The *United States* has passed its statutory life; the *Santa Rosa* has not.

These interests also state that notwithstanding this statutory interpretation and the fact that the court in *Alaska Bulk Carriers* did not directly address the issues, the opinion of the majority in that case may cast sufficient doubt on the view that expiration of a 25-year statutory life freezes a vessel built with U.S. subsidy from the domestic trade restrictions so as to jeopardize financing for the reconstruction of, for example, the SS *United States* and the SS *Santa Rosa* and their eventual operation.

The language of the majority opinion in question characterizes the subsidy restriction as follows:

The idea is one of permanence. Once the ship has been constructed by government assistance up to 50 percent of its original construction cost, the ship is dedicated to the U.S. foreign trade. Payment of the subsidy stamps indelibly the character of the ship then and thereafter.

Thus, H.R. 4416 and the bill I have just introduced for the *Santa Rosa* are intended to clarify the situation with respect to the *United States* and the *Santa Rosa*.

H.R. 4814 is intended to permit the SS *Independence* to operate in our domestic cruise trades. Unlike the legislation for the *United States* and the *Santa Rosa*, it is more substantive legislation which would amend existing law. Although built in the *United States* with subsidy funds, and operated for many years with subsidy funds, documented as a U.S. vessel, the *Independence* was subsequently sold foreign and operated under the Panamanian flag. American Hawaiian Cruising Line, a U.S. corporation, has contracted to purchase the *Independence* and seeks to have her redocumented as a U.S. vessel with full privileges of engaging in our coastwise trades.

Our traditional and longstanding cabotage laws have always prevented the operation of foreign-built or foreign-flag vessels from operating in the U.S. domestic trades. For example, 46 U.S.C. 298 provides that any foreign-flag vessel may not transport passengers between ports or places in the United States. And even though a vessel is built in the United States and documented as a U.S. vessel, it may forever lose the right to engage in the U.S. coastwise trades if it is sold to aliens, placed under foreign flag or rebuilt abroad. The cabotage principle is recognized in international law and is commonly practiced throughout the world. It has been applied continuously throughout our history, beginning with the 3rd and 11th statutes, and enacted at the first session of the Congress in 1789. Cabotage laws represent Government efforts to promote U.S. shipbuilding and its employees, U.S. ship operators and their employees, and the general public.

Section 506 of the Merchant Marine Act of 1936, which is relevant to all three vessels, provides that the owner of any ship built with CDS must agree that the vessel is to be operated only in foreign trades, except for certain intermediate stops in the United States or its territories as part of their worldwide voyages or under temporary waivers granted by the agency, not to exceed 6 months in any one year.

[The bills and departmental reports follow:]

96TH CONGRESS
1ST SESSION

H. R. 4416

To clarify that the steamship United States may operate in the domestic and/or foreign commerce of the United States and between foreign ports.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1979

Mr. AKAKA introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To clarify that the steamship United States may operate in the domestic and/or foreign commerce of the United States and between foreign ports.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 2 of Public Law 92-296 (86 Stat. 140), as
- 4 amended by Public Law 94-536 (90 Stat. 2497), is further
- 5 amended by inserting after "American flag" the following:
- 6 "in the domestic commerce and/or foreign commerce of the
- 7 United States and/or between foreign ports,".



DEPARTMENT OF THE NAVY
OFFICE OF LEGISLATIVE AFFAIRS
WASHINGTON, D. C. 20350

30 OCT 1979

Dear Mr. Chairman:

Your request for comments on H.R. 4416, a bill "To clarify that the steamship United States may operate in the domestic and/or foreign commerce of the United States and between foreign ports," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The purpose of the bill is stated in the title.

The Department of the Navy, in behalf of the Department of Defense, has no objection to the enactment of H.R. 4416.

This report has been coordinated within the Department of Defense in accordance with the procedure prescribed by the Secretary of Defense. The Office of Management and Budget advises that from the standpoint of the Administration program, there is no objection to the presentation of this report on H.R. 4416 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,


L. C. LINTON
Captain, U. S. Navy
Director, Legislation

The Honorable John M. Murphy
Committee on Merchant Marine and Fisheries
House of Representatives
Washington, D.C. 20510

RECEIVED

NOV 0 1979

COMMITTEE ON MERCHANT MARINE
AND FISHERIES

96TH CONGRESS
1ST SESSION

H. R. 4688 and H. R. 4814

To direct the Secretary of the department in which the United States Coast Guard is operating to cause the vessel Independence to be documented as a vessel of the United States so as to be entitled to engage in the coastwise trade.

IN THE HOUSE OF REPRESENTATIVES

BILLS

To direct the Secretary of the department in which the United States Coast Guard is operating to cause the vessel Independence to be documented as a vessel of the United States so as to be entitled to engage in the coastwise trade.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, notwithstanding the provisions of section 27 of the
4 Merchant Marine Act of 1920 (46 U.S.C. 883), as amended,
5 and any other provision of law, the Secretary of the depart-
6 ment in which the United States Coast Guard is operating
7 shall cause the vessel Independence (official Coast Guard

1 numbered 261147), an American-built vessel presently
2 owned by American Hawaiian Cruising Line, Incorporated, a
3 corporation chartered under the laws of the State of Dela-
4 ware, to be documented as a vessel of the United States with
5 the privileges of engaging in coastwise trade, upon compli-
6 ance with the usual requirements, so long as the vessel is
7 owned by a citizen or citizens of the United States, as defined
8 in the applicable laws prescribing the qualifications for ves-
9 sels to engage in coastwise trade.



DEPARTMENT OF THE NAVY
OFFICE OF LEGISLATIVE AFFAIRS
WASHINGTON, D. C. 20350

IN REPLY REFER TO

LA-62A:mr1

8 APR 1980

Dear Mr. Chairman:

Your request for comments on H.R. 4814 and H.R. 4688, bills "To direct the Secretary of the department in which the United States Coast Guard is operating to cause the vessel Independence to be documented as a vessel of the United States so as to be entitled to engage in the coastwise trade," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The purpose of the bills is stated in their title.

The Department of the Navy, on behalf of the Department of Defense, defers to other agencies more directly concerned on the merits of H.R. 4814 and H.R. 4688.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 4814 and H.R. 4688 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely,

L. C. LAITSCH
Captain, USN, U. S. Navy
Director, Legislation

The Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D. C. 20515

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REP. JOHN M. MURPHY

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PARA: _____

96TH CONGRESS
1ST SESSION

H. R. 4886

To amend the Merchant Marine Act, 1936, to provide that certain inactive American-flag passenger vessels may operate in both the domestic and/or foreign commerce of the United States and between foreign ports.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 1979

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Merchant Marine Act, 1936, to provide that certain inactive American-flag passenger vessels may operate in both the domestic and/or foreign commerce of the United States and between foreign ports.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 506 of the Merchant Marine Act, 1936 (46
4 U.S.C. 1156) is amended by adding at the end thereof the
5 following new paragraph:

6 “Notwithstanding the provisions of section 506 and sec-
7 tion 613(a), any other provision of law or of prior contract

1 with the United States, any vessel heretofore operated as a
2 passenger vessel, as defined in section 613(a) of the Merchant
3 Marine Act, 1936, and now in inactive or layup status, may,
4 subject to the approval of the Secretary of Commerce, be
5 allowed to remain under the American flag and operate total-
6 ly in both the domestic and foreign commerce of the United
7 States and/or between foreign ports.”.

The CHAIRMAN. The purpose of the hearing today is to receive testimony concerning these three passenger vessels and the legislation in question. We must not let this opportunity slip by, and we must do everything possible legislatively, to permit the interested operators to renovate these magnificent vessels and get them back in operation under the U.S. flag with U.S. crews serving the domestic and foreign commerce of the United States.

Our first witness today is the Honorable Daniel Akaka from Hawaii. Mr. Akaka?

**STATEMENT OF HON. DANIEL K. AKAKA, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF HAWAII**

Mr. AKAKA. Thank you very much, Mr. Chairman. I am grateful that I have this opportunity to introduce the bill to permit the *United States* steamship to operate in the domestic and the foreign commerce of our country and also between foreign ports.

I share with you and with people in the maritime trade the anxiety of not being able to have a fleet that will carry passengers under the American flag. This is an opportunity, a beginning step, to try to get these passenger ships back in service.

Contrary to what was mentioned by Bob McNamara—I still feel that the passenger ships can be used in our defense and also for carrying troops whenever an emergency arises.

Mr. Chairman, I look forward to the successful passage of this bill through our full committee, as well as on the floor. This will be the first step toward regaining the kind of stature we have had in our passenger maritime fleet. Thank you very much.

The CHAIRMAN. Thank you, Mr. Akaka.

Our next witness will be Mr. Gus Caras, Maritime Administration, Department of Commerce. Mr. Caras.

**STATEMENT OF CONSTANTINE G. CARAS, GENERAL COUNSEL,
MARITIME ADMINISTRATION, U.S. DEPARTMENT OF COM-
MERCE**

Mr. CARAS. Thank you, Mr. Chairman. I am happy to appear before you today for the purpose of testifying on three bills concerning the future use of the passenger vessels *United States*, *Independence*, and *Santa Rosa*. These bills are H.R. 4416, 4814, and 4886, respectively.

During the last 10 years, no segment of the U.S.-flag fleet has been depleted as dramatically as the U.S.-passenger fleet. As of December 31, 1969, 20 active passenger and passenger-combo vessels, offering thousands of sea-going jobs, were being operated under the U.S. flag. As you said a few minutes ago, Mr. Chairman, today there are only four passenger-combo vessels left in operation.

In 1972, seven U.S.-flag passenger ships were laid up. Because the heavy costs of maintaining these vessels in layup threatened to interfere with the financial ability of their operators to carry on their cargo liner operations, Congress enacted Public Law 92-296 to authorize the transfer of the passenger vessels in layup to foreign ownership and registry. Exceptions were the *United States*, because of its special defense features, and the *Independence*, because a U.S.-flag operator had expressed interest in purchasing the vessel. This public law also authorized the Secretary of Commerce to

purchase the *United States* for the Reserve Fleet. With respect to the *Independence*, when the prospective sale did not materialize, the Congress enacted Public Law 93-330 in 1974, authorizing the transfer of that vessel to foreign ownership and registry. The vessel was transferred to Panamanian registry, but has been laid up in Hong Kong for several years.

SS "UNITED STATES"

This subcommittee is well aware of the important place of the *United States* in our maritime history. It is also aware of the circumstances which led to the vessel's layup in 1969 and of the various legislative and administrative efforts undertaken since that time to encourage the vessel's return to U.S.-flag service. On September 29, 1978, the Maritime Administration entered into a contract to sell the *United States* to United States Cruises, Inc. (USCI) for \$5 million, for operation primarily in the cruise trade between the Hawaiian Islands and the mainland.

At the time of the contract between the Maritime Administration and USCI, the vessel's 25-year statutory life had expired. A new vessel built with the aid of construction-differential subsidy (CDS), to be used in the foreign commerce of the United States, is required to remain documented under U.S. laws for not less than 25 years following delivery, or so long as there is any remaining principal or interest due the United States on the purchase price, whichever is the longer period.

Since the 25 years had expired and no principal or interest remained outstanding at the time of the vessel's sale, the Maritime Administration did not believe section 506 of the 1936 act presented a legal obstacle to the operation of the vessel exclusively in the domestic trade. In fact, the question never arose. That provision of law specifically provides a formula for annual repayment of CDS for permissible operation in the domestic trade based on an annual proration of the vessel's entire economic life; that is, an annual payment of one twenty-fifth of CDS paid.

USCI has read the court of appeals decision in *Alaska Bulk Carriers, Inc. v. Kreps* as casting a cloud over the legality of USCI's planned operations in the domestic Pacific cruise market. While we doubt that the court's decision should be read so broadly, we would favor enactment of the clarifying legislation in H.R. 4416. This should eliminate any need for further delays in the pursuit of this worthwhile project.

SS "INDEPENDENCE"

H.R. 4814 would direct the Coast Guard to document the vessel *Independence* for operation in the coastwise trade.

In 1978, the American Hawaiian Cruising Line, Inc. (AHCL) purchased the *Independence* from a Liberian corporation, with the intention of renovating the vessel extensively and operating it strictly as a cruise ship among the Hawaiian Islands on voyages to various ports beginning early next year. While the Maritime Administration has approved the retransfer to U.S. registry of this CDS-built vessel whose economic life for CDS purposes has expired, the Coast Guard has indicated that it cannot, pursuant to law,

document the vessel with full privileges to engage in the coastwise trade.

SS "SANTA ROSA"

H.R. 4886 would also direct the Coast Guard to document the *Santa Rosa* as a vessel of the United States entitled to operate in the domestic and foreign commerce and between foreign ports. The *Santa Rosa's* history, like that of the *United States* and *Independence*, is intertwined with legislative and administrative efforts to promote U.S.-flag ocean passenger service.

In 1975, the Maritime Administration acquired title to the vessel. Thereafter, the agency offered the vessel for sale to U.S. citizens, as well as noncitizens, for operation in world trade or for scrapping within the United States or a friendly foreign country. In May 1975, the *Santa Rosa* was purchased by the Vintero Corp. The contract of sale included the restrictions imposed by the payback provisions of section 506. The vessel was to be refurbished and reconditioned in the United States and transferred to Venezuelan registry. However, this was not accomplished for a number of reasons beyond the control of Vintero, and during the last 4 years, the vessel has remained idle, resulting in a severe financial drain on Vintero.

We now understand that the Vintero Corp. plans to modify and convert the *Santa Rosa* to strictly passenger use, and intends to put the ship into service on an exclusive Hawaiian interisland itinerary. However, because of the *Alaska Bulk Carrier* case, the Vintero Corp. has concluded that it cannot initiate such service without remedial legislation.

Since the contract of sale signed by the Vintero Corp. maintains the section 506 restrictions, it would be consistent with Department policy to require the payback of CDS with respect to the remaining statutory economic life of the vessel before lifting the restrictions of section 506. Any remedial legislation should contain such a condition.

The Department of Commerce supports these three bills as important steps toward promoting and developing U.S.-flag passenger and cruise service in our domestic trades. Initiation of such service by these vessels would be beneficial to the economy of the State of Hawaii as well as to the national economy. It would result in jobs for U.S. merchant seamen. It would also result in jobs for workers in U.S. ship repair and other maritime-related industries as work on these three vessels comes due.

However, we are not able to comment at this time on the competitive impact of three ships operating in the passenger trade until completion of a market feasibility study analyzing the market of the pleasure cruise industry in the United States and Canada. One phase of the study, concerning the cruise market itself, is currently being contracted out to a commercial firm for analysis. The other phase, concerning shipping aspects, is being completed within the Maritime Administration. We expect publication of the study by the end of the year, at the very earliest.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you or members of the subcommittee may have.

The CHAIRMAN. Thank you, Mr. Caras. I gather from the testimony that MarAd supports these three bills.

Mr. CARAS. Yes, sir, we do.

The CHAIRMAN. Do you see any substantial differences in the situations regarding the *United States* and the *Santa Rosa*?

Mr. CARAS. The statutory life of the *United States* has expired, while the statutory life of the *Santa Rosa* has not, and therefore, we have the section 506 payback problem. Other than that, I see no substantial difference.

The CHAIRMAN. Do you support H.R. 4814 concerning the SS *Independence*, and is there anything concerning this vessel which gives you any special concern?

Mr. CARAS. The vessel has been transferred foreign, as you know. The Coast Guard has taken the position that the vessel may not be redocumented under the U.S. flag, absent some remedial legislation. That is of concern, of course.

There is also the concern as to what kind of reconditioning and repair work is going to be done on the vessel before it is transferred back.

The CHAIRMAN. What about if they change its name?

Mr. CARAS. As I understand it, there is another vessel now under U.S. registry with the name *Independence*. I am told that the owners of the existing U.S.-flag vessel have objected to the use of the name "Independence" by the owners of the vessel we are talking about.

I personally see no problem in using the name "Oceanic Independence." I do not know what the Coast Guard would say about that, but I personally see no problems.

The CHAIRMAN. The witness for the SS *Independence* interests will suggest an amendment today stating that, "a vessel rebuilt outside the United States, its territories, or possessions shall not be deemed to have lost its coastwise privileges." Do you support such an amendment, and what is your view regarding it?

Mr. CARAS. One of the reasons why we are supporting H.R. 4814 is precisely because it will result in jobs not only for oceangoing seamen, but it will also result, or should result, in jobs for workers in the maritime repair and shipbuilding area.

I think we are defeating the purpose of the bill if, in fact, we allow an open rebuilding outside the United States before the vessel is redocumented under the U.S. flag.

I understand there is some kind of agreement as to installation of a bow thruster and installation of a sewage tank to comply with IMCO requirements. If an agreement has already been arrived at, we would not object as to these two particular items of work, but we think, in terms of any additional rebuilding, that we should require that it be in the United States.

The CHAIRMAN. Do you consider the bow thruster and that environmental system a major or significant repair?

Mr. CARAS. I understand that for the bow thruster we are talking about perhaps a couple hundred thousand dollars abroad. I do not really have any figures for the installation of a sewage tank, but I think we are talking about another \$500,000 or \$600,000. These are ball park numbers, of course.

So we are talking perhaps about \$1 million of work if done outside the United States; I am sure a higher number if done in the United States. I personally consider those large numbers, but as I understand the state of prices in the shipbuilding, ship repair industry these days, it may, in the opinion of some people, not be major work.

The CHAIRMAN. Mr. Akaka.

Mr. AKAKA. Thank you very much, Mr. Chairman.

I read your statement that there is a study on the cruise market analysis. Has that been contracted already?

Mr. CARAS. It has not been contracted out yet. We have an invitation out but we have not signed a contract with anybody, and we are still working on it.

We have, on the other hand, undertaken some work in the Maritime Administration itself with respect to pricing the vessel or vessels that would be built for this trade. But in terms of the feasibility study as to whether there is a trade out there, that part of the work has not been contracted yet.

Mr. AKAKA. So when you do contract it out, you are going to expect it to be completed by the end of this year?

Mr. CARAS. Yes; we say the end of the year, but, of course, a lot will depend upon how fast the contractor moves and what conditions he meets out in the marketplace.

Mr. AKAKA. Your statement, of course, is in favor and support of these three ships having authorization to compete in domestic and foreign passenger travel. Is there any feeling in MarAd as to what this could lead to in the future? Does this fit with your future plans?

Mr. CARAS. Well, we are hoping it will lead to a revitalization of the passenger segment of the fleet; whether it will or will not, of course, it is too early to tell. We will have a better feel for it once the study has been completed.

Mr. AKAKA. Thank you very much, Mr. Caras.

[Whereupon, Mr. Akaka assumed the chair.]

Mr. AKAKA. Does Counsel have any questions?

Mr. CORRADO. No; thank you, Mr. Chairman.

Mr. AKAKA. Thank you very much, Mr. Caras, and thank you for your testimony.

Mr. AKAKA. I would like to call Rear Adm. Henry H. Bell as our next witness, Chief of the Office of Merchant Marine Safety of the U.S. Coast Guard, Department of Transportation.

Thank you very much, Admiral; you may proceed.

STATEMENT OF REAR ADM. HENRY H. BELL, CHIEF, OFFICE OF MERCHANT MARINE SAFETY, U.S. COAST GUARD, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOSEPH YGLESIAS, CHIEF, MERCHANT VESSEL DOCUMENTATION DIVISION

Admiral BELL. Thank you, sir. Mr. Chairman, members of the subcommittee, I am Rear Adm. Henry H. Bell, Chief of the Office of Merchant Marine Safety, U.S. Coast Guard. I am accompanied today by Mr. Joseph Yglesias, Chief of our Merchant Vessel Documentation Division. I will, with your permission, address the bills in order.

I would first like to discuss H.R. 4416, a bill to clarify that the steamship *United States* may operate in the domestic and/or foreign commerce of the United States between foreign ports.

The SS *United States*, official No. 263934, was built in 1952 at Newport News, Va., by the Newport News Shipbuilding & Drydock Co. for the United States of America. The vessel was first documented as a vessel of the United States on June 16, 1952, in the ownership of the United States of America. Since that time, the SS *United States* has undergone three changes of ownership: on June 18, 1952, to United States Lines Co., a New Jersey corporation; on June 23, 1967, to United States Lines, Inc., a Delaware corporation; and on February 2, 1973, to the United States of America, the current owner of record.

U.S. Cruise Lines, Inc., reportedly entered into a sales contract with the Maritime Administration for purchase of the SS *United States* for operation primarily in the carriage of passengers on cruises between Hawaii and the mainland. A recent court decision has raised a question as to whether or not a vessel built with construction differential subsidy can be operated in domestic trade. Since the SS *United States* was built with construction differential subsidy, there appears to be a question as to the legality of the proposed employment. H.R. 4416, by amending section 2 of Public Law 92-296, as amended, would clearly permit operation of the vessel in domestic and/or foreign commerce.

While we have no objection to the proposed legislation, we defer to the views of the Maritime Administration of the Department of Commerce, under whose jurisdiction Public Law 92-296 primarily belongs.

[Whereupon, the chairman resumed the chair.]

Admiral BELL. I want to point out that, subject to compliance with safety inspection and certification requirements, and all other requirements applicable to this type vessel, the Coast Guard perceives no impediment to documentation of the SS *United States* for operation in the intended employment.

Next, I wish to discuss H.R. 4814, a bill to direct the Secretary of the department in which the Coast Guard is operating to cause the vessel *Independence* to be documented as a vessel of the United States so as to be entitled to engage in the coastwise trade.

The SS *Independence*, official No. 261147, was built in 1951 at Quincy, Mass., by the Bethlehem Steel Co., for the United States of America. The vessel was first documented as a vessel of the United States on January 10, 1951, in the ownership of the United States of America. On January 11, 1951, the SS *Independence* was transferred to the ownership of American Export Lines, Inc., a New York corporation. In 1967, the corporation changed its name to American Export Isbrandsten Lines, Inc., and the vessel remained of record in that ownership until 1974.

On July 3, 1974, the Maritime Administration approved sale of the vessel to Far East Lines, Inc., a Liberian corporation, and transfer to Panamanian registry. The SS *Independence* was removed from documentation as a vessel of the United States on July 18, 1974.

American Hawaiian Cruising Lines, Inc., has contracted to acquire the SS *Independence* for operation in a Hawaiian interisland

passenger service. The U.S. Customs Service, the agency primarily responsible for administering the coastwise trading laws, deems the transportation of passengers between points in the United States as an employment in the coastwise trade. Under section 27 of the Merchant Marine Act, 1920, as amended, a vessel sold foreign in whole or in part, or placed under foreign registry, loses its coastwise trading privileges. H.R. 4814 would restore coastwise trading privileges to the SS *Independence* so that it could engage in the intended employment.

It is to be noted that section 27, in effect, also provides that a coastwise trade-qualified vessel of more than 500 gross tons rebuilt abroad will lose its coastwise trading privileges. In our view, if H.R. 4814 is enacted and the SS *Independence* thereafter undergoes work abroad of a nature that is deemed a rebuilding within the meaning of section 27, the vessel will lose the coastwise trading privileges intended to be restored by the bill.

If enacted, H.R. 4814 will entitle the SS *Independence* to documentation for, and employment in, the coastwise trade upon compliance with safety inspection and certification requirements and all other requirements applicable to this type of vessel.

Now, Mr. Chairman, as a policy matter, the Department of Transportation favors the return of the *Independence* to the U.S. flag. The redocumentation of this vessel would return full passenger service to the U.S. fleet, would create additional job opportunities in the U.S. merchant fleet, and would promote increased activity at U.S. shipyards which will service this vessel.

Finally, sir, I wish to discuss H.R. 4886. This bill has no direct effect on the Coast Guard's programs, and I will defer to the Department of Commerce for their comments. As a technical matter, the Coast Guard does have two changes to the bill's present language which we will submit at a later date.

Sir, that concludes my prepared remarks. I thank the committee for the opportunity to have appeared, and I would be pleased to answer any questions you may so direct.

The CHAIRMAN. Thank you, Admiral Bell; we appreciate your comments. Do you support the three bills under consideration today for the three vessels in question?

Admiral BELL. Sir, the Coast Guard does not see its role as supporting; it sees its role as advising as to whether these vessels can comply with the laws or not through the actions that their owners have taken. As my statement says, sir, the Department of Transportation, however, does favor the bill in respect to the SS *Independence*.

The CHAIRMAN. DOT does favor the SS *Independence* bill?

Admiral BELL. Yes, sir.

The CHAIRMAN. How about the *United States* and *Santa Rosa*?

Admiral BELL. They did not say, sir, but I would presume, for the same reasons, they would similarly support the other two bills.

The CHAIRMAN. OK. Maybe that is why they have changes over there.

Admiral BELL. It could be, sir.

The CHAIRMAN. The witness for the SS *Independence* will recommend an amendment today, stating that if a vessel is rebuilt outside the United States, it shall not be deemed to have lost its

coastwise privileges. Do you support such an amendment and what is your opinion of it?

Admiral BELL. Sir, as the statement points out, there is a dichotomy we could run into here. If the bill, 4814, passed and the vessel was engaged in, or subsequently engaged in, rebuilding foreign, it could again lose its coastwise trading privileges; we pointed out this possibility in the statement.

I think our only role as the Coast Guard is to make sure that people understand this possibility exists with the law and that unless this bill is amended to take care of that provision or any foreign construction is done prior to the final passage of the act, we think it could be embarrassing.

I do not see myself, sir, as supporting or objecting to this; it is mainly to make sure that everybody understands the possibility of this provision.

The CHAIRMAN. I understand that it is necessary for the *Independence* to have a bow thruster installed and to be retrofitted for sewerage retention and disposal. Would this constitute rebuilding under section 27 of the 1920 act?

Admiral BELL. Sir, we have not had the particulars filed with us so that my documentation officer can look at it. But I am of the opinion that the scope of work probably would be considered rebuilding abroad, yes, sir. That is a preliminary assessment, sir, without having seen all the details.

The CHAIRMAN. Are there any other requirements that will have to be met before the Coast Guard could document the SS *Independence* for U.S. coastwise trades?

Admiral BELL. Yes, sir. These efforts are currently underway. They involve a complete inspection of the vessel and a planned review of any alterations that have been made to the vessel since it was last certificated. The vessel must have been inspected to be sure that it is in compliance with applicable laws and regulations prior to the documentation being issued to that vessel.

In other words, sir, it will get a certificate and a document of registry at roughly the same time.

The CHAIRMAN. Thank you very much, Admiral; I appreciate your contribution.

Admiral BELL. Thank you.

The CHAIRMAN. The next witness is a very famous New Yorker, Frank Braynard. We remember the parade of the tall ships in 1976 in our great Bicentennial, and Frank Braynard was responsible for that parade. Frank.

STATEMENT OF FRANK O. BRAYNARD, EXECUTIVE DIRECTOR, HARBOR FESTIVAL FOUNDATION, INC.

Mr. BRAYNARD. Thank you, John. This hearing to revive U.S. passenger shipping is particularly important in these oil shortage days. Coal-driven steamships will be welcomed back on our rivers, our lakes and along our coasts. Ship travel is the most enjoyable of all forms of mass transit.

We can go to the Moon, but there are, as you have said, no deep-sea American cruise ships. On our river system, there are only the two beauties, *Delta Queen* and *Mississippi Queen*. Along our coasts, we have only the two very small American Cruise Line boats out of

Warren, R.I. One of them is the one named *Independence*, and she is a beauty.

Domestic passenger shipping should be a major American industry; it once was, and it can be again. We should be sure that laws passed for another era do not block this cause. A look at history is pertinent.

During the Civil War, the bulk of our shipping fled the flag to survive high insurance rates caused by Confederate raiders. After the war, a revengeful Congress passed laws preventing their return. This virtually doomed the merchant marine for one century.

I wish to applaud your efforts to make the way smooth to bring back the *United States*, the *Independence*, and the *Santa Rosa*. In my opinion, it does not matter how old the ships are. If labor and management can cooperate to get them going again and to maintain continuous service, new American flagships will be built.

I hope the Nation's labor movement—all labor, not just maritime labor—will assist in establishing a climate of confidence to encourage capital to invest in new coastal cruise ships and riverboats.

Again, history points the way. The Seafarers International Union was a prime financial backer of the American Banner Line in 1957. Let us revive the New York to Florida run, carrying cars as well as passengers; the overnight boats between Cleveland and Buffalo, San Francisco and Los Angeles, Boston and New York.

At this very moment, thousands of happy passengers, many of them Americans, are enjoying overnight cruise-like trips by sea everywhere in the world, except within our own country and along our coasts. Ship travel is mass transit; it is "see America first." It is superb encouragement to greater foreign tourism to help our dollar balance situation. Above all, it is a way of life we all should be able to enjoy. Thank you.

The CHAIRMAN. Thank you, Frank, and we appreciate your very cogent statement and, as usual, your promotion of the American-flag merchant marine.

Mr. Akaka.

Mr. AKAKA. Thank you very much, Mr. Chairman. I too want to thank you very much for your testimony and your faith in the future.

Mr. BRAYNARD. Thank you, sir. It can happen.

Mr. AKAKA. We certainly want to keep our citizens of our country happy, and this is one step in that direction. Thank you very much.

Mr. BRAYNARD. Thank you.

The CHAIRMAN. Our next witnesses will be a panel: Mr. Herb Brand, president of the Transportation Institute; Mr. Charles Mollard, vice president, Seafarers International Union; Mrs. Jean Ingrao, secretary-treasurer of the Maritime Trades Department; Mr. Ed Kelly, special assistant to the president, district 2, MEBA.

Mr. Brand, if you would lead off, please.

STATEMENT OF A PANEL CONSISTING OF: HERBERT BRAND, PRESIDENT, TRANSPORTATION INSTITUTE; CHARLES MOLLARD, VICE PRESIDENT, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA; JEAN F. INGRAO, SECRETARY-TREASURER, MARITIME TRADES DEPARTMENT, AFL-CIO, ACCOMPANIED BY DAVID DOLGEN, LEGISLATIVE DIRECTOR, MARITIME TRADES DEPARTMENT, AFL-CIO; AND EDWARD V. KELLY, SPECIAL ASSISTANT TO THE PRESIDENT, DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION-ASSOCIATED MARITIME OFFICERS

Mr. BRAND. Mr. Chairman, thank you very much. In view of the fact that you have a great many witnesses and because the issue, I think, is very uncomplicated, I have an extremely brief statement, and then my colleagues here can elaborate if they wish.

First of all, we appreciate the opportunity to testify on legislation that would clarify the eligibility of the SS *United States* and the SS *Independence* to participate once again in the passenger trades of the United States. Accordingly, we support passage of H.R. 4814, directing U.S. documentation of the *Independence* for the coastwise trade, and H.R. 4416, enabling the *United States* and the *Santa Rosa* to operate in the domestic and foreign commerce of the nation.

The Transportation Institute, Mr. Chairman, as you know, comprises 174 companies engaged in U.S.-flag marine transportation, and it most enthusiastically hails this hearing on the revival of the operation of these vessels. It bodes well for the U.S. maritime industry, and beyond that there is a promise of beneficial effects for tourism and the American economy in general.

The return of these vessels would constitute a remarkable and important step in the revitalization of our merchant fleet, in our view. As this subcommittee knows, American-flag shipping has virtually disappeared from the seas, and the irony of that fact cannot be overemphasized.

The United States is, of necessity, a maritime nation. We depend on ocean transportation for a staggering flow of imports and exports needed for the maintenance of our economy. Increasing numbers of American citizens also take advantage of foreign-flag passenger ships, and we believe that many of these citizens would turn to new services, once they became available under the U.S. flag. To those American citizens would be added, as Frank Braynard pointed out, a potentially substantial number of foreign travelers who would be attracted to the kind of service that the *Independence* and the *United States* now present us with.

We have never given up hope for the U.S.-passenger trade. On the contrary, we have always believed that a successful service could be redeveloped in this country, and today we have a unique opportunity to augment the limited U.S.-flag passenger services that exist at present.

A return of these passenger ships would not only strengthen the U.S. merchant fleet, but it would benefit our shipyards, our balance of payments, State and local tax revenues and, through ripple effects, the many other sectors of our economy that interconnect with the maritime industry.

The opportunities presented in the reactivation of these vessels to commercial service constitute a challenge, in our view, to the American shipping management, a challenge to the American shipyards, a challenge to American labor, and a challenge to the Federal Government.

We are breaking new ground with these vessels, in effect, and every effort should be made to assist every shipping company that shows an interest in putting capital into this kind of venture.

The subcommittee, in our view, does this country a great service by pursuing an interest in these vessels and the opportunities they represent. We respectfully urge the committee to proceed as quickly as possible to restore these vessels for active service under the American flag.

That concludes my statement, Mr. Chairman.

The CHAIRMAN. Thank you, Herb. Mr. Charlie Mollard, vice president, Seafarers International.

Mr. MOLLARD. Mr. Chairman and members of the subcommittee, my name is Charles Mollard, vice president of the Seafarers International Union of North America, AFL-CIO. The Seafarers International Union of North America has long advanced the proposition that there is a place under the U.S. flag for efficient and successful U.S.-passenger ship service, and therefore it is with special pleasure that we testify today in support of returning the SS *United States* and the SS *Independence*, and now the SS *Santa Rosa*, to active operation.

The legislation under consideration, H.R. 4814 and H.R. 4416, effectively deal with the technical amendments needed to assure that the intent of our national maritime policy is fulfilled. But the real importance of this legislation is far more than technical, because it is essential to rebuilding the vital passenger component of the U.S. merchant fleet.

The new services into which these two vessels would be placed show a need for innovation, for daring, and for resourcefulness. With these elements, American-flag passenger service can be rejuvenated to the status it once enjoyed.

As it stands today, the members of the Seafarers International Union man the only U.S.-flag passenger vessels still in operation. Accordingly, we are well aware of the needs and economic realities faced by passenger ship operators. We look forward to any new opportunities to advance this sector of the industry.

The Seafarers International Union has been in the forefront of the effort to break with tradition in whatever ways are necessary to rebuild the merchant marine. We have a deep interest in the reactivation of these vessels, and we want to contribute in any way possible.

The American seaman has always demonstrated his willingness to cooperate. In fact, workers in perhaps no other industry have better information on the inroads made by foreign competitors, including those that are market oriented and those that are State controlled.

It is important to keep in mind that both the *Independence* and the *United States*, and now the *Santa Rosa*, were built in this country and were operated under the U.S. flag. Again, as before, they will be manned by American crews in their new services.

I would like to bring to your attention the fact that these vessels would be reactivated in viable commercial enterprises without any need for expenditure of Federal tax dollars. This would mean that opportunities would be opened up for ship repair and shipbuilding facilities, thereby bolstering the Nation's economy as a whole. As such, these vessels present a unique opportunity that this country can ill afford to ignore.

We appreciate the subcommittee's efforts toward the revitalization of the American-flag passenger fleet, and we hope this legislation will be expedited in order that the substantial benefits of the return of these vessels can begin to accrue to American citizens at the earliest possible moment. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Mollard; we appreciate your comments.

Mrs. Jean Ingrao, secretary-treasurer, maritime trades department.

Mrs. INGRAO. My name is Mrs. Jean F. Ingrao. I am executive secretary-treasurer of the AFL-CIO maritime trades department. I am accompanied today by Mr. David Dolgen, legislative director of the AFL-CIO Maritime Trades Department.

The AFL-CIO maritime trades department appreciates the opportunity to testify on legislation, H.R. 4416 and H.R. 4814, to facilitate the return of the SS *United States* and the SS *Independence* to U.S.-passenger service.

The maritime trades department is the official constitutional department of the AFL-CIO, representing maritime and allied workers. It is composed of 43 affiliated national and international unions, representing some 8 million workers in shipping, shipbuilding, allied trades, and many support occupations.

The AFL-CIO and its maritime trades department have long sought the revitalization of the U.S.-passenger fleet. Since the cessation of point-to-point passenger service in the early 1970s, the maritime trades department has advocated innovative and imaginative policies for getting new companies started in the industry.

The bills to permit the *United States* and *Independence* to return to active U.S. service are consonant with this goal. As the AFL-CIO executive council stated in February 1979, there must be an "encouragement of incentives which will contribute to a revival of U.S.-passenger fleet services."

Both vessels were originally built in the United States and were maintained by U.S. shipyards during their operational U.S. lives. Once returned to service, these vessels would provide jobs for American workers at sea, in U.S. shipyards, and in allied and supportive industries, such as the longshore industry as well as food and fuel supplies, and many other services that U.S. ports provide.

In addition, these bills address the concerns expressed by many Americans who have asked the MTD when they can again take cruises on a U.S.-flag vessel that is inspected by the U.S. Coast Guard and which is operated to U.S. safety and manning standards.

The popularity of international cruises provides evidence that these vessels will add a major new source of tourist revenues for many coastal States.

In 1977, some 850,000 ship passengers embarked from the U.S. eastern ports alone. This is the tremendous industry the United States is letting foreign vessels monopolize.

Mr. Chairman, the need to immediately revive passenger services by U.S. vessels is a critical challenge facing the U.S. merchant marine. The AFL-CIO maritime trades department strongly supports the adoption of the legislation to facilitate the SS *United States* and the SS *Independence* returning to active U.S. service. Both bills benefit the Nation's economy and the U.S. maritime industry and its workers. Thank you very much.

The CHAIRMAN. Thank you, Mrs. Ingrao. The next witness is Ed Kelly, special assistant to the president, district 2, MEBA. Ed.

Mr. KELLY. Thank you. I am Ed Kelly, representing District 2, Marine Engineers Beneficial Association-Associated Maritime Officers.

The welcome appearance of initiatives to return the SS *United States*, SS *Independence*, and SS *Santa Rosa* to U.S.-flag passenger service will, if these projects are adequately supported by Congress, bring jobs for more Americans at sea, provide three vessels that could serve with little modification as troop carriers in a time of crisis, and encourage United States as well as foreign tourists to spend their cruise dollars aboard an American ship.

District 2, MEBA-AMO, endorses the return of these liners which seemed, until a short time ago, to have no credible future. We commend the good sense of those who would bring back these ships, for they have perceived correctly that the international cruise trade has been consistently successful in spite of the trans-Atlantic jets that gave the coup de grace to liners making regular ports of call.

Not everyone wants to take the Concorde. Greek, Scandinavian and Soviet cruise ships have flourished, particularly in recent years, by providing carefully planned and advertised cruises targeted for the most profitable tourist markets. We do not doubt that these new American ventures will be successful as well.

The restoration of three U.S.-flag liners to a sector of the maritime industry that has had little or no business for years would be a practical and psychological boost for the entire beleaguered U.S. merchant marine. Would it not stir the heart to see the SS *United States*, a ship of legend that still holds the trans-Atlantic speed record, active again on the high seas? She would be a floating metaphor of better times ahead for every U.S.-flag vessel.

Mr. Chairman, with your permission, I would like to add to our statement. We too are appalled; we note that the Soviets have 71 passenger vessels capable of being converted to troop transports, while we are completely dependent on air transportation for any and all troop movement.

We are also of the opinion that all maritime labor, seagoing as well as shore-side, should work with you to bring these vessels back to an active status. Thank you.

The CHAIRMAN. Thank you very much, Mr. Kelly. We have two questions for the whole panel to answer, Mr. Kelly on the left and Mrs. Ingrao on the right.

Do you support all of these bills for all of these vessels, and do you have any problems with the amendment offered by Mr. Everhard for the SS *Independence*?

Mr. KELLY. Yes; we do support all bills, and no, we do not have any trouble with the amendments, as we know them. We have taken a look at it and realize that if he wants to get some work done overseas in the yards where the ships are presently located, we feel that the amount of work he is getting done there now is only minimal compared to the amount of work that will be done in the future in the U.S. shipyards.

I think the figure of \$1 million was raised. I think in the future, every year of operating will show \$1 million in the U.S. shipyards.

The CHAIRMAN. Mr. Brand?

Mr. BRAND. I support, of course, all the bills, and I support that amendment, too. My concern is a larger one. I am interested in seeing that all of the projects go forward with the maximum possible haste.

It would seem to me that when people come in with capital in an area that has been virtually defunct—people coming in to risk capital in an area which has attracted little interest up to now—I think that we should do every bit possible that we can to encourage their entry into this field.

We can rest assured that from that point forward that any other ship repair work, any other ship rebuilding and any new construction must inevitably come into the United States, and that is what we are shooting for in the larger sense.

Consequently, Mr. Chairman, I would urge that we do not allow issues of this nature to befuddle us in reaching our ultimate goal.

The CHAIRMAN. Charlie Mollard.

Mr. MOLLARD. Mr. Chairman, on behalf of the Seafarers International Union, we certainly support all three bills, and we think this is a necessary and worthwhile effort to get started for the American merchant marine.

As has been observed by both yourself and Congressman Akaka, there are no American-flag passenger vessels in these trades, and it is very necessary that we get them started. I believe that these vessels can really be a catalyst for a major revitalization of American-flag passenger vessels in the United States, and this is the way that we view them.

With regard to the second question on the rebuilding, as I understand it, there is certain work that needs to be done in the area of the bow thrusters and making the sanitary systems come up to a current U.S. standard. As I further understand it, the owner of the *Independence* is willing to do that work and get it started now, even though he does not have the enabling legislation passed.

I think there should be some clarifying language to allow what the Coast Guard calls rebuilding, which in my view, may not be. But, to allow that rebuilding to take place prior to the vessel entering the coastwise trade.

We would certainly urge that all three bills, together with the appropriate amendments to the *Independence* bill, be expedited as quickly as possible. Thank you.

The CHAIRMAN. Mrs. Ingrao.

Mr. DOLGEN. Mr. Chairman, the maritime trades department has no problem with any of the three pieces of legislation; it supports all three and has no problem with the proposed amendment to the *Independence* legislation.

To reiterate some of the comments of some of the other members of this panel, we believe that there is a need now for a positive joining together of all elements in the maritime industry, both labor and management, to do whatever they can to revitalize the passenger trade in the American merchant marine.

We believe that our efforts should lead us in the direction of positive developments such as these which have resulted in the three pieces of legislation. We have no problem with the amendment. We do believe, however, that the work should be finalized prior to the *Independence* entering into the coastwise trade.

The CHAIRMAN. Thank you. Mr. Akaka?

Mr. AKAKA. Mr. Chairman, I want to thank the witnesses for their support and their encouragement on these bills. I am happy also to note that there is a spirit of cooperation here, I think that we need this cooperation from all of the different sectors to move this as expeditiously as we can. Thank you very much.

The CHAIRMAN. Thank you, ladies and gentlemen; we appreciate your contribution.

Our next witnesses are a panel: Mr. Eugene Spector, research director of the National Maritime Union, accompanied by Tal Simpkins, executive director of the AFL-CIO Maritime Committee; Julian Singman, representing the Masters, Mates & Pilots; and Captain John Cox, special assistant to the president, International Organization of Masters, Mates & Pilots.

Mr. Spector, if you would proceed.

STATEMENT OF A PANEL CONSISTING OF: EUGENE SPECTOR, RESEARCH DIRECTOR, NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, ACCOMPANIED BY TALMAGE SIMPKINS, EXECUTIVE DIRECTOR, AFL-CIO MARITIME COMMITTEE; AND JOHN COX, SPECIAL ASSISTANT TO THE PRESIDENT, INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, ACCOMPANIED BY HENRY F. TRUTNEFF, DIRECTOR OF HUMAN RESOURCES, INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AND JULIAN SINGMAN

Mr. SPECTOR. Mr. Chairman and members of the committee, I am Eugene Spector, research director of the National Maritime Union of America, AFL-CIO. I am appearing on behalf of the AFL-CIO Maritime Committee. Accompanying me is Talmage Simpkins, executive director of the AFL-CIO Maritime Committee.

We appreciate the opportunity to testify before this subcommittee and wholeheartedly support H.R. 4416, a bill to clarify that the steamship *United States* may operate in the domestic and/or foreign commerce of the United States and between foreign ports, and also the proposed legislation for the SS *Santa Rosa*.

Historically, the National Maritime Union has manned the U.S. passenger ship fleet. We consistently opposed the foreign sale as authorized by Public Law 92-296 and subsequent legislation which allowed the foreign sale of the SS *Independence*, despite the provisions of Public Law 92-296.

In the interim, we have expended considerable time, effort and money in the study of the passenger ship industry in an effort to reactivate the SS *United States* in the domestic trade; namely, servicing the Hawaiian Islands. Apparently, these efforts have borne fruit, in light of the recent spate of interest in just such a proposal.

The *United States* project has been given new life through the efforts of United States Cruises, Inc. We have also been advised of real progress with respect to the reactivation of the SS *Monterey* and the SS *Mariposa* in the domestic Pacific cruise service.

These vessels have never run afoul of the section 27 prohibition of the Jones Act. However, the recent U.S. court of appeals decision in *Alaska Bulk Carriers, Inc. v. Kreps* raises some question as to whether these ships, having been built with construction differential subsidy, as was the SS *United States* and SS *Santa Rosa*, can operate on a permanent basis in the domestic trade of the United States.

We believe the Congress should approve H.R. 4416 and the legislation for the *Santa Rosa* as proposed. However, prompt consideration should also be given for the overall approval for any passenger ship built with a construction-differential subsidy which has been deemed to have reached the end of its economic life, in light of the implications of the *Stuyvesant* case. Since there are no U.S. flag passenger ships currently operating in the domestic trade, such action cannot have any detrimental effect.

The committee and the NMU are strong proponents of the Jones Act and we are opposed to any action which would further weaken it. We believe that H.R. 4814 represents special-class legislation in direct conflict with the provisions of section 27 which provide:

That no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade * * *

Frankly, we are caught in a dilemma. We urgently seek the development of U.S. flag passenger ship capacity, while at the same time we are committed to uphold all of the provisions of the Jones Act.

H.R. 4416 and the *Santa Rosa* legislation, as applied in a limited manner to passenger ships, presents no problem to us, while H.R. 4814 is in direct contravention of an expressed prohibition of the 1920 act. The long-term consequences appear to us out of proportion to the short-term gain. We are quite fearful of where these exceptions may lead and to the ultimate loss of the needed protection of the Jones Act, which we believe to be the cornerstone of the U.S. merchant marine policy.

[Whereupon, Mr. Akaka assumed the chair.]

Mr. SPECTOR. The purchasers of those ships never registered abroad had the right to believe that they could be used in the domestic trade prior to the *Stuyvesant* decision. It would be inequitable to deprive United States Cruises, Incorporated and Vintero Corp. of this option which it considered to be open at the time of purchase, and similar treatment should be afforded to all others on the same footing.

In the case of the SS *Independence*, the purchaser knew that section 27 foreclosed any domestic operation upon transfer to foreign registry. The proposed legislation could open the door to the movement in and out of U.S.-flag operations as market conditions warrant.

It raises serious questions as to the other U.S.-built ships in the same situation; namely, the SS *Brazil*, *Argentina*, *Constitution*, and the SS *Santa Paula*.

We have no problem with redocumentation of any of these vessels under U.S. flag for operation in the foreign commerce of the United States. We would welcome such a development. We do not believe the Jones Act and its basic principles should be sacrificed or weakened for expediency.

These ships are old, in excess of 25 years; future operating life is limited. Replacement costs would undoubtedly result in attempts to bring foreign-built vessels into the trade in the future to reduce capital costs and debt service.

Our long battle for a balanced U.S. flag merchant fleet to include adequate passenger ship capacity appears to be bearing fruit. We are particularly heartened by a MarAd request for proposals for an analysis of the North American pleasure cruise industry for the purpose of enabling the Maritime Administration to evaluate the potential for future U.S. flag entry into the passenger cruise industry and to evaluate the potential for new domestic cruise ship construction.

We are quite thankful to the committee for the time allotted to us and for the fine cooperation that the committee has given to the industry. Thank you very much, sir.

Mr. AKAKA. Thank you very much, Mr. Spector. May we hear at this time from Captain Cox?

Captain Cox. I am Capt. John Cox; I am special assistant to the president of the International Organization of Masters, Mates & Pilots, Captain Robert Lowen. The International Organization of Masters, Mates and Pilots is an autonomous union affiliated with the International Longshoremen's Association, AFL-CIO. With me is Dr. Henry F. Trutneff, director of human resources, also with the International Organization of Masters, Mates & Pilots.

As a master mariner and with many years' experience on passenger vessels alone—a former captain of highly successful cruise liners and of other ships, including U.S. Government vessels—and as a maritime consultant, my frame of reference is broad and I feel duly qualified to speak on this important issue of passenger ships.

We of the International Organization of Masters, Mates & Pilots are grateful for this privilege to express our viewpoint before this subcommittee in strong support of H.R. 4416, the bill to open the way for the steamship *United States* to operate in the domestic and/or foreign commerce of the United States, and/or between foreign ports.

We take this position not only with the steamship *United States* in mind, but with the vessels SS *Santa Rosa*, SS *Mariposa* and SS *Monterey*—proud American liners now lying in mothballs and awaiting resurrection. Let us not also forget all the other U.S. flag passenger vessels who have not left U.S. registry, including the

four *Santa "M"* ships presently serving South America, and those vessels of the Alaska Marine Highways System.

Like our sister union, the National Maritime Union, the International Organization of Masters, Mates & Pilots also takes deep pride in the tradition for having manned the U.S. passenger ship fleet. It was the International Organization of Masters, Mates & Pilots that provided the leadership—the commodore and deck officers who conned the SS *United States* to the coveted *Blue Riband*.

It is the unanimous opinion of this organization that the demise of the U.S.-flag passenger ships casts a dark shadow on our national escutcheon, for at this very day, very hour, not one passenger vessel of liner status may be found flying the flag we love so well of the United States. Is this to be the final equation of the American dream and the American heritage?

It was in 1624 what John Donne stated:

No man is an island entire to itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friend's or of thine own were. Any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bell tolls; it tolls for thee.

Then, in 1972, Helen Delich Bentley paraphrased this plea to modern maritime philosophy when she stated:

All of us in this nation have a responsibility to do our part in keeping the U.S. merchant marine fleet viable. We are all responsible for seeing to it that the merchant marine of our country does not falter, that America's expansion of world trade does not diminish, for if the fleet falls, so our country is in danger of falling.

Here now in 1979, action is finally in progress. Consonant to this philosophy, distinguished leadership in Congress, both in the House and Senate, seek to rejuvenate the American merchant marine. In our humble opinion, H.R. 4416 is a glorious first step and we pray for its passage.

On the other hand, we of the International Organization of Masters, Mates & Pilots must again support the position of the National Maritime Union with regard to the SS *Independence* and H.R. 4814. The International Organization of Masters, Mates & Pilots holds no quarrel with the reregistration of this vessel to U.S.-flag. In fact, we say "welcome"; in fact, we applaud Mr. Tung, his service and his dedication, and we are fully cognizant of his deep, burning commitment to a strong, viable U.S.-flag passenger fleet.

Yet, to permit this vessel privileged entry to the cabotage trade would be diametrically opposed to the philosophy of the Jones Act, which we cherish so dearly. It would possibly open the floodgates for entire fleets, diminishing the investment of U.S. owners.

While the SS *United States*, SS *Santa Rosa*, SS *Mariposa* and SS *Monterey* remain virgin baptized U.S. vessels with but the need to be given back their proud names, the SS *Independence* was sold foreign, has earned foreign, and would be reregistered United States by foreign interests.

The differences and ramifications which could impact upon further Jones Act decisions are obvious. We do, however, support the entry of the SS *Independence* to engage in foreign passenger commerce under the U.S. flag.

In closing, the International Organization of Masters, Mates & Pilots appreciates the positive attitude, assistance and interest

shown in the revitalization of the U.S.-flag passenger fleet by the chairman and this committee. Thank you.

Mr. AKAKA. Thank you very much, Captain Cox. I would like to ask both of you this question. Do studies indicate that the Hawaiian cruise trades can support the five vessels in question?

Mr. SPECTOR. Mr. Chairman, the only study I have seen was one done, I believe, 3 or 4 years ago for a Mr. Wallace when he was investigating the possibility of the SS *United States* operating in Hawaiian trade.

As I recall, that particular market study showed that the SS *United States*' penetration into the market would be minimal. If my memory serves me, it would be in the neighborhood of perhaps three percent of the market. If I am correct in that assumption and relating it to the four or five ships involved, it still is not a very significant penetration of the market. It is possible that the market could sustain it.

I understood from Mr. Caras that the Maritime Administration is making a more up-to-date analysis, marketwise. It would be very interesting to see what their response is to this question, based on a more up-to-date study. Thank you, sir.

Mr. AKAKA. Captain Cox.

Captain Cox. I have no comments; I have seen no market studies.

Mr. AKAKA. Do you know what the specific plans are for the *Mariposa* and the *Monterey* at the present time?

Captain Cox. Yes. It was announced yesterday that the Royal Hawaiian Cruise Lines would be operating the *Mariposa* and *Monterey*, and that is all I know.

Mr. AKAKA. And that will be between the mainland and Hawaii?

Captain Cox. I believe so, yes, with possible cruising among the islands.

Mr. AKAKA. Mr. Spector, how do you respond to the allegations that the *United States* is too large for the cruise trades and is not properly configured for the cruise trades and will be too costly to operate because of the large amount of fuel needed to run her, in that fuel is \$19 per barrel?

Mr. SPECTOR. Well, we had studies done for the union. We found the ship has certain advantages; one is economies of scale. In the cruise area, it can carry 900 to 1,250 passengers. It would operate on half of its engine power, at about 25 knots; it would not use full power.

It was my understanding that the proposal was to use the engine rooms for some number of years, and then switch engines so that both would be operative over time. At 25 knots, even at \$19 a barrel, all other competition has to pay the same price.

With the economies that we looked at in terms of increased productivity of the crew, new crew manning skills in relation to what the ship was manned at prior, and new management techniques applied with labor-saving devices aboard the vessel, lead to substantial savings.

It is our opinion, for example, that the ship could be manned probably in the neighborhood of one-half the prior crew, and that alone would tend to take care of the subsidy that had been paid when the ship was operated with subsidy.

So it appeared to us that the bottom line was a black figure and that it could be operated on a financially sound basis.

Mr. AKAKA. Mr. Spector, I agree with you regarding the sanctity of the Jones Act, but do you really think that the limited exception for the *Independence* would really do violence to the Jones Act?

Mr. SPECTOR. We already have a number of cracks in the act which bother us to no end. We are trying to patch up those cracks in the act, and here we are doing more violence to the act, on the other hand. I think we are doing that on the basis of expediency; in the long term, we could well live to regret it.

I hear of a proposed amendment; I know the ship has been operating for 4 or 5 years under foreign flag. Its maintenance has been in foreign shipyards done by foreign labor. It would then come into the United States; it would be protected against foreign competition, but then it would be competing directly, if we are lucky enough to see the revitalization that we are talking about, with the *Mariposa*, the *Monterey*, the *United States* and the *Santa Rosa*. It is in direct competition, then, with these vessels.

The *United States*, in particular, has about \$30 million worth of repair work that needs to be done. Can some of that, in fact, be done outside the United States? Is it fair, then, to require all of that to be done within the United States, when another ship can come in with special legislation and with special legislation, saying that bow thrusters, the sewage system—let us exempt it?

It seems to us that that is going much too far. We have to live in the long run, and we still believe the Jones Act to be the cornerstone of our national policy. Without that, we are not going to have a shipbuilding industry, and we are not going to have a base of labor and jobs. We are very hesitant about doing anything that will do further damage to the Jones Act than has already been done to it.

We cannot come crying to the Congress, saying "we need assistance with respect to the Jones Act," and on the other hand, coming in and asking for special legislation because, in this case, it can help us to do the opposite of what the Jones Act says.

Mr. AKAKA. Captain Cox, do you have any response to that?

Captain Cox. No. I agree with Mr. Spector. The fuel costs are the same everywhere in the industry; there is a sliding scale, of course, that is the provision for wage costs.

With regard to the SS *United States*, I do not believe any specific trade route has been decided upon, because there has been some talk that she would do some cruising. But, as Mr. Spector said, there is a very reduced manning scale down from, at one time, 1,100, to now 550. I understand that one engine room is to be made redundant, so they will be cruising on one engine room only, with two outboard shafts full and the propeller removed, at a speed of about 25 knots.

Mr. AKAKA. Well, I thank you, gentlemen, for your testimony. Are there any further comments from you or your associates?

Mr. SINGMAN. Mr. Chairman, may I make one very brief comment about the observation by Mr. Caras this afternoon on behalf of the Maritime Administration?

Mr. AKAKA. Surely.

Mr. SINGMAN. Mr. Spector made a reference to this a little earlier, about a study that the Maritime Administration is doing which they expect to be ready by the end of the year concerning the cruise market.

It is our position that Congress should not await that market study before taking action on these bills. It is our feeling that the legislation should be enacted that would permit these ships to come in. If the market study should prove unfavorable, we would prefer to have the companies battle it out among themselves with the banks as to which, if any of them, should actually go into service.

But we do feel that the legislation should not be a bar and that Congress should act now, notwithstanding the pendency of that study. Thank you, Mr. Chairman.

Mr. AKAKA. Thank you, Mr. Singman; we really appreciate that statement from you.

Well, I thank you very much for your testimony this afternoon, gentlemen.

I would like to call as a witness David A. Leff, executive director of the Joint Maritime Congress. Will you proceed, Mr. Leff?

STATEMENT OF DAVID A. LEFF, EXECUTIVE DIRECTOR, JOINT MARITIME CONGRESS

Mr. LEFF. Before I begin, I would like to point out a transposition in the bill numbers in my statement. H.R. 4416, of course, refers to the *United States*, and H.R. 4814 to the *Independence*, and the way they are presented in the statement, they are reversed; I apologize. With that understanding, I would like to go on.

The Joint Maritime Congress, a group of nearly 100 U.S.-flag vessel operators, working with labor to redevelop an American-flag merchant marine, appreciates this opportunity to present our views on H.R. 4416, H.R. 4814, and H.R. 4886, clarifying that the steamships *United States*, *Independence*, and *Santa Rosa* may operate in domestic and/or foreign commerce of the United States and between foreign ports and in the coastwise trade.

With respect to the SS *Independence*, this vessel had been built, manned, and documented in the United States. It is a viable and attractive ship for passenger cruising from the United States to the Hawaiian Islands, and therefore should be permitted to be redocumented as a U.S. vessel.

The following statement is made without prejudice or precedent to any past, current or future positions on the Jones Act, but it is our position on the *Independence* that we support its redocumentation. We also regard the "floodgate" argument made just now by one of the witnesses that if the *Independence* was allowed to enter the coastwise trade, such entry would create a floodgate and many other vessels would seek entry—as not being realistic.

Each vessel which enters this trade represents a sizable investment on the part of the entrepreneurs who are sponsoring it, and these entrepreneurs all hope to make a substantial profit on their investment. The investment is twofold: The initial one of purchasing the ship, and the secondary one of fitting it for attractive cruise travel. Therefore, these decisions are not made willy-nilly, so we do not believe the floodgate argument will have that much of an impact. We make the point to this committee in further support of

the *Independence* being permitted to be redocumented for the coast-wise trade because the plus side of permitting redocumentation clearly outweighs the negative.

With respect to all three vessels, an American passenger liner is a prestigious national symbol that inspires respect for the flag she flies. The Joint Maritime Congress applauds the initial efforts of this subcommittee that we hope has as its goal a sufficient quantity of passenger ships operating under U.S. flag to satisfy the travel desires of American citizens.

The U.S.-cruise market is a lucrative one, as witnessed by the fact that so many foreign-flag passenger vessels view the United States as their primary market. It is axiomatic, therefore, that U.S. vessels should at least participate and hopefully predominate in this market.

U.S. ships already have the highest safety, fire, and health standards. Indeed, Coast Guard requirements for safety supersede international standards by a large degree. Moreover, the national defense aspect of available passenger ships to carry troops and military personnel and/or dependents is no small factor when considering the revitalization of the passenger fleet. All of these reasons compel passage of H.R. 4886, H.R. 4814, and H.R. 4416.

The loss of our maritime prestige among the nations of the world by the demise of our passenger fleet is regrettable, to say the least. These bills are an important first step to regain that prestige. In addition, revitalization of a passenger fleet will restore many lost jobs, both shipboard and shoreside, and improve our balance-of-payments account and generate income taxes for the Government.

Millions of dollars spent each year by tourists traveling to Hawaii benefit the economy of both that State and the Nation as a whole. Tourist dollars spent there instead of in foreign countries do not aggravate our continuing balance-of-payments deficit. Therefore, this country should do everything possible to encourage U.S. citizens to visit Hawaii.

In 1978, more than 3.5 million tourists visited Hawaii. Of these, over 2 million departed from the U.S. mainland. For the month of March of that year, about 1,000 traveled by ship. For the year 1968, 816,256 tourists traveled from the U.S. mainland to Hawaii, and of this number, almost 50,000 traveled by ship. Let me remind you that there was only limited passenger vessel service in 1968. Thus, there clearly exists a market for United States-to-Hawaii cruise trade and, I might add, interisland cruise trade.

However, among the SS *United States*, the SS *Independence*, and the SS *Santa Rosa*, we believe the latter two vessels have the best chance of successful operation in the trade. While all of these ships are large, the *Independence* is smaller than the *United States* and thus closer to the SS *Mariposa* and SS *Monterey* in ease of navigating the islands.

The *Santa Rose* is of ideal size for cruising and, together with the *Independence*, possesses many of those amenities necessary for passenger cruise vessel operation. More important, especially in view of rapidly escalating fuel costs, the *United States*, as testimony in former hearings before this committee reveals, could easily utilize 600 tons of fuel a day in cruising the islands.

Furthermore, the *Santa Rosa* is equipped for cruising, and the *Independence* has already been converted to a one-class ship, a necessity for cruising. The *United States* will require extensive and costly refitting for cruising, including installation of outdoor swimming pools and other amenities that cruise passengers demand. She will also be required to be fitted with motor launches to carry passengers from the ship to the island the tourist wishes to visit.

The *Independence* and the *Santa Rosa* have these features already and, because of their size, might be able to reach more ports, I might add, without the use of launches. Maritime experts have concluded that the *United States*, because of its size, is not as practical a candidate for cruising as both the *Independence* and the *Santa Rosa*. That point was made in testimony previously given to this committee in earlier hearings.

Finally, the Joint Maritime Congress agrees, for purposes of the *Santa Rosa* application only, with the position of the principals who are seeking to purchase the vessel that a concession be made that the statutory life of the *Santa Rosa* has ended for purposes of construction-differential subsidy or payback purposes.

In conclusion, the Joint Maritime Congress supports all these bills and applauds the subcommittee's action in trying to reestablish the U.S.-flag passenger fleet. We firmly believe that management, labor, and Government, working together, can make U.S.-flag passenger ship travel a successful reality.

We look forward to the reversal of the day when the citizens of this country who desire to travel by sea will not be limited to sailing on foreign-flag ships. We look forward to the prospect of sleek U.S.-flag vessels once again in the active service of this country, adding to its prestige, increasing domestic employment, contributing additional income to its economy, and creating a favorable tilt for our balance-of-payments situation. We pledge our support to the full implementation of these objectives.

Mr. AKAKA. Thank you very much, Mr. Leff, for your support. Does the fact that the *Independence* was sold foreign give you any problem?

Mr. LEFF. No, sir, as I hope I made clear. We believe that because it was built, manned, and originally documented in this country and because of its attractiveness for the purpose for which the owners seek to use it, it should be allowed to be redocumented.

I hope I answered the question also in my testimony regarding the floodgate argument that was raised by a previous witness.

Mr. AKAKA. Just for my personal interest, can you give me the passenger capacity of each of these vessels?

Mr. LEFF. Yes. As I understand it, the *United States*, for cruising purposes, is approximately 1,000 passengers; the *Independence*, about 600; and the *Santa Rosa*, about 300.

Mr. AKAKA. I thank you very much for your support of these bills and your candid statements. Thank you very much.

I would like to call to the witness table Mr. Conrad H. C. Everhard, chairman of the board, American Hawaiian Cruising Line, Inc. Mr. Everhard.

STATEMENT OF CONRAD H. C. EVERHARD, CHAIRMAN OF THE
BOARD, AMERICAN HAWAIIAN CRUISING LINE, INC.

Mr. EVERHARD. Mr. Chairman, I greatly appreciate the opportunity to testify this afternoon as the representative of American Hawaiian Cruising Line in support of H.R. 4814, a bill which will materially boost the U.S.-flag passenger fleet by enabling the former SS *Independence* to enter the cruise trade among the Hawaiian Islands.

Mr. Chairman, we are all too familiar with the disastrous decline in the U.S.-passenger trade during the past several decades and the consequent blow to our Nation's maritime prestige. But H.R. 4814 provides a ready vehicle for the Congress to move our country toward a rejuvenated American-flag passenger industry.

Last year, my company contracted to purchase the liner *Independence* for the purpose of operating it on cruises among the Hawaiian Islands under the U.S. flag. The vessel is now undergoing refitting and redecorating to insure that it will be in truly first-class condition when it inaugurates its cruise service. We are also making a few alterations required to meet the Coast Guard's documentation and present IMCO standards. We have secured the necessary financing to acquire the ship.

Within the next 2 weeks, we anticipate the Coast Guard will complete its current predocumentation inspection; the vessel will be returned to U.S. registry; and legal title will have been transferred to the American Hawaiian Cruising Line. We plan to launch our cruise enterprise no later than January 21, 1980, assuming timely passage of H.R. 4814.

I might note here that we will operate the vessel as the *Oceanic Independence*, which has been its name since it was placed under foreign flag in 1974. We have agreed to do this to avoid legal complications and any possible delay to our enterprise which might flow from the objections to our use of the name *Independence* by the owners of a smaller excursion vessel based in New England also called the *Independence*. Therefore, we respectfully ask that H.R. 4814 be amended to refer to the vessel as the *Oceanic Independence*.

Mr. Chairman, it should be abundantly clear that the reentry of the former *Independence* into U.S.-flag passenger service will advance our national interests and will enhance our merchant marine and defense posture in many ways.

For example, badly needed jobs will be provided for American workers in the seafaring trades, and in the shipyards and other maritime-related industries. Goods and services will be purchased from numerous other sectors of our economy.

Our present dependence on foreign-flag ships in the profitable cruise ship trade will be diminished. The outstanding new opportunity to travel by sea among the Hawaiian Islands will keep tourist dollars in the United States. The flow of foreign tourists will be increased, particularly from the Orient and Europe, and our balance-of-payments position will be improved.

The emergency capability of the National Reserve Defense Fleet to move large numbers of troops will be greatly strengthened because the fleet will gain access to a large passenger liner which

will be maintained in top operating condition, while located strategically in U.S. waters in the Pacific.

The *Independence* will be reactivated, returned to the American flag and operated in the cruise trade entirely with private capital. Our market surveys show that a strong market exists for our Hawaiian cruise venture. We have found also that there are many potential investors who agree with us that with a strong dose of goal-oriented entrepreneurial talent, plus labor leadership with vision, the American-flag passenger service can be made profitable. Under no circumstances would we seek, or need, any subsidy from public funds.

Mr. Chairman, it is absolutely essential that H.R. 4814 be enacted into law if the *Oceanic Independence* is to rejoin our U.S.-flag fleet as an economically viable member. The legal impediment we must clear stems from the Coast Guard's ruling that the vessel's documentation would have to bear a restriction against engaging in the coastwise trade because of the first proviso in section 27 of the Merchant Marine Act of 1920, 46 U.S.C. 883.

The *Independence* was built in Quincy, Mass., in 1951; flew the flag of American Export Lines for many years, and was transferred to the Panamanian flag in 1974 with congressional authorization. In view of these facts, the Coast Guard has held that under the first proviso of section 27, the vessel could no longer engage in passenger cruise among the Hawaiian Islands after it had been returned to U.S. registry.

Although the Maritime Administration and the Department of Transportation, as a policy matter, both favor the return of the ship to U.S. flag, the legal authority to decide whether the vessel is entitled to coastwise privileges resides with the Coast Guard, and that agency has determined that legislation is necessary if coastwise trading privileges are to be restored.

There is one other minor amendment we would request to H.R. 4814 as presently drafted. The work to the vessel which is now underway includes the installation of a bow thruster and a sewage treatment tank—sewage holding tanks. As you know, Mr. Chairman, thrusters consist of small propellers positioned at the base of the bow of the vessel. This equipment will facilitate the maneuvering and docking of the vessel in the Hawaiian ports and waters where it will be cruising. The holding tanks are, of course, required to meet the IMCO standards.

In its testimony on S. 1365, the counterpart of H.R. 4814, the Coast Guard emphasized that the *Independence* would forfeit its coastwise trading privileges if, after the legislation passed, the ship underwent work abroad which constituted a rebuilding within the scope of the second proviso of section 27. The Coast Guard has informed my company that it would consider the installation of the bow thruster and the holding tanks to be rebuilding under section 27.

Because these two items of work will not be finished until much later this year, it would appear that H.R. 4814 should be amended to insure that the coastwise privileges are not lost simply because the rebuilding is completed in the interval between enactment of the bill and the start of the inter-Hawaiian cruise service early in

1980. With your permission, we will submit suggested language for the bill which would accomplish the necessary objective.

In closing, we would like to express our appreciation to Chairman Murphy for the strong leadership he has shown in sponsoring H.R. 4814 and in convening this hearing so expeditiously. With his continuing assistance, we look forward to the early passage of this legislation and to the benefits for the U.S.-flag maritime industry which will follow.

What we are really talking about here, Mr. Chairman, is the revival of the American-flag passenger industry, and I think that what we are going to do here is in the spirit of the omnibus bill, which I think is probably one of the most courageous documents that ever came out of the Merchant Marine and Fisheries Committee. I would like to commend the chairman and the committee for creating the foundation of an American maritime policy. It is about time that somebody rocked the boat in our industry.

That concludes my prepared statement, Mr. Chairman. I will be pleased to respond to any questions you or the other members of the subcommittee might have. Thank you very much.

Mr. AKAKA. Thank you very much, Mr. Everhard. You mentioned that you contracted to purchase the *Independence*. Have you finalized the contract?

Mr. EVERHARD. Technically, the bill of sale is finalized, but the two Coast Guard inspectors, Commodore Amos and Lieutenant Miller, flew yesterday to Kaohsiung from Hawaii with one of our captains. They arrived today, and actually, today is tomorrow in Kaohsiung, and tomorrow they will start the preliminary inspections.

Upon completion of that inspection, because the drydock is for the cost of the seller and we want to make sure that the ship is up to class, the transfer of title, I would say, would be done within the next 2 weeks.

Mr. AKAKA. And that is a contract to purchase the ship from the Atlantic Far East Lines?

Mr. EVERHARD. Yes, we want it up to class.

Mr. AKAKA. You did give us some details on installing the bow thruster on the *Independence* and to retrofit the vessel for sewage retention and disposal. Where and when will this work be done, and approximately how much will it cost you?

Mr. EVERHARD. The work will be done in Kaohsiung in the shipyard. The parts have been ordered, and it takes about 8 weeks to get the parts. Then it has to be put in, and I understand it takes another 2 weeks before it is ready. So if I would have to give you a time element, I would say, from today, in 2 to 12 weeks, the bow thruster and the sewage treatment tank should be installed.

But the importance of speedy enactment upon the bill is the factor; we would like to start promoting this service as soon as possible on a nationwide and worldwide basis.

Mr. AKAKA. You will be getting parts to do this work. Where are you obtaining the parts from?

Mr. EVERHARD. The parts are coming from Japan.

Mr. AKAKA. Do you intend to carry cargo as well as passengers?

Mr. EVERHARD. No, Mr. Chairman, we do not have any intention of carrying cargo whatsoever; strictly 100 percent passengers.

Mr. AKAKA. Mr. Everhard, let me ask counsel whether he has any questions for you.

Mr. CORRADO. Yes; one, Mr. Chairman. Thank you.

Conrad, just to make the record absolutely clear with respect to your amendment, as I understand it your amendment provides that any so-called rebuilding—the bow thruster and the sewage retention tanks for sewage—anything that is done after enactment of the bill is still sanitized, is that not correct?

Mr. EVERHARD. That is correct. In other words, the rebuilding was a word chosen by the Coast Guard. Like I said before, I am not an engineer. Even in the broadest interpretation, putting in a sewage treatment tank and a bow thruster, even though under today's prices it costs substantial money—if you compare it to the cost of the vessel it is nothing—is not rebuilding, in my mind.

But if it has to be limited to the bow thruster and the sewage treatment tank, yes.

Mr. CORRADO. The word “rebuilding?” occurs in section 27 of the 1920 act, but the question is, When you do work of that magnitude, does that fall within the word “rebuilding.” Apparently, the Coast Guard has decided that it does, so you are stuck with it.

Mr. EVERHARD. That is right.

Mr. CORRADO. Now you are asking the committee to accept an amendment that would give you sanitization after enactment of the bill, if, in fact, those facts should occur that way?

Mr. EVERHARD. Right. The reason is that, first of all, if we would want to do it in Honolulu, we could not, because they do not have a drydock that could accommodate this vessel. No. 2, if we would have to bring the ship to the mainland, you run into a critical time element again; you have to start ordering all over again. Besides, you use all this oil and energy, which is another cost factor, and then bring it back again to Honolulu.

You know, there is a lot of talk about all this. Like I say, we are goal-oriented and the main factor is the labor leadership with vision, which you need. We can resolve turf protection and we can get this thing on stream. This is, as far as I am concerned, a very minor technicality.

Mr. EVERHARD. As soon as she is in American waters, of course, from then on, and little change or anything will be done in American yards. It is just a commonsense approach to that particular problem, that is, because of this technicality we would like the amendment.

The amendment says clearly before the vessel engages in the coastwide trade following enactment of this Bill, sentences 14 and 15. So that limits it in scope right there.

Mr. CORRADO. Thank you, Mr. Chairman.

Mr. AKAKA. Thank you, Mr. Everhard.

May I call up Mr. John Colbrunn, vice president for planning for United States Cruises, who is accompanied by Mr. William Myhre.

STATEMENT OF JOHN COLBRUNN, VICE PRESIDENT—PLANNING, UNITED STATES CRUISES, INC., ACCOMPANIED BY WILLIAM MYHRE

Mr. COLBRUNN. Mr. Chairman, much of my prepared statement has been articulated by one of the people appearing before me; so with your permission, I would like to summarize.

Mr. AKAKA. Without objection, we will have your entire testimony included in the record.

[The following was received for the record:]

PREPARED STATEMENT OF JOHN COLBRUNN ON BEHALF OF UNITED STATES CRUISES, INC.

Mr. Chairman and members of the Subcommittee, my name is John Colbrunn. I am Vice President for Planning of United States Cruises, Inc. (USCI). With me today is Mr. William Myhre, of Preston, Thorgrimson, Ellis, Holman & Fletcher, Washington counsel for the company. We appreciate this opportunity to appear before you in support of H.R. 4416 to discuss our efforts to return the American flag to the domestic cruise trade. We also want to extend thanks to you, Congressman Akaka, for introducing this legislation.

As you know, United States Cruises, Inc. has entered into a contract of sale with the Maritime Administration (Marad) for the purchase of the SS *United States* and accordingly has a vital interest in this legislation.

To you, as members of the Merchant Marine & Fisheries Committee and to many Americans the SS *United States* needs no introduction. Shortly after her launching she was described by the eminent maritime historian Frank Braynard as "probably the most remarkable single moving unit ever designed by man." While the intervening years and subsequent developments in air and space travel may outdate this assessment to some observers there are few who would disagree that the SS *United States* is one of America's greatest maritime achievements.

Built in 1952 the ship was exceptionally advanced for its time and is still a marvel of naval architecture and engineering. Designed by the noted naval architect Francis Gibbs the vessel has long been regarded as the pre-eminent American superliner. She was built with Construction Differential Subsidy and designed with U.S. Navy participation to be utilized as a troop transport in time of national emergency and incorporates many design features long-held secret for defense reasons. Among the innovations are the vessel's advanced hull design and the extensive use of aluminum which reduced her weight and correspondingly increased her speed. So successful was this design feature that the nearly 36 knots she logged on her maiden Trans-Atlantic voyage has never been equalled. This was not her fastest speed, however, last year with the government's declassification of performance data on the ship it was disclosed that in her then-secret sea trials in May 1952, the SS *United States* achieved a top speed of 38.32 knots.

After nearly a decade in lay-up, the acquisition of the vessel by United States Cruises, Inc. saves the flagship of the American fleet from oblivion or possible loss through foreign sale or scrapping. United States Cruises, Inc. is now actively involved in preparing for the task of reconstructing the ship for a new, useful and active life in providing warm water cruise service between the West Coast and the Hawaiian Islands, as well as in other trades.

1. RECONSTRUCTION PLANS

Our plans for reconstructing the vessel are extensive and will insure that America's greatest ocean liner will be America's greatest and most luxurious cruise ship. The passenger load will be reduced for operation as a one-class, first-class, cruise ship. Navigation and communication equipment will be completely updated; fin stabilizers will be added to enhance passenger comfort; new outdoor swimming pools will supplement the existing indoor pool; shore tenders will be added so that passengers will be able to disembark at harbors otherwise too small for the ship; thorough repairs and renovations inside and out will include new restaurants, clothing shops, beauty salon, barber shop, racquetball court, gym and other improvements. We have here today copies of certain brochures which describe in greater detail our plans for the ship and which we request be put into the record of this hearing.

2. CRUISE MARKET

Our proposal for refitting the SS *United States* for use as a cruise ship rather than mere point-to-point transportation is designed to take advantage of the ever-growing cruise market. Last year more than 1.2 million passengers sailed from North American ports, an increase of 10 percent from 1977. Just last month, the Wall Street Journal reported that so far this year traffic on West Coast cruise lines is up 12 to 15 percent from a year ago with some of the larger lines reporting 25 percent gains. In the East, lines to the Caribbean and to Europe say business is up as much as 20 percent with cruises for this summer completely booked and winter bookings ahead of last year's. It should be remembered that this entire demand is being met by foreign-flag ships alone. Earlier this year Newsweek Magazine reported, in a feature article on the growing interest in cruising, that the entire cruise trade has doubled in the last decade to a \$20 billion a year industry and that it is expected to grow another 35 percent by 1983. This latter figure assumes, of course, that new vessels will be constructed to meet that demand. This is where the SS *United States* has a significant competitive advantage. Built originally at a cost of nearly \$80 million, today it would cost some \$350 million to replace the ship. But with an acquisition price of \$5 million and renovation costs of approximately \$30 million she can be refitted for first class cruise service at a fraction of the cost of new construction. To put it in perspective, our capital cost will be approximately \$30,000 per berth as compared to \$100,000 to \$125,000 per berth presently being spent by foreigners on new construction. With this low capital cost, a rapidly growing market, and the ability to serve directly domestic ports, such as Los Angeles and Honolulu, from which foreign-flag vessels are precluded, United States Cruises, Inc. is confident that it can successfully compete with foreign operators in providing an American option to all ocean travelers.

3. THE NEED FOR LEGISLATION—"ALASKA BULK CARRIERS" V. "KREBS"

We think it is important that you be apprised of the plans of United States Cruises, Inc. and its progress in bringing the SS *United States* back into operation, however, our purpose in being here today is more than merely informational. A court decision handed down earlier this year could have a profound affect on our proposed operation in the domestic trade. The United States Court of Appeals decision in *Alaska Bulk Carriers, Inc. v. Krebs* raises some question about the ability of a vessel built with Construction Differential Subsidy, as was the SS *United States*, to operate permanently in the domestic trades, even after the expiration of the vessel's statutory life. Thus, United States Cruises, Inc. which entered into the contract of sale with the Maritime Administration for the purchase of the SS *United States* with the specifically stated intention of refitting the vessel for operation in the domestic Pacific cruise trade is now faced with a possible restriction which could substantially undermine the entire reactivation project. It is for this reason that we are here before you today, appearing in support of H.R. 4416 which would clarify the ability of the ship to operate between California and Hawaii as planned.

Although the decision in *Alaska Bulk Carriers* has been appealed, and the Supreme Court has recently agreed to hear the case, ultimate resolution is nonetheless some time away and even then would not necessarily resolve the problem facing the SS *United States*. Shortly after the court's decision, we reluctantly decided that the only prudent course in an undertaking of this magnitude would be to seek legislation clarifying the status of the vessel to operate in the proposed trade. Because of the uncertainty created by the court's decision, the Maritime Administration granted, under the terms of the contract, a written extension of the delivery date to allow time to seek enactment of this clarifying legislation.

Before proceeding to explain the exact nature of the uncertainty created by the court's decision I would like to emphasize what this legislation seeks to do is clarify dicta in the case, and not overturn the judicial determination.

As you know, vessels built with Construction Differential Subsidy (CDS) are restricted from operation in domestic trades except for intermediary domestic stops made on foreign voyages and temporary six month waivers granted at the discretion of the Secretary of Commerce (§ 506 Merchant Marine Act of 1936). In the *Alaska Bulk Carriers* case the owners of a new oil tanker entered into an agreement with the Secretary of Commerce to pay back the entire subsidy in order to lift the domestic trade restriction, thus allowing the vessel to enter the Alaskan oil trade. The District Court upheld the Secretary's discretion to make such a waiver, only to be reversed by the Court of Appeals in an unexpected decision which held that ships built with CDS are permanently barred from domestic trade and that the Secretary did not have the discretion to permanently waive the restriction even upon the

payback of subsidy. In so holding, the court cast doubt on the ability of a vessel whose statutory life has expired—like the SS *United States*—to operate permanently in the domestic trades.

4. THE LAW BEFORE ALASKA BULK CARRIERS

Prior to the decision in this case it was generally understood that once the statutory life of a vessel built with CDS had expired, the vessel would be eligible for permanent domestic service. Both United States Cruises, Inc. and Marad fully recognized that the intended use of the SS *United States* was to be in the domestic trade. From the first communications between USCI and Marad the proposed operation between California and Hawaii was clearly set forth. In fact, it was the heart of the bid submission and formed the basis of the pro forma analysis of economic feasibility and other information which was incorporated in the contract of sale as the officially proposed plan of operation (deviation from which, incidentally, is a sufficient basis for Marad to exercise its authority under the contract to repurchase the vessel). Thus, not only was it the intention of the parties that the vessel be used in the domestic trade but such operation is specifically mandated by the contract of sale.

The Act which authorized the Maritime Administration to sell the vessel, (Public Law 92-296, *as amended*), clearly does not preclude domestic use and requires only that the vessel be used "for operation under the American flag."

The House Report to the bill which amended Public Law 92-296 to allow the SS *United States* to be used as a floating hotel further illustrates the general understanding that restrictions imposed on subsidized vessels were lifted at the end of the vessel's statutory life. That report noted that the then-pending legislation was necessary because at that time the vessel's statutory life had not expired but that when it had the ship could be used for a hotel or "any other purpose." The bill was required at that time only because the prospective owners wanted to acquire the ship before expiration of her statutory life. Although that sale was never consummated the Report language makes clear that the understanding at the time was that the vessel's restrictions were lifted at the end of her statutory life. In fact, in a subsequent passage of the same report the Committee referred to the proposal of a company which sought to operate the vessel in the same trade as United States Cruises, Inc. With apparent approval, or at least without criticism, the Committee reported that under this proposal "the vessel would operate in the domestic trades and thereby be protected from foreign competition."

A careful reading of the relevant statutory provisions of the Merchant Marine Act of 1936 (§§ 215 and 506) supports the position that once a vessel, built with CDS, has outlived its statutory life any restriction against operation in the domestic trade also expires. Section 506 requires every owner of a vessel for which CDS has been paid to agree that the vessel will be operated exclusively in the U.S. foreign trade with the only exceptions being for certain intermediary stops on foreign voyages and the temporary (six months or less) transfer of vessels to domestic trade provided that a proportionate amount of the CDS is repaid. When read in conjunction with Public Law 88-225, (which appears in footnote 5 to § 215) these two provisions lead directly to the conclusion that Congress specifically contemplated that a subsidized vessel would be free to enter unrestricted domestic trade without any further repayment of subsidy after its economic life had expired. Public Law 88-225 amended the basis for computing the amount of subsidy to be repaid pursuant to § 506. Application of that formula yields a zero repayment once the subsidy has been fully depreciated at the end of the vessel's statutory life. This interpretation, which is set forth by Judge Bazelon in his dissenting opinion in *Alaska Bulk Carriers*, is also amply supported in the legislative history of these sections.

5. UNCERTAINTY CREATED BY ALASKA BULK CARRIERS

Notwithstanding this statutory interpretation and the fact that the court in *Alaska Bulk Carriers* did not directly address the issue, the opinion of the majority casts sufficient doubt on the view that expiration of the 25 year statutory life frees a subsidy-built vessel from the domestic trade restriction so as to jeopardize the financing arrangements for the reconstruction of the SS *United States* and its eventual operation. The language of the majority opinion characterizes the subsidy restriction as follows:

"The idea is one of the *permanence*; once the ship has been constructed by government assistance of up to 50 percent of its original construction cost, the ship is dedicated to the U.S. foreign trade. Payment of the subsidy stamps *indelibly* the character of the ship then and thereafter." (Emphasis added)

The court's majority narrowly read the statutory language of § 506 reasoning that "the specific enumeration of the permissible exceptions to the vessel's permanent dedication to U.S. foreign trade" was meant to be "exclusive, and that any other exception * * * is ruled out implicitly."

The "other exception" to which the court refers is the permanent waiver or revocation of the vessel use restriction through accelerated pay back of the subsidy. However the language of the opinion could also be read to rule out expiration of the statutory life as an exception.

It could be argued that the use of the term "permanent," which is repeated so frequently in the majority opinion, was understood to be limited by the 25 year statutory life prescribed in the statute since that period had not expired for the tanker under consideration by the court. Thus, the issue of lifting trade restrictions under such circumstances was simply not addressed. The issue is nevertheless clouded by the absence of any specific definition of the vessel's life in the court's decision; various terms are used, apparently interchangeably, such as "life," "entire life," "permanent life," and "remaining life." By characterizing the term "permanent life" as "a period in excess of 25 years" the court in one passage indicated that it had in mind something other than a 25 year statutory life.

The absence of a precise definition creates doubt as to the proposed operation in the domestic trades of a vessel which has outlived its statutory life. While it is true that any language of the court which is applied to such coverage vessels is dicta and that the facts of the *Alaska Bulk Carriers* case are distinguishable in a number of substantial respects from those surrounding the *SS United States*, United States Cruises is nevertheless led to the conclusion that it cannot reasonably proceed with its proposed operation of the ship in the domestic Pacific cruise trade without seeking the additional clarification contained in H.R. 4416 as it relates to the ability of the *SS United States* to operate permanently in that trade.

6. CONCLUSION

The problems created by failure to clarify the status of the *SS United States* under the holding in *Alaska Bulk Carriers* are obvious. If the vessel is precluded from operation in the domestic trade, not only is the basic purpose of the contract of sale with the Maritime Administration frustrated, but the substantial resources already expended in pursuit of the project will be put to waste.

On the other hand, the return of the *SS United States* to active service will be greatly facilitated by enactment of H.R. 4416 and will result in multiple benefits. It will provide Americans, who are now totally dependent on foreign flag ships for cruise and passenger ship service, a viable American alternative. Operation of this ship will create nearly 1,000 new ongoing jobs including jobs including crew, vacation/sick leave replacements and shore-related support positions. Moreover, reconstruction and repair work done in U.S. yards will create additional jobs. Reactivation of this ship will also mark the return of passenger ship service to Hawaii—which is now the only state in our country totally dependent on a single transportation mode. Operation of the *SS United States* between the mainland and Hawaii, and around the globe, will help to correct our balance of payments deficits by giving Americans an alternative to foreign flag cruise ships, by providing U.S. destinations rather than foreign ones, and by stimulating use by foreign tourists. Finally, the future defense utility of this vessel will be enhanced by being maintained in an active state in the event it is necessary in a national emergency.

United States Cruises, Inc. remains firm in its belief that the American flag will return to the cruise trade and that the *SS United States* will be the standard bearer. The Company's commitment to that goal is amply demonstrated by its purchase of the *SS United States* and the time, effort and expense it has devoted to making the vessel's operation a reality. Faced with the uncertainty created by the decision in *Alaska Bulk Carriers*, United States Cruises, Inc. has again reaffirmed that commitment by seeking the Committee's support for this legislation clarifying this ship's ability to operate in the proposed trade. We are confident that early enactment of this legislation will be a major step toward revitalizing America's passenger fleet.

Mr. COLBRUNN. I am vice president for planning of the United States Cruises, Inc. With me today is Mr. William Myhre of our Washington counsel for the company.

At this point it might be interesting to talk about efficiency and size because those points have come up several times.

The *SS United States* is powered by four steam turbines in two engine compartments, each delivering 66,000 horsepower to each of

the shafts. This is just accomplished recently by other ships in the world. That is how advance it was back in 1952.

It is our plan to use one engine room at a time, thus reducing the consumption of fuel.

Our cruising speed could be as high as 25 knots. But it is not going to cruise—it will be about 22, 23 knots.

In addition, Mr. Chairman, Mr. Hadley, our President, is primarily an architect and engineer, not a developer. He is currently engaged in the research and development on changing the front to turbine engine to be powered by powdered coal. If we can succeed in this, we may not only be the world's most luxurious and modern but also the most efficient; and this is what we are shooting for.

We appreciate this opportunity to appear before you in support of H.R. 4416 and to discuss our efforts to return the American flag to the domestic cruise trade. We also want to extend special thanks to you, Congress Akaka, for introducing this legislation.

As you know, United States Cruises, Inc., has entered into a contract of sale with the Maritime Administration, Marad, for the purchase of the SS *United States* and, accordingly, has a vital interest in this legislation.

To you, as members of the Merchant Marine and Fisheries Committee and to many Americans, the SS *United States* needs no introduction. Shortly after her launching she was described by the eminent maritime historian, Frank Braynard, who we are glad is with us today, as "probably the most remarkable single moving unit ever designed by man."

While the intervening years and subsequent developments in air and space travel may outdate this assessment to some observers, there are few who would disagree that the SS *United States* is one of America's greatest maritime achievements.

Built in 1952, the ship was exceptionally advanced for its time and is still a marvel of naval architecture and engineering.

Designed by the noted naval architect, William Francis Gibbs, the vessel has long been regarded as the preeminent American superliner. She was built with construction differential subsidy and designed with U.S. Navy participation to be utilized as a troop transport in time of national emergency and incorporates many design features long held secret for defense reasons.

Among the innovations are the vessel's advanced hull design and the extensive use of aluminum, which reduced her weight and correspondingly increased her speed.

So successful was this design feature that the nearly 36 knots per hour she logged on her maiden trans-Atlantic voyage has never been equaled.

This was not her fastest speed, however, last year with the Government's declassification of performance data on the ship, it was disclosed that in her then-secret sea trials in May, 1952, the SS *United States* achieved a top speed of 38.22 knots.

After nearly a decade in layup, the acquisition of the vessel by United States Cruises, Inc., saves the flagship of the American fleet from oblivion or possible loss through foreign sale or scrapping. United States Cruises, Inc., is now actively involved in preparing for the task of reconstructing the ship for a new, useful and active

life in providing warm water cruise service between the west coast and the Hawaiian Islands, as well as in other trades.

1. Reconstruction Plans.

Our plans for reconstructing the vessel are extensive and will insure that America's greatest ocean liner will be America's greatest and most luxurious cruise ship. The passenger load will be reduced for operation as a 1-class, first-class cruise ship. We are anticipating 625 state rooms, so approximately 1,200 passengers.

Navigation and communication equipment will be completely updated; fin stabilizers will be added to enhance passenger comfort; new outdoor swimming pools will supplement the existing indoor pool; shore tenders will be added so that passengers will be able to disembark at harbors otherwise too small for the ship; thorough repairs and renovations inside and out will include new restaurants, clothing shops, beauty salon, barber shop, racquet-ball court, gym and a full size tennis court.

Our proposal for refitting the SS *United States* for use as a cruise ship rather than mere point-to-point transportation is designed to take advantage of the ever-growing cruise market.

Last year, more than 1.2 million passengers sailed from North American ports, an increase of 10 percent from 1977.

Several months ago, the Wall Street Journal reported that so far as this year traffic on West Coast cruise lines is up 12 to 15 percent from a year ago with some of the larger lines reporting 25 percent gains.

In the East, lines to the Caribbean and to Europe say business is up as much as 20 percent with cruises from this summer completely booked and winter bookings ahead of last year's. This entire demand is being met by foreign flag ships alone.

Earlier this year Newsweek magazine reported, in a feature article on the growing interest in cruising, that the entire cruise trade has doubled in the last decade to a \$20 billion a year industry and that it is expected to grow another 35 percent by 1983.

This latter figure assumes, of course, that new vessels will be constructed to meet that demand. This is where the SS *United States* has a significant competitive advantage.

Built originally at a cost of nearly \$80 million, today it would cost some \$350 million to replace the ship. But with an acquisition price of \$5 million and renovation costs of approximately \$30 million she can be refitted for first-class cruise service at a fraction of the cost of new construction.

To put it in perspective, our capital cost will be approximately \$30,000 per berth as compared to \$100,000 to \$125,000 per berth presently being spent by foreigners on new construction.

With this low capital cost, a rapidly growing market, and the ability to serve directly domestic ports, such as Los Angeles and Honolulu, from which foreign-flag vessels are precluded, United States Cruises is confident that it can successfully compete with foreign operators in providing an American option to all ocean travelers.

Our purpose is more than informational. Because of the court decision handed down this year, it could have a profound impact on our operation. The SS *United States* is in jeopardy of losing its right to sail back and forth to Hawaii and, once again, to answer a

question, our plans are to go 6 months a year back and forth to Hawaii and another 6 months to have it on international cruising.

The United States will enter into a contract—and my testimony contains a lot more detail, but again to summarize, the decision suggests that a vessel built with construction differential subsidy is permanently barred from domestic service even after the expiration of the vessel's statutory life.

Obviously, such a provision casts a cloud over our proposed operation. Redirection of the operation of this ship, whose statutory life has expired, was simply not contemplated prior to the court decision and clarification is needed if we are to know.

H.R. 4416 provides the needed clarification.

The return of the SS *United States* to active service will be greatly facilitated by enactment of this bill and will result in multiple benefits.

It will provide Americans, who are totally dependent on foreign cruise and passenger service a viable alternative. The operation will create nearly 1,000 new ongoing jobs, reconstruction, and will create additional jobs.

The activation of this ship will also mark the return of passenger service to Hawaii, which is now our only State in the country totally dependent on a single-transportation mode.

Operation of the SS *United States* between the mainland and Hawaii and around the globe will help to correct our balance-of-payment deficit by giving Americans an alternative to foreign-flag cruise ships, by providing U.S. destinations rather than foreign ones, and by stimulating use by foreign tourists.

Finally, the future defense utility of this vessel will be enhanced by being maintained in an active state in the event it is necessary in a national emergency.

I would like to mention one other thing.

Congressman Akaka, I have never met you before, but 40 years ago today, I met a young Hawaiian man in the Rocky Mountains where I was attending summer camp. That young, on a Sunday evening at vespers was singing some Hawaiian hymns and then sang the beautiful Hawaiian hymn "Aloho Hya." It was very inspiring and an emotional moment.

I suggest that when the Royal Hawaiian Band comes to welcome the SS *United States* that it will be equally inspiring and emotional.

One other point.

That young man in the mountains of Colorado was Rev. Abraham Akaka, your older brother.

Mr. AKAKA. Have you purchased the SS *United States*?

Mr. COLBRUNN. The SS *United States* is, of course, under contract and the final closing contract date is dependent—has been put off for 6 months pending clarification of the *Alaska Bulk Carriers, Inc. v. Krepes*, case.

Mr. AKAKA. How much do you estimate that it would cost to get the U.S. operating in the Hawaiian cruise trade?

Mr. COLBRUNN. We are estimating \$25 million and \$30 million of refurbishing and cosmetics for the SS *United States*.

The CHAIRMAN. Can you generate sufficient business to pay the heavy cost of operating the SS *United States*?

Mr. COLBRUNN. I am not sure if you entered during the time I was explaining what Mr. Hadley, our president—he is basically an engineer and architect. It is his desire to try to convert the two front engines and the front to using powdered coal for the steam turbines. We are lucky to have steam turbines in the ship. If we can do that, we can cruise forever at a very low cost.

We can use bunker sea fuel to go in and out of ports of call. We feel we can operate the ship at a profit.

Mr. MYHRE. If I could add a point.

We have performed certain market studies which also indicate that the ship needs will consume something over 2 percent of the North American cruise market and still be economically viable.

We are convinced that a ship of this size has a place in the cruise market and the recent purchase of the *France* by Norwegian Caribbean Lines further illustrates the viability of a ship this size in the cruise trade.

The CHAIRMAN. Are you going to carry cargo as well as passengers?

Mr. MYHRE. There is some cargo capacity on the ship as it was originally designed. We are reconfiguring the ship in a number of ways, which will remove virtually all of the cargo capacity. There will still be some capability, although it is not our intention to carry any substantial amount of cargo, only that which is necessary for the operation of a cruise ship.

Mr. AKAKA. Mr. Colbrunn or Mr. Hyhre, in connection with what was just mentioned, Matson Navigation Co. has expressed some reservations with H.R. 4416. I think their objection was related to freight, cargo.

Have you had any discussions with them on that?

Mr. MYHRE. The point was raised at the Senate hearing on the counterpart bill, S. 1281. At that time, we raised some of our concerns with the language proposed by Matson, primarily because it covered only passengers and their accompanying baggage, and we had some technical reservations about it concerning the merchandise carried in the ship stores, for example, and other commodities that would be carried by the ship in its operation as a cruise vessel.

Since that time, we have talked with Matson. Compromise language or a redraft of the language has been suggested and we think it is acceptable.

Mr. AKAKA. Has there been any close agreement on that, with Matson, on your carrying some of that freight?

Mr. MYHRE. Agreement?

Mr. AKAKA. Was there any agreement? I understand, as I said, you have had those discussions with them and I know of an amendment forthcoming; and so my question was whether you have had any understanding with Matson Navigation Co. on this.

Mr. MYHRE. Yes; they have suggested a revised draft of their amendment which we find acceptable.

Mr. AKAKA. I also understand that there is a time-sharing plan that you have in connection with the SS *United States*.

Would you explain this plan briefly?

Mr. MYHRE. Certainly.

One of the innovative concepts that the United States Cruise Co. is utilizing in its reactivation plan for the SS *United States* involves the application of the time share concept to a cruise ship. This stems from our principal, Mr. Hadley's experience in time-sharing condominiums, primarily in Hawaii, but also real-estate developments on the mainland as well.

It enjoyed a great deal of popularity in recent years and a recent Wall Street Journal article reported a vast increase in the sale of time shares in this country and likened them to the situation condominiums were in 10 years ago.

Mr. Hadley has applied this concept to a ship which essentially involves a U.S. cruising society where members purchase the right to use a stateroom of a specified category for a specified number of days for a specified number of years. They are entitled to reservation priority and such other privileges in connection with the club membership.

Mr. AKAKA. And you plan to sail around the islands, the neighbor islands?

How do you plan to get in and out of islands?

Mr. MYHRE. The company plans to construct four shore tenders, diesel-powered shore tenders. The designs have already been prepared and they will be new construction and used in connection with landing passengers in smaller ports as cruise ships all over the world use.

Mr. AKAKA. Thank you very much for your testimony.

Mr. CORRADO. Did I understand you, Mr. Colbrunn, to say that your contract of sale has a 6-month condition because of the Supreme Court case and, if so, I gather that is because the Supreme Court granted cert in your case. Is this true?

Mr. MYHRE. The extension of the delivery date and the terms of the contract was granted prior to the Supreme Court's announcement concerning cert. It was based on the uncertainty created by the Court of Appeals decision and it was a 180-day extension while the company sought special legislation to clarify the status of the ship.

The time elapses on November 23, at which point we must take delivery of the ship and pay the balance of the ship's price.

Mr. CORRADO. What happens if there is no Supreme Court decision?

Mr. MYHRE. If the legislation is passed——

Mr. CORRADO. It does not make any difference.

What happens if there is no legislation?

Mr. MYHRE. The company will have to reassess its situation as to the proposed plans for the ship and whether or not it will continue with the project.

Mr. CORRADO. Make an agonizing reappraisal.

Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. The next witness will be Mr. Vincent de Lyra, accompanied by Mr. Thomas Downing.

Tom, it is a pleasure to have you back before the committee. You used to Chair this committee. It is good to see you.

STATEMENT OF STEPHEN DE LYRA, VINTERO CORP. AND
THOMAS DOWNING OF THE LAW FIRM OF BATEMAN, DOWN-
ING, REDDING & CONWAY

Mr. DOWNING. Thank you.

I can tell you it is much easier sitting on this side of the table. I had forgotten what the good life was. I regret I only have one copy of my prepared statement, which I will give to the reporter as soon as I conclude.

I shall be brief.

Mr. Chairman and members of the subcommittee, I am Thomas N. Downing, of the law firm of Bateman, Downing, Redding & Conway, located in Newport News, Va. I am appearing here today representing Mr. Kenneth B. Wallis, of California, who is a special consultant to the Federal Express Co. of St. Louis, Mo. I am most grateful to you for giving me the opportunity to express my support for a bill which would permit domestic operation of the SS *Santa Rosa*.

The Federal Express is trying to acquire the SS *Santa Rosa*, which is presently in inactive layup status, in Baltimore, Md. It is presently the subject of bankruptcy proceedings under chapter 11 of the National Bankruptcy Act.

If Federal Express is successful in acquiring this ship, they propose to use it as a cruise passenger vessel to carry passengers between some point on the west coast and the State of Hawaii and return. There are many problems, of course, but there is one legislative problem which must be resolved if the ship is ever to apply this service.

Under paragraph 506 of the Merchant Marine Act, 1936, 46 U.S.C. 1156, any vessel constructed with construction differential subsidy funds is required to operate in the foreign trade.

The purpose of this section was to achieve balance between the cost of building and operating American-flag vessels and the lesser cost incurred by competing foreign shippers.

One of the goals of the Merchant Marine Act of 1936 was, and is, to provide this country with a modern viable merchant marine built in American shipyards so that it could successfully compete with foreign-built ships which could be constructed and operated at a much lesser cost.

In the good old days, when we had passenger vessels operating in and out of domestic ports without having the benefit of financial subsidy it would have been most inequitable for these subsidized U.S.-flag foreign trade mariners to compete with the domestic or foreign trade, so it now appears that no inequity will exist by allowing some of these inactive vessels to call in domestic ports.

It is disheartening, to say the least, to see the American flag disappear from ocean passenger service at the same time that our foreign competitors calling at U.S. ports and carrying American citizens are thriving and expanding.

In my judgment, there is no reason why an American operation, soundly based and properly managed, cannot meet this competition. And this is what Federal Express, and possibly others, propose to do.

There are many more Americans who have not lost their love of the sea and would prefer traveling by ocean liner rather than by the airplane.

Getting these ships back into service would provide additional maritime employment, be financially beneficial to both Hawaii and the west coast and, hopefully, if the operation is profitable, yield additional revenues to our Federal Treasury. And, conceivably, it could give a small boost to our sagging national morale.

Again, I thank you for this opportunity to appear before you and I shall be happy to try to answer any questions you may have.

The CHAIRMAN. Mr. de Lyra?

Mr. DE LYRA. Mr. Chairman and members of the committee, my name is Stephen de Lyra, vice president of Vintero Corp., owners of the SS *Santa Rosa*, official number, 276598. I thank you for this opportunity to testify regarding our project which would restore the U.S. flag to a passenger ship.

We support the bill in question, as it would allow the *Santa Rosa* to engage in the domestic commerce of the United States.

Foreign-flag cruise ships are making excellent profits operating out of U.S. ports with ports of call in the Caribbean and Pacific. Occupancy rates are as close to 100 percent as is practically possible. The dollar loss in foreign exchange has no offset with U.S.-flag passenger ships.

Not only would our project restore the flag to a proud cruise ship, but we would operate in the United States' answer to, and improvement of, the Caribbean—the State of Hawaii.

Our project involves the utilization of the SS *Santa Rosa* for interisland cruises in Hawaii, never leaving the State with the possible exception of annual cruises to the west coast for the required drydocking, if we can't do it in Hawaii.

We had made great progress toward finalizing a joint venture which would have implemented the project, until the *Stuyvesant* case became an issue.

The SS *Santa Rosa* was built with a construction differential subsidy—CDS—and therefore, under the current statutes, is not eligible for coastwise trade. We need legislative clarification to remove the doubt created by the aforementioned case, in order to finalize the creation of the new corporate entity which would own and operate the SS *Santa Rosa*.

There is no doubt that passenger revenues are a small part of waterborne commerce. And no informed person could dispute that our merchant fleet is in trouble. But I refuse to concede that the merchant fleet of this Nation is dying, as some have alleged. I don't believe that you gentlemen—as evidenced by this hearing and the spate of pending legislation—will let it die. Your efforts to restore the flag of this great Nation to its rightful position of prominence in the world fleet is to be applauded.

With your assistance, we can put the U.S. flag on a ship which can offset some of the hard dollar loss to foreign interests in peacetime, and be counted on to carry our troops, should the need arise, in time of war.

I would be pleased to answer any questions of the committee.

The CHAIRMAN. Mr. Downing, has the *Santa Rosa* reached her statutory life?

MR. DOWNING. No, sir; it has about 2 more years to go—3½ years to go.

In that regard, Mr. Chairman, one of the witnesses earlier today, Mr. Leff, of the Joint Maritime Congress, suggested that those remaining several years of the CDS should be forgiven and let this ship start out with a new slate.

I, of course, would welcome that. I do not want to jeopardize the legislation, but I would hope they would forgive the remaining years of that CDS.

THE CHAIRMAN. In your opinion, does the bill take care of the subsidy domestic trade problem of the *Santa Rosa*?

MR. DOWNING. Yes, Mr. Chairman; I was of the opinion that it does.

THE CHAIRMAN. If this legislation is enacted within the next several months, how soon thereafter can you begin operations?

MR. DOWNING. I will have to refer that to Mr. de Lyra.

MR. DE LYRA. Mr. Chairman, we could possibly get on line by January 1, 1980, with all of the work—we would also incorporate a bow thruster for the plan of reconstruction of the ship and sewage treatment plant, which would meet the requirements for the vessel's age and classification and also convert that to all-passenger.

Currently, she is a passenger-cargo vessel.

THE CHAIRMAN. Have you had any discussions with the maritime unions regarding manning?

MR. DE LYRA. Yes, sir; we have.

THE CHAIRMAN. Do you intend carrying cargo as well as passengers?

MR. DE LYRA. No; we don't anticipate carrying cargo at all.

MR. AKAKA. I want to thank Steve de Lyra for his testimony and I just want to take the time to wish you well.

MR. DE LYRA. Thank you very much. We need it.

MR. CORRADA. Would either or both of the witnesses please submit for the record for us just so we are abundantly clear what the bankruptcy situation is you referred to earlier? It is not clear in our minds and we do not want to take the time now, but we would like the record to be clear. If you do that, we will then put it in the record.

MR. DE LYRA. Yes; I will take care of that.

[The following was received for the record:]

VINTERO CORP.,
New York, N.Y., July 25, 1979.

Re SS *Santa Rosa*.

HON. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
Longworth House Office Building, Washington, D.C.

DEAR SIR: Thank you for the courtesies received during our visit with you on Thursday the 19th, as well as those received during the hearings on Monday the 23rd.

In compliance with the questions advanced by yourself and Mr. Ernest J. Corrado, Chief Counsel, I will attempt to clarify this firm's status under Chapter XI of the Bankruptcy Act, and state our position regarding the Federal Express Company. I shall also detail a brief history of the firm, including our involvement with the subject vessel and our plans for same.

VINTERO HISTORY

This firm was started in 1950 as Vintero Sales Company and was incorporated in 1956 under the laws of the State of New York as Vintero Sales Corporation, subsequently changed to Vintero Corporation.

Since inception, the firm has been an active trading company. As an importer, the firm has brought such divers products as carnauba wax (our cable address is still "Vintero-wax") and watermelons to this country. We have exported construction equipment, electrical power plants and all types of industrial equipment and supplies.

The firm has also represented U.S. manufacturers in Latin America—our principal place of business. White Diesel Engine Division, White Motor Corporation, Allis Chalmers, Ideal Electric Corporation are among those firms which have received the benefit of our expertise.

Vintero Corporation is presently staffed by the fifth and sixth generation of an international trading family. My father, Joaquim, fourth generation (Ret.), served as adviser to the War Production Board and the Office of Price Administration during WWII. I am a veteran of WWII and Korea; my son served with the 101st Airborne Division in Vietnam.

SHIP HISTORY

In May of 1975 Vintero purchased the subject vessel from the U.S. Maritime Administration (MARAD) as highest bidder at an international auction.

This vessel was to be refurbished and reconditioned in the United States and transferred to Venezuelan registry and flag. Although we were advancing toward that goal, the shipyard doing the work incurred a five month strike. The strike ended in April, 1976 and in that same month the Government of Venezuela initiated litigation in U.S. District Court against Vintero and all others involved in the transaction. The court decided in our favor in February, 1979.

Due to the drain of our resources in carrying idle tonnage and fighting a major court battle we were forced to file a petition for an arrangement under Chapter XI of the Federal Bankruptcy Act in November, 1977.

The Bankruptcy court issued an order designating the corporation a debtor-in-possession. The existing management was retained, charged with fiduciary responsibility as officers of the court and have continued in that capacity to date.

THE PLAN

Vintero and a joint venture group will form a new corporate entity for ownership and operation of the SS SANTA ROSA. After modifications and conversion to strictly passenger use, we plan to put the ship into service on an exclusive Hawaiian inter-island itinerary.

Our plans do not include any subsidy from the government. We are planning to apply for reconstruction loan guarantees pursuant to Title XI of the Merchant Marine Act, 1936, as amended. The new corporation would enter into a contract with an established U.S. flag company for marine operations.

Regarding Federal Express, we had discussions about the possibility of a joint venture for the plan discussed heretofore and they sent a team to inspect the ship. Discussion ceased more than 2 months ago when the "Stuyvesant" case became an issue.

Mr. Downing is a deservedly well respected man. Conversations with that gentleman have been most cordial and I have only praise for his fine record. But it is our opinion that he is being misled and I have made this known to him. Federal Express has no more claim to the SS SANTA ROSA than the "man in the moon."

I apologize to you, Mr. Chairman, and to the Subcommittee, for not making our status and position clear. I hope this letter belatedly accomplishes that goal.

Please contact this office if there is any further information required.

Again many thanks for allowing our testimony. We are confident that with the continued collaboration of your good self and this Subcommittee, we shall arrive at our mutual goal and see our Flag once again on a proud passenger ship.

Very truly yours,

VINCENT A. DE LYRA, *President.*

The CHAIRMAN. Thank you very much.

[The following was received for the record:]

ROYAL HAWAIIAN CRUISE LINES, INC.,
San Francisco, Calif., September 10, 1979.

Re H.R. 4886.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
Longworth House Office Building, Washington, D.C.

DEAR MR. MURPHY: I am the chief executive and principal owner of Royal Hawaiian Cruise Lines, Inc., a California corporation, which proposes to purchase, refurbish and put into service in Hawaii, operating out of San Francisco, a now inactive U.S. built passenger vessel, the SS *Monterey*. The present law, the so-called Jones Act, has been interpreted as forbidding the use of the *Monterey* and a sister ship, the SS *Mariposa*, in that service because prior to their retirement, they operated enjoying construction differential subsidies. For the reasons outlined below, we feel that application of such Jones Act restrictions are inequitable and contrary to the interests which the Jones Act was designed to protect.

You have introduced H.R. 4886 to amend the Merchant Marine Act of 1936 to provide that certain inactive American-flag passenger vessels may operate in both domestic and/or foreign commerce of the United States and between foreign ports. This bill, if enacted, will clarify the application of Jones Act restrictions so as to allow the use of the *Monterey*, and the *Mariposa*, in a cruise service as contemplated, thereby removing the inequitable and counterproductive restrictions. We therefore support H.R. 4886 and urge its passage.

THE VESSELS

The SS *Monterey*, and SS *Mariposa* were built in 1952 by Bethlehem Steel Co. at Sparrows Point, Maryland and rebuilt as passenger vessels in 1956 by Willamette Iron and Steel Co. in Portland, Oregon. They were last operated by Pacific Far East Lines as passenger cruise vessels with the benefit of construction differential subsidies as allowed for by law.

Upon the bankruptcy of PFEL, they went on the block and were sold at auction to World Airways, Inc., of Oakland, California. They have been out of service and inactive since the Fall of 1977. Their "useful life" as determined by the Federal Maritime Administration for the purpose of determining the subsidy has expired.

They are 20,000 ton vessels which upon refurbishing will each have a capacity to carry in a cruise trade up to 350 passengers.

PROPOSED OPERATIONS OF THE VESSELS

The operator will be the Royal Hawaiian Cruise Lines, Inc., a California corporation formed to own and operate the *Monterey*. Royal Hawaiian, in turn, is entirely owned by citizens of the United States. As principal owner, I am also the owner and manager of Ship and Shore Agencies, Inc., an on-going and successful operator of two large cruise vessels in foreign commerce. Royal Hawaiian, therefore, benefits from considerable experience in the cruise business. I would like to see that experience applied to opportunities which exist to rejuvenate cruise trade under the Jones Act.

Royal Hawaiian proposes to purchase the *Monterey* from World Airways, refurbish it and put it directly into cruise service in Hawaii, with periodic service to San Francisco, as well. The vessel, will be based in San Francisco. It will engage in 50 cruises, carrying some 20,000 separate bookings, in a year. Ninety percent of its cruise time will be among the Hawaiian Island, and many cruises will originate there (with an air fare package included).

The operation of the *Monterey* will create an estimated 448 direct jobs—including ship's crew members and support personnel in the company, as well as longshoremen, baggage handlers, tour drivers and others. It will stimulate tourism both in Hawaii and San Francisco. As a totally U.S. operation, this country will benefit not only from the operation and support of the vessel, but also from the beneficial impact of its passengers activities on land.

It should be noted that Royal Hawaiian has discussed the purchase of the *Mariposa* for operation in the same manner. In this event, the impact of operations on both Hawaii and San Francisco would be nearly doubled.

JONES ACT RESTRICTIONS

The Jones Act prohibits United States vessels benefiting from a construction differential subsidy from engaging in trade among U.S. ports, thus eliminating the potential unfair advantage in that trade which subsidized vessels would enjoy.

However, the Act has also been interpreted as prohibiting vessels from such trade which have been subsidized even though they no longer enjoy the subsidy or may even no longer be eligible for a subsidy. This practice can result in excluding adequate U.S. built ships from engaging in Jones Act trade—with all the benefits which such trade brings to U.S. merchant seamen and U.S. ports.

In cases such as ours described above, the result is all the more counterproductive and inequitable since the vessels in question have not only been inactive since the Fall of 1977, but their useful life for subsidy purposes has, in fact, expired.

It is for these reasons that we are requesting that the Act be amended to explicitly allow vessels such as ours to take part in trade among U.S. ports. Without sacrificing any of the goals which the Jones Act achieves and is intended to achieve, the proposed amendment contained in H.R. 4886 will open up new opportunities to further the interests of U.S. seamen and our national maritime industry.

Very truly yours,

OTHMAR G. GRUENINGER, *President.*

The CHAIRMAN. The hearing stands adjourned.

[Whereupon, at 4:20 p.m., the subcommittee adjourned.]

SHIPPING ACT AMENDMENTS

TUESDAY, OCTOBER 30, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to notice, in room 1334, Longworth House Office Building, Hon. John M. Murphy (chairman of the subcommittee) presiding.

Present: Representative Murphy.

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

This morning we are conducting a hearing on H.R. 1715, a bill to amend the Shipping Act to vest jurisdiction in the Federal Maritime Commission over complaints against shippers, consignors, and consignees, and for other purposes.

The Shipping Act, 1916, as amended, was enacted to insure that American foreign commerce would proceed in an orderly and non-discriminatory manner without undue advantage to carriers, shippers, consignors or consignees.

It is this element of fair business practices that has long distinguished the competitive nature of our ocean shipping industry.

This bill attempts for the first time to put the shippers of goods as well as the ocean carriers on the same footing as far as responsibilities and obligations of the Shipping Act, 1916, are concerned. Fundamental notions of fairness would certainly require parity of treatment for these two vital parties in our ocean commerce.

Under existing law, the Federal Maritime Commission—(FMC)—has no jurisdiction over complaints filed by carriers or other persons against shippers for alleged violations of the Shipping Act of 1916, even though the FMC does have jurisdiction in the reverse situation where complaints are filed by shippers against carriers.

The requirement that these complaints against shippers which frequently involve complex issues of maritime policy, be litigated in forums all over the country, rather than before the expert agency entrusted with enforcement of the act, clearly prevents a coordinated formulation of such policy.

It is therefore proposed to amend section 22 of the act to confer primary jurisdiction in the FMC to hear complaints against shippers.

In addition, since it is important to the administration of the shipping laws that carriers' tariffs be strictly enforced according to their terms, irrespective of whether any deviations therefrom are knowing or willful, it is also proposed that section 18(b) of the act be amended, by addition of a new paragraph (4), to make it unlawful for a shipper, consignor, or consignee to receive transportation

at less than the applicable rates therefore, whether or not such receipt is knowing or willful.

This bill simply requires that shippers as well as carriers must abide by, and be responsible for, similar obligations and duties under the Shipping Act, 1916. The result of an ocean transportation system where both shippers and carriers must deal in a fair and competitive manner will be that American consumers will benefit from lower ocean freight rates and a more stable and strengthened American Merchant Marine.

[The bill follows:]

96TH CONGRESS
1ST SESSION

H. R. 1715

To amend the Shipping Act to vest jurisdiction in the Federal Maritime Commission over complaints against shippers, consignors, and consignees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1979

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Shipping Act to vest jurisdiction in the Federal Maritime Commission over complaints against shippers, consignors, and consignees, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 22 of the Shipping Act, 1916, as amended (46
- 4 U.S.C. 821), is further amended by—
- 5 (1) following the words, “common carrier by
- 6 water,” inserting “shipper, consignor, consignee,”;

I—E●

1 (2) striking the words, "reparation for the injury,
2 if any," and insertng in lieu thereof, "for an award of
3 damages for any injury";

4 (3) following the words, "complaint to such carri-
5 er," inserting "shipper, consignor, consignee,"; and

6 (4) striking the words, "of full reparation to the
7 complainant", and inserting in lieu thereof, "of the
8 sum to which the complainant is entitled".

9 SEC. 2. Section 18(b) of the Shipping Act, 1916, as
10 amended (46 U.S.C. 817(b)), is further amended by adding a
11 new paragraph (4) to read as follows:

12 "(4) Except as permitted by the Federal Maritime
13 Commission in accordance with the provisions of subdi-
14 vision (b)(3) of this section, no shipper, consignor, or
15 consignee, or any officer, agent, or employee thereof
16 shall receive or demand or obtain or attempt to obtain
17 transportation by water for property at less than the
18 rates and charges specified in applicable tariffs on file
19 with the Commission and duly published and in effect
20 at the time.", and by renumbering present paragraphs
21 (4), (5), and (6), as (5), (6), and (7), respectively.

Mr. MURPHY. Our first witness today will be Commissioner Thomas Moakley of the Federal Maritime Commission.
Commissioner Moakley, welcome to the committee.

STATEMENT OF HON. THOMAS F. MOAKLEY, VICE CHAIRMAN, FEDERAL MARITIME COMMISSION, ACCOMPANIED BY CHARLES L. HASLUP, CONFIDENTIAL ASSISTANT TO VICE CHAIRMAN MOAKLEY

Mr. MOAKLEY. Thank you, Mr. Chairman. I appreciate the opportunity to appear today to testify on behalf of the Federal Maritime Commission on H.R. 1715, a bill which would vest jurisdiction in the FMC over complaints against shippers, clarify the Commission's authority to investigate violations of the Shipping Act, 1916, by shippers, and make it a violation of the act for shippers to pay less than applicable tariff rates.

Mr. MURPHY. Would you identify the gentleman with you?

Mr. MOAKLEY. I am sorry. I am accompanied by my legal assistant, Mr. Haslup, this morning.

The Commission supports the purposes of this legislation and generally supports the language of the bill. This authority would be helpful in several important areas.

Currently, section 16, initial paragraph, is the only section of the act which specifically proscribes unlawful activity by shippers.

In our investigation of rebating activities in foreign commerce, we are frequently met with the argument that a simple rebate or kickback by a carrier to a shipper does not constitute a violation of section 16 because that section requires the finding of some unjust or unfair device or means used by a shipper to obtain the lower rate. A few shippers have contended that the statute's present language is confined to acts of deception such as false weighing and do not extend to rebates paid with the carrier's knowledge and consent.

While we have been successful in overcoming arguments of this nature, there is no good reason why the act should even give rise to the argument that a shipper would be able to escape liability for paying a lesser rate than that set forth in the tariff when a carrier can be penalized for collecting such a rate. In many cases it is the shipper who takes the lead in the rebate scheme.

There is, however, one obvious, significant difference between a carrier and a shipper with respect to a tariff. The carrier is the author of the tariff and employs a staff of persons with expertise in its application. It is clearly the carrier's obligation to initiate the freight billing and to insure its accuracy. A shipper cannot be presumed to have the same level of knowledge of the contents of that carrier's tariff and the same degree of expertise in its application.

Thus, payment by a shipper of an erroneous freight bill prepared by a carrier should not subject that shipper to statutory penalties if the evidence indicates that the shipper was unaware of the carrier's error.

A suggested amendment to section 2 of the bill, to accomplish such protection for shippers who inadvertently pay the wrong rate, is appended to this testimony.

Section 22 of the act currently authorizes the Commission to hear complaints against carriers and other persons subject to the act. In 1916, the phrase "other person subject to the Act" was defined to include terminal operators, forwarders, and other persons furnishing services in connection with common carriers but not to include shippers.

It was not until 1961 that shippers were brought within the prohibitions of the act by the passage of section 16, initial paragraph. However, section 22 was not amended at that time to specifically authorize the filing of complaints against shippers. Nor was the definition of "other person" contained in section 1 of the act amended to include shippers.

When faced with a complaint by a carrier's agent against a shipper for collection of unpaid demurrage charges, the Commission, in 1973, held that it lacked jurisdiction to hear the complaint because of the plain language of section 22. (*Maritime Service Corporation v. Plaza Provision Company*, 13 S.R.R. 524 (Jan. 15, 1973).)

Thus, the Commission now administers a statute that requires carriers to adhere to and collect the applicable rates set forth in their tariffs and permits shippers to file complaints with the Commission against carriers for overcharges but does not permit carriers to file complaints with the Commission against shippers for undercharges.

The carrier, faced with this obligation to charge the lawful rate, must therefore file suit in a State or Federal court having jurisdiction over the parties, whenever a shipper refuses to pay the rate set forth in the carrier's tariff.

H.R. 1715 would correct this anomaly by permitting such Shipping Act questions to be heard and decided by the Federal Maritime Commission, the agency charged with administering that statute. A common forum for all such tariff questions should create consistency in the results of this type of litigation.

Obviously, this authority would place additional workload requirements upon the Commission. While it is difficult to quantify these requirements, without knowledge of the number of existing court actions of this nature, we believe that the vast majority of these cases could be handled by settlement officers on an informal basis, in much the same fashion as most overcharge claims are now handled.

Moreover, this statutory change would relieve courts which are less familiar with the subject and the law in this area of an equal number of cases. Transfer of this authority should result in greater judicial economy, efficiency and predictability.

The third area in which the bill would be helpful to the agency is merely one of clarification. The second paragraph of section 22 of the Shipping Act—now denominated 22(b) by virtue of Public Law 96-25—gives the Commission authority to investigate on its own motion, violations of the act "with the same powers" as set forth in the first paragraph of that section (22)(a).

The specific inclusion of shippers, consignors and consignees in the first paragraph of section 22 will avoid any future argument that the Commission cannot investigate, on its own motion, violations of the act by those persons. Rebating investigations are often

aided considerably by focusing on shipper recipients as a means of documenting violations by carriers.

In summary, the Commission supports H.R. 1715 with the one substantive change set forth in the appendix to this testimony. There are also certain minor technical changes that need to be made to the bill in view of the enactment of Public Law 96-25 subsequent to the bill's introduction. We are available to work with your staff on these changes at your convenience.

There is one further aspect of section 2 of the bill that we believe should be addressed. As the language is now presented, it is possible that a shipper could be charged with a violation of new section 18(b)(4) of the act for attempting to negotiate a lower rate with a carrier for a future shipment. Obviously, this is not the intent of the authors and we have suggested, in our appendix to this testimony, the addition of language at the end of the first sentence of section 2 to make it clear that the rate which must be observed is that which is in effect at the time the transportation begins.

That completes my statement, Mr. Chairman. If there are any questions, I would be pleased to attempt to answer them.

Mr. MURPHY. Thank you, Mr. Moakley.

Would 1715 create any additional burdens for shippers?

Mr. MOAKLEY. I believe quite to the contrary that it would lessen the burden to the shipper. The shipper must now employ counsel to go into court. If we handle these under the informal basis that we anticipate, which has been quite successful with overcharges, a sworn affidavit by the traffic manager of a company could be sufficient to handle the case.

Mr. MURPHY. Is this a lawyer's bill?

Mr. MOAKLEY. I would not see this as a lawyer's bill. In spite of all the lawyers present, I might see this as an antilawyer's bill.

Mr. MURPHY. We have questioned the heads of so many companies in this industry and they have all agreed to a formula on profit, that is, they would accept a profit formula that equals their legal fees for the year.

Is 1715 consistent with the FMC's recommendations on the omnibus maritime bill we are considering?

Mr. MOAKLEY. Yes, sir. We have addressed the coverage of the shippers and consignees under the revised shipping bill the Federal Maritime Commission has submitted.

Mr. MURPHY. Mr. Kyros.

Mr. KYROS. Thank you, Mr. Chairman.

In regard to the question the chairman just asked Mr. Moakley, in the revised shipping act that the FMC proposed to us in one hearing, do you deal with the situation where a carrier can bring a shipper before the FMC?

Mr. MOAKLEY. We define other persons subject to the act to include conferences, shippers, consignees or any other persons carrying on the business of freight forwarding, so we do define them as other persons subject to the act under the bill that was submitted to you.

Mr. KYROS. So your revised shipping act presented to the committee does include jurisdiction over claims by carriers against shippers.

Mr. MOAKLEY. That is correct.

Mr. KYROS. If you will notice in H.R. 4769, the committee's omnibus bill, on page 26 in section 212(b) we provided that no shipper may obtain or attempt to obtain rates from an ocean common carrier less than those specified in the tariffs.

In other words, we have already taken care of the second part of this bill. Is that correct?

Mr. MOAKLEY. That appears to be correct.

Mr. KYROS. Is that provision, putting the shipper on the same plane as the carrier insofar as rebating is concerned also included in your revised shipping proposal?

Mr. MOAKLEY. I believe that it is. Yes.

Mr. KYROS. One thing that the chairman brought out, if you sue a small shipper—and there are millions of shippers I imagine; is that right, Mr. Moakley?

Mr. MOAKLEY. Yes.

Mr. KYROS. In the present circumstance the carrier must go, in order to get jurisdiction, before the local court where the shipper resides; is that correct?

Mr. MOAKLEY. That is correct.

Mr. KYROS. Under H.R. 1715 the carrier would file with the FMC and notice would be sent to the shipper of the claim.

Mr. MOAKLEY. Yes.

Mr. KYROS. To adjudicate a claim wouldn't a shipper have to appear before the FMC and have to retain Washington counsel?

Mr. MOAKLEY. No, he would not. In fact, I have just recently done a survey on the overcharge complaints that have been filed. I find that in the year 1979 to date 143 were filed. Of that, in 141, both the shipper and the carrier had agreed to the informal procedure.

Mr. KYROS. Before the FMC?

Mr. MOAKLEY. Before the FMC.

Mr. KYROS. In other words, you already have a procedure where the shipper without claiming the jurisdictional bar that exists can come before the FMC with the carrier and settle the matter on an informal basis under your present regulations?

Mr. MOAKLEY. Correct. In many cases neither party appears but merely files affidavits.

Mr. KYROS. So with the informal procedure already in place, Mr. Moakley, what then becomes the necessity of a bill specifically that gives such jurisdiction to the FMC to have the carrier sue the shipper before the FMC?

Mr. MOAKLEY. Because as the act is now written a shipper is not a person subject to the act. Therefore, there is no basis for the carrier filing with the FMC the claim against the shipper.

Mr. KYROS. I understand. But you just told us informal claims against shippers by carriers are settled in many cases before the FMC.

Mr. MOAKLEY. I am saying the informal procedure is the complaint of the shipper against the carrier for the overcharge.

Mr. KYROS. But you have no informal complaint procedure where a carrier can make a complaint?

Mr. MOAKLEY. No.

Mr. KYROS. And the shipper doesn't voluntarily come in before the FMC? That never happens?

Mr. MOAKLEY. No.

Mr. KYROS. Not at all?

Mr. MOAKLEY. No.

Mr. KYROS. How many cases do you anticipate would come before the FMC, on an annual basis as a result of this legislation—new cases?

Mr. MOAKLEY. Having no experience in that, it would just have to be an off-the-top-of-my head guess. Because we have no experience, whereas to date no carrier has filed with the Commission against a shipper, I would assume it would be almost impossible for me to estimate. I would assume the conferences would be in a better position.

Mr. KYROS. No assessment has been made through the Federal or State courts to amass data indicating how many carrier claims against shippers have been brought for violations of the Shipping Act.

Mr. MOAKLEY. I had asked that question when I came into the room and I was told there are approximately 60 cases pending before the courts now, not all initiated in the year 1979, so it appears the balance between those initiated by carriers against shippers is about 1-to-4.

Mr. KYROS. Mr. Moakley, in your experience where have there been American carriers or foreign carriers who have come in and complained about their inability to pursue complaints against shippers? Have there been such complaints?

Mr. MOAKLEY. I do not know of any. I assume in most of the cases they initiate against the shipper it is to satisfy the jurisdiction of the Federal Maritime Commission, that is, they are charging rates that are in their tariff.

Mr. KYROS. Frankly, unless there is massive carrier apathy, we have had no outpouring of complaints in this particular area. We have not heard a single word. I talked to a few carriers. That is not representative. They said the bill would be a good idea but no one came forward to say there was any great need to be filled. How do you explain that?

Mr. MOAKLEY. I think I touched on that slightly in my testimony when I said that the shipper could be the means of exposing malpractices within the industry. He could be the means of our obtaining information relative to malpractices by a carrier.

Mr. KYROS. One of the points that is advanced in support of this legislation is that it would put within one jurisdiction all these cases, and inhibit disparate treatment, development of maritime policy by various forums instead of having it all in one jurisdiction. Is that an effect of this bill?

Mr. MOAKLEY. I think it is a very salutary effect of this bill.

Mr. KYROS. It also stated there would be greater expedition to have this before the FMC. Do you have records that indicate that you could handle these cases, so that they would be adjudicated faster through the FMC than in a State or Federal court?

Mr. MOAKLEY. I do to this extent: As I said, I did run a survey on overcharge complaints and in 1979, as I told you, we had 141 informal complaints filed with the Federal Maritime Commission. To date this year we have resolved 114 of those complaints.

Mr. KYROS. Those overcharges are shipper claims against carriers?

Mr. MOAKLEY. That is right.

Mr. KYROS. Were any of those adjudicated?

Mr. MOAKLEY. One. One went on a formal basis.

Mr. KYROS. Do you know how long it took the one that went on a formal basis of adjudication?

Mr. MOAKLEY. No. I would be glad to supply that information. [The information follows:]

LENGTH OF ADJUDICATION

The one complaint filed in 1979 that is being handled on a formal basis was just filed in September and assigned to an Administrative Law Judge on October 22, 1979. There were, however, two of these overcharge complaints handled formally in 1977 and two more in 1978. Of the two filed in 1977, one took 7 months and the other 10 months to resolve. Each of the two filed in 1978 took 5 months to resolve.

Mr. KYROS. Actually in a State and Federal court there are pretrial procedures and matters can be settled very rapidly and disposed of under Federal Rules of Civil Procedure. Is that a fact?

Mr. MOAKLEY. That is a fact.

Mr. KYROS. But you are confident, in your judgment that it would be a saving of money overall and it would be not only more economical but more expeditious and also it would be of benefit to the shipper to have the case disposed of before the FMC?

Mr. MOAKLEY. I do believe so because based on my own personal experience in a case on a maritime matter, first I had to define for the court what demurrage and wharfage meant, and some of the courts have difficulty understanding the terminology of the maritime industry.

Mr. KYROS. But sometimes in these kinds of cases, Mr. Moakley, the issue is, suppose you have a delay on a carload of coal and it freezes. It seems to me the question of demurrage is a question of contract understanding that can be handled as well by a court as by a commission. Is that incorrect?

Mr. MOAKLEY. No. I think the Federal Maritime Commission is the expert party. If we are getting into cases of loss or damage that is an entirely different situation but I think if you are talking about demurrage, I think resolution of the demurrage problem should rest with the Federal Maritime Commission, and maybe the carrier's tariff relating to the demurrage should be changed.

Mr. KYROS. If a carrier does sue a shipper under the proposed amendments in H.R. 1715 and they are before the FMC, can the shipper counterclaim for any damage to his goods or any claim he may have against the carrier again with the jurisdiction of the FMC?

Mr. MOAKLEY. I would say no as to damage. The statute does not vest in the Federal Maritime Commission authority to deal with damage claims. That is well left to the court.

Mr. KYROS. So you still would have a problem about wrapping up the entire transaction of carriage and any liability incidence that occur before one jurisdiction?

Mr. MOAKLEY. My experience tells me that quite frankly the undercharges that are claimed or made do not relate to loss or damage claims. The average shipper today insures his commodity from door to door. Therefore, the sooner he can resolve the loss or

damage claim by filing against his insurance company, who would subrogate the carrier, the faster the situation moves.

Mr. KYROS. Finally, Mr. Moakley, it is your considered judgment based on your experience in these claims that small shippers will not have to answer carriers' claims in Washington?

Mr. MOAKLEY. That is my considered opinion. Yes. Very definitely.

Mr. KYROS. Thank you. Thank you, Mr. Chairman.

Mr. MURPHY. Thank you very much, Mr. Moakley.

Our next witness is Mr. Manuel Diaz, Jr., president of the Adherence Group. Mr. Diaz, it is a pleasure to have you here before the committee. Without objection, we will place a letter from the National Industrial Traffic League in the record at the conclusion of Mr. Diaz's testimony, signed by George F. Avery, Jr., chairman of the Water Freight Transportation Maritime Committee. In effect the letter reflects that a conflict in scheduling permits prohibits a personal appearance before the committee but they want it made clear that the National Industrial Traffic League has no objection to the legislation.

Mr. Diaz, we have a very comprehensive statement from you which we have reviewed. You can read the entire statement or you can paraphrase it if you like. The entire statement will be placed in the record at this point.

STATEMENT OF MANUEL DIAZ, JR., PRESIDENT, THE ADHERENCE GROUP, INC., ACCOMPANIED BY JACOB P. BILLIG, COUNSEL

[The prepared statement of Manuel Diaz follows:]

STATEMENT OF MANUEL DIAZ, JR., PRESIDENT OF THE ADHERENCE GROUP, INC.

I. INTRODUCTION

I am Manuel Diaz, Jr., President of The Adherence Group, Inc., of 21 West Street, New York, New York 10006. Thank you for providing me with the opportunity to testify before this Committee today. The Adherence Group, Inc. (TAG) is a private corporation that provides a policing and inspection service for several conferences of ocean carriers. In this capacity, I urge the passage of the legislation that is the subject of these hearings, for the reasons I have set forth below.

The Federal Maritime Commission (FMC), the agency empowered to regulate the transportation by water of property in foreign commerce, has concluded that, under the Shipping Act of 1916, (hereinafter sometimes referred to as "the Act"), it has no jurisdiction over complaints filed against shippers for alleged violation of that Act. I will demonstrate in this testimony that this lack of jurisdiction in the FMC to adjudicate complaints against shippers is plainly anomalous and irrational; creates a serious gap in the proper and uniform administration of the nation's shipping laws by the expert agency entrusted with such administration and is directly contrary to well-established principles of primary jurisdiction; and creates severe and needless hardship on carriers in seeking to enforce, in numerous and disparate forums all over the country, the terms of their tariffs. It has therefore been proposed that this deficiency in the Shipping Act, which has resulted in the frustration of efforts to assure compliance by all shippers with the terms of ocean carriers' tariffs, be remedied by an amendment thereto which specifically confers jurisdiction over complaints against shippers in the FMC, and which provides that violations by shippers of the terms of their tariffs need not be knowing or willful.

II. PRESENT STATE OF THE LAW

The FMC's conclusion that it at present lacks jurisdiction over complaints against shippers for alleged violations of the Shipping Act is based on a failure of the Act to specifically include complaints against shippers in Section 22 thereof (46 U.S.C. § 821). Section 22 presently provides that: "Any person may file with the Federal

Maritime Commission a sworn complaint setting forth any violation of this chapter by a common carrier by water, or other person subject to this chapter, and asking reparation for the injury, if any, caused thereby . . . The Commission, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The Commission, upon its own motion, may in like manner and, except as to orders for the payment of money with the same powers, investigate any violation of this chapter." (46 U.S.C. § 821) (Emphasis added)

The term "other person subject to this chapter", which is used in Section 22, is defined in Section 1 of the Act (46 U.S.C. § 801), as "any person not included in the term 'common carrier by water', carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water". It seems clear from this language, applying well-settled canons of statutory construction, that the failure to include shippers, consignors, and consignees within this definition which expressly includes another class of persons requires the conclusion that it was intended that shippers, consignors, and consignees be exclude from the meaning of "other person subject to this chapter".

Thus, Section 22 limits Commission jurisdiction over complaints to those filed against common carriers or other persons subject to the Shipping Act, which does not include shippers, consignors, and consignees. And yet, Section 16 of the Act (46 U.S.C. § 815) provides that: "It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable". (Emphasis added)

In short, Section 16 clearly makes it unlawful for shippers to commit the acts prohibited therein, and Section 22 provides that the Commission may, upon its own motion, investigate any violation of the Act, presumably including a violation by a shipper, consignor, or consignee. Nevertheless, notwithstanding the clear and common sense implication of Section 16 that a shipper, consignor or consignee is a person subject to the Act, and notwithstanding the fact that violations by such persons may be investigated by the Commission upon its own motion, thus making them subject to the Commission's jurisdiction (and obviously, subject to the Act) for such purpose, the limited definition of "person subject to the Act" contained in Section 1 precludes the Commission from asserting jurisdiction over complaints against shippers.

While the issue of the Commission's jurisdiction to adjudicate a complaint against a shipper has never been reviewed by a court, the Commission has confirmed that, under Section 22, it has no such jurisdiction. In *Maritime Service Corp. v. Plaza Provision Co.*, F.M.C. Nos. 72-27, 72-28 [13 S.R.R. 524] (January 15, 1973), the Commission held that "the plain language" of Section 22 precluded its assertion of jurisdiction over a complaint against a shipper or consignee. The Commission, while acknowledging that a question of interpretation exists as a result of Section 16's prohibition against certain acts by shippers, nevertheless declined to construe Section 22 as conferring jurisdiction over complaints against shippers. The Commission likewise dismissed a complaint against a shipper in *American Export Isbrandtsen Lines, Inc. v. Military Sealeft Command*, F.M.C. No. 72-10 [13 S.R.R. 650] (February 15, 1973), relying on its decision in *Maritime Service Corp.*

It is interesting in this regard, however, that the Commission has held that its jurisdiction does extend to a complaint filed by a vessel-operated-carrier (VOC) against a non-vessel-operating carrier (NVO) in its capacity as a shipper with respect to the underlying VOC. In *Maritime Service Corp. v. Acme Fast Freight*, FMC No. 73-3 [13 S.R.R. 1025] (July 23, 1973), the Commission denied the motion of the respondent NVO's to dismiss the complaint against them which alleged, inter alia, that they had acted in concert to refuse to pay container demurrage charges and used their substantial demurrage accounts to coerce concessions and rebates in demurrage contrary to the carriers' tariffs. While recognizing that the NVO assumes the dual status of carrier with respect to the exporter, and shipper with respect to the VOC, the Commission held that an NVO's entire operation should be, and is, subject to the Commission's jurisdiction. It said: Unless the Commission, pursuant to Section 22 First, has jurisdiction in all respects over respondents, it may not be able, effectively, to carry out the policies of the Shipping Act.

Inasmuch as the NVO's behavior as a shipper poses no greater or lesser danger to the policies of the Shipping Act than does the behavior of any other shipper (all of its activities *qua* carrier being regulated to the same extent as those of a vessel-operating carrier), the Commission's rationale in *Maritime Service v. Acme* also

supports the position that the Commission requires jurisdiction over complaints against shippers and others who might violate the Act. Unless it has such jurisdiction, as will be demonstrated hereinafter, the effective and consistent enforcement of the Act will be frustrated.

III. PROPOSED AMENDMENTS TO THE SHIPPING ACT

In order to remedy the clearly irrational present statutory scheme, whereby the FMC has no jurisdiction to investigate complaints alleging violations of the statute it administers, as well as to alleviate the difficulties and frustrations, described hereinafter, encountered by persons seeking to secure adjudications of such complaints in courts all over the country, it is proposed that section 22 of the Act be amended as set forth in Appendix A hereto.¹

The procedure to be followed for enforcement of an FMC order entered pursuant to the proposed amendment would be the same as that now contained in existing law. Thus, under Section 30 of the Act (46 U.S.C. § 829), provision is presently made for the filing of suit for violation of any order of the FMC for the payment of money. The suit may be brought by the person to whom such award is made, and may be filed in the U.S. District Court for the district where the plaintiff resides, or in which is located any office of the defendant or port of call of a carrier-defendant, or in any court of general jurisdiction of a State, Territory, District or possession of the United States having jurisdiction of the parties. Section 30 further provides that the findings and order of the FMC shall be prima facie evidence of the facts stated in the court suit.

In addition, it is also proposed, for the reasons further enumerated herein, that Section 18 of the Act (46 U.S.C. § 817) be amended as set forth in Appendix A. The purpose of such amendment is to make unlawful under the Shipping Act the receipt by a shipper, consignor, or consignee of transportation at less than the applicable tariff rate, whether or not the receipt of such transportation was obtained knowingly or willfully.

IV. FACTUAL AND LEGAL BASES FOR THE PROPOSED AMENDMENTS

The legislation proposed herein, which would empower the FMC to hear complaints against shippers for alleged violations of the Act, is urgently required for numerous reasons. In the first place, the current requirement that complaints against shippers be filed in various state and local courts is clearly contrary to the doctrine of primary jurisdiction. Certainly, the FMC, as the expert body entrusted with the administration of the Shipping Act should, at least in the first instance, be accorded the opportunity to decide issues arising under that Act.

Of significant importance also is the fact that the inability to file complaints at the FMC has required carriers and their neutral enforcement agencies, such as The Adherence Group, Inc., which provides a policing and inspection service for several conferences of carriers, to file such complaints with various courts located literally all over the country. Not only does such practice result in the adjudication of complaints by a hodge-podge of forums who have little interest in or capability of establishing a uniform ocean transportation policy, but it also imposes, as further discussed herein, significant hardships on the carriers.

Finally, the proposed amendment to Section 18 is required to authorize the FMC to investigate complaints against shippers for tariff violations even if such violations are not alleged to have been committed knowingly or willfully. In short, in order to effectively curb rebating and other malpractices it is essential that the terms of tariffs be strictly enforced, and such enforcement as to shippers should not be limited to solely those instances where tariff violations are knowing or willful.

A. The need for a uniform and expert administration of the Nation's shipping laws requires the vesting of primary jurisdiction in the FMC

The litigation of cases raising questions of ocean transportation policy in a variety of forums all over the country clearly prevents a coordinated formulation of such policy and ignores the accumulated expertise of the FMC with respect to such matters. This obviously inefficient and irrational approach, whereby civil courts, and not infrequently "small claims" courts, in communities throughout the nation, rather than the expert body entrusted with administering the Shipping Act, are establishing this country's ocean transportation policy, should be remedied by conferring primary jurisdiction in the FMC to decide these matters.

¹ The amendment to Section 22 as set forth in Appendix A reflects a slight modification of the amendment as set forth in H.R. 1715. Additional language has been added to satisfy concerns expressed by the National Industrial Traffic League that under H.R. 1715 actions could be brought by persons other than common carriers by water.

In seeking to enforce the terms of their tariffs against shippers, TAG member-carriers have filed a multitude of law suits in numerous jurisdictions. The issues raised in these law suits, which may be generally classified as inspection cases² or demurrage (storage charges) cases, are many. While the inspection cases generally allege a cube (density), weight, or commodity misdeclaration by the shipper, thereby enabling it to secure a lower freight charge than it was actually entitled to receive, these cases also involve other technical and specialized ocean transportation issues, such as the right of the shipper to be present at any reinspection of its cargo resulting in a claim of higher freight charges; the applicability of foreign port charges; the question of the proper tariff to be applied; whether contract or non-contract rates of the tariff should be applied; deductions unilaterally made by the shipper from the billed tariff charges; and whether the cargo involved was entitled to the "returned goods" rate in the tariff.

Even the misdescription and misdeclaration cases can involve highly technical questions of tariff interpretation requiring the application of the expertise of a body familiar with such issues. For example, one of TAG's claims³ for freight undercharges seeks an amount from a shipper in excess of \$254,000 in the U.S. District Court for the Northern District of California. The complaint alleges misdescription of the cube of the shipment, as well as of the commodity shipped. Thus, the shipper in most cases described the commodities as "parts for manufacturing and assembly of system for making cellulosic pulp, paper or paperboard". In a few other instances, the commodity was described as "Electrical Machinery, NOS". The carriers claim that under the applicable tariff the commodity in all cases should have been described as "Electronic Equipment, NOS including calculating, computing or tabulating machines," thereby resulting in higher freight charges. The court in that case will be required to resolve the applicability of the involved tariff provisions to the commodities which were shipped, as well as technical "liquidated damage" provisions contained in the bills of lading which the carriers contend are also here applicable.

Demurrage cases similarly involve issues which require the expert judgment of the FMC. Thus, while the tariffs of the carriers generally impose liability for demurrage on the consignee, the issue frequently arises as to whether or not the delay in removing the shipment from the pier was the fault of the carrier, thereby relieving the consignee from the demurrage assessment. The following examples are illustrative of such issues raised in demurrage proceedings:

(1) The consignee received the shipment in open-top vans which the United States Department of Agriculture determined required fumigation due to infestation by "wood borers." The delay resulting from the fumigation required the assessment of demurrage. The consignee claimed the delay was the fault of the carrier, but the bill of lading released the carrier from all liability once the container is unloaded from the vessel.

(2) The carrier sent an arrival notice to the consignee indicating that four containers were available for pick-up at the pier. The trucker sent by the consignee inadvertently picked up only three of the four containers. The consignee contended that the carrier was responsible for the demurrage charges because it permitted the fourth container to remain on the pier without furnishing additional notice to the consignee.

(3) The carrier inadvertently applied the incorrect rate to a shipment of granite (applying rate for "granite" instead of rate for "rough granite"). The consignee refused to pick up the cargo until it believed the correct charges were assessed therefor. The consignee contends that demurrage accruing during the period of a rate dispute is the fault of the carrier, while the carrier contends that the consignee should have picked up the cargo on arrival and filed a claim for overcharge.

It is clear, therefore, that many of the cases present difficult issues of tariff interpretation and maritime law whose resolution depends upon the expert application of the Shipping Act and the body of administrative and judicial case law which has developed thereunder. In many instances, the issues may be of first impression, thereby requiring a formulation of ocean transportation policy with respect thereto. It cannot be seriously disputed that any resolution of these important and often complex issues should be based on an informed, precise, and consistent determination of what the governing principles are, or should be. There is no assurance, however, that such an informed, precise and consistent determination will result

² As explained in detail hereinafter, inspection cases arise after a TAG inspector, upon examining a loaded container, discovers a discrepancy between the contents of the container and the shipper's declaration therefor on the shipping documents.

³ While reference is sometimes made herein to TAG claims or cases, law suits to collect tariff charges are brought, in most instances, in the name of the carrier. As part of its function, however, TAG oversees the prosecution of those law suits.

when the resolution of such issues is made by a multiplicity of judicial forums with little or no expertise with respect to such issues.

A further reason compelling vesting of primary jurisdiction in the FMC to hear these complaints against shippers is that, in many cases, the FMC is already involved in these proceedings. Thus, on many occasions after TAG contacts a shipper with an undercharge claim or files suit, the shipper will seek advice from the FMC. The FMC will then investigate the claim, review and interpret the tariff provisions involved, and advise the shipper as to its view of the matter. Notwithstanding the extensive investigation which the FMC may have conducted, not to mention its expertise on matters of ocean transportation generally, once the matter proceeds to litigation it is brought, not before the FMC, but before a court which has no familiarity with the case and probably no familiarity with the governing law.

In fact, in the \$254,000 claim, mentioned previously, which TAG has pending in the U.S. District Court for the Northern District of California, the FMC had previously conducted an extensive investigation with respect to the issue of the misdescription of the cube of the shipments. While the FMC is moving ahead with its investigation and enforcement action, the carriers are required to litigate the identical issue concerning the identical shipment before the California District Court. Such a procedure is obviously a waste of time, manpower, and resources on the part of the FMC, the courts, the carriers and their enforcement agencies, and the shippers. Vesting primary jurisdiction in the FMC in these matters, in which the FMC is already involved in numerous instances to one degree or another, would eliminate such needless duplication of investigative and adjudicatory effort.

It thus seems clear that vesting of primary jurisdiction in the FMC to hear complaints against shippers is urgently required. Creation of such jurisdiction in the FMC would be, as Professor Davis explained, in "recognition of the need for orderly and sensible coordination of the work of agencies and of courts."⁴ Moreover, the reason for such jurisdiction in the FMC exists because: "Whether the agency happens to be expert or not, a court should not act upon subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer, for otherwise parties who are subject to the agency's continuous regulation may become the victims of uncoordinated and conflicting requirements".⁵ And, as the Supreme Court noted in *Far East Conference v. United States*, 342 U.S. 570, 574-575 (1952): "The Court thus applied a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over . . . Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure".

Surely, the matters raised by the TAG claims are not "within the conventional experience" of judges but are "peculiarly within the [FMC's] specialized field." Basic tenets of primary jurisdiction as well as the desirability of promoting the consistent and coordinated application and evolution of our nation's maritime law principles require that the FMC cease being "passed over", and that its invaluable insight and experience be brought to bear in adjudicating alleged violations of the Shipping Act by shippers, consignors, and consignees.

B. The present statutory scheme places insuperable obstacles in the path of carriers seeking to enforce the terms of their tariffs

Even aside from considerations of primary jurisdiction, the proposed amendments are required to remove the often impossible task which carriers now face in seeking to enforce their tariffs. In this respect, one of the principal concerns of the FMC and other federal agencies in recent years has been the problem of controlling rebating and other carrier malpractices, including those initiated by or involving the active participation of shippers. In July, 1976, the FMC began a wide-ranging investigation of such malpractices and also commissioned an independent study of self-policing within the conference system. It was concluded from that study that self-policing by carriers, under the neutral body concept "is the most effective approach to the policing of operating malpractice such as misdeclarations, absorptions and demurrage." Statement of Harry C. de Venoge before the Subcommittee on Merchant Marine and Tourism, United States Senate (March 25, 1977).

An important aspect of self-policing is the removal of the incentive to shippers to demand concessions from carriers or to use self-help, as through misdeclaration,

⁴ K. Davis, *Administrative Law Treatise*, § 19.01 at 5 (1956 ed.).

⁵ *Id.*

non-payment of demurrage, etc., to obtain transportation at less-than-tariff rates. As noted in the Commission's Independent Report on Self-Policing Within the Steamship Conference System (pp. 106-107): Some shippers are notorious for demanding rebates. They shop from one carrier to another looking for a better deal. They operate with relative impunity . . . [A] conference-approved policy should be established directing the neutral body to refer a proven serious malpractice to the Commission, with documentation of the cargo interest's involvement, deferring assessment of damages against the carrier to the Commission's levying of penalties against both the carrier and the shipper.

Another important aspect of self-policing under the major neutral bodies now providing self-policing services to conferences, consistent with the above-stated proposal in the Report on Self-Policing, is the enforcement of tariff provisions through the collection from shippers of unpaid freight resulting from misdeclarations by the shippers and from assessments of demurrage. As noted, one such neutral body is TAG, formerly an arm of the Associated North Atlantic Freight Conferences. TAG operates under contracts with several of the United States North Atlantic Shipping conferences to provide a self-policing and cargo and document inspection service to assure that correct ocean freight charges are being assessed and collected in accordance with what is in fact being shipped. An integral part of its operation is the discovery and collection of delinquent shipper accounts for misdeclared freight and for unpaid demurrage. To carry out its inspection program, TAG employs inspectors on the four coasts who work on the docks opening and inspecting containers at random and comparing their contents with the shippers' declarations on the shipping papers. The containers are particularly examined for misdeclarations with respect to commodity, cube, and weight. Manifest checks are also conducted by the inspectors to enable them to discover misdeclarations by examination of the shipping documents.

When misdescriptions or misdeclarations are discovered by TAG's inspectors in their examination of containers and documents, TAG attempts initially to collect the proper freight rate on the basis of what was actually shipped by contacting the involved shipper by telephone, by correspondence, or in person. If the amounts due cannot be collected in that fashion, they are forwarded to TAG's legal counsel who again contacts the shipper and endeavors to secure collection. If those efforts of counsel are unsuccessful, then, because the FMC has no jurisdiction over complaints against shippers, consignors, and consignees, TAG must of necessity refer its claims to other law firms throughout the nation for the commencement of law suits in federal or state courts having personal jurisdiction over the involved shippers.

This requirement that TAG and its member carriers resort to varied judicial forums in order to enforce the carriers' tariffs has resulted in TAG's members filing law suits all over the country, at an enormous hardship and expense. At the present time, for example, TAG members have 61 lawsuits pending or about to be filed in 31 cities or towns in 17 states, including such diverse jurisdictions as Mountain City, Tennessee; Mobile, Alabama; Los Angeles, California; Kirkwood, Missouri; Birmingham, Michigan; Tampa, Florida; Southern Pines, North Carolina; New York, New York; and Falls Church, Virginia.

Not only does the litigation of cases raising questions of ocean transportation policy in such a multiplicity of forums preclude the consistent and rational formulation of such policy, but it also imposes undue hardships and litigation disadvantages upon carriers and their neutral enforcement bodies. While the problems with which TAG has been confronted in this regard are numerous, the principal difficulties may be categorized as follows:

- (1) Inability to secure capable attorneys in widely scattered parts of the country who are willing and able to prosecute TAG's complaints, which frequently involve small amounts of money;
- (2) Inordinate delays in securing the filing of claims in court, and in attaining a decision from frequently back-logged courts; and
- (3) The raising of technical and frivolous defenses by defendants which do not bear on the tariff issues but solely impede the progress of the litigation.

While these problems frequently tend to overlap (for example, delays in the disposition of proceedings may be caused by the raising of frivolous defenses, the unwillingness or inability of local counsel to vigorously pursue the litigation, or the unfamiliarity of the court with the issues involved, or by a combination of all of these factors), to the extent possible they will be discussed individually herein. It should be emphasized again that these problems are ones which TAG is actually encountering at the present time in seeking enforcement of the terms of its member carriers' tariffs.

1. *Inability to secure competent and willing local counsel.*—The absence of jurisdiction in the FMC over complaints against shippers has, as noted, necessitated the

filing of lawsuits against shippers in judicial forums scattered throughout the United States. Shippers and consignees involved in claims handled by TAG may, of course, be located anywhere in the country, and the need to obtain jurisdiction over these potential defendants requires pursuit of these claims in varied and far-flung locations. One of the principal and most persistent problems which TAG has encountered in attempting to litigate its tariff claims is the selection of competent local counsel who are willing and able to undertake such litigation. The selection of such counsel has been a serious and continuing problem for TAG, and has greatly impeded its efforts at tariff enforcement.

In the majority of instances, the search for such counsel usually begins with a search through various law directories. However, even with these aids, in many areas of the country the securing of an attorney to undertake maritime litigation can be an arduous and painstaking task. For example, TAG has had particular difficulty in obtaining local counsel in many of the smaller communities in which suits are required to be filed, particularly if the community is a "company town." In one such case, it was necessary to contact a half dozen law firms before locating an attorney who did not have a connection with the potential defendant, the major industry in that town. In other small towns, the attorney handling the suit, although not professionally connected with the defendant, may have extensive personal relationships with members of the defendant company. Many other attorneys in large as well as small communities, because of the complexity of the ocean transportation issues involved and the frequently small amounts of the claims,⁶ have indicated that they are simply unwilling or, at best, extremely reluctant to handle the TAG claims.

In addition, even if an attorney agrees to handle a claim, he frequently fails to prosecute it with the diligence and persistence required in claims litigation. In fact, on many occasions, TAG has been advised by its local counsel, particularly with respect to smaller claims in the \$500 to \$1000 range, that the attorney will seek to collect the outstanding charges from the shipper, but that the size of the claims does not make it worthwhile to initiate litigation. There have also been instances of attorneys unwilling to file suit when it becomes apparent that the claim will be vigorously defended, or that the debtor is insolvent.

Even where the amounts in controversy are larger, TAG has experienced extreme reluctance on the part of the attorneys it has retained to file complaints, notwithstanding constant prodding by TAG's Washington counsel. This reluctance stems, for the most part, from the attorney's complete unfamiliarity with the ocean transportation issues involved and his lack of competence to litigate such issues. Many of these attorneys, for example, are completely unfamiliar with the governing statutes and regulations, and require step-by-step guidance from TAG and its counsel. On at least one occasion, local counsel inquired at to what law permits TAG to "after the fact" collect additional freight charges from a shipper. It was necessary to brief the attorney in detail on the Shipping Act and the requirement that carriers must collect their freight charges in strict accordance with the terms of their tariffs. As these matters are frequently referred to attorneys who have not handled TAG cases previously, it is necessary to send these attorneys copies of the Shipping Act and regulations thereunder in order for them to acquaint themselves, for the very first time, with the issues and the governing law, as well as detailed explanations of the shipping terminology and procedures.

TAG, in short, in seeking enforcement of its members' tariffs is, in many instances, required to rely upon attorneys who are both unfamiliar with the issues involved and who are unwilling to undertake the necessary litigation to secure such enforcement. Certainly, the administration of our country's shipping laws should not depend upon the willingness or ability of attorneys engaged in general practice in communities throughout the country to undertake a piece of specialized litigation which these cases reflect. By vesting jurisdiction over these complaints in the FMC, not only would an expert body decide these matters in the first instance but there would be available, to prosecute these claims, specialized attorneys who would be fully familiar with the issues and the law applicable thereto.

2. Time delays seriously impair enforcement efforts.—Primarily as a result of the reluctance of the attorneys retained by TAG to vigorously pursue its claims and, in some instances, to refuse to file a law suit at all, TAG has experienced inordinate delays in not only securing a resolution of its claims, but in merely securing the filing of its complaints. For example, in the majority of instances, it takes from one to three months for an attorney to file a complaint after the TAG claim is forward-

⁶While the claims involved may sometimes be small, the principles of law, such as where the interpretation of a tariff rule, regulation or commodity description is involved, may nevertheless have significant industry-wide implications.

ed to him. In some cases, as much as four to six months transpired before a complaint was filed, and in one instance an attorney waited 12 months before he filed the complaint. While TAG counsel is constantly prodding these attorneys to act more promptly, their efforts have largely not been successful. It appears that these cases are treated by local counsel as minor collection matters and not accorded the attention which they clearly warrant under the Shipping Act.

The delays encountered after the complaint is filed are also a serious problem. Many of these suits are pending in courts that are so backlogged that the case will not be heard for as long as one to two years after the filing of the suit. On the average, one year passes from the time a case is referred in local counsel until receipt of payment; but a number of cases have been with local counsel for two to four years without resolution.

It is strongly believed that these delays, which seriously impede the proper administration of the Shipping Act and enforcement of the carriers' tariffs filed thereunder, could be greatly reduced if complaints against shippers could be filed, in the first instance, with the FMC. Reduction in delays could be accomplished since both the FMC and the maritime attorneys handling the complaint would be much more familiar with the issues and their significance under the Shipping Act than the courts in which those claims are now filed and the local counsel TAG has been required to retain under present procedures.

3. *Frivolous defenses are frequently raised under the present procedures.*—A direct result, under the present procedure, of the unfamiliarity of the courts and counsel with the Shipping Act and especially the carrier's obligation to collect its freight charges strictly in accordance with the terms of its tariff, is that frivolous and immaterial defenses are often interposed and required to be litigated, at a great waste of time and money. These defenses have absolutely nothing to do with the merits of the tariff issues involved in the proceedings, but serve solely to impede the progress of the litigation.

A typical defense of this nature is an allegation that the carrier, its agent, or a forwarder agreed to waive certain demurrage charges. In one case, such a defense was asserted and, in the carrier's memorandum of points and authorities in support of a motion for summary judgment, it was necessary to devote a considerable number of pages in response to this defense, despite the fact that such defense is frivolous is well-settled. See, e.g., *United States v. Seatrain Lines, Inc.*, 370 F. Supp. 483; "Free Time and Demurrage Charges on Export Cargo," 13 F.M.C. 207, 238 (1970).

Another example of a frivolous defense frequently interposed for the purpose of delay occurred in an action brought in the Civil Court of the City of New York, County of New York by a major container carrier against an exporter of fabric for additional freight owed as a result of the exporter's misdescription of cargo. The first defense raised by the defendant in that action was that the carrier had not qualified to do business within the State of New York and was, therefore, precluded from maintaining an action in a New York court. Similar defenses have been raised in actions brought against shippers in Illinois and Michigan. Whatever the merits of such a defense under local law, it is clearly contrary to the intent of Congress in the Shipping Act to impose such barriers to maintaining actions against shippers to collect charges which ocean carriers are required by law to collect. Ocean carriers do business primarily on the high seas, and it would clearly constitute an unreasonable burden on such carriers to undertake to qualify to do business in every state of the United States in order to be able to bring actions against delinquent shippers wherever they may happen to be found.

Another defense which is often raised, especially by consignees against whom actions have been brought in inspection cases, is that the shipper (located outside the United States) is liable for the freight unpaid as a result of a misdeclaration and not the consignee. On the other hand, certain shippers have claimed, particularly on "freight collect" shipments to Europe, that any additional freight charges are the responsibility of the consignee, and that the shipper has no contractual obligation to pay freight charges. Other shippers have claimed that, since the carriers contracted with various freight forwarders, there is no privity between the carriers and the shipper and recourse can only be had by the carrier against the forwarders. Despite the clarity of the law on this point that both shipper and consignee are liable for freight charges, the use of these defenses persists, with the result that legal resources are wasted responding to such defenses in an effort to educate local tribunals as to the involved law in order to assure that an erroneous decision is not rendered.

Other frivolous defenses which have been raised in TAG cases, and which are clearly irrelevant and immaterial, include claims that since the defendant paid the freight bill as tendered in full, the carrier may not subsequently seek to collect a

greater amount, notwithstanding any misdeclaration or misdescription which may have occurred; that a consignee could rely on a carrier's past practice of not assessing demurrage; and that the consignee was not responsible for demurrage since it was acting solely as agent for another party or because delays were caused by the slowness of its customs brokers in preparing paperwork or customs agents in inspecting imported cargo, notwithstanding tariff provisions making the consignee responsible for demurrage.

Assertion of the foregoing, and similar defenses, has served solely to greatly hinder the carriers' efforts to enforce the terms of their tariffs. If jurisdiction resided in the FMC to hear these complaints, that agency, with its expertise in the administration of the Shipping Act, would be able quickly to lay such defenses to rest and proceed to the merits of the tariff issues involved.

C. The enforcement of carriers' tariffs filed with the FMC should not depend upon whether violations of the terms thereof are "knowing and willful"

While, as noted, Section 16 of the Act prohibits certain actions by shippers, consignors, and consignees, that Section requires that such acts be committed "knowingly and willfully." It is, however, obviously important to the administration of the shipping laws, and to the prevention of rebates and other malpractices, that carriers' tariffs be strictly enforced according to their terms. A failure to abide by such terms should not, therefore, be excused on the grounds that such failure was not "knowing and willful". Accordingly, in addition to amending Section 22 to confer jurisdiction over complaints against shippers in the FMC, it is also proposed that Section 18(b) of the Act be amended, by addition of a new paragraph (4) thereto, to make it unlawful for a shipper, consignor, or consignee to receive, demand, obtain, or attempt to obtain transportation at rates less than those specified in the applicable tariff, irrespective of whether or not such acts were knowing or willful. Such amendment will not only prevent any deviation from the terms of carrier tariffs, but it will also place shippers on an equal footing under the Act with carriers who are prohibited, in Section 18(b)(3) aside from any considerations of knowledge or willfulness, from charging a different compensation for transportation than that specified in their tariffs.

The proposed amendment to Section 18 would, in fact, merely make it clear that shippers, as well as carriers, are required to strictly adhere to the terms of effective tariffs on file with the FMC. This principle, as applied to carriers, has been enunciated in decisions almost too numerous to cite. For example, in *Kraft Foods v. Moore McCormack Lines*, 17 FMC 320, 322 (1974), the FMC said: "Section 18(b)(3) makes it abundantly clear that a carrier is strictly bound to adhere to the terms of the tariff as filed. This mandate applies not only to the rates published therein, but to the various terms, rules, regulations and conditions included within that tariff which are as much a part of the tariff as are the rates themselves".

The Commission added: "Neither mistakes, inadvertence, contrary intention of the parties, hardship nor principles of equity permit a deviation from the rates, rules and regulations in the carriers' filed tariff".⁷

In sum, in order for the FMC to effectively control rebating and other malpractices initiated by shippers, it must not only possess jurisdiction to hear complaints against shippers, but it must also be able to investigate such malpractices whether or not they are committed knowingly or willfully. The amendments proposed herein would accomplish both objectives.

V. CONCLUSION

Jurisdiction in the FMC of complaints against shippers will, in short, further the orderly and rational development of maritime law by permitting the FMC to participate, for the first time, in the adjudication of such complaints. While the courts will still retain ultimate responsibility for such adjudication, they will be invaluablely assisted by the FMC's prior determination of the involved issues. Moreover, vesting or jurisdiction in the FMC will alleviate the serious problems of time delays, reluctant and inexperienced counsel, and frivolous defenses which are encountered by any party currently attempting to enforce tariff provisions against shippers by law suits which of necessity must now be brought in diverse forums all over the country.

⁷ 17 FMC at 323, Note 4. See also, *Union Carbide Inter-America v. Venezuelan Line*, 17 FMC 181 (1973); *Kraft Foods v. Prudential-Grace Line*, 17 FMC 159 (1973); *United States v. Seatrain Lines, Inc.*, 370 F. Supp. 483.

S. _____

IN THE SENATE OF THE UNITED STATES

_____, 1979

A BILL

To amend the Shipping Act to vest jurisdiction in the Federal Maritime Commission over complaints against shippers, consignors, and consignees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 22 of the Shipping Act (46 U.S.C. 821) is amended to read (new language is underscored and omitted language is struck through):

"Sec. 22. Any person may file with the board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby, and any common carrier by water may file with the board a sworn complaint setting forth any violation of Section 16 or Section 18(b)(4) of this Act by any shipper, consignor, or consignee in connection with the transportation of property by such carrier and asking reparation for the injury, if any, caused thereby. The board shall furnish a copy of the complaint to such carrier, shipper, consignor, consignee, or other person, who shall, within a reasonable

time specified by the board, satisfy the complaint or answer it in writing. If the complaint is not satisfied the board shall, except as otherwise provided in this Act, investigate it in such manner and by such means, and make such order as it deems proper. The board, if the complaint is filed within two years after the cause of action accrued, may direct payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The board, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this Act."

SECTION 2. Subsection (b) of Section 18 of the Shipping Act (46 U.S.C. 817(b)), is amended by renumbering present paragraphs (4), (5), and (6) thereof as paragraphs (5), (6), and (7), respectively, and by adding a new paragraph (4):

"(4) Except as permitted by the Commission in accordance with the provisions of paragraph (3) of this subsection, no shipper, consignor, or consignee, or any officer, agent, or employee thereof shall receive or demand or obtain or attempt to obtain transportation by water for property at less than the rates and charges specified in applicable tariffs on file with the Commission and duly published and in effect at the time."

Mr. DIAZ. I have a summary I would like to read.

I am Manuel Diaz, Jr., president of the Adherence Group, Inc. of 21 West Street, New York, N.Y.

I thank you for the opportunity of being here this morning. I am accompanied by Mr. Jacob Billig who is the counsel for The Adherence Group and has done quite possibly 90 percent of the work in this country with respect to the shipper shortage claims.

Thank you for providing me with the opportunity to testify before the committee today. I have submitted written testimony, copies of which have been provided to you. At this time I would like to summarize that testimony and then answer any questions the committee may have.

The Adherence Group, Inc. (TAG) is a private corporation that provides a policing and inspection service for conferences of ocean carriers. As the representative of The Adherence Group, I urge the passage of the legislation that is the subject of this hearing, for the reasons I will set forth today.

The Federal Maritime Commission, the agency empowered to regulate the transportation by water of property in foreign commerce, has concluded that, under the Shipping Act of 1916, it has no jurisdiction of complaints filed against shippers for alleged violations of the Shipping Act.

I will demonstrate in this testimony that this lack of jurisdiction in the FMC to adjudicate complaints against shippers is anomalous and irrational. It creates a serious gap in the proper and uniform administration of the Nation's shipping laws by the expert agency entrusted with administration. It is directly contrary to well-established principles of primary jurisdiction.

It creates severe and needless hardships on ocean carriers seeking to enforce the terms of their tariffs in numerous and disparate forums all over the country.

It has therefore been proposed that this deficiency in the Shipping Act which has resulted in the frustration of efforts to assure compliance by all shippers with the terms of ocean carriers' tariffs be remedied by an amendment. This amendment to the Shipping Act would specifically confer jurisdiction over complaints against shippers in the FMC, and it would provide that violations by shippers of the terms of the tariff need not be knowing or willful.

The Federal Maritime Commission's conclusion that it at present lacks jurisdiction over complaints against shippers for alleged violations of the Shipping Act is based on a failure of the act to specifically include complaints against shippers in its section 22.

The relevant portion of section 22 presently provides that:

Any person may file with the Federal Maritime Commission a sworn complaint setting forth any violation of this chapter by a common carrier by water, or other person subject to this chapter. . .

The term "other person subject to this chapter" is defined in section 1 of the act as:

Any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

It seems clear from this language, that the failure to include shippers, consignors, and consignees within this definition, which does expressly include another class of persons requires the conclu-

sion that it was intended that shippers, consignors, and consignees be excluded from the meaning of "other person subject to this chapter."

Thus, section 22 limits Commission jurisdiction over complaints to those filed against common carriers or other persons subject to the Shipping Act, which does not include shippers, consignors, and consignees.

And yet, section 16 of the act which declares it unlawful to obtain or attempt to obtain transportation by water for less than the rates or charges which would otherwise be applicable, does expressly include shippers, consignors, and consignees in this prescription.

In short, section 16 clearly makes it unlawful for shippers to commit the acts prohibited therein, and section 22 provides that the Commission may, upon its own motion, investigate any violation of the act, presumably including a violation by a shipper, consignor, or consignee. Nevertheless, notwithstanding the clear and commonsense implication of section 16 that a shipper, consignor, or consignee is a person subject to the act, and notwithstanding the fact that violations by such persons may be investigated by the Commission upon its own motion, thus making them subject to the Commission's jurisdiction for such purpose, the limited definition of "person subject to the act" contained in section 1 precludes the Commission from asserting jurisdiction over complaints against shippers.

While the issue of the Commission's jurisdiction to adjudicate a complaint against a shipper has never been reviewed by a court, the Commission has confirmed in several of its proceedings that, under section 22, it has no such jurisdiction.

The proposed amendment to section 22 of the act is set forth in the appendix to my testimony. This proposed amendment reflects a slight modification to the amendment as set forth in H.R. 1715. Additional language has been added to satisfy concerns of the National Industrial Traffic League that under H.R. 1715 actions could be brought by persons other than common carriers by water. The amendment here proposed makes clear that only ocean common carriers may bring such actions.

At this point I might add in connection with Commissioner Moakley's statements, we have no objection to the FMC amendment to section 2 of the bill which eliminates the penalty provision from knowingly and willfully.

The procedure to be followed for enforcement of an FMC order entered pursuant to the proposed amendment would be the same as that now contained in existing law. Thus, under section 30 of the act provision is presently made for the filing of suit for violation of any order of the FMC for the payment of money.

The suit may be brought by the person to whom such award is made, and may be filed in the U.S. district court for the district where the plaintiff resides, or in which is located any office of the defendant or port of call of a carrier-defendant, or in any court of general jurisdiction of a State, territory, district or possession of the United States having jurisdiction of the parties.

Section 30 further provides that the findings and order of the FMC shall be prima facie evidence of the facts stated in the court suit.

In addition, it is also proposed, for reasons I will enumerate, that section 18 of the act be amended as set forth in the appendix to my testimony. The purpose of such amendment is to make unlawful under the Shipping Act the receipt by a shipper, consignor, or consignee of transportation at less than the applicable freight tariff, whether or not the receipt of such transportation was obtained knowingly or willfully.

There are numerous reasons that this legislation, which would empower the FMC to hear complaints against shippers for alleged violations of the act, is urgently required to alleviate the difficulties and frustrations encountered by persons seeking to adjudicate such complaints in courts all over the country.

The three areas discussed in more detail in my written testimony are:

First, the need for a uniform and expert administration of the Nation's shipping laws requires that the FMC have primary jurisdiction in these matters.

Second, the present statutory scheme places insuperable obstacles and imposes significant hardships on the carriers seeking to enforce the terms of their tariff; and

Third, the enforcement of the carriers' tariffs should not depend upon whether the violations were knowing and willful.

The litigation of cases raising questions of ocean transportation policy in a variety of forums all over the country clearly prevents a coordinated formulation of such policy and ignores the accumulated expertise of the FMC with respect to such matters.

This obviously inefficient and irrational approach, whereby civil courts, and not infrequently "small claims" courts, in communities throughout the Nation, rather than the expert body entrusted with administering the Shipping Act, are establishing this country's ocean transportation policy, should be remedied by conferring primary jurisdiction in the FMC to decide these matters.

In seeking to enforce the terms of their tariffs against shippers, TAG member-carriers have filed a multitude of lawsuits in numerous jurisdictions. The issues raised in these lawsuits, which may be generally classified as inspection cases or demurrage (storage charges) cases, are many.

While the inspection cases generally alleged that there was a cube, weight, or commodity misdeclaration by the shipper, which enabled it to secure a lower freight charge than it was actually entitled to receive, these cases also involve other technical and specialized ocean transportation issues, such as the right of the shipper to be present at any reinspection of its cargo resulting in a claim of higher freight charges; the applicability of foreign port charges; the question of the proper tariff to be applied; and deductions unilaterally made by the shipper from the billed tariff charges.

The misdescription and misdeclaration cases frequently involve highly technical questions of tariff interpretation requiring the application of the expertise of a body familiar with such issues.

Demurrage cases similarly involve issues which require the expert judgment of the FMC.

Thus, while the tariffs of the carriers generally impose liability for demurrage on the consignee, the issue frequently arises as to whether or not the delay in removing the shipment from the pier was the fault of the carrier, thereby relieving the consignee from the demurrage assessment.

It is clear, therefore, that many of the cases present difficult issues of tariff interpretation and maritime law whose resolution depends upon the expert application of the Shipping Act and the body of administrative and judicial case law which has developed thereunder.

In many instances, the issues may be of first impression, thereby requiring a formulation of ocean transportation policy with respect thereto. It cannot be seriously disputed that any resolution of these important and often complex issues should be based on an informed, precise and consistent determination of what the governing principles are, or should be.

There is no assurance, however, that such an informed, precise and consistent determination will result when the resolution of such issues is made by a multiplicity of judicial forums with little or no expertise with respect to such issues.

A further reason compelling vesting of primary jurisdiction in the FMC to hear these complaints against shippers is that, in many cases, the FMC is already involved in these proceedings.

Thus, on many occasions after TAG contacts a shipper with an undercharge claim or files suit, the shipper will seek advice from the FMC. The FMC will then investigate the claim, review and interpret the tariff provisions involved, and advise the shipper as to its view of the matter. Notwithstanding the extensive investigation which the FMC may have conducted, not to mention its expertise on matters of ocean transportation generally, once the matter proceeds to litigation it is brought, not before the FMC, but before a court which has no familiarity with the case and probably no familiarity with the governing law.

This procedure is a waste of time, manpower, and resources on the part of the FMC, the courts, the carriers and their enforcement agencies, and the shippers. Vesting primary jurisdiction in the FMC in these matters, in which the FMC is already involved in numerous instances to one degree or another, would eliminate such needless duplication of investigative and adjudicatory effort.

Basic tenets of primary jurisdiction as well as the desirability of promoting the consistent and coordinated application and evolution of our Nation's maritime law principles required that the FMC cease being "passed over", and that its invaluable insight and experience be brought to bear in adjudicating alleged violations of the Shipping Act by shippers, consignors, and consignees.

Even aside from considerations of primary jurisdiction, the proposed amendments are required to remove the often impossible task which carriers now face in seeking to enforce their tariffs.

In this respect, one of the principal concerns of the FMC and other Federal agencies in recent years has been the problem of controlling rebating and other carrier malpractices, including those initiated by or involving the active participation of shippers.

In July 1976, the FMC began a wide-ranging investigation of such malpractices and also commissioned an independent study of self-policing within the conference system.

It was concluded from that study that self-policing by carriers, under the neutral body concept "is the most effective approach to the policing of operating malpractices such as misdeclarations, absorptions and demurrage."

An important aspect of self-policing is the removal of the incentive to shippers to demand concessions from carriers or to use self-help, as through misdeclaration, nonpayment of demurrage, et cetera, to obtain transportation at less than tariff rates.

Another important aspect of self-policing under the major neutral bodies now providing self-policing services to conferences is the enforcement of tariff provisions through the collection from shippers of unpaid freight resulting from misdeclarations by the shippers and from assessments of demurrage.

As noted, one such neutral body is TAG, formerly an arm of the Associated North Atlantic Freight Conferences. TAG operates under contracts with several of the U.S. North Atlantic shipping conferences to provide a self-policing and cargo and document inspection service to assure that correct ocean freight charges are being assessed and collected in accordance with what is in fact being shipped. An integral part of its operation is the discovery and collection of delinquent shipper accounts for misdeclared freight and for unpaid demurrage. To carry out its inspection program, TAG employs inspectors on the four coasts who work on the docks opening and inspecting containers at random and comparing their contents with the shippers' declarations on the shipping papers. The containers are particularly examined for misdeclarations with respect to commodity, cube and weight. Manifest checks are also conducted by the inspectors to enable them to discover misdeclarations by examination of the shipping documents.

When misdescriptions or misdeclarations are discovered by TAG inspectors in their examination of containers and documents, TAG attempts initially to collect the proper freight rate on the basis of what was actually shipped by contacting the involved shipper by telephone, by correspondence, or in person. If the amounts due cannot be collected in that fashion, they are forwarded to TAG's legal counsel who again contacts the shipper and endeavors to secure collection.

If those efforts of counsel are unsuccessful, then, because the FMC has no jurisdiction over complaints against shippers, consignors, and consignees, TAG must of necessity refer its claims to other law firms throughout the Nation for the commencement of lawsuits in Federal or State courts having personal jurisdiction over the involved shippers.

This requirement that TAG and its member carriers resort to varied judicial forums in order to enforce the carriers' tariffs has resulted in TAG's members filing lawsuits all over the country, at an enormous hardship and expense.

At the present time, for example, TAG members have 61 lawsuits pending or about to be filed in 31 cities or towns in 17 States, including such diverse jurisdictions as Mountain City, Tenn.; Mobile, Ala.; Los Angeles, Calif.; Kirkwood, Mo.; Birmingham,

Mich.; Tampa, Fla.; Southern Pines, N.C.; New York, N.Y.; and Falls Church, Va. and even Guam.

Not only does the litigation of cases raising questions of ocean transportation policy in such a multiplicity of forums preclude the consistent and rational formulation of such policy, but it also imposes undue hardships and litigation disadvantages upon carriers and their neutral enforcement bodies.

While the problems with which TAG has been confronted in this regard are numerous, the principal difficulties may be categorized as follows:

One, inability to secure capable attorneys in widely scattered parts of the country who are willing and able to prosecute TAG's complaints, which frequently involve small amounts of money;

Two, inordinate delays in securing the filing of claims in court, and in attaining a decision from frequently backlogged courts and;

Three, the raising of technical and frivolous defenses by defendants which do not bear on the tariff issues but solely impede the progress of the litigation.

It is strongly believed that these obstacles which seriously impede the proper administration of the Shipping Act and enforcement of the carriers' tariffs filed thereunder, could be significantly reduced if complaints against shippers could be filed, in the first instance, with the FMC. Reduction in delays could be accomplished since both the FMC and the maritime attorneys handling the complaint would be much more familiar with the issues and their significance under the Shipping Act than the courts in which those claims are now filed and the local counsel TAG has been required to retain under present procedures.

Further, a direct result, under the present procedure, of the unfamiliarity of the courts and counsel with the Shipping Act and especially the carrier's obligation to collect its freight charges strictly in accordance with the terms of its tariff, is that frivolous and immaterial defenses are often interposed and required to be litigated, at a great waste of time and money.

These defenses, examples of which are cited in my written testimony, usually have nothing to do with the merit of the tariff issues involved in the proceedings, and serve solely to impede the progress of the litigation.

It is believed that if jurisdiction resided in the FMC to hear these complaints, that agency, with its expertise in the administration of the Shipping Act, would be able quickly to lay such defenses to rest and proceed to the merits of the tariff issues involved.

While, as noted, section 16 of the act prohibits certain actions by shippers, consignors, and consignees, that section requires that such acts be committed knowingly and willfully.

It is, however, obviously important to the administration of the shipping laws, and to the prevention of rebates and other malpractices, that carriers' tariffs be strictly enforced according to their terms. A failure to abide by such terms should not, therefore, be excused on the grounds that such failure was not "knowing and willful."

Accordingly, in addition to amending section 22 to confer jurisdiction over complaints against shippers in the FMC, it has also been proposed that section 18(b) of the act be amended, by addition

of a new paragraph to make it unlawful for a shipper, consignor, or consignee to receive, demand, obtain, or attempt to obtain transportation at rates less than those specified in the applicable tariff, irrespective of whether or not such acts were knowing or willful.

Such amendment will not only prevent any deviation from the terms of carrier tariffs, but it will also place shippers on an equal footing under the act with carriers who are prohibited, in section 18(b)(3) aside from any considerations of knowledge or willfulness, from charging a different compensation for transportation than that specified in their tariffs.

In order for the FMC to effectively control rebating and other malpractices initiated by shippers, it must not only possess jurisdiction to hear complaints against shippers, but it must also be able to investigate such malpractices whether or not they are committed knowingly or willfully. The amendments proposed herein would accomplish both objectives.

In conclusion, jurisdiction in the FMC of complaints against shippers will further the orderly and rational development of maritime law by permitting the FMC to adjudicate such complaints. While the courts will still retain ultimate responsibility for such adjudication, they will be invaluablely assisted by the FMC's prior determination of the involved issues.

Moreover, investigating of the jurisdiction in the FMC will alleviate the serious problems of time delays, reluctant and inexperienced counsel, and frivolous defenses which are frequently encountered in many cases where attempts are made to enforce traffic provisions against shippers by lawsuits which of necessity must be brought in diverse forms all over the country.

Thank you. That is the summary of my testimony.

[The letter referred to follows:]

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
October 29, 1979.

Mr. PETER N. KYROS,
Staff Counsel, Subcommittee on Merchant Marine,
Longworth House Office Building, Washington, D.C.

DEAR MR. KYROS: The Water Freight Transportation-Maritime Committee of The National Industrial Traffic League would like to thank you for your invitation to appear before the Merchant Marine Subcommittee to testify on H.R. 1715. While a conflict in scheduling regretfully prohibits a personal appearance before the Subcommittee at its October 30 hearing, we would like to take this opportunity to provide a shippers' perspective on the proposed legislation. We ask that the hearing record reflect that we are not opposed to revisions of sections 22 and 18(b) of the Shipping Act in the amended language provided the House Subcommittee by Jacob P. Billig last May 10. We regret our inability to appear personally and hope that our comments will be of assistance to the Subcommittee's deliberations.

Sincerely,

GEORGE F. AVERY, Jr.,
Chairman, Water Freight Transportation,
Maritime Committee.

Mr. MURPHY. Thank you, Mike.

Would this legislation hurt the small shipper?

Mr. DIAZ. No sir, it would not.

Mr. MURPHY. Would the FMC become a collection agency for small claims?

Mr. DIAZ. No, it wouldn't. Mr. Chairman, when we say that, essentially Commissioner Moakley indicated that there were 61

cases pending now either in litigation or in courts or ready to go to court. This is a reflection of some 2 or 3 years work. It doesn't mean that there are 61 cases generated in 1979. The heavy majority of the cases that we get into involving collection of misdeclarations or miscubes are satisfied before they ever even get to counsel.

No. 1, by our contact with the shippers and their bringing to their attention that the carriers are by law required to collect charges according to their tariffs. And at the same time, if we do turn over to counsel very often a letter from counsel or contact by counsel generates a payment of the required tariff charges.

So whatever the fallout that we have, which would revert to the FMC under this legislation would be very small. In fact, I think that if the FMC were given this power, once they contacted the shipper involved, you would get a much more instantaneous response than we are getting by using either our own counsel here in Washigton or having to use the local counsel in Mountain City, Tenn. or whatever.

Mr. MURPHY. Why aren't the courts adequately competent to handle claims against shippers?

Mr. DIAZ. Well, most of the courts in which we have found ourselves, regretfully don't know much about international shipping and they are not aware of the intricacies of the Shipping Act and don't know anything about either the definition of shipping terms or what is involved. They immediately get on to a learning curve which takes a tremendous amount of time.

Mr. MURPHY. You are talking about administrative law judges as well?

Mr. DIAZ. No; administrative law judges in the Federal Maritime Commission are well aware of the terms involved and they also have deep background in various procedures and the relationship of the conference or carrier tariff to the Shipping Act.

Mr. MURPHY. How many complaint cases annually do you think would be filed under H.R. 1715?

Mr. DIAZ. Well, I would think that maybe 25 at the most.

Mr. MURPHY. How many?

Mr. DIAZ. I say maybe 25 at the most.

Mr. MURPHY. Twenty-five?

Mr. DIAZ. Yes.

Mr. MURPHY. Counsel.

Mr. KYROS. Thank you, Mr. Chairman.

Mr. Diaz, you say in your statement, sir, that the shippers sometimes raise frivolous defenses. Of course, that is a value judgment you are making right now, about raising frivolous defenses?

Mr. DIAZ. Well, it is a value judgment from my standpoint, but I think it has some merit.

Mr. KYROS. What would prevent a shipper from raising the same defense if he were within the jurisdiction of the FMC, in a case adjudicated before the FMC?

Mr. DIAZ. Nothing. But when you raise it in a forum where the presiding officer is not acquainted with the law and regulations that are extant in the maritime field that has to be accepted not as frivolous but on its face value, and looked into and held up to the light.

But if we were doing this in the forum of the FMC before a knowledgeable administrative law judge, whoever would be the presiding officer, he could dismiss it out of hand.

Mr. KYROS. Knowledgeable law judges and commissioners are swift and efficient in these claims?

Mr. DIAZ. Yes sir.

Mr. KYROS. Is there any history in the section 15 agreements now handled by the FMC that indeed they are swift and efficient?

Mr. DIAZ. No. As a matter of fact, they are not, but I don't think you can compare a section 15 hearing with a matter that has to do with a collection of tariff charges. One of them is essentially a black and white problem. The section 15 agreement has many facets.

Mr. KYROS. You say essentially a black and white problem yet you point out if TAG, your company, had to rely on attorneys throughout various jurisdictions of the United States who aren't familiar with this intricate law, you say, then there would be difficulties in their undertaking litigation.

Do you want it both ways here?

Mr. DIAZ. I am not saying that. Of course I don't want it both ways. The problem is that it doesn't become black and white when it gets into a forum where the intricacies of the case and the applicable laws and statutes are not understood and they are not a matter of day to day discussions as they are in the FMC.

Mr. KYROS. You also make the points on page 22 that TAG, is a neutral policing body, is that right?

Mr. DIAZ. Yes sir.

Mr. KYROS. "Should not have to rely on attorneys throughout the United States but should be able to rely on attorneys who have specialized in this kind of claim litigation." That is the point you make on page 22, is that correct?

Mr. DIAZ. Yes sir.

Mr. KYROS. Are you suggesting small shippers should be dragged to Washington to adjudicate claims against them?

Mr. DIAZ. I don't think they will ever get to that. I think that Commissioner Moakley testified that much in the case of overcharges, which are claims that the shippers bring against the carriers, that this will be done on an informal basis relying on the judgment of the Federal Maritime Commission.

Mr. KYROS. Will passage of H.R. 1715 increase the strength and the ability of a neutral body, such as your own company, to conduct self-policing?

Mr. DIAZ. Yes sir.

Mr. KYROS. Would that be of value to establishing stable rates and ridding the trade of malpractice?

Mr. DIAZ. No question.

Mr. KYROS. Would that benefit shippers as well as carriers?

Mr. DIAZ. It benefits the honest shippers, which are probably in the substantial majority, like about 99 percent.

Mr. KYROS. Do you know of any complaints by shippers against this bill?

Mr. DIAZ. No, we have had numerous discussions with the National Industrial Traffic League and Mr. George Avery, who is

chairman of the Maritime Committee. We have received their acceptance of this legislation.

Mr. KYROS. The theory is, I suppose, if one shipper takes advantage of the carrier he is getting a preference that somewhere will be paid for by the other mass of shippers or the consuming public.

Mr. DIAZ. Well, I don't think he thinks that at all. He just thinks, very frankly, Mr. Kyros—we would be getting my product on the market so I can get a bigger profit or sell underneath my competitor.

Mr. KYROS. As I understand your testimony, Mr. Diaz, you thought you believed that the recommendations made by FMC for section 2 of this bill, which pertains to section 18 of the Shipping Act, were in good form and would improve your own recommendations?

Mr. DIAZ. Yes sir, I do, it simply addresses itself——

Mr. KYROS. I want to take you back to the words in section 22 that give me a little concern, and that is, we now say in this bill any person may file a complaint, a common carrier may file a small complaint in connection with injuries, violations of the Shipping Act, asking reparation of the injury, if any. Is that right?

Mr. DIAZ. Yes sir.

Mr. KYROS. Now, the word would be changed in accordance with H.R. 1715 striking the words "reparation for the injury" and inserting in lieu thereof "for an award of damages for any injury".

I am looking at the bill itself, H.R. 1715, on the second page, sir, on lines 2 and 3.

Mr. DIAZ. We put in a further amendment, Mr. Kyros.

Mr. KYROS. I see. You have got an appendix on page 1 of 2, the further amendment of section 22?

Mr. DIAZ. That is right.

Mr. KYROS. Well, the question would come to this, when we are talking about an action against a shipper, by a carrier, are we talking just for the violation of the act, for example, a misdescription or miscubing, are we talking about any consequential damages that might flow from that violation?

Mr. DIAZ. The consequential damages that would flow is that there are in various ocean tariffs some administrative charges that can be applied to this kind of a collection simply because it is an additional and heavy cost to the lines to collect, to have to go through this procedure.

Mr. KYROS. I am sorry, that would be part of the tariff, any charges that would be incurred in terms of collection. But would there be anything in here for consequential damages?

Mr. DIAZ. No, that is already in. As I understand, that language is already in the act.

Mr. KYROS. The act just says reparation for injury, as it stands right now.

Mr. DIAZ. That is what we have in our further amendment.

Mr. KYROS. You are putting back the same words of the act?

Mr. DIAZ. That is right, we are not touching that.

Mr. KYROS. Now, the second part of your bill, other than the one that gives jurisdiction over shippers, provides that in terms of rebating the shipper should be on no different footing than the carrier, is that correct?

Mr. DIAZ. Yes sir.

Mr. KYROS. When the 1916 act was written, it was a shipper protection act. That is a correct characterization, is it not?

Mr. DIAZ. It was a shipper protection act, yes. I guess that was, Mr. Kyros.

Mr. KYROS. It wasn't even until 1961 they put in section 16 the initial paragraph saying if a shipper did something knowingly, willfully, by cheating, by unfair means, he would be held liable.

The act sought to protect the shipper in this manner against a powerful carrier, is that correct?

Mr. DIAZ. Yes sir.

Mr. KYROS. Are we in any way, in your judgment, cutting away from this protection of the shipper by enacting legislation that now makes the shipper liable, even as the carrier, for accepting what would be a rate less than the filed rate?

Mr. DIAZ. No. What our proposed legislation does, it protects the honest shipper. We presume that the shippers are going to be honest and it protects them all?

Mr. KYROS. We can't argue against honesty?

Mr. DIAZ. No, I am in favor of that.

Mr. MURPHY. Thank you. We appreciate your being here and your contribution to the legislation.

Mr. DIAZ. Thank you very much.

Mr. MURPHY. The subcommittee will stand adjourned.

[The following was submitted:]

BILLIG, SHER & JONES,
Washington, D.C., October 31, 1979.

Mr. PETER N. KYROS,
Staff Counsel, Subcommittee on Merchant Marine,
Longworth House Office Building, Washington, D.C.

DEAR MR. KYROS: On behalf of The Adherence Group, Inc., please extend our sincere thanks to Congressman Murphy and the entire staff of your Committee for the hearing which was accorded to use yesterday in connection with the above legislation. I trust that in light of the strong Federal Maritime Commission support and the absence of any opposition to the bill, that it will now be possible to move it along at a very rapid rate so that it may be enacted during this Session.

With respect to your further queries, please be advised that we do not believe that there would be any occasion for the award of "any damages," consequential or otherwise, under the proposed legislation beyond those specified in any complainant carrier's tariff. In this respect, as you are aware, the purpose of the legislation is to provide an FMC forum for the ocean carrier to collect the charges due under its tariff, which would include its bill of lading filed as a part thereof. In our view, if an element of damage is not specified in the carrier's tariff, it could not be collected.

With reference to the FMC proposed amendments, please be further advised that we believe that they should be adopted, they relate solely to limitations upon the imposition of penalties which may otherwise be due from shippers and would not be of direct concern to the ocean carriers.

If any further information or clarification is desired, please do not hesitate to contact me.

Thank you again for your assistance and cooperation.

Yours very truly,

JACOB P. BILLIG.

[Whereupon, at 10:40 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

STATUTE OF LIMITATIONS

MONDAY, DECEMBER 3, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met at 2:55 p.m., pursuant to call, in room 1334, Longworth House Office Building, Hon. John M. Murphy (chairman of the subcommittee) presiding.

Present: Representatives Murphy and Anderson.

Mr. MURPHY. We will commence the hearing on H.R. 3748.

I regret that I had to be on the floor, otherwise, we would have kept to our time schedule.

This afternoon we commence hearings on H.R. 3748, a bill to provide for a uniform national 3-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort.

One of the more ancient legal specialties is that related to admiralty problems. Long before governments exercised concern for the life and safety of industrial workers, the need to maintain the flow of world commerce gave rise to the development of a series of remedies for injuries occurring to those who worked in maritime pursuits.

As commerce became more complex, as society assumed increased responsibility for work-related injuries, and as the tort law in the United States developed, we have experienced some redundancy in the availability of legal remedies and procedures.

Uncertainty in knowing the availability of remedies, and the uncertainty in being able to anticipate potential liability do not necessarily contribute to the smooth flow of commerce. H.R. 3748 is offered as a legislative remedy to this problem.

[The bill and departmental reports follow:]

96TH CONGRESS
1ST SESSION

H. R. 3748

To provide for a uniform national three-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 1979

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To provide for a uniform national three-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, unless otherwise specified by law, a suit for recovery of
4 damages for personal injury or death, or both, arising out of a
5 maritime tort, shall not be maintained unless commenced
6 within three years from the date the cause of action accrued.

7 SEC. 2. Section 3 of the Act of March 30, 1920 (41
8 Stat. 537; 46 U.S.C. 763) is repealed.

GENERAL COUNSEL OF THE U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., January 14, 1980.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We have been asked to submit the views of the Department of Commerce on H.R. 3748, a bill "To provide for a uniform national three year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes."

The bill states that unless otherwise authorized by law, a suit for the recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued. The bill would also repeal the two year statute of limitation set forth in 46 U.S.C. § 763 for actions on wrongful death on the high seas.

Under existing law, several periods of limitation apply to personal injury or death actions for seamen. The Jones Act (46 U.S.C. § 688) incorporates by reference the three year period set forth in the Federal Employee Liability Act for actions by seamen for personal injury or death. The Death on the High Seas Act (46 U.S.C. § 763) (DOHSA) has a two year period of limitation. The most significant difference between the two acts is that the Jones Act applies only to "seamen" while DOHSA is available to anyone.

A third remedy, which has been fashioned by the Federal Courts, is based on damages for a breach of the duty to furnish a seaworthy vessel. The statute of limitations for these actions is based on the doctrine of "laches" or unjustified delay. As a practical matter, "laches" is measured by the appropriate state law statute of limitation. As a result, one claim for personal injury or death could be maintained under several different theories, each with a different period of limitation. The result may well be a tendency toward forum shopping and different results for essentially identical cases.

The Department of Commerce supports measures to defend the rights of seamen. While we defer to other agencies on the question of whether H.R. 3748 fully meets the problem to which it is addressed we would like to make several observations.

The period of time for bringing the action set forth in the bill is longer than the majority of wrongful death statutes in the United States. Most of these statutes require that a claim be brought within two years after a death occurs.

Extending the period to three years may place a strain on the insurance system for incurred but not reported claims. It will necessitate that reserves be established for incurred but not reported claims for an additional year. This, in turn, can potentially increase the cost of liability insurance without any added benefit.

Passage of H.R. 3748 would eliminate the inconsistency between the limitation periods of DOHSA and the Jones Act by imposing the Jones Act three year limit on both. However, it would not affect the two year period of limitations for tort actions against the United States set forth in 46 U.S.C. § 745. This section, and not the Jones Act or DOHSA, governs seamen injury or death claims against the Government. It is also not clear whether H.R. 3748 would affect the doctrine of "laches" on seaworthiness claims since the bill specifically would not apply where "otherwise specified by law."

With respect to actions brought to recover for personal injury where death has not ensued, the bill leaves open a very important issue: Traditionally, the rule has been that an action accrues at the time the person is injured. Recently, there has been a trend in both state legislation and court decision to extend the period where an injury has, in fact, occurred, but the person who is injured is unaware of that event. This type of incident can occur with regard to exposure to toxic substances and other potential slumbering hazards. To meet this problem, many jurisdictions permit a claim to accrue "at the time it was discovered or should have been discovered." This is an important issue which should be addressed in the legislation.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

HOMER E. MOYER, Jr.,
General Counsel.

U.S. DEPARTMENT OF JUSTICE,
 ASSISTANT ATTORNEY GENERAL, LEGISLATIVE AFFAIRS,
 Washington, D.C., November 30, 1979.

Hon. JOHN M. MURPHY,
 Chairman, Committee on Merchant Marine and Fisheries,
 House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 3748, a bill "To provide for a uniform national three-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes."

The bill would apply a specific three-year statute of limitations to those maritime tort actions currently governed by the doctrine of laches. Those cases already controlled by another statutory time limitation would, however, be exempted from the bill's coverage. The bill would also repeal Section 3 of the Act of March 30, 1920 (41 Stat. 437; 46 U.S.C. 763), which currently specifies a two-year limit for bringing actions arising from death on the high seas. Consequently, such actions would hereafter be subject to the bill's three year limitation.

The Department of Justice has no objection to enactment of this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ALAN A. PARKER,
 Assistant Attorney General.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
 Washington, D.C., December 28, 1979.

Hon. JOHN M. MURPHY,
 Chairman, Committee on Merchant Marine and Fisheries,
 House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Transportation on H.R. 3748, a bill "To provide for a uniform national three-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes."

The bill states that, unless otherwise specified by law, a suit for recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action occurred. The proposed legislation also would repeal section 3 of the Act of March 30, 1920 (41 Stat. 537; 46 U.S.C. 763), which sets a two-year limitation period for bringing actions arising from death on the high seas.

The Department of Transportation has no objection to enactment of H.R. 3748.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report for the consideration of the committee.

Sincerely,

LINDA HELLER KAMM.

Mr. MURPHY. Our first witness is Francis X. Byrn, counsel, Haight, Gardner, Poor & Havens.

Mr. Byrn, welcome to the committee.

STATEMENT OF FRANCIS X. BYRN, COUNSEL, HAIGHT, GARDNER, POOR & HAVENS, APPEARING ON BEHALF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

Mr. BYRN. I should like to preface my remarks by thanking the committee for the courtesy extended to the Maritime Law Association and myself for inviting me to appear here today on behalf of H.R. 3748.

H.R. 3748, as you know, is a bill introduced by Chairman Murphy on April 25, 1979, to provide for a uniform national 3-year statute of limitations in maritime personal injury and death litigation.

I have prepared a longer and more formal statement in behalf of the bill which I have already submitted to the committee. Today, I shall briefly outline the position of the Maritime Law Association in supporting this bill.

Mr. MURPHY. Your entire statment will be placed in the record. [The prepared statement of Mr. Byrn follows:]

STATEMENT OF FRANCIS X. BYRN, CHAIRMAN, SUBCOMMITTEE ON STATUTES OF LIMITATION, THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

The Maritime Law Association of the United States founded in 1899 is a bar association with some 2500 members in all port cities of the United States whose objects according to its Articles of Association are to: "advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, and to act with foreign and other association in efforts to bring about a greater harmony in the Shipping Laws, regulations and practices of different nations".

In accordance with its general objectives, The Maritime Law Association at its annual meeting May 5, 1978, passed a resolution by vote of 331 to 1 favoring a three-year uniform national statute of limitations in maritime personal injury and death cases. A copy of the minutes of the May 5, 1978 meeting and resolution insofar as they pertain to this subject are enclosed herewith and marked Exhibit A.

Previously at its Fall meeting on November 4, 1977 the Association had been put on notice in order to give all members an opportunity to offer suggestions, amendments or criticism of the proposed legislation. A copy of the applicable minutes of the November 4, 1977 meeting of The Maritime Law Association is enclosed herewith and marked Exhibit B.

Thereafter, on October 3, 1978, a letter was addressed by the undersigned to the Honorable John M. Murphy, Chairman of the House Merchant Marine and Fisheries Committee advising of the resolution of the Maritime Law Association, enclosing copies of Exhibits A and B, and also a comparison of statutes of limitation presently existing in all 50 States of the United States and the District of Columbia as well as a proposed draft of a Bill amending Title 46 to accomplish the desired legislation (see Exhibit C). On April 25, 1979, Chairman Murphy introduced H.R. 3748 into the 96th Congress and this December 3, 1979 hearing date concerns itself with that Bill.

BACKGROUND AND DISCUSSION

The thought for the foregoing legislation was originated at the Acapulco meeting of the Maritime Law Association in October of 1974. Thereafter, at the Fall 1975 meeting in New York a proposal was submitted to the Association's Legislation Committee to replace the laches concept with a uniform national statute of limitation. At that time a memorandum was submitted to the Legislation Committee. A copy of that memorandum is annexed herewith and marked Exhibit D. This memorandum appeared in shortened form in the minutes of the November 1977 meeting of the Maritime Law Association heretofore marked as Exhibit B. It traces the uneven development of the laches doctrine in the maritime law.

It may be noted that prior to the decision of the Supreme Court of the United States in *McAllister v. Magnolia Petroleum*, 357 U.S. 221 (1958), limitation questions in maritime matters now otherwise covered by statutory periods, were routinely processed by reference to analogous state statutes of limitations. As pointed out in that memorandum, since that decision and prompted particularly by the concurring opinion of Mr. Justice Brennan, a growing body of law has developed which began to see the fallacy of referring to multiple and varying state statutes in an area of law where uniformity appeared to be the cherished goal of both the Federal courts and Congress. Mr. Justice Brennan Wryly noted the range of options open to the District Court in the *McAllister* case p. 229:

"In the absence of any comparable federal statute of limitations which might be applied, the Court had four choices:

1. No period of limitations at all;
2. An arbitrary period applicable in all like cases;
3. The flexible but uncertain doctrine of laches; and
4. State statutes of limitation. The state statutes were chosen by default."

He then went on to observe that there was no reason for such a negative approach to reaching a decision, as reference could be had to the negligence statute under the Jones Act, 46 U.S.C. § 688: "This reference seems especially appropriate since the seaman's remedy for unseaworthiness under the general maritime law and

his remedy for negligence under the Jones Act are but two aspects of the single cause of action".

He concluded that this approach would avoid the mischief of forum shopping.

It may also be noted that the majority had ruled that when an action for unseaworthiness is combined with an action under the Jones Act, the former could not be limited by a shorter period than that contained in the Jones Act. The three dissenters stated that while there was a limitation period of three years for negligence under the Jones Act, there was none for unseaworthiness and none should be devised by the Court in the absence of congressional enactment. The dissenters suggested p. 234 that while "coterminous uniformly applicable periods of limitation" may be desirable "accomplishment of that change in the law is not properly for us, but for Congress". So it is that we are here urging Congressional action.

Thereafter, a number of decisions cited in Exhibit D applied the Jones Act as an analogous statute but still adhered to the laches concept. At least this had the effect of eliminating reference to diverse local statutes in determining whose burden it was to show inexcusable delay or prejudice. Thus the Court of Appeals for the Fifth Circuit pointedly observed in *Flowers v. Savannah Machine & Foundry Co., et al.*, 310 F.2d 135 (1962) that the continued reliance upon state law in laches and limitations questions p. 139 "produces varying results depending upon the holy fortuitous, but otherwise irrelevant local limitations statute." This the court believed would "impede that essential uniformity of the admiralty which is at the heart of all of this troublesome litigation." In so doing it noted in Footnote 9 the gamut of limitation periods from one to six years in the six maritime states comprising of the Fifth Circuit. It went on to state quite perceptively: "Complications and opportunities for judge-made hardship are multiplied by the fact that several principal water-ways constitute the boundary line between states. And to this must now be added the problems from offshore operations in areas in or short of the outer continental shelf and the projected state lines asserted by contiguous states."

The third Circuit went further in *Lipfird v. Mississippi Valley Barge Line Co.*, 310 F.2d 639, 642 (1962) stating its support for the idea that if a shorter state period of limitations should under the *Magnolia* case be extended to the three-year period of the Jones Act, then it would appear logical that the converse would be true, and a longer state statute should be shortened to conform to the three-year Jones Act. The Court noted p. 642 this would be in accord with the public policy against prosecution of stale claims. However, the court did not decide the case on the ground that plaintiff was bound by the three-year Jones Act limitation period on his unseaworthiness claim, but that plaintiff failed to prove any facts excusing his delay or showing prejudice to the defendant.

In 1966 the Court of Appeals for the Fourth Circuit in *Giddens v. Isbrandtsen*, 355 F.2d 125 also applied the Jones Act by analogy to a longshoreman's injury noting p. 127 that "the 3 years fixed in the Federal statute represents the consensus of Congress, the final authority on remedies in admiralty, as to what is a fair opportunity for suit".

Of course if it is a fair opportunity for a seaman it should not be logically less for a passenger, a long-shoreman, or any other harbor worker who are not as transient as seamen may be and for whom the Courts have not shown the same solicitude.

Incorporated within the minutes of the November 4, 1977 meeting was a survey of personal injury and death cases involving laches reported in American Maritime Cases for the 37 period from 1940 to 1977. (Exhibit B attached). This confirms that there is little predictability or uniformity as to laches issues. For example some 35 cases were dismissed for laches where a suit was commenced within three years. At the other extreme, some 29 cases were allowed to proceed where suit was brought more than 3 years later. At the same time, 41 cases within three years were allowed to proceed and 48 cases were dismissed after three years.

Apart from the inevitable lack of uniformity where reference is had to state statutes of limitations, further confusion was added to the problem by the decision of the United States Court of Appeals for the Second Circuit in *Larios v. Victor Carriers Inc.*, 316 F.2d 63 (2 Cir. 1963). Hitherto the courts had ruled that where the analogous statute of limitation had expired, the plaintiff had the burden of proving that his delay was excusable and that there was no prejudice to defendant. This already vague rule became further clouded when the Court of Appeals stated that even where the analogous statute had expired, if plaintiff presented evidence of excusable neglect, the defendant would then be required to come forward to show prejudice because it presumably had greater knowledge or accessibility to proof. The Court also set a sliding scale of delay and prejudice noting p. 67 that: "A weak excuse may suffice if there has been no prejudice; an exceedingly good one might still do even where there has been some."

This decision was predictably productive of a conflict which later arose between the Fifth Circuit which agreed with the Second Circuit in *Fidelity and Casualty Co. v. C. B. Mr. Kin*, 345 F.2d 45 (5 Cir. 1965) and the Third Circuit in *Burke v. Gateway Clipper Inc*, 441 F.2d 946 (1971) discussed in more detail on pp 5 and 6 of Exhibit D annexed.

Not only is there a complete lack of uniformity as to the analogous statute of limitations, but that lack also has inherent in it the element of unfairness in that a California longshoreman must resort to a one-year statute of limitations, whereas a New York longshoreman has a three year statute of limitations to look to. A Florida harbor worker may wait for four years while his Texas counterpart has only 2 years. (See table annexed to Exhibit C).

It is not easy to say to what extent the vague and unpredictable laches concept has contributed to court congestion in the federal judicial system both as being an additional troublesome issue in every case where it arises but also in preserving actions which should have been long since dismissed as stale.

A laches issue also puts both sides in a dilemma, with the plaintiff seeking to emphasize the strength of defendants case in order to escape dismissal on the issue of prejudice and the defendant arguing that because of plaintiff's delay it "cannot adequately defend on the merits." See for example *Baczor v. Atlantic Richfield Co.*, 424 F. Supp. 1370, 1377 (E.D. Pa. 1976). Thus the more defendant emphasizes how it has been prejudiced by the delay, the more it tends to subvert whatever remaining defense it has on the merits.

CONCLUSION

In view of the problems of forum shopping, unpredictability, and uncertainty as to who has the burden of proof of persuasion on either side of an analogous state statute of limitations, the added work load imposed by such cases on the already overburdened federal court system, it would appear that the replacement of the laches concept with a uniform national statute of limitations in maritime personal injury and death actions is clearly in order.

Mr. Justice Brennan's concurring opinion in the *McAllister* decision and successor decisions offer a judicial solution to this problem by employing the three-year Jones Act limitation period either as an analogy or as bar to all personal injury actions brought under the maritime law, but the ultimate solution lies with Congress.

Congressional dedication to uniformity in the maritime law was manifested in legislation resulting in the amendments to the Longshoreman and Harbor Worker's Compensation Act in 1972. 86 Stat. 1251 33 U.S.C. § 905. The Report of the House Education and Labor Committee H.R. Rep. 1441 92nd Cong. 2d Sess. 1972 U.S. Code Cong. & Adm. News pp 4695 at p. 4705 recites: "Finally, the Committee does not intend that the negligence remedy authorized in the bill should be applied differently in different ports depending on the law of the State in which the port may be located. The Committee intends that legal questions which may arise in actions brought under these provisions of the law shall be determined as a matter of Federal law."

In view of comments such as this and the off-repeated judicial deference in the cases to Congress in this area, it is likely that a uniform national statute of limitations for maritime personal injury and death litigation should be legislated.

Apart from obvious loss of uniformity when reference is had to state statutes of limitation,

The Maritime Law Association has selected the three year period not only because it conforms to the three year existing Jones Act period so championed in many of the cases, but also because it represents a fair and typical middle point when all the statutes of the maritime states are considered.

Exhibit A

[6851]

DOCUMENT No. 615
MAY 5, 1978

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

ANNUAL MEETING—MAY 5, 1978

The Seventy-Ninth Annual Spring Meeting of The Maritime Law Association of the United States was held at The New York County Lawyers Association, at 9:30 A.M. on Friday, May 5, 1978.

PRESENT:

DAVID R. OWEN
FRANCIS J. O'BRIEN
JOHN W. SIMS
JAMES J. DONOVAN
JOHN J. SULLIVAN

and the following 327 other members:

Arthur Abarbanel	Robert Lamar Bell
Robert Acomb	F. L. Benckenstein
Stephen A. Agus	Thomas M. Bergstedt
Jack L. Allbritton	Waverley L. Berkley, III
Lloyd L. Andersen	Philip A. Berns
Cromwell A. Anderson	Erik Bernstrom
Linwood Anderson	Edward C. Biele
David M. Armstrong	Hubert I. Binowitz
Timothy J. Armstrong	Richard C. Binzley
R. G. Ashworth	Antonio M. Bird
Bruno S. Augenti	Geoffrey F. Birkhead
Terry P. Ayre	G. W. Birkhead
Robert J. Barbier	Tallman Bissell
E. F. Barnett	Ed Bluestein, Jr.
James W. Bartlett, III	Arthur M. Boal
Douglas D. Batchelor	Ralph O. Bowden, III
E. Brudsy	Thomas H. Bowersox
Louis H. Beard	John Bradbury
Griffin B. Bell, Jr.	Stuart B. Bradley

[6882]

That concludes our report, Mr. President.

President Owen: Thank you, Mr. Higgins.

(Applause.)

Frank Byrn, please report for the Committee on Maritime Legislation.

COMMITTEE ON MARITIME LEGISLATION

Mr. Byrn: Mr. President, fellow members and guests: Our Chairman, Michael Cohen, has designated me to report because our only report at this time is our recommendation to the Association with respect to the elimination of laches in the maritime personal injury and death field and a substitution of a three-year limitation statute.

This was the subject of a report at the Fall Meeting, document 610, pages 6769 to 6772 and 6774. I certainly won't go through that since it is also a synopsis of an even lengthier report that we submitted to the Maritime Legislation Committee.

I think there is general agreement as to our proposal. I have found really no dissent on this subject in the past three or four years that we have been considering this particular legislation.

Laches is a very uncertain, non-uniform and unpredictable doctrine, if it can be called a doctrine at all. It has a primary meaning of delay or laxness and I just found a secondary meaning of "wanton" and "lewd." So we don't want to have the MLA associated with it, if that's what it is.

In establishing laches, the question of the burden of inexcusable delay and prejudice has varied from jurisdiction to jurisdiction with the Second Circuit complicating it even further in the *Larios* case where they said that it might depend on who has access to greater information.

Without belaboring the point, we have taken the position that a three-year statute in conformity with the Jones Act, as suggested originally in a Supreme Court concurring decision in the *Magnolia Petroleum** case is the most desirable way out of this morass.

I should say that the Committee is in complete agreement. The subcommittee is in complete agreement. There has been plenty of

* 357 US 222 (1958).

[6883]

notice for other people to come forward and express any opinion they have. We have heard no dissent. It is fair to both the plaintiffs' and defendants' bar. It increases the statute in some states. It will do away with the two-year period of the Death on the High Seas Act and increase it to three years, I recommend it heartily to the Association.

I will now read the resolution as proposed.

"Resolved, that the Maritime Law Association of the United States supports the enactment of legislation to provide for a three-year uniform national statute of limitations in maritime personal injury and death cases, and the President is authorized to designate a representative of the Association to make this resolution known, and to facilitate its implementation, by the appropriate committees of the Congress."

That is the resolution.

President Owen: Before I open the floor to discussion, I would like to remind you as Frank indicated that this resolution and a notice that it would be up today were contained in the report of the Committee printed in the minutes of the November 4, 1977 meeting, document number 610, at page 6772.

What Frank has read to you is the resolution that was contained in that advance notice, so to speak.

This is obviously an important matter. First of all, I think in the interests of good order, we should have a motion to approve, a second, if any, and we will open the floor for discussion.

(It was duly moved and seconded.)

President Owen: It has been duly moved and seconded that the resolution as proposed by the Committee be adopted by the Association.

Is there any discussion or any questions on the subject? It is a very important matter, ladies and gentlemen.

Mr. Abarbanel: Does this intend to apply to the unseaworthiness limitation statute as well?

Mr. Byrn: There is no unseaworthiness limitation right now. That is presently governed by laches.

Mr. Abarbanel: And by the state law. Would this now make the three-year statute of limitations on unseaworthiness?

Mr. Byrn: On unseaworthiness, negligence, both, yes. And it would be a substantive statute so that it could not be circumvented

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by the mere expedient of suing in a state court. It would be just like the Jones Act and I should say that most of these people who do sue, longshoremen and whatnot, have their rights derived from the rights of seamen who are already prescribed by the Jones Act three-year limitation period. So I think it is eminently fair.

A Speaker: Move the question.

President Owen: Any further discussion? Are you ready for the question? All in favor of the resolution, please indicate by saying aye.

(Chorus of "ayes".)

President Owen: Opposed?

Mr. Abarbanel: Opposed.

President Owen: Mr. Abarbanel opposed the resolution.

Mr. Byrn: I thought I had convinced you, Arthur.

President Owen: The resolution is carried and it is self-executing in the sense that it directs the new president of the Association to implement the resolution in Washington, D. C.

SUPPLEMENTAL REPORT OF THE COMMITTEE ON MARITIME LEGISLATION

1. *Appeals from Decisions of the Pacific Territorial Courts*

In the November 1977 meeting, the Association unanimously adopted a resolution in favor of the "enactment of legislation to provide for appeals to one of the circuit courts of the United States from decisions, particularly in admiralty cases, by the highest courts established by the local legislatures of Pacific territories belonging to or administered by the United States". (Document No. 610, p. 6768).

This resolution was made known to the Judicial Conference of the United States which, as previously reported, had already gone on record as favoring a proposal to give the Ninth Circuit certiorari jurisdiction to hear appeals from the Appellate Division of the High Court of American Samoa in all cases except those involving real estate and tribal titles. Recently a bill, S. 2793, was introduced to

Exhibit B

[6730]

DOCUMENT No. 610
NOVEMBER 4, 1977

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING—NOVEMBER 4, 1977

PRESENT:

DAVID R. OWEN
FRANCIS J. O'BRIEN
JOHN W. SIMS
JAMES J. DONOVAN
JOHN L. QUINLAN
JOHN J. SULLIVAN

and the following 310 other members:

Arthur Abarbanel
Robert Acomb
Stephen A. Agus
Jack L. Allbritton
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Lloyd L. Andersen
Cromwell Anderson
Wayne K. Anderson
David M. Armstrong
Timothy J. Armstrong
Bruno J. Augenti
James W. Bartlett, III
Almer Beale
Waverley L. Berkley, III
Philip A. Berns
Frank Billings
Richard C. Binzley
Antonio M. Bird
Antonio M. Bird, Jr.
Tallman Bissell
Ed Bluestein, Jr.

Arthur M. Boal
James D. Boughey
Ralph O. Bowden, III
Lawrence J. Bowles
Stuart B. Bradley
George F. Brammer, Jr.
James K. Brengle
Edward T. Brennan
Charles D. Brown
Richard H. Brown, Jr.
Henry B. Bruner
L. J. Buglass
William C. Bullard
Robert E. Bunce
Richard Burke
August C. Burns
T. E. Byrne
Steven P. Calkins
Jack B. Carbutt
John E. Carlson
Edward V. Cattell, Jr.

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Finally, I am pleased to report that a new bill, H.R. 3969, has been introduced into the 95th Congress to create a National Court of Appeals. When Congressional hearings are scheduled, Lucian Y. Ray of Cleveland will testify on behalf of the Association in favor of the bill, in accordance with the resolution passed in the May, 1976, convention.

This concludes the partial report of the Committee on Maritime Legislation.

SUPPLEMENTAL REPORT OF THE COMMITTEE ON MARITIME LEGISLATION

I. *Proposed Statute of Limitations Legislation.*

A subcommittee chaired by Francis X. Byrn, Esq., of New York, has been considering a proposal to recommend that legislation be enacted to replace the doctrine of laches with a uniform national statute of limitations for maritime personal injury and death cases.

Absent a statute of limitations, all matters of delay in admiralty or maritime cases are left to the discretion of the courts under the doctrine of laches. As an examination of the substantive rules relating to laches demonstrates, this "discretion" has been exercised by the courts using vague and often conflicting standards. It has been recognized for over a century that laches is an equitable defense and as such "the delay which will defeat such a suit must in every case depend on the particular equitable circumstances of that case." *The Key City*, 14 Wall (81 U.S.) 663, 660 (1871). The Supreme Court has also said in *Gardner v. Panama R. Co.*, 342 U.S. 29, 30-31 (1951), that where there "has been no inexcusable delay in seeking a remedy and where no prejudice to the defendant has ensued from the mere passage of time, there should be no bar to relief."

For many years the decisions were seemingly in accord that the party bringing suit bore the burden of proof both as to excuse for the delay and lack of prejudice to the defendant. See *King v. U.S.S.R.*, 189 F. 2d 303 (3 Cir., 1951); *Redman v. United Fruit Co.*, 185 F. 2d 553 (2 Cir., 1950); *Redman v. United States*, 176 F. 2d 713 (2 Cir., 1949); *McMahon v. Pan-American World Airways, Inc.*, 297 F. 2d 268 (5 Cir., 1962).

Since the 1960's there has arisen a conflict in the Circuits on the laches burden of proof problem. In *Larios v. Victory Carriers*,

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Inc., 316 F. 2d 63 (2 Cir., 1963) the Second Circuit overturned the settled approach to this issue, holding that after an analogous state statute has expired and a plaintiff has presented evidence excusing his own delay, the defendant ought to be required to come forward with evidence of prejudice, although the plaintiff retains "the ultimate burden of persuasion both as to the excuse for his own delay and as to the lack of prejudice to the defendant." While the Fifth Circuit has agreed with this position in *Fidelity & Casualty Co. v. C. B. Mr. Kim*, 345 F. 2d 45 (5 Cir., 1965), it was rejected by the Third Circuit in *Burke v. Gateway Clipper, Inc.*, 441 F. 2d 946 (3 Cir., 1971).

Thus, a tardy maritime personal injury plaintiff who sues in Newark has the burden of proving excusable delay and lack of prejudice; whereas, if he files suit across the Hudson River in New York the burden of coming forward with evidence of prejudice shifts to the defendant. A more obvious inducement to forum shopping cannot be imagined.

Another complicating element of the laches issue is the use of state's statutes of limitations as an analogous benchmark. Based on the entirely fortuitous circumstances of where precisely on the waters or piers of the Hudson River the accident occurred, the plaintiff's cause of action could be governed by a two-year New Jersey statute of limitations or a three year New York statute of limitations.

Moreover, the considerations weighed by the courts in determining laches defenses are so unique to each case and so possibly countervailing as to totally destroy any hope of predictability or settled expectations. A table of the disposition over the last 37 years of maritime personal injury and death actions in which a laches defense was raised is appended to this report.

Prior to the decision of the Supreme Court in *McAllister v. Magnolia Petroleum*, 357 U.S. 222 (1958), the courts had decided limitation questions in maritime matters routinely by reference to analogous state statutes of limitations. In *McAllister*, the issue was whether a state court could apply a 2-year statute of limitations by analogy to bar an unseaworthiness action joined with a seaman's action for negligence under the Jones Act. The Court held that where an action for unseaworthiness is coupled with an action under the Jones Act, a shorter period than the Jones Act limitation of 3 years cannot be applied, be it in state or federal court, admiralty

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or civil side. In his concurring opinion, Mr. Justice Brennan criticized the use of analogous state statutes of limitations and suggested the 3 year period of prescription provided in the Jones Act as a better alternative generally for maritime personal injury and death claims.

The first decisions after *McAllister* to rely upon the Jones Act as the analogous statute of limitations were *Daniels v. State Marine Corp. of Delaware*, 184 F. Supp. 815 (E.D. La., 1960) and *Seals v. States Marine Lines, Inc.*, 188 F. Supp. 398 (E.D. La., 1960). The development in this area of the law then suffered a temporary setback in *Dawson v. Fearnley & Eger*, 196 F. Supp. 816 (E.D. Va., 1961), but it later received approval in *Flowers v. Savannah Machine & Foundry Co. et al.*, 310 F. 2d 135 (5 Cir., 1962); *Lipfird v. Mississippi Valley Barge Line Co.*, 310 F. 2d 639 (3 Cir., 1962); *Giddens v. Isbrandtsen Co.*, 355 F. 2d 125 (4 Cir., 1966); *Watz v. Zapata Offshore Co.*, 431 F. 2d 100 (5 Cir., 1970); *Keller v. Standard Sand and Gravel Co.*, 365 F. Supp. 1 (S.D. Ohio, E.D. 1973).

The Supreme Court's decision in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), where a state statute of limitations was held to be analogous for purposes of laches, is not contrary to the general trend, since the Court expressly held that the suit there, for injuries sustained on an offshore platform, was not maritime in nature.

No discussion can be complete without examining the implications of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C. §905. Although the legislative history of these amendments indicates that a longshoreman injured on board a vessel should be in no less favorable position to sue the vessel for negligence than is an employee who is injured on land, the Senate Committee also pointed out that the negligence remedy was not intended to be applied differently in different ports depending on the law of the state in which the port may be located and that legal questions which may arise in actions brought under these provisions of the law "shall be determined as a matter of federal law." Sen. Rep. No. 92-1125.

In view of the problem of forum shopping, unpredictability, cumbersomeness and unsettling of expectations surrounding the doctrine of laches, its replacement with a 3 year uniform national statute of limitations seems clearly in order. It may be noted that such a

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proposal would require repeal of the existing 2 year statute of limitations in the Death On The High Seas Act, 46 U.S.C. §763.

The Committee proposes the following resolution for consideration by the Association at the meeting in May 1978:

RESOLVED, that the Maritime Law Association of the United States supports the enactment of legislation to provide for a three-year uniform national statute of limitations in maritime personal injury and death cases, and the President is authorized to designate a representative of the Association to make this resolution known, and to facilitate its implementation, by the appropriate committees of the Congress.

The Committee is also considering uniform national statutes of limitations for other maritime causes of action which would have the effect of supplanting the doctrine of laches in its entirety.

II. Proposed National Court of Appeals.

Deputy Chairman Lucian Y. Ray of Cleveland reported that a new bill, HR3969, has been introduced into this Congress to provide for a national court of appeals with jurisdiction to hear cases referred to it by the circuit courts as well as cases transferred to it by the Supreme Court. In accordance with the resolution passed by the Association at the meeting on May 7, 1976, Mr. Ray has prepared a statement in support of the bill for delivery at congressional hearings whenever they are scheduled.

III. Anglo-American Convention On Reciprocal Recognition and Enforcement of Civil Judgments.

A subcommittee chaired by Francis J. Gorman of Baltimore is considering a draft treaty between the United States and the United Kingdom for the recognition and enforcement in one jurisdiction of the civil judgments awarded by the courts of the other jurisdiction.

IV. New Customs Legislation.

Subcommittee Chairman Robert V. McIntyre of Washington reports that the House of Representatives has passed HR8149, Title I of which is denominated as the Customs Procedural Reform Act of 1977. Title II of the bill, which is denominated as the Customs

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unintended result of the rider was, however, cured by a joint resolution which was enacted as Public Law 95-135.

PERSONAL INJURY AND DEATH LACHES CASES
REPORTED IN AMERICAN MARITIME CASES
VOLUMES 1940-1977

Years Between Incident and Filing of Suit

Disposition	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7 or More
Dismissed	3	11	21	19	12	5	6	6
Allowed to Proceed	8	10	23	10	10	4	2	3
Remanded	<u>—</u>	<u>—</u>	<u>3</u>	<u>6</u>	<u>2</u>	<u>2</u>	<u>—</u>	<u>3</u>
Total Cases	11	21	47	35	24	11	8	12

President Owen: Thank you, Mr. Cohen. [Applause]

COMMITTEE ON PRACTICE AND PROCEDURE

I now call on Graydon S. Staring, the chairman of the Committee on Practice and Procedure, to report for that committee. Before he makes his report, I should like to clarify the procedural situation with respect to this. The committee reported to the May, 1977, meeting and after considerable debate, a motion to table the report was carried by a very narrow margin. However, under Robert's Rules of Order—and we are not going into the reasons for it—the motion died at the end of the May meeting. So that the slate is wiped clean and we do not now take up again the same motion or the same report made at the May meeting, but we start over again. Of course, the debate at the May meeting is a matter of record, so we are not starting from scratch as far as that is concerned, but the committee and this Association are not in any way bound by anything that occurred at the May meeting.

I should also say for the record that this subject has been under active consideration by this committee since the Fall meeting of 1976. The committee's preliminary report was made in Document 605 on April 18, 1977, which went to all members of the Association, and the final report was made at the May meeting and appears in Document 606 dated May 6, 1977.

Exhibit C

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

JAMES J. DONOVAN
PRESIDENT
161 WILLIAM STREET
NEW YORK, N.Y. 10038

JOHN W. SIMS
FIRST VICE PRESIDENT
HIBERNIA BANK BLDG.
NEW ORLEANS, LA. 70112

DAVID C. WOOD
SECOND VICE PRESIDENT
ONE WORLD TRADE CENTER
SUITE 5215
NEW YORK, N.Y. 10048

October 3, 1978

MACDONALD DEMING
SECRETARY
ONE STATE STREET PLAZA
NEW YORK, N.Y. 10004

MARSHALL F. KEATING
TREASURER
120 BROADWAY
NEW YORK, N.Y. 10005

JOHN J. SULLIVAN
MEMBERSHIP SECRETARY
3 PARK AVENUE
NEW YORK, N.Y. 10016

Honorable John M. Murphy
Chairman
House Merchant Marine & Fisheries Committee

COMMITTEE ON MARITIME LEGISLATION
SUB-COMMITTEE ON STATUTES
OF LIMITATION
Our file: 2950-8

Dear Congressman Murphy:

At its annual meeting on May 15, 1978, the Maritime Law Association of the United States empowered its new President, James T. Donovan, to implement a resolution before Congress to provide for a three-year uniform national statute of limitations in maritime personal injury and death cases. Pursuant to that resolution, Mr. Donovan has designated the undersigned to make this representation.

It would appear that the House Merchant Marine and Fisheries Committee would be the appropriate Committee to introduce such a Bill which would contemplate an amendment to Title 46 USC. Other maritime limitation sections already appear in Title 46. There is, for example, the three-year provision incorporated within the Jones Act 46 USC §688, after which the within proposed legislation is patterned. There is also the two-year limitation period under the Suits in Admiralty Act 46 USC 745, a two-year period for the Death on the High Seas Act 46 USC 763 (which the within legislation would eliminate); a two-year period under the Salvage Act, 46 USC 730 and the one-year period under the Carriage of Goods by Sea Act, 46 USC 1303(6).

2- Honorable John M. Murphy

In order to facilitate the Committee's study of this proposed legislation, we are including the following:

I. Excerpts from the minutes of the annual meeting of the Maritime Law Association May 5, 1978 including report of the undersigned and the resolution carried.

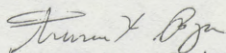
II. Excerpt of minutes of the Maritime Law Association Fall meeting of November 4, 1977 with Supplemental Report of the Committee on Maritime Legislation concerning this proposed Bill and the reasons therefore.

III. List of Statutes of Limitation in death and personal negligence cases extant in 50 States and the District of Columbia showing that the proposed three-year period largely conforms to a national average.

IV. Text of the proposed Bill as adopted by the Committee on Maritime Legislation of the MLA.

The Maritime Law Association of the United States urges the introduction and passage of the foregoing Bill.

Very sincerely yours,



Francis X. Byrn, Chairman
Sub-Committee on Statutes
of Limitation - Maritime
Law Association of the
United States

FXB:ps
cc:

James J. Donovan, Esq.
President
Maritime Law Association of
the United States

Michael Marks Cohen, Esq.
Chairman
Maritime Legislation Committee

MEMORANDUM TO FRANCIS X. BYRN

Comparison of Statutes of Limitation
Our file: 4950-8

<u>STATE</u>	<u>WRONGFUL DEATH</u>	<u>PERSONAL INJURY/NEGLIGENCE</u>
Alabama	2 years	2 years
Alaska	2 years	2 years
Arizona	2 years	2 years
Arkansas	3 years	3 years
California	1 year	1 year
Colorado	2 years	2 years (action against employer)
Connecticut	2 years	2 years
Delaware	2 years	2 years
District of Columbia	1 year	3 years
Florida	2 years	4 years
Georgia	2 years	2 years
Hawaii	2 years	2 years
Idaho	2 years	2 years
Illinois	2 years	2 years
Iowa	2 years	2 years
Kansas	2 years	2 years
Kentucky	1 year	1 year
Louisiana	1 year	1 year
Maine	2 years	2 years
Maryland	3 years	3 years
Massachusetts	2 years	3 years

<u>STATE</u>	<u>WRONGFUL DEATH</u>	<u>PERSONAL INJURY/NEGLIGENCE</u>
Michigan	3 years	3 years
Minnesota	3 years	6 years
Mississippi	6 years	6 years
Missouri	2 years	5 years
Montana	3 years	5 years
Nebraska	2 years	4 years
Nevada	2 years	2 years
New Hampshire	2 years	6 years
New Jersey	2 years	2 years
New Mexico	3 years	3 years
New York	2 years	3 years
North Carolina	2 years	3 years
North Dakota	2 years	6 years
Ohio	2 years	2 years
Oklahoma	2 years	2 years
Oregon	3 years	2 years
Pennsylvania	1 year	2 years
Rhode Island	2 years	3 years
South Carolina	6 years	6 years
South Dakota	3 years	3 years
Tennessee	1 year	1 year
Texas	2 years	2 years
Utah	2 years	4 years
Vermont	2 years	3 years
Virginia	2 years	2 years
Washington	3 years	3 years
West Virginia	2 years	2 years
Wisconsin	3 years	3 years
Wyoming	2 years	4 years
September 26, 1978		Christopher Raleigh

A BILL

"To amend Title 46 U.S.C. to add a section enacting a uniform national three-year statute of limitations in actions to recover for personal injuries and/or wrongful death arising out of a maritime tort and to repeal 46 U.S.C. 763.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Unless otherwise specified in this Title, a suit for recovery of damages for personal injury and/or death arising out of a maritime tort shall not be maintained unless commenced within three years from the day the cause of action accrued."

Exhibit D

MARITIME LAW ASSOCIATION - COMMITTEE
ON MARITIME LEGISLATION - SUB-COMMITTEE
ON STATUTES OF LIMITATION

Our file 2950-8

A PROPOSAL TO REPLACE THE
DOCTRINE OF LACHES WITH A UNIFORM
NATIONAL STATUTE OF LIMITATIONS

INTRODUCTION

Bearing in mind Mr. Justice Holmes' remark that

it is revolting to have no better reason for a rule of law

than so it was laid down during the reign of Henry IV,*

this paper examines the maritime doctrine of laches as a bar

to personal injury actions and proposes its rejection in

favor of the Jones Act 3-year statute of limitations as a

uniform and strict bar to all personal injury and death

actions brought under the maritime law.** This might also

extend to all property damage cases not otherwise covered by

statute.

*O. W. Holmes, Jr. "The Path of the Law" in
Collected Legal Papers (1920) 167, 187.

**Uniformity now has been recognized substantively
in maritime death actions. Moragne v. States Marine Lines,
398 U.S. 375 (1970); but the decision still looks to laches
as a time bar. Uniformity suffered a set back, however, in
Askew v. American Waterways, 411 U.S. 325 (1973).

Absent a statute specifying a time certain in which an action must be commenced, a petition filed, or some other legal action taken, all matters of delay in admiralty or maritime cases are left to the discretion of the district court. As Knauth points out in Benedict on Admiralty, Vol. 3 (6th Ed. 1940):

"In so exercising its discretion, the court applies the universal maxim 'vigilantibus non dormientibus subseruiunt leges,' which is familiar in the administration of every system of jurisprudence. This is the constant practice of courts of admiralty whose discretion is not mere caprice, nor will, nor arbitrary power but the sound legal discretion of cultivated reason, in which the circumstances of the parties, of the property and of the transaction, the wants and convenience of commerce, the demands of public policy and the analogies of the local statutes of limitation are fully to be considered and carefully weighed."

As an examination of the substantive rules relating to laches demonstrates, this "discretion" has been exercised by the courts using vague and often conflicting standards.

It has been recognized for over a century that laches is an equitable defense and as such "the delay which will defeat such a suit must in every case depend on the peculiar equitable circumstances of that case." The Key City, 14 Wall (81 U.S.) 663, 660 (1871). The Supreme Court has also said in Gardner v. Panama R. Co., 342 U.S. 29, 30-31 (1951):

"Though the existence of laches is a question primarily addressed to the discretion of the trial court, the matter should not be determined merely by a reference to and a mechanical application of the statute of limitations. The equities of the parties must be considered as well. Where there has been no inexcusable delay in seeking a remedy and where no prejudice to the defendant has ensued from the mere passage of time, there should be no bar to relief."

For that same period the decisions were seemingly in accord that the party bringing suit bore the burden of proof both as to excuse for the delay and lack of prejudice to the defendant. See King v. U.S.S.R., 189 F. 2d 303

(3 Cir., 1951); Redman v. United Fruit Co., 185 F. 2d 553

(2 Cir., 1950); Redman v. United States, 176 F. 2d 713

(2 Cir., 1949); McMahon v. Pan-American World Airways, Inc.,

297 F. 2d 268 (5 Cir., 1962).

Since the 1960's there has arisen a conflict in the Circuits on the laches burden of proof problem. In Larios v. Victory Carriers, Inc., 316 F. 2d 63 (2 Cir., 1963) the Second Circuit overturned the settled approach to this issue:

"We cannot regard it as consistent with those decisions to hold that expiration of the analogous state statute creates a 'presumption of prejudice', save in the sense that if the plaintiff proffers no pleading or presents no proof on the issues of laches, the defendant wins. Nor can we agree that when such a plaintiff has presented evidence excusing his own delay, he should nevertheless be automatically barred unless he also presents anticipatory evidence to negate prejudice on the part of the defendant, an issue as to which the defendant, with this greater knowledge, ought to be required to come forward. Rather, when a plaintiff who asserts a maritime claim after the state's statute has run, presents evidence

tending to excuse his delay, the court must weigh the legitimacy of his excuse, the inference to be drawn from the expiration of the state statute, and the length of the delay, along with evidence as to prejudice if the defendant comes forward with any.

Moreover, although a plaintiff who has delayed bringing suit beyond the analogous state period has the ultimate burden of persuasion both as to the excuse for his own delay and as to the lack of prejudice to the defendant, see *Gilmore & Black, Admiralty* (1957), 631, these two factors are not to be viewed independently. A weak excuse may suffice if there has been no prejudice; an exceedingly good one might still do even when there has been some."

While the Fifth Circuit has agreed with this position in Fidelity & Casualty Co. v. C. B. Mr. Kim, 345 F. 2d 45 (5 Cir., 1965), the Second Circuit's position was rejected by the Third Circuit in Burke v. Gateway Clipper, Inc., 441 F. 2d 946 (3 Cir., 1971). There the Court stated:

"This Circuit requires a plaintiff to come forward and prove that his delay was excusable and that it did not unduly prejudice the defendant."

We are aware that other circuits place the burden of proving inexcusable delay and

prejudice on the defendant. We see no new and compelling reason to reverse the well established and thoroughly considered line of decisions of this Circuit requiring the plaintiff to disprove both inexcusable delay and lack of prejudice to defendant when, as here, more than three years have passed since the cause of action accrued."

Thus, it can be seen that a maritime employee injured in the Port of New York, suing in Newark has the burden of proving excusable delay and lack of prejudice; whereas, if he files suit across the Hudson River the burden of proof shifts to the defendant. A more obvious inducement to forum shopping cannot be imagined. Another complicating element surrounding the laches issue is the use of the state's statute of limitations as a guide in resolving the laches defense. Based on the entirely fortuitous circumstances of where precisely in the Port of New York the accident occurred, the plaintiff could be governed by a two-year New Jersey statute of limitations or a three year New York statute of limitations.

Moreover, the considerations weighed by the Judges in determining laches defenses are so unique to each case and so possibly countervailing as to totally destroy any hope of predictability or settled expectations.

It is the proposal of the writer that the above considerations have already been weighed by Congress in passing upon the Jones Act statute of limitations of three years, and this weighing process is more properly in the realm of the legislature. This paper then will trace the doctrinal development in the cases supporting the use of the three year Jones Act limitation period, as a fixed period of limitation, or failing that, at least as a uniform nationwide guide.

PHASE I

THE DRIVE FOR UNIFORMITY-INITIAL PHASE

Prior to the decision of the Supreme Court of the United States in McAllister v. Magnolia Petroleum, 357 U.S. 222 (1958), the courts had decided limitation questions in maritime matters routinely by reference to analogous states statutes of limitations and had employed the doctrine of laches rather than any strict statute of limitations. Since that decision, and particularly prompted by the concurring opinion of Mr. Justice Brennan, a growing body of law has developed which has begun to see the fallacy of referring to multiple and varying state statutes of limitations. This development gained currency in the 1960's, especially in the Third and Fifth Circuits.

In McAllister, the issue was whether a state court could apply a 2-year statute of limitations by analogy to bar an unseaworthiness action joined with a seaman's action for negligence under the Jones Act. The Court held that

where an action for unseaworthiness is coupled with an action under the Jones Act, a shorter period than the Jones Act limitation of 3 years cannot be applied, be it in state or federal court, admiralty or civil side.

The Court noted that because any suit for unseaworthiness brought by a seaman must be joined at the same time with any claim arising out of the same facts or occurrences for negligence, the effect of shortening the unseaworthiness period was also to shorten the fixed Jones Act limitation period which it would not and could not permit to be done. Thus, it may be said that at least where a shorter period for unseaworthiness is provided for by state law, this will be ineffective as a bar to a seaman's claim based on unseaworthiness by reason of the 3 year limitation period of the Jones Act. It is thus apparent that the Supreme Court in the McAllister case had begun to lay out boundaries in the previously uncharted area of unseaworthiness

and to recognize the need to maintain a certain uniformity in this area.

These considerations are even more apparent in the concurring opinion of Mr. Justice Brennan who noted four unhappy alternatives to the limitation problem in the absence of any federal statute of limitations. He observed the one referring to state statutes of limitations had been previously chosen by default. Justice Brennan said instead:

"I think that the maritime cause of action for unseaworthiness could be measured by the analogous section at law for negligence under the Jones Act, 46 U.S.C. § 688."

He thought this was especially appropriate since the remedy under the General Maritime Law and under the Jones Act to seamen were two aspects of a single cause of action, citing Baltimore SS Co. v. Phillips, 274 U.S. 316. He commented further that this would avoid the mischief of "shopping for the forum with the most favorable period of limitation", and that "continued application of state statutes of

limitations would be disruptive of the desired uniformity of enforcement of maritime rights." Even the dissenting justices believed the same way but said that while "coterminous and uniformly applicable periods of limitation" may be desirable they would leave their creation to Congress.

PHASE II

THE DRIVE FOR UNIFORMITY AND LIMITATION PERIODS - THE DEVELOPMENTAL STAGE

The first decision following McAllister v. Magnolia Petroleum Co., supra, to embrace the Jones Act as a reference in determining the analogous period of limitations was Daniels v. States Marine Corp. of Delaware, 184 F. Supp. 815 (E.D. La., 1960) decided by the Honorable J. Skelly Wright, now a Judge of the Court of Appeals for the District of Columbia. Although a longshoreman was involved in that action, the Court pointed out that at the time of the accident he was doing seaman's work and was entitled to the same protection as a seaman, insofar as the warranty of seaworthiness

was concerned. The Court held that since a seaman was entitled to a 3 year statute for both negligence and unseaworthiness under the McAllister v. Magnolia Petroleum case, "it would be anomalous to hold that a person doing a seaman's work and making a similar claim is not." The court also pointed out that the use of the statute of limitations of the forum state as an analogous reference resulted in much forum shopping, and that a reference to the Jones Act instead would have the advantage of uniformity. The same court followed its own opinion in Seals v. States Marine Lines, Inc., 188 F. Supp. 398 (E.D. La., 1960). The development in law in this area then suffered a temporary setback in Dawson v. Fearnley & Eger, 196 F. Supp. 816 (E.D. Va., 1961) where the court disagreed with the Daniels and Seals cases as to the desirability and applicability of the 3 year Jones Act as a uniform statute in all maritime injury cases.

This issue was then squarely met in two Circuits.

In the Fifth Circuit in Flowers v. Savannah Machine & Foundry Co. et al., 310 F. 2d 135 (1962) and in the Third Circuit in Lipfird v. Mississippi Valley Barge Line Co., 310 F. 2d 639 (1962). In the Flowers case the Court of Appeals was interested in determining the appropriate statutory period in deciding whether or not laches barred an action. The District Court had rejected the contention that the most appropriate limitation analogy to injuries to a marine repairman for negligence or unseaworthiness or both was to the Jones Act. The Court of Appeals for the Fifth Circuit in reversing expressly approved the reference of Judge Wright to the Jones Act in the Daniels and Seals cases, supra, and rejected the contrary conclusions in the Dawson v. Fearnley & Eger case, supra. The Court of Appeals felt this to be "both more workable and sensible." In so doing it pointed to the steady erosion of the applicability of

local limitation law to maritime injuries, and in determining what was left for local law could only point to the reference to state statutes of limitations in maritime cases.

The Court observed that the continued reliance upon state law in laches and limitation questions "produces varying results depending upon the wholly fortuitous, but otherwise irrelevant local limitation statutes." This the court felt would "impede an essential uniformity of the admiralty." In so doing, the Court noted in footnote 9 the gamut of limitations within the six maritime states comprising the Fifth Circuit running from one to six years.

In Lipfird v. Mississippi Valley Barge Line Co., 310 F. 2d 639 (3 Cir., 1962) the Court of Appeals had before it the question whether the doctrine of laches should be applied by analogy to the Jones Act limitation to bar a seaman's action for unseaworthiness more than three years after the accident had occurred. The court stated that the

McAllister v. Magnolia Petroleum case was held that the Jones Act should apply where the claim for unseaworthiness was sought to be barred by a shorter period of limitations and said:

"It would appear to follow logically that the converse should be true and that the enforcement of the three-year limitation imposed by statute on the claim of Jones Act negligence made in support of the single action would accomplish in substance a similar three-year limitation on the claim of unseaworthiness also made in support of it even if application of the ordinary doctrine of laches might not then bar the claim."

The Court said that this would be in accord with the public policy against the prosecution of stale claims.

The Third Circuit did not actually decide the issue on the limitation question, however, but found that by applying the Jones Act by analogy that the plaintiff had wholly failed to plead or prove any facts excusing his delay or showing lack of prejudice to the defendant despite the assertion of laches by the defendant in its answer.

Thus, while not actually deciding the issue the Third Circuit did recommend a fixed limitation for maritime injuries of three years by reference to the Jones Act, whether said claims were for negligence or unseaworthiness, and whether by seamen or those who have been juridically equated with seamen.

PHASE III
SLOW RECENT PROGRESS

In the years since the Flowers case was decided there has been little doctrinal development in this area. The Flowers rationale has been embraced by another Circuit (the Fourth) and has received a passing nod of approval from a District Court in Ohio. While the Supreme Court's decision in Chevron Oil Co. v. Huson, 404 U.S. 97 (1971) appears at first blush to be at odds with McAllister, on closer scrutiny the Huson case does not represent such a departure.

In Watz v. Zapata Offshore Co., 431 F. 2d 100

(5th Cir., 1970), a suit by an injured shipyard worker was brought against the vessel owner and the hoist assembler who impleaded the chainmaker, the Court held that the Texas statute of limitations did not apply to maritime personal injury causes of action for laches purposes. The Court held:

"Instead we look to the analogous limitations period of the Jones Act, which is three years, (citations omitted). Since this action was brought after this statute had run, plaintiff bears the burden of proof with regard to the two elements counteracting laches' defense: Excuse for the delay and lack of prejudice to the defendant."

The position of the Fifth Circuit in Flowers and Watz was adopted by the Fourth Circuit in Giddens v. Isbrandtsen Co., 355 F. 2d 125 (4th Cir., 1966). There, the District Court dismissed the complaint of the plaintiff longshoreman for personal injuries resulting from an alleged

maritime tort committed on the navigable waters of Virginia which the District Court ruled was determined by reference to the Virginia two-year statute of limitations. The Court of Appeals for the Fourth Circuit reversed and remanded the case holding that the Virginia statute was not the significant factor, but rather that the Jones Act three-year statute of limitations should have the decisive influence for laches purposes. The Court stated:

"On the other hand, the limitation in the Jones Act - 3 years - is a more logical and acceptable polestar. It relates to personal injuries on navigable waters. Presumably it was adopted with seamen's circumstances in mind. On the other hand, the state statute comprehends many other and more varied concerns landside rather than offshore. Also, the Jones Act is of national application, thus providing a uniform criteria wherever in the United States maritime responsibilities are to be enforced. Forces ^{is sent} ~~led~~ to this argument by recalling that the three years fixed in the federal statute represents the consensus of Congress, the final authority on remedies in admiralty, as to what is a fair opportunity for suit."

The use of the Jones Act three-year statute of limitations as a guideline in laches cases was commented upon favorably in Keller v. Standard Sand and Gravel Co., 365 F. Supp. 1 (S.D. Ohio, E.D. 1973). The Court there rejected plaintiff's claim that the Jones Act limitation should apply since plaintiff was not a seaman, vicarious seaman or offshore worker seeking recovery for personal injuries sustained while in the course of his employment aboard a vessel in navigable waters. Nonetheless, the Court did note:

"A common thread running through these cases is the existence of a claim by a seaman, vicarious seaman or offshore worker for personal injuries sustained in the course of his employment while aboard a ship in navigable waters. With this fact in mind it is not difficult to understand why the Third, Fifth and Fourth Circuits considered the three-year statute of limitations under the Jones Act, which extended the benefits of the Federal Employees' Liability Act to Seamen to be the most analogous period of limitation."

PHASE IV

AFTER THE 1972 AMENDMENTS TO THE LONG-
SHOREMEN'S AND HARBOR WORKERS' COMPENSATION
ACT

No discussion of a proposal to substitute a uniform statute of limitations for laches can be complete without examining the implications of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act effective November 26, 1972, 86 Stat. 1251, 33 U.S.C. §905. As is well known this section provides for a third party action against the vessel for personal injuries sustained by a longshoreman or harbor worker due to the negligence of the vessel. Two items from the legislative history of these amendments may be of some relevance to this issue. The first item consists of comments contained in Senate Committee Report No. 92-1125:

"The Committee intends that on the one hand an employee injured on board a vessel shall be in no less favorable position 'vis a vis' his rights against the vessel as a third party than is an employee who is injured on land

This quote would seem to indicate that it was the intent of Congress under the Amendments to place a longshoreman or harbor worker in the same legal position as a land-based worker who is injured. Thus, it can be argued that the Federal Court should borrow the state's statute of limitation in order to effectuate this intended parity between the land based and marine based worker. See also, House Committee Report No. 92-1441.

However, the need for uniformity seems to be stressed by the legislative history more strongly than the need for parity between the marine based worker and the shore based worker. As the Senate Committee also pointed out:

"Finally, the Committee does not intend that the negligence remedy authorized in the bill shall be applied differently in different ports depending on the law of the state in which the port may be located. The Committee intends that legal questions which may arise in actions brought under these provisions of the law shall be determined as a matter of federal law."

It therefore appears that the Congress preferred the uniformity of a federal substantive law in this area over disparate substantive rules varying with the fortuitous circumstance of forum state law. Likewise it can be argued a uniform statute of limitations is preferable to a doctrine of laches using widely varying state statutes of limitations as guides.

CONCLUSION

In view of the problems of forum shopping, unpredictability, cumbersomeness and unsettling of expectations surrounding the doctrine of laches, its replacement with a uniform national statute of limitations seems clearly in order. Mr. Justice Brennan's concurring opinion in McAllister and its progeny offer a rapid judicial solution to this problem by employing the three year Jones Act limitation period as a bar to all personal injury actions brought under the maritime law. In view of the deference of the McAllister

majority to congress in this area, however, it is likely

that a uniform national statute of limitations for

maritime personal injuries must be legislated.

Submitted by:

Francis X. Byrn, Esq.
Committee Member

James M. Hazen, Esq.
HAIGHT, GARDNER, POOR & HAVENS

Mr. BYRN. Apart from the Jones Act, the Death on the High Seas Act, and suits against the Government, there is no limitation period in the maritime law for personal injury and death actions. The Jones Act has a 3-year period for seamen injury and death cases, and the Death on the High Seas Act contains a 2-year period. Everything else is governed by laches which has two aspects, inexcusable delay and prejudice.

Traditionally courts look to the local State statute of limitations to determine whether a party was guilty of laches and to determine whose burden it was to demonstrate laches or lack of it.

This resulted in time periods as varying as there are States with maritime jurisdiction. None of these periods had any binding effect, and if they had any effect at all, it was only to determine who had the burden of proof on this issue.

We have submitted a table showing the variety of State statutes of limitation, with California, for example, having a 1-year period for injury cases, Texas, 2 years; New York, 3 years; and Florida, 4 years.

The burden of proof obligation which is set by the analogous statute was fairly clearly defined by the authorities until 1963. Thus, if you were within the local statute the burden was on the defendant to show excusable neglect and prejudice.

If you were not, then plaintiff would have that burden, although even then confusion prevailed in some jurisdictions as to whether the burden existed with respect to either or both criteria. Sometimes the burden was stated in the form of a presumption either one way or the other depending on whether or not the local statute had expired.

In any event, whatever fragile rule existed was shattered in 1963 by the decision of the United States Court of Appeals for the Second Circuit in *Larios v. Victory Carriers*.

This case held that while the ultimate burden of proof remained as before, the defendant, having greater access to proof, had the obligation even after the expiration of the local State statute to come forward with evidence showing prejudice, if plaintiff offered evidence of excusable neglect.

A sliding scale rule of thumb was announced whereby a weak excuse might suffice if there were no prejudice, and an exceedingly good one might do when there had been some.

Predictably this created a division in the Courts of Appeals with the Fifth Circuit moving in one direction and the Third Circuit in another. As matters now stand, no one can offer a prediction as to the outcome of a laches dispute today.

In order to demonstrate the conflicting results we have submitted a table of laches dispositions culled from American Maritime Cases (AMC) for the period 1940 to 1977. Thirty-five cases were dismissed within 3 years and, at the extreme, 29 were allowed to proceed where suit was brought more than 3 years later. Forty-one cases were permitted to continue within 3 years, whereas, 48 were dismissed after 3 years.

Well aware of this confusing situation and lack of uniformity, some courts, following the lead of Mr. Justice Brennan, have attempted to resolve the problem by reference to the Jones Act 3-year period for laches purposes. Others believe that there should be a firm 3-year limitation period as in the Jones Act.

The latter is the solution we have urged upon this committee and the Congress, and which form the text of H.R. 3748. As was said in the Giddens case, provided in the material forwarded to the committee, the 3-year period "represents the consensus of Congress, the final authority on remedies in admiralty, as to what is a fair opportunity for suit."

If it is fair for seamen as to whom the courts have traditionally expressed solicitude, it should certainly be fair as to their own unseaworthiness causes of action, and as to other forms of maritime claimants, ship passengers, longshoremen, harbor workers, et cetera.

The bill would raise the statute in approximately 26 States, keep it the same in some 13 States and lower it wholly or in part in some 10 States. It also would raise the time limitation under the Death on the High Seas Act from 2 to 3 years.

This, it is submitted, represents a reasonable balance between the interests of both plaintiffs and defendants which is why it received an almost unanimous vote of 330 to 1 in our Maritime Law Association, which I might mention represents a cross section of maritime practice.

Certainly in this day of modern transportation and high speed communication there is really insufficient reason why anyone cannot make up their mind and commence suit within 3 years of the accrual of a maritime personal injury or death cause of action.

We therefore urge in the interest of uniformity of the maritime law, greater predictability, and the unburdening of the Federal judicial system of this highly litigious laches question, that H.R. 3748 receive the favorable attention of this committee.

I would like to call the chair's attention to a rather egregious error in the formal presentation on page 4. Toward the bottom of the page right under the citation, is a sentence that says "produces varying results depending upon the holy fortuitous," and the word "holy" is spelled as if it were sanctified, and it is intended to mean completely.

Mr. MURPHY. It is understandable in the legal profession.

Mr. BYRN. Unless it is an act of God.

Mr. MURPHY. Mr. Lange Hoffman, Associate General Counsel for Zapata Off-Shore Co. in Houston, Tex.

STATEMENT OF LANGE HOFFMAN, ASSOCIATE GENERAL COUNSEL, ZAPATA OFF-SHORE CO., HOUSTON, TEX.

Mr. HOFFMAN. Mr. Chairman and distinguished members of the Merchant Marine Subcommittee, my name is Lange Hoffman, and I am associate general counsel for Zapata Off-Shore Co. in Houston, Tex.

My company owns and operates 20 offshore drilling rigs which are engaged in oil and gas exploration activities around the world.

I am appearing today as a representative of the International Association of Drilling Contractors. The IADC represents more than 1,200 companies from around the world who engage in all aspects of oil and gas exploration and production.

The nearly 600 drilling and well-servicing contractor members of the association operate approximately 350 offshore mobile drilling units in American and foreign waters. These mobile offshore drilling units are considered vessels and the companies who own them are subject to suits arising out of maritime torts; therefore, we share with the Maritime Law Association a keen interest in the passage of H.R. 3748.

Our interest is based on the belief that it is fundamentally unjust to permit the prosecution of lawsuits for alleged personal injuries long after the occurrence thereof, at a time when it is extremely difficult, if not impossible, for the defendant to locate witnesses, records, and the physical evidence.

In such cases when witnesses are located, their memory of the occurrence is often weak or nonexistent when records are found they are often incomplete and cannot be verified; when physical evidence is located or preserved its condition is substantially deteriorated.

Yet, in spite of these obvious burdens of prejudice, my company has in numerous cases been forced to defend claims 5, 6, and even 7 years after the alleged occurrence.

U.S. courts are reticent to summarily dismiss such cases on the theory that facts may be developed during the course of the trial which may excuse the plaintiff's delay or show that the defendant was not prejudiced.

But how can a U.S. court, sitting 5 or 6 years after the occurrence, determine that a defendant is not prejudiced when there is no way to determine what the missing or forgetful witness knew at the time, or what missing or incomplete records would show or even the actual condition of the physical evidence at the time of the alleged injury.

This is an impossible task which many U.S. courts resolve simply by forcing the parties to trial or to settlement without adequate facts to determine the true issues of the case.

Over the past 7 years my company has been placed in this position on numerous occasions. For example, in one instance, a Spaniard employed on board a mobile offshore drilling rig, off the coast of Gabon, was allegedly injured. This incident was supposed to have occurred on or about December 3, 1971. On May 24, 1978,

more than 6½ years later, this Spaniard filed suit against my company, claiming damages greatly in excess of \$1 million.

This was obviously a serious matter and we were surprised as this was the first notice we had ever had that any accident or injury involving this Spaniard had allegedly occurred.

During the 6½ years since the occurrence, the drilling rig had moved from the west coast of Africa to the Middle East, severing all ties with the African operation.

The regular crew of the drilling rig was multinational and had long since scattered to the far corners of the world. These crew members were no longer employed by my company.

Most of the records, including the vessel's log, were no longer available. There was no physical evidence in this case.

Diligent efforts, at great expense to my company, were made to contact the 25 regular crew members on board at the time. We were ultimately able to contact nine crew members, none of which had any recollection of any incident involving an accident or injury to the plaintiff. We were never able to contact the remaining 16 crew members. The plaintiff's own attorney could not or would not supply us with any substantive information on how the plaintiff was injured.

Based on our inability to develop any internal information with which to defend this case, my company was forced to consider, as a last resort, going to Spain, at further great expense and taking the depositions of the plaintiff's doctors and the plaintiff himself. Unfortunately, this only gave us the plaintiff's side of the story, only the names of witnesses favorable to the plaintiff and we ran the risk of the court concluding that since some information about the incident and the plaintiff's medical condition was available, we were not prejudiced.

On September 20, 1979, nearly 2 years after the plaintiff filed his action, and my company had expended substantial sums of money and effort in investigation and legal preparation for trial, the court, after a long delay, granted our motion for summary judgment. But this result was not a foregone conclusion. The various circuits in the United States are in conflict in their decisions involving the laches doctrine. Plaintiffs are permitted to shop for the most favorable forum and the unpredictable way in which the courts of this land have approached the doctrine of laches has contributed to the runaway cost of doing business, encouraged tenuous litigation, and added to the huge backlog of cases currently jamming the U.S. court system.

It is for these reasons we support H.R. 3748 and strongly urge you to replace the unpredictable laches doctrine with a uniform 3-year statute of limitations.

Mr. MURPHY. Counsel.

Mr. SEIFERT. Thank you, Mr. Chairman.

There are statutes extant dealing with workmen's compensation. How do they and how have they affected the matter before us?

Mr. BYRN. You mean under the Longshoremen and Harbor Workers Act?

Mr. SEIFERT. Yes; or the State Workmen's Compensation laws. Have they had any impact on the decision of the courts in deciding what term should run for laches?

Mr. BYRN. Not under the Workmen's Compensation Act.

Mr. SEIFERT. None has ever been cited by any Federal court?

Mr. BYRN. No; I would say under the Longshoremen's Act there is a provision that if the longshoreman does not sue within 6 months, the action may be assigned to his employer. Several courts have held that is in effect a kind of limitation statute. Actually, I am arguing this issue in the Court of Appeals for the Second Circuit on Thursday. Meanwhile, the regulations have been changed so that I don't think the longshoremen would be bound by such a 6-month rule anymore.

Mr. SEIFERT. Is that another requirement under the Federal Torts Claims Act—

Mr. BYRN. No; that is under Longshoremen's Act.

Mr. SEIFERT. You must show an intent to sue within a 6-month period?

Mr. BYRN. I would say it is akin to it. But then the action is assigned to the employer and it is still for the benefit of the man so in effect I don't see any great similarity.

Mr. SEIFERT. Internationally how are maritime torts handled in jurisdictions other than the United States?

Mr. BYRN. By and large, I would say in most maritime nations there is a compensation system, that is, there is no suit against the employer as we have here under the Jones Act.

Mr. SEIFERT. You are not suggesting that, are you?

Mr. BYRN. No; I am not.

Mr. SEIFERT. Does it benefit that maritime nation as compared to the United States to have that system of compensation rather than the tort system?

Mr. BYRN. I am really not prepared to say that or whether we should have the compensation system. I think the compensation system we have had in the Longshoremen's Act has proven very costly to the industry.

Mr. MURPHY. It differs substantially in geographic location. In the New York area the awards are far higher.

Mr. BYRN. That is true.

Mr. MURPHY. Therefore, the cost to the industry is far higher.

Mr. BYRN. Which has driven some of our maritime interests out of New York.

Mr. SEIFERT. Do you find that some jurisdictions or some district courts regularly apply one period of time while others use another one to the detriment of one which has either the longer or the shorter period?

Mr. BYRN. They do as a general rule defer to the local State statute. If the local statute in New Jersey is 2 years, the Federal judge will look to that statute. Across the river in New York it would be 3 years and across the border in Connecticut it would be 2 years.

Also, there is so much discretion vested in the district court or in the jury if they are the triers of fact that it can go any way, and there is no predictability as to the question of burden of proof and excusable neglect and prejudice. It is very hard to estimate a case.

Mr. SEIFERT. The way the bill is drafted right now describing the incident which is affected by this particular statute as a maritime

tort, if the tort arose out of contract, would the 3-year term still apply?

Mr. BYRN. It would not.

Mr. SEIFERT. So we could still have, the way the bill is now drafted, more than one period of limitation for a tort?

Mr. BYRN. I should say that we have discussed this in the Maritime Legislation Committee. We were able to reach almost unanimity in the association as to the maritime tort personal injury and death cases.

There are many people in the Maritime Law Association who would like a property damage limitation as well as an injury and death limitation. We do have in the maritime law, for example under the Carriage by Sea Act, a 1-year period in which to commence suit. There is no momentum to change that at all.

Mr. SEIFERT. You are not suggesting that it be extended. You don't see the lack of exclusivity over all kinds of torts regardless of what they arrive at as being necessary?

Mr. BYRN. As far as tort law is concerned, I would like to see a 3-year limitation to injury, death and property damage cases but I do not speak for the association on that.

Mr. SEIFERT. Mr. Hoffman?

Mr. HOFFMAN. I would agree with that. I think a 3-year statute of limitations would be good on all three bases.

Mr. SEIFERT. Is anybody suggesting or would you be willing to draft language amendatory to that which we have before us so that issue could be presented to the Congress?

Mr. BYRN. Again, I am speaking for the Maritime Law Association and that issue came up and it was deferred. So I could not prescribe that but I think it would be a good idea.

Mr. MURPHY. Was it deferred by a 370-to-1 vote? Who was that?

Mr. BYRN. Arthur Abarbanel, a good friend of mine in the association, whose views I always appreciate and I think he stirs us up mightily from time to time. He is also resisting the limitation of liability convention that was put forward. I like to see him there. I think he does a good job.

Mr. SEIFERT. Mr. Hoffman, in the example you gave us of the Spanish worker and the difficulty in obtaining witnesses 6½ years after the incident with the movement of these people and movement of rigs about the world, would a three-year statute help you that much? Would it be that much different or would you have the same difficulty?

Mr. HOFFMAN. We would still have the difficulty but a 3-year statute of limitations would certainly minimize this difficulty and be more equitable to all parties involved.

Mr. SEIFERT. So we are not providing a personal solution to a unique problem that drilling contractors have?

Mr. HOFFMAN. Not by any means.

Mr. SEIFERT. This is an academic question, the answer to which we all know. I was going to ask you if admiralty jurisdiction is exclusively Federal, why do we have the forum shopping you testified to when the purpose of Federal exclusivity is to overcome that? But it is a rhetorical question.

Mr. BYRN. There has been a void in the maritime law which we have tried to fill now and I think I refer to the four possibilities

that Mr. Justice Brennan in the *McAllister* case suggested on page 3 of my presentation. He said in the absence of any comparable Federal statute of limitations which might be applied, the court had four choices: no period of limitations at all, an arbitrary period applicable in all cases, the flexible but uncertain doctrine of laches and State statutes of limitations.

Then he said the State statutes were chosen by default, but that was only by analogy to the State statutes. They are not binding.

Mr. SEIFERT. There is nothing in the Hamburg Rules, is there, that addresses this problem?

Mr. BYRN. No. They are not concerned with this.

Mr. SEIFERT. I have no further questions. Thank you, Mr. Chairman.

Mr. MURPHY. Thank you very much, gentlemen.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned.]

[The following was received for the record:]

AIMU,
New York, N.Y., November 30, 1979.

Hon. JOHN M. MURPHY,
Chairman, Subcommittee on Merchant Marine, Committee on Merchant Marine and Fisheries, Longworth, House of Representatives, U.S. Congress, Washington, D.C.

DEAR CHAIRMAN MURPHY: The American Institute of Marine Underwriters is honored to have this opportunity to present its views in support of H.R. 3748. We hereby respectfully request that the enclosed statement be included as part of the record of the hearing held by the Subcommittee on Merchant Marine on December 3, 1979.

Thank You.

Very truly yours,

THOMAS A. FAIN,
President.

STATEMENT OF THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS BY THOMAS
A. FAIN

The American Institute of Marine Underwriters (AIMU) is a trade association representing ocean marine underwriters providing over 90 percent of the ocean marine insurance written in the United States. As such AIMU is vitally interested in the efficient and fair resolution of maritime claims. Mr. Murphy's bill, H.R. 3748, would contribute to those goals by establishing a uniform statute of limitations in actions to recover damages for personal injury or death arising out of maritime torts. We are pleased that this committee is holding hearings on this proposal so that the confusion surrounding the current applicable time limitations may come to light and the issue of a national uniform statute of limitations in maritime personal injury and death cases may be given due consideration.

Lack of a uniform rule delineating when suit may be brought has led to uncertainty, unpredictability, and forum shopping. There are currently three limitation periods which may apply to a maritime personal injury or death action. Under the Jones Act 46 USC 688, a crew member sustaining personal injury must sue within three years. Normally, however, a seaman will add an additional count under the General Maritime Law which is governed by laches. The courts have varied so in the considerations weighed in determining whether there is a defense of laches that there is no hope of predictability. The question of which party has the burden of establishing inexcusable delay and prejudice has varied from jurisdiction to jurisdiction as well. In applying the doctrine of laches, the court may also look to the statute of limitations in the state where the injury has occurred. Since states have differing time limitations for the commencement of suit, the time in which the suit must be brought may depend entirely upon the fortuitous circumstances of where the accident occurred. One inevitable consequence of applying laches to maritime personal injury or death actions is that plaintiff will shop for the most favorable jurisdiction. Forum shopping constitutes a serious strain on the efficient administration of our courts. The third applicable time limitation is found under the Death On The High Seas Act, 46 USC 763, where the limitation is two years. The resolution of maritime personal injury and death cases would be more efficiently and justly accomplished if there were a uniform statute of limitations.

AIMU strongly supports this effort to eliminate the confusion surrounding maritime personal injury and death actions. Enactment of H.R. 3748 would establish a uniform, national statute of limitations of three years and do away with the undesirable consequences of the current legal confusion.

Thank you for this opportunity to present our views. If AIMU can be of any further assistance, please do not hesitate to contact us.

WAR RISKS INSURANCE

MONDAY, DECEMBER 3, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met at 3:20 p.m., pursuant to call, in room 1334, Longworth House Office Building, Hon. John M. Murphy (chairman of the subcommittee) presiding.

Present: Representatives Murphy and Anderson.

Mr. MURPHY. The next hearing is on H.R. 5784 and H.R. 5913. H.R. 5784 would extend permanently the life of title XII of the Merchant Marine Act of 1936, which authorizes the Secretary of Commerce, with the approval of the President, to provide insurance against loss or damage by war risks with respect to vessels, cargoes, crew life and personal effects, and liabilities related to ownership or operation of the vessels, when commercial insurance cannot be obtained on reasonable terms and conditions.

I have remarks which I will place in the record at this point, along with copies of the bills, and will go right to our first witness. [The material follows:]

STATEMENT OF HON. JOHN M. MURPHY, CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

The subcommittee will please come to order.

This afternoon the subcommittee will first hold hearings on H.R. 5784, a bill which would extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance.

Title XII authorizes the Secretary of Commerce with the approval of the President, to provide insurance against loss or damage by war risks with respect to vessels, cargoes, crew life and personal effects, and liabilities related to ownership or operation of the vessels, when commercial insurance cannot be obtained on reasonable terms and conditions. The purpose of title XII is to maintain the flow of the U.S. waterborne commerce, including the maintenance of essential transportation services for the Department of Defense.

Title XII of the Merchant Marine Act, 1936, was enacted with the outbreak of the Korean war in 1950. It was temporary legislation that expired in 5 years. Past extensions of the title XII authority had been for 5-year periods, expiring on September 7 of each fifth year. The last extension was for 3 years, terminating on the date corresponding to the end of the new fiscal year established by the Congressional Budget and Impoundment Control Act of 1974.

Title XII authority expired on September 30, 1979, after several extensions enacted by the Congress. H.R. 5784 would eliminate the necessity for repeated congressional action on a measure which should be in place when needed.

The subcommittee will also conduct hearings on H.R. 5913, a bill to amend section 502(a) of the Merchant Marine Act, 1936.

A goal of the 1970 amendments to the Merchant Marine Act, 1936, was to reduce progressively the Government's subsidy participation in the construction of merchant vessels. Prior to the enactment of the 1970 act, contracting for construction was based on the competitive bid process. Section 502(a) of the 1936 act permits a shipyard and a purchaser to negotiate the price of a ship, as an alternative to

competitive bidding, so long as the resulting subsidy is consistent with guideline rates established in the 1970 act. The Secretary of Commerce is authorized to accept the negotiated price if he finds that such price is fair and reasonable.

The negotiated pricing authority was initially limited to a period of 3 years from the date of enactment unless extended by law.

H.R. 5913 would make permanent the authority of shipyards to negotiate construction contracts with ship purchasers subject to approval by the Secretary of Commerce.

Our first witness today is Mr. Samuel Nemirow, Assistant Secretary of Commerce for Maritime Affairs, Department of Commerce.

Mr. Nemirow, welcome to the committee.

96TH CONGRESS
1ST SESSION

H. R. 5784

To extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 1979

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That title XII of the Merchant Marine Act, 1936 (46 U.S.C.
- 4 1281 et seq.), is amended by striking section 1214.

[Executive Communication No. 1813]

THE SECRETARY OF COMMERCE,
Washington, D.C., June 11, 1979.

HON. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed are six copies of a bill "To extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance.", together with a statement of purpose and need in support thereof.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this legislation to the Congress from the standpoint of the Administration's program.

Sincerely,

JUANITA M. KREPS,
Secretary of Commerce.

[The draft bill became H.R. 5784.]
Enclosures.

STATEMENT OF PURPOSE AND NEED

The draft bill would extend permanently the life of title XII of the Merchant Marine Act, 1936 (46 U.S.C. 1281-1294). Section 1214 of the Act, pursuant to amendment by Public Law 94-523 (90 Stat. 2474), now provides that the authority under that title shall expire on September 30, 1979.

Title XII authorizes the Secretary of Commerce (Secretary), with the approval of the President, to provide insurance against loss or damage by war risks with respect to vessels, cargos, crew life and personal effects, and liabilities related to ownership or operation of the vessels, when commercial insurance cannot be obtained on reasonable terms and conditions. The purpose of title XII is to maintain the flow of the U.S. waterborne commerce, including the maintenance of essential transportation services for the Department of Defense. War risk insurance was provided by the Government in both World War I and World War II, and proved effective in protecting the civilian and military commerce of the United States, with total premium receipts in excess of losses paid.

Title XII of the Merchant Marine Act, 1936, was enacted with the outbreak of the Korean War in 1950. It was temporary legislation that expired in five years. Past extensions of the title XII authority had been for five year periods, expiring on September 7 of each fifth year. The last extension was for three years, terminating on the date corresponding to the end of the new fiscal year established by the Congressional Budget and Impoundment Control Act of 1974.

War risk protection has been provided through the issuance, for a fee, of interim binders under which Government war risk insurance will attach immediately when commercial war risk insurance terminates under the automatic termination clauses in the commercial policies. These clauses provide that such insurance will terminate immediately upon (a) the outbreak of war (whether there is a declaration of war or not) between any of the following countries: the United States of America, the United Kingdom, France, the Union of Soviet Socialist Republics, and the Peoples Republic of China; or (b) the occurrence of any hostile detonation of any nuclear weapon of war, whether or not the covered vessel is involved. Our binders give back-to-back coverage with the commercial policies. The war risk insurance coverage under the binders ends 30 days after it attaches. At that time, the premiums for coverage during that period would be fixed retroactively, and terms for the continuation of war risk insurance coverage for the ensuing period would be determined on the basis of the circumstances existing at that time.

Section 1203(a) of the 1936 Act authorizes the Secretary to provide insurance not only to American vessels, but also to "foreign-flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States when so engaged." Public Law 94-523 (90 Stat. 2474), which reinstated the authority of the Secretary to issue war risk insurance until September 30, 1979, also amended this section to require that the Secretary consider specified general criteria in determining whether to issue war risk insurance to foreign-flag vessels. It provided further that all American and foreign-flag vessels with such insurance coverage shall be subject to vessel location reporting requirements as the Secretary may establish by regulation.

The Maritime Administration has developed criteria for eligibility of foreign-flag vessels, including types, tonnages, speed, and age. These criteria have been set forth

in regulations published in the Federal Register on November 20, 1978. These regulations also include vessel location reporting requirements.

Enactment of this legislation would require no additional appropriations.

96TH CONGRESS
1ST SESSION

H. R. 5913

To amend section 502(a) of the Merchant Marine Act, 1936.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 1979

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend section 502(a) of the Merchant Marine Act, 1936.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the third sentence of section 502(a) of the Merchant
4 Marine Act, 1936 (46 U.S.C. 1152(a)), is amended by strik-
5 ing the words “, at any time prior to June 30, 1979,”.

[Executive Communication No. 1812]

THE SECRETARY OF COMMERCE,
Washington, D.C., June 11, 1979.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed are six copies of a bill "To amend section 502(a) of the Merchant Marine Act, 1936.", together with a statement of purpose and need in support thereof.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this legislation to the Congress from the standpoint of the Administration's program.

Sincerely,

JUANITA M. KREPS,
Secretary of Commerce.

[The Draft Bill became H.R. 5913.]
Enclosures.

STATEMENT OF PURPOSE AND NEED

Section 505 of the Merchant Marine Act, 1936, provides that all vessel construction in respect to which a construction-differential subsidy is allowed shall be performed as a result of competitive bidding. This provision was in the 1936 Act prior to the enactment of the Merchant Marine Act of 1970. One of the purposes of the 1970 Act was to bring the shipyards into the design work on vessels so as to achieve economies of production. Since a shipyard is basically in the construction, not the design business, it could not be expected to develop a design at its own expense if it could not be assured of being awarded the related construction contract. It was, therefore, necessary to provide a means whereby the designing yard was not required to submit its design to competitive bidding at which it could not be certain that it would be the lowest responsible bidder.

The 1970 Act, therefore, included an amendment to section 502(a) of the 1936 Act authorizing the Secretary of Commerce, under certain conditions, notwithstanding the provisions of section 505 of the 1936 Act, at any time prior to June 30, 1973, to accept, for purposes of computing construction-differential subsidy, a price for construction of a ship that has been negotiated between a shipbuilder and a proposed ship purchaser.

Under section 502 of the 1936 Act, the Secretary is authorized to contract with a shipyard for construction of the vessel and concurrently to contract with the proposed ship purchaser for sale of the vessel upon its completion at the estimated cost of construction less construction-differential subsidy, if he determines that such purchaser possesses the ability, experience, financial resources and other qualifications necessary for the operation and maintenance of the vessel. This section has not been used since private financing became a viable means of contracting vessels with title XI aid in 1954. The provisions of this section with respect to negotiation, however, are incorporated by reference in section 504 of the 1936 Act, under which the Secretary agrees to pay the shipyard the construction-differential subsidy and the ship purchaser agrees to pay the shipyard the balance of the construction cost. Since 1954, all vessels with respect to which construction-differential subsidy has been paid have been built under section 504.

Public Law 93-71 extended the negotiating authority under sections 502 and 504 to June 30, 1976. Public Law 94-372 further extended this authority to June 30, 1979.

The conditions under which the negotiating authority under sections 502 and 504 may be utilized until June 30, 1979, are if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence that the price is fair and reasonable, (2) the Secretary of Commerce finds that the price is fair and reasonable, and (3) the shipyard agrees that the Comptroller General of the United States shall, until 3 years after final payment, have the right to examine any pertinent books, documents, or records of the shipyard or its subcontractors related to the negotiation or performance of the contract. These conditions with respect to negotiating were imposed by the Merchant Marine Act of 1970, were continued by each of the extensions of this authority and will be continued on a permanent basis by the draft bill.

Throughout the shipbuilding world, negotiated pricing is the method used for contracting for the construction of ships. Negotiated pricing facilitates marketing endeavors by shipbuilders to produce standard ships and avoids the building of custom made ships which is promoted by competitive bidding.

The history of negotiated pricing since its enactment in 1970 demonstrates the significance of this provision for shipbuilding in the United States. Of the 80 vessels for which construction-differential subsidy has been awarded since 1970, 78 were the subject of negotiated prices.

Enactment of this legislation requires no additional appropriations.

Mr. MURPHY. Mr. Leonard Dickstein, Acting General Counsel, Maritime Administration.

STATEMENT OF LEONARD H. DICKSTEIN, ACTING GENERAL COUNSEL, MARITIME ADMINISTRATION, ACCOMPANIED BY K. H. GREEN, DIRECTOR, OFFICE OF MARINE INSURANCE, MARITIME ADMINISTRATION

Mr. DICKSTEIN. Mr. Chairman and members of this subcommittee, I am pleased to appear before this subcommittee today, to testify on two Administration bills. I am accompanied by Mr. K. H. Green, Director of our Office of Marine Insurance.

They are H.R. 5784, a bill, "To extend the provisions of title XII of the Merchant Marine Act, 1936," and H.R. 5913, a bill, "To amend section 502(a) of the Merchant Marine Act, 1936."

Since these bills involve different subjects, I will comment on them separately.

First, I would like to discuss H.R. 5913. Section 505 of the Merchant Marine Act, 1936, provides that all vessel construction in respect to which a construction-differential subsidy is allowed shall be performed as a result of competitive bidding. This provision was in the 1936 act prior to the enactment of the Merchant Marine Act of 1970.

One of the purposes of the 1970 act was to encourage shipyard participation in the design work on vessels so as to achieve economies of production. Since a shipyard is engaged principally in vessel construction, rather than vessel design, it would be unreasonable to expect a shipyard to develop a design at its own expense without being assured that these expenditures would culminate in the award of a construction contract.

An objective in drafting the 1970 act was to provide a mechanism whereby the shipyard would not be required to submit its design to competitive bidding with the risk of losing the contract to another shipyard that is determined to be the lowest responsible bidder.

Accordingly, the 1970 act included an amendment to section 502(a) of the 1936 act authorizing the Secretary of Commerce, under certain conditions and notwithstanding the provisions of section 505 of the act, to accept, for purposes of computing CDS, a price for construction of a ship that has been negotiated between a shipbuilder and a proposed ship purchaser. That authority expired on June 30, 1973.

Section 502(a) authorizes the Secretary concurrently to contract with a shipyard for construction of the vessel and to contract for sale of the vessel upon its completion to a U.S. citizen at the estimated cost of construction less CDS.

The Secretary is required to first determine that such purchaser possess the ability, experience, financial resources and other qualifications necessary for the operation and maintenance of the vessel.

This section has not been used since private financing became a viable means of constructing vessels with title XI aid in 1954. The provisions of this section with respect to negotiation, however, are

incorporated by reference in section 504 of the act, under which the Secretary agrees to pay the shipyard the construction-differential subsidy and the ship purchaser agrees to pay the shipyard the balance of the construction cost.

Since 1954, all vessels with respect to which construction-differential subsidy has been paid have been built under section 504.

Public Law 93-71 extended the negotiating authority under sections 502 and 504 to June 30, 1976, and Public Law 94-372 further extended this authority to June 30, 1979.

The negotiating authority under section 502 and 504 could have been utilized until June 30, 1979, subject to the following conditions: First, the proposed ship purchaser and the shipyard submit backup cost details and evidence that the price is fair and reasonable; second, the Secretary of Commerce finds that the price is fair and reasonable; and third, the shipyard agrees that the Comptroller General of the United States shall, until 3 years after final payment, have the right to examine any pertinent books, documents, or records of the shipyard or its subcontractors related to the negotiation or performance of the contract.

These conditions were imposed by the Merchant Marine Act of 1970, were included in each extension of this authority and would be continued on a permanent basis under the bill.

Negotiated pricing is the procedure generally adopted throughout the world in awarding contracts for the construction of ships. Negotiated pricing facilitates efforts by shipbuilders to produce and sell standard ships. It discourages the building of custom made ships, with its cost inefficiencies, which is promoted by competitive bidding.

The history of negotiated pricing since its enactment in 1970 has demonstrated the great benefits provided by this provision of law for shipbuilding in the United States. Of the 83 vessels for which construction-differential subsidy has been awarded since 1970, 81 were the subject of negotiated prices.

Mr. Chairman, the administration strongly supports the enactment of H.R. 5913, which would make permanent the negotiated pricing authority.

Turning now to H.R. 5784; this bill would revive on a permanent basis the authority to issue war risk insurance under title XII of the Merchant Marine Act, 1936, which expired on September 30 of this year.

Title XII of the act was enacted with the outbreak of the Korean war in 1950. It was temporary legislation that expired 5 years later. Since then, it has been extended several times, normally for 5-year periods expiring on September 7 of each fifth year.

The last extension was for 3 years to terminate on the date corresponding with the end of the new fiscal year established by the Congressional Budget and Impoundment Act of 1974.

Title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war risk insurance covering ships, cargoes, the lives and personal effects of the crew and other liabilities resulting from ownership and operation of the vessels when commercial insurance cannot be obtained on reasonable terms and conditions.

Such a situation may be triggered when commercial underwriters drastically increase war risk hull insurance rates because conditions existing at certain ports are considered by underwriters to be hazardous to the safety of the vessels.

Vessel owners, in turn, may refuse to trade in the areas where high rates are charged and the waterborne commerce of the United States could be adversely affected by such action.

The purpose of title XII is to maintain the flow of the U.S. waterborne commerce, including the maintenance of essential transportation services. Unless insurance is available against all risks, including war risks, commercial operators are not likely to send their ships into situations where a risk of war damage exists.

Governmental war risk insurance binders become effective for a period of 30 days immediately upon the termination of commercial war risk insurance through the operation of the automatic termination clauses of the commercial policies which provide that insurance automatically terminates upon the hostile detonation of a nuclear weapon of war anywhere in the world whether or not insured vessels are involved or upon outbreak of hostilities between any of the five great powers, including the United States, the United Kingdom, France, the Soviet Union and the Peoples Republic of China. Premiums for the war risk insurance coverage will be charged on a mutual basis for the 30-day binder period.

At the expiration of the 30-day binder period, a full insurance program will provide war risk coverage for hull, cargo, second seamen's war risk, protection and indemnity and builders' risk for both the prelaunching and postlaunching periods. Premiums will be charged on an actuarial basis and will be changed from time to time as loss experience dictates.

Mr. Chairman, as you and the members of this subcommittee are well aware, section 1203(a) of the 1936 act authorizes the Secretary to provide insurance not only to American-flag vessels, but also to "foreign-flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States when so engaged."

Public Law 94-523 added the requirement that "the characteristics, the employment and the general management of the vessel by the owner or charterer" of foreign-flag tonnage would have to be evaluated before war risk insurance could be extended to those ships.

This provision was part of a Maritime Administration proposal not only to check closely those qualifying requirements, but also to withdraw the blanket finding that all effective U.S. controlled vessels of Panamanian, Honduran, and Liberian registry were automatically eligible for war risk insurance.

This agreement was made following introduction of an amendment to eliminate all foreign flag participation in the war risk insurance program. While not reflected in the new language inserted into the law, participation would be limited to approximately 25 percent of the foreign flag tonnage entered in the program which expired on September 7, 1975. Only those foreign flag vessels

deemed most suitable to augment the U.S.-flag merchant fleet in event of a national emergency would be selected on a case by case basis for inclusion in the program.

War risk insurance binders covering U.S.-flag vessels on September 7, 1975, were reinstated effective March 8, 1977, provide that conditions had not changed in respect of the vessel's ownership, registry, or certain other particulars and that binder fees were paid. Foreign flag binders were cancelled until new regulations could be published in the Federal Register.

Proposed regulations were published for public comment on June 2, 1978. As a result of comments received, final regulations with some modifications were published on November 20, 1978.

Although 87 foreign flag applications had been received when the legislation expired on September 30, 1979, no binders had been issued for foreign flag vessels. Most of the applications had to be returned due to serious deficiencies.

Also, in view of our expressed intention to deal with requests for insurance on foreign flag vessels on a case-by-case basis, we delayed the issue of any bonders until we had applications for a representative group of vessels from which to choose.

If authority to underwrite war risk insurance is renewed by favorable action on this bill by the Congress, it is our intention to issue binders for these foreign flag vessels meeting the previously stated criteria and for which we now have applications in hand.

We estimate that processing of applications for foreign flag vessel operators under a newly developed system will be done in less than 15 working days from receipt.

As with H.R. 5913, the administration fully supports enactment of this bill.

Mr. Chairman, that concludes my prepared statement. I would be pleased to answer any questions that you or other members of the subcommittee may have on either bill.

Mr. MURPHY. Thank you, Mr. Dickstein.

Counsel?

Mr. KYROS. Mr. Dickstein, one problem here I notice is that the war risk insurance program was re-enacted the last time on October 17, 1976. But the final regulations were not issued by Marad for the American-owned foreign flag fleet until November 20, 1978.

What was the reason for that delay?

Mr. DICKSTEIN. We did issue proposed regulations and rather lengthy comments were received in response to the proposed regulations. Due to the time period for the filing of these comments, the analysis of these comments and our attempt to meet the concerns of some of the commentators, it took time to get the regulations out.

Mr. KYROS. Well, what is the major problem there? As I understood it, the American-owned foreign flag fleet was going to be covered by this war risk program.

Mr. DICKSTEIN. That is right.

Mr. KYROS. What happened in between? Was there a need to categorize specifically what types of ships would be covered, or would the place where those foreign ships would serve also be a problem as to whether they would be covered?

Mr. DICKSTEIN. It was really both factors, Mr. Kryos. As you know, in the regulations there is a requirement that the foreign flag vessels that will be covered must serve 30 percent of the time in U.S. waterborne commerce.

We also wanted to insure that we had a method of determining where these vessels were serving and where they were located at any given time, so we made them subject to the Vessel Locator Filing System.

As a result of dealing with all of these problems, it took a great deal of time to develop the regulations. Of course, the owners of the foreign flag vessels want all vessels covered.

The owners of U.S.-flag vessels competing with the foreign-flag vessels wanted none of these vessels covered. So the Maritime Administration had to determine in an equitable manner under the guidance given to us by the Congress which of these vessels should be covered and which should not.

Mr. KYROS. What was the purpose of requiring 30 percent of the foreign-flag vessels' cargoes carried on a semiannual basis in the U.S. foreign trades in order to qualify?

Mr. DICKSTEIN. These vessels were supposed to serve the national defense and the national economy of the United States. If they are carrying cargo in the waterborne commerce of the United States then at least an argument can be made that they are serving the national economy.

Mr. KYROS. But you have other vessels that just go foreign to foreign, don't you, that are covered?

Mr. DICKSTEIN. Then we would look to the vessel type and its need in terms of the national defense.

Mr. KYROS. And why did you limit tankers to 90,000 deadweight tons?

Mr. DICKSTEIN. I do not recall. I would have to submit that for the record.

Mr. KYROS. What?

Mr. DICKSTEIN. I do not recall why the decision was made at 90,000 deadweight tons.

Mr. KYROS. That is in your regulations.

Mr. DICKSTEIN. Yes.

Mr. KYROS. 308(2)(b), "Product tankers up to 90,000 deadweight tons."

Mr. DICKSTEIN. Are the ones covered.

Mr. KYROS. Why did you do that?

Mr. DICKSTEIN. I believe those are the tankers which can serve our ports at this time. Our ports will not accomodate much larger than a 90,000 deadweight ton tanker.

Mr. KYROS. Don't larger tankers come to the North American Continent from the Caribbean, and transfer fuel?

Mr. DICKSTEIN. Yes, they do transfer fuel, but they don't actually serve U.S. ports.

Mr. KYROS. Ultimately doesn't the oil come to U.S. ports?

Mr. DICKSTEIN. Yes.

Mr. KYROS. What about LOOP? Isn't that going in soon?

Mr. DICKSTEIN. Soon, but certainly not at the time these regulations were adopted.

Mr. KYROS. I thought the policy objective was to serve the national economy, not just specific tactical considerations. Are you saying that you are reconsidering the 90,000 deadweight ton problem?

Mr. DICKSTEIN. Not at this time, I don't believe.

Mr. KYROS. Of your knowledge, did any vessel refuse to carry arms during the Vietnamese war when that vessel was under the war risk insurance program?

Mr. DICKSTEIN. Personally, I have no knowledge on that subject. I would be glad to submit something for the record.

Mr. MURPHY. Research that and submit it for the record, please.

Mr. DICKSTEIN. Certainly.

[The following was received:]

REFUSAL TO CARRY ARMS DURING VIETNAM CONFLICT

The Maritime Administration is not aware of any incident during the Vietnam conflict of a refusal to carry arms on a vessel that was under the war risk insurance program.

Mr. KYROS. One final question. Who provides most of the money for this program, American-flag vessels or foreign vessels, or the premiums for the program?

Mr. DICKSTEIN. Since there were no foreign flag vessels covered after the last extension it was the U.S.-flag vessels that provided the premiums during that period.

Mr. KYROS. Thank you, Mr. Chairman.

Mr. SEIFERT. Mr. Dickstein, since the expiration of the negotiated price provision on June 30, 1979, have any contracts been let—

Mr. DICKSTEIN. No.

Mr. SEIFERT [continuing]. Which are subject to subsidy, so no harm has occurred as a result of the lapsing of this program? Are any contracts under negotiation for construction of vessels right now, to the best of your knowledge?

Mr. DICKSTEIN. There are contracts for negotiation of ships being talked about by shipyards and people. Whether you could characterize it as negotiations, I am not sure. Surely without the enactment of this legislation it would be very difficult to build ships with the aid of construction differential subsidies.

Mr. SEIFERT. You are familiar, in the case of contract authority and the war risk extension, that both provisions are provided for in H.R. 4769.

Mr. DICKSTEIN. Yes.

Mr. SEIFERT. What the Administration is seeking now is interim relief, pending a determination of H.R. 4769? Or are you assuming that we will not consider these authorities in H.R. 4769?

Mr. DICKSTEIN. I am not sure which was introduced first, whether it was 4769—

Mr. SEIFERT. H.R. 4769 was introduced July 12. These bills were both introduced in November of this year. Consequently, we have been considering all the provisions of H.R. 4769, including the two authorities which are before us today.

Pending completion of consideration of all the provisions of H.R. 4769, would the administration be amenable to an extension of both these programs for a period of 1 year rather than making them permanent, which is the language you sent up to the Hill?

Mr. DICKSTEIN. We would certainly prefer that these provisions be made permanent. We think that, for example, with respect to

the negotiating contract authority, the 9 years of experience that we have had since the Merchant Marine Act of 1970 teaches us this is the way to do ship construction contracts.

A 1-year extension is just another temporary measure. If ultimately through the enactment of the omnibus bill or any other legislation the authority is given to us to make these features a permanent part of our maritime law, I suppose we could go along with it.

Mr. SEIFERT. One of the requirements in the negotiating pricing authority is that the contractor agree to allow the General Accounting Office to investigate its records for a period of time following the last payment.

Mr. DICKSTEIN. That is correct, 3 years.

Mr. SEIFERT. Has there ever been any occasion on which the information obtained from these records has necessitated a recovery of any payments made by the Maritime Administration to any contractor.

Mr. DICKSTEIN. No.

Mr. SEIFERT. What kind of policing do you undertake of records?

Mr. DICKSTEIN. You have to understand that before the contract is entered into there is extensive policing of the fairness and reasonableness of the price at which the contract is entered into.

The postcontract type of policing, which is contemplated by GAO, is really to discover cases of, I guess what you would call, outright fraud.

Mr. SEIFERT. You haven't had any fraud in all the years this has been underway. Do you look at these records or do you rely on GAO?

Mr. DICKSTEIN. The Maritime Administration does audit all vouchers that come in for the payment of construction differential subsidy money.

Mr. SEIFERT. But these are review of the records after the last payment is made. I would assume then there are no vouchers left over at that point.

Mr. DICKSTEIN. That is right.

Mr. SEIFERT. And that 3-year period, and for the period following that 3 years of investigation of GAO, you have never had any occasion, to your knowledge, to request the refund of any money paid out?

Mr. DICKSTEIN. No.

Mr. SEIFERT. You still think that that requirement is necessary?

Mr. DICKSTEIN. It is a prophylactic requirement against cases of outright fraud. And I guess—

Mr. SEIFERT. The more protection you have, the better off you feel.

Mr. DICKSTEIN. That is probably the way to characterize it. Oliver Wendell Holmes would call it the bad man theory of the law.

Mr. SEIFERT. I have no further questions. Thank you, Mr. Chairman.

Mr. MURPHY. Thank you, Mr. Dickstein.

Our next two witnesses will appear as a panel: Mr. Albert May, executive vice president, Council of American-Flag Ship Operators,

and the very distinguished Adm. William Benkert, president of the American Institute of Merchant Shipping.

STATEMENTS OF ALBERT E. MAY, EXECUTIVE VICE PRESIDENT, COUNCIL OF AMERICAN-FLAGSHIP OPERATORS; REAR ADM. WILLIAM M. BENKERT, PRESIDENT, AMERICAN INSTITUTE OF MERCHANT SHIPPING; BARBARA D. BURKE, DIRECTOR, PUBLIC AND LEGISLATIVE AFFAIRS, AMERICAN INSTITUTE OF MERCHANT SHIPPING

Mr. BENKERT. We did bring another member of the AIMS staff along, Mr. Chairman, if you have no objection. On my right is Ms. Barbara Burke, director of public and legislative affairs for the American Institute of Merchant Shipping.

Mr. MURPHY. Who is going to go first?

Mr. May?

STATEMENT OF ALBERT MAY

Mr. MAY. Thank you, Mr. Chairman.

It is a pleasure to appear before you today on behalf of CASO in support of H.R. 5784 and H.R. 5916. All CASO members are participants in the mutual insurance pool provided by title XII of the Merchant Marine Act, 1936 as amended, which gives authority to the Maritime Administration to provide, at no cost to the Government, war risk insurance when commercial coverage cannot be obtained on reasonable terms and conditions.

Title XII was added to the act on September 7, 1950 for an initial period of 5 years. There have been five subsequent amendments to extend the provisions of this title, the most recent of which expired on September 30, 1979.

Commercial insurance companies, both in the United States and abroad, are unable to underwrite the concentrated and massive risk to which merchant shipping may be exposed in the event of a major armed conflict.

Consequently, all commercial war risk insurance policies presently contain a termination clause, which automatically becomes effective upon " * * * the occurrence of any hostile detonation of any nuclear weapon of war * * * wheresoever or whensoever such detonation may occur and whether or not the vessel may be involved * * *" or " * * * the outbreak of war, whether there be a declaration of war or not, between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics, or the People's Republic of China."

The inability of the commercial market to insure the potential losses which could occur during a major war is understandable, since merchant shipping, which supports the military and economic logistics of war, is usually a primary target at the outbreak of hostilities.

Even if a conflict between the great powers were brief and localized, steamship companies which specialize in serving the geographic area involved would suffer enormous losses.

The war risk insurance program creates a mutual pool to spread this risk among a large number of vessel operators trading worldwide. Our Government operates as the administrator of this pool.

For modest fees it issues binders to the United States and selected foreign flag operators to provide war risk insurance effective immediately upon the termination of commercial insurance.

During the first 30 days when such binders are in effect, losses are paid by the Government. However, at the end of 30 days premiums are fixed retroactively on the basis of losses actually incurred and those anticipated.

During the entire period title XII war risk insurance is effective, the Government as the program's administrator is charged with regularly adjusting the premiums so as to cover all the losses. Thus, the program should cost the Government nothing.

In fact, during World War II, when a similar program was in effect, the Government collected an excess of insurance premiums and other credits over amounts expended in settlement of losses of \$127,285,104.

The very nature of maritime operations often requires vessels to travel through hostile waters beyond the immediate protection of our military forces. It is not unreasonable to ask that crews, cargoes, and ships serve under such conditions without insurance being made available to them.

In order to overcome the problems attendant to timely passage of legislation to further extend the authority under XII for a limited period, we wish to record our support for H.R. 5784, which provides permanent authority for the Maritime Administration to issue interim binders for war risk insurance.

This action will assure the continuity of insurance coverage in the event of war and eliminates an insurance problem as a basis for interruption of military sea lines of communication or the movement of necessary strategic material.

Accordingly, CASO urges the enactment of H.R. 5784 as introduced.

We also support H.R. 5913, renegotiated procurement of CDS ships.

H.R. 5913 would make permanent the authority of the Secretary of Commerce to accept negotiated bids for ships to be constructed with the aid of construction differential subsidy.

Prior to 1970, the Merchant Marine Act of 1936 required that all vessels built with the aid of construction differential subsidy be contracted through competitive bidding.

With the enactment of the 1970 act, the Secretary of Commerce was authorized to accept a price for ship construction which had been negotiated by the shipbuilder and the ship purchaser.

This amendment resulted from the realization that competitive bidding is usually not an efficient or cost-effective means of procuring ship construction contracts. In fact, virtually all ship construction contracts in foreign yards resulted from negotiated procurement.

This is partially due to the fact that shipyards have different procedures, methods, and equipment. If a ship design is compatible with the procedures, methods and equipment already in use by a yard, then construction costs are reduced.

In negotiated procurement, representatives of the prospective owner and of shipyards can discuss possible changes in plans and specifications that will permit a yard to build a lower cost vessel

which still meets all of the owner's operating and service requirements.

If shipyards have a steady volume of orders over an extended period of time, they can reduce their costs and thus their prices. Through negotiations, owners are often able to time the keel laying and delivery of their vessels to coincide with efficient operation of a yard so as to achieve a lower price for the ship.

During negotiations, the actual present cost of various equipment and features in a ship design is positively identified. When costs for certain equipment or features are higher than the owner had anticipated, these may be modified so as to achieve lower cost.

This committee recognized these benefits of negotiated procurement and included such authority in the Merchant Marine Act of 1970 on an interim trial basis.

The national interest in insuring that ships built with construction subsidy are procured at the lowest possible price is fully protected under negotiated procurement. The proposed ship purchaser and the shipyard must both submit backup cost details and evidence and the Secretary of Commerce must determine that these are fair and reasonable.

Additionally, the contracts, including the subcontracts for components and main powerplant, are open to scrutiny by the Comptroller General until 3 years after final payment has been made.

It is for these reasons that CASO supports H.R. 5913.

Thank you, Mr. Chairman.

Mr. MURPHY. Admiral?

STATEMENT OF WILLIAM BENKERT

Mr. BENKERT. Thank you, Mr. Chairman.

Mr. Chairman, my name is William M. Benkert. I am the president of the American Institute of Merchant Shipping, a national trade association composed of 26 companies which own, operate, and charter 190 American-flag bulk vessels, aggregating over 8 million deadweight tons, which serve U.S. foreign and domestic ocean-borne commerce.

I am testifying today, Mr. Chairman, in support of H.R. 5913, legislation to make negotiated contracting authority permanent, and H.R. 5784, legislation to provide permanent authority for the title XII war risk insurance program.

AIMS strongly supports permanent authority for negotiated ship construction contracts as provided for in H.R. 5913. This approach has been found to be the most efficient for all parties concerned, permitting the operator to engage in hardnosed bargaining after shopping in various yards.

The yard, once selected, is assured the business and can concentrate on designing vessels of greater utility suitable for series construction. Negotiated contracts also allow better timing so that the acquisition of a new vessel can fit smoothly into a company's operational schedule.

By making permanent the Government's authority to accept negotiated contracts, Congress would be acting to facilitate the resumption of shipbuilding momentum in this country. There are adequate safeguards to protect the taxpayers, including the alternative of competitive bidding which would still be present and the

required certification of cost information to provide evidence that the negotiated price is fair and reasonable.

Finally, the action we are urging would help prevent the undesirable effects of shipyards bidding under cost to stay in business. I would add, Mr. Chairman, that we agree with the material which Mr. May has presented in support of this legislation.

Turning now to H.R. 5784, most of our companies have participated in the now-expired title XII war risk insurance program and thus have a direct interest in the proposed legislation.

AIMS strongly supports permanent authority for Government-issued war risk insurance. This program helps to insure that vessels are available to the United States in time of war when commercial insurance is unable to cover at reasonable rates and conditions the risks of vessel operation.

Offering war risk insurance costs the Government and the taxpayers nothing, for fees and premiums are calculated in a manner to cover all administrative costs and any actual losses.

I think again Mr. May's statement went into this rather extensively, Mr. Chairman.

Due to this inherent safeguard in the program, we think it is eminently reasonable for Congress to grant permanent authority to issue war risk binders.

Continuous coverage should be provided so that in time of war or national emergency, shipowners whose vessels are committed to the United States can serve this country without exposing themselves to uninsured losses.

Furthermore, it is our view that the program, as it is currently being administered, is unnecessarily restrictive in its scope of coverage.

Since final regulations were issued November 20, 1978, the administrative policy of the Maritime Administration has been unclear to us as to whether U.S.-owned foreign flag vessels will be allowed to participate in the war risk program.

Yet, on November 1, 1979 testimony before the Senate Merchant Marine and Tourism Subcommittee on U.S. sealift capability, Assistant Secretary of Commerce for Maritime Affairs Nemirow contended:

If supply of Persian Gulf oil were cut off, the existing U.S. tanker fleet in addition to meeting military plus U.S. domestic requirements, could carry about a quarter of U.S. wartime imports.

To be able to carry all imports at that reduced level, an additional 7.5 million dwt of capacity would be needed—about 75 tankers averaging 100,000 dwt. In addition, ships would be needed to replace losses to enemy action.

In the absence of additional U.S. flag ships, we would have to rely on foreign flag ships, including U.S.-owned effective U.S. control fleet ships.

In view of these comments, we find it puzzling that MarAd has imposed a size restriction on participation in the title XII program by U.S.-owned foreign flag vessels, particularly since there is no such limitation on U.S.-flag vessels.

We feel that MarAd's size restriction of 90,000 deadweight tons on U.S.-owned foreign flag vessels is not in the national interest, as these larger vessels would be needed in time of war by the United States and her allies.

Regardless of the relative dependability of U.S.-owned American and foreign flag vessels, it is clear that the more ships available to serve, the better.

The benefits of war risk insurance program are not conferred upon those who fail to respond to the U.S. Government; insurance coverage for such recalcitrants would be automatically terminated without refund of fees or premiums.

We feel the inclusion of U.S.-controlled vessels in the program would be beneficial both to the Government and U.S.-flag operators. The Government would have available more vessels to maintain the flow of U.S. waterborne commerce in the national interest. Operators would benefit because the larger the mutual insurance pool, the lower the rates for participants.

In conclusion, AIMS believes that war risk insurance should be made available on a permanent basis to all U.S.-owned vessels, regardless of size or flag. We firmly believe that the paramount consideration in determining vessel eligibility and participation should be whether the vessels concerned will or will not be required by the United States in the event of a national emergency.

We see advantage, not disadvantage, to the U.S.-flag fleet in broadening the scope of the title XII program. The fact is that the absence of coverage for U.S.-controlled vessels over the last few years has not served as a disincentive to flags of convenience or as an incentive to American registry.

We urge this committee to make the title XII program permanent and take such other action as it deems appropriate to end MarAd's restrictive practices on foreign flag coverage.

Mr. MURPHY. Thank you.

Ms. Burke?

Ms. BURKE. My statement is the same as the admiral's.

Mr. MURPHY. You fellows are getting along pretty good these days, aren't you?

Mr. BENKERT. Yes, I think we are, Mr. Chairman.

Mr. MAY. We are indeed.

Mr. MURPHY. Counsel?

Mr. KYROS. Mr. May, did you say that due to the war risk insurance revolving fund there is no cost to the Government by running a war risk insurance program?

Mr. MAY. There should not be, that is the intent of the law.

Mr. KYROS. Is that what the figures show, that the premiums paid compared to the losses paid out have been that the premiums have exceeded the losses?

Mr. MAY. During the Second World War the Government took in some \$127 million more than it paid out. The only profitable program I think the Government has had in a long, long time.

Mr. KYROS. Admiral Benkert, you believe that the program should be broader than it now is? For example, American-owned foreign flag 90,000 deadweight ton tankers, are not automatically covered. You want the program made broader, as to categories, sizes, and types of vessels?

Mr. BENKERT. Yes, sir, I do.

Mr. KYROS. And you think the basis is that these vessels are broadly valuable to the national security and economic interest of the United States?

Mr. BENKERT. Yes, sir, I believe that the intent is that you are looking to help vessels, and of course their owners, which are of value to the United States in time of national emergency or specifically conflict.

Therefore, I don't think there should be artificial limitations which don't relate to whether the vessels are worthwhile or not to the U.S. interests.

Mr. KYROS. Your debate really isn't with the statute, the law as it stands. It is with the regulations issued by the Maritime Administration; it is at section 308(2)(b), where MarAd had determined and made these categories and regulations, is that right?

Mr. BENKERT. Yes, sir, I think that is right. Our feeling is that the law of course should be, as we have indicated, extended, but we have some objections to what is in the implementing regulations.

Mr. KYROS. Did AIMS take part in the process of making those rules and regulations by MarAd? Did you make a submission, do you know?

Mr. BENKERT. I would presume so. Miss Burke informs me that we did. I was not at the time associated with AIMS and was not involved.

Mr. KYROS. Thank you very much.

Thank you, Mr. Chairman.

Mr. SEIFERT. The authority is for both of these bills to be extended indefinitely. Yet, you have just expressed some unhappiness with the regulations that have been promulgated by the Maritime Administration.

Would it not be beneficial to put a term on this bill so that it is subject to revision, as it is today? We are not going for sunset, although that is a proposal which also could be proposed.

But wouldn't it be beneficial to have it come back to the Congress so that the type of difficulty which you are now facing with Maritime Administration could once again be addressed and statutory language put in to correct the difficulties you are now having?

Mr. MAY. If I may speak to that first—I think it would be desirable to have permanent authority with the understanding that the Congress could, at any time it wished, reopen the matter.

I think that is perhaps pointed up, Mr. Seifert, by the situation that we see today. The war risk has expired, and we have a situation in Iran—God hope that it won't blow up on us, but it could. I think it points up the need for having a permanent statute on the books. I would certainly agree with you that it should be reviewed occasionally.

Mr. SEIFERT. Would 5 years, subject to renewal, not be the same as the one which is permanent and then subject to renewal with the outside chance Congress will never look at it? Which would you prefer?

Mr. MAY. We would prefer the permanent authority because we would feel free to come to this committee at any time we had a problem and ask if you could not take a look at it.

Mr. SEIFERT. Do you have any idea of what the relationship is between fair and reasonable and competitive? Fair and reasonable is the language used in the negotiating pricing authority and competitive is what the public thinks of as the way in which public funds should be expended by way of competitive bid.

Is there a real relationship? Is it less than it would be if it were competitive? Have either of your organizations done any studies on the cost effectiveness of this over competitive bidding?

Mr. MAY. No, we have not.

Mr. BENKERT. No, sir; we haven't done any studies on this specifically. I might say in the case of AIMS we have discussed this very extensively with individual vessel owners and prospective owners and operators, and as Mr. May, explained in his testimony, the benefits to be obtained must still be at a reasonable cost in terms of CDS, in the negotiated type of contract.

Mr. SEIFERT. Are you of the opinion that the prudent operator, if there were no CDS, would use negotiating versus competitive bid as the method of making that procurement?

Mr. BENKERT. Yes. Is this done? Is that what you are asking? With no CDS, does anybody negotiate and contract—

Mr. SEIFERT. Does anybody go and ask for competitive bids?

Mr. BENKERT. Yes, there have been competitive bids for some types of vessels that I know of personally but there are far more negotiated contracts. There are competitive bids, for example, in some large construction.

Mr. MAY. If I may add, I think the admiral will probably agree barges are much simpler and, therefore, they are more susceptible.

It is my understanding that far in excess of 95 percent of all the U.S. vessels built without CDS are negotiated procurement and the same thing is true abroad.

Mr. SEIFERT. Thank you very much. Thank you, Mr. Chairman.

Mr. MURPHY. Thank you, gentlemen.

The next witness will be Mr. Eugene Yourch, executive secretary, Federation of American Controlled Shipping, accompanied by Mr. Philip Loree.

Mr. Yourch, your full statement will be printed in the record, including the index A-1 through A-5. If you would like to summarize your statement, please do.

[The information follows:]

STATEMENT OF EUGENE A. YOURCH, EXECUTIVE SECRETARY, FEDERATION OF AMERICAN CONTROLLED SHIPPING

My name is Eugene A. Yourch. I am Executive Secretary of the Federation of American Controlled Shipping or "FACS" as it is often called. With me today is Philip J. Loree, the Chairman of our organization. The companies within FACS beneficially own almost 85 percent of the 50 million deadweight tons of modern tankers, oil/bulk/ore and oil/ore vessels, bulkers, reefers and other specialized bulk cargo ships which are controlled by American enterprises and are registered under the laws of Liberia and Panama. These vessels are under the effective control of the United States pursuant to a policy formulated by the Joint Chiefs of Staff, and are available for use, requisition or charter by the United States in event of war or national emergency. Appendix A to this statement explains U.S. effective control policy in much greater detail.

Title XII of the Merchant Marine Act of 1936 authorizes the Secretary of Commerce to provide war risk insurance for U.S. flag and U.S. controlled foreign flag vessels when commercial insurance cannot be obtained. The purpose of Title XII is to protect U.S. assets and maintain the flow of U.S. waterborne commerce and commercial Defense Department transportation services in the event of war. Section 1214 is a form of "sunset" law under which the authority of the Secretary of Commerce to issue such insurance expires unless renewed. Prior to September 7, 1975, renewals for five year periods were enacted by Congress essentially without question. H.R. 5784 would provide permanent authority by eliminating section 1214.

Under the war risk insurance program in effect for twenty years prior to 1975 all U.S. controlled Liberian, Panamanian and Honduran registered vessels were auto-

matically eligible for coverage in exchange for their owners' contractual commitment to make such vessels available to the U.S. government for use, requisition and charter in the event of war or national emergency. Some U.S. maritime union spokesmen objected to the program, apparently believing that it bestowed a special status, which they did not like, on U.S. controlled vessels. Thus, in early 1975 the union spokesmen urged your Subcommittee to restrict eligibility for war risk insurance solely to U.S. flag vessels.

On July 17, 1975, we wrote to your Subcommittee opposing the proposed deletion of foreign flag ships, pointing out, among other things, that it ignored both the large number of "handy size" tankers in the controlled fleet suitable for direct military support and the contribution the entire controlled fleet would make to maintaining the flow of strategic materials to the U.S. economy during war or national emergency. A stalemate resulted.

The program lapsed on September 7, 1975 and was not reenacted until October 17, 1976 following testimony in which the Maritime Administration proposed that they would promulgate new regulations substantially restricting (but not eliminating) eligibility for the U.S. controlled foreign flag fleet.¹ In addition, the reenactment provided authority to the Secretary of Commerce for only three years (to September 30, 1979) instead of the five year periods of the past.

Some five months later, on March 8, 1977, MARAD's regulations for the American flag fleet were published. However, proposed regulations for the foreign flag fleet were not published until June 2, 1978 and the final regulations were not published until November 20, 1978. Thus, in the four years and two months since the program lapsed in 1975, U.S. flag vessels could apply for war risk insurance for only 2½ years and the U.S. controlled Liberian, Panamanian and Honduran vessels could apply only during a 10 month period. As you know, the program lapsed once again on September 30, 1979.

We believe that the war risk insurance program is important to the nation and should not be made a political football. We therefore support H.R. 5784 insofar as it grants permanent authority for the issuance of war risk insurance. We do not, however, believe that the bill goes far enough.

When the war risk insurance program was reenacted in 1976 (Public Law 94-523, Oct. 17, 1976) section 1203(a) of the Merchant Marine Act of 1936 was amended by inserting at the end thereof the following language: "In determining whether to grant such insurance or reinsurance to foreign flag vessels, the Secretary shall further consider the characteristics, the employment, and the general management of the vessel by the owner or charterer. . . ."

MARAD's final regulations for foreign flag vessels, issued under this statutory authority, were rather restrictive:

§ 308.2(b)

"(b) *Special rules—foreign-flag vessels.* For the purpose of providing interim insurance on vessels described in § 308.1(b), the Assistant Secretary shall consider the characteristics, employment, and general management of the vessel. The Assistant Secretary formally determines that the following vessels are engaged in a service in the interest of the national defense or the national economy of the United States and qualify for interim insurance:

(1) Vessels substantially engaged in the foreign commerce of the United States or which would be required in the event of a war or national emergency: *Provided*, That a vessel will be considered to be substantially engaged in the foreign commerce of the United States is, on a semiannual basis, in excess of thirty percent (30 percent) of the net tons of cargo carried by the vessel is carried between a foreign port or ports and a port or ports in the United States (including Alaska, Hawaii, Puerto Rico, and any territory or insular possession of the United States), but only if such cargo is transported to such port or ports for consumption therein or for transshipment (in its raw state or subsequent to refining) for consumption elsewhere in the United States:

(2) Product tankers up to 90,000 deadweight tons and with particular emphasis on so-called handy-sized tankers having relatively high speed and refueling at sea capability:

¹ Nothing demonstrates MARAD's change of heart better than to quote its statement of June 2, 1975 to your Subcommittee: "There is inadequate U.S. flag tonnage to satisfy the defense and commercial needs of the United States in the event of a national emergency or war. . . . It would be much more desirable to have adequate U.S. flag tonnage available. However, this ideal situation does not exist, and until enough U.S. flag tonnage is available, *we need to do what we can* to make foreign flag ships available. If the United States did not offer war risk binders on these vessels in return for their commitment of availability, it is possible that some other nation might. If war risk insurance can help assure the availability of these ships, it is worth the small price to furnish it." (italic added)

- (3) Dry bulk cargo vessels;
- (4) Heavy lift vessels;
- (5) Refrigerated vessels and other classes of ships in short supply in the United States flag fleet; and
- (6) Other vessels with special capabilities."

In considering the potential emergency employment of tankers in the U.S. effective control fleet, MARAD seemed to focus only on what it perceived as the direct military needs for tankers, and disregarded entirely the broader national security needs as they relate to maintaining the U.S. economy by continuing the flow of vitally needed oil imports under emergency conditions.

The nation's dependence on imported oil hardly needs to be mentioned here. Suffice it to say that over the past twelve months U.S. imports of crude and oil products have averaged 8.3 million barrels per day. These levels of imports translate into a tremendous reliance on tanker transportation. We estimate that the tanker capacity needed to maintain these imports (including the necessary back-up transportation of crude oil to offshore Western Hemisphere refineries) totals approximately 49,000,000 dwt. of tanker carrying capacity—most of which, because of the volumes and distances involved, would have to be medium size tankers and large size VLCCs. Under wartime or other emergency conditions the level of imports would most certainly drop because of rationing and other conservation measures. Nevertheless the demand for tankers would still be substantial. U.S. energy needs are such that even under wartime conditions oil imports would have to be continued for the U.S. economy to function and thus be able to supply vital military and civilian needs. In wartime, the high attrition rate for tankers would probably require the employment of every available vessel both for maintaining the flow of oil and also for providing offshore floating storage.

As is painfully obvious, national emergencies other than wartime conditions must also be considered. A political or military interruption affecting one or more of the petroleum exporting nations could give rise to a national emergency, escalating the need for tankers of various sizes. For example, if the African oil producing nations embargoed oil exports to the United States as the result of a political dispute, or if some OPEC members other than Saudi Arabia imposed an oil embargo in an effort to raise prices the need for additional tanker capacity, primarily VLCCs, would skyrocket. On the other hand, if military action interrupted Middle East oil production the need for VLCCs would probably decrease but the demand for medium size tankers would increase.

The active, privately owned U.S. flag tanker fleet, with a total carrying capacity of about 13,000,000 dwt. and average size of about 50,000 dwt., is not capable of providing emergency coverage under these conditions. Today, with the advent of the Alaskan oil trades, most of the subsidized larger tankers capable of transporting oil internationally have been permitted by MARAD to be employed in the domestic trades, where they probably would have to remain during an emergency.

Under emergency conditions the only American controlled tankers readily available for requisition, use or charter by the United States in the U.S. import trades are those flying the Liberian and Panamanian flags. The U.S. effective control tanker fleet totals about 45,000,000 dwt., with an average size about 140,000 dwt. clearly designed for the international oil trades.²

In our view, there is no better example of bureaucratic myopia than MARAD's most recent war risk regulations which treated all U.S. effective control tankers over 90,000 dwt. in this fleet as if they were of no importance to the national security in an emergency—unless, as we will discuss momentarily, they happened to spend 30 percent of the time in U.S. foreign commerce.

The illogic of this approach is further highlighted by the fact that MARAD's regulations granted automatic interim war risk coverage to American controlled Liberian, Panamanian and Honduran registered dry bulk carriers regardless of trading patterns and regardless of size. The utility of large dry bulk carriers (today such vessels range in size up to 160,000 dwt.) under wartime or emergency conditions clearly is to maintain the flow of strategic, critically needed iron ore, bauxite and other bulk materials from abroad rather than to serve direct military needs.

It scarcely needs to be pointed out that precisely the same considerations apply to tankers regardless of their size and regardless of their trading patterns. The only distinction is that crude oil and residual and other fuel oils imported from abroad would probably be much more critically needed in terms of maintaining the U.S.

² On average, half of the U.S. effective control tanker fleet is at any given time laden with 157.5 million barrels of oil—about 19 days' supply of imported oil for the United States under present rates of consumption.

economy under emergency conditions than iron ore, bauxite and other ores which can be stockpiled far more easily than oil.

We strongly believe that each and every one of these American controlled tankers should be eligible for automatic interim war risk coverage—thus having them under contracts of commitment and facilitating their availability for requisition, use or charter by the United States in the event of war or national emergency.

We are also struck by the lack of rhyme or reason in the requirement that U.S. effective control vessels (other than dry bulk, refrigerated, heavy-lift and product tankers under 90,000 dwt.) would have to carry 30 percent of their cargoes on a semi-annual basis in U.S. foreign trade in order to qualify for automatic interim war risk insurance coverage.

We would like to think that after the experience it has undergone in repeatedly waiving U.S. trade requirements for subsidized non-liner vessels in recent years. MARAD would now understand that vessels in the bulk trades engage in worldwide trading for competitive reasons and generally do not operate on shuttle runs between two or more countries. In our opinion, the proposed "trade" requirement for automatic war risk insurance eligibility has no more relevance or meaning when applied to tankers (or certain other types of U.S. effective control vessels) than it would if applied, say, to dry bulk vessels, refrigerated vessels and heavy-lift vessels—three types of American controlled ships for which, wisely, MARAD imposes no trade requirement.

The irrationality of a trade requirement is highlighted when one considers that under wartime conditions there is a definite advantage in having a worldwide dispersal of tanker carrying capacity rather than having all available tankers clustered into trades with the United States where enemy submarine and missile attacks may, at the onset of hostilities, be concentrated.

Perhaps more important is the consideration that if a future emergency erupts the critical national security factor will not be where tankers may have been trading over the past six months but their location and cargoes at the time the emergency occurs. For example, U.S. effective control tankers which happen to be near foreign loading ports or which are laden with oil that can be diverted from foreign destinations to American ports could be of much greater utility in meeting immediate national security needs than, say, tankers which have completed discharge of their cargoes in American ports and will not return with additional cargoes from the Middle East until completion of round trip voyages lasting more than two months.

The possible examples are endless, but all bear witness to the inescapable conclusion that past trading patterns of American controlled PANLIBHON tankers or other vessels have no relevance in determining their utility in a future war or national emergency.

Further, we submit that, in promulgating these regulations, MARAD actually exceeded its statutory authority. The language of § 1203(a) left intact by the 1976 amendment reads as follows:

SEC. 1203. The Secretary may provide the insurance and reinsurance authorized by section 1202 with respect to the following persons, property, or interest: (a) American vessels, including vessels under construction, foreign-flag vessels owned by citizens of the United States *or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged.* (italic added)

Foreign flag vessels owned by citizens of the United States are thus distinguished from foreign flag vessels of foreign ownership. Only the latter group requires an administrative determination that the service of the foreign vessel is "in the interest of the national defense or the national economy of the United States." The statute implicitly makes that determination for U.S. citizen owned foreign flag vessels. Thus there is no requirement under current law that MARAD formally determine that some or all U.S. citizen owned foreign flag vessels are engaged in a service in the interest of the national defense or national economy.

By letter of July 27, 1978 we called MARAD's attention to this language, but that agency either ignored or disagreed with us. The final regulations allowed MARAD to issue insurance for vessels "which would be required in the event of a war or national emergency" in the event that such vessels do not otherwise fit into any of the preferred categories devised by MARAD in its regulations. But this general exception points out the inherent problem in allowing MARAD to determine eligibility on an ad hoc basis. To the best of our knowledge, applications by FACS members for 53 vessels with a corporate expenditure of 2 to 3 man days per application have been sent to MARAD. The fact is that there has been absolutely no

response from MARAD to any of these applications. The inaction on the part of MARAD probably reflects the fact that 40 of the vessels are VLCCs and require an ad hoc determination under the above exception. This must present a dilemma to MARAD since the agency has freely granted construction subsidies to build U.S. flag VLCCs (subsidy payments which require a national security determination) and have granted waivers to allow foreign-to-foreign trading of subsidized bulk carriers.

Those who oppose the blanket extension of war risk insurance to American controlled Liberian, Panamanian and Honduran flag vessels sometimes lose sight of the fact that these are real ships in a real world. To illustrate this point we call your attention to an article in the November 26, 1979 issue of the *Journal of Commerce*:

[Commodity News Service]

PERSIAN GULF WAR RISK RATES UP

LONDON.—The additional premium on the London market for war risk has been increased to 0.05 percent on hull coverage for vessels trading to the Persian Gulf. The previous level was 0.025 percent.

Sources say the new rate is effective immediately, unlike prior changes when insurers have given some warning of intend increases.

In addition to the general war risk premium of 0.05 percent, vessels trading to Iran will be subject to a 0.1 percent additional premium charge, according to sources. Owners wishing to cover a vessel against blocking and trapping in the Persian Gulf will have to pay an additional premium of 0.25 percent.

The situation, however, is said to be extremely fluid and it has been mentioned that the levels of premium affected will be subject to continuing review.

Since U.S.-flag vessels are not being rated at all, it seems unlikely that they will be able to obtain a war risk policy in the London market for the Persian Gulf. However, some insurers may consider coverage, though at an inflated figure. This is obviously due to the poor political relations between the U.S. and Iran, sources said.

It is true that, as described in Appendix A, § 902 of the Merchant Marine Act of 1936 provides that the effective control fleet is subject to requisition, use or charter in the event of war or national emergency. We submit that a far more desirable state of readiness for conditions such as those prevailing today would exist if blanket eligibility and a fully functioning system of insurance binders and contracts of commitment were in place.

While we can accept the fact that MARAD has the staff and expertise to process the applications, issue interim war risk insurance binders and administer the application fees and revolving fund (some \$6 million at last report) we do not believe that MARAD should determine the eligibility of vessels for the program on a case-by-case basis. Unless the essentially blanket eligibility for U.S. effective control vessels that existed prior to 1975 is restored, MARAD's restrictive approach will continue to be counterproductive in terms of the best interests of the United States.

MARAD's policies clearly do not accord with those of defense officials having the ultimate responsibility for assuring that the nation's emergency sealift needs can be met. In July 1977, for example, Vice Admiral Edward W. Cooke, Deputy Chief of Naval Operations for Logistics, U.S. Navy, testified as follows on the subject of U.S. effective control policy: "In case of mobilization, we believe those ships will be available. There is a contractual control, based on war risk insurance, but beyond that, there is the fact that they are U.S.-owned in case of mobilization. We believe they would be available for U.S. forces." (Hearings before the Committee on Merchant Marine and Fisheries, Serial No. 95-12.)

Similarly, Admiral James L. Holloway III, Chief of Naval Operations, in his policy statement dated March 1, 1978 on the Navy's military and budget postures confirmed that: "The United States has plans for the utilization of foreign flag ships of the Effective U.S. Control (EUSC) fleet. There are U.S.-owned or U.S. controlled ships of foreign registry of 1,000 gross tons or more, which are under contract to the Maritime Administration. These can reasonably be expected to be made available for U.S. use in time of emergency."

Thus, the incongruous situation exists today where MARAD seeks to restrict U.S. effective control policy, despite continuing, long-standing support of the policy by officials charged with responsibility for the nation's security. The incongruity is intensified by the fact that MARAD, not the Department of Defense or Navy, is the lead agency for writing regulations under the war risk insurance program—one of the important underpinnings of U.S. effective control policy.

We therefore urge your Subcommittee to modify H.R. 5784 in one of two ways: either authorize the Secretary of Defense to establish the eligibility of U.S. effective

control vessels for war risk insurance or require MARAD to restore the blanket war risk insurance coverage that existed prior to 1975.

APPENDIX A

U.S. effective control fleet

The U.S. effective control fleet is made up of Liberian, Panamanian and Honduran flag ships which American companies have committed to be made available to the United States in the event of war or national emergency. These commitments are based on federal law as well as agreements and voluntary undertakings with the United States government which, in effect, provide that the ships will be made available in times of crisis in exactly the same manner as U.S. flag vessels. U.S. effective control policy comes into full force and effect in time of war or national emergency proclaimed by the President pursuant to § 902 of the Merchant Marine Act of 1936 which provides, in part: "Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Commerce to requisition or purchase any vessel or other watercraft owned by citizens of the United States or under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President."

In recent years, the more outspoken advocates of building up the U.S. flag merchant marine have adopted a stance that only U.S. built and registered merchant ships represent an asset in terms of the national security. We do not believe that anyone can seriously contend that having the U.S. effective control fleet available as a large reserve fleet for use or requisition in time of war or national emergency is not a plus factor in terms of the national security. This is particularly so considering the tremendous carrying capacity of the U.S. effective control fleet, most of it modern tankers, combination vessels, and dry bulk carriers. The replacement value alone of these vessels today, if they were to be built in U.S. shipyards, would be upwards of \$50 billion. The cost of providing the same fleet with operating subsidies, if these ships were under U.S. registry, would be almost \$1 billion each year. Most importantly, these U.S. effective control ships represent a fleet in being, which can be called upon immediately if a war or national emergency erupts.

As the Department of Defense has pointed out over the years, it has never been intended that U.S. effective control ships should be a substitute for U.S. flag ships. Instead, U.S. effective control ships represent an auxiliary fleet which is available to be called upon in a crisis to supplement the sealift capacity offered by the U.S. flag fleet.

As government officials have emphasized on various occasions, the primary task for U.S. effective control vessels during war or national emergency is not to provide direct support to the armed forces, although it is likely that some ships would be employed in this fashion. Instead, as the Department of Defense informed your Committee in various hearings, the value of these vessels lies in "transporting critical materials in times of crisis."

In this regard, it should be noted that the carrying capacity of these ships is so great that, together with U.S. flag ships, they provide the nation with a sizeable sealift capacity in terms of transporting bulk cargoes under emergency conditions. For example, assuming that during a crisis, conservation, rationing and other measures did not result in a drastic cut back in U.S. oil imports, U.S. effective control tankers and combination vessels together with U.S. flag tankers would have the capacity to deliver all domestic oil shipments plus about 75% of current waterborne petroleum imports to our shores. At the same time, under emergency conditions the shipping requirements for current import levels of other raw materials, such as iron ore and bauxite, could easily be handled by the bulk carriers under U.S. effective control.

The potential value of U.S. effective control ships to the United States goes beyond a shooting war. For example, it is certainly conceivable that in the event of another oil embargo, a national emergency could be declared by the President. Under such circumstances the benefit of having American controlled tankers readily available should be apparent. U.S. effective control tankers and combination vessels, excluding those on ballast voyages, are at any given point in time carrying oil cargoes equal to about 20 days supply in terms of this nation's current consumption of imported oil.

One of the strongest arguments in favor of U.S. effective control policy is past performance. In testimony during March 1966, Maritime Administrator Nicholas Johnson, speaking of U.S. effective control policy, said: "Certainly if the history of the Second World War and Korea is valid for purposes of future planning, history is

on the side of this judgment. As a practical matter *these ships have been available to the United States when needed.*" (italic added)

The history of U.S. effective control policy dates back to the early days of World War II when American companies, acting at the request of the United States government, made available their Panamanian, Honduran and Venezuelan flag ships as part of the effort to supply Great Britain and France with essential supplies, a trade barred to American flag ships by the Neutrality Act of 1939. At the same time, the government encouraged transfers to Panamanian registry—an action which gave birth to the U.S. effective control concept. By July 1941 there were 111 vessels of more than 1 million deadweight tons under U.S. effective control, including 88 tankers aggregating over 950,000 deadweight tons.

Later, when the United States entered World War II, U.S. effective control ships joined with the American merchant marine in the war effort, including the famous convoys to Murmansk. During the war many were sunk by enemy action. One American company alone lost 19 ships, while another operator lost 17 vessels.

As reported in a U.S. Department of Commerce study, it was during World War II that the term "effective control" was actually adopted by the War Shipping Administration to differentiate between ships operating under U.S. flag and those under foreign flags, principally Panamanian. The same governmental study points out that the present U.S. effective control policy was developed originally by the Joint Chiefs of Staff.

In 1948, when the first U.S. controlled ships were placed under Liberian registry, the Joint Military Transportation Committee of the Joint Chiefs of Staff recommended that these ships could also be considered under U.S. effective control. In 1959 it was decided that ships under Venezuelan registry could no longer be considered as part of the U.S. effective control fleet. At present, Liberian, Panamanian and Honduran vessels are the only foreign registered ships which have been expressly recognized as eligible for U.S. interim war risk insurance pursuant to § 1283(a) of the Merchant Marine Act of 1936.

Since World War II there has not been a national emergency which required the requisitioning of U.S. effective control vessels or, for that matter, American flag vessels. Nevertheless, U.S. effective control vessels have been credited with aiding the nation's sealift requirements during the Korean and Vietnamese conflicts. During the Korean war American companies committed both their U.S. flag and foreign flag vessels to the voluntary tanker pool, and U.S. effective control vessels were credited with making most of the foreign tanker voyages under the voluntary tanker plan. In December 1960 the Office of Civil and Defense Mobilization reported: "... in practice during World War II and Korea, when the United States called on privately-owned tonnage to meet defense needs, PANLIBHON [meaning Panamanian, Liberian and Honduran flag] vessels subject to emergency utilization by the United States were immediately made available. In neither case did serious problems develop because of the foreign nationality of the crews."

Throughout the Viet Nam conflict U.S. effective control tankers were engaged in the carriage of essential petroleum products to South Viet Nam on a commercial basis. For example, a 1967 study showed that during the 12-month period ending March 31, 1967 U.S. effective control tankers made 61 voyages to or between South Vietnamese ports, delivering more than 5½ million barrels of petroleum products. During this same period these same ships spent an aggregate of 429 days in Vietnamese waters on floating storage or shuttle service duty, transferring petroleum products to and from other tankers, including MSTs vessels.

In late 1966, during the period of increasing U.S. involvement in Viet Nam, FACS (then named American Committee for Flags of Necessity) was approached by Captain J. W. Lipscomb, Jr., Contracting Officer of the Military Sea Transportation Service (now Military Sealift Command) and asked to respond on behalf of the member companies to various suppositions, including one in which "a high level policy decision was reached within the government whereby chartering by MSTs was confined to U.S. effective control tankers."

By letter dated December 20, 1966, then Chairman Breck P. McAllister advised the Military Sea Transportation Service that if this supposition became reality, the member companies, which had been individually polled, could make 31 Liberian and Panamanian tankers of 1.6 million deadweight tons available over the next 14 to 90 days. This represented more tonnage than would have been needed at that time to supply military operators in Viet Nam. In addition, Mr. McAllister advised: "Moreover, our members have expressed their determination to do whatever they could to make even more ships available, assuming that additional effective control tonnage was required by the government. Some companies report that this would require them to enter the charter market to secure replacement tonnage to meet their own transportation needs."

He also emphasized that: "In the event of a national emergency, I can report the determination of our members to honor their commitment to make available to the United States whatever effective control ships are requested by the government. I want to make this point very clear and also to report the willingness of these companies, even in the absence of a national emergency, to cooperate to the greatest extent possible in making their ships available should specific requests be made to individual companies by MSTs."

The high regard in which government officials held U.S. effective control ships during the Viet Nam conflict was reflected in the testimony of Maritime Administrator Nicholas Johnson in March 1966: "The government believes these ships to be subject to the 'effective control' of the United States under emergency conditions. We are not now talking about ships owned by foreign citizens and registered in foreign countries—which have in a small number of cases refused to carry our defense cargoes—but ships owned by American citizens. We are talking of plans that, by and large, those ships will continue to serve the raw materials import trades that they now serve—*although some of them would be directly involved in the defense effort (and are today).*" (italic added)

It might be added that no crews on U.S. effective control vessels refused to sail during World War II, the Korean conflict or at any time during the Viet Nam conflict. This may explain why during 1967 Secretary of Defense Robert S. McNamara stated: "In a full scale national emergency, we believe 'effective U.S. controlled' ships will be as available to DoD [Department of Defense] as U.S. flag ships."

One of the most recent descriptions of the role of the U.S. effective control fleet in defense planning is contained in an April 3, 1979 letter from Secretary of the Navy, W. Granham Clayton, Jr., to Congressman McCloskey: "With respect to your question on foreign-flag shipping, we understand that the Merchant Marine and Fisheries Committee was provided in April 1977 with a study prepared by the Joint Chiefs on the utilization of the Effective U.S. Controlled (EUSC) Fleet. The EUSC fleet consists of U.S. owned or U.S. controlled ships of foreign registry which are subject to call for the use of the U.S. government. Sealift resources identified in the Joint Staff study included the EUSC fleet as one of the several sources of sealift for reinforcement of Europe. Department of Defense (DoD) planning for contingencies includes the use of EUSC assets, as necessary, based on the availability of U.S.- flag shipping. EUSC sealift envisioned is minimal, and is comprised of tankers. There is presently sufficient U.S.-flag tanker capacity to support DoD needs for a NATO contingency. However, there is the likelihood of a requirement for EUSC shipping to carry sufficient petroleum imports to meet national security requirements. While all EUSC ships might not be needed or necessary under contingency conditions, we have no reason to believe that a significant portion would not be made available if required."

**STATEMENT OF EUGENE A. YOURCH, EXECUTIVE SECRETARY,
FEDERATION OF AMERICAN CONTROLLED SHIPPING, ACCOMPANIED BY PHILIP J. LOREE, CHAIRMAN, FACS**

Mr. YOURCH. Thank you, Mr. Chairman. I intended to do just that.

I am Eugene Yourch, executive secretary of the Federation of American Controlled Shipping. With me is Philip J. Loree, chairman of FACS.

In summary, we first point out that your bill would, by eliminating section 1214 of title XII, give the Secretary of Commerce permanent authority to issue war risk insurance.

We describe the lapse of the program in 1975; taking more than a year to get it reenacted, the subsequent 19-month delay on the part of MarAd to get proposed regulations for the foreign-flag vessels printed, and another 5 months to get the final regulations printed for a total delay of more than 3 years, a record which we think is not in the national interest.

We believe that the war risk insurance program is important to the Nation and should not, simply because it includes certain foreign-flag vessels, be made a political football. We, therefore, sup-

port H.R. 5784 insofar as it grants permanent authority for the issuance of war risk insurance. We do not, however, believe that the bill goes far enough.

In my statement, I describe and quote the statute as well as MarAd's regulations pursuant to the statute. In these regulations MarAd has focused only on what it perceives as the direct military needs for tankers, and disregards entirely the broader national security needs as they relate to maintaining the U.S. economy by continuing the flow of vitally needed oil imports under emergency conditions.

My statement estimates the quantity of oil needed to be imported under emergency conditions and the amount of tanker tonnage needed to support those import levels as considerably more than is available under U.S. flag.

U.S. energy needs are such that even under wartime conditions oil imports would have to be continued for the U.S. economy to function and thus be able to supply vital military and civilian needs.

In wartime, the high attrition rate for tankers would probably require the employment of every available vessel both for maintaining the flow of oil and also for providing offshore floating storage.

As is painfully obvious, national emergencies other than wartime conditions must also be considered. A political or military interruption affecting one or more of the petroleum-exporting nations could give rise to a national emergency, escalating the need for tankers of various sizes.

For example, if the African oil-producing nations embargoed oil exports to the United States as the result of a political dispute, or if some OPEC members other than Saudi Arabia imposed an oil embargo in an effort to raise prices, the need for additional tanker capacity, primarily VLCC's, would skyrocket.

Under emergency conditions the only American-controlled tankers readily available for requisition, use or charter by the United States in the U.S. import trades are those flying the Liberian and Panamanian flags.

In our view, there is no better example of bureaucratic myopia than MarAd's most recent war risk regulations which treated all U.S. effective control tankers over 90,000 deadweight tons in this fleet as if they were of no importance to the national security in an emergency—unless, as we will discuss momentarily, they happened to spend 30 percent of the time in U.S. foreign commerce.

We strongly believe that each and every one of these American-controlled tankers should be eligible for automatic interim war risk coverage—thus having them under contracts of commitment and facilitating their availability for requisition, use or charter by the United States in the event of war or national emergency.

With regard to MarAd's restrictive regulations on past trading patterns, the question is not, as MarAd suggests, where the ships have been trading in the last 6 months, but where they are at the time you need them. If the President were to impose a maritime embargo on Iran he would want to know at a given point in time what ships he could call upon, and where they were. Their trade

routes of the past 6 months would have no relevance to any action the President might take.

We also argue that MarAd has exceeded its statutory authority in issuing the regulations. It is a technical legal argument explained fully in the statement. I must emphasize that those who oppose the blanket extension of war risk insurance to American-controlled Liberian, Panamanian, and Honduran-flag vessels sometimes lose sight of the fact that these are real ships in a real world.

My statement quotes a Journal of Commerce article of last week noting increased commercial war risk rates for ships in the Persian Gulf area and the apparent unavailability of such insurance for U.S.-flag vessels. The United States would be in a far better state of readiness today if there were blanket eligibility and a fully functioning system of war risk insurance binders with contracts of commitment making provision for the use, requisition, or charter of American-controlled Panamanian, Liberian, and Honduran ships in the event of national emergency.

We have two recommendations. We accept the fact that MarAd has the staff and expertise to process the applications, issue interim war risk insurance binders and administer the application fees and revolving fund—some \$6 million at last report—but we do not think that MarAd should determine the eligibility of vessels for the program on a case-by-case basis.

My statement quotes Defense Department officials, who have a broader view of the utility and the role of the effective control fleet. Our recommendations are simply to modify H.R. 5784 either to provide that the Secretary of Defense determines the eligibility of vessels for war risk insurance or that MarAd restore the blanket war risk insurance coverage that existed prior to 1975.

I would like to make two or three additional comments that are not in the statement. Mr. Dickstein was uncertain as to the performance of the effective control fleet in the Vietnam crisis. I refer to page 26 of the record of the 1975 hearings on war risk insurance. Mr. Van Doren, general counsel of MarAd, supplied the information.

According to the Military Sealift Command, they experienced difficulty during the Vietnam experience with four vessels: two of Greek registry, one of British, and one of Mexican registry. None of these foreign-flag vessels was American controlled.

In the supplement to our statement we point out that American-controlled Liberian and Panamanian ships served without incident in the Vietnam conflict. There was, unfortunately, a mutiny on a U.S.-flag ship.

Mr. Dickstein was also not aware why the 90,000-ton limit existed in the regulations. The regulations as first proposed by MarAd had a limit of 60,000 tons, presumably reflecting direct military resupply utility, and we urged that there be no limit at all. The 90,000 dwt. figure is their compromise position, not ours.

The other statement Mr. Dickstein made was the reason for the restrictive regulations. He suggested that it was a result of pressure from owners of U.S.-flag ships which he said were in competition with foreign-flag vessels and who wanted the restriction if not the elimination of eligibility. That wasn't true then and it is not true today.

You heard the same testimony in 1975 and 1976 that you have heard today to the effect that the U.S.-flag owners wanted all the foreign-flag ships in. It was better for the Nation as well as for the program and it spread the insurance risks over a larger group of ships.

It is a fair statement to say that the maritime unions oppose the program because they feel that the existence of this war risk program somehow bestows a special benefit on foreign-flag ships and that it is a disincentive to U.S.-flag operation. In fact, the absence of war risk insurance over the last 4 years has not helped the U.S.-flag fleet or hurt foreign-flag fleet. It has just hurt the Nation.

Without war risk insurance, if the Nation needed to call upon the ships today, the system is just not ready. You would have to resort to section 902 to requisition the ships. The Nation would be in a far greater state of readiness if the insurance system were in place and it provided total blanket eligibility for the Liberian and Panamanian ships.

Thank you, Mr. Chairman.

Mr. KYROS. Mr. Yourch, you mentioned that according to the Military Sealift Command in the hearing held in 1975, the Command experienced difficulties during Vietnam with only four vessels—two of Greek registry, one Mexican, one British.

Were any of those owned by American citizens?

Mr. YOURCH. No, they were not American owned.

Mr. KYROS. The next question is simply, Why was there a nearly 2-year delay in the issuance of final regulations by the Maritime Administration concerning the program that was reenacted by the Congress in October 1976.

Mr. YOURCH. I think there are probably two or three reasons. I would like to think that internally within MarAd there was a serious conflict as to what their regulations said. I know that some of the people within MarAd resented this restriction of eligibility and wanted the regulations to be as broad as possible. There were other people in MarAd who wanted it as restrictive as possible. Of the four companies in FACS that have applied for war risk binders for 53 vessels, one of the companies had its check cashed and heard nothing from MarAd. Another company called MarAd on Friday last week and asked about its check and application, MarAd then decided, according to the company, that they would return the check because they got it only a couple months ago and there wasn't time enough to act on it. The other companies have not heard from MarAd at all.

Further to Mr. Dickstein's statement, I would like to learn what companies' applications were returned for deficiencies because I called my companies and they had heard nothing from MarAd—not a single word. I would also be very interested to know just how many U.S.-flag ships applied for war risk insurance during this 2½-year period of time. MarAd's statement suggested that they are all eligible. The fact is they have to take an affirmative step to bring the applications and the war risk binders up to date. I would be curious to know just how many binders exist for the U.S.-flag fleet.

Mr. KYROS. I thought MarAd said in their statement they had covered all the U.S.-flag vessels in that period.

Mr. YOURCH. But if you read the regulations, every company had to affirmatively reapply and, among other things, list the ships that had binders in the past. It was quite a procedure that they had to go through.

Mr. KYROS. Apart from getting the Secretary of Defense to establish the criteria for automatic approval or approval of war risk insurance covered, you recommend that we restore the blanket war risk insurance?

Mr. YOURCH. Absolutely.

Mr. KYROS. Which would cover every U.S.-owned foreign-flag vessel?

Mr. YOURCH. Panama and Liberia are the only governments that have arrangements permitting such requisition by the United States. A U.K.-flag ship owned by an American company would not have blanket eligibility.

Mr. KYROS. Of the limitations in categories included in the special rules of section 3082(bb) by MarAd, your contention is they do not make any sense at all?

Mr. YOURCH. Absolutely no sense at all. They have no relevance to the national interest of the country.

Mr. KYROS. The thing that interests me particularly in the last hearing in 1975 under question by Mr. Ruppe, MarAd answered they had war risk binders on 37 small foreign-flag vessels with Saudi Arabia flag used abroad for reserve servicing of shore oil wells.

Mr. YOURCH. That is true. Actually, the statute as it was written permitted insurance for foreign-owned, foreign-flag vessels if such insurance was determined to be in the national interest.

My statement's argument that MarAd exceeded its statutory authority's on page 9. The way the statute is written, § 1203 is left intact by the 1976 amendment, and the only required determination that insurance for the vessel would be in the national interest applies to foreign-owned vessels. I think they were mostly Saudi Arabian flag.

They are all listed in the report on the 1975 hearings. They were running in the Persian Gulf. It was felt by MarAd that their operation was in the national interest and they were therefore eligible for insurance binders.

My point is that MarAd doesn't have to make any kind of statutory determination for the American-owned vessels. Their regulations exceed their statutory authority.

Mr. KYROS. On page 5 you say, "As is painfully obvious," are you asserting—

Mr. YOURCH. I am referring to Iran.

Mr. KYROS. How does that exacerbate the immediate condition regarding war risk coverage?

Mr. YOURCH. My statement quotes an article in the Journal of Commerce which indicates that commercial war risk rates are up and U.S.-flag vessels are not being rated at all. I have not had time to investigate this but U.S.-flag vessels apparently cannot get commercial war risk insurance. Since there is no legislation at present they can't get insurance at all.

Mr. KYROS. What would be the result of that in case anything happened?

Mr. YOURCH. If something happened I presume DOD, which has authority to issue war risk authority, would do so. DOD has said that all along that if they needed the effective control ships they would issue war risk insurance. But Defense's official position, evidenced by their statement here today, is that they would like to have it in place and administered by MarAd.

Mr. KYROS. Thank you very much.

Mr. MURPHY. Thank you, gentlemen.

Our concluding witness will be Mr. R. W. Thorpe, marine marketing manager, Bath Iron Works Corp.

Mr. Thorpe.

**STATEMENT OF R. W. THORPE, JR., MARINE MARKETING
MANAGER, BATH IRON WORKS CORP.**

Mr. THORPE. Mr. Chairman, and members of the subcommittee, I am Rick Thorpe, marine marketing manager and long-range planning manager of Bath Iron Works Corp., a congoileum company.

I also serve on the commercial shipbuilding committee of the Shipbuilders Council of America, and appear here today on behalf of the council in support of H.R. 5913.

Bath Iron Works Corp. is one of the major shipbuilders in the United States employing approximately 5,600 people. We serve four markets: commercial ship new construction, Navy ship new construction, Navy ship repair and overhaul, and industrial products.

We diversify into several served markets to reduce the risk of not operating at a sustained profitable level, but our basic markets are Navy and commercial new ship construction.

Our experience at Bath Iron Works has been the same as most, if not all, of the U.S. shipyards: The negotiation of shipbuilding contracts between shipowner and shipyard is a far better method of procuring ships than using formally advertised bidding procedures.

This is true for the following reasons:

First, negotiated contracting encourages shipyards to develop their own ship designs to meet shipowner requirements with the most cost effective design solutions.

Second, when owners desire to develop their own contract designs, negotiated contracting allows shipbuilders to propose design features which can both reduce ship construction and maintenance costs, and also increase ship operating performance based on the shipyard's experience.

Third, in both instances of shipyard and shipowner prepared designs, the process of negotiation leads to a better understanding of ship operation and ship construction requirements and fewer misunderstandings between the owner and builder. This, in turn, minimizes costly changes during the construction cycle and in most cases has eliminated expensive and time-consuming claim action.

When hearings were held on negotiated contracting before this subcommittee on March 3, 1970, Ed Hood, president of the Shipbuilders Council, gave testimony in support of negotiated contracting as being in the best interests of the Government, which is as true today as it was then.

He said:

In the first place, the climate created by the alternative [of negotiated contracting] would encourage competition in the truest sense—competition between private builders for the needs of private owners.

The owner has the product of several builders to choose among. The owner chooses the product best enhancing his economic opportunity, hence, in the long run, makes a selection in the best interest of the government.

The competition is in the full marketplace, not in a marketplace circumscribed by the government. But, the competition, to exist, must contemplate direct negotiation for purchase of owner-selected, builder-designed product.

Second, the Comptroller General finds the government's interest in the case of negotiated contracts to be adequately protected if the government retains the right of audit of builder costs.

Third, there is little publicized but nonetheless widespread and growing belief that, in many areas, formal advertisement is an outmoded technique of public purchase—one which impedes, not supports, prudent and effective procurement by the government. Shipbuilding is among these areas.

This ends Ed Hood's testimony.

As you know, the 1970 amendments to the Merchant Marine Act of 1936 enabled shipbuilding contracts for subsidized ships to be negotiated. Experience since 1970 has proven the value of the procurement method to all three parties involved—owner, builder and Government. Nearly all subsidized contracts signed since 1970 have been negotiated. Cost savings resulting from these negotiations have been shared by the owner and the Government.

All negotiated contracts have been in the best interest of the Government in providing more functional ships, suiting shipyard construction methods and supporting the national economic and defense security through both the ships themselves and the continuing defense industrial mobilization base.

I would like to give a few examples from our experience at Bath Iron Works to illustrate how negotiating contracts to build ships can save money and improve ship performance. The first example is the first shipbuilding contract Bath Iron Works negotiated in 1972 for a subsidized ship, the Maine Class Roll-on/Roll-off ships built for States Line and now being used by Lykes Lines.

Bath Iron Works worked closely with States Line in the early stages of the program to prepare concept designs. Being a traditional company, States decided to have contract plans prepared by an independent naval architect based on a Swedish Ro/Ro ship design concept which it then used to solicit formally advertised bids.

Bath Iron Works and another U.S. shipyard submitted bids to build this design, which were rejected by the owner as being too high.

Based on our knowledge of the ship requirements and of structural steel design and material improvements, Bath, with technical support from another ship design firm, redesigned the steel structure.

This redesign reduced the steel weight by more than 1,000 tons, decreased the labor hours per ton of steel, while at the same time increasing the cargo-carrying capability of the ship 30 percent. Other changes were made to the ship's machinery and outfit which in total reduced the ship cost by over 10 percent. This redesign was proposed to the owner who reviewed all the suggestions and accepted most of them. Bath and States then negotiated a final ship price which was about 10 percent lower than the best bid States received on their own design.

Negotiated procurement has nearly always been used to buy Jones Act domestic trade ships. My second example is a Jones Act containership we built for Matson Navigation.

In 1975, Matson requested two shipyards to propose to build the ship. They also proposed that the yards suggest cost reduction ideas. After review, many of these ideas were accepted and incorporated in the final contract plans and specifications.

Matson initiated negotiations with Bath with the statement that our price was lowest, but not low enough to meet their budget.

We then suggested additional cost-reducing changes to plans and specifications with a corresponding price reduction which met Matson's requirements.

To show how continuing negotiation can save even more money after signing the contract and accomplishing the detail engineering, Bath proposed changes to the contract terms and conditions and offered to share half the cost savings with Matson.

The final audited cost reduction was \$3 million, resulting in Matson receiving a \$1½ million check from Bath in addition to its ship being delivered 6 weeks ahead of schedule.

Bath Iron Works continues to work on cost-reducing design features and on new ship designs which we believe will earn profits for our customers in the future.

If we are prevented from using negotiated contracting for subsidized ships, we will not expend this effort to produce lower cost ships in a shorter building time period.

We strongly recommend passage of H.R. 5913 to amend section 502(a) of the Merchant Marine Act of 1936 to make negotiated contracting a permanent method of procuring subsidized merchant ships.

Mr. THORPE. Thank you very much.

Mr. MURPHY. Thank you, Mr. Thorpe.

You cite several examples here, the success of negotiating ability of Bath to reduce a ship's tonnage or steel usage by 1,000 tons, increasing its carrying capacity by 30 percent, reduce the costs by 10 percent.

Did Bath ever build any LASH ships?

In your experience with the Government in this tripartite relationship, have you found the Government insisting on certain design ships, and say, pressuring the company to build a certain type ship?

Mr. THORPE. No; at Bath, we have not experienced that.

Mr. MURPHY. We had testimony before this committee over the years that PFEL went into financial difficulties because LASH ships were required for their lines, and then the next thing they go through is a big program to redo the LASH ships.

Of course, that was one of the management problems that they ran into, that generally is held out as the reason for their going out of business.

It was a Government decision, I think, wasn't it, in that case?

Mr. THORPE. The Government at the time the LASH ships were being contracted, if I recall correctly, was interested in seeing more of those ships built, and they liked the multipurpose capability that the ship had.

We didn't have any personal contact with any pressure put on us, though, to build those ships.

Mr. MURPHY. One the problems, is that that type of pressure can come from Government, and Government may not have the insight and commercial experience to really make the determination as to what design ship is necessary for a given trade.

Mr. THORPE. I couldn't agree more. My feelings are that the best kinds of decisions are made in business relationships between the supplier of the ship, the shipbuilder and the operator who knows his trade route.

Mr. MURPHY. We have had testimony this afternoon about the number, I think it was 81 out of the last 83 CDS ships built were built on this negotiated basis, is that right?

Mr. THORPE. That is correct.

Mr. MURPHY. Yet we find that people still are required to have a competitive price, as far as ships are concerned, and I think have bids from three yards in certain circumstances.

Is that right also?

Mr. THORPE. That is often the case. We have had situations where it has not been necessary to get bids from say more than one or two shipyards, based on the Maritime Administration's capability, and they have an excellent capability, by the way, of evaluating the costs of ships.

What would be a fair and reasonable cost to construct those ships?

We have not found situations in which we were necessarily forced to go into a competitive bidding situation.

Mr. MURPHY. Do we have a broad enough shipyard base to have a competitive situation, as far as shipbuilding in this country is concerned?

Mr. THORPE. You mean in terms of formally soliciting, formally advertised bids?

Mr. MURPHY. Yes; do we have a big enough industry where if somebody wanted to build some ships, you would get a competitive price on them?

Mr. THORPE. Well, I think that the nature of U.S. shipyards is such that if you were to solicit in a formal advertised bidding procedure competitive bids, you very well might not receive as an opener what you might call adequate response.

The reason for that would be that the bidding package with its requirements for developing a specialized ship or a ship with custom features in a time period that might not suit the shipyard would just want to get, with the option of being able to negotiate contracts, would possibly not bid on the ship.

You might get a very thin response.

Mr. MURPHY. Counsel?

Mr. SEIFERT. Thank you.

Mr. Thorpe, what is the relationship between fair and reasonable—which is the requirement in negotiated pricing authority—and a competitive price?

Mr. THORPE. Mr. Seifert, I would say that there are two relationships between fair and reasonable pricing and a so-called competitive price that you would get through competitive bidding.

The first is sequential. Before a fair and reasonable price is determined by the Maritime Administration, it is in practically all cases after competitive negotiations between the shipbuilder and the shipowner.

The shipowner has usually reviewed a number of different designs with different price proposals, selected one or two, or possibly as many as three, out of that initial negotiation which is really quite competitive at that point, prior to entering into final negotiations or referring to MarAd to make the final fair and reasonable price determination.

Now, at that point, and sometimes even if there has not been a major shopping around on the part of the shipowner, the Maritime Administration cost evaluation people who have a data bank which in my belief is one of the best, if not the best in the world, in terms of knowing in great detail how much things should cost in the American shipbuilding environment, will review the shipyards' cost estimate, its proposal to the owner in great detail, and will go through several rounds of discussions, negotiations, questioning of any aspect of that bid sometimes in a great deal of detail that they do not believe is competitive in the sense of being reasonable based on what they know other shipyards can do that work for.

Mr. SEIFERT. And those other shipyards that they compare them to are U.S. yards, you said?

Mr. THORPE. In this case in determining the fair and reasonable U.S. price, that is correct.

Now, they also, of course, have an analysis of foreign ship pricing. Their knowledge into foreign ship costing is nowhere near as detailed as it is into U.S. ship costing.

Mr. SEIFERT. What is the situation where you talk for the first time about a unique vessel? What would be their experience base in determining what reasonable costs should be?

Mr. THORPE. At the detail level, their experience base could be synthesized, I think, with reasonable credibility.

Mr. SEIFERT. Could they do that?

Mr. THORPE. In our experience at Bath, they do. We have not, well, yes, we were in the case of States Line, there is a specific example that I mention in the testimony.

That was a ship of the type that had never been built in the United States before. Similar ships had been built in Sweden, but not to that exact design or just the general arrangement was close, and they had the basic capability to be able to determine whether that was a fair and reasonable price, costed price, based on looking at the detailed pieces.

Mr. SEIFERT. Mr. Thorpe, back in October we had testimony from shipbuilders, one of whom testified that one of the major costs of ship construction is the contract changes that take place after the contract is negotiated. Referring to the costs which are incurred as a result of contract changes, I have a list of them here which has been submitted by one such shipbuilder, indicating they can amount to 20, 30 percent of the final costs of that vessel.

Would this likely occur if the ship were constructed as a result of a competitive bid, or doesn't it make any difference?

Mr. THORPE. It does make a difference. It is much more likely to take place if the ship were constructed as the result of a formally advertised competitive bid.

You have a situation where because of the procedures, the law in which a bid has to be made, the shipyard has to respond to that bid package. Now, in that bid package, it is very likely that there are going to be, requirements that will force the shipyard into inefficient practices, and specified equipment that the shipyard can replace with more effective equipment that can contribute to the ship operation more efficiently and be bought and installed for less cost.

Naturally, this creates an environment which leads to changes and, unfortunately, in some cases to costly claim action. In a negotiated procurement, that education on the part of the shipowner and the shipyard takes place before you sign the contract in a much better environment where both sides are anxious to get together, and the degree of understanding that you come out of a negotiated procurement which tends to minimize the changes.

That has definitely been the experience that we have had at Bath.

Mr. SEIFERT. Thank you very much. Thank you, Mr. Chairman.

Mr. MURPHY. Thank you, Mr. Thorpe.

I appreciate it.

The subcommittee will stand adjourned.

[The following was submitted for the record:]

LABOR-MANAGEMENT MARITIME COMMITTEE

100 INDIANA AVENUE, N. W. / WASHINGTON, D. C. 20001 / 347-9771

*Co-Chairmen***SPYROS S. SKOURAS
SHANNON WALL***Co-Directors***EARL W. CLARK
TALMAGE E. SIMPKINS**

November 5, 1979

The Honorable John M. Murphy, Chairman
Merchant Marine and Fisheries Committee
U. S. House of Representatives
Room 1334, Longworth House Office Building
Washington, D. C. 20515

Dear Congressman Murphy:

The Labor-Management Maritime Committee, composed of major steamship lines and maritime labor, fully supports H.R. 5913, a bill to amend Section 502(a) of the Merchant Marine Act of 1936. This bill would strike the clause "at any time prior to June 30, 1979" from Section 502(a), and thereby eliminate any time limitation on the use of the negotiated contract principle and process in the construction of merchant vessels. The use of negotiated contracting authority in merchant shipbuilding would become a continuing option.

Section 502(a) of the Merchant Marine Act of 1936 provides for competitive bidding in the construction of merchant ships with the lowest bidder receiving the contract for "construction, outfitting and equipment of the proposed vessel" if acceptable to the Secretary of Commerce and the proposed ship purchaser. However, Section 502(a) also provides for the use of negotiated contracting. In the latter case, the proposed ship purchaser and the shipyard submit back-up costs and other evidence that the price is fair and reasonable. There must be a specific finding by the Secretary of Commerce attesting to such "fair and reasonableness." Lastly, there must be agreement on the part of the shipyard providing access to the Comptroller General of the United States for examining all books, documents and records of the shipyard, sub-contractors, etc., both as to the negotiation itself and the performance of the contractor or sub-contractors.

Negotiated contracts have the following advantages: (1) securing the best contract (competitive bidding does not always produce this result); (2) securing the best performance under the contract (such performance does not always result from the lowest bidder); (3) effectuating cost reductions not otherwise possible under competitive bidding; (4) creating better overall understandings between shipyards and ship owners; and (5) producing potentially better designs.

H.R. 5913, now before the Congress, would eliminate repetitive cut-off dates for negotiated contracting and would make negotiated contract authority under Section 502(a) of the 1936 Merchant Marine Act continuous.

We believe past experience in the use of negotiated shipbuilding contracts fully justifies making this option a permanently available one in the circumstances outlined in Section 502(a) of the 1936 Act, and we fully support H.R. 5913 designed to achieve that purpose.

We respectfully request that this communication be made a part of the official record of the hearings on H.R. 5913.

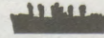
Respectfully submitted,

Earl W. Clark
Earl W. Clark

Salman E. Simpkins
Salman E. Simpkins
Co-Directors

LABOR-MANAGEMENT MARITIME COMMITTEE

100 INDIANA AVENUE, N. W. / WASHINGTON, D. C. 20001 / 347-9771



Co-Chairmen
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EARL W. CLARK
TALMAGE E. SIMPKINS

November 5, 1979

The Honorable John M. Murphy, Chairman
 Merchant Marine and Fisheries Committee
 U. S. House of Representatives
 Room 1334, Longworth House Office Building
 Washington, D. C. 20515

Dear Congressman Murphy:

The Labor-Management Maritime Committee, composed of major steamship lines and maritime labor, supports without reservation H.R. 5784, which amends Title XII of the Merchant Marine Act of 1936 (46; U.S.C. 1281, et seq.) to place War Risk Insurance on a continuing basis without cut-off date as heretofore.

War risk, under Section 1201(c) of the Merchant Marine Act of 1936, includes "all or any part of those losses which are excluded from marine insurance coverage under a 'free of capture and seizure' clause, or analogous clauses." Losses, by seizure or otherwise, due to war or international conflict are obviously beyond the coverage of commercial insurance. Therefore, where merchant shipping is committed to such purposes, war risk insurance by governmental entity is mandated by necessity.

Under Section 1203(a), war risk insurance has traditionally covered "American vessels, including vessels under construction, foreign flag vessels owned by citizens of the United States or engaged in transportation in waterborne commerce of the United States, or in such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States when so engaged." Cargoes of such vessels are also covered under Section 1203(b).

Under current and past practice war risk coverage has terminated on legally established cut-off dates, thus requiring repetitive extensions by Congressional action. The last cut-off date was September 30, 1979. Because world tension and conflict areas continue to persist, requiring such repetitive war risk insurance extensions, a bill, H.R. 1452, has been introduced in the Congress of the United States granting continuous authority to the Secretary of Commerce to provide such war risk insurance coverage as the situation may from time to time require. This is accomplished by deleting Section 1214 of the 1936 Merchant Marine Act which currently reads: "The authority of the Secretary to provide insurance and re-insurance under this title shall expire September 30, 1979." This effectively eliminates war risk authority expiration. We support this proposition as provided in H.R. 1452.

We respectfully request that this communication be filed as a part of the official record in connection with the hearings on H.R. 5784.

Respectfully submitted,

Earl W. Clark
 Earl W. Clark

Talmage E. Simpkins
 Talmage E. Simpkins
 Co-Directors

TRANSPORTATION INSTITUTE

923 15TH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 347-2590

Herbert Brand
President



November 27, 1979

The Honorable John M. Murphy
Chairman
Subcommittee on Merchant Marine
Committee on Merchant Marine and Fisheries
1332 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The Transportation Institute, a research and education organization composed of 174 U.S.-flag shipping companies engaged in all aspects of U.S. domestic and international trade, wishes to express its support for H.R. 5784, legislation to extend the war risk insurance program of Title XII of the Merchant Marine Act of 1936.

In hearings held before the House Merchant Marine and Fisheries Committee during the 94th Congress, you may recall that the Transportation Institute proposed an amendment limiting war risk insurance to American-flag vessels. At that time, approximately 260 American-owned vessels registered under the flags of Panama, Liberia and Honduras were included in the war risk insurance program and therefore comprised the "effective control" fleet of the United States. As we expressed in a letter submitted for the record:

"Effective control is little more than a theory by which the oil companies attempt to justify their non-payment of U.S. taxes and their employment of non-American workers. There is no factual basis for believing that foreign-flag tankers, regardless of who they are owned by, are under any control of the United States."

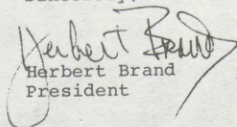
Proponents of the effective control theory advertised war risk insurance to support their contention that foreign-flagged and foreign-manned vessels would be available to the United States in time of war and emergency. We, however, expressed reservations regarding the underwriting of the safety of these vessels which because of the nationality of their crews, disposition of their country of registry or their size, might never be made available to the United States in time of war or emergency.

In response to our concern, the Maritime Administration withdrew the blanket finding made in 1959 that all Effective United States Controlled (EUSC) vessels be eligible automatically for war risk insurance binders. As promulgated in regulations which recently expired September 30, 1979, requests for insurance of EUSC ships, dealt with on a case-by-case basis, have been effective in reducing the number of foreign-flag vessels included in the program. We believe such regulations should be extended and enforced.

In view of the effectiveness of these regulations, the Transportation Institute supports this legislation in order to assure the free and uninterrupted flow of U.S. waterborne commerce on American-flag vessels in the event of an outbreak of war.

We request that this letter be made part of the record on H.R. 5784.

Sincerely,


Herbert Brand
President

TRANSPORTATION INSTITUTE

923 15TH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 347-2590

Herbert Brand
President



November 28, 1979

The Honorable John M. Murphy
Chairman
Subcommittee on Merchant Marine
Committee on Merchant Marine and Fisheries
1332 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The Transportation Institute, a research and education organization composed of 174 U.S.-flag shipping companies engaged in all aspects of U.S. domestic and international trade, wishes to express its support for H.R. 5913, legislation authorizing the permanent renewal of negotiated pricing in construction differential subsidy contracting.

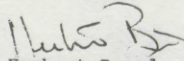
Negotiated pricing, under Section 502 (a) of the Merchant Marine Act of 1936 and as amended by the 1970 Act, allows the Secretary of Commerce to accept, for purposes of computing construction differential subsidy, a price for construction of a ship that has been negotiated between a shipbuilder and a proposed ship purchaser. This provision is incorporated by reference into Section 504 of the 1936 Merchant Marine Act.

Renewals of the negotiating authority under Public law 93-71 and Public law 94-372 have indicated that negotiated pricing is an efficient and economical method for contracting for the construction of ships. Negotiated pricing has facilitated the marketing endeavors by shipbuilders to produce standard ships through series designs, thus reducing costs and increasing American competitiveness in the world shipbuilding market.

In view of the positive influence negotiated pricing has had on shipyard investment and shipbuilding activity, we believe that the extension of the negotiating authority which expired on June 30, 1979, should be continued on a permanent basis. The Transportation Institute supports H.R. 5913 in the hope that it will stimulate and improve the investment climate in the U.S. shipbuilding industry.

We request that this letter be made part of the record on H.R. 5913.

Sincerely,


Herbert Brand
President



NATIONAL MARITIME COUNCIL
1742 N STREET, N.W., WASHINGTON, D.C. 20036 • Telephone 202-785-3754

December 3, 1979

The Honorable John M. Murphy
Chairman
Subcommittee on Merchant Marine
Committee on Merchant Marine
and Fisheries
Room 1334 Longworth HOB
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to the Subcommittee on Merchant Marine's request of November 19, 1979 for comments on H.R. 5784, a bill to extend the provisions of Title XII of the Merchant Marine Act, 1936, relating to war risk insurance. The National Maritime Council welcomes the opportunity to present its views on this legislation.

The NMC is a non-profit trade association which represents virtually all segments of the American maritime industry. The position of the Council on H.R. 5784 was agreed upon by the senior executives of all NMC member U.S.-flag carriers, bulk operators, seagoing and shoreside labor unions, and major shipyards. The Council's objective is to foster the development of a strong, competitive, modern, American-built, privately-owned and operated merchant marine which will afford United States importers and exporters the finest and most cost efficient fleet of commercial ships in the world.

H.R. 5784, if enacted, would make permanent the authority of the Secretary of Commerce to provide war risk insurance and reinsurance under the terms and conditions set forth in Title XII of the Merchant Marine Act, 1936. The authority of the Secretary to provide such insurance expired on September 30 of this year.

Title XII authorizes the Secretary of Commerce, with the approval of the President, to provide war risk and certain marine and liability insurance for the protection of

The National Maritime Council is a unified organization of all segments of the maritime industry, established for the purpose of developing a strong, competitive, modern, American-built, privately-owned and operated U. S. Flag Merchant Marine, which will afford United States importers and exporters the finest and most consistently operated maritime fleet in the world.

SHIP A FAIR SHARE ON AMERICAN FLAG SHIPS

merchant vessels, cargos, crew life and personal effects of the crew and other persons transported on vessels when commercial insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do business in a state of the United States. Similar authority existed during both World Wars I and II and then expired; but on September 7, 1950, was reenacted as Title XII of the Merchant Marine Act, 1936, for an initial period of five years. Such authority has been extended for four five-year periods and one three-year period.

The necessity for Title XII arises out of the fact that commercial war risk insurance on merchant vessels and crews contain "automatic termination clauses". These clauses provide that, effective upon outbreak of war, declared or undeclared, between any of the so-called five great powers -- the United States, the United Kingdom, France, the Soviet Union, or the People's Republic of China -- or the hostile detonation of a nuclear weapon of war, such commercial war risk insurance automatically terminates. The events that trigger these clauses may occur while many of the ships engaged in shipping service essential for the maintenance of the waterborne commerce of the United States are far from their home ports. Thus, such vessels are exposed to war risks but deprived of commercial coverage exactly when insurance coverage is most needed.

The long-standing policy of the United States government to provide war risk insurance to cover ships, cargos, and their crews, when similar coverage is not extended to industries other than aviation, is based on the greater hazards to which ships are exposed in wartime. Ships range all over the world and are exposed to risks far beyond industries at home which are protected by our military defenses. Ships and their cargos are peculiarly exposed to war risks which may only remotely affect other industrial establishments.

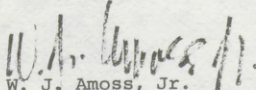
Recognizing that ships and cargos cannot move without war risk insurance, many of the major maritime nations of the world (e.g., England, France, Canada, and the Scandinavian countries) provide for continuing coverage when commercial underwriters find it financially impossible to write such insurance. The purpose of war risk insurance then is to maintain the free flow of the United States waterborne commerce, including the maintenance of essential transportation services for the Department of Defense.

It should be stressed that when the government furnishes war risk insurance, it is not a gratuity to the shipowner or the cargo owner. The government merely steps into a commercial transaction where private underwriters are no longer able to function because of the lack of financial capacities. The best evidence that government war risk insurance is not a form of aid is the experience during World War II where total premium receipts exceeded, by a substantial margin, losses paid.

The National Maritime Council believes that the authority of the Secretary of Commerce to provide war risk insurance and reinsurance should not, however, be made permanent. Rather the NMC is of the view that the Title XII program should, as it has been in the past, be extended for a number of years. The Council would recommend a period of five years. This would allow appropriate oversight of the program by those committees of the Congress having jurisdiction over maritime affairs.

Accordingly, the National Maritime Council urges the enactment of H.R. 5784, with the suggested amendment.

Sincerely,


W. J. Amoss, Jr.
Chairman
Board of Governors

cc:

The Honorable Gene Snyder
Ranking Minority Member
Subcommittee on Merchant Marine

/djK

MARITIME TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR and CONGRESS OF INDUSTRIAL ORGANIZATIONS

815 SIXTEENTH STREET, N.W., SUITE 510
WASHINGTON, D.C. 20006 (202) 628-6300

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JACK McDONALD, VICE-PRESIDENT

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International Union
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Shipbuilding Workers of America
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Association
International Union of Allied, Novelty and
Production Workers, AFL-CIO
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International Union
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Allied Trades
United Paperworkers International Union
Operative Plasterers' and Cement Masons'
International Association of the United States
and Canada
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Apprentices of the Plumbing and
Pipe Fitting Industry of the
United States and Canada
International Brotherhood of
Pottery and Allied Workers
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Clerks, Freight Handlers, Express
and Station Employees
Retail, Wholesale and Department Store Union
United Rubber, Cork, Linoleum and Plastic
Workers of America
Seafarers International Union of
North America
Sheet Metal Workers International Association
American Federation of State, County
and Municipal Employees
United Telegraph Workers
United Textile Workers of America

December 13, 1979

The Honorable John M. Murphy
Chairman
Subcommittee on Merchant Marine
Committee on Merchant Marine and Fisheries
1332 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The AFL-CIO Maritime Trades Department, a constitutional department of the AFL-CIO, wishes to express its support for H.R. 5784, legislation to extend the war risk insurance program of Title XII of the Merchant Marine Act of 1936. The Maritime Trades Department is composed of 42 national and international unions which represent approximately eight million workers.

Title XII of the Merchant Marine Act of 1936, as amended, vests authority in the Secretary of Commerce with the approval of the President to provide insurance and reinsurance against loss or damage by war risks to American vessels and their crews and cargoes when commercial coverage is not available on reasonable terms or conditions.

The Maritime Trades Department supported efforts made in 1975 to reduce the number of foreign-flag vessels in the Federal war risk insurance program. We continue to believe that American-owned foreign registered vessels, the so called effective control fleet, can not be relied upon and therefore should not be enrolled in the program.

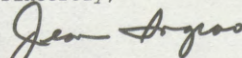
As a result of these efforts, the Maritime Administration promulgated regulations which considered foreign flag eligibility on a ship-by-ship basis, examining the ship's age and capability, the nationality of its crews, its general management and other relevant factors. Because of this new regulation, the war risk program was extended for three years rather than the customary five. The program expired on September 30, 1979.

The Maritime Trades Department feels that the regulations issued three years ago have been effective in reducing the number of American-owned but foreign-flagged vessels covered under the war risk program. However, H.R. 5784 makes the Title XII program permanent law. The MTD feels that the program should not be made permanent, but rather extended for five year periods. This would result in periodic review of the program by the appropriate Congressional committees, thus ensuring proper, efficient implementation and operation of the program.

Therefore, the Maritime Trades Department supports H.R. 5784 with five year extensions of the program.

We request that this letter be made part of your hearing record on H.R. 5784.

Sincerely,


(Mrs.) Jean Ingrao
Executive Secretary-Treasurer

The Seafarers International Union

OF NORTH AMERICA • AFL-CIO

815 16th Street, N. W., Suite 510, Washington D. C. 20006

(202) 347-3504

PAUL HALL

President

December 13, 1979



The Honorable John M. Murphy
Chairman
Subcommittee on Merchant Marine
Committee on Merchant Marine and Fisheries
1332 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The Seafarers International Union of North America, AFL-CIO, would like to express its support for H.R. 5784, which seeks to extend the provisions of Title XII of the Merchant Marine Act of 1936 relating to war risk insurance.

As the members of the Subcommittee know, Title XII authorizes the Secretary of Commerce to provide insurance against loss or damage by war risks with respect to vessels, cargoes, crew life and personal effects, and liabilities related to ownership or operation of the vessels when commercial insurance cannot be obtained on reasonable terms and conditions.

The long-standing policy of the United States government to provide war risk insurance, as embodied in the Title XII authority, is well founded and consistent with the policies of most other major maritime nations. Reauthorization of this provision is absolutely necessary to maintain the steady flow of United States' waterborne commerce, including the maintenance of essential transportation services for the Department of Defense during a national emergency. Historical experience has proven the Title XII mechanism to be critical to the national security interests of the United States, and has clearly demonstrated the economic viability of the program. We would, however, urge that the extended authorization be for a period of five years rather than a permanent reauthorization. This would assist in insuring adequate oversight by the committee of jurisdiction.

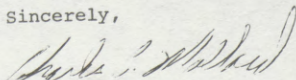
The SIUNA has supported efforts in the past to limit war risk insurance to American-flag vessels. While our opposition to the inclusion of foreign-flag vessels continues, we believe the recently expired regulations promulgated by the Maritime Administration,

which provide for a case-by-case review of requests for coverage by American-owned, foreign-flag ships, have been effective. These regulations should be extended and vigorously enforced.

Passage of H.R. 5784 would fill the gap that occurs when vessels are exposed to war risks but deprived of commercial insurance coverage exactly when that coverage is needed most. The Seafarers International Union respectfully urges the Subcommittee to act expeditiously and favorably on this important measure.

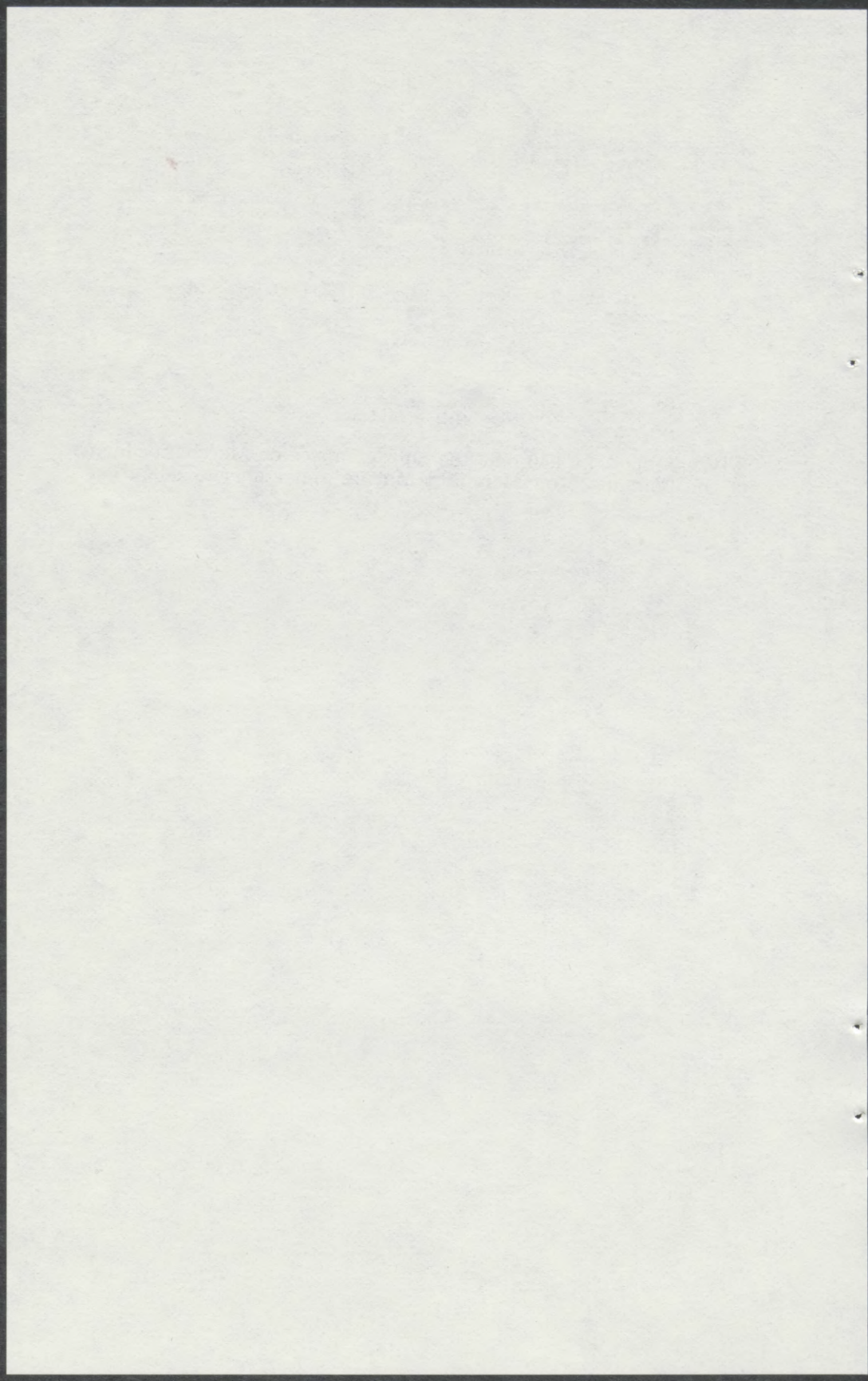
We request this letter become part of the hearing record on this legislation.

Sincerely,



Charles Mollard
Vice President

[Whereupon, at 4:40 p.m. the Subcommittee on Merchant Marine of the Committee on Merchant Marine and Fisheries adjourned.]



UNITED STATES-SOVIET MARITIME AGREEMENTS

MONDAY, FEBRUARY 25, 1980

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The committee met, pursuant to call, in room 1334 of the Longworth House Office Building, at 2:07 p.m., Hon. Joe Wyatt presiding.

Present: Representative Wyatt.

Staff present: Peter Kyros, Jack E. Sands, Stephen Cunningham, and Peter Gatti.

Mr. WYATT. The committee will be in order. Today we are considering House Concurrent Resolution 269, which urges the President to terminate the Maritime Agreement between the United States and the U.S.S.R. unless the Soviet Union's military forces are withdrawn from Afghanistan, along with H.R. 6424, which would require Executive action.

The Maritime Agreement presently provides the Soviets, upon 4 days' notice, with open access to 40 U.S. ports. However, article 9 of the Maritime Agreement allows termination by either party on 90 days' notice. This resolution urges the President to give the Soviets notice of our intention to terminate. Otherwise, the agreement will remain in force through 1981.

House Concurrent Resolution 269 also urges the President to refuse any request that may be made by the Soviet Union to enter United States ports not specified in the agreement. In 1979, Soviet vessels were permitted to call on United States ports other than those in the agreement 103 times, after requesting access at least 14 days beforehand.

Coupled with the existing embargo of grain sales to the U.S.S.R., the closing of our ports will clearly demonstrate the extent to which we disapprove of Soviet aggression in Afghanistan. If the United States is to continue being the world's principal defender and proponent of human rights and self-determination we can certainly do no less.

The Soviet Union has made merchant shipping a national priority and, as a result, has the largest merchant fleet in the world. The U.S.S.R. relies on its merchant fleet not only to carry commerce but also to acquire hard currency. For example, it has been reported that during the first half of 1979, more than 10 percent of all cargo shipped between the United States west coast and Hong Kong went in Soviet vessels. Virtually none of this cargo originated in, or was destined for, the U.S.S.R.

In light of the fact that U.S.-flag vessels carry little more than 3 percent of our foreign trade, and given the state of the U.S. merchant marine, it is incredible to consider that the Soviet Union is being given such trade opportunities.

To put it in perspective, the Soviets have been encroaching on U.S. shipping markets, obtaining hard U.S. currency, and are helping to kill off the U.S. fleet in the process. Clearly this situation calls for change. With 25 percent of world ocean trade involving the United States, it is readily apparent that the carriage of goods to and from the United States is of vital and continuing importance to the Soviets. By closing U.S. ports, we would be imposing an immediate economic sanction of substantial proportions that can be expected to have a dramatic impact on the U.S.S.R.

[The bills and departmental report follow:]

96TH CONGRESS
2D SESSION

H. CON. RES. 269

Urging the President to terminate the maritime agreement between the United States and the Union of Soviet Socialist Republics unless the Soviet Union withdraws its military presence from Afghanistan.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1980

Mr. MURPHY of New York (for himself, Mr. McCloskey, Mr. Akaka, Mr. Bauman, Mr. Bevill, Mr. Biaggi, Mr. Bonior of Michigan, Mr. Carney, Mr. Clausen, Mr. Corrada, Mr. Philip M. Crane, Mr. D'Amours, Mr. De La Garza, Mr. Derwinski, Mr. Dickinson, Mr. Donnelly, Mr. Dougherty, Mr. Erlenborn, Mr. Fisher, Mr. Florio, Mr. Forsythe, Mr. Frost, Mr. Gramm, Mr. Hinson, Mr. Hubbard, Mr. Hutto, Mr. Jenrette, Mr. Lagomarsino, Mr. Lungren, Mr. Mollohan, Mr. Nichols, Mr. Pepper, Mr. Pritchard, Mr. Volkmer, Mr. Young of Alaska, Mr. Zefferetti, Mr. Cleveland, Mr. Evans of Georgia, Mr. Rudd, Mr. Whitehurst, Mr. Edwards of Oklahoma, Mr. Ottinger, Mr. Bereuter, Mr. Lent, Mr. Roe, Mr. Mathis, Mr. Neal, Mr. Snyder, Mr. Hughes, and Mr. AuCoin) submitted the following concurrent resolution; which was referred jointly to the Committees on Foreign Affairs and Merchant Marine and Fisheries

CONCURRENT RESOLUTION

Urging the President to terminate the maritime agreement between the United States and the Union of Soviet Socialist Republics unless the Soviet Union withdraws its military presence from Afghanistan.

Whereas the invasion and occupation by the Union of Soviet Socialist Republics of the sovereign nation of Afghanistan is

a grave violation of international law and poses a genuine threat to world peace;

Whereas the Soviet invasion endangers international access to a major source of the world's oil supplies, thereby threatening not only the security of the United States and of the region encompassing Afghanistan, but of the entire world;

Whereas the Soviet Union has ignored the United Nations General Assembly's overwhelming vote of 104 to 18 that condemned the Soviet invasion of Afghanistan and urged the immediate withdrawal of all foreign troops from that nation;

Whereas the United States, for purposes of improving the maritime relations between it and the Soviet Union, particularly through arrangements regarding port access and cargo carriage by sea, entered into an Agreement on Maritime Matters with the Soviet Union, which entered into force on January 1, 1976; and

Whereas the United States currency accruing to the Soviet Government as a result of the economic benefits obtained by Soviet shipping under the agreement assists the Soviet Government in carrying out its unlawful invasion of Afghanistan: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That the President is strongly urged—

3 (1) to give to the Government of the Union of
4 Soviet Socialist Republics immediate written notice
5 under Article 9 of the Agreement on Maritime Matters
6 that the United States will terminate such agreement,
7 as provided therein, on the ninetieth day after such

1 notice is received by the Soviet Government unless the
2 Soviet Government promptly withdraws its military
3 presence from Afghanistan; and

4 (2) until such time as the Soviet Government
5 withdraws its military presence, to refuse any request
6 that may be made by the Soviet Government for per-
7 mission to enter United States ports not specified in
8 the agreement.

95TH CONGRESS
2D SESSION

H. R. 6424

To deny access to ports of the United States to Soviet vessels until the Soviet Union withdraws its military forces from Afghanistan.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1980

Mr. SHUMWAY introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To deny access to ports of the United States to Soviet vessels until the Soviet Union withdraws its military forces from Afghanistan.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, notwithstanding any other provision of law, after the
4 date of the enactment of this Act and until the date on which
5 the Congress receives notification from the President that the
6 Government of the Union of Soviet Socialist Republics has
7 withdrawn its military forces from Afghanistan, the Secre-
8 tary of the department in which the Coast Guard is operating
1 shall deny to all vessels of Soviet registry or ownership
2 access to all ports of the United States, including ports in any
3 Commonwealth, territory, or possession of the United States.

DEPARTMENT OF STATE,
Washington, D.C.

Hon. JOHN M. MURPHY,
Chairman, House Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR MR. CHAIRMAN: Enclosed is the statement by Deputy Assistant Secretary Robert L. Barry before the House Committee on Merchant Marine and Fisheries. Mr. Barry's statement incorporates the comments of the Department of State on the proposed concurrent resolution H. Con. Res. 269, and on the captioned bill H.R. 6424.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.
Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.

Enclosure: As stated.

STATEMENT OF DEPUTY ASSISTANT SECRETARY ROBERT L. BARRY

Mr. Chairman, thank you for the opportunity to appear before this Committee to give the Department of State's views on proposed Concurrent Resolution H. Con. Res. 269.

I appreciate the interest of this Committee in reenforcing the measures the Administration has taken to oppose the brutal Soviet invasion of Afghanistan and deter further Soviet aggression. We agree that Soviet actions against the sovereign nation of Afghanistan represent a grave violation of international law and a genuine threat to world peace. We appreciate the support expressed in the Chairman's letter of January 8 to the President for the steps the President announced in his January 4 address to the nation. The case I wish to make to you today is that these steps represent an effective response to the Soviet invasion and that the President's decision to stop short of abrogating existing agreements between the United States and the Soviet Union at this time is the correct one.

First let me summarize for you the steps we have taken so far.

We have halted the 17 million tons of grain sales to the Soviet Union in excess of the 8 million tons per year which we are committed to sell under the terms of the US-Soviet Grains Agreement.

We have halted sales of high technology or other strategic items requiring licenses for sale to the Soviet Union while our licensing policy is revised to tighten controls on exports of strategic goods. We are now consulting with our allies on these new controls.

We have announced our own intention not to participate in the Moscow Olympics and are working with others concerning the possibility of alternative games.

We have sharply curtailed Soviet fishing in US waters, thus denying them some 365,000 tons of fish they would have otherwise been allocated.

We have reduced the number of flights by the Soviet airline Aeroflot to the United States from three per week to two per week.

We have suspended preparations for opening new consulates in New York and Kiev and arranged for the mutual withdrawal of the advance parties in those two cities preparing for the opening of consulates.

We have sharply reduced scientific and technical exchanges with the Soviet Union.

We have deferred bilateral negotiations with the Soviets on a number of topics including extension of our cultural exchanges agreement.

We have been working with the countries of the region with a view to improving their military and economic capabilities to resist outside aggression.

We are consulting with our Western allies and with the countries in the region with the aim of improving our capabilities for projecting our military deterrent power in the region.

The President has declared that any attempt by an outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States—to be repelled by use of any means necessary, including military force.

We have called for sustained increase in the US defense budget and are improving our capabilities to deploy US forces rapidly to distant areas.

In all these areas, we have stayed in close touch with our allies with a view to a unified and coordinated response to Soviet aggression.

These are the major steps—political, economic and military—which the President has decided that we should take in response to the Soviet invasion of Afghanistan.

We believe that the Soviet leaders counted on a considerably less determined reaction and one which would quickly pass as happened in 1968 after the Soviet invasion of Czechoslovakia. They miscalculated badly. They will pay a concrete and lasting price for their aggression and will meet with firm resistance should they attempt to carry out similar steps elsewhere in the world.

At the same time we have chosen not to dismantle the structure of US-Soviet relations created by the agreements which our countries have negotiated over the years. And while we have deferred Senate consideration of the SALT II agreement, we continue to believe that ratification is in our interest and will observe the mutual constraints in both SALT treaties as long as the Soviets do the same.

It is against this background that the President has decided not to abrogate the US-USSR Maritime Agreement. We believe it is important to preserve the basic US-Soviet technical arrangements we have negotiated in the past few years. We have thus not abrogated any of the formal agreements with the USSR including the Maritime Agreement. Should Soviet actions in the future require qualitatively new American responses, this decision regarding the Maritime Agreement and other bilateral agreements between our countries would obviously have to be reviewed. We believe it is important to have steps in reserve which we can take in response to future challenges and we believe the Maritime Agreement properly fits into this category.

Mr. WYATT. Today's hearing provides us with the opportunity to question various spokesmen for the administration on the impact this proposal would have on the Soviet economy, its military policies, and the capability of the world fleet to fill the void left if Soviet vessels are precluded from serving the United States.

Now let us welcome our first witnesses this afternoon.

STATEMENTS OF SAMUEL B. NEMIROW, ASSISTANT SECRETARY FOR MARITIME AFFAIRS, MARITIME ADMINISTRATION; ROBERT BARRY, DEPUTY ASSISTANT SECRETARY FOR EUROPEAN AFFAIRS, DEPARTMENT OF STATE; JAMES V. SIENA, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR EUROPEAN AFFAIRS, DEPARTMENT OF DEFENSE

Mr. WYATT. I might point out that under the witness list that was distributed earlier it shows that the Department of State will be the third witness; under the procedures that we will follow the witness from the Department of State will be the second witness, and the Defense Department witness will be the third witness.

At this time I would recognize Mr. Sam Nemirow, who is Assistant Secretary for Maritime Affairs, Maritime Administration, Department of Commerce.

Mr. NEMIROW. Thank you, Mr. Chairman, I appreciate the opportunity to appear before this committee and to comment upon proposed House Concurrent Resolution 269, which recommends that the President take steps to terminate the U.S.-U.S.S.R. Maritime Agreement.

For several weeks the administration has been engaged in assessing various courses of economic action that could be taken against the Soviets in response to the latter's invasion of Afghanistan. Included in this evaluation has been the option of terminating the U.S.-U.S.S.R. Maritime Agreement. While termination of the agreement remains an option that could be exercised in the event further action at a later date is warranted, the administration does not believe it to be an appropriate response at this time.

As you know, several economic measures have already been taken by the administration that impact adversely against the interests of the Soviet Union. Included amongst these are the curtailment of grain sales and technology transfers, the denial of certain

export licenses, a reduction in the amount of fish the Soviet Union may catch within the 200-mile economic zone, and a call for boycotting of the Olympic games.

Termination of the Maritime Agreement differs from the action taken thus far in that it would dismantle the structure that was created to facilitate the long-term development of the U.S.-U.S.S.R. bilateral trade. If such a step were taken, careful thought would have to be given to its impact on long-term economic relations with the U.S.S.R., the international shipping community, and U.S. shipping interests.

From the standpoint of bilateral maritime relations, the U.S.-U.S.S.R. Maritime Agreement has served us well. Economic benefits accruing to the U.S. maritime industry have paralleled those achieved by Soviet shipping interests. Between 1972 and 1978 total earnings in the bilateral trade from shipping have been about \$300 million to each side. Prior to 1978, U.S. operators had maintained a marginal cumulative advantage in earnings over the Soviets in the bilateral trade. However, as of December 31, 1978, Soviet operators had achieved some advantage, largely because of the significant decline in the carriage of grain by U.S.-flag vessels, who found more profitable employment in the Alaska oil trade. In 1978, U.S. operators earned approximately \$8 million for the carriage of grain, compared to \$34.9 million in the previous year. Soviet carriers on the other hand earned \$50.3 million in 1978, almost three times the amount earned in 1977. In every year of the agreement before 1978, U.S. vessels outcarried Soviet vessels in the U.S.-U.S.S.R. grain trade.

The movement of grain from the United States to the Soviet Union has provided the greatest dollar benefit in the bilateral trades to both United States and Soviet carriers. U.S.-flag vessels earned an estimated \$183.1 million for the carriage of grain from 1972 to 1978—62.5 percent of their total earnings in the trade. Soviet carriers earned about \$177.7 million in grain carriage—59.1 percent of their total earnings in the bilateral trade.

A close balance of earnings has been maintained in the carriage of bilateral liner cargo. Except for an imbalance occurring during the first year of the arrangement and corrected during the second year, the vessels of both sides have shared equally in that trade. During the period 1972-78 U.S. carriers earned approximately \$100.6 million in the bilateral liner trade, while Soviet carriers earned about \$100.8 million.

The bilateral trade between the United States and U.S.S.R. since 1972 has seen the movement of relatively small amounts of dry and liquid bulk commodities. U.S. vessels earned approximately \$9.2 million from the carriage of oil from the Soviet Union to the United States, while Soviet carriers earned \$13.1 million, mainly from the carriage of chrome ore to the United States. Very few, if any, countries have achieved parity in the carriage of bilateral cargoes with the Soviet Union. In this connection the United States has achieved virtual parity, both from the standpoint of tonnage and freight earnings.

No doubt, the agreement has facilitated Soviet penetration of U.S. crosstrades. This agreement is scheduled to expire on its own terms on December 31, 1981, and, therefore, it should be the inten-

tion of U.S. negotiators at the time of renegotiation of the agreement, if indeed a new arrangement is to be entered into, to insure that any crosstrading benefits accruing to the Soviets as a result of favorable port entry provisions in the Maritime Agreement be taken into account in this process.

Mr. Chairman, I would be happy to answer any questions you might have as to my testimony at this time, or wait until you hear from other witnesses.

Mr. WYATT. Thank you, Mr. Nemirow. Could you please comment on the likelihood of retaliation by the Soviet Union and its effects on United States trade?

Mr. NEMIROW. If by retaliation what you have reference to is impact on United States carriers calling at Soviet ports, United States-flag carriers have called at Soviet ports to carry bilateral cargo, and virtually for that purpose alone. If bilateral cargo were not available to either Soviet or United States carriers, I can conceive of no retaliation which would have a significant impact on United States-flag operators.

Mr. WYATT. What impact will port closure have on our own ports?

Mr. NEMIROW. You are hearing from port witnesses, I know, today. I can indicate to you that the number of port calls by Soviet-flag vessels at United States ports of call in recent years has been very significant, and I know that is one of the concerns which this committee has. There have been in the year 1979 1,253 port calls by Soviet ships at the various ports in the United States. That is a significant amount of traffic, and I am sure it would have some impact on our ports and the revenues of our ports. I think they could probably better address that than I could.

Mr. WYATT. Do you know how many U.S.-flag vessels docked in Russian ports during 1979?

Mr. NEMIROW. During 1979 I would say the number was probably fewer than 10 to 15.

Mr. WYATT. Versus 1,000?

Mr. NEMIROW. Versus 1,253.

Mr. WYATT. 1,253.

Mr. NEMIROW. Actually, the number from January to June of 1979 was 18 United States calls at Soviet ports.

Mr. WYATT. Pardon?

Mr. Nemirow. Eighteen U.S.-flag vessels arrived at Soviet ports in the period January 1979 to June 1979.

Mr. WYATT. What cargoes do we carry to Russia?

Mr. NEMIROW. Basically, our participation has been to a great extent, up until 1978-79, in the carriage of grain cargoes. We have had sporadic movements, perhaps 8 or 10 a year, of liner cargoes mainly to Leningrad, but the cargoes that have been moving since 1972 have been in the main cargoes moving on U.S. tankers carrying grain to the Soviet Union, mainly with destinations to the Black Sea.

Mr. WYATT. Do you know the economic value of those cargoes?

Mr. NEMIROW. Yes. For the period 1972 to 1978, the liner participation in terms of dollar revenue to U.S. companies in the bilateral trade was \$100.6 million. The participation in the bulk cargo trades yielded participation at a level of \$183.1 million. There were cer-

tain other liquid cargoes which are referred to in my testimony with a dollar value in terms of participation of \$9.2 million, yielding for the period 1972 to 1978 U.S.-flag dollar benefit in the Soviet bilateral trade \$292.9 million.

I might just for the record indicate that the Soviet participation through that same time period yielded \$300.9 million, so the difference is they outcarried us for that period of approximately \$8 million out of \$300 million.

Mr. WYATT. That's 1972 through 1978?

Mr. NEMIROW. Yes, sir.

Mr. WYATT. I notice that you don't use 1979. Is there a reason for that?

Mr. NEMIROW. There are a couple of reasons. Some of the data for 1979 is not complete, but 1979 I think I indicated in my testimony—and I don't intend to be deceptive here at all—1979 would demonstrate that the Soviets are outcarrying us significantly in that calendar year, the reason for that being that the U.S.-flag tankers which had been carrying grain to the Soviet Union, as I indicated earlier, had been the predominant cargo, had virtually all moved to the Alaskan oil trade and have not been made available for carriage in the Soviet grain trade.

So in 1979 we were not able to carry the cargo offered to us by the Soviets in the bilateral, but they continue to offer and have offered us one-third of the cargo, grain cargoes, in accordance with our agreement. We have not carried any appreciable amount of that cargo in 1979.

Mr. WYATT. Would you tell me what would be the capability of the world fleet to fill the void if Soviet and American vessels are precluded from entering each other's ports?

Mr. NEMIROW. The bilateral trade with the Soviet Union is really quite insignificant in terms of world trade. The liner cargoes could easily be accommodated with existing tonnage. The bulk cargoes today are being carried almost exclusively, with only one exception in recent months that I can think of, on third-flag vessels, world trade vessels. That trade is continuing, the grain is continuing to move, although in reduced amounts. And the world tonnage capacity has seemed to be able to make up the void.

The logic of it, Mr. Chairman, would be that vessels that cannot now operate between the United States and the Soviet Union, for example, because of the ILA action, could operate between, let's say, between Argentina and the Soviet Union, and therefore ships that are now in the trade between Argentina and the Soviet Union could be shifted to the U.S. gulf if that trade were available to them.

So particularly in the bulk area where the ships are so fungible and flexible, I am quite confident the world fleet would be able to accommodate that kind of a disruption.

Mr. WYATT. Would?

Mr. NEMIROW. Would.

Mr. WYATT. To what extent are Soviet vessels engaged in cross-trading activity, especially with regard to U.S. commerce?

Mr. NEMIROW. The Soviet participation in crosstrades, out of all of their earnings in the bilateral and crosstrades, their crosstrades earnings are significantly greater than their bilateral trade earn-

ings. To be more specific, the Soviets earned \$17 million in 1978 in the bilateral liner trade, and \$50 million in the bilateral bulk trade, so if you combine those two you have got a \$67 million—actually it's \$68.1 million revenue dollar benefit from participation in the U.S. bilateral trade. In the nonbilateral trade, the dollar benefit to the Soviet Union has been \$255.7 million. Obviously the nonbilateral trade is substantially more important to the Soviet merchant marine at this time than the bilateral trade.

Mr. WYATT. To what extent are U.S. vessels engaged in crosstrading activity with the Soviets?

Mr. NEMIROW. Not to any extent it all. There have been a couple of cargoes that were carried on some of our tankers some years ago, but I would say that there has been no appreciable carriage by U.S. liners in the crosstrades from the Soviet Union, and the same is also true for bulk and tanker operators.

Mr. WYATT. So, then, the differential there would be some \$250 or \$260 million to nothing?

Mr. NEMIROW. If you want to compare nonbilateral trade, the answer is yes. The agreement was basically designed to establish a mechanism whereby U.S. carriers would participate on a fair and equitable basis in the bilateral trade. As I indicated in my testimony, that has been monitored very carefully, and the agreement has fulfilled that objective. U.S. carriers have carried an equivalent amount to that carried by the Soviets in the bilateral trade. As to crosstrades, your comment is an accurate one.

Mr. WYATT. Mr. Kyros.

Mr. KYROS. Thank you, Mr. Chairman. Mr. Nemirow, turning your attention for the moment to the crosstrading activities by Soviet liners, as I understood it you said that they gained revenues of \$255 million. Is that the last complete year, 1979?

Mr. NEMIROW. No, that was in 1978.

Mr. KYROS. Is it accurate to say that this has grown to about \$400 million in 1979?

Mr. NEMIROW. I don't recall.

Mr. KYROS. The percentage carriage in each of the trade groups by the Soviets has grown, has it not, Mr. Nemirow?

Mr. NEMIROW. It's an interesting phenomenon, as you go through it: it has grown in some and not grown in the others. For example, on trade route 7, North Atlantic to West Germany, in 1974 they carried 12.5 percent, in 1978 they carried 9.4 percent.

On an overall basis it is an accurate statement.

Mr. KYROS. A growth of another, let's say, another percentage point perhaps, total carriage in our trades?

Mr. NEMIROW. Pardon?

Mr. KYROS. In other words, their total carriage in our trades has gone from 3 to 4¼ percent? What is their total growth, do you know, from 1978 to 1979?

Mr. NEMIROW. I don't have 1979 numbers in front of me.

Mr. KYROS. But one thing is clear: it would be well over \$255 million in freight revenues gained in the year 1979.

Mr. NEMIROW. Oh, yes. If those are the reference points, I can tell you, Mr. Kyros, that in 1972-73, the Soviets participated to the tune of \$85 million; that has increased annually to the point now

we are at \$255.7; 1977 was \$208.7. It has been increasing significantly since 1972.

Mr. KYROS. And in your colloquy with Mr. Wyatt, as you brought out, we have just practically zero trade in terms of crosstrading between the Soviet Union and some nation other than the United States.

Mr. NEMIROW. That is an accurate statement.

Mr. KYROS. So this is a benefit uniquely accruing to the Soviet Union. It is entirely not in any way met comparably by our own American vessels; the benefit they gain, we have no benefit whatsoever therefrom.

Mr. NEMIROW. Well, the fact of the matter is that Soviet foreign trade doesn't approximate in any way the U.S. foreign trade. That is an accurate statement, that under the agreement at the moment crosstrading benefits afforded the Soviets are very significant.

Mr. KYROS. Actually, Mr. Nemirow, when the U.S.-U.S.S.R. Maritime Agreement was negotiated to facilitate maritime relationships between the two nations and to promote them, I don't think it was ever intended or conceived that their crosstrading would grow to the extent that it has—what we are talking about right now, \$250 or \$300 million, whatever it is now—is that correct?

Mr. NEMIROW. It's very difficult for me to know what was conceived of by other people than myself when I participated in those meetings. The fact is that we all expected that the bilateral trade would increase significantly. It was at a period, 1971-72, when détente appeared to be flourishing. It was expected that credits might be made available to the Soviet Union. That was prior to Jackson-Vanek. And it appeared that the liner bilateral trade over a period of the next few years would be quite significant. Given the course of events since then, our expectations were not reached. And today it is a fact that the crosstrade is much more significant than anyone contemplated.

Mr. KYROS. In your statement on page 1, you state that termination of the agreement would dismantle the structure that was created to facilitate the long-term development of the maritime relationship between the United States and the U.S.S.R.

Mr. NEMIROW. That's right; that's what it says.

Mr. KYROS. On page 4, however, you say if the agreement expires and if we should renegotiate it in 1981, we will look very closely at any crosstrading benefits accruing to the Soviet Union as a result of the agreement.

Mr. NEMIROW. Yes, I think those statements are not inconsistent.

Mr. KYROS. I didn't infer that they were inconsistent, but that it shows your immediate concern, then, for the crosstrading activity that the Soviets have undertaken in the last several years.

Mr. NEMIROW. Yes, that concern exists.

Mr. WYATT. Mr. Nemirow, the House went into a secret session about 5 minutes ago on a foreign policy matter that I would like to attend. It appears we are going to have to recess for some period of time until that session has come to a conclusion. I apologize for this delay. I will be back at 3.

[The committee briefly recesses.]

Mr. WYATT. The committee will be in order. Thank you, Mr. Nemirow, for staying, and I apologize for being a little late.

Mr. NEMIROW. Thank you, Mr. Chairman, I appreciate the problems of being called to the floor and look forward to going ahead with the questions.

Mr. KYROS. Mr. Nemirow, before the recess we were considering the crosstrading activities of the Soviets. Now, you recall 2 years ago, this committee, with testimony from the Maritime Administration, the State Department, and the Federal Maritime Commission, passed a bill popularly known as the Control Carrier Act. You are aware of that, Mr. Nemirow?

Mr. NEMIROW. Yes, I am aware of that.

Mr. KYROS. And it was signed by the President last year, I believe, into law.

Mr. NEMIROW. I am aware of that also.

Mr. KYROS. And at that time, if I recall correctly, the Department of Commerce and the Maritime Administration supported the bill.

Mr. NEMIROW. I believe that is so.

Mr. KYROS. The bill was directed against what we call unjust and unreasonable rate-cutting practices of state-controlled carriers and in particular the Soviet Union.

Mr. NEMIROW. Yes.

Mr. KYROS. And the basis for that bill was the incredible growth of the Soviet Union's crosstrading activities in the U.S. trade.

Mr. NEMIROW. I assume that what you are stating is the intention of the bill as the committee and its staff perceived it at the time, and I certainly understand that to be the purpose of the bill, as you stated it, yes.

Mr. KYROS. The point I am making is that even though we had a U.S.-U.S.S.R. agreement which focused on bilateral bulk trade and liner trade, nevertheless we had to face a special problem that resulted in the crosstrades that was probably not foreseen or imagined at the time of 1972.

Mr. NEMIROW. Yes.

Mr. KYROS. Now, why then is it not highly appropriate at this time to take as an economic sanction, in the light of all the recent events for which this very hearing is called concerning Afghanistan—why is that not a very proper economic sanction to redress perhaps what was really an oversight on our part in negotiating the U.S.-U.S.S.R. Maritime Agreement?

Mr. NEMIROW. I think, as I indicated in my earlier testimony, Mr. Kyros, that I do not believe that this is an oversight. I think the factors have changed since the agreement was initially negotiated in 1971-72 and renegotiated in 1975. I think the issues relating to crosstrading are significant issues that affect our relations with the Soviets. On the other hand, I believe that those issues are validly concerns within the agreement, and those issues exist whether we have Afghanistan or whether we don't have Afghanistan. The question before the committee, as I understand it, is in light of the Soviet invasion of Afghanistan, should we terminate the Maritime Agreement? The administration position as I understand it, and as I have stated it, is that we have considered that; it is one of the options available to us, and will continue to be available to us, but not an option we are prepared to take at this time in order to redress the problem in Afghanistan. Clearly the

question of the Soviet penetration of the crosstrades in the United States is an issue which must be addressed in any renegotiation of the Maritime Agreement.

Mr. KYROS. I agree with everything you have said. And on page 1 of your statement, you say specifically, as we noted before, that to dismantle the structure, that is, this agreement, that was created to facilitate long-term trade, would not be in our best interest at this time, in effect is what you say.

Mr. NEMIROW. Yes, that is what I say.

Mr. KYROS. And I am examining the elements of that conclusion, and what I am suggesting to you, Mr. Secretary, is that indeed it is important to have the bilateral agreement, the bulk agreement, and the liner agreement for the development of bilateral trade with the Soviet Union, but there really is no particular reason why we should be solicitous of the activities of a state-owned fleet which can dump at will in our liner trades.

Is there any particular reason why we should promote that kind of an agreement?

Mr. NEMIROW. Mr. Kyros, the facts of the matter are that we negotiated an agreement with the Soviets that has been complied with by both the Soviets and ourselves. As of 1980 the agreement is working more in their favor than in our favor. That is a fact of record. That is unfortunate. At the time it was negotiated, I believed it was the proper course to follow, as did other people on the delegation. We have an opportunity in 1981 to modify, cancel, terminate, renew that agreement. And I think we will seize that opportunity.

But the issue before us today is, because you came out a little bit short on a deal that you made, do you walk away from it? As far as I am concerned, as far as the Maritime Administration is concerned, we made a deal, we are going to live up to it until 1981. The issue before you today is not whether we should live up to our obligations, but whether some external issue is of such magnitude that the United States should sever its maritime relations with the Soviets. That is a completely different matter than whether we are coming out even under the Maritime Agreement.

Mr. KYROS. Well, I am glad to hear you frame the issue in a larger sense, but, again, perhaps we can address those questions to the gentleman from the State Department—but again, Mr. Nemirow, apart from the bilateral bulk and liner trade, in your testimony—you testified that the United States had no crosstrading with the Soviet Union, or it was negligible, and they, on the other hand, derived several hundred million dollars from crosstrading in the United States trade. Is that an accurate statement?

Mr. NEMIROW. Yes, that's my statement.

Mr. KYROS. So it's not only to consider whether this is an appropriate sanction, but perhaps this is a signal and most seemly opportunity to redress a circumstance that we never expected, namely, another nation to suddenly build a burgeoning liner fleet far beyond its own national needs and dump it in our trades.

Mr. NEMIROW. I think I am only suggesting to you that simply because certain events have taken place that perhaps we did not contemplate, that mere fact presents no reason to me to terminate the agreement. We have other provisions in the agreement—we

can call for discussions on it, we can renegotiate the agreement. We are involved in business dealings every day, many of them not involving the Soviets, and some of them are good and some of them are bad. I would have hoped that this agreement would have worked out a little better in terms of cargoes and trades available to U.S. carriers. It didn't work out as well as we expected. I am not prepared to walk away from it on that basis alone. The bigger political issue is another matter, which this committee is now considering.

Mr. KYROS. Yes, but you know it's a factual matter, when you say very candidly and fairly that the agreement in some respects worked out in a way you did not expect, it is difficult to assume that in normal business relations and maritime relations that anyone could have foreseen what happens when people allege that there has been this kind of sharp rate-cutting on the high seas. I mean, no one could have foreseen that, so there is no reason for you to feel unhappy that there were elements of the Maritime Agreement that you did not foresee.

Mr. NEMIROW. Oh, I am not unhappy. How does that go—don't get mad, get even. I mean, I am not unhappy; that's the way the deal worked out.

The fact is—the concern that I have is that at the time we entered into this agreement we contemplated that the U.S. bilateral trade, given credits which were expected at that time, would be significantly greater than it is today. That's where we came up short.

Mr. KYROS. Well, that problem was the Jackson-Vanik amendment; it had nothing to do with you really; it was not your fault that that didn't happen, that your forecast of that bilateral—

Mr. NEMIROW. At the time the agreement was negotiated, contemplated Eximbank credits and other U.S. credits available to the Soviets, and because of reasons beyond the control of the Maritime Administration, at least, that did not come about.

Mr. KYROS. Now, finally, not to belabor any of these points, the cancellation of this agreement would really deny the Soviets several hundred million dollars a year in freight rates from the U.S. trade.

Mr. NEMIROW. According to our numbers, it would have amounted to \$255 million in 1978.

Mr. KYROS. And we all agree that it has grown in 1979. Is there any lack of capacity of Western carriers or other carriers, carriers other than the Soviet Union, to carry the liner trades of the United States? Is there any lack of capacity, in your estimation?

Mr. NEMIROW. No.

Mr. KYROS. And, as a matter of fact, isn't it a fact that probably the existing U.S. carriers, which we subsidize so dearly and so faithfully, could probably carry that extra 2 or 3 percent?

Mr. NEMIROW. Existing U.S. subsidized and unsubsidized I believe could.

Mr. KYROS. You believe they could carry it.

Mr. NEMIROW. I believe there is enough capacity to carry cargoes which are now moving on Soviet ships.

Mr. KYROS. And the Maritime Administration is charged with the responsibility and concern for any possible effects of financial hardship for U.S.-subsidized carriers, to be sure.

Mr. NEMIROW. Yes, we are concerned with the condition of the U.S. merchant marine.

Mr. KYROS. In the last couple of years we had both States Lines and Pacific Far East Lines that went bankrupt.

Mr. NEMIROW. That's a fact of record. Actually, States is not bankrupt, they are still in receivership and they are in reorganization.

Mr. KYROS. During the testimony on these two carriers, Mr. Nemirow, are you aware that we have had testimony of record before us that in both instances Soviet activities in our liner trades were termed a cause—not the cause—of the financial hardships of those two carriers?

Mr. NEMIROW. I recall that testimony I think by Mr. Alioto in the PFEL case; I don't recall in the States matter. But I would not find that surprising.

Mr. KYROS. If the Congress should pass this resolution, there would be no particular difficulty in effecting it; that is, if the Congress did pass the resolution and you were called on to terminate the agreement, you could terminate the agreement.

Mr. NEMIROW. Yes, the agreement by its own terms provides that it can be terminated with 90 days' notice. And I would assume that if Congress were to pass this resolution, it would afford us the 90-day notice required in the agreement.

Mr. KYROS. What agreement would then exist, if this agreement were terminated, for entry by Soviet vessels into U.S. ports?

Mr. NEMIROW. There would be no international agreement or bilateral agreement, that I know of. They would come under the general regulations of the United States concerning port access and entry by vessels of communist countries.

Mr. KYROS. They would have to give 14 days' notice, in other words—request.

Mr. NEMIROW. Request.

Mr. KYROS. So they would not be shut off entirely, would they, even if the agreement were terminated?

Mr. NEMIROW. Well, it depends on how you read the language of the resolution which has been submitted. The language of the resolution seems to indicate the intent of its drafters that if a request is made to enter one of the ports that they can now enter that that request would be denied.

Mr. KYROS. That's the second paragraph, Mr. Nemirow, is that correct?

Mr. NEMIROW. Yes, and there has been some confusion on our part as to the exact intent, that the way the last subparagraph is written it is our understanding that the committee contemplates that if a request for entry is made, that request would be denied.

Mr. KYROS. You spoke this afternoon about the termination provision, article nine, which appears in the U.S.-U.S.S.R. maritime agreement.

Mr. NEMIROW. Yes.

Mr. KYROS. That article states: This agreement may be terminated by either party prior to December 31, 1981; such termination

shall be effective 90 days after the date on which written notice of termination has been received by the other party.

What was the purpose of the termination provision in the U.S.-U.S.S.R. agreement?

Mr. NEMIROW. I think it's not unconventional to have in bilateral agreements, particularly one which lasts 6 years, as this second version of the maritime bilateral does, to have a provision whereby one party can withdraw.

Mr. KYROS. That's a fair answer. But, Mr. Nemirow, do you know of any more specific reasons why that provision was put in except the general one you just gave us?

Mr. NEMIROW. I was at the negotiations in both 1972 and 1975, and I don't know that there was anything more specific. We have gone through a period of good and bad relations with the Soviet Union, and there was nothing specific in mind that I can recall, as this article was being negotiated. But it was with our history in mind that we decided this would be an appropriate paragraph to include in the agreement.

Mr. KYROS. Is that how you want to leave it, to the best of your recollection? I realize that there might have been some reason in somebody else's mind that wasn't even addressed to you, but, to the best of your recollection, it was just a general provision that follows, that simply tracks general international treaties, is that how it's left?

Mr. NEMIROW. The second part of my answer was that I assume, taking into account our relations with the Soviet Union over many years, both good and bad relations, that when this provision was suggested it seemed entirely appropriate that we have this kind of an out in the event something untoward happened.

Mr. KYROS. Something untoward—like what?

Mr. NEMIROW. I'll give you an example. In the course of negotiating this agreement, we were having negotiations I think it was on a Tuesday morning, the Soviets came in and they announced that we had just bombed Haiphong Harbor and hit one of their ships. I think that was something untoward that happened, and it certainly delayed our negotiations and it was certainly something that caused us to not have anything to talk about for a few days. Lots of things can happen.

We have a situation now where obviously our relations with the Soviets have been more cordial than they are these days. These opportunities are available to our Government. The Soviets—we have gone through various things; we have gone through the problems in Cuba, we have gone through the problems in Africa—we've had all of these in the course of this agreement.

Mr. KYROS. So, Mr. Nemirow, you have just stated in effect that certain changed political circumstances between the two countries, were contemplated when this provision, article 9, was put in the agreement.

Mr. NEMIROW. If you are trying to suggest that we should have the authority to terminate the agreement, if we elected to use that authority because of the Afghanistan situation, I don't think we are without authority; we have the authority in the text of the agreement to terminate it in 90 days. As you know, we are not recommending that.

Mr. KYROS. Can you advise this committee what the Secretary of Commerce recommendation to the Administration was in regard to this resolution, particularly the one dealing with paragraph 1 of the resolution? Also, what was the recommendation made by the Undersecretary for Maritime Affairs to the Administration or the Secretary of Commerce, whoever you are speaking for here today?

Mr. NEMIROW. Actually, in the course of events, the Maritime Administration drafted a paper for the Secretary very early on in this process before the ILA boycott and long before this resolution, which was simply a fact paper reciting what our authorities and options were and some of these issues that we have been talking about, about crosstrades and bilateral trades. And before the ultimate decision was made as to how to testify on this particular resolution, the decision had already been reached within the Administration that it was not an appropriate time to terminate the maritime agreement; therefore when we drafted the testimony for today, it was in keeping with an Administration position which had been set forward some time over 4 to 6 weeks ago.

Mr. KYROS. So it was set forward before the 20th of February, 1980?

Mr. NEMIROW. Yes, sir.

Mr. KYROS. And I mention, February 20, because I believe that was the date that the President had requested the Soviets to withdraw from Afghanistan or otherwise we would go ahead with the Olympic boycott and certain other sanctions.

Mr. NEMIROW. The Administration position on termination of the Soviet maritime agreement, as we have discussed it here today, predates February 20, 1980.

Mr. KYROS. Thank you, Mr. Nemirow. Thank you, Mr. Chairman.

Mr. WYATT. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman. Mr. Nemirow, could you tell us whether any of the commodities we supply the Soviets with could be used in military actions?

Mr. NEMIROW. Now, that one I really would like to duck, and I think the big issue before the Secretary of Commerce in terms of export control is what exports can be used for military purposes, and what exports have been used for military purposes, and there have been several hearings on various cognizant committees on the Hill on that precise issue. And I am not competent to address it.

Mr. CUNNINGHAM. Well, then, would you concede the possibility that there are some such commodities? Given that there are some commodities that could be used for military actions, do you have any view on how the Soviets would answer their needs if they couldn't do it with our products?

Mr. NEMIROW. Well, in the course of our dealings with the Soviets and the Department of Commerce administration of the export control laws over the past several years, they have endeavored to assure that military equipment or equipment that could be used for military purposes was not exported to the Soviet Union.

I assume that long before the United States engaged in any trade with the Soviet Union of any significance—and I refer back to the 1970-71 detente period—the Soviets were supplying their defense requirements very nicely. And I assume if we weren't supplying them with certain goods, they will continue to supply their defense

requirements very nicely, either through internal manufacturing or through purchase.

Mr. CUNNINGHAM. One last question, then. Has there been any communication from the Soviets on port closure, to your knowledge?

Mr. NEMIROW. On port closure?

Mr. CUNNINGHAM. On the ILA boycott.

Mr. NEMIROW. Yes.

Mr. CUNNINGHAM. What is that communication?

Mr. NEMIROW. I had a discussion with a Soviet maritime attaché at the time when the ILA boycott went into being, and it was a general discussion concerning our obligation under the agreement to assure that these ports, which have been made available for Soviet-flag vessels, in fact be available for Soviet-flag vessels. We had a discussion about that.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. WYATT. Mr. Nemirow, I have one question I would like to clarify in my own mind. Of the crosstrading that took place I believe back in 1979 which I discussed earlier—could you tell me how much of that crosstrading took place in ports outside the stated ports in the agreement?

Mr. NEMIROW. I can tell you how many vessel calls they made at ports outside of the 40 ports. The numbers I have—these are new numbers now—1979 on the west coast, the Soviets made 476 entries; 15 of those were at nonagreement ports. On the east coast the number was 312; and 14 of those were nonagreement ports. On the Gulf it was 418; and 22 of those were at nonagreement ports. And on the Great Lakes there were 47 calls; 8 of those were nonagreement ports. Total: 1,253 entries; 59 at nonagreement ports.

Mr. WYATT. It's my further understanding that under the agreement that the Soviets can conduct bilateral trade or crosstrading with only the 4-day notice, is that correct?

Mr. NEMIROW. As to the 40 ports, they can enter those ports for bilateral or crosstrading with 4-day notice.

Mr. WYATT. Have the Soviets indicated what impact port closure would have on them to you, the Soviet attaché?

Mr. NEMIROW. The discussion we had was basically one of principle, and we did not go into details of impact or costs.

Mr. WYATT. And how many ports do we visit in the Soviet Union?

Mr. NEMIROW. I just had that number, and I placed it in these materials somewhere; perhaps I can just give you the chart at the conclusion of the hearing.

Mr. WYATT. Do you have a general number?

Mr. NEMIROW. Here's the number: 1979, January to June, we made 18 calls in 4 ports; 1978, calendar year, 46 calls at the same 4 ports; 1977, just as a reference point, we made 95 calls at 10 ports.

Mr. WYATT. Ten ports is the maximum in the last three years?

Mr. NEMIROW. Ten ports in the last three years, yes. 1976 there were probably 12 or 14 ports.

Mr. WYATT. Is that due again to the grain trade?

Mr. NEMIROW. In looking at the ports, knowing what cargoes move through these ports, that would be the reason. Most of the ports that had been eliminated have been ports which we have

called at in earlier years carrying bulk cargo. The conventionally used liner ports are still on the list in 1979.

Mr. WYATT. Let me ask one further question, Mr. Nemirow. Would it be possible for the President to use some selectivity in determining whether or not Soviet ships could arrive in American ports or not, or is there a standard that is set out in the agreement? Why in essence do we have the 4-day notice?

Mr. NEMIROW. Without the agreement, the President, the executive branch, would assess each request by the Soviets to enter a U.S. port on a 14-day request basis. At that point, you exercise a great deal of discretion as to whether they get into port A or port B, and whether they get into port A today and not get into port A 6 months from now, depending on the conditions in the port.

With the maritime agreement in place, we have basically negotiated a situation whereby they can enter practically without discretion those 40 ports. If we did not have a maritime agreement, we could administer our 14-day request basis in such a way that there would be great discretion on the part of the Executive.

Mr. WYATT. But with the agreement you think the discretion is limited?

Mr. NEMIROW. Yes.

Mr. WYATT. How much of a problem would it be if we were talking about bilateral trade versus crosstrade; in other words, if there would be no crosstrading, and make that a policy?

Mr. NEMIROW. The agreement speaks in terms of both the bilateral and the crosstrade, and that was known at the time it was negotiated. And it seems to me that it would be tantamount to an abrogation or a termination of the agreement to now try to limit its terms to the bilateral trade only.

Mr. WYATT. I have no further questions.

Mr. SANDS. Mr. Nemirow, what is the overall U.S.-Soviet trade balance for the last year that you have figures available?

Mr. NEMIROW. The U.S.-Soviet trade balance or participation by carriers.

Mr. SANDS. Trade balance.

Mr. NEMIROW. I don't have that number. I would say—I won't say.

Mr. SANDS. OK, one other question. What is the status of the International Longshoremen's Association boycott of Soviet vessels? Is that effectively closing U.S. ports on the East and gulf coasts to the Soviets?

Mr. NEMIROW. The answer is that it has been effective. However, in recent weeks, there have been several court cases where interested parties have been able to enjoin the Longshoremen from boycotting or failing to serve certain vessels engaged in the bilateral trade with the Soviet Union, and ships have moved to the Soviet Union with cargoes from the United States. However, the boycott in general has been very effective in the Atlantic and Gulf ports.

Mr. SANDS. Does the administration have a position on the ILA boycott?

Mr. NEMIROW. I think it's been reported in the press that the President has met with Mr. Gleason and indicated to him that measures at this time which exceed measures taken by the administration are not appropriate.

And that is the position of the administration at this particular time in our dealings with the Soviet Union. The actions taken by the administration have been and continue to be the appropriate ones.

Mr. SANDS. That meeting with the President was some 2 or 3 weeks ago?

Mr. NEMIROW. That's about the right time frame.

Mr. SANDS. Have there been any results from that meeting? I guess the answer is no.

Mr. NEMIROW. The answer is that I don't see any public change in the ILA's position with respect to the closure of ports.

Mr. SANDS. Does the administration have the legal tools available to deal with that boycott? And, if so, do they intend to use them?

Mr. NEMIROW. The administration has participated in the two or three cases that I am aware of where private parties have sought to enjoin the ILA from pursuing their boycott. That's the course of action that has been followed.

Mr. SANDS. Just to join private suits?

Mr. NEMIROW. That's the only course that I am familiar with. I have not been involved in all of the White House discussions on this in recent weeks. Any affirmative specific action that might have been considered or may now be in the process of being considered I am just not familiar with.

Mr. SANDS. Thank you very much. Thank you, Mr. Chairman.

Mr. WYATT. Thank you. Thank you, Mr. Nemirow. I appreciate very much, and sorry that you were delayed today in your testimony.

Mr. NEMIROW. Thank you.

Mr. WYATT. At this time I would like to call on Mr. Robert Barry, Deputy Assistant Secretary for European Affairs, the Department of State.

Mr. Barry, please proceed.

Mr. BARRY. Thank you, Mr. Chairman. I appreciate this opportunity to appear before your committee to give the Department's views on proposed Concurrent Resolution H. Con. Res. 269.

I appreciate the interest of this committee in reenforcing the measures the administration has taken to oppose the brutal Soviet invasion of Afghanistan and deter further Soviet aggression. We agree that Soviet actions against the sovereign nation of Afghanistan represent a grave violation of international law and a genuine threat to world peace. We appreciate the support expressed in the chairman's letter of January 8 to the President for the steps the President announced in his January 4 address to the Nation. The case I wish to make to you today is that these steps represent an effective response to the Soviet invasion and that the President's decision to stop short of abrogating existing agreements between the United States and the Soviet Union at this time is the correct one.

First let me summarize for you the steps we have taken so far.

We have halted the 17 million tons of grain sales to the Soviet Union in excess of the 8 million tons per year which are committed to sell under the terms of the U.S.-Soviet grains agreement.

We have halted sales of high technology or other strategic items requiring licenses for sale to the Soviet Union while our licensing policy is revised to tighten controls on exports of strategic goods. We are now consulting with our allies on these new controls.

We have announced our own intention not to participate in the Moscow Olympics and are working with others concerning the possibility of alternative games.

We have sharply curtailed Soviet fishing in U.S. waters, thus denying them some 365,000 tons of fish they would otherwise have been allocated.

We have reduced the number of flights by the Soviet airline Aeroflot to the United States from three per week to two per week.

We have suspended preparations for opening new consulates in New York and Kiev and arranged for the mutual withdrawal of the advance parties in those two cities preparing for the opening of consulates.

We have sharply reduced scientific and technical exchanges with the Soviet Union.

We have deferred bilateral negotiations with the Soviets on a number of topics including extension of our cultural exchanges agreement.

We have been working with the countries of the region with a view to improving their military and economic capabilities to resist outside aggression.

We are consulting with our western allies and with the countries in the region with the aim of improving our capabilities for projecting our military deterrent power into the region.

The President has declared that any attempt by an outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States—to be repelled by use of any means necessary, including military force.

We have called for sustained increase in the U.S. defense budget and are improving our capabilities to deploy U.S. forces rapidly to distant areas.

In all these areas, we have stayed in close touch with our allies with a view to a unified and coordinated response to Soviet aggression.

These are the major steps—political, economic, and military—which the President has decided that we should take in response to the Soviet invasion of Afghanistan. We believe that the Soviet leaders counted on a considerably less determined reaction and one which would quickly pass as happened in 1968 after the Soviet invasion of Czechoslovakia. They miscalculated badly. They will pay a concrete and lasting price for their aggression and will meet with firm resistance should they attempt to carry out similar steps elsewhere in the world.

At the same time we have chosen not to dismantle the structure of U.S.-Soviet relations created by the agreements which our countries have negotiated over the years. And while we have deferred Senate consideration of the SALT II agreement, we continue to believe that ratification is in our interest and we will observe the mutual constraints in both SALT treaties as long as the Soviets do the same.

It is against this background that the President has decided not to abrogate the U.S.-U.S.S.R. maritime agreement. We believe it is important to preserve the basic U.S.-Soviet technical arrangements we have negotiated in the past few years. We have thus not abrogated any of the formal agreements with the U.S.S.R., including the maritime agreement. Should Soviet actions in the future require qualitatively new American responses, this decision regarding the maritime agreement and other bilateral agreements between our countries would obviously have to be reviewed. We believe it is important to have steps in reserve which we can take in response to future challenges and we believe the maritime agreement properly fits into this category.

Thank you, Mr. Chairman.

Mr. WYATT. Thank you, Mr. Barry. I have one question that I am somewhat uninformed about. On page 2 you state: "We have announced our own intention not to participate in the Moscow Olympics and are working with others concerning the possibility of alternative games."

Wasn't a deadline set for that?

Mr. BARRY. Yes, Mr. Chairman, the deadline of February 20 for our own participation decision was set.

Mr. WYATT. Has that deadline been moved?

Mr. BARRY. No, sir, it has not.

Mr. WYATT. We are not going to participate in the Moscow games?

Mr. BARRY. That is correct. That is, the administration's position is that we should not participate in the Moscow games.

Mr. WYATT. Should not, not will not.

Mr. BARRY. Certainly we strongly urge the U.S. Olympic Committee not to have our athletes participate in the Moscow games. Our belief is that they will not participate in the Moscow games.

Mr. WYATT. Do you believe that the Soviets believe at this time that we will not participate in the Moscow games?

Mr. BARRY. I believe that is so, yes, Mr. Chairman.

Mr. WYATT. Has there been any comment from the Soviets in that regard?

Mr. BARRY. There has been a good deal of public comment, attacking our decision not to participate in the games, attempting to persuade other countries to participate, claiming that the United States is attempting to revive the cold war, and that kind of thing. It has not been a matter of diplomatic discourse between ourselves and the Soviet Union.

Mr. WYATT. Can you tell me how many countries have agreed not to participate in the games along with the United States at this time?

Mr. BARRY. Well, I think there are many countries where no firm decision has been made, and they don't like the idea of our announcing the decision for them. But I would guess there is somewhere in the area of 30 countries which I believe will probably not participate in the Moscow games at this point.

Mr. WYATT. How many have said that they will not?

Mr. BARRY. Well, it's not a question really of having to decide firmly now, because the invitations to participate in the Moscow Olympics do not have to be responded to until the 24th of May.

And I believe in fact that in many cases the invitations have not even been received yet.

Mr. WYATT. You say that 30 potentially will not?

Mr. BARRY. Roughly.

Mr. WYATT. How many have said that they will not?

Mr. BARRY. I couldn't answer that for you, Mr. Chairman; I could provide the answer to the record.

Mr. WYATT. Please comment on the impact port closure might have on the Soviets and on our relations with the Soviet Union.

Mr. BARRY. Well, I believe, as Mr. Nemirow has indicated, that as far as the economic impact of port closure on the Soviet Union, it would have a significant impact on their hard currency receipts. As far as the question of this in terms of our bilateral relations, I think any decision to step over the threshold of abrogating agreements between our two countries would have a serious effect on bilateral relations. It would mean that we ourselves have crossed a new threshold in terms of where we stand vis-a-vis the existing agreements between our countries. It would be a step considerably further and qualitatively different than any we have taken to date.

Mr. WYATT. Could you comment on the likelihood of retaliation should the President take the actions we are recommending, or that have been recommended.

Mr. BARRY. I believe it is likely that the Soviets would retaliate in terms of closing some Soviet ports and acting more or less in a tit-for-tat manner. As Mr. Nemirow indicated, that would not have any significant impact economically on the United States.

A more important question is whether the Soviet Union would, react by abrogating agreements between our two countries other than the maritime agreement, that is, respond in another field. I wouldn't be able to speculate as to whether they might in fact do that. I think it is something to be reckoned with.

Mr. WYATT. Could you give us an example of other agreements that you think might?

Mr. BARRY. Well, I would rather not just off the top of my head give an example—it might provide ideas that wouldn't otherwise be—

Mr. WYATT. All right. Certainly we don't want it said that we are telling them where they should go.

What effect do you think that port closure would have on existing U.S.-Soviet relations?

Mr. BARRY. It would, I think, certainly signify another worsening of U.S.-Soviet relations. I must say that U.S.-Soviet relations at the moment are not very good anyhow. And the reason for that is very clear; the reason for that is Soviet actions in Afghanistan.

At the same time we want to keep this framework for eventual cooperation in place as an incentive to Soviet withdrawal from Afghanistan; that is, we want to make it clear that provided the Soviets undo what they have done, that we are prepared to resume cooperation in the fields where we have done so before. It is for that reason that we have stopped short of abrogating agreements.

Mr. WYATT. Do I take it from your testimony, Mr. Barry, that in essence the administration has not broken or threatened to break any agreement that we have reached over the last many years

with the Soviet Union, that most actions that have been taken have been to I guess abrogate cooperative agreements.

Mr. BARRY. That is so in the case, for example, of the grain agreement that we have with the Soviet Union; we are obligated under the terms of the grain agreement to sell a minimum of 8 million tons of grain to the Soviet Union.

At the time that we decided to limit grain sales to the Soviet Union, we still had not delivered 8 million tons. However, we recognized our obligation to provide the minimum, the 8 million, but not the 17 million in excess of that.

In deciding against allocating fish to the Soviet Union under the various fisheries agreements, we stayed within the bounds of the bilateral agreements.

In cutting down the number of flights that the Soviet airline carries out to the United States, once again we did not violate the terms of the civil aviation agreement.

So the steps that we have taken, while they are very significant steps, have not gone into the area of having to terminate or abrogate or unilaterally violate formal agreements between the United States and the Soviet Union.

Mr. WYATT. I would like to go back to your first page of testimony and the second paragraph, "brutal Soviet invasion of Afghanistan and further Soviet aggression," that is the last part of the sentence in which you are talking about the measures the administration has taken to oppose the Soviet action. Further, you state that, "The Soviet action in Afghanistan is a grave violation of international law, a genuine threat to world peace. The President has said it is the gravest international crisis since the Berlin—"

Mr. BARRY. Since World War II.

Mr. WYATT. And yet we do not even threaten the termination of an agreement with the Soviet Union.

Mr. BARRY. Well, we believe that in fact the various agreements we have negotiated with the Soviet Union, taken as a whole, are mutually beneficial. We also do not exclude the possibility that, should there be something that the Soviets do, or something that calls for a new qualitative response, that we will take these steps. This is indeed a possibility.

At this stage, we believe that the Soviet Union miscalculated, did not appreciate the kind of response that would come from the United States, the West and the nonaligned world, and we believe it is still possible to see them carry out a withdrawal and, in fact, end up in a situation where we could resume the pattern of cooperation with them, basically in areas—we still believe it is essential to keep this communication, a pattern of agreements in place at the moment.

Mr. WYATT. We do consider the Soviet action in Afghanistan a complete violation of international law?

Mr. BARRY. We do.

Mr. WYATT. Are we at all concerned that the termination of an agreement would affect SALT II? I notice that you do bring that up in the last part of your testimony—that it could have an impact on SALT II.

Mr. BARRY. Mr. Chairman, I believe that SALT II is in the mutual interest of the United States and the Soviet Union. I do not

believe that the Soviet Union should have any interest in departing from this agreement either. At the same time, SALT II has not been ratified. It does not have the status of an international agreement. Unless it is acted on, unless it is ratified, the obligations that both sides have under international law is to act consistently with the provisions of the provisions of the agreement. But there is no formal obligation.

Mr. WYATT. I take it that your primary reason for discussing SALT II is to support your statement that past agreements with the Soviet Union have not been terminated and that SALT II, since it has not been ratified, is not equal to a termination?

Mr. BARRY. That is correct; yes.

Mr. WYATT. Do you have any knowledge of whether or not the Soviets will be able to substitute products they presently receive from the United States—high technology and others—with products from other nations?

Mr. BARRY. We believe that the new controls we put on exports to the Soviet Union to cover strategic goods would be ones that our allies would share and we would work through existing mechanisms to make sure that as many as possible of the allies agree with these controls.

However, I think there is a possibility that we will go further in our controls than some other countries are prepared to do. It is something we want to work closely with our allies to avoid to make sure they are not able to substitute.

Mr. WYATT. What is happening in the area of grain itself? Do you feel that the Soviets will have their grain supplies replaced by some American competitor which, of course, has concerned a number of American farmers?

Mr. BARRY. No, Mr. Chairman; I don't believe that is possible. Even were countries willing, for example, to make up the deficit, and many of our countries and many significant suppliers have agreed they will not step in to fill the gap, but the sale, the grain sales we made were largely corn. Corn is not something which is easily replaceable on the international market; and I think the various studies that have been made of this would indicate that although some of this may be made up through leakage, through some countries deciding to sell, through some shipments being diverted through third parties, there is no chance that even half as much could be made up and probably significantly less.

Mr. WYATT. You say one way would be through third-party sales. Are you talking about U.S. farmers—

Mr. BARRY. It could be U.S. grain. It could be some other countries and then shipped to another country and then shipped to the Soviet Union. That is a possibility.

Mr. WYATT. So you think at this time the grain embargo is having some impact on the Soviet Union?

Mr. BARRY. I know it is having some impact. It is having both a psychological impact and an economic impact. I think it is very interesting that when Brezhnev had an interview in the Soviet newspaper, Pravda, I believe it was, on the 29th of January, he made a point of saying to the Soviet people that, "I can assure you that what the Americans are doing will not lead to 1 kilogram less of bread." This was, of course, recognized by us when we put the

embargo on. What we are attempting to cut off is feed grain and not food grain.

But the fact that Brezhnev mentioned this I think was an indication that it was a well-known fact, and one which hurt both psychologically and economically.

Mr. WYATT. Can you tell us if the Soviet Union has put any new troops in Afghanistan in the past 10 days or 2 weeks?

Mr. BARRY. It is my belief that the Soviet Union is continuing to increase the number of its troops in Afghanistan and has done so in the last 10 days.

Mr. WYATT. Have they shown any inclination up to now to turn around on their invasion of Afghanistan and lessen their involvement?

Mr. BARRY. Certainly not in any of their actions.

Mr. WYATT. Would it be fair to say at this point that then all of the actions of the Government of the United States in regard to the Soviet invasion of Afghanistan have not been successful up to now?

Mr. BARRY. Up to now, I think that is correct. But as I pointed out in my statement, we believe that it is not only the impact of these sanctions initially but their duration, their ability to last for some time, which is going to create pressure on the Soviets to turn around and, in fact, withdraw. That was my reference to Czechoslovakia, because there the Western reaction was short. It passed over rather quickly.

So we believe that by making them pay a price and over time, there is a chance that it will have the desired affect.

Mr. WYATT. That is all the questions I have.

Mr. KYROS. Thank you, Mr. Chairman.

Mr. BARRY. I think you stated at one point that the United States should utilize these sanctions until the Soviets undo what they have done.

Mr. BARRY. I don't think that was the exact wording, but that was the idea.

Mr. KYROS. Are they going to resurrect the people they killed in Afghanistan?

Mr. BARRY. We have two very specific goals. One is Soviet withdrawal from Afghanistan and that means the withdrawal of all Soviet troops and the other is to deter other steps. It is true there can be no return to the status quo.

Mr. KYROS. Let me direct your attention to the maritime agreement, which is the subject of this hearing, particularly the part exclusive of the bilateral arrangements; that is, where the Soviet Merchant Marine has been able to penetrate our liner trades through cross trading.

Now I don't know what your perception is of the U.S.S.R. maritime agreement, but that was not a benefit that was initially conceived as arising from the agreement.

Would you agree with me on that?

Mr. BARRY. Yes, sir. I am not an expert on the U.S. maritime industry, but I believe that is what Mr. Nemirow indicated.

Mr. KYROS. I admire your candor, but the questions I am going to pursue and your view of the resolution really concern themselves with the maritime agreement and its effect.

Mr. Barry, you recall in my questioning of Mr. Nemirow, I pointed out that article 9 provided for termination of the agreement on 90 days written notice?

Mr. BARRY. Yes.

Mr. KYROS. Do you know why that provision was included?

Mr. BARRY. No, I do not. I do not know the history of the negotiating. I know this is a clause that occurs frequently in U.S.-Soviet agreements. It may occur in other maritime agreements, but I do not know about that.

Mr. KYROS. We have an international air agreement between us and the Soviets. Isn't that correct?

Mr. BARRY. Yes.

Mr. KYROS. When you reduce the number of flights by—from three per week to two per week, you change that agreement under what provision?

Mr. BARRY. We did not change the agreement. It happened that the airline-to-airline agreement involved Pan American Airlines and Aeroflot and was no longer in operation and the minimum frequency of two per week was still that called for in the 1973 protocol to the civil aviation agreement; and the reason we cut from three to two is because it did not involve abrogation of the treaty.

Mr. KYROS. You are aware that the ILA boycotted the east coast and the gulf ports against loading of Soviet vessels and, in fact, Soviet vessels cannot use the east and gulf coasts?

Mr. BARRY. That is correct.

Mr. KYROS. Do you know the situation on the west coast? Are they using our coasts there?

Mr. BARRY. They are.

Mr. KYROS. Do you know whether they are carrying liner cargoes in cross trades?

Mr. BARRY. Yes, they are.

Mr. KYROS. In the same amounts they were carrying it before the events in Afghanistan occurred?

Mr. BARRY. No; considerably reduced. I think the effects of the measures that the President has announced in his January 4 announcement, would sharply cut trade with the Soviet Union, this will inevitably have the effect of reducing bilateral cargo.

Mr. KYROS. We are not talking about bilateral cargo. I want you to focus, if you will, on the cross trades where the Soviet ships never touch the Soviet Union. They shuttle between the United States and other Western or Asian nations. In that case, then, you say that the cross trades have diminished in the Pacific? Does that mean that American shippers and Asian shippers are more loathe to use Soviet liner vessels?

Mr. BARRY. There seems to be some indication of that.

Mr. KYROS. Did you hear the figure of \$255 million in freight rates gained by the Soviet Union in 1978?

Mr. BARRY. I did.

Mr. KYROS. And do you know about their requirement for hard currency?

Mr. BARRY. I do.

Mr. KYROS. They need—what is their international debt? What is the Soviet Union's international debt?

Mr. BARRY. I don't have an idea offhand.

Mr. KYROS. Do you have a ballpark figure of several billion dollars?

Mr. BARRY. I think the figure is something like \$18 billion.

Mr. KYROS. \$18 billion?

Mr. BARRY. Yes.

Mr. KYROS. The Soviet Union does not borrow from the Export-Import Bank?

Mr. BARRY. It cannot.

Mr. KYROS. And no other international bank that makes soft loans to other countries that are friendly to the United States—

Mr. BARRY. Well, as a matter of fact, the Soviet Union is able to borrow on the private commercial market of the United States.

Mr. KYROS. I didn't mean private. I meant any of those Government supported banks.

Mr. BARRY. It does benefit from official government credits from most Western European countries which are similar to the U.S. Export-Import Bank credits.

Mr. KYROS. Do you know the amount of interest annually on their debt?

Mr. BARRY. It is relatively lower than it would be if the debt was accumulated in the last 2 or 3 years. As far as the debt service provisions, the banking community and the U.S. community feel there is really no problem as far as Soviet debt service is concerned.

Mr. KYROS. In any event, let's say 10 percent of \$20 billion; that is \$2 billion in debt service alone that the Soviet Union must meet annually.

Mr. BARRY. Yes. And I don't think anybody in the banking community feels there is a problem in their doing so.

Mr. KYROS. This debt cannot be paid in Soviet currency, rubles, or in East bloc currency, but in hard currency, deutschmarks, yen, or dollars; is that correct?

Mr. BARRY. Yes.

Mr. KYROS. So it is important for the Soviet Union to gain this hard currency?

Mr. BARRY. Yes.

Mr. KYROS. That is a compelling imperative.

Mr. BARRY. It is extremely important to them.

Mr. KYROS. And they gain, let's say, \$255 million in 1978 and probably around \$400 million in 1979?

Mr. BARRY. I will accept your figures.

Mr. KYROS. And now if those sums were cut off, even though we renegotiate the bilateral agreement on grain, then the Soviet Union would feel that loss pretty sharply?

Mr. BARRY. They would feel it, but I would anticipate they would have no trouble in continuing to service their debt.

Mr. KYROS. Let's see how that goes.

You replied earlier, to Mr. Wyatt's question, that we cut off certain items that we will not export to them and they may be difficult to get elsewhere.

Has France ceased trading with the Soviet Union?

Mr. BARRY. No, nor have we.

Mr. KYROS. Has France taken any similar steps?

Mr. BARRY. Yes, they have. In fact, they have given us commitments which they have lived up to so far as not to step in to make sales in areas where we have stopped sales.

Mr. KYROS. That was not my question.

Have they stopped their normal trading with the Soviet Union?

Mr. BARRY. They have changed some of their trading patterns.

Mr. KYROS. Name one item they have now refused to give the Soviet Union that they did before Afghanistan.

Mr. BARRY. There are cases where American companies have made sales, where the American company was going to withdraw from that sale and where a French company has agreed not to try to replace it.

Mr. KYROS. I meant in normal commercial intercourse between France and the Soviet Union. Can you name any item, technical item, agricultural, any single item that France is no longer exporting as a result of Afghanistan?

Mr. BARRY. No.

I know, for example, when it comes to grain, that France, together with its partners in the European community, have agreed not to make up the grain sales which we are holding back on.

Mr. KYROS. You told us that the European community has generally agreed not to step in specifically where the United States was providing goods but they have not stopped normal trading between their nations and the Soviet Union—

Mr. BARRY. No. We are consulting with them concerning new controls on strategic materials and we have not asked them to stop anything pending those consultations.

Mr. KYROS. When you ask another nation to do something negative in its trade with the Soviet Union, that European nation has to look long down the road and determine what is in its self-interest?

Mr. BARRY. Yes, indeed.

Mr. KYROS. Whereas, by using this resolution, the United States is taking action itself without asking its allies to take any detrimental steps of their own. We would be doing this unilaterally would we not, if we stopped cross trading?

Mr. BARRY. That would be true; but I assume that the Soviet Union would become more extensively involved in cross trading with other allies.

Mr. KYROS. That assumption, Mr. Barry, has broken down within it several other key assumptions.

For example, consider the cross trade between the European community and Japan: Why do Japanese shippers have to utilize Soviet liner vessels that would leave U.S. trades? They have an absolute right not to do so if they choose; isn't that a fact?

Mr. BARRY. That is true.

Mr. KYROS. And they might well—the Germans have liner fleets of their own; so do the French and the Japanese. They do not need to ship on any Soviet liner.

Mr. BARRY. No; they do not need to. My understanding is that they follow more or less a laissez-faire shipping policy.

Mr. KYROS. Your understanding is in disagreement with several of our understandings along this line and about cargo reservation policies that either expressly or implicitly apply.

In any event, the Soviets would have to dump their cargo ships elsewhere and other foreign shippers would have to ship on them in order for them to gain the same hard currency?

Mr. BARRY. True.

Mr. KYROS. Are you aware of any shortage of liner capacity in our trades that would have to be made up by the Soviets?

Mr. BARRY. I would not be enough of an expert to be able to say.

Mr. KYROS. Under the current agreement, the Soviets have a right to visit 40 of our ports on 4 days' notice. We actually only visit several of their ports on 4 days' notice.

Mr. BARRY. Right.

Mr. KYROS. They have also sought on 14 days notice a request to visit 59 nonagreement ports?

Mr. BARRY. I didn't hear the figure.

Mr. KYROS. Fifty-nine, around that figure; is that correct?

Mr. BARRY. I presume so. I don't know the figures.

Mr. KYROS. So they are capable of going to 99 of our ports. Is that correct?

Mr. BARRY. I don't know.

Mr. KYROS. That means—do you understand that that means the Soviet Union now, exclusive of the bilateral trade and in our cross trades, the Soviet Union is able to ship under Soviet flags throughout the world, and call at 99 of our ports? Are you aware of that?

Mr. BARRY. Yes.

Mr. KYROS. You realize, of course, that being able to expand your merchant fleet throughout the entire world is a source of great maritime strength; is it not?

Mr. BARRY. Yes.

Mr. KYROS. And as a matter of fact, it is a source of power, of military strength, is it not?

Mr. BARRY. Yes.

Mr. KYROS. We have been advised that the Soviet merchant fleet has a close working relationship with its naval fleet certainly much closer than our merchant fleet has—is that correct?

Mr. BARRY. Yes.

Mr. KYROS. So why would it not be an excellent idea to single out the cross trades part of this agreement and abrogate that and then go back in due course, if events change in Afghanistan, and negotiate a simple bilateral agreement? Why is that so difficult? Why is that not a perfectly sound objective to pursue at this time?

Mr. BARRY. I have to go back to the original premise; and that is that we have, as a matter of policy, decided that we do not want to get into the area of abrogating bilateral agreements with the Soviet Union. I am not excluding this for the future, but for the moment. That is the decision that the President has made. I think this is the correct decision, because it does not foreclose options for the future.

But it keeps the framework we have in place for the future as well as being a way of avoiding things from becoming unraveled.

Mr. KYROS. You keep saying "abrogate" the agreement. We are saying "utilize" the agreement.

Section 9 provides that on a 90-day written notice, either party has a right to terminate. You are not breaking your word or the

agreement. You are carrying it out because of compelling exogenous circumstances.

Mr. BARRY. I thought you used the word "abrogate."

Mr. KYROS. You say in your statement, "We should not abrogate or break our bilateral agreement." You have not done it yet. But here I say utilization of article 9 in the provisions of the agreement is in keeping with the agreement.

Mr. BARRY. But it is because that calls for abrogation.

Mr. KYROS. It says "terminate" not "abrogate."

Mr. BARRY. We have decided not to terminate.

Mr. KYROS. Certainly, you would not be breaking the agreement, would you? You would be following the termination clause. You would do it on 90-days notice, as it calls for.

What advice did you receive from the Department of Commerce in regard to the termination of this agreement?

Mr. BARRY. I am not aware of what advice we received from the Department of Commerce.

Mr. KYROS. Did you consult with Commerce?

Mr. BARRY. I personally did not.

Mr. KYROS. I am not talking about you. I am talking about the State Department.

Mr. BARRY. I don't know.

Mr. KYROS. You are representing the State Department?

Mr. BARRY. That is correct.

Mr. KYROS. Did they have any consultations with Commerce?

Mr. BARRY. There were a series of meetings that were held in the White House involving representatives of the various interested Government agencies. I was not at those meetings and I am not aware of what transpired between the people that were there.

Mr. KYROS. Do you know what the projected growth of the Soviet liner share would be in the U.S. trades for the year 1980, in dollars?

Mr. BARRY. No; I do not.

Mr. KYROS. Would it be \$600 million?

Mr. BARRY. I am not aware of the figure.

Mr. KYROS. You have no way of saying that that might be an incorrect figure?

Mr. BARRY. I could try to get the information for you for the record.

Mr. KYROS. Isn't that a tremendous sum, to make available to ships—ships that never touch the shores of the Soviet Union?

Mr. BARRY. I don't know if those figures are correct. If it were correct, it would be enormous.

Mr. KYROS. Have you studied the capacity of American liners in their own trade, in the U.S. foreign trade?

Mr. BARRY. No.

Mr. KYROS. Does it concern you?

Mr. BARRY. It concerns me as a general proposition; yes.

Mr. KYROS. Thank you.

No further questions.

Mr. WYATT. I have about 3 or 4 minutes.

Mr. SANDS. Is the administration opposed to the ILA boycott of Soviet ships?

Mr. BARRY. The administration has filed a suggestion of interest indicating that it believes that the decision as to what response we make to the Soviet invasion of Afghanistan is one for the President to make and not for the trade unions.

Mr. SANDS. Does that mean that the administration is opposed to the ILA boycott?

Mr. BARRY. Yes.

Mr. SANDS. Is there any intention to do anything except joining in private suits?

Mr. BARRY. Not at this point; no.

Mr. SANDS. One other question.

Do you know what the trade balance is between the Soviet Union and the United States?

Mr. BARRY. I do, by chance.

In 1979, U.S. exports amounted to \$3.6 billion. U.S. imports from the Soviet Union amounted to \$873 million. A total trade both ways of \$4.5 billion, roughly.

Mr. SANDS. And those figures are trade in goods and services?

Mr. BARRY. I believe that is correct.

Mr. SANDS. No other questions.

Mr. BARRY. This is just goods. It does not include services.

Mr. SANDS. Thank you.

Mr. WYATT. I do not believe there are any further questions.

Thank you for appearing before the committee.

The committee will be in recess for about 10 minutes.

[Brief recess.]

Mr. WYATT. The committee will come to order.

At this time, I would like to call Mr. James Siena, Deputy Assistant Secretary of Defense for European Affairs of the Department of Defense.

STATEMENT OF JAMES V. SIENA, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR EUROPEAN AFFAIRS

Mr. SIENA. I welcome the opportunity to appear before this committee to comment on the national security implications of terminating the marine agreement between the United States and the U.S.S.R. I wish first to associate myself with the remarks and conclusions of Mr. Barry.

Mr. WYATT. Can I interrupt you?

Could you state your name?

Mr. SIENA. James Siena.

My comments will address briefly the military role played by the Soviet merchant fleet and the likely impact which closing U.S. ports to Soviet merchant ships would have on broader Soviet military policy. Let me take the last point first.

The military value derived from the Soviet maritime fleet would not be substantially affected by closing U.S. ports to Soviet ships. Abrogating or terminating the maritime agreement would complicate the Soviets' worldwide deployment of their merchant ships as military support vessels, since they could no longer rely with any certitude on access to U.S. ports on either coast. However, the Soviets still could continue their efforts with little real impact on their military functions.

Let me point out further that the port access granted under the agreement was and is determined with national security in mind, and in the judgment of our military and intelligence authorities, the agreement does not jeopardize our security interests.

Let me turn briefly to the committee's request for discussion of the military role played by the merchant fleet.

The Soviet merchant fleet directly supports the Soviet military in several ways:

It provides a readily available worldwide transport capacity for military personnel and equipment. The passenger ships are used to move military personnel, and can provide berthing and messing facilities;

It participates in Soviet naval operations, and exercises. A substantial amount of Soviet naval ship replenishment and refueling is accomplished by merchant ships. To equip them for refueling operations, Soviet merchant ships are sometimes given an extra 60 days' supply of fuel in their ballast and bunker tanks. Soviet merchant ships often take part in Soviet naval exercises, either in routine or emergency situations, and have done so while in the course of commercial transit;

Soviet merchant ship crews train for military activities. To help prepare merchant crews for military roles, each of the 16 Soviet merchant shipping companies has assigned to it a naval team of about 20 persons headed by an admiral. Soviet naval radio operators sometimes are stationed on merchant ships. Teams of Soviet naval personnel are also sometimes assigned to merchant ships;

Finally, the fleet could be useful for intelligence collection. On merchant ships themselves, evidence of possible intelligence collection and transmission equipment has been noted, such as satellite communication facilities, unusual bow protrusions, and extra radio rooms.

In all their military-related operations, Soviet merchant ships have the advantage of being able to carry out military missions while conducting normal merchant shipping operations.

In open warfare, merchant ships could also be used to interdict allied shipping routes, for example, by laying mines.

In addition, the design of many merchant fleet ships makes it relatively easy to fit them with arms, and the similarity of their operating practices to Soviet naval procedures, which I noted above, helps insure that crews could rapidly adapt to wartime functions.

Thus, while the development and activities of the Soviet merchant marine is of general concern to the Department of Defense, we do not see that as particularly dependent on access to U.S. ports.

In short, at present, we see no military costs or benefits sufficient to advocate abrogating or terminating the United States-Soviet Maritime Agreement.

That is the completion of my prepared statement, Mr. Chairman.

Mr. WYATT. Could you detail the military role played by the merchant fleet of the U.S.S.R., in regard to what role the merchant fleet plays in supplying and resupplying troops in Cuba?

Mr. SIENA. My understanding is that it is the principal source of supply and resupply to Soviet forces overseas.

Mr. WYATT. Would they utilize U.S. ports either before or after their docking in Cuban ports?

Mr. SIENA. I believe they do.

Mr. WYATT. With regularity?

Mr. SIENA. I cannot say whether it is with regularity. It is not uncommon.

Mr. WYATT. If it is important for them to utilize U.S. ports, they would have to either find other ports in this hemisphere or return to Europe or elsewhere empty?

Mr. SIENA. It does provide a financial benefit on the return voyage.

Mr. WYATT. Financial?

Mr. SIENA. Financial.

Mr. WYATT. In other words, they could take supplies to Cuba, stop off in Corpus Christi and take on cargo and have that trip paid for by U.S. interests?

Mr. SIENA. Yes, sir.

Mr. WYATT. And you know of that to have happened and you do know that this happens?

Mr. SIENA. I believe it does.

Mr. WYATT. Can you tell us with what kind of regularity?

Mr. SIENA. I do not have that with me. I could provide that for the record.

Mr. WYATT. Would you?

Mr. SIENA. Yes; I will.

[The information is confidential in content and consequently was placed in the subcommittee files.]

Mr. WYATT. Would the Soviets be able to perform this task as effectively if their vessels were not presently engaged in the U.S. foreign and international cross trades?

Mr. SIENA. I don't know whether they would perform them as effectively. If by "effectively," you mean whether the supplies would get through, I believe they would.

Mr. WYATT. But at some greater cost?

Mr. SIENA. It would be some greater cost.

Mr. WYATT. Could you document some information for the committee of that kind, since you are going to give us some further information in regards to Cuba?

How many of their ships would utilize American ports after going to Cuba, et cetera?

Mr. SIENA. Yes, sir; we will do our best.

Mr. WYATT. You alluded to the fact that the Soviet merchant marine fleet performs maneuvers with the Soviet Navy.

Could you detail any of the maneuvering the fleet engages in?

Mr. SIENA. The Soviet fleet?

Mr. WYATT. The merchant marine fleet.

Mr. SIENA. The principal function of the merchant marine fleet in maneuvering is to provide replenishment and resupply.

Mr. WYATT. To the Soviet Union?

Mr. SIENA. To the Soviet Navy ships; yes, sir.

Mr. WYATT. How do we perform that function with our ships?

Mr. SIENA. With U.S. Navy ships?

So far as I am aware, at least in peacetime.

Mr. WYATT. As the Soviets have developed a blue water navy, do you see the Soviets going in the direction of providing their own resupply ships within the Navy, or is the Soviet merchant marine such an integral part of the operation of the Soviet Navy that it would not be necessary?

Mr. SIENA. They do have supply and provisioning of ships and tankers, as does any other navy. I suppose the number is smaller because they do have access to the merchant shipping; that is to say, they do not depend entirely on the Soviet merchant marine for resupply and replenishment.

Mr. WYATT. Could you tell us the amount of dependence the Soviet Union has on its merchant fleet, versus the amount of dependence we have on our merchant fleet?

Mr. SIENA. About 50 percent of the fuel resupplies for the Soviet Navy comes from the merchant fleet. We have less from estimates of the replenishment and resupply of nonfuel items to the fleet. The Soviet merchant fleet also moved armaments in the 1973 conflict in the Middle East, a major factor in that sort of thing.

Mr. WYATT. They moved armaments?

Mr. SIENA. Yes.

Mr. WYATT. Are they moving any to Afghanistan, for instance?

Mr. SIENA. I very much doubt it. It is much easier to take it overland.

Mr. WYATT. And you said in 1973 they moved it where?

Mr. SIENA. To the Middle East.

Mr. WYATT. Could you compare their dependence on their merchant marine fleet for fuel, versus our dependence on our merchant marine fleet?

Mr. SIENA. I am sorry; I am not familiar with our relationship between our merchant marine and our Navy in that respect.

Mr. WYATT. Would you say we have a lesser dependence?

Mr. SIENA. That would be my understanding; yes.

Mr. WYATT. A much lesser dependence?

Mr. SIENA. Yes.

Mr. WYATT. Do you think there would be any kind of military retaliation or other retaliation should the President close the ports of the United States to Russian ships?

Mr. SIENA. I am not competent to speak to the question of other retaliation, Mr. Chairman I cannot at the moment think of any likely military retaliation.

Mr. WYATT. Do you think it would have any impact on Soviet military policy should we close the ports of the United States?

Mr. SIENA. I very much doubt that.

Mr. WYATT. No impact, or no impact that we would perceive?

Mr. SIENA. If it were made more expensive to resupply the Soviet forces in Cuba by denying Soviet ships to pick up goods in the United States for the return of transients, that would be an impact.

I think in terms of the total Soviet defense budget, that would be almost a trivial impact. I think in terms of their willingness to support their forces, there would be no impact whatsoever.

Mr. WYATT. What about Soviet conduct? Do you think there would be any change in Soviet conduct if we threatened denial of access to our ports?

Mr. SIENA. Is this conduct in the military sphere, or as a general proposition?

Mr. WYATT. I would say a general proposition, and specifically, military.

Mr. SIENA. I am hard pressed to imagine how this could affect Soviet military conduct. Nor to the extent that I am competent to testify on the larger question you put, I imagine that would be—standing by itself, that this would have a notable impact.

Mr. WYATT. What do you think would be the effect of a sanction?

Mr. SIENA. I am simply not prepared to say from my perspective.

Mr. WYATT. Were you involved in the recommendations to the President regarding sanctions to be taken against the Soviet Union for their activities in Afghanistan?

Mr. SIENA. In some respects I was involved in developing some of the Defense Department positions.

Mr. WYATT. At any time, was the closing and denial of access to ports of the United States a factor or a part of the discussion on sanctions?

Mr. SIENA. As Mr. Barry testified, this matter was discussed at the White House. As I have said, the judgment of the military and intelligence authorities is this is not a matter with significant security implications.

Mr. WYATT. A matter of security implications?

Mr. SIENA. Right.

Mr. WYATT. In 1962, in the Cuban missile crisis, didn't we at that time threaten and in fact put in place a blockade of Cuba and state that we would turn away all Soviet ships carrying missiles to Cuba?

Mr. SIENA. I believe we did, but you are straining my recollection, sir.

Mr. WYATT. I am straining mine, too.

Do you recall that we threatened at that time to turn away all Soviet ships or was it strictly Soviet ships with military equipment?

Mr. SIENA. My recollection, Mr. Chairman—and it is not one to be trusted too far going back that far—is that we indicated an intention to turn away ships carrying military equipment. I don't recall whether we indicated an intention to deal with ships carrying anything else.

Mr. WYATT. You may have some help behind you.

Mr. SIENA. I am informed it is strictly military.

Mr. WYATT. Was that equipment being carried by the Soviet merchant marine?

Mr. SIENA. Soviet merchant marine vessels.

Mr. WYATT. Do you recall if during that time it was part of the U.S. response to the Cuban missile threat that we stated that this country reserved a right to search all ships on the high seas if we consider that it may have military equipment on board?

Mr. SIENA. I believe we asserted the right to do that, but never were compelled to deliver on that assertion because the ships turned around and went home.

Mr. WYATT. They also slowed down?

Mr. SIENA. I remember several days; yes.

Mr. WYATT. And either circled or stopped.

As a representative of the Defense Department, do you think that the response of the United States in 1980 to the Soviet invasion of Afghanistan and the response of the United States in 1962 in regard to the Cuban missile crisis in terms of firmness and the utilization of the resolve of this Nation, can be compared? Or do you think the circumstances are so different that it does not allow a comparison?

Mr. SIENA. The circumstances are powerfully different, as your question suggests. I believe that we have taken in this case, as we did in that case, the steps necessary as the situation appears to us at this time to signal our reaction to this event and our intentions should future similar events occur.

Mr. WYATT. Personally, I have great problems in reading headlines and attempting to ask questions because, from personal experience, I know that headlines can somehow be misleading.

However, walking back from the building, I noticed that there is a headline which states, "Afghanistan Government Falling Apart, Martial Law Declared in Kabul," and it appears that a complete Soviet takeover, from reading that headline, is imminent or has happened.

Using this as a significant difference from where we were a week ago, and in regard to a crisis, I think this is the gravest threat since the Berlin blockage, or since World War II. We might take another look at our policy and our steps. I just question—and I guess what I am getting to—is whether stopping our Olympians is equivalent to putting a blockage around Cuba and saying, "You are not going to come in."

From the perspective of the Department of Defense, I must ask the question: Do you think that our response has been strong enough?

Mr. SIENA. Yes, sir, I do.

Mr. WYATT. If that is the case, what do you think the response of the Defense Department should have been in 1962 when Russian missiles were headed toward Cuba?

Mr. SIENA. I think the response in 1962 was the right response also; and it was successful.

Mr. WYATT. Well, I thought it was right because it was successful. I really question, as I see apparently an even firmer Soviet resolve to stop defense in Afghanistan, to see whether our current policies are either right or successful.

I wonder whether we in Congress should not go forward with House Concurrent Resolution 269 because it does not appear that threatening to withhold our athletes from the summer Olympics or reducing the amount of ballet companies that transfer between the two countries will be effective. I wonder if there is the same kind of firmness in our actions thus far that we have shown in the past for what is perceived to be today a much greater crisis.

Mr. SIENA. Let me say, Mr. Chairman, the Soviet missiles in Cuba, while they posed a serious threat, a most serious threat, had the virtue, if you will—it was a situation one could deal with quite directly and that is to say, get them out. One had the means readily at hand to compel the Soviet. to do that. The situation in Afghanistan is a much more difficult situation in terms of the

geography, the proximity to the Soviet Union, the regional situation generally.

The steps the chairman has mentioned are only part—only a few of the steps we have taken. I think the grain embargo was a quite a significant step; and I think it was seen as that not only by the Soviets, but by a lot of people elsewhere in the world.

I think the moves we are taking on technology transfer should have an impact over time. We are also proceeding in NATO to examine possible military responses to be taken by the alliance and by the allies as a whole. Those things obviously do not move as rapidly as other steps because one does not change one's military budget or undertake a new direction in one's military budget, particularly in an alliance of 15 nations with quite the speed with which we have done thus far unilaterally.

But I think the returns are not yet in on the initial phase and, as I said, the situation remains under review and some of the options which we have yet to see may be called upon if the developments continue to turn in an adverse way.

Mr. WYATT. That is all the questions I have at this time.

Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman. First, almost as a procedural matter, you say on the last page of your statement—your last sentence reads, "In short, at present we see no military costs or benefits sufficient to advocate abrogating the United States-Soviet maritime agreement."

By "abrogating," you do not mean breaking, do you?

Mr. SIENA. When I said that, I said "abrogating" or "terminating."

Mr. CUNNINGHAM. You say on the first page, in your second paragraph, that there are complications that would result to the Soviet's deployment of emerging ships as a result of the President's adopting the recommendation that this resolution speaks to.

Are you then saying that the complication would not have any impact on that fleet's military value? It seems a little incongruous in that one paragraph, your statement on abrogating would complicate the Soviets' worldwide deployment. However, the Soviets still could continue their efforts with little real impact.

Could you clarify that?

Mr. SIENA. Yes.

As I suggested in an earlier exchange, if by closing the U.S. ports it was made somewhat more costly for the Soviets to deploy their ships in support of the naval fleet, by virtue of their inability to pick up cargo in U.S. ports on return from ships to Cuba or under other circumstances, I see nothing in Soviet behavior to suggest that when it comes to an important military function they would diminish their activities.

I do believe, based on the figures I have seen, that in terms of their total defense effort, it would be—would have a trivial impact on costs.

As consequential as the Sun standing by itself in terms of total military budget, I don't think it would be a bad budget impact.

Mr. CUNNINGHAM. Despite the economic impact that your colleague from MarAd and the State Department agree closing our

ports could well have, you don't see that impacting on the military status of the Soviet fleet at all?

Mr. SIENA. The economic impact being the loss of the cross trades?

Mr. CUNNINGHAM. Yes, and bilateral.

Mr. SIENA. In terms of the revenue to the Soviet fleet?

Mr. CUNNINGHAM. Yes, sir.

Mr. SIENA. I would hazard a guess.

I don't have the Soviet naval budget in front of me. It is a very insignificant part of the Soviet naval budget, and I cannot imagine that the Soviet naval planners would diminish their intentions because of that impact.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. KYROS. You state in your statement in detail that the Soviet merchant fleet directly supports the Soviet military.

Mr. SIENA. Yes.

Mr. KYROS. And to have a merchant fleet such as the Soviet merchant fleet—it operates worldwide; is that correct?

Mr. SIENA. Yes.

Mr. KYROS. And part of that operating worldwide is the facility it has in coming into the U.S. ports and engaging in U.S. trade?

Mr. SIENA. Yes.

Mr. KYROS. From which it gains anywhere from \$250 million in 1978, to anywhere up to \$3, \$4, \$5 hundred million presently, at the current rate of growth; is that correct?

Mr. SIENA. Yes, sir.

I am not familiar with the figures.

Mr. KYROS. You realize that the Soviets cross-trading activities, which parallel the growth of the liner fleet we are talking about is a different phenomenon than the bulker fleet, which is also part of the maritime agreement?

Mr. SIENA. Yes.

Mr. KYROS. As a matter of fact, the Soviets charter foreign tonnage to carry part of their grain because the Soviets, like any mercantile nation, obtain ships at the lowest cost. Sometimes it is cheaper to charter a foreign vessel to carry their portion than it is to carry it themselves?

Mr. SIENA. Yes.

Mr. KYROS. So what I ask you to focus on is the primary Soviet merchant fleet, the containerized, general cargo fleet. That is the fleet you depicted as being the main adjunct to their Navy?

Mr. SIENA. Yes.

Mr. KYROS. And the Soviets have brandnew roll-on roll-off vessels?

Mr. SIENA. Yes.

Mr. KYROS. Their containerships can be made to carry containerized military cargoes.

Would it not, if the United States did not have an agreement with the Soviet Union so they could utilize our ports for cross trades, would that not diminish their ability to project that Soviet merchant fleet throughout the world?

Mr. SIENA. The only impact I can see is that it would—could and possibly would make it somewhat more expensive to move those ships out.

Mr. KYROS. I think that is a very reasonable judgment.

For example, if they were carrying material to Cuba, just in the normal Socialist trade, their trade where they carry supplies to Cuba, their backhaul would have to be low rated cargo such as tobacco, it would not be manufactured goods from Corpus Cristi or New Orleans. So we could make it more expensive to operate that fleet.

Mr. SIENA. I am not familiar with the industry or the trade patterns. I don't know whether it would be possible for those ships, as Mr. Nimerow testified, to go down and pick up cargo in Latin America.

Mr. KYROS. Not very likely. They have not broken into those trades yet.

I am suggesting that since you have those lucrative American trades you can penetrate into then you do not have to go searching for trade in other areas. If you did not have them available, the projection of their fleet would be more costly and would be somewhat hindered.

Mr. SIENA. More costly I can understand. Hindered, I don't see anything, as I said, in Soviet behavior when it comes to defense spending, that suggests they would not bear the costs.

Mr. KYROS. Even our country is limited in what it can spend. Every time you spend that dollar, it means something to you defensewise.

Mr. SIENA. Yes.

Mr. KYROS. The Defense Department does not get every dollar it wants.

Mr. SIENA. No, sir.

Mr. KYROS. And every year they want more money, and I don't see why the Soviets are in a different boat than we are. Your testimony is that from a military standpoint, port access is not an absolute necessity for the Soviet fleet.

Your testimony is based on the military bases only in regard to the resolution?

Mr. SIENA. Yes, sir.

Mr. KYROS. I have no further questions.

Thank you, Mr. Siena.

Mr. WYATT. I have one quick question.

Does the Soviet merchant fleet deliver Russian troops to Cuba?

Mr. SIENA. I don't know the answer to that question.

Mr. WYATT. Is it highly possible?

Mr. SIENA. It is possible. We have seen the Soviet merchant fleet used in troop movements. But it is not always the case.

Mr. WYATT. Could you get that information for the committee?

Mr. SIENA. I will try.

Mr. WYATT. Thank you very much.

[The information was confidential in content and consequently was placed in the files of the subcommittee.]

Mr. WYATT. The committee will recess again for 10 minutes.
[Brief recess.]

Mr. WYATT. The committee is in order.

Our last witness will be Mr. Ronald Brinson, executive vice president of the American Association of Port Authorities.

STATEMENT OF RONALD BRINSON, EXECUTIVE VICE
PRESIDENT, AMERICAN ASSOCIATION OF PORT AUTHORITIES

Mr. BRINSON. Mr. Chairman, thank you.

Just in the way of background, the American Association of Port Authorities represent virtually all public seaport authorities in the United States, as well as most of the ports in Canada, and throughout Latin America and the Caribbean.

We appreciate the opportunity to comment on the action proposed in this resolution. Virtually all of the U.S. ports open to Soviet vessel calls are represented in the membership of our association.

AAPA is probably the oldest international conference of seaports in the world, having been founded in 1912. One of the positions espoused continuously through the years has been the seaport industry's firm belief in free and open trade.

As this committee realizes, Mr. Chairman, U.S. seaports are operated by local or State authorities. Our ports are the hubs of the country's multiphasic maritime industry, the common points of reference for all functions of oceanborne transportation. Together, this system of non-Federal competitive seaport entities is the national seaport system of the United States. And I can tell you that our ports take pride in serving the fleets of the world.

We believe that it can fairly be said that our ports are operated in the national interest as world ports, serving international shipping. A major part of our mission is to foster and to service international oceanborne commerce. It is in this context that the Russian interests in recent years have become active, paying customers at many of our ports.

Although our ports are directly involved in foreign commerce, we naturally look to the proper segments of national leadership for the formulation of foreign policy. The consensus position of the U.S. seaport industry to the question of closing all U.S. ports to Russian vessels turns on the question of national interest, and a determination of national interest.

If the Nation's leadership deems that such sanctions are in the best interest of the United States, the management of the seaports involved stand ready to cooperate and do everything possible to minimize impacts which would result.

Our seaport managers have become astute observers of the Soviet merchant fleet and its ambitious growth in recent years.

We are aware of the growing Russian influence in many trade routes. Since the institution of the United States-Soviet maritime agreement, the level of cargo tonnage moving on Soviet vessels into and out of U.S. ports has reached volumes which suggest that a termination of service would create certain impacts.

Certainly, there would be a loss of revenues to the ports involved. Russian-flag ocean carriers moved 2,068,400 tons in the U.S. liner trades in 1978, or 3.5 percent of the U.S. total—54,603,000 long tons. Nonbilateral traffic accounted for 1,900,000 long tons, or 92 percent, of the cargoes carried in or out of U.S. ports by Soviet-flag ships that year.

Only 8 percent, 168,400 long tons, moved bilaterally between United States and Soviet ports. Expressed in terms of value, \$2.9

billion of \$3 billion in cargoes handled by Soviet-flag vessels at U.S. ports in 1978 were moving in the nonbilateral trades.

Regarding United States-Soviet bilateral trade, both liner and nonliner, bulk commodities—grain, particularly—make up more than 75 percent of U.S. oceanborne exports to the Soviet Union.

Other commodities include petroleum chemicals, fresh vegetables, iron and steel strips and tubes, agricultural machinery, road-building machines, and telecommunications equipment.

U.S. waterborne imports from the Soviet Union include manufactured fertilizers, alcoholic beverages, hides and skins, nonferrous ores, woods, veneers and paper products, nickel and nickel alloys, inorganic chemicals, and some other raw materials.

One result of excluding Russian ships from U.S. ports would be short-term operational problems revolving around what we would consider the ultimate movement of the cargoes which would be, of course, a paramount concern.

We know that the Russians are principally involved in the cross-trades, providing third-flag carriage. We believe that any fair analysis would show that alternate service would be available at most ports for the trades the Russians have penetrated, if indeed our ports were closed to the Russians.

A notable exception to this is the western Great Lakes ports where the only liner service for the North Atlantic trade routes is provided by the Soviets.

Several U.S. ports would also be concerned about diversion of the affected cargoes to Canadian ports where Soviet service would likely continue.

At ports with significant Russian liner service, some jobs would likely be lost. Many agency and related operations are geared up for Soviet vessel movements, primarily. The number of such jobs likely would be relatively small, but those involved would, of course, be affected in a very deep and personal way.

Clearly, the ability to call at U.S. ports is important to the Russians program of gaining business in the world's major trade routes. Against this reality, we in the seaport industry understand that this proposed action is an option to be considered in terms of a response to the excesses of the Soviets international behavior.

Again, Mr. Chairman, if it is determined that the best interest of the United States dictates that this action be taken, our Nation can depend on its seaports to support it and cooperate fully.

Thank you.

Mr. WYATT. Can you describe the economic impact port closure will have on American ports? Would you be more specific? I think you addressed the point somewhat.

Mr. BRINSON. We are talking about eliminating approximately 4 percent of the liner cargo.

Four percent is a minimum impact to be considered, particularly in view of the fact that this cargo is likely to move anyway. Now, the economic impact, of course, the negative economic impact would relate to what sort of difficulties you would have in moving that cargo. I say again I think any fair appraisal would indicate there is enough alternative service that would make sure that the cargo would ultimately get to its destination.

Mr. WYATT. Would you tell us which U.S. ports have the greatest number of callings by Soviet-flag ships?

Mr. BRINSON. I would say it would be very close between Baltimore and New Orleans. Baltimore had 198 liner calls during the first 9 months of 1979, 50 charters bearing that hammer and sickle. That is roughly 250 in a 9-month period. That was about 685,000 tons of cargo and another 50,000 tons moving on the minibridge.

The Port of New Orleans Authority itself handled approximately \$1.2 million. That does not reflect the total Russian involvement in that area, though, because many of the bigger grain elevators are upriver from the New Orleans terminals.

By comparison, New York, in the last reporting year, handled about 250,000 tons, of which 75 percent was in the cross trades. The Port of Long Beach last year had 97 sailings, handling 665,000 tons. One member of the staff reported to us last week that if their port was closed to Soviet vessel movement totally, and the cargoes did not otherwise move, then they would be talking about a \$25 million impact, \$25 million over a 12-month period.

To summarize that point, Mr. Chairman, I think that the ultimate negative economic impact would be diffused somewhat by the reality that the cargo would likely move anyway.

Mr. WYATT. Would your organization support a resolution asking member ports outside the United States to join with U.S. ports in boycotting Soviet-flag shipping?

Mr. BRINSON. If it was determined to be in the best interests of this country, we would, sir; and we would do it with great commitment.

Mr. WYATT. Do you think the Congress passing this resolution would determine if it was in the best interests of the United States, to your satisfaction?

Mr. BRINSON. Mr. Chairman, I am sure that you will understand that we choose not to be in the business of formulating international policy. We are involved in international business. We take on all customers consistent with foreign policy. At the same time, we can understand why this would be considered legitimately an option in reaction to the Soviet invasion of Afghanistan.

Mr. WYATT. Can you tell us which terminal operators, if any, rely substantially on Soviet shipping?

Mr. BRINSON. Not specifically. But I can tell you that they do.

Mr. WYATT. At the present time, many of our imports are carried in Soviet bottoms.

Do you foresee these goods being transferred to third-flag bottoms for U.S. ports?

Mr. BRINSON. If U.S. ports were closed to the movement on Soviet bottoms, I think they would; yes, sir.

Mr. WYATT. Those are all the questions I have.

Do members of the staff have questions?

Mr. KYROS. Just one question.

I take it from your testimony—you explained that except for the Western Great Lakes ports, there is no particular impact to the ports because other ships will be carrying cargo anyway, and ports will utilize their normal port facilities.

Mr. BRINSON. I think that is a reasonable assumption. There would be temporary operational problems, cargo already at the

ports, cargo in transit. But I think you can reasonably assume that ultimately that cargo will reach its destination.

Mr. KYROS. Actually, the ILA boycott of the east coast and the gulf has already done part of dislocation, hasn't it?

Mr. BRINSON. It has.

Mr. KYROS. Also, isn't west coast Soviet shipping—Soviet shipping on our west coast slowing down because U.S. shippers are now less likely to patronize the Soviets in cross trading?

Mr. BRINSON. I share that understanding. Not only shippers in this country, but shippers throughout the world.

Mr. KYROS. Thank you very much.

Mr. WYATT. Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman. Let me bring to your attention the fact that Mr. Brinson was associated with the South Carolina State Port Authority before working at the AAPA and while there, he had the opportunity to closely research the closing of the port of Charleston to Soviet-flag vessels.

While in that role, I understand that you were a part of a top-secret briefing on the dual role of Soviet merchant fleets; could you offer us some testimony on the implications of closing ports to Soviets during a period of conflict or turmoil?

Mr. BRINSON. To point out for the record—incidentally, three of our ports are now closed under any circumstances to the Soviets—Communist flags, really—three ports involved are Charleston, Norfolk, and San Diego. I think there is a smaller, noncommercial port in Connecticut.

These are all very competitive ports, all involved in developing world trade.

Several years ago, these three ports were concerned about exactly why it was that they had been excluded from taking part in the burgeoning Soviet business. It was my assignment at the time in South Carolina to ask the Defense Department for a full explanation of what had been otherwise esoteric explanations as to why Charleston had to be excluded.

Of course, we knew that there was a naval installation there, a very highly developed naval institution just as there was in Norfolk and San Diego.

We got to the point of agreeing with the Defense Department that if we all got top-secret briefings and filled out the mammoth forms, that they would tell us.

To answer your question, I don't intend to compromise on the top-secret status of what we heard; but we came away from the briefing with a determination to abandon our efforts to open our ports to Soviet ships. They convinced us beyond any reasonable doubt that the Soviet merchant ships are equipped for a dual purpose.

Mr. CUNNINGHAM. In other words, Soviet merchant ships do serve as a branch of the Soviet military operation?

Mr. BRINSON. Well, I think the gentleman from the Defense Department, in his testimony, and subsequent comments, confirmed that.

Mr. CUNNINGHAM. Can you give us any information on what happened at that briefing without compromising the secret nature of the meeting?

Mr. BRINSON. Well, we were simply briefed very fully on the reasoning of the Defense Department in adding these three ports, and particularly ours, Charleston, at the time, to the list of the closed ports.

Mr. CUNNINGHAM. Let me put it this way: Do Soviet merchant vessels carry weapons that could destroy naval installations at these ports?

Mr. BRINSON. I think you are leading me into an area where I would have to compromise the top-secret briefing. Simply let me tell you we were very zealous about challenging the reasons of the Defense Department because we saw a lot of the cargo. This third-flag carriage was affecting us at the third ports. We went into that briefing with this zeal. We came out of it convinced that there was no reasonable way that Soviet ships should ever be allowed close to Charleston. You can read into that what you would like.

Mr. CUNNINGHAM. Would you recommend to the committee that the members have a closed session at which they receive a similar briefing from the Department of Defense?

Mr. BRINSON. I personally found it most enlightening.

Mr. WYATT. You found it enlightening as opposed to esoteric?

I do not think anyone has any further questions. We apologize for the late hour.

At this point, I have a statement of our colleague, Norman Shumway, of California, that I would like included in the record and further we have a statement from the chief executive officer of Sea-Land, Mr. C. I. Hiltzheimer.

I would also like to have that put into the record.

[The following was received for the record:]

SEA-LAND INDUSTRIES, INC.,
Edison, N.J., February 20, 1980.

HON. JOHN M. MURPHY,
Chairman, House Committee on Merchant Marine and Fisheries,
Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Sea-Land Industries, Inc. supports H. Con. Res. 269 of January 30, 1980 which urges "the President to terminate the maritime agreement between the United States and the Union of Soviet Socialist Republics unless the Soviet Union withdraws its military presence from Afghanistan."

Sea-Land Industries, Inc. is a wholly-owned subsidiary of R. J. Reynolds, Inc. headquartered in Winston-Salem, North Carolina. Sea-Land is a U.S.-flag carrier and the world's largest oceanborne containerized freight company. Today, Sea-Land the pioneer of containerized ocean shipping, operates in 121 ports in 45 countries and territories around the world.

Sea-Land believes that in this period of national crisis that the nation stand together in combating the Soviet incursion in Afghanistan by signaling our national resolve loud and clear. We believe that Resolution 269 does exactly this. By terminating the 1976 Agreement and therein denying the Soviets the use of U.S. ports, Soviet maritime and political presence in the United States will be greatly reduced, all of which is to the benefit of every American.

Please feel free to call upon me for any follow-through on this matter.

Sincerely,

C. I. HILTZHEIMER,
Chairman, Chief Executive Officer.

STATEMENT OF HON. NORMAN D. SHUMWAY, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am pleased to have this opportunity to support H. Con. Res. 269, urging the President to terminate the maritime agreement between the United

States and the Soviet Union unless the Soviet Union withdraws its military presence from Afghanistan.

My conviction that the United States ports should be closed to the Soviet merchant fleet is strong enough to have motivated my own introduction of similar legislation calling for a denial of port access. I appreciate the Committee's desire to present a strong expression of Congressional intent to the President in lieu of a legislative "mandate," thereby providing the Administration with the discretionary flexibility required to evolve appropriate foreign policy decisions in the face of the Soviets' outrageous affront. However, I remain convinced that the United States must avail itself of all opportunities to notify the Russians in a clear cut manner that aggressive excursions of this nature will not be tolerated.

The sanctions now being imposed against the Soviets in areas of embargoed grain and high technology, curtailed fishing rights, and a potential boycott of the Moscow Olympics have been greeted with enthusiasm by the American public. However, while time alone can judge the effectiveness of these measures, I do not believe that we can afford to wait for time, nor do I believe that the above sanctions constitute sufficiently potent action to alter Soviet policy. The Russian reaction—or lack thereof—to warnings of these retaliatory measures would seem to bear out my thinking. The Soviets are still in Afghanistan, and they appear to be little more than amused by our "gestures."

We have at our disposal a strategic tool which could strike a blow against a keystone of Soviet economic well-being, and that tool is the measure before this Committee today. Since the Soviet Union possesses the world's largest merchant fleet, and since that fleet is critical to the Soviet effort to obtain much-needed hard currency, a curtailment of U.S. operations would certainly be hard felt.

Members of this Committee certainly do not need to be reminded of the USSR's merchant fleet expansion. At the conclusion of World War II, the Soviet merchant fleet consisted of some 400 aging, small and sluggish vessels totalling approximately 2 million deadweight tons. Just over three decades later, in 1978, the Russians possessed an ocean-going cargo carrying fleet of almost 1700 ships, totalling over 16 million deadweight tons. Moreover, the Soviet merchant fleet is, in large measure, comprised of general cargo vessels—vessels capable of being converted to military use when needed. The roll-on roll-off and Seabee cargo ships being procured by the Soviets are well suited to transporting arms and materials to areas lacking port facilities, in support of onshore military operations. A classic example of "dual purpose" utilization of Soviet merchant vessels would be the supply of tanks and other arms to Angola and the Middle East in 1976.

Leaving the potential for military transformation and transportation aside, we should consider the cross-trade expansion to which the Soviets are admittedly committed. From 1972 to 1977, Soviet liner vessels increased their cross-trading on United States trade routes from 8 ports to 94 ports. Of these 94, only 3 are located in the Soviet Union. The most recent annual figures available indicate that 57 U.S. ports received a total of 1456 calls by Russian vessels. According to *FORTUNE* magazine (and as pointed out by the Chairman in his correspondence with President Carter), "during the first half of 1976, more than 10 percent of all cargo shipped between the U.S. West Coast and Hong Kong went in Soviet vessels; virtually none of this cargo originated in, or was destined for, the USSR." In 1974, the Russian share of liner tonnages on three major U.S./European trade routes equalled 13 percent, 22 percent and 17 percent respectively.

The greater the Soviet share of cross-trade cargo, the more hard currency will be generated, and that hard currency is at a premium in the USSR.

The USSR's hard currency trade deficit went from \$911 million in 1974 to some \$5 billion in 1976. Soviet participation in U.S. liner oceanborne foreign trade in that latter year was approximately 1,440,000 tons valued at an estimated \$1.7 billion. During 1977, Russian merchant shipping contributed an amount of hard currency surpassed only by oil, timber and gold mining operations.

In their zeal to obtain hard currency through cross trading, the Soviets are employing predatory shipping policies—practices which further contribute to the alarming decline of our own merchant fleet. If we continue to permit Soviet vessels access to United States ports, we will only be assisting the Russians in achieving their goals at the further expense of American merchant shipping.

The Port of Stockton lies within my Congressional District, and I am privileged to be very well acquainted with Alexander Krygsman, the Port Director. Mr. Krygsman is a man who is highly respected in his field, as indeed he should be. There is virtually no aspect of merchant shipping with which he is not intimately familiar. Be it labor or management, in port or at sea, Krygsman has experience. He has been an ordinary seaman, a longshoreman, a ship's captain, a ship owner and a port director. I enumerate this background only to indicate my respect for him and for

his expert opinion. Krygsman and those who share his view assert that denying Soviet vessels access to American ports will jeopardize no one but the Soviets. Unlike the grain embargo, or other sanctions we might elect, this step will not rebound upon our own citizens or allies. The Soviets have proven clearly that there is nothing which takes precedence over the furtherance of their own self-interest. In this instance at least, I believe we might accord similar preference to our best interest.

In short, we have a powerful economic "weapon" available, and we should use it. Not only will we be confirming our vehement opposition to the USSR's unprecedented aggression into Afghanistan—we will also be contributing to the revitalization of our own merchant fleet.

I strongly urge favorable action on this measure, and I would like to reiterate my appreciation for this opportunity to air my views.

Mr. WYATT. If there is no further business, the hearing is adjourned.

[The following was submitted for the record:]

WORK SAVING INTERNATIONAL,
MANAGEMENT CONSULTANTS,
Washington, D.C., February 22, 1980.

Hon. JOHN M. MURPHY,
Chairman, Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During World War II I served as a logistic planning officer in the Office of the Chief Quartermaster, U.S. Army, in Cheltenham, London, Normandy and Paris. Since then I have maintained my contacts and studies of transport in Western Europe. My writings and special studies on containerization are well known to your staff members.

For 15 years I was the representative for this hemisphere to the International Container Bureau of Paris. This was an appointment by the Bureau which is an offshoot of the International Chamber of Commerce and the European Railway Union. This was the period during which containerization was developing in Europe. During this period I also served as an advisor to the Permanent Technical Committee on Ports of the Organization of American States.

Our government has taken certain steps designed to discourage Russia from its aggressive action in Afghanistan and middle east. I am quite sure that the Russians expected that certain cosmetic action would be taken by the United States. While the Olympics and an embargo on cowfood will have certain unpleasant repercussions they are more of a nuisance value rather than causing the Russians to reconsider their actions.

A port embargo against Russian ships would have an immediate and painful financial effect on Russia. Their newly expanded merchant marine is one of their largest sources of international exchange. If this action were followed by a similar action by the NATO countries it is my belief that the Russians could be induced to withdraw from Afghanistan within a matter of a few months. Such an action would also put the NATO countries in a strong bargaining position when it came to a resumption of "normal" trade relations after the withdrawal.

It is not often that shipping is the crux of an international diplomatic crisis but I firmly believe that such an embargo against Russian ships is the only mechanism available to us—short of military action—which might serve as a deterrent to continuing aggressive action which is endangering world peace.

Sincerely yours,

JOHN R. IMMER,
President.

WORK SAVING INTERNATIONAL,
MANAGEMENT CONSULTANTS,
Washington, D.C., January 28, 1980.

Hon. JIMMY CARTER,
President,
The White House, Washington, D.C.

DEAR PRESIDENT CARTER: It would not hurt your standing with the American labor unions in an election year to espouse an idea proposed by the International Longshoremen's Association, AFL-CIO. It is not often that international shipping is

at the crux of an international diplomatic crisis. You have taken certain steps, none of which will have an immediate adverse economic effect on Russia.

One of the main sources of much-needed international exchange for Russia is its enlarged merchant marine. This is also one of the greatest and most serious concerns to the merchant marine of the United States and the NATO countries.

An embargo on Russian ships by these countries would have an immediate and disastrous effect on the Russian trade and the Russian merchant marine. This would hurt financially almost immediately and would emphasize to the Russian people as well as its leaders that the rest of the world has the capability of taking effective action against naked overt aggression against other countries.

I do not know of any shipping consultants in the State Department or anyone there who would have an intimate working knowledge of shipping in Western Europe. I doubt seriously if there is that knowledge within the Security Council or the White House staff.

I would be pleased to have the opportunity of discussing this idea with any members of your staff by phone or in person.

Sincerely yours,

JOHN R. IMMER,
President.

[Traffic World, January 4, 1964]

UNIFIED TRANSPORT IN EUROPE—FASTER, LOWER-COST DISTRIBUTION CALLED SECRET TO POST-WAR BOOM

(By John R. Immer)

[Mr. Immer, who is president of Work Saving International, Washington, D.C., an international management consultant firm, bases his observations in this article on professional work with transport groups of more than 10 western European nations in the last 20 years. He is the permanent delegate for North America to the International Container Bureau, Paris, France. Mr. Immer also is a former chairman of the subcommittee on international coordination of container sizes and practices of the MH5 container committee of the American Standards Association, and is a founder of the International Cargo Handling Coordination Association. Additionally, he is the author of several books and scores of papers and manuscripts on international transportation and related subjects. This is the first of a series of articles concerning the development of coordinated transport in western Europe written for Traffic World.]

Things are moving in Western Europe! Transport costs are lower than they were 10 years ago for many commodities. Movement of packaged goods has been expedited. Low-cost water transport of bulky commodities has nearly doubled in this decade. Rail movement has increased by over a third.

Many reasons have been advanced as the cause of the boom in Europe, plus the almost complete lack of unemployment. The reduction of tariff barriers between the countries is a recent factor. However, these reductions have been applied only within the last few years, while the increase in gross national product and general prosperity has been at a constant rate over the last 10 years.

Long before tariff barriers were eased, the cost of movement of manufactured goods from Italy to France had been decreased by the removal of transport barriers. More rapid rail transport was reducing the delivered price of these goods in distant cities. As prices decreased the demand increased and men were called to work both in manufacturing industry and in the distribution of these products.

Here is the secret to the boom in Europe:

Faster and lower-cost distribution has permitted the benefits of increased productivity in the factories to be transmitted directly to the consumers. The consumer buys more manufactured goods and enjoys a higher standard of living. This is the result of unified transport in Europe—a natural development of a unified Europe.

When World War II ended, the transport capabilities—what remained of them—had been welded together to serve the military purposes of the allies. In the next two or three years the transport systems were repaired somewhat on the same basis. In 1947, Secretary of State George Marshall, in a speech at Harvard, called for unity and cohesion in Europe and a joint reconstruction effort—assisted and financed by the United States.

The formation of the Organization for European Economic Cooperation (OEEC) was the direct result of this proposal. This organization, which was to come into existence about a year after the Harvard speech, was to form the European effort to complement the aid program later known as the Marshall Plan.

In addition to the physical accomplishments of the program it established a pattern for European-wide action, planning and cooperation. It set the stage for other agencies that were to follow and for the spirit of Europeanism that swept the European universities in the early 1960's. At both planning and practical working levels nationalism was replaced or sublimated by Europeanism. Cultural union, military union, economic union and even political union became an eventual possibility.

Recognizing the extent of economic recovery and determined to further utilize joint consultation and cooperation to improve the economic and social status of European countries the OEEC was reorganized in December of 1960 as the Organization for Economic Cooperation and Development (OECD). Its main objective was to strengthen further the economic and social ties that would lead to economic unity for Europe.

Arising out of the structure of the Common Assembly of the European Coal and Steel Community (established in 1951) and the need for a similar organization for the Common Market and Eurotom, the European Parliament first convened March 21, 1958. It is a supragovernmental organization consisting of a parliament elected from six European countries, a Council of Ministers and a Court of Justice. It has 13 standing committees, one of which is the transport committee.

Its standing committees have been very active and have produced many statements of policy on behalf of the European Community. Its decisions are directly binding on its member states. The formulation of economic policies, commercial objectives and social aims on a European-wide basis has resulted in a cohesion of action and development, major effects of which are yet to be felt.

THE COMMON MARKET

The 1958 treaty setting up the European Economic Community (referred to as the Common Market) also stated its major objective which was to create a common market for all European goods. The unification of the economies of its member countries and the removal of trade barriers are only a part of these objectives. These are also to provide free circulation of labor, capital and services.

This depends on an efficient transport system unfettered by any restrictions and designed to facilitate the lowest-cost movement of all the elements of production. This had been recognized early in 1950's and has been dominant in all economic planning in Europe since.

The North Atlantic Treaty Organization (NATO) resulted from a treaty signed in Washington on April 4, 1949, by the U.S., Canada and 10 European countries. Two other European countries later joined. It set up a European-wide organization for standardization of military supplies—including all logistic equipment—and for close planning and coordination of all defense and military matters, including transport equipment and facilities.

It also set up a program in which all 14 NATO countries contribute to a common pool out of which airfields, communication lines, port facilities, oil pipelines and storage tanks and submarine cable lines have been financed. To date, more than \$1 billion have been approved for such projects. All these projects have involved the cooperation of NATO countries and the strengthening of the concept of unity in transport as well as in defense.

Unity in transport requires a conscious effort to achieve a unified system. Such a goal has been uppermost in the minds of the leaders of transport in Europe since the early post-World War II years. This policy of unity has also been carried out by specific direction from the governments themselves.

The exact form of coordination that exists today was not exactly planned that way from the beginning. In the early years after World War II, Europe utilized the transport facilities available. Existing organizations, such as the International Union of Railways (UIC) were strengthened and given new responsibilities.

Later, as these forms still proved inadequate to provide European-wide coordination desired, they were implemented (not replaced) by more formal organizations empowered to take action on the part of the governments involved. The new organizations were careful not to duplicate any of the technical activities already carried on by the existing organizations.

This reliance on existing professional and trade organizations remains an important characteristic of European transport. It has also made it possible to have a much smaller staff in all the organizations concerned with transport policy. This simplifies the problem of European-wide coordination.

At the time of the formation of the OEEC an attempt was being made to solve rail coordination problems by increasing the powers and functions of the UIC. Hence, this area was not emphasized in its committee assignments.

The fact that the OEEC established an effective coordinating committee for maritime transport resulted in this area being omitted from the committee assignments of the European Conference of Ministers of Transport, European Economic Community and the UN's Economic Commission for Europe.

Again, in the field of customs regulations and coordination of road-rail transport equipment, the inland transport committee of the Economic Commission for Europe provided an effective nucleus for this area of activity, which as a result, is not duplicated in any of the other European organizations. Thus, although the structure of this coordinating mechanism seems complicated, there is little duplication and considerable respect shown for the accomplishment of the other groups.

Policy studies prepared by the European Parliament's very active transport committee have established broad policy objectives for unified transport in Europe. This committee, which has been in operation only since 1959, has recommended lines of development that have been further amplified by the European Economic Community.

The Division of Transportation of the EEC is concerned with all forms of land transport, but not with maritime affairs. Its work of implementation of the transport studies of the European Parliament has resulted in draft proposals for establishing a common transport policy for the Common Market countries. The aim of these proposals is to create a jointly regulated transport market in the Community by the end of 1969. These proposals cover:

- (1) Establishment of a system of rate brackets applicable to railways, highways and inland waterways.
- (2) Initial steps for harmonizing certain conditions of competition.
- (3) Studies into the cost of transport modes.

TRANSPORT AND THE OEEC

In the years immediately following World War II transport was considered as another of the economic areas for cooperation under the Organization for European Economic Cooperation. The more specific aspects were left to the existing organizations such as the International Union of Railways and the inland transport committee of the UN's Economic Commission for Europe. However, a maritime committee was established, and it has continued to work under the revised organization of the Organization for Economic Cooperation and Development.

By 1952 it was apparent that greater coordination at a governmental level was needed. The result was formation of the European Conference of Ministers of Transport in 1954. Once a year, the ministers themselves meet to discuss policy and outline broad objectives for European transport. Their deputies and numerous, technical and coordinating committees meet more often.

The ECMT heeds the broader economic objectives and policies prescribed by the European Parliament and the Common Market. Its Secretariat is housed in the offices of the OECD in Paris and it is closely associated with that organization. For advice on more technical problems it may request recommendations from the representatives of commercial transport interests in Europe such as the International Union of Railways, the International Chamber of Commerce and the International Road Transport Union.

NATIONAL

The instruments for the implementation of the transport policies as developed by the above listed agencies are well established. At a national level, practically all the countries of Western Europe have had a Minister of Transport since long before World War II.

The role of the government in the railroads, which are the principal carriers in Europe, insures that there is close accord between the technical demands of the industry and the political power necessary for government action when needed. In the field of shipping containers, for example, the long-time interest and support of the railroads—when they were privately owned—have carried over into government support and encouragement.

The ECMT normally receives and considers policy recommendations from other governmental bodies. As such policies have been cleared previously with the respective governments, it is usually more a matter of implementation than acceptance. The ministers may then assign the problem to the deputies within the conference or transmit it directly to their respective countries for implementation within the countries concerned.

For inland waterways there are several regional organizations, including the Central Commission for the Navigation of the Rhine (CCR) and the International Mosel-BambH (IMA). Professional organizations, organized on a European-wide basis generally, provide regional action in specific technical areas.

TECHNICAL AND PROFESSIONAL IMPLEMENTATION

The international organizations formed in Europe within the last 10 years have not sought to develop their own technical staffs. Theirs has been primarily a coordinating function. For technical questions they rely on the established professional and technical organizations. Many of these organizations, although primarily European in composition, develop international standards and determine the rules and codes for international trade and commerce world-wide.

INTERNATIONAL CHAMBER OF COMMERCE

The International Chamber of Commerce is a federation of 41 national committees of business groups. Since 1919 it has served as a spokesman for business interests. Its standing committee and other committees have served as a forum on business matters. Its transport and communications committee makes recommendations to government agencies on transport matters. This committee and the chamber may convene special conferences on specific subjects.

It also works closely with the International Federation of Shipping and many other international organizations concerned with transport in Europe and world wide. The chamber has published a uniform interpretation of the principal trade terms used in foreign trade practice. They are called "Incoterms" and are published in the leading trading languages.

THE INTERNATIONAL UNION OF RAILWAYS (UIC)

The UIC is composed of the government-owned and the private-owned railways of Europe. After World War II its activities were extended in an effort to provide a European-wide coordinating agency for rail transport. Today, its members are coordinating its lines into a European network with emphasis on the fast movement of freight and passengers from one country to another.

The result has been increased standardization of equipment, accounting methods, financing and administrative controls that have practically resulted in a single large rail system with operating divisions.

Eurofima provides a source of financing rolling stock. The inland transport committee of the Economic Commission for Europe has been active in coordinating equipment for road-rail service. The International Association of Rolling Stock Manufacturers. (AICMR) provides representation for equipment manufacturers.

Unified transport starts with unified economic policies and objectives. The mechanism for developing policy and its technical implementation has been effectively developed over the last 15 years. For at least 10 years of that time these policies have been the guiding force in developing the transport capabilities of Europe. This coordination and unification has been producing results and even more effective results are expected within the next decade.

Nor is the approach to the economic prosperity of Europe limited to transport. Transport is part of the broader problem of distribution. Distribution patterns are being changed and simplified. New wholesale markets are being established such as the new markets for Paris.

The attack is on the total distribution problem of the continent, of which transport is an important part. The success of these efforts to date is seen in the general prosperity and full employment of the nations of Western Europe.

CRESCENT WHARF AND WAREHOUSE CO., AND SUBSIDIARIES,
Wilmington, Calif., February 26, 1980.

HON. JOHN MURPHY,
Chairman, Subcommittee on Merchant Marine,
Longworth House Office Building, Washington, D.C.

DEAR MR. MURPHY: With respect to the present hearings giving consideration to the closure of all United States Ports to Soviet Merchant Marine activities, we must express our strenuous objection. As Master Contracting Stevedores serving all ports of the United States West Coast, the economic hardship of port closure action would not, in fact, be borne by the Soviet Merchant Marines or its government, but rather by West Coast communities, Port Authorities, contractors and labor forces that are actively engaged in or are beneficiaries of maritime activities.

The undue economic hardship resulting from the closure of United States West Coast Ports to the Soviet Merchant Marines, would be disastrous to our maritime community and in our opinion, serve no useful purpose.

We therefore request that the Hearing Committee give full consideration to not in any way curtail or disrupt West Coast Merchant Marine activities.

Very truly yours,

WALTER E. TILLEY,
President.

[Whereupon, at 5:50 p.m., the subcommittee adjourned.]