Statement submitted by the

American Maritime Officers,

International Organization of Masters, Mates & Pilots,

and

Marine Engineers' Beneficial Association

to the

Subcommittee on Coast Guard and Maritime Transportation

of the

Committee on Transportation and Infrastructure

on

"Maritime Transportation: The Role of U.S. Ships and Mariners"

May 21, 2013

Mr. Chairman and Members of the Subcommittee:

This statement is submitted on behalf of the American Maritime Officers (AMO), the International Organization of Masters, Mates & Pilots (MM&P), and my union, the Marine Engineers' Beneficial Association (MEBA). We appreciate the opportunity to present our views on "Maritime Transportation: The Role of U.S. Ships and Mariners."

Our maritime labor organizations represent primarily ships' Masters, Licensed Deck Officers and Licensed Engineers working aboard U.S.-flag commercial vessels operating in our nation's foreign commerce and domestic trades. The federal programs and policies that support this fleet and increase its ability to compete for a larger share of America's foreign trade are extremely important to the jobs of the men and women our labor organizations represent as well as our country's national security. The jobs that American merchant mariners do, and the ships that they man, are in turn vital to U.S. national security and defense, and to sealift support of the U.S. Armed Forces.

History has repeatedly proven, and policymakers have recognized, that it is in the best interest of the United States to maintain and support a strong, active, competitive and militarily-useful privately-owned U.S.-flag merchant marine in order to protect, strengthen and enhance our nation's economic and military security. In times of war or other international emergency, U.S.-flag commercial vessels and their United States citizen crews have steadfastly responded to our nation's call, providing the commercial sealift capability and civilian maritime manpower necessary to transport and support American forces overseas. Without a strong U.S.-flag shipping capability, the United States may find itself at great risk as we become even more dependent on foreign flag shipping operations for the carriage of our domestic and international trade.

It is important that our nation has the United States-flag commercial vessels and the trained and loyal United States citizen crews needed to support our troops, to protect and enhance America's economic interests at home and abroad, and to strengthen United States defense operations around the world. Section 101 of the Merchant Marine Act of 1936 states:

> It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-born export and import foreign commerce...

Today, U.S.-flag commercial vessels and their American merchant mariners are responsible for transporting only two percent of our country's foreign commerce. Mr. Chairman, that is hardly a "substantial portion." We believe that the best way to achieve these goals is for Congress and the Administration to (1) support and fund the existing programs, and (2) promote forward-thinking policies and laws that encourage new tonnage to operate under the U.S.-flag.

<u>The Carriage of U.S. Government Generated Cargo</u>

U.S. cargo preference statutes are among the cornerstones of American maritime policy. The laws require the utilization of U.S.-flagged vessels for the transportation of U.S. military cargoes and a percentage of certain government-impelled and generated cargoes, thereby providing essential assurance that active U.S. merchant mariners and U.S.-flagged vessels are ready and available to support military sealift missions, and that government defense reserve vessels can be manned rapidly and effectively in times of war, conflict and crisis. Cargo preference statutes provide U.S.-flag vessels with a critical base of cargo. They give U.S.-flag vessels the opportunity to stay active while they compete against lower-cost and often subsidized foreign flag vessels for the carriage of commercial cargoes to and from the U.S.

The commercial viability of the U.S.-flag fleet ensures that the U.S.-flag vessels and their American crews remain available to the Department of Defense in time of war or other international or domestic emergency. In May 2011, General Duncan McNabb, Commander of the United States Transportation Command, stated that "To date, over 90 percent of all cargo to Afghanistan and Iraq has been moved by sea on U.S.-flag vessels." He went on to note that U.S. cargo preference laws have helped in "ensuring the continued viability of both the U.S.-flag fleet and the pool of citizen mariners who man those vessels."

We are deeply troubled by the Administration's recent proposal to replace the existing Food for Peace program with the "Emergency Food Security Program" – a program that simply provides U.S. taxpayer dollars to other nations to be used to purchase foreign agricultural commodities and foreign shipping services. As presently implemented, the Food for Peace Program provides U.S. agricultural commodities to needy nations and requires that a percentage of these commodities be transported on U.S.-flag vessels. While serving U.S. humanitarian and foreign aid objectives the Food for Peace program also provides a significant return to the American taxpayer by creating and maintaining American jobs, and by generating income for American ports and the domestic agricultural and transportation industries.

Most importantly, the Food for Peace program is integral in supporting the U.S. vessels and highly trained U.S. mariners that stand ready to serve the U.S. military wherever and whenever needed. The same mariner that is employed in peacetime in the safe transport of U.S. food aid is available in wartime to deliver the bullets and blankets to our troops overseas. Without the cargo preference statutes, and more specifically the continuation of in-kind food aid, our nation's ability to project and maintain force abroad will be diminished.

In 2004, the Deputy Undersecretary of Defense for Logistics and Material Readiness stated that, "The Department of Defense supports a strong and viable United States merchant marine which provides DOD with needed U.S.-flag vessels and mariners during war. Any change in cargo preference that would adversely impact the U.S. merchant marine will have a similar negative impact on DOD's mobilization capabilities."

American taxpayers and the Federal government should be proud that the Food for Peace not only demonstrates the willingness and generosity of the American people to help the world's neediest people, but at the same time results in significant economic and strategic benefits for our country.

The Administration's 2014 budget proposal regarding Food for Peace comes on the heels of the passage of the "Moving Ahead for Progress in the 21st Century Act" (MAP-21) in July 2012, in which the Food for Peace cargo preference suffered an unprecedented setback. Without committee review or Floor consideration, Congress reduced the 75% U.S.-flag shipping requirement to 50%. The results of this change were the nearly immediate loss of U.S.-flagged commercial vessels from the merchant fleet and the loss of hundreds of American jobs. We thank Congressman Don Young, Congressman John Garamendi, and Chairman Nick Rahall for their support and urge the other Members of the Subcommittee to support H.R. 1678, introduced by Congressman Elijah E. Cummings and Congressman Scott Rigell, which would reverse the cuts made to cargo preference.

It is equally important that all other federally funded cargoes are in fact transported in compliance with the existing cargo preference laws. Unfortunately, both the letter and the spirit of the law have been neglected. There should be no question that, in order to grow and maintain the U.S. merchant marine, U.S.-flagged vessels should be used to the greatest extent possible when shipping government-impelled cargoes.

For instance, we support the goal of doubling exports by 2015. Government agencies and the private sector should view the U.S. merchant marine as a partner. When U.S. taxpayer dollars are used to ship cargoes, whether governmental or private sector through the utilization of grants, loans and loan guarantees, the cargo should be shipped on U.S.-flag vessels. Using foreign flagged vessels in order to save a nominal amount of money disregards the spirit of the cargo preference laws and neglects the importance of the U.S.-flag merchant marine.

We note that the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417) encourages greater adherence to the cargo preference laws. We would ask this Subcommittee to do whatever it can to ensure full compliance with the both the spirit and letter of cargo preference laws by all Federal departments and agencies.

Maritime Security Program

One of the cornerstones of American maritime policy is the Maritime Security Program (MSP). The MSP fleet was originally established by the Maritime Security Act of 1996 and has since expanded to include 60 U.S.-flagged, privately owned, militarily useful vessels. These vessels and the global intermodal cargo systems established and maintained by the private-sector operators are made available to the Department of Defense through the Maritime Security Program for sealift missions, and provide a crucial, effective and highly efficient supply and delivery network for the U.S. Armed Forces.

The Department of Defense testified that it would need more than $10 billion in capital costs and $1 billion in annual operations costs to replicate the commercial sealift capability and worldwide logistics network that the MSP and the commercial maritime industry provide to the Department of Defense at a fraction of the cost: authorized at $186 million in FY'13. This equates to an annual per vessel payment $3.1 million in order to help offset the enormous tax, regulatory, and other economic incentives given to foreign flag vessels and foreign crews by foreign governments.

In order to ensure the continued availability and operation of the fleet, the Department of Defense requested, and the Congress reauthorized the Maritime Security Program for an additional ten-year period through fiscal year 2025. This extension gives the Department of Defense the opportunity to undertake long-term planning so that it can count on the ships, civilian maritime manpower, and logistical resources that MSP provides.

We would point out that *ExpectMore.gov*, a web site developed by the Office of Management and Budget (OMB), contains the results of an assessment of every Federal program, including the Maritime Security Program. "Effective" is the highest rating a program can achieve and a rating of "effective" means that a program has "set ambitious goals, achieves results, [is] well-managed and improves efficiency." It is especially important to note that *ExpectMore.gov* has rated the Maritime Security Program as "Effective". Only 193 programs out of a total of 1,015 programs assessed by *ExpectMore.gov* received a rating of "effective".

Unfortunately, the MSP has been affected by the Sequester. Due to the across-the-board cuts associated with Sequestration, the program has realized a reduction of approximately $22.8 million. This means that, one way or another, the Maritime Administration will not be able to fulfill their contractual obligation to the MSP carriers. Should the trend of financial uncertainly continue in the Program and government generated cargoes continue to decrease, U.S. shipping companies will be forced to decide whether keeping vessels under the U.S.-flag is economically feasible. A loss of ships would immediately trigger a decrease in American jobs and military sealift capability. It is essential that Congress approve full funding for this program at the Congressionally-authorized level of $186 million.

The Jones Act

The U.S.-flag domestic shipping industry is paramount to the unimpeded flow of domestic cargo. In order to maintain this capacity, we must uphold the body of law commonly referred to as the Jones Act and the requirement that vessels operating between American ports must be built in the United States, owned by United States citizens, crewed by American mariners, and operated in accordance with all U.S. rules, regulations and tax obligations.

The construction of vessels in the United States and the operation of these vessels by American citizens for the domestic trades ensures that maritime and maritime related jobs will not be outsourced to foreign shipyards and seafaring workers. The full enforcement of the Jones Act helps guarantee that our nation will have the domestic shipyard mobilization base and the American merchant mariners available to support Department of Defense requirements. Equally important, the full implementation and enforcement of the Jones Act means that the waterborne transportation of America's domestic commerce will not fall under the control of foreign shipping interests but will instead remain under the control of American companies and American crews who, unlike foreign mariners, are subject to U.S.-government imposed background and security checks.

As noted by the Government Accountability Office (GAO) in a report released in March 2013, the Jones Act ensures orders for commercial shipbuilding projects at American shipyards. A loss

or even a reduction in commercial shipbuilding orders will compromise U.S. shipyards, which are in turn essential for U.S. military shipbuilding projects. The GAO, in its report, pointed out: "Although the Department of Defense does not administer or enforce the Jones Act, the military strategy of the United States relies on the use of commercial U.S.-flag ships and crews and the availability of a shipyard industrial base to support national defense needs."

Bolstering the U.S. Merchant Marine by Leveling the International Playing Field

Congress and the Administration should explore a number of proposals that can help increase the competitiveness of U.S.-flag shipping in the foreign trades, and thereby increase American jobs and national security.

Maritime Tax Reform

As Congress considers a broad overhaul of U.S. tax policies, we believe that the competitiveness of the U.S. merchant fleet and U.S. mariners should be a top priority. We agree wholeheartedly that America's tax laws and policies should encourage, and not discourage, investment in the United States and the employment of American workers.

To this end, we believe that there are changes that should be made in our tax laws that can foster the growth of the United States maritime industry, preserve and create jobs for American maritime workers, and help reduce the disparity in tax treatment that gives foreign flag vessels and foreign mariners a significant economic advantage over the United States-flag merchant marine as they compete for the carriage of commercial cargoes.

We would note at the outset that we greatly appreciate the support the Members of this Subcommittee gave for the enactment in 2004 of tonnage tax legislation for U.S.-flag vessels. Enacted as part of the American Jobs Creation Act of 2004, the tonnage tax alternative to the normal corporate income tax system was made available to U.S.-flag vessels operating exclusively in the U.S. foreign trades or in the domestic trades for less than 30-days in each year.

The tonnage tax is intended to help American vessels compete on a more equal footing in the international shipping arena. A significant number of foreign flag and foreign crewed vessels had already enjoyed the advantages of a tonnage tax and many other foreign flag and foreign crewed vessels operated in what is essentially a tax-free environment, enabling them to capture approximately 95 percent of all the commercial cargo entering and leaving our country. In response, Congress wisely enacted the tonnage tax, eliminating one of the tax-related disincentives to operating vessels under the U.S.-flag with U.S. citizen crews.

Nevertheless, as important as the applicability of the tonnage tax is, it is equally important that Congress build on this provision and explore other tax-related provisions that encourage the operation of vessels under the United States-flag and the employment of American mariners.

For example, the limitation that precludes vessels that operate in the domestic trades for more than 30 days from using the tonnage tax for their U.S.-flag operations in the foreign trade should be eliminated. We ask that you support this initiative and work with us for its enactment.

The existing 30-day limitation precludes United States shipping companies, which operate vessels in both the foreign and domestic trades, from benefiting from the tonnage tax when it competes against foreign flag vessels in the international trades. We are convinced that unless the 30-day limitation is removed, domestic shipping companies, including those with an experienced record of operating vessels under the U.S.-flag with American crews, will be effectively precluded from successfully expanding their operations into the U.S. foreign trades and recapturing a share of America's trade for American ships. Removing the 30-day limitation will help achieve the primary objective of the tonnage tax: retaining, attracting and expanding U.S.-flag vessel operations.

Any maritime tax reform proposal should include the extension of the foreign source income exclusion contained in section 911 of the Internal Revenue Code to American merchant mariners working aboard commercial vessels engaged in the foreign trades. Section 911 of the Internal Revenue Code was originally enacted in 1926 in order to place American citizens working or seeking to work outside the United States "in an equal position with citizens of other countries...who are not taxed by their own countries" (Senate Report No. 781, 82nd Congress, 1951). The Internal Revenue Code allows American citizens employed outside the United States to exclude from their gross income for Federal income tax purposes a portion of their foreign-earned income. At present, the Internal Revenue Service does not permit United States citizen merchant mariners working on commercial vessels in United States-foreign commerce or in international commerce to exclude income under section 911. The Internal Revenue Service has taken the position that an individual is working outside the United States for purposes of section 911 (the foreign earned income exclusion) only when he is working in a foreign country as defined in IRS regulations. The current tax liability for wages earned by American mariners is an indirect cost borne by United States vessel owners but not by their foreign competitors who benefit from the tax exclusion granted by their home countries for their citizen-crew wages. In fact, every open and traditional shipping registry nation except the United States, China and Japan have adopted some form of seafarer's tax and manning incentives. For example, British seafarers working on a U.K.-flag vessel in the foreign trades are generally entitled to a 100 percent foreign earnings deduction on their U.K. income tax, and no taxes are imposed on mariners working aboard vessels flying the flag of Panama, Liberia, the Bahamas, Cyprus, Malta, Hong Kong, or the Marshall Islands.

A change in section 911 of the tax code would put U.S. mariners on equal economic footing as their foreign counterparts. This would allow U.S. companies and mariners to compete in new fields. Given a fair playing field, we know that U.S. mariners will succeed.

Domestic Shipping

There are a number of things that we believe Congress can and should do in order to strengthen the domestic maritime industry.

First, Congress should enact policies that promote a vibrant Short Sea Shipping industry. America's coasts and inland rivers are underutilized as a means of cargo transportation. Water transportation is the most fuel efficient and environmentally beneficial way to ship goods. As a

complement to our highways and railroads, which are garnering drastically more traffic, moving goods by vessels along our coasts offers an opportunity to complement our national transportation system. To that end, we ask that the Transportation and Infrastructure Committee, through its formation of the panel on "21st Century Freight Transportation", include maritime and Short Sea Shipping as a top priority as they move forward.

Second, Congress should support the Title XI ship construction loan guarantee program and appropriate the funds necessary for this program. Even as Congress reviews all accounts carefully, this program deserves full support. It guarantees commercial loans for privately financed ship construction and shipyard modernization – all in the United States. And, since it is a guarantee, no funds are actually spent unless there is a default. Funding and implementation of the Title XI program will help grow the economy, create and maintain shipbuilding and shipboard jobs, and protect national security by ensuring a U.S. capacity to move domestic cargoes.

The Title XI ship construction loan guarantee program fosters the continuation of commercial shipbuilding orders at American shipyards — orders that help ensure the U.S. shipbuilding industrial base remains active and able to provide effective production and service for U.S. military shipbuilding projects.

We further believe the Maritime Administration should consider an expedited Title XI application review process for ship construction projects in which the applicant is seeking to replace a vessel with a newer vessel on a route it has served. We believe this will help American shipping companies upgrade and modernize their fleets, creating even greater economic and environmental benefits for the United States.

Finally, we would ask that Congress enact legislation that would eliminate another anomaly in the tax law that impedes the ability of American companies to repair their vessels in United States shipyards. Under existing law (Title VI of the Merchant Marine Act of 1936), American companies are able to establish a tax deferred Capital Construction Fund (CCF) in order to accumulate the capital necessary to build vessels in the United States. Unfortunately, the statute does not allow a company to withdraw its funds without penalty from a CCF to be used for the maintenance and repair of its vessels in an American shipyard. Expanding the permissible use of CCF funds to include maintenance and repair will help reduce the outsourcing of business and jobs from the domestic ship repair industry to the benefit of the foreign ship repair industry.

New Opportunities for the U.S. Merchant Marine

The export of Liquefied Natural Gas (LNG) and the growth of the cruise ship industry represent very large and potentially booming industries for the U.S. merchant marine. Both the potential export of LNG and the current operation of cruise ships into and out of U.S. ports rely on America's natural and financial resources. These industries require mariners, very few are Americans.

Our unions variously have supplied and currently supply licensed LNG deck and engineering officers to crew and operate numerous LNG ships. U.S. merchant marine officers are now

working aboard LNG carriers operating in the international fleet. The benefit plans of the unions operate their own training facilities, at which we train both current and future LNG officers for shipboard employment. Through these training facilities, U.S. merchant mariner officers have access to U.S. Coast Guard certified LNG training and certification programs, as well as simulation training specific to LNG tankers and carriers. One of these training facilities provides training for U.S. merchant marine officers certified to the standards of the Society of International Gas Tanker and Terminal Operators and has trained U.S. Coast Guard Marine Inspectors in this field. Another training course provides comprehensive lectures and computer-based cargo handling simulator training which includes: LNG science, engineering systems, cargo systems, ship/shore interfaces, rules and regulations, and safety. This class complies with the IMO and USCG requirements for a liquefied gases PIC (Person In Charge).

The cruise industry continues to be a potential area of growth for U.S. merchant mariners. Ten million passengers boarded cruise ships in the United States in 2012 and there are about 300 cruise ships in operation around the world. While we are among the highest trained and most rigorously certified, U.S. mariners are notably absent in the operation of cruise ships internationally.

In China, the cruise industry is booming and the Chinese government has invested billions to further that success. Although we understand that the current fiscal environment prevents Congress from making such an investment here in the United States, we encourage Congress and the Administration to do whatever possible to encourage the employment of U.S. merchant mariners. It is only logical that a business that relies so heavily on the United States should be encouraged to employ Americans.

Conclusion

President Ronald Reagan once said that "The maritime industry has been a key contributor to our economic strength and security since our Nation was founded. Its continued growth and prosperity is necessary for the economic renewal we all seek."

We agree.

In order to best serve the economic and military interests of the United States by promoting a competitive U.S.-flag shipping industry, Congress and the Administration must take a number of important and innovative steps. We have raised what we consider to be many of the most important, immediate steps that should be considered, and we look forward to working with you Mr. Chairman and your Subcommittee on these and other essential maritime initiatives.