Testimony of

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the Coast Guard and Maritime Transportation"
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Subcommittee on Coast Guard and Maritime Transportation
U.S. House of Representatives

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Good morning Chairman Carbajal, Ranking Member Gibbs, and Members of the Subcommittee. I am grateful to have this opportunity to appear before you today and testify in support of the Federal Maritime Commission's budget request for Fiscal Year 2022.

The Commission seeks $30.87 million to fund its operations for the coming year to meet its mission of ensuring a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

Before discussing our budget request in more detail, allow me to provide a brief update on conditions in the industry since my appearance before you in June.

Overall, the situation remains largely unchanged since my last testimony.

Cargo volumes remain at record highs and show no signs of dissipating in the near term. Historic levels of U.S. consumer demand for goods manufactured overseas is primarily driving this cargo flow although demand overseas for U.S. commodities and products has also increased. Ports, marine terminals, and domestic freight delivery networks continue to work vessels and deliver the cargo, but at less-than-optimal performance due to congestion. Issues related to equipment availability, a shortage of truck drivers, backups on the rails as well at inland railyards, and lack of space at warehouses all contribute to eroding the reliability of the system overall and increase delays.

The good news is the worker absences at the ports that were due to COVID infections and quarantines has diminished, and at vital ports such as New York/New Jersey, many COVID precautions that reduced capacity have been safely drawn down. The bad news is the persistent volumes continue to overwhelm what was considered by most terminals only eighteen months ago to be an adequate workforce even in high volume times.

Many of these problems feed on themselves such as when truck, rail, and warehouse congestion cause terminals fill up with so many import-laden containers that they cannot absorb more empty containers and close to shippers and truckers trying to return those empties. Those empties then remain on chassis tying up empties and the chassis amidst shortages of both. The congestion forces truckers to wait in unusually long lines to drop off an empty and/or pick up a full container decreasing their productivity and exacerbating driver fatigue. Shortage of space on the terminal leads to inefficient ship loading and unloading and that leads to ships needing to wait at anchor and "bunch up" so that several will enter a terminal at once adding to the unload/load times, increasing the strain on our port workers, and piling up import-laden containers so fast that there is no way the land-side system can absorb them.

In short, trying to force more cargo through the freight transportation system than it can handle creates a cargo jam analogous to the traffic jam you get when forcing four lanes of cars down to one.

What will likely make this challenging situation even worse are developments outside the United States that could have a direct impact on the performance of the freight delivery system here. For example, an outbreak of COVID-19 in the Southern China port of Yantian closed that facility for four weeks in June. Yantian is the gateway for 23% of the cargo destined for the United States. Ocean carriers had to cancel vessel calls at Yantian. The closure of Yantian caused cascading problems at other ports in Southern China. Though Yantian is now operating again, the freight and ships delayed by the closure are now headed for the U.S., likely to result in an unprecedented July and August peak season and exacerbating port congestion. The consequences of Yantian's closing will eclipse those associated with the grounding of the Ever Given in the Suez Canal.

While the capacity of the system is being pushed to the brink, the record demand for imports shows no sign of abating. As a result, cargo rates have been at record highs, and are likely to go still higher in 2021 with no substantial decline likely until at least 2022. While there are many factors contributing to the high prices, there is no indication that the carrier industry as a whole or any individual carrier is holding back on supply of cargo space. Instead, we find the world's container ship fleet remains effectively full deployed. There are essentially no additional vessels available to increase capacity to carry cargo. In fact, as one would expect, ocean carriers are ordering new ships. A total of 286 new container ships were ordered in the first half of 2021, the highest level over the past two decades. The time it takes to build new vessels means there will be a delay before they launch and be available to shippers. Again, additional vessel capacity without the ability to better serve those ships when they call does not solve many of the underlying problems creating congestion and high rates. Additionally, carriers and intermodal equipment providers continue to buy additional containers and chassis to serve demand but there is also a lag between the order and deployment of that equipment as well.

I remain particularly concerned about exporters – especially many agricultural exporters – due to the shifting dates of when ships are expected to make their port calls and the lack of reliability of service. While export shipping rates remain much lower than import rates, they too have gone up dramatically. Furthermore, exporters are finding themselves in the frustrating position of having to deal with the fact that a carrier is making so much money on a container full of imports than exports that it is often in the carrier's best short-term economic interest to get more empty containers back to Asian factories faster rather than carrying more export containers.

While the Shipping Act does not give the FMC authority to place a cap on rates, set quotas for export carriage, or require carriers offer the same rates to smaller shippers as bigger shippers, we are taking on a major source of headaches for shippers and truckers - unreasonable detention and demurrage fees. On April 28, 2020, the FMC unanimously voted for an interpretive rule that I believe clearly defined when carriers and terminal operators are permitted to charge these sorts of fees and when these fees are unreasonable and therefore in violation of the Shipping Act.

A supplemental order to Fact Finding 29 and issued in late November of last year directed Commissioner Rebecca Dye to investigate if the detention and demurrage policies and practices of shipping companies operating in an alliance and calling Los Angeles, Long Beach, or New York/New Jersey violate the law. The supplemental order also directed her to examine policies and practices related to container return, and container availability for U.S. export cargoes. Since then, Commissioner Dye has issued an information demand order to 27 different entities—ten ocean carriers and 17 marine terminal operators—and the information gathered in response to these orders is being examined to determine whether enforcement actions against any of these entities are warranted.

Additionally, Commissioner Dye plans to present the Commission with interim recommendations for action at our meeting next week. As you may recall, in our appearance before you in June, both Commissioner Dye and I testified that auditing the ocean carriers is action the Commission should take. In the immediate timeframe, we need to more fully examine and understand the way carriers determine who owes what fees, how they bill, what their appeals processes are, and whether they place any restrictions on shippers who refuse to pay a given fee while it is being challenged. Such an audit could inform additional rulemaking or enforcement, and I am using my administrative authority to start this program as soon as possible. I would note though that this audit program will be important, it's initial scope will be limited to just the nine largest carriers and focus on their detention and demurrage billing practices. I would like to be able to conduct more comprehensive forensic audits of all major carriers and other entities with substantial effect on the cost and efficiency of ocean shipping, but that would require more resources than we currently have or are asking for today.

Circumstances and conditions causing the cargo surge and related congestion are beyond the jurisdiction, authority, or control of any one agency. Many parties, at levels from local to national, have a role to play in responding to challenges frustrating all involved in the movement of ocean cargo. Toward that end, the Commission is involved in the President's whole-of-government response and I have held calls with White House officials, the Secretary of Transportation, the Chair of the Surface Transportation Board, the Acting Administrator of MARAD and the Acting Administrator of the FMCSA, among others. Everyone is committed to interagency cooperation and doing what they can. We are grateful to be included in these efforts and will remain actively engaged in them for as long as necessary.

Two areas where the Commission can make an immediate impact is by bolstering the resources and capabilities of its Bureau of Enforcement (BoE) and Office of Consumer Affairs and Dispute Resolution Services (CADRS). We are actively assessing what additional capabilities are needed to reinforce BoE to make it more effective, particularly as I place a higher emphasis on conducting enforcement actions. In CADRS, we are in the process of hiring a Conflict Resolution Specialist to fill an existing vacancy and are moving forward with creating a new position for an Export Advocate. This will be a person who is solely responsible for assisting export shippers in overcoming issues they have in moving their cargoes.

On a related note, our Area Representatives are a resource for both BoE and CADRS. These individuals work out of field offices in Southern California, Tacoma, Washington, New York/New Jersey, Southern Florida, and Houston. We are examining whether establishing a presence in an additional city or cities would be beneficial to meeting the Commission's mission.

In recent years, we have concentrated on building our capabilities in the Bureau of Trade Analysis (BTA), which is responsible for reviewing filed agreements (including those concerning the three major carrier alliances) and then monitoring both agreements that have gone into effect as well as the broader marketplace for ocean transportation services. As a result of this emphasis, we have in place a strong group of economists and analysts with the knowledge and skillsets necessary to detect anticompetitive behavior in the marketplace. Our task going forward is to maintain the capacity we have achieved in BTA through recent hirings.

Our budget request supports an agency workforce of 128 fulltime equivalent employees, including the five Commissioners and their Counsels. The majority of our budget goes towards salaries and benefits.

Office Lease & Security represents the next largest part of the Commission's budget. The Commission, working with the General Services Administration is expected to conclude negotiation of a lease that will allow us to stay in our current Washington, D.C. location. Rent will remain a significant cost for the agency but through this effort we will avoid moving costs and mitigated the potential risk of higher future lease costs. Our workforce views the proximity of our headquarters building to a major mass transit and commuter hub as a benefit. I should highlight that the Commission was rated seventh in Small Agencies and the FMC continues as a Top 10 Best Places to Work by the Partnership for Public Service. This is the fourth year in a row the Commission has earned top ten distinction.

Information technology and cyber security are priorities for any organization and require significant overhead. The Commission is no different from any other agency and there are considerable costs associated with providing the technology our workforce needs to do their jobs, the platforms necessary to interact with our regulated entities, and the defenses required to protect our systems from nefarious actors. Past years' investments in providing our employees with the assets they needed to be telework ready have paid dividends as the Commission went to a "maximum telework" posture in response to the COVID-19 pandemic.

Responsible stewardship of the public funds appropriated to the Commission is a priority shared by myself, my colleagues, and the senior career staff of the agency. We are constantly on watch to spend a dollar more responsibly and only procure those goods and services necessary to accomplish the mission of the Commission and comply with all legal and administrative mandates.

Again, I appreciate this opportunity to appear before you today and am prepared to answer any questions you might have.