

STATEMENT SUBMITTED BY THE
AMERICAN MARITIME OFFICERS,
INTERNATIONAL ORGANIZATION OF MASTERS, MATES &
PILOTS,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
MARINE FIREMEN'S UNION,
SAILORS' UNION OF THE PACIFIC
AND THE
SEAFARERS INTERNATIONAL UNION
TO THE
SUBCOMMITTEE ON COAST GUARD AND MARITIME
TRANSPORTATION
OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
ON
THE STATE OF THE UNITED STATES MARITIME INDUSTRY

SEPTEMBER 10, 2014

CHAIRMAN HUNTER, RANKING MEMBER GARAMENDI, AND
MEMBERS OF THE SUBCOMMITTEE:

Good morning.

My name is Don Marcus. I am the President of the International Organization of Masters, Mates & Pilots (MM&P). I am presenting this statement on behalf of the MM&P as well as the American Maritime Officers (AMO), the Marine Engineers' Beneficial Association (MEBA), the Marine Firemen's Union (MFOU), the Sailors' Union of the Pacific (SUP) and the Seafarers International Union (SIU).

Our maritime labor organizations represent ships' masters, licensed deck officers and licensed marine engineers, and unlicensed merchant mariners working aboard U.S.-flag commercial vessels operating in our nation's foreign commerce and domestic trades. The development, implementation and funding of programs and policies that support this fleet, enhance its economic viability 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. Consequently, we are very grateful that this hearing is being held and that we have been given the opportunity to present our views on the "Status of the Merchant Marine."

Out the outset, we would like to express our deep appreciation for the support that you, Mr. Chairman, Ranking Member Garamendi, and the Members of this Subcommittee and the Transportation and Infrastructure Committee have given to our industry. Your leadership in the ongoing fight to protect and enhance the programs and policies important to the operation of United States-flag vessels and your commitment to the growth of our industry have been and will continue to be critically important as we go forward. I can assure you that the American maritime labor organizations I have the privilege of representing today share this commitment and look forward to working with you and your colleagues to achieve the goal of a stronger, more competitive U.S.-flag merchant marine.

From the founding days of our nation to the conflicts in Iraq and Afghanistan to the ongoing War on Terror, it is clear that the United States needs and relies upon the militarily-useful privately-owned U.S.-flag merchant marine 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 respond quickly, efficiently and effectively to our nation's call, providing the commercial sealift capability and civilian maritime manpower necessary to support American forces overseas. Significantly, privately-owned U.S.-flag commercial vessels participating in the Maritime Security Program and their civilian U.S. citizen crews who, I am proud to say, are represented by America's maritime labor organizations, have carried more than 90 percent of the war material to the forward operating bases during the Afghanistan and Iraq conflicts.

In 1992, General Colin Powell, then-Chairman of the Joint Chiefs of Staff, told the graduating class of the United States Merchant Marine Academy at Kings Point that:

“Since I became Chairman of the Joint Chiefs of Staff, I have come to appreciate first-hand why our merchant marine has long been called the nation's fourth arm of defense.

“Fifty years ago, U.S. merchant vessels . . . were battling the frigid seas of the North Atlantic to provide the lifeline to our allies in Europe. The sacrifice of those mariners was essential to keeping us in the war until we could go on the offensive. . .

“In war, merchant seamen have long served with valor and distinction by carrying critical supplies and equipment to our troops in far away lands. In peacetime, the merchant marine has another vital role – contributing to our economic security by linking us to trading partners around the world and providing the foundation for our ocean commerce.”

It cannot be emphasized strongly enough: without the assured commercial seapower capability provided by the U.S.-flag merchant marine and its civilian manpower, American troops overseas will likely find themselves at the mercy of foreign vessels that may be owned and operated by foreign interests to deliver the material, supplies and equipment they need to do their job in our behalf. Our country should not increase the risk American troops already face by forcing them to rely on the whim of foreign shipping interests which do not share America's defense objectives to provide them with what they need when they need it. Rather,

our country owes it to the American servicemen and women stationed overseas and putting their lives on the line to protect America's interests to make sure that U.S.-flag vessels and U.S. citizen crews will be there to support them when they need it.

This sentiment was expressed in 2008 by Major General Kathleen Gainey, Commander, U.S. Military Surface Deployment and Distribution Command. She stated that *"The merchant marine has always been there beside us . . . You have been there and delivered for our service members around the world . . . I am here to tell you, having deployed twice, I know how critical it is that we get that equipment and supplies on time . . . You are the fourth arm of the Department of Defense and you are critical to this nation."*

More recently, on May 22, 2014, General Paul Selva, Commander, United States Transportation Command, echoed these comments, stating: *"America's merchant mariners are the backbone of USTRANSCOM's promise to deliver the strategic mobility and enabling capabilities needed to achieve our Nation's objectives. Our Command also serves as the foundation of America's defense, and our Country's seafarers keep its base rock solid and level. **Together, we deliver (emphasis added).**"*

Unfortunately, and notwithstanding this indisputable need for a strong U.S.-flag maritime industry, the state of our industry in the foreign trades is in jeopardy. Today, U.S.-flag commercial vessels and their American citizen crews are subject to a variety of United States government imposed rules, regulations and tax obligations that are not applicable to their foreign flag competition. In fact, many of the world's maritime fleets, if not state-owned and controlled, operate in what is largely a tax-free environment, faced with little or no tax obligations from their flag nations. Equally important, we are today seeing significant reductions in the amounts of defense and non-defense government cargoes available to U.S.-flag vessels.

As a result, U.S.-flag vessel operators face significant economic and competitive disadvantages which have resulted in a decline in the share of U.S.-foreign trade carried by privately-owned U.S.-flag commercial vessels, a decrease in the number of vessels operating under the U.S.-flag in the foreign trades, and a loss of employment opportunities for American merchant mariners.

If the appropriate steps are not taken, additional vessels will likely be forced to leave the U.S.-flag, This will not only reduce the commercial sealift capability available to the Department of Defense but result in an outsourcing of critically important American maritime jobs causing a dangerous reduction in the number of American mariners available to crew the surge and sustainment vessels needed to support American troops overseas.

In fact, when we lose U.S.-flag vessels and the shipboard billets they provide, trained and experienced American mariners lose their jobs, their income, their health and other benefits, and their ability to provide for their families. When this happens they have no choice but to leave our industry and find employment someplace else. For our government and in particular the Department of Defense, this means that a sufficient number of American mariners will no longer be there – will no longer be working in our industry – the next time the need to support American troops and America’s interests abroad arises.

It is also extremely important to emphasize that it takes many years for an individual to gain the sea-time necessary to obtain Coast Guard-issued licenses and endorsements. Simply put, it will take a long time for our country and our industry to recover from the further downsizing of our fleet and the outsourcing of American maritime jobs. Rather, Congress, the Administration and our industry need to work together to achieve the goals and objectives contained in the Declaration of Policy in the Merchant Marine Act, 1936: namely, that “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. . . a substantial portion of the water-borne export and import foreign commerce of the United States. . .”

If we do not, and our industry is left to try to respond on its own to constantly changing conditions in the international shipping arena, the stability necessary for the U.S.-flag shipping companies to attract the investments they need and for maritime labor to recruit and retain the mariners our country needs will not be there. Most importantly, the failure to act means that the Department of Defense will no longer have the certainty that the privately-owned U.S.-flag commercial industry will be there to provide the commercial sealift capability it needs; will no longer be able to undertake the long-term planning necessary for an effective

sealift strategy; and will be forced to dedicate a significant portion of its limited resources to the commercial sealift functions presently provided by the U.S.-flag merchant marine at a fraction of what it would cost the government to do it all itself.

To this end, we believe it is extremely important that our government, United States-flag shipping companies and America's maritime labor organizations look closely at all the factors that are contributing to the declining state of our industry. In so doing, we will be in a better position to respond to the factors affecting U.S.-flag shipping, by modifying where appropriate existing programs supporting or affecting the operation of U.S.-flag vessels, and by creating new programs and opportunities that would increase the number of vessels operating under the U.S.-flag, the amount of cargo carried by U.S.-flag vessels, and the shipboard employment opportunities for American licensed and unlicensed merchant mariners.

MARITIME SECURITY PROGRAM

For example, one of the key components of American maritime policy is the Maritime Security Program (MSP). Originally enacted as the Maritime Security Act of 1995 (Public Law 104-239), this statute allowed the Secretary of Transportation, in consultation with the Secretary of Defense, to establish and support a fleet of 47 privately-owned, militarily-useful U.S.-flag commercial vessels to meet the defense and economic requirements of our nation. This program was, by statute, scheduled to expire in ten years unless specifically reauthorized by the Congress.

In 2003, prior to the expiration of the Maritime Security Program, General John W. Handy, Commander in Chief, United States Transportation Command, told Congress that "as we look at operations on multiple fronts in support of the War on Terrorism, it is clear that our limited defense resources will increasingly rely on partnerships with industry to maintain the needed capability and capacity to meet our most demanding wartime scenarios. . . .MSP [Maritime Security Program] is a cost-effective program that assures guaranteed access to required commercial U.S.-flag shipping and U.S. merchant mariners when needed . . . MSP is a vital element of our military's strategic sealift and global response capability."

As a result, and with the support of the Department of Defense, legislation to extend, expand and enhance the Maritime Security Program was enacted in October 2003. As signed (Public Law 108-136), the MSP Program would now include a maritime security fleet of 60 militarily-useful privately-owned U.S.-flag commercial vessels and would run through September 30, 2015. Significantly, and as further evidence of the value of the Maritime Security Program to our nation, Congress passed and the President signed the National Defense Authorization Act of Fiscal Year 2011, which again extends the MSP, from fiscal year 2015 through fiscal year 2025.

This extension was intended to give the Department of Defense the opportunity to undertake long-term planning with the certainty that it can count on the commercial sealift capability provided by the 60-ship maritime security fleet, its associated civilian maritime manpower, and the worldwide intermodal and logistical resources that MSP carriers provide to the Department of Defense.

To ensure that this intent is fully realized, we believe it is imperative that Congress appropriate the authorized \$186 million for the MSP for FY'15. Legislation pending in the Senate contains this amount; the legislation that passed the House of Representatives includes only \$166 million. This reduced amount, if approved, threatens the continued operation of as many as seven U.S.-flag ships in the maritime security fleet and undercuts Department of Defense planning that is predicated on a sixty-ship maritime security fleet.

It is also important to understand that the weakening of the maritime security program will cost the American taxpayer far more than what it costs to fully fund the MSP. In fact, a 2006 report prepared for the National Defense Transportation Association – Military Sealift Committee concluded that “the likely cost to the government to replicate just the vessel capacity provided by the MSP dry cargo vessels would be \$13 billion.” In addition, the United States Transportation Command has estimated that it would cost the U.S. Government an additional \$52 billion to replicate the “global intermodal system” that is made available to the Department of Defense by MSP participants who are continuously developing, maintaining and upgrading their systems. In contrast, the commercial maritime industry, through the MSP, will provide the Department of Defense with these

same vessels and global intermodal system at a cost to the taxpayer of \$186 million, a fraction of what it would cost our government to do the job itself.

Looking forward, we believe it is critically important that the per vessel support levels authorized for the MSP as part of the defense authorizations legislation enacted in 2012 be reviewed and adjusted as appropriate. As we noted previously, significant reductions in the amounts of defense and non-defense government cargoes available to U.S.-flag vessels; the proliferation of income tax and other economic incentives available to foreign flag vessels and foreign crews but not to U.S.-flag vessels and their American crews; and the growing competition for cargoes from foreign flag of convenience vessel operations which fail to meet the operational and labor standards applicable to U.S.-flag vessels are all contributing to the differential between the cost of operating a U.S.-flag vessel and a foreign flag vessel.

By taking constructive and immediate action to update the funding levels authorized in the MSP, Congress and the Administration will be acting to ensure that this essential U.S.-flag commercial sealift capability continues operations under the U.S. flag and that the associated American mariner jobs are not lost and outsourced to the benefit of foreign maritime workers.

CARRIAGE OF U.S. GOVERNMENT GENERATED CARGOES

Another key component of U.S. maritime policy that promotes the use of U.S.-flag vessels and enhances the economic and security interests of the United States are the cargo preference statutes. Taken together, these statutes require that a percentage of U.S. government cargoes be transported on U.S.-flag vessels if such vessels are available at fair and reasonable rates. They provide U.S.-flag vessels with a critical base of cargo, giving U.S.-flag vessels the opportunity to stay active while they work to compete against lower-cost and oftentimes tax-free foreign flag vessels for the carriage of commercial cargoes in the U.S. foreign trades. This in turn helps to ensure that the U.S.-flag vessels and their American crews remain available to the Department of Defense in time of war or other international emergency.

Consequently, we believe:

- Congress should make clear to the Maritime Administration (MarAd) that MarAd has responsibility to determine if a Federal program is subject to U.S.-flag cargo preference shipping requirements and that it must exercise its authority to enforce U.S.-flag shipping requirements. We greatly appreciate your efforts Chairman Hunter, Ranking Member Garamendi and the Members of this Subcommittee for including language intended to achieve these objectives in the House-passed Coast Guard authorizations legislation for FY'15 and we urge that this language be included in the final version of this legislation.

We further believe it is important that the Maritime Administration regularly exercise this responsibility, and that Congress ensure that this is in fact done. To this end, Congress should require that the Maritime Administration report to Congress on a regular basis and to document its actions and efforts, specifying the programs, departments and agencies it has reviewed as well as the actions taken to ensure full compliance with cargo preference requirements.

- Congress should restore the U.S.-flag share of PL 480 Food for Peace and other humanitarian food aid cargoes to the 75 percent level that was in place beginning in 1985 until reduced to 50 percent in 2012. Such language is included in the House-passed Coast Guard authorizations legislation for FY'15 and this language should be included in the final version of this legislation.

We believe it is also important to reiterate that maritime labor strongly opposes proposals to transform the existing PL 480 Food for Peace Program from a program predicated on the use of U.S. produced agricultural commodities shipped in part on U.S.-flag vessels to a program that instead gives away cash instead of food. 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, by generating income for American ports and the domestic agricultural and transportation industries, and by raising revenues for U.S. taxing authorities.

We believe the Food for Peace program is a program that should be emulated, not eliminated. American taxpayers and the Federal government should be proud that there is a Federal program that not only demonstrates the generosity of the

American people to help the world's neediest people, but which at the same time results in significant economic and strategic benefits for our country.

DEATH OR INJURY TO SEAMEN

Section 33 of the Merchant Marine Act of 1920 (46 App. 688) sets out the legal remedy available to merchant seamen and their estates in the event a seaman is injured or killed in the course of his employment. Specifically, in the event a seaman is injured or killed, the existing law allows the seaman or his personal representative to sue for damages in court.

It has been suggested that this legal course of action has a direct relationship on the cost of insurance paid by U.S.-flag vessel operators. It is further suggested that this cost adds to the differential between U.S. and foreign flag vessel operations and reduces the economic viability of the U.S.-flag fleet.

America's maritime labor unions have strongly and consistently supported the availability of this remedy to our seagoing workforce and we continue to support the existing law. Americans working aboard vessels are on the job 24 hours per day, seven days per week when their vessel is at sea. Consequently, ensuring that they have a safe workplace environment to do their jobs is an obligation we take very seriously, and the failure to provide such a workplace environment should have serious repercussions.

However, as we have stated, we recognize that in order to truly revitalize the U.S.-flag fleet and to stop the further loss of U.S.-flag vessels, maritime labor, the U.S.-flag shipping companies and the government need to examine all the factors that may affect the economic and competitive viability of our fleet. Consequently, we suggest that Congress work with maritime labor and management to determine the extent to which, if at all, the availability of this legal remedy affects the cost of operating a U.S.-flag vessel. Once such facts are available we will then be able to determine whether an alternative or additional remedy should be available in the case of death or injury in the course of a mariner's employment.

ENCOURAGING THE USE OF US-FLAG VESSELS FOR ENERGY EXPORTS

Our maritime labor unions strongly support legislation (HR 5270) introduced by Congressmen John Garamendi and Duncan Hunter to encourage the use of U.S.-flag liquefied natural gas (LNG) vessels. We agree that the export of LNG offers an opportunity for the United States merchant marine to expand and to create

significant new job opportunities for American mariners. This legislation, the *Growing American Shipping Act*, authorizes the Secretary of Transportation to develop and implement a program to promote the export of LNG on U.S.-flag vessels. The Secretary is further directed under this bill to give priority in the processing of LNG export applications for deepwater port terminals that include the utilization of U.S.-flag ships.

In order to build upon and to more fully realize the goals inherent in HR 5270, we suggest that this legislation be expanded and amended as follows:

- We suggest that the scope of HR 5270 should be expanded to encompass crude oil exports so that if the ban on such exports is lifted, U.S.-flag vessels would also have an opportunity to participate in this trade. We would note that existing law governing Alaskan crude oil exports reserves the export of oil transported over the TransAlaska Pipeline System (TAPS) to U.S.-flag vessels, including reflagged vessels, owned by a United States citizen.
- We suggest that Congress should require regular reports from the Secretary on the steps being taken to develop and implement the program called for in HR 5270 to promote the carriage of LNG exports on U.S.-flag LNG vessels.
- We suggest that Congress consider addressing one possible impediment to operating a U.S.-flag rather than a foreign flag LNG vessel by extending the provisions of section 911 of the Internal Revenue Code (the foreign source income exclusion) to American mariners working aboard LNG vessels engaged in the carriage of LNG exports from the United States. This action would have two extremely important benefits: First, extending section 911 to Americans working aboard vessels carrying LNG exports could encourage companies to employ American mariners for their foreign flag LNG vessel operations, thereby giving Americans the seetime and training they need to operate U.S.-flag vessels in this trade. Secondly, not only could this change in the tax law help develop the cadre of U.S. citizen mariners qualified to operate LNG vessels, but it could eliminate an economic disincentive to the operation of LNG vessels under the U.S.-flag, thereby

encouraging companies to develop U.S.-flag LNG vessel operations in these trades.

- We suggest that Congress allow foreign built, foreign flag LNG vessels to document under the U.S.-flag for operations in the U.S. foreign trades without the need for any vessel construction-related changes provided they meet commonly accepted international standards. In other words, foreign flag LNG vessels meeting International Maritime Organization (IMO) requirements and holding a valid United States Coast Guard Certificate of Compliance for foreign flag LNG vessels entering U.S. waters would be deemed in compliance with all U.S. standards required for documentation under the U.S. flag.

DEVELOPMENT OF A MARINE HIGHWAY SYSTEM

Our maritime labor organizations have been part of a large maritime industry coalition comprised of shipping companies, ports and other interests that strongly support the development of a U.S. marine highway system comprised of U.S.-built, U.S.-owned and U.S.-flag vessels. Increasing the operation of American vessels along the coasts of the United States, including within the Great Lakes, will provide numerous benefits to the United States.

As the Members of this Subcommittee are aware, one of the major impediments to the development of a marine highway system is the discriminatory application of the harbor maintenance tax (HMT) on the transportation of waterborne cargo between American ports, including ports on the Great Lakes. As applied today, the HMT is imposed on cargo entering the United States from an overseas market. If this cargo is then reloaded onto another vessel for transportation along our coasts to another U.S. port, it is taxed again upon its arrival at this second U.S. destination. This double taxation of waterborne cargo under the HMT discourages shippers from using vessels to supplement their rail and truck traffic, thereby increasing congestion on the roads and rails.

We ask that Congress enact legislation to eliminate the double taxation of waterborne commerce moving between American ports in order to eliminate this

serious tax-related impediment to the development of a marine highway system. Such a system has the potential to create significant new employment opportunities for American shipbuilding workers and workers in related service and supply industries as well as for those licensed and unlicensed merchant mariners who will crew these vessels. The shipment of imported cargo along our coasts will provide a significant opportunity for America's underutilized smaller and medium sized ports, creating important new employment opportunities for American longshoremen and other shoreside workers.

We would point out that in 2008 the National Association of Counties adopted a resolution that calls on Congress "to support the development of a robust short sea shipping [i.e. marine highway] system to aid in the reduction of greater freight congestion on our nation's highway systems, with an additional benefit of reducing air pollution." The Resolution went on to state that "water transportation, especially along our coasts and inland waterways, is a sensible, economical, and environmentally-sound solution to many of our congestion problems and the related issue of air pollution. Urban and rural counties would benefit from increased use of coastal and inland waterways to move freight . . ."

CONCLUSION

In conclusion, we would again emphasize that the economic and military security of the United States are best served if our country has a strong, competitive U.S.-flag shipping capability.

Our country cannot afford to lose any additional U.S.-flag commercial vessels, or see the further decline in our nation's ability to carry its commerce on U.S.-flag ships. The next generation of American mariners will not be available to serve the needs of our nation unless something is done. It is time for immediate, aggressive and innovative action to develop a stronger, more competitive U.S.-flag fleet, to increase the share of our trade carried by American ships, and to stop the outsourcing of American maritime jobs.

We stand ready to work with you, Mr. Chairman, with Ranking Member Garamendi, the Members of this Subcommittee and your colleagues to achieve these objectives.