

MISCELLANEOUS JONES ACT EXEMPTIONS

HEARING BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

VARIOUS BILLS REGARDING: COASTWISE TRADING AND FISHERIES PRIVILEGES (PART I); SURPLUS NATIONAL DEFENSE RESERVE FLEET VESSELS (PART II); AND H.R. 5030, ESTABLISHMENT OF AN ALTERNATIVE PENALTY FOR CERTAIN VESSELS IN THE COASTWISE TRADE OF THE UNITED STATES AND PUERTO RICO (PART III)

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MISCELLANEOUS JONES ACT EXEMPTIONS

WEDNESDAY, MAY 20, 1992

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

The Subcommittee met, pursuant to call, at 10 a.m. in room 1334, Longworth House Office Building, Hon. Walter B. Jones (Chairman of the Subcommittee) presiding.

Members present: Representatives Jones, Borski, Pickett, Taylor, Hertel, Tallon, Ortiz; Lent, Fields, Callahan, and Davis.

Also present: Representatives Anderson, Reed; and Bentley (Full Committee Member).

Staff present: Carl W. Bentzel, Counsel; Sharon K. Brooks, Counsel; John Cullather, Professional Staff; Samuel Whitehurst, Jr., Counsel; Theresa Antoine, Staff Assistant; Kip Robinson, Minority Counsel; and Ann M. Mueller, Clerk.

Full Committee Staff present: Edmund B. Welch, Chief Counsel; George Pence, Minority Staff Director/Chief Counsel; Mark Ruge, Deputy Staff Director; Hugh N. Johnston, Minority Counsel; Margherita Woods, Chief Minority Clerk; and Sue Waldron, Press Assistant.

OPENING STATEMENT OF HON. WALTER B. JONES, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Mr. JONES. The Committee will come to order, please.

Today's hearing will be in three parts. In Part I, we will discuss coastwise and fisheries documentation. In Part II, we will review legislation to transfer certain vessels from the National Defense Reserve Fleet (NDRF) to nonprofit organizations, or to allow nonprofit organizations to scrap NDRF vessels and use the proceeds therefrom. During Part III, we will consider H.R. 5030, a bill to establish an alternative penalty for operation of certain vessels in the coastwise trade of the United States and Puerto Rico.

With regard to coastwise and fisheries documentation, we will consider testimony from Members of Congress and interested parties on private bills. These bills would permit the entry into our domestic commerce of vessels that suffer a disability under Section 27 of the 1920 Merchant Marine Act.

If legislation is passed, and if these vessels can comply with Coast Guard requirements, they then would be allowed to engage in the coastwise or fisheries trade.

In the past, special legislation has been approved when the owner proved that there were extenuating circumstances such as severe financial hardship, or the unintentional destruction of necessary documentation papers.

For example, a person may have purchased a vessel or spent considerable sums of money in U.S. shipyards to refurbish it. Then, only after spending the money, was it learned that there was a defect in the chain of title, or that the vessel was built foreign, making it impossible to use in the intended trade.

The Committee has also approved special legislation when the vessel or its operation was unique, and when the documentation for the commercial service or the fisheries was in the national interest.

I look forward to hearing about the problems facing these vessel owners, and why they desire legislative relief from various documentation statutes.

This morning we have several Members of Congress who have something else to do, so the Chairman will recognize the Members as they appear.

Are there any Members who would like to make an opening statement?

Mr. Davis.

STATEMENT OF HON. ROBERT W. DAVIS, A U.S. REPRESENTATIVE FROM MICHIGAN, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. DAVIS. Thank you, Mr. Chairman. I am pleased to be here this morning. I want to thank you and Mr. Lent for including H.R. 3086 on the list of bills being considered today.

H.R. 3086, which I introduced last year, will grant coastwise privileges to the MM 262, a barge owned by the Lafarge Corporation. This unmanned barge was built in the United States, but was previously owned by a Canadian corporation. The barge was never documented or registered in Canada. This defect in the chain of title prevents its current use in the United States absent passage of H.R. 3086.

I would like to personally welcome Don Peart, who is president of Standard Lafarge Corporation, a subsidiary of Lafarge Corporation. Lafarge, as people know, is a U.S. corporation with extensive cement and aggregate operations on the Great Lakes, including Alpena, Michigan. Mr. Peart will provide the Subcommittee with additional details, and I am sure will be glad to answer any questions.

I might say the Lafarge Corporation operates the largest cement plant in North America, in Alpena, Michigan. I have visited the facility, as a matter of fact, within the last 30 days. They are doing an excellent job, making a very good product, providing employment to a lot of people in the area; are cleaning up a mess that was there; and are spending a lot of time making sure they comply with all the environmental needs of the community.

So I am very pleased to be sponsoring this bill and have the people of Lafarge here testifying today.

I thank you for your consideration of this bill, Mr. Chairman.

Mr. JONES. Is there anyone else?

Mr. Reed.

STATEMENT OF HON. JOHN F. REED, A U.S. REPRESENTATIVE
FROM RHODE ISLAND

Mr. REED. Thank you, Mr. Chairman.

I thank you for allowing me the opportunity to testify in support of H.R. 4191, legislation I have introduced to waive certain Jones Act requirements for the vessel *Southern Yankee*.

In January, I was contacted by Mr. Robert Wenzel of North Kingstown, Rhode Island, who had discovered that the sailboat he had spent thousands of dollars rebuilding does not qualify for coast-wise trade documentation because it was previously owned by a non-citizen.

The vessel was built by the Morgan Division of Catalina Yachts in Florida in 1988 for the Bay Yacht Agency of Annapolis, Maryland. The Bay Yacht Agency then sold the vessel to Mr. Udo Warmhold, who is not an American citizen. While owned by Mr. Warmhold, the boat suffered severe fire and smoke damage and was declared a total loss.

In November 1990, Mr. Wenzel purchased the vessel from the Cigna Insurance Company. Mr. Wenzel then proceeded to repair the vessel and invested \$33,560 in repairs and labor in order to meet Coast Guard safety requirements. The vessel received no repairs in foreign shipyards, no foreign subsidies, nor did it leave U.S. waters.

In early 1991, after completing these repairs, Mr. Wenzel began the Coast Guard documentation process. Unfortunately, Mr. Wenzel discovered that Mr. Warmhold was not an American citizen, and that he needed a Jones Act waiver before he could begin the sailing charter operation he and his wife had planned.

In January, Mr. Wenzel brought this matter to my attention. Working in conjunction with the staff of the Merchant Marine and Fisheries Committee and the Coast Guard, H.R. 4191 was introduced in order to permit Mr. Wenzel to go forward with his business plans.

I know of no reason why the *Southern Yankee* should not be granted a waiver. The facts above suggest that this situation comports with the spirit of the Jones Act. All repairs were made in America. Passage of this legislation will allow a Rhode Islander to get his business under way.

Mr. Wenzel completed the extensive repairs himself and simply wants to get his boat in the water in time for the summer charter season. I urge the Subcommittee to support the passage of H.R. 4191.

I thank you and Mr. Lent for your cooperation and assistance. Thank you, Mr. Chairman.

Mr. JONES. Does anyone else want to be recognized?

I ask unanimous consent that materials from the following be included in the hearing record: my record statement on the *Mariposa*; the Honorable Robert W. Davis (R-MI) on the *Day Dream*; the Honorable Helen D. Bentley (R-MD) on the *North Atlantic*; the Honorable Wayne T. Gilchrest (R-MD) on the *Blithe Spirit*, the

Bluejacket, and the *Jubilee*; and the Honorable Tom McMillen (D-MD) on the *A Weigh Life* and *Fifty-Fifty*.

[The statements of Messrs. Jones, Davis, Gilchrest, McMillen, and Mrs. Bentley can be found at the end of the hearing.]

Mr. JONES. The Chair recognizes Mr. Bunning, a former Member of this Committee.

**STATEMENT OF HON. JIM BUNNING, A U.S. REPRESENTATIVE
FROM KENTUCKY**

Mr. BUNNING. Thank you, Mr. Chairman. It is a pleasure to be back in Merchant Marine and Fisheries' hearing room.

And, Congressman Davis, thank you for listening to what I have to say today.

I thank the Subcommittee for inviting me to your meeting and allowing me to introduce my guest from Warsaw, Kentucky, Winslow Baker. Warsaw, Kentucky, is in Gallatin County, the smallest of all counties in Kentucky. If Congressman Borski were here, he might be interested to know Gallatin County is named for Albert Gallatin, who was once elected to the U.S. Senate, but they wouldn't let him serve his full term, because they found out he hadn't been in the country long enough to become a U.S. citizen. So they made him Secretary of the Treasury.

In any event, it is my pleasure to introduce to you Mr. Winslow Baker, who serves as the Warsaw City's Economic Development Corporation representative. He is going to be testifying in favor of S. 1973, which was a bill put in by my colleague in the U.S. Senate, Senator Wendell Ford.

Mr. Baker is here to talk to you about an economic opportunity for Gallatin County. I don't want to give away what it is, so I would like to turn over the testimony to Mr. Baker.

Mr. JONES. Mr. Baker, you are recognized.

**STATEMENT OF HON. WINSLOW BAKER, COUNCILMAN, CITY OF
WARSAW, AND MEMBER, ECONOMIC DEVELOPMENT CORPORATION
FOR GALLATIN COUNTY, KENTUCKY**

Mr. BAKER. Mr. Chairman and Members of the Subcommittee, it is privilege to appear before you to discuss the transfer of a vessel to the city of Warsaw.

My name is Winslow Baker. I am the Warsaw City Council Representative to the Gallatin County Economic Development Corporation. My reason for being here is that the city of Warsaw could use some economic development, and we would like to have your help in making it possible.

The ship we are requesting would be part of the National Defense Fleet and has no current usefulness to the United States Government. Of course, the ship to be transferred would be determined by what is available from the Department of Transportation.

I believe maybe I should talk a little about the city of Warsaw and how the City intends to use the ship. The city of Warsaw is located between Louisville and Cincinnati on U.S. Highway 42. Within an hour of an international airport and regional shopping area and downtown Cincinnati, Gallatin County is situated on the Ohio River. However, since being bypassed by Interstate 71,

Warsaw has increasingly become a bedroom community, and we are no longer self-sufficient as we once were. Virtually everyone has to work and shop someplace else, and we would like to change that.

The Ohio Riverfront is an outstanding attraction for the City. The City and County officials want to develop the area to its full potential. Currently, we have two large marinas and the largest groups using these marinas are from Indianapolis, Cincinnati, and Louisville.

I am here asking the Subcommittee to assist us in making our economic development plans a reality. These plans include the use of a ship as the centerpiece for a tourist trade.

The City has cleared and built a large park on the river. For some time, the Economic Corporation, in conjunction with the City Council, has been exporting a riverfront complex with dining and entertainment.

Our intentions are to set up a corporation to lease the ship from the City, move it to Warsaw, and sublease the areas of the ship to individuals for restaurants and shops. We have been working on this for some time and have several interested investors. Also, we are getting a lot of inquiries about leasing space on the ship.

I realize there has been some discussion about the feasibility of moving the ship to Warsaw. The City has engaged the services of Richard Lamb of American Boats in Alton, Illinois. Mr. Lamb is confident the ship can be moved to the site. In fact, just before I left for Washington, another ship mover from Cincinnati contacted me, asking if he could bid on the move.

My fellow councilmen and representatives on the Economic Corporation realize this is a big step for Warsaw, but with determination and dedication to the project, I know we will make this happen.

Again, thank you for allowing me to appear today. I will be glad to answer any questions you may have.

Mr. JONES. Thank you, Mr. Baker.

What type of vessel do you require?

Mr. BAKER. We have acquired some specifications located down on the Gulf Coast. Those specs are the ones we sent to Mr. Lamb at American Boat to review. It is a freighter. It is what they used during the Second World War. They were referred to as Victory Ships.

Mr. JONES. Do you know of any obstacles along the Mississippi and Ohio Rivers that would prevent the vessel from being towed to Warsaw?

Mr. BAKER. As it exists today, there were some tall masts and a smokestack that would have to be removed to get under one real low bridge.

Mr. JONES. How do you plan to get the vessel to Warsaw?

Mr. BAKER. American Boat is a barge line company.

There is another company called Ohio River Company that is a barge line company, that operates on the Ohio and Mississippi. We would use their facilities to tow it up the Mississippi, up to the Ohio River to Warsaw.

Mr. JONES. Are there any other questions from anyone?

Being no further questions, Congressman Bunning and Mr. Baker, we thank you for your appearance.

Mr. BUNNING. Thank you, Mr. Chairman.

Mr. JONES. At this point in the hearing, we are going to go out of order.

Congressman Colorado, we invite you to speak to us.

STATEMENT OF HON. ANTONIO J. COLORADO, JR., THE RESIDENT COMMISSIONER, COMMONWEALTH OF PUERTO RICO; ACCOMPANIED BY DANIEL M. CONATON, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, PUERTO RICO MARINE MANAGEMENT, INC., SAN JUAN, PUERTO RICO

Mr. COLORADO. Thank you very much, Mr. Chairman. I am accompanied today by Mr. Daniel Conaton, Senior Vice President and General Counsel of Puerto Rico Marine Management, Inc. (PRMMI). I thank you again for the opportunity to appear before you in support of H.R. 5030.

H.R. 5030 is a bill to provide much needed assistance to the people of Puerto Rico by aiding our local shipping companies in providing continued service to the citizens of our Commonwealth and the people in the mainland United States.

Mr. Chairman, this bill would provide relief to our small Puerto Rico Maritime Shipping Authority (PRMSA) from any further regulatory interpretation from the Maritime Administration (MARAD) that could threaten our economic well-being.

Specifically, it would amend Section 506 of the Merchant Marine Act of 1936, by allowing nine vessels built with construction-differential subsidies (CDS) and which are currently operating from the mainland United States to the Commonwealth of Puerto Rico, to be exempted from any provisions of Section 506 or from future regulatory interpretations which would require a "foreign voyage" when carrying maritime cargo to and from Puerto Rico.

The most obvious and most immediate beneficiaries of any legislative exemption to Section 506 (46 App. U.S.C. 1156) will be the American-flag operators which service the Island: the Puerto Rico Maritime Shipping Authority; its agent, the Puerto Rico Marine Management, Inc.; and Sea-Land Services, Inc. The real beneficiaries, however, will be the people from the mainland United States and Puerto Rico, who are the recipients of cargo shipped between these two locations.

Commercial products come to Puerto Rico from almost every State in the Nation, and our cargo moves through many ports of call: New Orleans, Louisiana; Jacksonville, Florida; Charleston, South Carolina; Baltimore, Maryland; and Edison, New Jersey.

For example, the Port of Jacksonville, Florida, is one of the biggest beneficiaries of trade with Puerto Rico. At 26 percent of Jacksonville's total tonnage, more trade takes place with Puerto Rico than with any port. The rest of the Caribbean accounts for 24 percent of their business (all in terms of tonnage), South America for 19 percent, Europe for 10 percent, and the Far East for 8 percent. If we just look at container cargo in and out of Jacksonville, Puerto Rico accounted for 43 percent of such trade versus 32 percent for South America, and 15 percent for Europe. The Port of Jackson-

ville and, by extension, the entire Jacksonville area, obviously has a stake in Puerto Rico's continued prosperity.

In 1991, Puerto Rico accounted for 14.1 percent of the general cargo going in and out of the Port of New Orleans and 41.5 of the container cargo.

In the New York/New Jersey area, if Puerto Rican data is included with all foreign country trade data, Puerto Rico accounts for 7.5 percent of such overseas business, inbound and outbound—all together. In terms of outbound shipments, Puerto Rico ranks third, behind Korea and Taiwan, and ranks tenth in inbound shipments.

In fact, seaborne transportation of goods purchased by the citizens of Puerto Rico accounts for over \$11 billion in revenue and generates well over 155,000 jobs in the continental United States. Another \$11 billion in profits, in net income, comes also to the mainland because of that trading, amounting to over \$22 billion from Puerto Rico that comes to the mainland that obviously generates very close to 250,000 jobs.

It is important to realize that Puerto Rico ranks among the top ten world customers of the mainland U.S.A. In 1990, our purchases were greater than the combined purchases of Brazil, Argentina, Chile, Colombia, and Peru all together. Puerto Rico has a population of 3.6 million, while those five South American countries have a total population of 253 million people.

It is interesting to note also that, worldwide, its investment abroad generated last year \$54 billion, not including Puerto Rico. Puerto Rico alone generated \$11 billion in net profit to U.S. mainland companies. This is about 16 percent of all the worldwide income that the mainland had last year.

Another interesting point is that Puerto Rico is currently carrying a disproportionate share of the burden of the transportation cost associated with financing the U.S. merchant marine. This represents an additional cost of 5 percent of all goods purchased in Puerto Rico. To the extent that an exemption to the 506 requirement—which also affects trade to these areas—will be granted, the entire Island of Puerto Rico will benefit.

We have to realize that Puerto Rico income depends basically on manufacturing and its trade to the mainland and other parts of the world. Most of its trade is with the mainland, and 40 percent of its net income is from manufacturing. Obviously, the cost of bringing products into Puerto Rico, as Puerto Rico has no natural resources, Puerto Rico has to bring all its products, mostly from the mainland, but all of them from abroad and all the products, after they are finished, are sent back to the mainland or other parts of the world.

Mr. Chairman, this amendment will not cost the U.S. Government any funds. On the contrary, as proposed, in order to take advantage of this grandfather clause for Puerto Rico, an operator will have to repay the then-outstanding unamortized CDS amount. In the case of the five vessels operated by Puerto Rico Maritime Shipping Authority, that will be approximately \$4.5 million.

Will this legislation cause the loss of jobs? On the contrary, this legislation will save jobs. If our shipping authority is forced to go out of business because this problem is not corrected, all of our

ports of call will be impacted. Another area that will be affected will be the shipping yards on the mainland.

Mr. Chairman, we need this remedied now to ensure the Commonwealth of Puerto Rico will, in the future, be protected against any further potential arbitrary rulings from MARAD in the future. I believe H.R. 5030 is the vehicle to resolve the long and important dispute for the Commonwealth of Puerto Rico.

Thank you very much.

Mr. JONES. I appreciate your testimony. We will have questions for the shipping panels that will be heard later.

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

Mr. JONES. Thank you.

The Chairman recognizes Mr. Donald Peart.

**STATEMENT OF DONALD PEART, PRESIDENT, STANDARD
LAFARGE CORPORATION, CANFIELD, OHIO**

Mr. PEART. Thank you, Mr. Chairman, for this opportunity to testify before the Subcommittee. I would also like to thank Congressman Bob Davis for introducing H.R. 3086, a bill to permit the return of Barge MM 262 to U.S. flag and operation.

I am Donald Peart, President of Standard Lafarge, a subsidiary of Lafarge Corporation, which is a U.S. corporation with aggregate and cement operations on the Great Lakes and elsewhere in the United States. Standard Lafarge produces sand, gravel, stone, and other materials for construction. We have operations in New York, Ohio, Michigan, West Virginia, Kentucky, and Illinois.

H.R. 3086 would waive certain provisions of the Jones Act to permit Lafarge to use Barge MM 262 in the coastwise trade of the United States and on the Great Lakes. Barge MM 262 was built in New Orleans in 1965. In 1989, it was refitted and repaired in the United States and sold to a Canadian company to be used by a Canadian division of Lafarge. Since the vessel could not be used for the intended purposes, it was never documented or registered in Canada. Ownership of the barge now resides with Lafarge Corporation, our parent company.

Last summer, Standard Lafarge needed Barge MM 262 to transport stone from its Marblehead, Ohio, quarry to customers on the Great Lakes, but the barge could not be used because it had once been sold to a Canadian company. The barge was needed because a vessel operator who had agreed to carry 300,000 tons of aggregate from the quarry to our customers with shallow draft ports, canceled mid-season. I understand that the vessel operator was unable to find enough additional cargo from other sources to make it financially worthwhile to service our quarry.

We were unable to charter another vessel to carry this 300,000 tons last year, which resulted in a loss of business and forced us to lay off employees and close our quarry earlier than planned for the 1991 season.

Since the Marblehead quarry is dependent upon waterborne transportation, we are concerned about facing similar problems this shipping season. Our main problem is that U.S. Great Lakes vessels that can be, and are, chartered to carry most of our aggregate cannot be used to service all of our customers. They lack the

shallow draft and maneuverability needed to access some of our customers' ports. Moreover, the quarry produces one-to-fifteen-ton stones that cannot be transported on most existing U.S. Great Lakes vessels. We need Barge MM 262 to service these particular customers and markets. Although many of the U.S. Great Lakes operators, including tug and barge companies, would like to help us out, their equipment is not appropriate for all of our needs or is not available when required.

I would like to emphasize that Barge MM 262 would only be used by Lafarge for the carriage of its proprietary cargo; we would be chartering U.S.-flag tugs from Great Lakes operators in order to tow the barge; and the barge will not replace our use of Great Lakes carriers. In fact, we are expanding our use of U.S. Great Lakes carriers because of the increased production at the Marblehead quarry. Lafarge has invested \$7.4 million to modernize the Marblehead quarry and nearly double its capacity, and an additional \$4 million to expand the dock into deeper water. This has provided new employment opportunities to many on the Lakes, including U.S.-flag operators.

With access to the barge, we will be able to keep the quarry in production for a longer period each year, which will provide additional work and income for the quarry's employees. Because we will be hiring tugs to tow the barge, we will be adding to employment on the Lakes.

Mr. Chairman, thank you for this opportunity to testify. I would be happy to answer any questions you may have.

Mr. JONES. Are there any questions?

Mr. DAVIS. Mr. Chairman.

Mr. Peart, in simple terms, this is just a chain-of-citizenship issue; isn't that correct?

Mr. PEART. That is correct.

Mr. DAVIS. As you said, it is U.S.-built, U.S.-repaired. It is going to be pushed by United States-crewed tugs; is that right?

Mr. PEART. That is correct.

Mr. DAVIS. Thank you, Mr. Chairman. No more questions.

Mr. JONES. The Chair recognizes Mr. Anderson.

**STATEMENT OF HON. GLENN M. ANDERSON, A U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. ANDERSON. Thank you, Mr. Chairman, for this opportunity to testify on behalf of Assistance International and their request for two retired vessels from the Maritime Administration's reserve fleet. Assistance International has a long and storied history of volunteer and humanitarian efforts, efforts that are directed at the idea of "a handup rather than a handout."

This seems a particularly fitting time to support an organization which embodies an idea which is receiving so much press of late. Since 1947, Assistance International has brought committed, skilled volunteers to the mission of helping people around the world to better their material condition. I am proud to have Captain Fred Stabbert, the Chairman of Assistance International, as a resident and contributor to the community of Long Beach, California.

I have introduced legislation, H.R. 3036, on behalf of Assistance International, so that this organization can take ships which are destined for the scrap heap and put them to productive use. (MV *Mizar*, MV *Mirfac*, and RV *Conrad*) In the intervening time period between the introduction of that legislation, two of the three ships detailed in that legislation have either been so thoroughly stripped so as to make their refurbishment impossible or they have been scrapped.

Assistance International has since proposed an alternative ship which they could use for their good work, the LST *Tioga County*, which is currently on the schedule to be scrapped. I very much hope we can work with this Committee to see that legislation is moved forward which makes this vessel transfer possible in the near term. I would also ask your Committee's help in seeing that these vessels are not completely stripped before they are transferred to this organization.

Assistance International not only has the skill, experience, and talent to put these vessels to good use, but the dedication. The relatively small amount of money to be derived from scrapping these vessels seems almost trivial in comparison to the magnitude of the good which can be achieved through this transfer.

In conclusion, I want to compliment the staff of your Committee, particularly Mr. Sam Whitehurst, for their work in looking into the feasibility of my legislation. Thank you once again, Mr. Chairman, and I look forward to continuing to work with your Committee to see that this transfer is implemented.

Thank you very much.

Mr. JONES. Thank you, Mr. Anderson.

The next witness is Assistance International, Captain Stabbert.

STATEMENT OF CAPTAIN DAVID STABBERT, DIRECTOR OF VOCATIONAL TRAINING, ASSISTANCE INTERNATIONAL, INC., ACCOMPANIED BY CAPTAIN FRED STABBERT, PRESIDENT; REAR ADMIRAL JOHN BELL JOHNSON, USN (Ret.), VICE PRESIDENT; AND CAPTAIN RICHARD STABBERT, DIRECTOR OF MARINE OPERATIONS, ASSISTANCE INTERNATIONAL, INC., ST. THOMAS, U.S. VIRGIN ISLANDS/LONG BEACH, CA/VIENNA, VA/RENTON, WA, RESPECTIVELY

Capt. STABBERT. Good morning, Honorable Members of the Merchant Marine and Fisheries Committee.

I would like to introduce my father, Captain Fred Stabbert, founder of Assistance International, and Admiral John Johnson, the first president of the organization. They are sitting right behind me.

My name is Captain David Stabbert, and I am here to testify on behalf of Assistance International. The purpose of this testimony is to request that the United States Government transfer to Assistance two surplus vessels, which are the MV *Robert Conrad* and the LST *Tioga County* for the purpose of economic development and vocational training in Central America.

Assistance International is a nonprofit organization that specializes in economic development and vocational training. Assistance was started in the late 1940's. World War II had just ended, and we

were concerned about the needs that we saw in underdeveloped areas. We decided that we could make a difference by combining American volunteers who knew how to build and operate business and industry with people who needed economic and vocational training. As a marine-based organization, we gathered experts in the fields of health, agriculture, and industry. Our ship-based teams specialized in remote villages and towns, utilizing their skills to meet the immediate needs of the area.

For example, our hospital ship, the *Willis Shank*, once a derelict World War II minesweeper, was completely renovated into a first-class facility with eight hospital beds, a surgery, X-ray equipment, and dental equipment. This vessel was staffed by volunteer doctors, dentists, nurses, and others who gave of their time to make these projects successful.

Other vessels in our fleet carried volunteers to distant locations where they, in conjunction with the local people, installed generators for power, sawmills, logging equipment, taught skills such as welding, electricity, engine repair, and more. Eventually, we were operating five ships, three airplanes, and a vocational training facility to meet the needs of the North Country. This program developed leaders in every tribe and village, and thus ensured the continued success still seen today.

In 1967, we turned our attention to Central America, when we were asked to help the weavers in Guatemala who had no market for their products. Our first efforts were to gather up sewing machines, which we loaded onto our vessels and distributed to various villages. We then began a training operation where the people were taught to use patterns, how to use colorfast dyes, and how to weave the threads tighter to reduce shrinkage, thus enabling their industry to become competitive in the world market. This one project alone increased the daily wage of the weaver from approximately 50 cents per day to over \$2 per day.

In addition to the economic development projects, Assistance was always alert to the problems of natural disasters. We were available following the earthquake in Nicaragua, as well as numerous other disasters, such as Hurricane Fifi.

The advent of political turmoil in Central America curtailed our programs, making it impossible to continue until recently. Never has the opportunity to help Central America been as great, nor has the Central American cry for Assistance been as loud as it is today.

It is with our goal of "a handup instead of a handout" that we have set our sights on the Central American need for fisheries management, marine transportation, marine construction, and maritime-related vocational training. In order to begin meeting these needs, we must have a minimum of two pieces of marine equipment.

The equipment that Assistance is requesting are two surplus vessels that are old and of relatively inconsequential value, but combined with our marine expertise in operations and vocational training, these vessels will make a great difference.

The 212-foot *Robert Conrad* with a scrap value of less than \$25,000, is scheduled to be sunk and used as a fish reef. In the hands of Assistance and its volunteers, what was destined to lie at the bottom of the ocean will be renovated and activated as a float-

ing fisheries management and studies facility for Central America. This vessel will house research groups, educators, students, and business consultants as it plies the Central American waters. What was destined for scrap will become a shining, operating symbol of progress to a people who are desperately in need of examples to substantiate their faith in the free economic and political society that they have worked so hard for.

The LST *Tioga County* is a 1952 385-foot landing craft that is scheduled to be scrapped. The scrap value of this vessel is less than \$150,000. This vessel is ideally suited for Assistance use as a vocational training facility, specializing in the marine construction fields. It is the answer to the desperate need for training of the area's youth; and, in addition, it will be operated by these same students to help their countries by providing the marine infrastructure, such as pile driving, breakwater construction, and other services needed by the small coastal villages. This will enable them to transport their local products to market, as well as receive the supplies necessary to support their communities.

In summary, there is a desperate cry for Assistance in Central America for both economic development and for vocational training. The \$150,000 to \$200,000 combined scrap value of these vessels is minute compared to the good use that these vessels can be put to without even accounting for the value of future U.S. trade that will stem from these projects. Our background and years of marine experience have proven our capability to perform.

We want to improve the conditions in Central America so that people do not have to leave their countries to emigrate to the United States in order to make a living, so that the communities and groups of coastal people can experience economic stability, which was previously only a dream, but will now be a reality. We would like to help them achieve stability.

Therefore, we respectfully request your assistance in this endeavor by approving the transfer of the vessels that we request. Thank you.

Mr. JONES. Please explain how Assistance funds its projects.

Capt. STABBERT. The majority of the folks that work with Assistance are volunteers, but the funding comes from individual donations. It has come from corporations and foundations.

Mr. JONES. Could you give us more details about how the *Conrad* would be used as a fishery management and study facility?

Capt. STABBERT. I will say this. My brother is far more an expert in this one field than I am; I will do the best I can. If I misspeak, I will ask him to come up and answer your question.

The *Conrad* will have to be refurbished; she is in very sad shape. When she is running, she will be taken down into the Caribbean Basin and will conduct oceanographic studies in the areas of availability of bottom fish. From there on, she will be used in implementing of that fisheries aspect from the fishing to the transportation of the fish to the wholesaling of the fish—that sort of thing.

So it is firstly a maritime trade school, then fisheries research (with that vessel).

Mr. JONES. Have you had occasion to convert these types of vessels before?

Capt. STABBERT. Yes, sir, we sure have. I have some pictures, too, that I have brought with me.

I would say about 10 vessels in all.

Mr. JONES. So you know what you are getting into?

Capt. STABBERT. It is very interesting to see a hulk turn into something that is absolutely beautiful.

Mr. JONES. Are there any other questions?

Mr. Callahan.

Mr. CALLAHAN. Where are the vessels refurbished?

Capt. STABBERT. The majority of our work has been done in the Northwest. But one boat is coming from the Northwest—actually, from California. *Tioga* is in California. The *Conrad* is laid up here in Virginia, so that work will probably be done in New Orleans.

Mr. CALLAHAN. That is what I was going to say. Wouldn't it be more practical to refurbish them somewhere on the Gulf Coast, like in south Alabama?

Capt. STABBERT. I probably shouldn't have said New Orleans. I would say somewhere on the Gulf Coast.

Mr. CALLAHAN. Thank you, Mr. Chairman.

Mr. TAYLOR. Captain, I am curious, seeing that we have a trade imbalance with regard to seafood already with Central America, why would it be in the interests of the American taxpayer to further subsidize this imbalance?

I go through the packing plants in south Alabama, Mississippi, Louisiana and all the time see the 50-pound bags of shrimp—Produce of Costa Rica, Product of El Salvador. There is obviously a flourishing market.

I think it is—80 percent of all the shrimp in America come from someplace else. Why would I want to make that worse? That shrimp comes in and lowers the price of the American product. The American fisherman has to now compete not only with the subsidies of other countries, in the case of the Mexicans, but if we now give this ship to someone in Central America, we are in effect subsidizing another.

How would you—

Capt. STABBERT. You may be right in some industries.

Mr. TAYLOR. I am exactly right when it comes to seafood, sir. The Mexican Government controls the seafood industry, and they subsidize that product, and that shrimp comes into the United States, lowers the price; it is a commodity, and it makes it that much harder for the American shrimper to compete.

Capt. STABBERT. In no way whatsoever are we dealing with the shrimp or the lobster market. We are talking about what is now known as "bottom fish" or "scrap fish" that will simply feed people.

Now, whether it is people in Central America, South America, or shipped over to Asia, we are talking about bottom fish to feed people. We are not interested in the shrimp and lobster market, or I would say, the "high tech" or the expensive seafood market.

Mr. TAYLOR. But is it still fish that could well end up here in America. It could, in effect, compete against the product produced by someone on the East Coast, the Gulf Coast.

Capt. STABBERT. Once again, you are asking about an area of expertise my brother is far more qualified to address than I am, because they are involved in this in the Northwest.

But we are not talking about the same thing, I don't believe, at all.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. JONES. Is there anyone else?

Captain, thank you very much.

Mr. JONES. The Chair is happy to recognize a very charming woman of Congress, Ms. Marcy Kaptur.

**STATEMENT OF HON. MARCY KAPTUR, A U.S. REPRESENTATIVE
FROM OHIO**

Ms. KAPTUR. Good morning, Mr. Chairman and Members of the Committee. It is a distinct pleasure to appear before you today in this magnificent hearing room. I just love to come to this room, and hope I haven't worn out my welcome.

I am appreciative of your holding this hearing on requested waivers for boat owners seeking licensing for vessels for employment in the coastwise trade and fisheries of the United States. On July 23, 1991, I introduced H.R. 3005, which would allow for the licensing of the *Miss Joan*, a boat owned by Mr. Robert Lamb, one of my constituents from Oregon, Ohio. The introduction of this bill was necessary because Mr. Lamb was unable to provide all the adequate documentation to prove that the *Miss Joan* was used commercially as a U.S.-flag vessel before he purchased the vessel.

I will just take two minutes here to tell you what happened. I am sure you have had other situations like this before the Committee.

Mr. Lamb bought the *Miss Joan* in 1981 from the Northshores Marina in Spring Lake, Michigan. Mr. Robert G. Doll of Traverse City, Michigan, was the previous owner, and he used the boat for charter fishing. As Mr. Lamb went about acquiring all the necessary licenses to enable the *Miss Joan* to be used as a charter vessel in Lake Erie—my district borders Lake Erie—he found that he must have verification from all previous owners that the *Miss Joan* was operated under the U.S. flag.

Unfortunately, there was fire at Northshores Marina two years after Mr. Lamb bought the *Miss Joan* and all records were destroyed, preventing Mr. Lamb from securing the proper documentation to show the chain of title.

Despite Mr. Lamb's perseverance through phone calls, visits to Traverse City (Mr. Doll's last known address), and working with the Toledo Police Department and a local search company, he was unable to locate Mr. Doll to obtain the necessary verification. After these efforts proved fruitless, Mr. Lamb contacted me, and I introduced H.R. 3005 to obtain a waiver, so that the boat can be documented and operated on Lake Erie as a charter boat. My understanding is that the *Miss Joan* meets the requirements necessary for such a waiver. Mr. Lamb is retired and is not in a position to purchase another boat.

I believe that your staff has copies of all the documentation that Mr. Lamb has on the *Miss Joan*. At the time that I received notification of this hearing, my staff spoke again with Mr. Lamb, and he

indicated that he has provided us with all the documents he has available on the *Miss Joan*.

I would appreciate your assistance in approving H.R. 3005 and, consequently, granting this waiver. Your interest in moving the bill quickly is greatly appreciated. The boat owners represented by these private bill waivers should not be penalized through circumstances that are no fault of their own.

Thank you, Mr. Chairman, for your consideration of my testimony. I look forward to working with you on moving H.R. 3005 through the Committee and the House.

If the Committee has any questions, I would be happy to respond.

Mr. JONES. Thank you.

Are there any questions?

If not, we appreciate your coming by.

Ms. KAPTUR. I thank you very much and I thank the Committee.

Mr. JONES. The Chair now calls Mr. Tom Willis of the U.S. Coast Guard.

STATEMENT OF THOMAS L. WILLIS, CHIEF, VESSEL DOCUMENTATION AND TONNAGE SURVEY BRANCH, MERCHANT VESSEL INSPECTION AND DOCUMENTATION DIVISION, HEADQUARTERS, UNITED STATES COAST GUARD

Mr. WILLIS. Good morning, Mr. Chairman. The Coast Guard does not have a prepared statement, but I would be happy to answer any questions any Members of the Subcommittee might have.

Mr. JONES. We are aware you have no statement. You were provided information on these vessels under discussion today. Based upon your review, is there any specific comment you would like to make?

Mr. WILLIS. Mr. Chairman, we have reviewed all of these vessels in terms of safety records. We have no opposition from a safety standpoint. We, of course, do not speak to the policy issues that would normally be addressed by the Maritime Administration.

We do, however, have a question about the vessel *Hazana*, identified in H.R. 4469. We note at the present time it is owned by Jeff Hossellman and his wife, Vicky. Mrs. Hossellman is not a citizen of the United States. It is unclear to us whether or not it is desired that this vessel be documented in the partial ownership of a non-citizen. That would be unprecedented, and we would like clarification there, please.

Mr. JONES. Thank you, Mr. Willis.

Are there any questions?

I appreciate your presence here this morning.

Mr. WILLIS. Thank you, Mr. Chairman.

Mr. JONES. The Chair calls Reverend Meyers and Mr. Bangert to come up to the table—and, of course, Mrs. Meyers.

Reverend, you may proceed.

PANEL CONSISTING OF REVEREND ROBERT N. MEYERS, PRESIDENT, LIFE INTERNATIONAL, SILVER SPRING, MARYLAND, ACCOMPANIED BY MRS. MEYERS; AND PHILIP A. BANGERT, RICHARD L. SINNOTT AND COMPANY, WASHINGTON, DC ON BEHALF OF THE PORT OF OAKLAND AND THE ASSOCIATION FOR THE PRESERVATION OF THE PRESIDENTIAL YACHT *POTOMAC*

Rev. MEYERS. Good morning, Mr. Chairman, Members of the Committee. I am Robert N. Meyers, President of Life International. Thank you for this opportunity to testify before the Merchant Marine Subcommittee on behalf of H.R. 2832.

Life International is a humanitarian organization formed to use ships to take aid, technical assistance, training, education, and medical treatment to the Third World. Under Public Law 97-360, et al., two ships were set aside for Life—the Landing Ship Dock *Donner* and the Troop Ship *General Nelson M. Walker*.

The legislation currently before this Committee, H.R. 2832, would substitute the Landing Ship Dock *Plymouth Rock* for the *Donner* and set aside both the *Plymouth Rock* and the *Walker* until October 22, 1997. The bill has 27 cosponsors.

Life took custody of the Navy hospital ship *Sanctuary* on February 4, 1990. The Maryland Port Administration is donating a berth at Pier 5 in the Fairfield area of Baltimore. We have spent over \$500,000 upgrading the ship, on salaries, public relations, et cetera. Significant contributions of time and expertise have been made by many individuals and groups, such as electricians and welders. Six members of the Elevator Construction Union have volunteered 300 hours repairing and activating the elevators. AT&T, through its Newark Chapter of the Telephone Pioneers, has volunteered to activate the phone system on the ship.

Practical and Technical, Inc., of Baltimore have prepared specifications for the complete refurbishing. We are submitting these specs to shipyards for cost estimates. We are hoping to classify the *Sanctuary* as an industrial ship, rather than a passenger ship, thereby reducing the cost of bringing it up to Coast Guard certification.

The Navy Ship Parts Control Center in Mechanicsburg, Pennsylvania, has many of the parts and equipment that were taken off the *Sanctuary* (lifeboats, fire extinguishers, clocks, et cetera), which they are making available to us.

Delegations from Nigeria, Venezuela, and the former Soviet Union have visited the ship. We are trying to work out some agreement to barter the humanitarian services of the ship in return for oil, which we would sell to get the funds to finish the refurbishing, and oil for the operation.

There are two possibilities for service that are being considered—Russia and the Horn of Africa.

We are planning to submit a proposal to the State Department and the Agency for International Development with regard to the medical initiatives that are going to take place in the former Soviet Union. We envision that our ship will play a role both in the immediate delivery of direct medical care where it is direly needed to the New Independent States, as well as provide some form of tech-

nical assistance that would be more useful in solving long-term medical problems.

On November 29, 1991, Aleksandr A. Sokhin, M.D., and Michael J. Chistyakov, M.D., of the Russian Embassy visited the ship and were so impressed that they became very interested in the *Sanctuary's* going to Russia. Dr. Sokhin contacted Moscow and has received official notification that they are interested in the *Sanctuary's* going to Murmansk and Vladivostok.

We were recently told that Smith Hempstone, our Ambassador to Kenya, requested that our government send a hospital ship to the Horn of Africa. This request is not only because of the millions of people with little or no medical treatment, but also for the thousands of wounded and diseased from the war in Somalia. Knowing that Life International has a hospital ship, we were called regarding his request.

We talked by phone, and Ambassador Hempstone confirmed that there is a real need for our ship in that area. The State Department and the Agency for International Development feel that the Horn of Africa is the place the ship will be needed most because of the constant needs in that area for years to come.

We have met twice with the Dean of the African Diplomatic Corps, Ambassador Paul Pondi of Cameroon. Ambassador Pondi passed out packets of information to introduce the *Sanctuary* Project to the 45 ambassadors of the African countries at their March meeting.

It is important that these two ships be set aside so we can assure those with whom we are negotiating that they will be available. We have been negotiating with several cities to use the troop ship *Walker* as a substance abuse rehabilitation center or a facility for the homeless. We are approaching States to sponsor the *Plymouth Rock* as an agriculture, construction, or vocational school ship, which would be renamed the *Texas*, *California*, or *Wisconsin*.

Thank you.

Mr. JONES. Reverend Meyers, how close is Life International to having the ship *Sanctuary* ready for sea?

Rev. MEYERS. We have now paid \$8,000 to draw up specs for the ship from Practical and Technical—it is two people, Gabriel Inrini and David Breitner, whose combined experience at Sparrow's Point, Bethlehem Steel—and that spec, which is quite extensive, has been sent to seven shipyards, and now we are waiting. The estimated cost of refurbishing the ship, the State Department has said that if we can finish the refurbishing of the ship, that there is a good likelihood they would finance this for the ex-Soviet republics.

Mr. JONES. All right, sir. What has to be done to *General Walker* and *Plymouth Rock* so your organization can use them?

Rev. MEYERS. We have been negotiating for years with the city of New York to use that as a ship for the homeless. We are now talking about using it for a substance abuse city for the State of Maryland. What we would do in that case, Mr. Chairman, Members of the Committee, we would not activate the main engines like we would do with the *Sanctuary*. That ship would simply be towed to a place and moored there as a stationary vessel.

With regard to the *Plymouth Rock*, it is in excellent condition, and that wouldn't take very much money to activate that as a construction ship or agriculture ship or a medical ship.

Mr. JONES. Reverend Meyers, do you feel Life International has adequate funding in order to accomplish your objective?

Rev. MEYERS. Absolutely, Mr. Chairman.

Mr. JONES. Mr. Bangert, I ask you to step aside for a minute and let me recognize a Member of Congress.

It is my pleasure to welcome to the Committee Ms. Nancy Pelosi.

PANEL CONSISTING OF HON. NANCY PELOSI, A U.S. REPRESENTATIVE FROM CALIFORNIA, AND WILLIAM J. WHALEN, EXECUTIVE DIRECTOR, NATIONAL MARITIME MUSEUM ASSOCIATION, SAN FRANCISCO, CA

STATEMENT OF HON. NANCY PELOSI

Ms. PELOSI. Thank you very much, Mr. Chairman.

Mr. Chairman, I am pleased to be accompanied today by Mr. William Whalen, Executive Director of the National Maritime Museum Association and former Director of the National Park Service.

The subject before us that I have come to testify about is the concept of utilizing the proceeds from the sale of scrapped National Defense Reserve Fleet ships. On this score, Mr. Chairman, I want to thank you for conducting the hearing today and for the latitude that you have demonstrated in discussing the concept of using the proceeds from surplus vessels to address other Federal maritime needs. I am sympathetic, as a Member of the Appropriations Subcommittee that funds the Maritime Administration, and well understand how important it is to maintain funding for the corresponding projects under your jurisdiction.

Mr. Chairman, Members of the Committee, the issue of utilizing proceeds from the sale of scrapped National Defense Reserve Fleet ships has particular importance to my district and the San Francisco Bay area. Congress, as you know, acted in 1987 to create a separate unit of the National Park Service to recognize the national significance of the largest collection of historic ships in the world. The San Francisco Maritime National Historical Park faces a backlog in repairs and maintenance for the historic ships and is without reserves to keep pace with the restorative work required to maintain the ships.

The Maritime Park has a nonprofit association which contributes in part to the upkeep of historic ships and which could function as a conduit for revenues for scrapped reserve ships toward the restoration of the National Historic Fleet. This is a concept modeled on the Merchant Mariner Memorial, included in Public Law 101-595, which allowed scrapped reserve vessels to be used by nonprofits to construct a memorial to merchant mariners.

I believe the same model could be used to allow the proceeds from the sale of a national asset to be channeled for the purpose of maintaining another national asset. Mr. Chairman, Congress decided that these historic ships were nationally significant and worthy of preservation, but the strong Federal commitment to keep them afloat has been lacking.

The *Jeremiah O'Brien*, the restored and seaworthy workhorse of World War II in the historic collection, is docked at Fort Mason Center. It is the only true replica in the Nation of the 2,750 Liberty ships built during World War II. In fact, the *Jeremiah O'Brien* was the beneficiary of Public Law 101-595 in receiving over \$200,000 for its restoration. Its original funding was provided through the National Historic Trust, and recently, the National Park Service provided over \$400,000 to fund badly needed drydocking, inspection, and repairs. This is the kind of cross-section of Federal interest that is needed to support related Federal maritime projects.

Another issue at stake is the preservation of skilled and specialized labor that is necessary to care for the historic ships. Many of the skills required to maintain and repair the historic ships are unique where specialized carpenters and craftsmen are needed to work on traditional ship riggings and wooden-hulled ships, the oldest dating to 1886. It is in the long-term interest of the Maritime Park to develop these skills among its staff and to preserve these uncommon and exceptional skills in the American labor force. Without this expertise, we would be dependent on foreign skilled labor to preserve American history.

In addition to these skilled workers, hundreds of hours of volunteer effort is contributed to maintaining the ships. There is also considerable local interest and support for the preservation of the National Fleet of Historic Ships.

No visit to San Francisco is complete without a tour along the waterfront. A tremendous effort has been made to capture the rich history of the Pacific Coast sailing ship days, and I think that the Maritime Park has one of the foremost maritime displays anywhere in the world. I invite you to visit the park, Mr. Chairman and Members of the Committee. I believe Sam Whitehurst on the Subcommittee staff visited the park and can attest to the unique significance of these ships.

Thank you, Mr. Chairman. The idea of using decayed defense ships to revitalize a living museum of maritime history is a worthy cause. I hope we can be forward-looking and creative in our approach to using the funds from scrapped reserve ships for the purpose of preserving another aspect of our Nation's rich maritime heritage.

Thank you for your time today.

Mr. Chairman, with your permission, I would like to submit for the record a letter of support from the President of Tricoastal Marine, involved in maritime preservation.

Mr. JONES. Without objection.

Ms. PELOSI. I would also like to present for the Members of the Committee and Subcommittee staff a brochure on the San Francisco Maritime National Historic Park, so you can have some visual evidence of what the park is like. Hopefully, it will whet your appetite to visit us in San Francisco.

Thank you, Mr. Chairman.

[The letter from the President of Tricoastal Marine can be found at the end of the hearing; the brochure on the San Francisco Maritime National Historic Park can be found in the Subcommittee files.]

Mr. JONES. Are there any questions?

Apparently, there are no questions.

Mr. HERTEL. Mr. Chairman, I think it is a great idea. I think it is innovative.

Ms. PELOSI. Thank you, Mr. Hertel.

Thank you, Mr. Chairman, for your time.

Mr. JONES. Mr. Whalen.

STATEMENT OF WILLIAM J. WHALEN

Mr. WHALEN. I am Bill Whalen. I am with the National Maritime Museum Association. We are a nonprofit organization which helps raise outside moneys and provides major support for the National Park Service. We are particularly interested in any ways we can find to enhance or embellish the budget of the National Park Service.

The seven large ships of this National Park Service fleet tell the story of the distinguished heritage of America's merchant marine. This is not a naval museum. These vessels are unique in all the world; they span the era of revolutionary changes in marine technology—from the use of wind power to steam, and from wooden construction to steel-plated hulls.

Each vessel represents a particular type with local, regional, and national significance: the World War II Liberty ship *Jeremiah O'Brien* built at South Portland, Maine, in 45 days; the scow *Alma*, a flat-bottomed schooner suited to the waters of California's Bay and Delta region; the 300-foot-long ferryboat *Eureka*, which carried passengers, automobiles, and railroad cars across San Francisco Bay; the *C.A. Thayer*, one of only two survivors of a fleet of 900 lumber schooners that represent the coastwise commerce of the West; the steam schooner *Wapama*, the last of the type that replaced the sailing schooners along the Pacific Coast; the deepwater, square-rigged *Balclutha*, which was built in Scotland, but became the last sailing packet in the Alaska salmon trade; the powerful oceangoing tugboat *Hercules*, product of a distinguished New Jersey shipyard; and the *Epplenton Hall*, whose side-lever steam engines evoke an earlier day in steam technology.

Mr. Chairman, money is greatly needed to restore these vessels. An estimated \$12.7 million for major restoration work will bring the ships to a condition in which they can be maintained on a routine basis. This funding could be made available over a six-year period, the minimum time needed to accomplish the program.

We need additional money for maintenance. A proper level of routine care requires making up a current annual funding deficiency of \$711,000, in order to bring the total projected annual cost of protecting the investment and adequately maintaining the fleet of seven vessels, their moorings, and their gangways to \$1.9 million per year.

In the Park's Museum Building located adjacent to the ships, built by the Works Progress Administration in 1939. It is a National Landmark in its own right and has serious rainwater leak problems which are threatening the integrity of the structure. Stainless steel window frames have rusted out and leak; the roofs leak and cause damage to interior murals; the skylights leak and damage basement-level workshops; the second floor of the building needs an

elevator to provide handicapped accessibility; ceiling areas and walls with murals have been damaged by the water intrusion; and an appropriate plaque honoring Sala Burton must be installed to comply with Public Law 100-348 that established the Park. The total one-time cost is \$2.7 million.

The needs of the Park are considerable, but the goals are attainable and worthwhile. There is staff in place, able to carry out the work, and there is a quantifiable and realistic work plan. Therefore, the National Maritime Museum Association would like to strongly support the crafting of legislation to earmark proceeds from obsolete vessels in the National Defense Reserve Fleet to preserve the historic fleet at San Francisco Maritime. What more fitting way could there be to direct the proceeds from merchant vessels that have outlived their usefulness, than to support an institution dedicated to preserving the most striking examples of our merchant marine?

Thank you, Mr. Chairman. I would be happy to answer any questions from you or Committee Members.

Ms. PELOSI. Mr. Chairman, in the interest of time, Mr. Whalen gave an abbreviated statement. I would ask your consent to have his full statement placed in the record.

[The prepared statement of Mr. Whalen can be found at the end of the hearing.]

Mr. JONES. Without objection, so ordered.

Ms. PELOSI. Thank you, Mr. Chairman.

Mr. JONES. Mr. Whalen, do you know how much money San Francisco Maritime gets in fiscal year 1992 from the National Park Service?

Mr. WHALEN. The National Park Service provided to the Historic Park in fiscal year 1992 approximately \$2 million. Of this, the majority went for the day-to-day operations of the Park, and a small part went toward the upgrader capital expenses toward maintaining the fleet.

Mr. JONES. Of this sum, how much was spent to restore and maintain the National Historic Fleet and how much for maintenance of the Hyde Street Pier?

Mr. WHALEN. The figure on the Hyde Street Pier is a very small figure, I would say less than \$100,000.

On the Historic Fleet, you would say that the approximate \$2 million, about 50 percent of that was used for interpretation in programs for others. About, I would guess, somewhere in the neighborhood of \$750,000 to \$800,000 went into the actual maintenance, on a day-to-day basis, of the fleet.

Mr. JONES. As I understand your testimony, you need \$12.7 million over six years to restore the fleet, \$1.9 million annually to maintain it, and approximately \$1.3 for repairs to the Hyde Street Pier and \$2.7 for repairs to the Museum Building and Aquatic Park; is that correct?

Mr. WHALEN. That is correct. Those are in 1992 dollars.

Mr. JONES. Are there any other questions of Mr. Whalen? If not, thank you for your appearance here this morning.

Mr. WHALEN. Thank you.

Ms. PELOSI. Thank you very much, Mr. Chairman.

Mr. JONES. Mr. Bangert, if you will return and be recognized.

Mr. Bangert, I am sorry. There is a vote on the House Floor. We will have to recess for about 15 to 20 minutes.

[RECESS]

Mr. JONES. The Committee will come to order.
The Chair recognizes Mr. Bangert. You are recognized.

STATEMENT OF PHILIP A. BANGERT ON BEHALF OF THE PORT OF OAKLAND AND THE ASSOCIATION FOR THE PRESERVATION OF THE PRESIDENTIAL YACHT *POTOMAC*

Mr. BANGERT. Good morning, Mr. Chairman and Members of the Subcommittee. I want to thank you for the opportunity to appear before you today. My name is Philip Bangert, and I am Washington representation for the Port of Oakland, in Oakland, California.

I am here today to testify on behalf of the Port and the Association for the Preservation of the Presidential Yacht *Potomac*. With your permission, I would like to submit a full written statement and additional material for the record, and summarize my remarks.

Mr. JONES. Without objection, so ordered.

Mr. BANGERT. Thank you, Mr. Chairman.

In 1980, the Port of Oakland purchased the USS *Potomac*, the presidential yacht of the late President Franklin D. Roosevelt. Since that time, the Port has contributed \$1 million in cash and in-kind contributions toward its \$3.5 million restoration.

Soon after the Port purchased the vessel, the Association for the Preservation of the Presidential Yacht *Potomac* was established. The Association is a nonprofit, public benefit corporation. As its charter indicates, the Association's purpose is to "organize, direct, and sustain the community effort necessary to restore, operate, and preserve the Presidential Yacht *Potomac*, an historic vessel of national significance, in order to provide continual educational opportunities for members of the public."

This ship is now nearly 100 percent restored and has been certified as a National Historic Landmark. It will be docked at the Franklin D. Roosevelt Memorial Pier in Oakland, California, built at a cost of nearly \$450,000. This ship will constitute the only memorial to President Roosevelt west of the Rocky Mountains.

The *Potomac* will also be used as a floating classroom for northern California school children studying the Great Depression, the New Deal, and the World War II years, including President Roosevelt's effort in preparing the merchant marine for the key role it played in World War II.

Legislation has been introduced by Representatives Ron Dellums and George Miller that would transfer ownership of the *Potomac* to the National Park Service, which would then have responsibility for the operation of the vessel. The legislation would permit the Secretary of the Interior to accept private and public funds for the purpose of providing facilities and services necessary for the operation of the *Potomac*.

[EDITOR'S NOTE: H.R. 1789, 16 April 1991.]

Mr. Chairman, last year the *Potomac* Association submitted an application to the Maritime Administration to obtain title of a sur-

plus vessel in the National Defense Reserve Fleet, pursuant to the Merchant Mariner Memorial Act of 1990 that was reported by this Committee and passed by Congress last year. Unfortunately, it was MARAD's interpretation that the preservation of the *Potomac* would not specifically function as a memorial to merchant mariners, and therefore the Association would not qualify to receive title to a vessel under this program. The irony, of course, Mr. Chairman, is that it was under President Roosevelt's Administration that the Merchant Marine Act of 1936 was passed, legislation which established the modern-day merchant marine of which President Roosevelt was a great supporter. While we are disappointed by the Maritime Administration's response, we respect their decision.

It is the intention of Congressman Dellums to introduce legislation in the form of private relief that will allow the *Potomac* Association to receive the rights, title, and interest of a surplus vessel in the National Defense Reserve Fleet. The Association would use the funds from the sale of the ship for the purpose of completing the refurbishment of the *Potomac*, to defray its operating expenses and toward the establishment of an interpretive center at the Roosevelt Pier. Attached to my written testimony submitted for the record is a letter to this Committee from Congressman Dellums, indicating his intention and requesting this Committee's support.

Mr. Chairman and Members of the Subcommittee, we believe that the *Potomac* yacht will serve a tremendous historic and educational purpose to the citizen of and visitors to northern California. We believe that Representative Dellums' bill is well within the spirit of the legislation passed last year by your Committee, and respectfully request that the Committee look favorably upon this legislation.

Again, Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today.

[Congressman Dellums' letter of 19 May 1992 can be found at the end of the hearing.]

Mr. JONES. Mr. Bangert, how much restoration work is left to do on the *Potomac*?

Mr. BANGERT. She is nearly complete. The restoration will be completed within the next two to three months.

Mr. JONES. What is the estimated cost?

Mr. BANGERT. Approximately \$3.5 million.

Mr. JONES. What are your sources of funding?

Mr. BANGERT. Since the Association was founded, they have received both private and business community funding to the Association, as well as funding from the Port of Oakland, in the neighborhood of \$1 million.

Mr. JONES. All right, sir.

Do you have any questions, Mr. Pickett?

Mr. PICKETT. No, sir.

Mr. JONES. Thank you for your appearance here this morning, Mr. Bangert.

Mr. BANGERT. Thank you, Mr. Chairman.

Mr. JONES. The next witness is Rafael Fabregas, representing the Puerto Rico Maritime Shipping Authority. With him are Miguel A. Rossy, Chairman of the Board of Directors of Puerto Rico Marine

Management, Inc.; Daniel Conaton, General Counsel of Puerto Rico Marine Management; and Juan Lopez Mangual, an economic consultant to the Puerto Rico Maritime Shipping Authority.

Mr. JONES. You may proceed.

PANEL CONSISTING OF RAFAEL FABREGAS, EXECUTIVE DIRECTOR, PUERTO RICO MARITIME SHIPPING AUTHORITY ("PRMSA" OR NAVIERAS DE PUERTO RICO), COMMONWEALTH OF PUERTO RICO, SAN JUAN, PR; ACCOMPANIED BY MIGUEL A. ROSSY, CHAIRMAN OF THE BOARD OF DIRECTORS, PUERTO RICO MARINE MANAGEMENT, INC., EDISON, NJ; DANIEL M. CONATON, GENERAL COUNSEL, PRMMI; AND JUAN LOPEZ MANGUAL, ECONOMIC CONSULTANT, PRMSA

STATEMENT OF RAFAEL FABREGAS

Mr. FABREGAS. Mr. Chairman, all Members on Merchant Marine, my name is Rafael Fabregas, Executive Director of the Puerto Rico Maritime Shipping Authority. I am accompanied by Mr. Rossy, Chairman of the Board; our Counsel, Dan Conaton; and our Economic Advisor, Mr. Lopez Mangual.

First of all, I appreciate the opportunity to appear before you in support of H.R. 5030. In appreciation of the very long morning this Committee has already put in, I will refer you to my prepared statement, already presented, and those made by Mr. Rossy and Mr. Charles Hiltzheimer, President and Chief Executive Officer of Puerto Rico Marine Management.

The shipping authority, Mr. Chairman, was founded in 1974 as a key support of the continuing development of Puerto Rico and to provide reliable, economic, U.S.-flag, U.S. cruise shipping service to Puerto Rico. As Congressman Colorado stated this morning, the Puerto Rico-U.S. trade brought us \$28 billion. As a result of Puerto Rican purchases from the U.S., over 140,000 jobs are created in the U.S. This is on account of our purchases in the United States.

In 1988, we purchased the surplus from bankruptcy at over \$44 million and invested an additional \$45 million in U.S. shipyards to repair them, which has totally raised any benefit of the construction-differential subsidy paid to U.S. lines over 20 years ago.

For 50 years, MARAD's only statement regarding Section 506 was repayment of subsidy by the CDS vessels' operators was the best way by which to protect domestic operators from unfair competition of the subsidized vessels. The market share has gone down from 90 percent to its current 43 to 45 percent. Its competitors continue to grow and expand, both in numbers and capacity, with no harm from the use of the Lancer vessels.

The use of the Lancers in the Puerto Rican trade does not harm the Jones Act fleet. There are no available, suitable Jones Act vessels and not sufficient Jones Act barges to replace the Lancers or to serve Puerto Rico's present needs, much less any future cargo growth.

Congressman Colorado spoke about this legislation earlier this morning, supporting the purposes of the Merchant Marine Act of 1936 and will assure the Lancers are available to, number one, the commerce of Puerto Rico that relies on Lancer's; number two, the

U.S. shipyards that repair Lancers; and number three, the U.S. military that used the Lancers in times of emergency.

In conclusion, Mr. Chairman, I also want to submit for the record letters of support from the Puerto Rico Manufacturers Association—I presume that you may not receive the copies of these letters—and from the Puerto Rico Chamber of Commerce. The Puerto Rico Manufacturers Association is comprised of 1,800 businesses, and the Puerto Rico Chamber of Commerce represents over 1,800 members and 60 affiliated associations.

[The information can be found at the end of the hearing.]

Mr. FABREGAS. I would like to thank you again, and if any Member has any question, Mr. Juan Lopez Mangual, Mr. Rossy, and Mr. Conaton, and myself will be pleased to try to answer them. Thank you again.

[The prepared statements of Mr. Fabregas, Mr. Rossy, and Mr. Hiltzheimer can be found at the end of the hearing.]

Mr. JONES. Thank you, sir.

Mr. Conaton, if we don't pass the bill and you and your company are not allowed to use the vessels in domestic trade, how many U.S. jobs will be lost and where?

Mr. CONATON. Mr. Chairman, the total economic impact of that would be hard to determine. We do know that our company, with these Lancers, employs over 300 merchant mariners, officers and seamen, members of the U.S. unions, aboard these vessels now. Those jobs, if these Lancers are not in operation, are lost.

We also employ approximately 900 to 950 longshoremen up and down the U.S. coast between our most northern port in New York and our New Orleans port in the Gulf. In addition, if these vessels—these are the only viable economic vessels we have to use. The over 750 to 800 employees of the operating company would be in jeopardy of losing their jobs, also.

Mr. JONES. What ports do you serve?

Mr. CONATON. Sir, we serve a full range of ports, starting—New York, Baltimore, Charleston, Jacksonville, and New Orleans; and through intermodal operations, we also serve the Midwest, Texas, and even a small amount of cargo is coming out of California and the West to Puerto Rico.

Mr. JONES. Will these ports be served by your competitors if your company shuts down?

Mr. CONATON. At the present time, Mr. Chairman, we have no direct vessel competition in either Baltimore or Charleston. We are the only carrier to Puerto Rico. In New York, we have competition by Sea-Land, and also a Crowley subsidiary operates out of an adjacent area in Philadelphia.

In Jacksonville, we have multiple competition, many of which are represented here this morning and, I assume, will talk to you later. And in New Orleans, our only competition is Sea-Land.

Mr. JONES. Besides the Lancers, what Jones Act-qualified container ships are suitable and available for the Puerto Rican trade?

Mr. CONATON. To the best of our knowledge, Mr. Chairman, there are no other qualified Jones Act vessels available that are suitable to serve Puerto Rican trade.

Mr. JONES. What is the benefit to the owners of the Lancer vessels of the CDS paid originally to the shipyards some 20 years ago?

Mr. CONATON. As Mr. Fabregas stated, there is no benefit in our view that remains with those vessels.

Yes, they were built over 20 years ago by the now bankrupt United States Lines, and they received CDS subsidy. Due to our acquisition of those vessels in an open public bidding process through the bankruptcy and maritime courts, we believe—and coupled with the over \$45 to \$47 million we spent in U.S. shipyards to refurbish them, any economic benefit that may theoretically be left with those vessels has been wiped out.

We have paid, in our view—it would have been much cheaper—we are—probably our capital costs in those vessels are three times higher, because of the way we acquired them, than they would have been if we had built those vessels back in 1969, with no subsidy, and paid regular commercial rates. We would have been much better off.

We developed some theory on that. We are paying like three times higher in capital costs than we would if we had built the vessels ourselves.

Mr. JONES. Thank you.

Mr. Pickett, do you have any questions?

Mr. PICKETT. Mr. Chairman, if I may hear—I probably should know this—how many vessels are we speaking of? How many of these Lancers are we talking about that would be involved in this legislation?

Mr. FABREGAS. Nine Lancers, five owned by us and four by Sea-Land.

Mr. PICKETT. These were acquired when?

Mr. FABREGAS. 1988.

Mr. PICKETT. And this legislation is necessary because of the court decision that was made on January 31, 1992, in *Marine Transportation Services v. Busey*?

Mr. CONATON. No, sir. We couldn't characterize it like that.

What has motivated us is a long history of multiple rulings by the Maritime Administration, starting back in 1988. As you know, this particular provision is part of the 1936 Act, and for 50 years, no one found it necessary to try to create these restrictive regulations. In 1988, there was a course of action set upon where new measuring methods, to determine what the application of Section 506 was, were implemented; and what has resulted from that is, we believe this legislation is necessary to again bring the house back in order to the way it was been for the 50-year history of this bill.

Mr. PICKETT. But specifically this court decision is what has created the immediate problem?

Mr. CONATON. The court decision is the last step in these multiple steps that have been occurring since 1988. You are correct there.

Mr. PICKETT. At the present time, these vessels, Lancers, are prohibited from engaging in this trade?

* The following can be found at the end of the hearing:

Order and Memorandum Opinion of the United States District Court for the District of Columbia (Judge Royce C. Lamberth), filed 31 January 1992, with regard to:
Civil Action No. 89-2278, *Marine Transportation Services Sea-Barge Group, Inc. v. Busey et al*;
Civil Action No. 90-0969, *Puerto Rico Maritime Shipping Authority v. Busey et al*;
Civil Action No. 90-0980, *Sea-Land Service, Inc. v. Busey et al*.

Mr. CONATON. At the present time, these vessels are engaged in the foreign commerce of the United States, which also includes service to Puerto Rico.

Mr. PICKETT. It revolves around whether or not their cargoes are principally comprised of trade with Puerto Rico, with trade between Puerto Rico and the U.S.; or whether it is principally foreign, outside of those two countries?

Mr. CONATON. That is one of the issues involved in the litigation, and also the current reconsideration by the Maritime Administration.

The litigation you referred to, the judge ruled the Maritime Administration was arbitrary and capricious, and has sent that matter back to the Maritime Administration for further consideration.

Mr. PICKETT. The issue is still in litigation at the present time?

Mr. CONATON. Our support of this bill is for the fact that we have lived under this uncertainty now for four years as a company, and Congressman Colorado's constituents in Puerto Rico have had to survive under the uncertainty of how their island will be served for this four-year period.

We believe this legislation is good insofar as it is finally going to, hopefully, remove, once and for all, this uncertainty that the people of Puerto Rico have tried to build their economy on for the last four years.

Mr. FABREGAS. I would like to add that, in addition, for planning purposes and also because we really don't know the end of this litigation controversy, it may go on and on, because it does not depend on us alone.

In other words, besides our right to appeal, the contenders, the ones that are opposing it, may also appeal for an indefinite period of time. So we would like to settle it for planning purposes once and for all.

Mr. PICKETT. This matter apparently was decided in favor of your position and has now gone back to the Maritime Administration for reconsideration by them?

Mr. CONATON. Congressman, I would love to characterize the litigation that way, but I think I would be a little over-reaching. The judge said many, many things—and I won't try to go from memory as to what his ruling was—but essentially, he sent it back to MARAD to develop a fuller record.

So we have—you know, I would love to characterize—I don't think it is a clear decision. I think it was very helpful to us, and I think the judge has said some very good things, and we have to really—as Mr. Fabregas said, what we are trying to do, hopefully, what this legislation will accomplish will keep us from being in limbo for the many, many months of debate and consideration.

As I said before, to get to this point, this issue has been here for four years, and we are no nearer than we were in 1988.

Mr. PICKETT. Well, I am trying to understand exactly what seems to be the problem at the moment.

I understand what the legislation asks for, but the reason for asking for this is the limit—am I correct in believing that the reason that this is being asked for is because the tonnage being taken between the U.S. and Puerto Rico was constituting, under

the MARAD regulations, too large a percentage of the cargoes that you were carrying with these vessels? Is that an oversimplification?

Mr. CONATON. We believe the route MARAD is proceeding under is trying to put artificial restraints on a commercial situation, trying to, by regulation, do something that should really be done in the marketplace.

In 1988, when we—the Shipping Authority acquired these vessels, they proceeded—they knew that 506 existed, and they analyzed 506, and they made a decision they were going to engage in foreign commerce with the United States. They have rigorously done that. Since that time, there have been new levels of interpretation layered over the top of this law that has been on the books for 50 years.

It is the layering over. It is the new progress, the new events that have occurred since 1988 that we have attempted to resolve in a regulatory and a litigation form; and seeing that we are no further along than we are, we have turned to Congress to, hopefully, bring this thing to finality.

Mr. PICKETT. The underlying controversy is, these vessels were constructed with government subsidies and government subsidized vessels were not supposed to be involved in coastwise trade. Too much of your cargo was considered to be coastwise and, therefore, there was some ruling that adversely affected the use of the vessel. Is that a fair summary?

Mr. CONATON. Yes, sir. That is the general issue. The vessels are to be used—they can be used in a mixed trade, foreign and domestic, and that is what we are in.

Mr. PICKETT. Thank you, Mr. Chairman.

Mr. JONES. Mr. Ortiz.

Mr. ORTIZ. Thank you, Mr. Chairman. I have a few questions I would like to ask the panel, and I appreciate them being with us this morning.

What ports do you serve? Will these ports be served by your competitors? How will this work now?

Mr. FABREGAS. Mike, do you want to answer that question?

Mr. ROSSY. Mr. Congressman, we presently serve the Ports of New York; Baltimore, Maryland; Charleston in South Carolina; Jacksonville in Florida; and New Orleans in Louisiana.

At the moment, there is competition serving some of these ports. However, we would like the record to show we are the only carrier presently serving Maryland, South Carolina—that's it.

Mr. ORTIZ. So actually the consumer would suffer because they would not be served; am I correct?

Mr. ROSSY. There would be no service available out from those ports.

Mr. ORTIZ. OK. I have another question.

To what extent is the economy of Puerto Rico dependent on the ocean freight service provided by the Lancer vessels?

Mr. MANGUAL. Mr. Chairman, the service provided now by the Lancers accounts for about 53 percent of the service between the United States and Puerto Rico.

Mr. ORTIZ. What is the benefit to the owners of the Lancer vessels of the CDS paid originally to the shipyards some 20 years ago?

Mr. MANGUAL. I think we mentioned something about this before.

The benefits of the subsidies that were granted to the original owners of the vessels have not been transferred to us, because we had to pay for the acquisition plus the improvement to the vessels in an amount that we have calculated that is above what what we had to dedicate to construct or build those vessels back in 1968—1988.

Mr. ORTIZ. OK. Now, what methods are available for ensuring fair competition between Lancer vessels and competing Jones Act-qualified vessels?

Mr. CONATON. Congressman, it is our view, Congress, in 1935 and 1936, who passed the original Merchant Marine Act of 1936, which 506 was a part of, determined in their wisdom that this compromise between the domestic fleet—the Jones Act fleet and the foreign fleet—the compromise between those two to level the playing field for competition, was as the current law provides. In fact, it is the pro rata payback of CDS on a yearly basis, based on the amount of usage when you cross over and come into domestic trade.

Mr. ORTIZ. I have just one more question, Mr. Chairman, and I would like to submit other questions for the record, if I may.

Now, if we do not pass the bill and you are not allowed to use the vessels in domestic trade, how many of those jobs will be lost and where and how many longshoremen will be affected?

Mr. FABREGAS. I believe Mr. Conaton mentioned that. He mentioned a number of 900 to 950 longshoremen, plus people employed by Navieras and PRMSA, about 1,000 more.

In addition, some of this employment that is generated, States in the United States may be affected. We can't answer to what extent, because we want to be honest, but it is a figure of more than 140,000.

The table I would like to submit for the record shows the employment—the direct and indirect employment affected or favored by these purchases of 140,000 throughout the United States in 1988. The figures presently should be much more, as Mr. Colorado stated in his testimony.

[ED. NOTE: Table III, "Gross Income and Employment Accounted for by Puerto Rico's Purchases From the United States, by State, Year Ending June 30, 1988" can be found at the end of the hearing (SOURCE: Economic Associates, Inc., Washington, DC)].

Mr. ORTIZ. Thank you very much, Mr. Chairman. I have no further questions.

Mr. JONES. I would say to the gentleman, that question has already been asked.

Mr. ORTIZ. Thank you very much. I am sorry I came late. I was at another hearing, and I now have to go to another hearing. Thank you, Mr. Chairman.

Mr. JONES. Thank you for joining us.

Mr. JONES. I will call the next panel.

PANEL CONSISTING OF PHILIP M. GRILL, VICE PRESIDENT, MATSON NAVIGATION COMPANY, INC., WASHINGTON, DC; JACK M. PARK, VICE PRESIDENT, GOVERNMENTAL RELATIONS, CROWLEY MARITIME CORPORATION, WASHINGTON, DC; AND MICHAEL D. SHEA, PRESIDENT, MARINE TRANSPORTATION SERVICES SEA-BARGE GROUP, INC., JACKSONVILLE, FLORIDA, ACCOMPANIED BY EDWARD SCHMELTZER, ESQUIRE, SCHMELTZER, APTAKER & SHEPARD, WASHINGTON, DC

Mr. JONES. Who is the spokesman of this group?

Mr. PARK. I think we will each speak, Mr. Chairman. Mr. Shea will go first.

Mr. JONES. Mr. Shea.

STATEMENT OF MICHAEL D. SHEA

Mr. SHEA. My name is Mike Shea. I am President of Marine Transportation Services Sea-Barge Group, Inc. Sitting to my left is Mr. Edward Schmeltzer of the Washington, DC, law firm Schmeltzer, Aptaker & Shepard. We have submitted a much more lengthy statement for the record. I will read you a very brief statement.

Sea-Barge, for the reasons discussed below, strenuously urges you to oppose this proposed legislation. Briefly put, H.R. 5030 would gut the very purpose of Section 506 of the Merchant Marine Act of 1936 and would seriously cripple, if not kill, all of the container carriers operating nonsubsidized, U.S.-built vessels in the U.S. mainland-Puerto Rico trade.

Sea-Barge has provided intermodal services between continental United States and Puerto Rico ports for nearly seven years. After years of painstaking effort, Sea-Barge has managed to capture nearly 10 percent of the market share in this bruising business. Unfortunately, the two biggest players in this trade, Sea-Land Service, Inc., and Puerto Rico Maritime Shipping Authority, would benefit from this bill so that they can unfairly operate subsidy-built ships in competition with Sea-Barge and others.

Sea-Land and PRMSA knew full well when they purchased the subsidy-built vessels which are the subject of H.R. 5030 that they were essentially prohibited by law, Section 506 of the Merchant Marine Act of 1936, and by contract, in the purchase contracts with MARAD, from operating such vessels in the U.S. mainland-Puerto Rico (Jones Act) trade. Recall that the main purpose of Section 506 was to protect unsubsidized U.S.-flag vessels engaged in the coastwise (Jones Act) trade from unfair competition by subsidy-built U.S.-flag vessels meant to be operated in the foreign trade; and that Section 506 was one of the cornerstones of the Merchant Marine Act of 1936.

In 1980, seven years before PRMSA bought the Lancers, the U.S. Supreme Court made it plain that in order to protect Jones Act operators, use of CDS ships had to be limited to foreign trade with only incidental domestic service on stops along the way at domestic ports. As Judge Lamberth put it a few months ago, the CDS voyages could not be taken "but for" the purpose of foreign trade. To permit Sea-Land Service, Inc., and Puerto Rico Maritime Shipping Authority to change the rules of the game at this late date would

be inequitable; and instead of resulting in benefits to the people of the U.S. mainland and the Commonwealth of Puerto Rico, as claimed by PRMSA, the result may very well be a monopoly shared by Sea-Land and PRMSA, with monopolistic pricing and monopolistic services.

Sea-Barge has never taken the position that CDS vessels can provide only token service in the Puerto Rico trade. We have urged only that CDS vessels be used primarily for foreign trade and incidentally for domestic trade. "Incidental," as we understand the word, cannot mean more than 50 percent of the capacity of the vessel or of the revenue earned by the vessel. In the Puerto Rico trade, "incidental" would mean utilization of somewhere between one-half and two-thirds of the vessel in foreign trade and somewhere between one-half and one-third in domestic trade.

Sea-Barge has never objected to Lancer calls at Puerto Rico on voyages to real foreign markets such as Brazil and Argentina. What we objected to is the 32 percent increase in PRMSA capacity and 30 percent increase in Sea-Land capacity that resulted from the entry of CDS ships into the Puerto Rico trade.

If PRMSA and Sea-Land do not want to utilize their subsidized vessels on foreign voyages which call at Puerto Rico, but would instead withdraw these ships from the Puerto Rico trade, I assure you that tug and barge services are available to supply all necessary shipping requirements in the Puerto Rico trade.

Mr. JONES. Thank you, sir.

[The prepared statement of Mr. Shea can be found at the end of the hearing.]

STATEMENT OF JACK M. PARK

Mr. PARK. Good morning, Mr. Chairman, Mr. Pickett. My name is Jack Park; I am Vice President, Crowley Maritime Corporation, for Governmental Relations.

Crowley Maritime Corporation is one of the largest of the U.S.-flag carriers with extensive common carrier and contract cargo services in both the domestic and international trades. We operate close to 400 vessels. Included in our domestic services are operations between the mainland and the principal noncontiguous domestic jurisdictions—Puerto Rico, Alaska, and Hawaii. This year we are celebrating our 100th year of service.

As you might expect, Crowley Maritime opposes H.R. 5030.

The legislation is an end-run around litigation and agency proceedings involving this same issue—allowing vessels built with CDS to operate in the domestic trades in contradiction to the meaning and intent of the 1936 Merchant Marine Act.

It is important to note that the litigation and agency proceedings are ongoing and the vessels involved have not been foreclosed from the Puerto Rico trade.

Mr. Colorado, when introducing the bill, stated that the "most obvious and most immediate beneficiaries of any legislative exemption to Section 506 will be the American-flag operators which serve the Island." With all due respect to our good friend, Mr. Colorado, we must correct that allegation. The exemption will help one U.S.-flag operator.

And at this point, I would like to break away from what I am reading to say that I understand Sea-Land has informed the Committee today that they will oppose the bill and they would like their four ships taken off the bill. The exemption will, therefore, help one operator. It will badly hurt others such as Crowley's subsidiary Trailer Marine Transport.

We are the second largest carrier in the trade with sailings three times a week from Florida and once a week from New Jersey and Louisiana. We employ more than 2,000 men and women in Puerto Rico and on the mainland and provide high-quality service to the people of Puerto Rico. We developed and paid for the nine giant, triple-deck, roll-on/roll-off barges used in this trade, without subsidy.

We played the game as intended by the Merchant Marine Acts of 1936 and 1920. Now, PRMSA, which purchased the vessels involved in this matter with full understanding of the operational limitations, and which finds itself in a bind, wants to change the rules in midstream.

Congress clearly intended that CDS-built vessels should operate only in international trade. They did allow an exemption to permit calls in the offshore domestic trade which were incidental to a bona fide voyage in international trade.

Again, digressing just a moment, certainly this exemption has been a continuing problem over the years, so this particular instance is simply another case of the basic problem that that exemption has created.

Congress certainly did not intend that the law should be changed under the circumstances which you are being asked to address.

We would further point out:

Firstly, that H.R. 5030 requires only the repayment of a pro rata portion of the CDS principal. If that is all that is repaid, then the owners of the nine vessels would receive the benefit of an interest-free loan on the value of the unamortized portion of the subsidy paid for the period from the date of construction to the present time. That advantage to PRMSA, for their five ships, is \$19.3 million, representing interest on the unamortized CDS.

Secondly, that the CDS-built ships can continue to service Puerto Rico on a stop-off basis. The only thing that appears to be at issue is the share of foreign trade cargo which must be carried—a question now under consideration by MARAD.

Thirdly, PRMSA does not deserve special protection just because it is a State-owned company. Low-cost, quality intermodal transportation service to Puerto Rico is not dependent on PRMSA. New carriers can and do enter the trade with ease. It is a highly competitive trade and would be so even if PRMSA did not participate.

That concludes my statement. I will be pleased to try to answer your questions.

[The prepared statement of Mr. Park can be found at the end of the hearing.]

STATEMENT OF PHILIP M. GRILL

Mr. GRILL. Good afternoon, Mr. Chairman. My name is Philip Grill. I would like to thank you for the opportunity to present Mat-

son's views today. I will be brief and not repeat the arguments that have already been made.

Matson does join the two previous witnesses in their opposition to H.R. 5030. We have submitted a full statement for the record, and I will not try to repeat all the arguments that have been made therein.

I would like to state, by way of background for those that are unfamiliar with Matson, that Matson has provided ocean transportation service between the U.S. Pacific Coast and the State of Hawaii continuously since 1882. Today, we have a fleet of oceangoing container ships that operate in that trade. Cargo is transhipped in Honolulu to the neighboring islands via three "Neighbor Island" barges.

I think it is relevant to the discussion this morning also to point out that Matson's largest competitor in this trade is Sea-Land. Sea-Land operates two strings of ships built with construction-differential subsidy. They depart the U.S. Pacific Coast westbound for Honolulu, continue on from Honolulu to the Far East, and then travel eastbound from Asia directly back to the U.S. Pacific Coast. They do not stop in Hawaii on the eastbound leg.

Again, these ships of Sea-Land's were constructed with construction-differential subsidy and are operating in a mixed foreign-domestic voyage under Section 506, the same section we are addressing this morning in Puerto Rico.

I also would like to say a word about Matson's ship construction and reconstruction activities under the U.S.-build requirements of the Jones Act. We have invested \$374 million since 1970 in U.S.-built equipment; and this summer, in July, we will take delivery of a \$129 million container ship that is now under construction for Matson at National Steel and Shipbuilding Company in southern California. So we do have a very real interest in the issue that is presented today, even though Matson does not operate in the Puerto Rican trade.

Again, I will not repeat the arguments that have already been made. I would like to emphasize one point, however. We feel very strongly that H.R. 5030 would discourage future construction of new ships for service in the Jones Act trades and is very disruptive to business planning. Enactment of this bill would represent a government by exception, rather than by a consistent application of a statutory policy and principle. It simply sends a message to the maritime industry that the law does not mean what it says.

This industry is highly capital-intensive, and we need a stable regulatory and statutory environment to make long-term, large commitments of capital. This is absolutely necessary in this highly capital-intensive business.

The decision of Matson's board of directors to invest \$129 million in a new vessel was a very, very difficult corporate decision. There were a number of business cycle and marketing considerations to take into account, as well as competitive considerations. This was a very difficult decision to make; and government policy, I would suggest, should be a policy that would facilitate and encourage those types of investment decisions, rather than be one that frustrates and makes those decisions more difficult.

This concludes my statement, Mr. Chairman. Thank you.

Mr. JONES. Thank you, Mr. Grill.

[The prepared statement of Mr. Grill can be found at the end of the hearing.]

Mr. JONES. Mr. Shea, I understand you recently announced plans to increase your capacity. Is it correct that you have more than doubled your capacity in the time the Lancers were put into service?

Mr. SHEA. Yes, sir, that is correct. At the time they were put into service, we operated a weekly service from Miami to San Juan. At that time, we had a maximum capacity of 240 forty-foot equivalent units per week. We expanded our service into Jacksonville and created another weekly service between Jacksonville and Puerto Rico, so that now we have a maximum capacity each week, with the two sailings, of about 600 FEU's or 40 Foot Equivalent Units.

The reason for our increase in capacity was an expansion of our operation to cover two ports. We found that, as a result of the increased capacity presented by the Lancer vessels in the trade, three other tug and barge operators went out of business and actually created a niche for us in Jacksonville we wished to fill. Furthermore, we have had a belief and reliance, in the Merchant Marine Act, in Section 506, that eventually this issue would be straightened out.

It is our goal to be a significant carrier in the Puerto Rican trade, and as a result of that, we did grow our service.

Mr. JONES. Mr. Grill, do you agree that this bill does not give the Lancer vessels any more ability to enter the coastwise trades, other than the Puerto Rico trade, than they have under current law?

Mr. GRILL. Mr. Chairman, I think the ramifications of this bill are much broader than that, but I would have to agree with your conclusion that, except for the Puerto Rican trade, the bill would give them no further authority to operate in domestic trades than they would already have.

I think the bill is limited, admittedly, to the Puerto Rican service.

Mr. JONES. You agree that Lancers owned by Sea-Land can operate anywhere in the U.S. after expiration of their 25-year economic life?

Mr. GRILL. I would not like to concede that point at the table here today. I think the law is unclear as to exactly what happens to these ships after they reach 25 years of age.

When they were originally constructed under the Capital Construction Fund (CCF) program, it was contemplated that when they reached 25 years old, they would be traded into the National Defense Reserve Fleet and replaced with new vessels. Well, now we have broken out of that cycle with the elimination of the CDS program in 1980, and the law is not specific on what happens to those ships or what their operating restrictions will be after they become 25 years old.

Mr. JONES. Mr. Park, could you explain exactly how a subsidy paid to U.S. Lines for vessels will help Sea-Land and PRMSA?

Mr. PARK. I think you have to go back to the basic purpose of CDS, which was to make a ship constructed under international trade competitive with the foreign operators who were able to build their ships in foreign yards. When CDS was paid, that made the

company operating with U.S.-built ships equal to a foreign operator.

That then creates some restriction on the vessel's operations in the Jones Act trade and makes a vessel that can operate in the Jones Act trade much more valuable than a ship which can't. So I believe the value to anybody who acquires these ships and who is able to get an exemption such as is being requested, is going to be a recipient of a significant advantage.

Mr. JONES. Once again, there is a vote on the House Floor, and I feel obligated to go, and will return.

Mr. Pickett will take over the gavel.

[RECESS]

Mr. PICKETT [presiding]. Gentlemen, we will resume the hearing at this time, and I will continue with a few questions.

This is for Mr. Park. If you were convinced that, despite all the considerations that you have put before this Subcommittee, the Puerto Rican economy would be hurt if these Lancers became ineligible to serve that trade, would you still oppose the bill?

Mr. PARK. Well, first, I would have to say it would be very, very hard to convince me the economy would be hurt.

Secondly, we are, in fact, part of the economy, so it is in our best interest to maintain or see that the economy of Puerto Rico is maintained.

Thirdly, if it got right down to it, we certainly would not want to see the economy of Puerto Rico have any more problems than it already has, so we would go along with whatever was necessary to sustain it.

I emphasize, I don't think we could be convinced it would be a problem.

Mr. PICKETT. Do you have any vessels at the present time that would be available to serve the Ports of Baltimore and Charleston, and do you have any plans to serve these ports?

Mr. PARK. Selection of ports is not an easy matter. We, as we have said, serve Pennsauken, New Jersey and Jacksonville, Florida, but we also serve Charleston and Baltimore and other cities throughout the United States with alternate service.

A company like ours decides which ports it will serve with direct service through an intricate process. We do not have any plans right now to serve Baltimore and Charleston, but we have many vessels, and if the economics justified it, we could certainly do so.

Mr. PICKETT. As I understand it, these vessels were purchased from U.S. Lines or from U.S. Lines in bankruptcy, and the original subsidy from the U.S. Government was, in fact, paid on behalf of U.S. Lines. Since neither PRMSA nor Sea-Land have derived any benefit, are you really being injured by the fact that these vessels were built with a subsidy? Is that having an economic impact in this particular case?

Mr. PARK. I think that relates to the question and answer before the recess.

We would maintain that the whole value of these vessels depends upon the legal circumstances of their construction and the restrictions that are placed upon them. And when these restrictions are

lifted, then the value of the vessels increases substantially over what they were when the restrictions were on them.

Mr. PICKETT. Some of the information we have indicates that the capital cost to PRMSA of these vessels was pretty much the market rate, and that their capital costs are consistent with the capital costs of other operators in this trade. Is that a fair statement of what the existing situation is?

Mr. PARK. I really don't know. I am sorry.

Mr. PICKETT. What about the rate structure that the individual carriers are charging in the Puerto Rican trade? Is that comparable or is there a wide difference between the rates that are charged by the different carriers?

Mr. PARK. I believe they are roughly comparable. It is a very competitive situation. No carrier is going to be able to charge much more than the other.

Mr. PICKETT. I think you would agree if a subsidy was paid to U.S. Lines, there would be no direct benefit to PRMSA or Sealand. In other words, there is no contract between the U.S. Government and the present owners of these vessels as far as the construction subsidy is concerned.

Mr. PARK. I would agree. I am saying, the market value was affected by the decision.

Mr. PICKETT. Mr. Grill, if this bill were to pass, and the Lancer vessels, the owners of the Lancer vessels were to pay back to the United States Government the remaining subsidy and operate in the Puerto Rican-Caribbean trades, and they are restricted by law from coming into the Hawaiian or other Pacific trades, could you tell us—tell the Subcommittee how your company, Matson, would be harmed in that situation?

Mr. GRILL. Yes, Mr. Pickett. I earlier mentioned Matson's vessel construction and reconstruction program, where we had invested \$374 million since 1980 in U.S.-built equipment.

Back in 1988, when these CDS Lancers were available at the bankruptcy sale from U.S. Lines, Matson did not really actively explore bidding on these ships, because they had to be operated in foreign commerce. Instead, since 1988, we purchased two fully qualified Jones Act ships—one of which, by the way, was purchased from PRMSA—at approximately \$40 million apiece, and invested additional capital into those ships to have them accommodate the carriage of containers in the Hawaii trade.

We built a new barge for service between Honolulu (Oahu) and the Neighbor Islands of Kuai, Hawaii, and Maui for about \$9 million, and we made the decision since 1988 to invest \$129 million in a new oceangoing container ship that will be delivered to us in July, this summer.

I think that it would be, let's say, most unfair to Matson for Congress, in effect, to jerk the rug out from under us, because the bill would directly affect, I feel like, those investment decisions. Congress would now be, in effect, saying to Matson, what you should have done was not to invest the money that you did in new construction and in reconstruction of fully Jones Act-qualified vessels; what you should have done was go to the bankruptcy sale, purchase ships that statutorily had to be operated in foreign commerce in connection with their domestic call, and then ask Congress to

change the law so they could operate purely in a domestic service and meet your operating requirements.

So I feel like that would have a direct adverse impact on decisions that Matson has already made.

As I mentioned before, I think the bill also would harm us in the future. I mentioned how difficult a corporate decision it was to make a \$129 million capital commitment for the new container ship.

How would this bill affect our future decisions? One, two, three, four years, or however many years down the line, somebody in the board room would say, well, maybe we ought to invest in a new ship, maybe we ought to build a new ship and make another major capital commitment. But you would have to say, well, perhaps Congress is going to change the law and permit domestic operation of other vessels that we haven't even considered that presently are statutorily restricted or prohibited from operating the way we need to operate them. Congress could change the rules retroactively.

Enactment of H.R. 5030 frustrates those business decisions down the road. That is how it would directly impact us.

Mr. PICKETT. Didn't the PRMSA line pioneer some of these new routes in providing service to Puerto Rico, calling at different U.S. ports? I don't know who wants to respond to that.

Mr. SHEA. Maybe I will try to answer that, Mr. Chairman.

I don't believe that PRMSA pioneered any of the routes, unless there is maybe one that I am missing. You mean perhaps their port calls at Charleston or Baltimore?

Mr. PICKETT. Yes.

Mr. SHEA. As was said earlier, a carrier chooses the actual ports of call it makes for economic reasons. The cargo is drawn from points—any point throughout the U.S. to the port of the carrier's choice. The carrier in an intermodal trade will pay to have the cargo reach that particular port.

I don't think you could characterize an entry into a port as "pioneering" service into a port; it is simply an economic choice by the carrier that that port call may generate greater revenues, more volume for his line.

Mr. PICKETT. In case of Puerto Rico, though, if they see fit to provide service directly to ports that are not presently being served as a way of increasing trade volume, is that a way in which they can serve to enhance and develop the Puerto Rican economy?

Mr. SHEA. I would dispute that they would increase trade volume. For instance, Charleston is approximately five hours from Jacksonville by road, a short journey overland. I don't think a single container of cargo would not be moved to Puerto Rico from the State of South Carolina or other contiguous States to the Charleston gateway if there was no direct service at Charleston. That cargo would certainly move, and it would move at competitive prices.

Mr. PICKETT. The operators have no obligation to provide service to Puerto Rico, other than whatever economic benefits they can get for their companies? They are not obligated in any way to provide service, are they?

Mr. SHEA. That is correct, sir.

Mr. PICKETT. It is possible if they want to get out of the trade for whatever reason that would restrict or limit the access as far as transport to and from Puerto Rico is concerned?

Mr. PARK. If I may, Mr. Pickett, the same thing would be true of Hawaii and Alaska. The same line of questioning could justify Hawaii's owning its own company and Alaska's owning its own company.

Mr. PICKETT. Hawaii and Alaska are States and Puerto Rico isn't, at least not yet.

Mr. PARK. It seems inconceivable to me there wouldn't be service to Puerto Rico.

Mr. PICKETT. Do the other existing carriers have any plans to add additional vessels to their fleet at the present time?

Mr. SHEA. I will speak for Sea-Barge at the start. We have just added a brand-new vessel to our fleet. It was just delivered, I believe in April, built in a U.S. yard in Mississippi. It is a deepsea barge, which added significant capacity. We acquired it not so much for the capacity, but for the speed. It will achieve much faster towing speeds than the types of barges we have had in the past.

We plan to continue that, to buy U.S. barges.

Mr. PICKETT. Your company does not operate any ships?

Mr. SHEA. We occasionally operate small vessels. That would generally be project service, not in the liner service to Puerto Rico.

Mr. PICKETT. Not container ships?

Mr. SHEA. Technically, they are container ships, in that they can carry up to 36 containers and, indeed, do; but we are not using them in the Puerto Rican trade.

Mr. PICKETT. You don't have any container ships you are operating?

Mr. SHEA. Not self-powered, no.

Mr. PARK. We operate nine barges; five of our nine barges are 710 feet long, with a capacity of 512 highway trailers. Four are 500 feet long and have a capacity of 375 40-foot trailers.

There is excess capacity in the trade now. We have no plans to add vessels. If that capacity turns out to be inadequate, we would put additional vessels on.

Mr. PICKETT. All right, gentlemen. We want to thank you very, very much for coming here today and providing us with your testimony on this bill. It has been most helpful. We deeply appreciate your participation.

That concludes the hearing. We thank everyone very much.

[Whereupon, at 1 p.m., the Subcommittee adjourned, subject to the call of the Chair, and the following was submitted for the record:]

ONE HUNDRED SECOND CONGRESS

CHIEF COUNSEL
EDWARD B. WELCHCHIEF CLERK
MARY J. FUSCO-KITSONMINORITY STAFF
DIRECTOR/CHIEF COUNSEL
GEORGE B. PERCE

**U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230**

May 19, 1992

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RANDY DUNE CUMMINGS CALIFORNIA

TO: MEMBERS, SUBCOMMITTEE ON MERCHANT MARINE

FROM: Majority and Minority Staff

SUBJECT: PART I: Hearing on Coastwise Trading and Fisheries Privileges
PART II: Surplus National Defense Reserve Fleet Vessels
PART III: H.R. 5030, To Establish an Alternative Penalty for Certain Vessels in the Coastwise Trade of the United States and Puerto Rico

At 10:00 a.m. on Wednesday, May 20, 1992, in 1334 Longworth House Office Building, the Subcommittee on Merchant Marine will hold a three-part hearing.

Part I will cover legislation to grant or restore coastwise trading or fisheries privileges to a number of vessels that would not otherwise be eligible to engage in the coastwise or fisheries trade.

In Part II, we will hear from witnesses regarding the proposed transfer of certain vessels from the National Defense Reserve Fleet (NDRF) to nonprofit organizations or to allow nonprofit organizations to scrap NDRF vessels and use the proceeds therefrom.

In Part III, the Subcommittee will hear testimony on H.R. 5030, legislation to establish an alternative penalty for operation of certain vessels in the coastwise trade of the United States and Puerto Rico.

CONTACTS

Majority: PART I - Carl Bentzel (56785)
PART II - Sam Whitehurst (62460)
PART III - Cher Brooks (62460)

Minority: Kip Robinson/Rusty Johnston (63492)

Enc

cc: Members, Committee on Merchant Marine and Fisheries

PART I -- COASTWISE/FISHERIES TRADE

H.R. 4802	(MARIPOSA)	(Mr. Jones)
H.R. 3086	(Barge MM 262)	(Mr. Davis)
H.R. 4469	(HAZANA)	(Mr. Abercrombie)
H.R. 5078	(DELPHINUS II)	(Mr. Abercrombie)
H.R. 5077	(TOUCH OF CLASS)	(Mr. Abercrombie)
H.R. 5077	(LIQUID GOLD)	(Mr. Abercrombie)
H.R. 5190	(NORTH ATLANTIC)	(Mrs. Bentley)
H.R. 5163	(WILD GOOSE)	(Mr. Cox)
H.R. 4987	(BLITHE SPIRIT)	(Mr. Gilchrest)
	(BLUEJACKET)	
	(JUBILEE)	
H.R. 5093	(SEA HAWK III)	(Mr. Hertel)
H.R. 3005	(MISS JOAN)	(Ms. Kaptur)
H.R. 4719	(FIFTY-FIFTY)	(Mr. McMillen)
H.R. 5094	(A WEIGH OF LIFE)	(Mr. McMillen)
H.R. 5128	(REDDY JANE)	(Mr. Pickett)
H.R. 4191	(SOUTHERN YANKEE)	(Mr. Reed)
H.R. 5148	(SEA HORSE)	(Mr. Young)

Section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883) provides that only a vessel built in the United States, documented under the laws of the United States, and owned by a citizen of the United States may transport merchandise in the coastwise trade of the United States. It also provides that a vessel that has acquired the right to engage in the coastwise trade and is later sold foreign (to an alien) or is placed under foreign registry may not engage in the coastwise trade.

In addition, Chapter 121 of Title 46, United States Code, prohibits foreign-built, -owned, and -documented vessels from engaging in the U.S. coastwise trade. A U.S.-built vessel does not permanently lose its right to engage in the fisheries of the United States if it is sold to an alien or if it is placed under foreign registry. Chapter 121 of Title 46, United States Code establishes requirements for the issuance of a fisheries license and registry -- one of which is a requirement that the vessel be built in the United States.

When the facts surrounding any particular vessel involve one or more of these statutory prohibitions, the Coast Guard will not issue a document granting coastwise trading or fisheries privileges. A vessel may acquire these privileges through special legislation authorizing the Secretary of the department in which the Coast Guard is operating to issue the necessary documentation.

In the past, the Committee has approved special legislation when the owner proved there were extenuating circumstances, such as severe financial hardship. For example, a person may purchase a vessel or may spend considerable sums of money in U.S. shipyards to refurbish it, and only after spending the money does the owner learn that there is a defect in the chain of title or that the vessel is foreign-built, making it impossible to use it in the intended trade. The Committee has also approved special legislation when the vessel or its operation was unique and documentation for commercial service or the fisheries was in the national interest.

The Administration has consistently opposed any relaxation of the cabotage laws, absent some compelling reason. It feels that coastwise trading and fisheries restrictions have been enacted to protect and foster United States maritime and shipyard industries and that any relaxation should be approached with caution. However, when the Congress has presented compelling reasons, the Administration has not opposed these special enactments.

The following is a brief resume of the vessels and the circumstances that necessitate legislation:

H.R. 3005 (MISS JOAN)

H.R. 3005 was introduced by the Honorable Marcy Kaptur (D-OH) on July 23, 1991, to permit issuance of a certificate of documentation for the MISS JOAN for employment in the coastwise trade of the United States.

The MISS JOAN, State of Ohio registration number 3250 XK -- a 30-foot sportfishing vessel -- was manufactured by Lyman Boat Works in Sandusky, Ohio, in 1969. The information that has been made available is that it is presently owned by Robert Lamb of Oregon, Ohio.

Mr. Lamb recently took advantage of an early retirement incentive offered by his employer, Owens-Illinois, and he wants to supplement his income by offering a sportfishing charter service. Mr. Lamb purchased his vessel in 1981, through a marina brokerage in Spring Lake, Michigan. The marina had a fire two years later, and all records were destroyed. In his efforts to locate the previous owners of the vessel, he has utilized the Toledo Police Department, Owens-Illinois Security Department, and a local search company to no avail. Mr. Lamb cannot secure commercial documentation because he cannot locate all of the previous owners to assure that they were U.S. citizens.

H.R. 3086 (BARGE MM 262)

H.R. 3086 was introduced by the Honorable Robert W. Davis (R-MI) on July 29, 1991, to permit the issuance of a certificate for the barge MM 262 in the coastwise trade of the United States. Barge MM 262 (2,553 gross tons, 16-foot draft, 249 feet/6 inches in length, 74 feet/4.5 inches breadth, U.S. official number 298924), was built in New Orleans in 1965 by Gulfport Shipbuilding Corporation for Brown & Root, Inc. It is currently owned by Lafarge Corporation, a U.S. corporation.

In 1989, Equilease Corporation, a New York corporation, as preferred mortgagee, foreclosed on the barge which it purchased at a U.S. Marshall's sale. Equilease then sold the barge to McKeil Work Boats Ltd., a Canadian corporation, on September 12, 1989, and received approval of the sale from the Maritime Administration in July of that same year. As agreed, McKeil sold the barge to Standard Aggregates Inc., a Canadian corporation and wholly-owned subsidiary of Lafarge Canada, Inc. Prior to being transported to Canada, extensive repairs were made to the vessel in Louisiana. A trial voyage in Canada indicated that the vessel could not be used for its intended purpose; consequently, the vessel has never been documented, registered, or even used in Canada.

Last year, Lafarge's U.S. operations had an immediate need for the barge. Standard Lafarge of Ohio had invested \$7.4 million to modernize and increase capacity at its Marblehead, Ohio quarry; an additional \$4 million was spent extending the dock. The Marblehead quarry is almost entirely dependent on waterborne transportation. A waiver for barge MM 262 was requested last Summer when a carrier that had agreed to carry 300,000 tons of aggregate cancelled the agreement and Standard Lafarge could not obtain other adequate transportation. This resulted in a 300,000-ton shortfall in aggregate sales and shipments from the quarry.

Although Standard Lafarge charters 16,000-25,000 DWT motorized vessels to carry most of its cargo, a shallow-draft barge is needed to provide the flexibility to service customers with shallow ports. In addition, large aggregate (1-15 ton stones) cannot be carried on regular self-unloading vessels and barges. The tugs used to pull barge MM 262 would be chartered from U.S. Great Lakes companies, adding to the employment opportunities on the Lakes. Standard Lafarge would use the barge only to haul proprietary cargo.

H.R. 4191 (SOUTHERN YANKEE)

H.R. 4191 was introduced by the Honorable John F. Reed (D-RI) on February 5, 1992, to permit issuance of a certificate of documentation for the SOUTHERN YANKEE for employment in the coastwise trade of the United States.

The SOUTHERN YANKEE, United States official number 976653 -- a 44-foot yacht -- was manufactured by Catalina Yachts in Largo, Florida, in 1988. The information that has been made available is that it is presently owned by L. Robert Wenzel of Wickford, Rhode Island.

Mr. Wenzel purchased the vessel from CIGNA Insurance Co. by sealed bid. The sale by CIGNA was an attempt to minimize the loss after declaring the vessel a constructive total loss due to extensive fire damage, for which the owner was insured. The previous owner had purchased the vessel new and registered it in New York State under the name of Sunrise Sailing Charter Co. Upon applying for coastwise documentation, the present owner discovered that the individual with the authority to transfer title of the vessel was not a U.S. citizen. Mr. Wenzel has spent close to \$20,000 on repairs to the SOUTHERN YANKEE, but needs a waiver of the Jones Act because the previous owner was not a citizen.

H.R. 4469 (HAZANA)

H.R. 4469 was introduced by the Honorable Neil Abercrombie (D-HA) on March 12, 1992, to permit the issuance of a certificate of documentation for the HAZANA for employment in the coastwise trade of the United States.

The HAZANA, Hawaii registration number HA9219D -- is a 44-foot ketch manufactured in 1979 in the Netherlands. The first owner was British and registered the vessel in Britain. In 1983, the owner requested a young couple to sail the vessel from Tahiti to San Diego to be refitted. Enroute to San Diego, the HAZANA encountered rough seas and a hurricane. The young man was swept overboard; however, the young woman spent the next 41 days alone, but she was able to successfully sail the vessel to Hawaii under a "jury rig". Lloyd's of London paid a constructive total loss on the vessel and became the owner under rights of subrogation.

The information made available is that the HAZANA is presently owned by Jeff Hossellman and his wife Vicki (an Australian citizen) of Honolulu, Hawaii. Mr. Hossellman purchased the HAZANA as a total loss from Lloyd's. He purchased a new mast and rigging in Los Angeles, and all repair work has been performed in Hawaii.

Mr. Hossellman would like to use the vessel to transport passengers between the Hawaiian Islands of Oahu and Molokai; there is currently no other vessel operating on this route. He needs a waiver of the Jones Act because the vessel was built foreign and because his wife is Australian.

H.R. 4719 (FIFTY-FIFTY)

H.R. 4719 was introduced by the Honorable C. Thomas McMillen (D-MD) on March 31, 1992, to permit issuance of a certificate of documentation for the FIFTY-FIFTY for employment in the coastwise trade of the United States.

The FIFTY-FIFTY, United States official number 272866 -- a 65-foot FEADSHIP yacht -- was manufactured by FEADSHIP ship builders in Aalsmeer, Holland in 1956. The information that has been made available is that it is presently owned by Atlantic Yachts Ltd. (Mr. and Mrs. John K. Clifford of Edgewater, Maryland).

Atlantic Yachts purchased the vessel in 1986 from the State of Maryland. Prior to being purchased by Atlantic Yachts, the FIFTY-FIFTY had acted as the official yacht of the State of Maryland (represented by the Department of National Resources) and the governor's yacht, and at one point the vessel actually served as the governor's place of residence. The yacht was also once owned by radio and television star, Arthur Godfrey (it was then known as the KENILWORTH II). All of the previous owners were U.S. citizens.

In 1986, the State of Maryland declared the yacht surplus property and sold it to Atlantic Yachts. At the time of sale, the yacht was in poor condition, and representatives of the American Bureau of Shipping recommended that it be scrapped. The owner, however, decided to restore the vessel and has spent the last seven years renovating it. Restoration has all been done in Maryland shipyards and has cost over \$300,000 -- an amount that is twice as much as the cost of the vessel new. Mr. Clifford was a naval officer in World War II, and is currently a licensed U.S. Coast Guard Master. The FIFTY-FIFTY has an application pending to be listed on the National Historic Registry, and is also listed in the data base of the Coast Guard Station in Baltimore as being available to augment the Coast Guard for oil spill response.

The owner/corporation requires a waiver of the Jones Act because the FIFTY-FIFTY was built abroad. Mr. Clifford has spent a considerable amount of money to renovate the yacht, and he needs to put the vessel to work. He plans to use the FIFTY-FIFTY to cruise from Annapolis to Atlantic City; no vessel currently serves that route. The FIFTY-FIFTY would require crewing and could provide the Port of Annapolis with as many as 15 jobs.

H.R. 4802 (MARIPOSA)

H.R. 4802 was introduced by Chairman Walter B. Jones (D-NC) on April 7, 1992, to permit issuance of a certificate of documentation for the MARIPOSA for employment in the coastwise trade of the United States.

The MARIPOSA, United States official number 982102 -- a 38-foot yacht -- was manufactured in 1990 by Cabo Rico Inc., a Florida corporation. Cabo Rico is a very small scale yacht builder that ships its raw materials to Costa Rica where the vessel is assembled. All of the raw materials that go into the construction of a yacht, including the engine, are from the United States with the exception of the lead used in the ballast and the teak and mahogany used on the vessel.

The information made available is that it is presently owned by Hunter B. Spencer of Bridgeport, North Carolina. Recently retired, Mr. Spencer used the proceeds of his 401(K) retirement fund to purchase the yacht. He would like to use the MARIPOSA for charter purposes; however, the vessel cannot be operated in the domestic coastwise trade because it was assembled in Costa Rica. Mr. Spencer was unaware of the Jones Act when he purchased the vessel.

H.R. 4987 (BLITHE SPIRIT, BLUEJACKET, JUBILEE)

H.R. 4987 was introduced by the Honorable Wayne T. Gilchrest (R-MD) on April 9, 1992, to permit issuance of a certificate of documentation for the BLITHE SPIRIT, BLUEJACKET, and JUBILEE for employment in the coastwise trade of the United States.

The BLITHE SPIRIT, United States official number 584730 -- a marine trader trawler of 27 gross tons and 39 feet in length -- was manufactured by Marine Trading International in Taipei, Taiwan, in 1976. The information that has been made available is that it is presently owned by Edward and Sherrie Cave of Port Tobacco, Maryland. All previous owners were U.S. citizens.

Mr. Cave has been employed by the Prince Georges County Government for the past fifteen years. When he purchased the vessel in 1990, he had no intention of using it for commercial purposes. Recent government cutbacks and furloughs have affected Mr. Cave, and he has decided to charter the BLITHE SPIRIT to supplement his income. Although constructed in Taiwan, nearly all of its equipment is U.S.-built. Mr. Cave needs a legislative waiver of the Jones Act because his vessel was built in Taiwan.

The BLUEJACKET, United States official number 973459 -- a yacht of 12 gross tons and 31 feet in length -- was manufactured by Hinterhoeller Yachts Ltd. in Ontario, Canada, in 1989. The information that has been made available is that it is presently owned by William and Beverly Macindoe of Oxford, Maryland. All of its previous owners were U.S. citizens.

Mr. Macindoe is licensed as a Master Ocean Operator which authorizes him to operate vessels of up to 100 gross tons, carrying unlimited passengers for hire. He purchased the vessel in late 1990 to be used in a program instructing others in proper boat handling techniques and safety procedures at sea. At the time he purchased the BLUEJACKET, he was unaware of Jones Act restrictions. Mr. Macindoe needs a legislative waiver of the Jones Act because his vessel was built in Canada.

The JUBILEE, United States official number 582812 -- a marine trader trawler of 16 gross tons and 34 feet in length -- was manufactured by Marine Trading International in Taipei, Taiwan, in 1976. The information that has been made available is that it is presently owned by Brandon and Carolyn Belote of Annapolis, Maryland, who purchased the vessel in 1990. All previous owners were U.S. citizens.

Mr. Belote worked for the Westinghouse Corporation until his 60th birthday when Westinghouse offered him incentives for early retirement. Mr. Belote wants to supplement his retirement income by making the JUBILEE available for charter out of Annapolis. He has recently had the vessel overhauled, incurring expenses of \$12,000 at a U.S. shipyard. Although it was constructed in Taiwan, nearly all of its equipment is U.S.-built. Mr. Belote needs a legislative waiver of the Jones Act because his vessel was built in Taiwan.

H.R. 5093 (SEA HAWK III)

H.R. 5093 was introduced by the Honorable Dennis M. Hertel (D-MI) on May 6, 1992, to permit issuance of a certificate of documentation for the SEA HAWK III for employment in the coastwise trade of the United States.

The SEA HAWK III, hull identification number SERF15220378 -- a 30-foot cabin cruiser -- was manufactured by Sea Ray Boats, Inc. in Merritt Island, Florida, in 1978. The information that has been made available is that it is presently owned by R.J. Branham. Ownership of the vessel is as follows:

K & M Boat Co.
Kenneth Okamoto
Ronald and Christine Gardhouse
Ronald Sacco
Ray Arndt
R.J. Branham

The current owner is an American citizen who wants to convert this recreational vessel into a licensed commercial vessel. The vessel is U.S. built, but Mr. Branham has not been able to secure commercial documentation because he has not been able to contact one of the previous owners. All other owners were U.S. citizens.

H.R. 5094 (A WEIGH OF LIFE)

H.R. 5094 was introduced by the Honorable C. Thomas McMillen (D-MD) on May 6, 1992, to permit issuance of a certificate of documentation for the A WEIGH OF LIFE for employment in the coastwise trade of the United States.

The A WEIGH OF LIFE, United States official number 973177 -- a motor vessel of 14 gross tons and 40 feet in length -- was manufactured by Marine Trading International in Taipei, Taiwan, in 1988. The information that has been made available is that it is presently owned by Francis and Doris Donaldson of Annapolis, Maryland.

Although the vessel was constructed in Taiwan, nearly all of its hardware, engine, and machinery are U.S.-built. At the time Mr. Donaldson purchased the yacht, he was unaware of the Jones Act. Mr. Donaldson needs a legislative waiver of the Jones Act because his vessel was built in Taiwan.

H.R. 5128 (REDDY JANE)

H.R. 5128 was introduced by the Honorable Owen W. Pickett (D-VA) on May 6, 1992, to permit issuance of a certificate of documentation for the REDDY JANE for employment in the coastwise trade of the United States.

The REDDY JANE, United States official number 928388 -- a 36-foot ChrisCraft -- was manufactured in 1964. The information that has been made available is that it is presently owned by Mr. Latina Combs of Norfolk, Virginia.

Mr. Combs purchased the vessel with the intention of converting it from a pleasure vessel into a licensed commercial vessel. At the time of the purchase, Mr. Combs stated his intention to use the vessel for commercial purposes and was assured that the vessel was fully documented. The purchase price was \$9,000; subsequent to the purchase, Mr. Combs invested an additional \$3,000 in fishing gear needed to charter the vessel.

The owner has been unable to provide the Coast Guard with evidence to show that the vessel was U.S.-built and U.S.-owned. Only after investing his money did the owner become aware that there was no building certificate or a complete history of previous owners. Mr. Combs feels that he is entitled to legislative relief due to the misstatements and negligence of the previous owner.

H.R. 5148 (SEA HORSE)

H.R. 5148 was introduced by the Honorable Don Young (R-AK) on May 12, 1992, to permit issuance of a certificate of documentation for the SEA HORSE for employment in the coastwise trade of the United States.

The SEA HORSE, United States official number 516343 -- a 50-foot yacht -- was manufactured by McQueen's Boatworks in Vancouver, Canada, in 1968. The information that has been made available is that it is presently owned by Steve H. McMurray of Sitka, Alaska. All previous owners of the SEA HORSE have been U.S. citizens.

Mr. McMurray spent twenty years cutting timber in the Pacific Northwest. In 1989, he sold his house and purchased the SEA HORSE with the intention of moving to Alaska to find a new line of work. Mr. McMurray would like to supplement his income by chartering out his vessel in the Summer months. The SEA HORSE is currently ineligible for a coastwise endorsement because it was built in Canada. Although the vessel was built in Canada, the drive train and nearly all other equipment was U.S.-made. When Mr. McMurray purchased the vessel, he was aware of the Jones Act but thought that it only impacted major U.S shipping and marine trades.

H.R. 5163 (WILD GOOSE)

H.R. 5163 was introduced by the Honorable Christopher C. Cox (R-CA) on May 13, 1992, to permit issuance of a certificate of documentation for the WILD GOOSE for employment in the coastwise trade of the United States.

The WILD GOOSE, California registration number CF6431FW -- a 136-foot wooden yacht -- was originally constructed in 1943 in Seattle, Washington. The vessel was originally used by the U.S. Navy as a minesweeper (USN YMS 328). In 1960, the vessel was declared surplus and was sold to a Canadian owner in Vancouver, British Columbia. In 1962, it was sold to the Seattle Yacht Club. In 1965, the vessel was purchased by John Wayne and renamed the WILD GOOSE. Mr. Wayne had the WILD GOOSE registered in California in 1975 and kept it until his death.

The current owner, Wild Goose Yacht Corporation (Mr. A. V. Kozloff) of Irvine, California, purchased the vessel in 1991 and has extensively restored John Wayne's yacht. Mr. Kozloff would like to use the yacht to transport passengers, but he requires special legislation because a previous owner was Canadian.

H.R. 5190 (NORTH ATLANTIC)

H.R. 5190 was introduced by the Honorable Helen D. Bentley (R-MD) on May 14, 1992, to permit issuance of a certificate of documentation for the NORTH ATLANTIC for employment in the coastwise trade of the United States.

The NORTH ATLANTIC, United States official number 695377 -- a sportfishing vessel of 25 gross tons and 42 feet in length -- was manufactured by Kulas Custom Sea Skiffs in Keyport, New Jersey, in 1972. The information that has been made available is that it is presently owned by Gerv C. Griffin of Middle River, Maryland.

Mr. Griffin purchased the vessel in 1990 and would like to charter it for fishing and scuba diving trips in the Chesapeake Bay and out of Ocean City, Maryland. He was unable to document the vessel for coastwise trade because the previous owner was unable to identify whom he purchased the vessel from. The Coast Guard abstract of title indicated that previously the vessel had been registered in New York State, but the New York State authorities no longer have any record of the vessel. Mr. Griffin cannot secure commercial documentation because he cannot locate all of the previous owners to assure that they were U.S. citizens.

H.R. 5190 (DELPHINUS II)
(bill to be introduced)

The Honorable Neil Abercrombie (D-HA) plans to introduce legislation to permit the issuance of a certificate of documentation for the DELPHINUS II for employment in the coastwise trade of the United States. (Senator Akaka and Senator Inouye introduced S. 2496 on March 31, 1992.)

The DELPHINUS II, United States official number 958902 -- a vessel of 5 gross tons and 28 feet in length -- was manufactured by Delta Boats Inc. in Cape Canaveral, Florida, in 1990. The information that has been made available is that it is presently owned by Marine Charterers Inc. of Maui, Hawaii.

Marine Charterers Inc. initially documented the vessel for coastwise trade. The initial application disclosed that the corporation had three directors, and that one of the directors was a foreign national. Nevertheless, the Coast Guard issued a coastwise endorsement. Two years later, the Corporation filed a

name change application with the Coast Guard. The Coast Guard withdrew coastwise trade status, because the Corporation did not satisfy the citizenship requirements for vessel documentation. Foreign ownership never exceeded 25 percent; however, the makeup of the board of directors violated the statutory requirement regarding quorums. Marine Charterers promptly amended its bylaws to increase the composition of the board to four with three U.S. citizens, thus satisfying the citizenship requirements. However, to legally reinstate the DELPHINUS II into the coastwise trade of the United States, the owners require a legislative waiver. Removal of coastwise status has caused financial hardship and resulted in the loss of three jobs.

H.R. 5076 (TOUCH OF CLASS) 5 21 81
(bill to be introduced)

The Honorable Neil Abercrombie (D-HA) plans to introduce legislation to permit the issuance of a certificate of documentation for the TOUCH OF CLASS for employment in the coastwise trade of the United States. (Senator Akaka and Senator Inouye introduced S. 2497 on March 31, 1992.)

The TOUCH OF CLASS, Hawaii registration number HA8762E -- a marine trawler of 22 gross tons and 50 feet in length -- was manufactured by Chun Hwa Boats in Taiwan in 1981. The information that has been made available is that it is presently owned by Cedric Steele of Maui, Hawaii.

Mr. Steele purchased the vessel in 1988 and, since then, has extensively renovated the vessel. Over \$62,500 has been invested in this vessel by the owner. All work has been done in U.S. shipyards. The vessel's machinery is U.S.-built. Mr. Steele would like to operate the vessel for commercial fishing charters in Maui and needs a waiver of the Jones Act because his vessel is foreign-built.

H.R. 5077 (LIQUID GOLD) 5 21 81
(bill to be introduced)

The Honorable Neil Abercrombie (D-HA) plans to introduce legislation to permit the issuance of a certificate of documentation for the LIQUID GOLD for employment in the coastwise trade of the United States. (Senator Akaka and Senator Inouye introduced S. 2498 on March 31, 1992.)

The LIQUID GOLD, United States official number 618121 -- a yacht of 58 gross tons and 61 feet in length -- was manufactured by AMF Hatteras Yachts in New Bern, North Carolina, in 1979. The information that has been made available is that it is presently owned by Seaduction Inc. of Kailua-Kona, Hawaii.

The present owner/corporation wants to use the vessel for charter fishing operations, but was unable to secure a coastwise endorsement because one of the previous owners was Venezuelan; all other previous owners were U.S. citizens.

PART II: NATIONAL DEFENSE RESERVE FLEET VESSELS

Sections 508 and 510(i) of the Merchant Marine Act of 1936 set out the methods by which obsolete vessels in the NDRF can be scrapped or sold for disposal and authorize the use of the proceeds to obtain more useful ships for the NDRF.

H.R. 3512, the NDRF Ship Disposal Act of 1992, was introduced by Mr. Broomfield, Mr. Wyden, Chairman Jones, Mr. Davis, and Mr. Lent. On September 10, 1990, and July 11, 1991, the Subcommittee on Merchant Marine held joint hearings with the Subcommittee on Regulation, Business Opportunities, and Energy of the Committee on Small Business. (See Printed Hearings No. 101-116 and No. 102-63.) H.R. 3512 passed the House of Representatives on January 28, 1992. It has been referred to the Senate Committee on Commerce, Science, and Transportation. At present, H.R. 3512 is before the Senate Subcommittee on Merchant Marine.

H.R. 3512 directs the Secretary of Transportation (Secretary) to dispose of all vessels in the NDRF before April 1, 1997 -- unless they are assigned to the Ready Reserve Force (RRF) component of the NDRF or required by statute to be used for a particular purpose. Vessels may be maintained in the NDRF for a one-year period if the Secretary of the Navy certifies to the Secretary that they are militarily useful and necessary for the national defense. In addition, the Secretary may retain vessels in the NDRF if he certifies to Congress that a certain vessel is needed by a State or Federal governmental agency.

This bill also requires the Secretary to develop a five-year plan for vessel disposal. With minor exceptions, disposal of vessels shall continue to be pursuant to sections 508 and 510(i) of the Merchant Marine Act of 1936.

The General Accounting Office (GAO), in an October, 1991 report entitled "Strategic Sealift: Part of the National Defense Reserve Fleet Is No Longer Needed" (GAO/NSAID-92-03), estimated that scrapping the obsolete non-RRF ships could save approximately \$10 million in direct maintenance costs over the next 10 years, and could generate an estimated \$38 to \$42 million to improve the RRF if the ships were sold to the highest bidders.

This portion of the hearing deals with authorizing the transfer of vessels from the NDRF to certain nonprofit organizations and to the City of Warsaw, Kentucky. In addition, several nonprofit organizations have approached the Subcommittee with requests to scrap NDRF vessels and use the proceeds therefrom.

The following is a brief description of pending legislation:

(1) H.R. 2832, LIFE INTERNATIONAL. H.R. 2832 was introduced by Chairman Jones on July 9, 1991. It amends and continues existing statutory authority for certain NDRF vessels to be reserved for transfer to Life International. In 1982, Congress first approved legislation reserving three vessels for Life International until 1987 (Public Law 97-360) (USS GENERAL NELSON M. WALKER, USS DONNER, and USS COLONIAL). It has occasionally extended and amended that authority.

Public Law 100-324, dated May 30, 1988, substituted the SANCTUARY, a mothballed hospital ship, for the COLONIAL. Life International hoped to revitalize the vessel and use it to provide medical and health services to third world nations. The vessel, now moored in Baltimore, has yet to be put into service for the intended purpose.

Life International is a private, nonprofit, humanitarian concern whose president is Robert N. Meyers. Its purpose is to provide health education, training, and medical treatment to impoverished third world countries. Life International's projects are funded largely from the private sector and staffed with volunteer maritime and medical personnel.

H.R. 2832 provides authority through 1996 to transfer the USS GENERAL NELSON M. WALKER, the USS GENERAL WILLIAM O. DARBY, and the USS PLYMOUTH ROCK to Life International. Reverend Meyers will propose that the bill be amended to only authorize the transfer of the GENERAL NELSON M. WALKER and the PLYMOUTH ROCK to Life International until 1996.

(2) H.R. 3036 and H.R. 1043, ASSISTANCE INTERNATIONAL, INC. H.R. 3036 was introduced by Mr. Anderson on July 25, 1991, and H.R. 1043 was introduced by Mr. Rohrabacher on February 20, 1991. These bills authorize the transfer of several NDRF vessels to Assistance International; however, Assistance International will propose that the bills be amended to substitute the M.V. TIOGA COUNTY and the R.V. CONRAD for the other vessels.

Assistance International, Inc. is a nonprofit 501.C3 corporation founded by Captain Fred Stabbert in the late 1940s. The primary purpose of the Corporation is to give assistance to third world countries, primarily in Central America, and provide disaster relief in times of natural disaster. The form of assistance is in the nature of hands-on vocational training which provides a means for people in third world countries to help themselves rather than getting a handout. Funding for Assistance International is done on a project-by-project basis.

(3) S. 1973, CITY OF WARSAW, KENTUCKY. S. 1973 was introduced by Senator Ford on November 14, 1991, and it was passed by the Senate the same day. It was referred to the Committee on Merchant Marine and Fisheries on November 18, 1991. The bill authorizes the Secretary of Transportation to transfer title of an NDRF vessel to the City of Warsaw, Kentucky, for the promotion of economic development and tourism.

(4) SAN FRANCISCO NATIONAL MARITIME MUSEUM ASSOCIATION. The National Historic Museum Fleet is located in San Francisco, California. It is part of the United States Park Service and, as such, receives some funding through the Department of the Interior. This Fleet is in various stages of restoration and preservation. The National Maritime Museum Association is a nonprofit group in San Francisco whose purpose is to seek additional avenues of funding for the National Historic Museum Fleet. This group's position is that the Fleet does not receive enough from the Department of the Interior to be properly maintained.

The Association has enlisted the assistance of Congresswoman Pelosi to scrap NDRF vessels and use the proceeds therefrom for the National Historic Museum Fleet.

(5) THE ASSOCIATION FOR THE PRESERVATION OF THE PRESIDENTIAL YACHT "POTOMAC". This is a nonprofit organization located in Oakland, California, whose purpose is to restore the yacht POTOMAC and construct a dockside facility in Oakland -- using proceeds obtained from scrapping NDRF vessels. The POTOMAC was the personal yacht of President Franklin D. Roosevelt.

PART III: H.R. 5030
TO ESTABLISH AN ALTERNATIVE PENALTY
FOR OPERATION OF CERTAIN VESSELS IN THE COASTWISE TRADE
BETWEEN THE UNITED STATES AND PUERTO RICO

The Honorable Antonio J. Colorado, the Resident Commissioner of Puerto Rico, introduced H.R. 5030 on April 29, 1992. The bill exempts nine vessels in the Puerto Rico trade from certain requirements in Section 506 of the Merchant Marine Act, 1936.

SECTION 506

- Description.

Section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156) requires owners of vessels that were built with construction-differential subsidies (CDS) to operate those vessels exclusively in foreign commerce; i.e., trade between the United States and foreign countries. Some exceptions to this restriction are written into Section 506 to allow for limited operation of CDS-built vessels in domestic trade between ports in the continental United States and Hawaii, Alaska, or an island territory. An island territory or possession includes Puerto Rico.

The purpose of Section 506 is to protect shipowners who build their vessels in the United States without subsidy. Shipowners with CDS-built ships are not permitted in the domestic trade because of the clearly unfair advantage over owners with vessels qualified for the domestic or coastwise trades; coastwise vessels are required by law to be built in U.S. shipyards without construction subsidy.

Shipowners who receive a CDS payment from the Secretary of Transportation agree to operate exclusively in the foreign trade as required in Section 506. Construction-differential subsidies assist U.S. shipowners who compete in the foreign trade against foreign subsidized vessels.

CDS restrictions for a liner vessel end 25 years after the vessel is delivered, which is considered the "economic life" of the vessel. All funding for CDS payments ended in 1981. Today's CDS vessels are nearing the end of their 25-year economic life, and most will attain this age by the year 2000.

Section 506 contains certain exceptions allowing limited use of CDS-built vessels in the domestic trade. The "Fourth Exception" authorizes CDS-built vessels to stop in Hawaii or an island territory/possession via a voyage to a foreign country.

The owner, in return, must pay back to the Secretary part of the revenues derived from the carriage of domestic trade cargo. The payment is to be paid annually in an amount which is proportionate to one twenty-fifth of the CDS payment, relative to the ratio of domestic revenues compared to gross revenues.

- Legislative History of Section 506.

The issue of CDS-built vessels operating in the domestic trade was a controversial political issue in 1935-36 when Congress was considering the Merchant Marine Act of 1936. The original bills in both the House and the Senate treated movements between the United States and Puerto Rico as foreign trade. Domestic operators opposed this provision, and a compromise emerged allowing mixed foreign-domestic operations in "semiforeign" trade with a CDS payback provision. Congress did not specify how much domestic cargo could be carried when stopping in Hawaii or Puerto Rico.

The scope of the Fourth Exception with regard to the required percentage of foreign cargo when stopping in Puerto Rico, and what constitutes a foreign voyage, is currently in dispute. This issue is the subject of a rulemaking by MARAD and has been extensively litigated over the past two years.

- Section 506 Litigation and Rulemaking.

In 1988, in response to a letter of inquiry from Sea-Land, MARAD advised that at least five TEU's of foreign cargo must be carried on a CDS-built vessel when stopping in Puerto Rico during a foreign voyage in order to qualify for CDS payback under the Fourth Exception in Section 506.

Various shipping companies protested MARAD's interpretation of Section 506, resulting in several years of comments and regulatory interpretations, including four different decisions by MARAD regarding the interpretation of the Fourth Exception. MARAD ultimately decided that 25 percent of the cargo carried by a CDS-built vessel, when stopping in Puerto Rico, must be foreign-bound cargo. This resulted in two years of litigation, with various parties espousing different interpretations of Section 506.

On January 31, 1992, the United States District Court for the District of Columbia found that the MARAD statutory interpretation of Section 506 was arbitrary and capricious and ordered MARAD to make a new determination. (See consolidated Civil Action Numbers 89-2278 and 90-0969.)

H.R. 5030- Background.

The Puerto Rico Maritime Shipping Authority (PRMSA) was created by the Legislature of Puerto Rico in 1974. At that time, the major U.S. carriers serving Puerto Rico left the Puerto Rican trade, mainly to serve Asia where prices were more lucrative after the Vietnam War.

Puerto Rico is dependent on U.S. imports and marine transportation. Food and other essential goods are exported on ships to Puerto Rico from the United States, and U.S. manufacturers in Puerto Rico rely on marine transportation to export their goods. The survival of Puerto Rico is dependent on these goods and the shipping companies who transport them. The cost and the availability of shipping are crucial to Puerto Rico.

The Legislature of Puerto Rico in 1974 created a semi-governmental shipping company to assure a permanent presence of vessels serving Puerto Rico and to seek to stabilize shipping rates at acceptable levels.

At the time of its creation, PRMSA carried over 90 percent of the liner cargoes between the United States and Puerto Rico because the other U.S. shipping companies had moved elsewhere. In 1988, when PRMSA replaced its aging vessels with the vessels it bought at the United States Lines' (USL) bankruptcy auction, PRMSA carried 52 percent of the Puerto Rico-U.S. cargo. Today, PRMSA carries 45 percent of the market. Since its creation, PRMSA has retained less of the market share as more companies enter the trade.

Other U.S.-flag companies serving Puerto Rico include:

- Trailer Marine Transport Corporation (a subsidiary of Crowley Maritime Corporation),
- Sea-Land Service, Inc.,
- Marine Transportation Services Sea-Barge Group, Inc., and
- Kadampanattu Corporation.

In 1988, PRMSA bought five Lancer container vessels from the USL bankruptcy auction. Sea-Land bought four vessels at the same auction. PRMSA was aware the Lancers were CDS-built vessels, as were the vessels bought by Sea-Land. PRMSA intended to expand its Caribbean trade, carry mixed domestic-foreign cargo, and pay back annually the CDS under the terms of the Fourth Exception. PRMSA paid \$44 million for the Lancers and spent \$46 million repairing and upgrading the vessels in U.S. repair yards.

The PRMSA offices are in Puerto Rico, but the operation of the company is contracted out to Puerto Rico Marine Management, Inc. (PRMMI), located in Edison, New Jersey. PRMMI operates the U.S.-flag, U.S.-crewed shipping company for PRMSA, with employees in Edison and throughout ports of call on the East and Gulf Coasts.

- Need for Legislation.

When he introduced H.R. 5030, Delegate Colorado stated that there is a compelling interest in clarifying legislatively that the Lancer vessels may be used in the U.S.-Puerto Rico trade with a CDS payback. Because of Puerto Rico's dependence on marine transportation, the basis for the creation of PRMSA, and because the Lancer vessels were purchased with the good faith belief that they qualified under the Fourth Exception, Delegate Colorado introduced H.R. 5030 to settle the issue. He noted that four different interpretations of the Section 506 Fourth Exception have been made by MARAD, the District Court was not able to make a determination as to the scope of Section 506, and every opposing shipping company has argued a different percentage requirement for the carriage of domestic cargo under Section 506. He contends that PRMSA will not be able to operate if the percentages argued by the other companies are adopted by MARAD and that PRMSA will have to shut down.

In order to keep PRMSA alive, Delegate Colorado has proposed in H.R. 5030 a lump sum CDS payback, which will add approximately \$4 million to the Treasury and maintain the status quo trade in Puerto Rico. Delegate Colorado stated that he chose to craft the bill as a private bill rather than amending Section 506, in order to make clear that he is not changing Section 506 in a way that might affect trade in other regions of the United States.

OPPOSITION TO LEGISLATION

U.S. non-subsidized shipowners will argue that Section 506 was written to protect vessel owners who have built their vessels in the United States without subsidy. Nonsubsidized owners are protected by limiting domestic trade solely to non-CDS-built vessels, thereby creating a level playing field for those who have made a large capital investment in U.S. shipping. To allow a vessel owner with the tremendous advantage of a vessel built with subsidy to enter the domestic trade at a later date by paying back the subsidy vitiates the purpose of Section 506 and places the nonsubsidized shipowner in an unfair and serious disadvantage. Nonsubsidized owners will argue that it is essential to narrowly construe the exceptions in Section 506 to prevent future deviations from the protective purposes of Section 506.



U.S. Department
of Transportation
Maritime
Administration

Administrator

400 Seventh Street S.W.
Washington D.C. 20590

18 MAY 1992

Rec'd

The Honorable Walter B. Jones
Chairman, Committee on Merchant Marine
and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your invitation to testify before the Subcommittee on Merchant Marine at the hearing on May 20, 1992, on several bills affecting the merchant marine.

H.R. 5030 would establish an alternative penalty for operation of certain vessels in the coastwise trade between the United States and Puerto Rico. The existing penalty for vessels built with construction-differential subsidy to operate in the domestic trade is contained in the Fourth Exception to Section 506 of the Merchant Marine Act, 1936, as amended. The Maritime Administration is currently considering issuing a new determination under the Fourth Exception, following the January 31, 1992, decision and order by the United States District Court for the District of Columbia in Marine Transportation Services Sea-Barge Group v. Busey. This agency has issued public notices inviting public comment on the issues raised by the District Court's decision. I believe it would be inappropriate for the agency to testify on legislation which could affect the pending docketed public proceeding. I would, however, be glad to answer any questions for the record of this hearing that you or other members of the Subcommittee may have.

H.R. 1043 and H.R. 3036 provide for the transfer of three vessels owned by the Federal Government to the nonprofit corporation Assistance International, Inc. The Secretary of the Navy currently has title to two of the vessels, M.V. MIRFAC and R.V. CONRAD, and we defer to the views of the Navy on any transfer. The Maritime Administration has title to the vessel M.V. MIZAR in the National Defense Reserve Fleet (NDRF), which is being considered as a candidate for the artificial reef program.

Regarding conveyance of an NDRF vessel for use as a merchant mariner memorial, section 709 of Public Law 101-595, enacted on November 16, 1990, contains criteria which a nonprofit organization must meet in order to qualify for a conveyance. These criteria include minimum capital requirements from non-Federal sources and use of any scrapping proceeds for expenses

-2-

directly related to the merchant mariner memorial. Section 709 also requires that delivery of an NDRF vessel must be at no cost to the Government. The period of time during which the provisions of this section can be utilized is limited to two years after enactment. I believe that these are important criteria for the Subcommittee to consider in relation to the pending bills, as well as the proposal to benefit the San Francisco Maritime National Historical Park.

Regarding the bills granting coastwise or fisheries privileges to various vessels, the available information on these vessels indicates that several were built abroad and some have had substantial rebuilding in the United States. In some cases, there is a period of foreign ownership or the current owner, a United States citizen, cannot prove that previous owners were also citizens. An initial survey of the available information does not indicate that any of these vessels will pose direct and significant competition with United States operators who are in compliance with the Jones Act.

I respectfully decline your kind invitation to testify at the May 20, 1992, hearing and hope that these comments will aid the Subcommittee in its consideration of this legislation.

Sincerely,



CAPTAIN WARREN G. LEBACK
Maritime Administrator



PART I: COASTWISE TRADING AND FISHERIES PRIVILEGES

PREPARED STATEMENT OF HON. WALTER B. JONES, A U.S. REPRESENTATIVE FROM
NORTH CAROLINA, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

H.R. 4802, a bill I introduced on April 7, 1992, would authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel *Mariposa*. The *Mariposa*, a 38-foot yacht, was assembled in Costa Rica in 1990, and is presently owned by Mr. Hunter Spencer of Bridgeton, North Carolina. Mr. Spencer purchased the vessel from Cabo Rico Yachts Inc. in January 1992 in Fort Lauderdale, Florida, for \$162,000. He used a portion of his 401(K) retirement fund to buy the vessel and would like to supplement his retirement income by chartering out the *Mariposa* for fishing trips.

Cabo Rico Yachts is a very small scale yacht builder that ships its raw materials to Costa Rica where the vessels are assembled. All of the materials that go into building the yacht—including the engine—are from the United States, with the exception of the lead used in the ballast and the teak and mahogany used on the vessel. Mr. Spencer was unaware of the Jones Act when he purchased the *Mariposa*, and Cabo Rico Yachts did not mention the possible restrictions on coastwise trade, because, to the company's knowledge, it had never sold a yacht for use in the coastwise trade of the United States.

Mr. Spencer has invested a substantial amount of his limited income in the hope that he could enter the charter market. The market for a yacht such as the *Mariposa* is small (from the time it was built to the time of its initial sale was one and one-half years), and to be forced to sell might cause Mr. Spencer severe financial harm.

In view of the aforementioned circumstances, I urge the Subcommittee to approve H.R. 4802.

PREPARED STATEMENT OF HON. ROBERT W. DAVIS, A U.S. REPRESENTATIVE FROM
MICHIGAN, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE
AND FISHERIES

H.R. 5197, a bill I introduced, would authorize the issuance of a certificate of documentation for employment in the coastwise trade for *The Day Dream*, official number 644805. The vessel *The Day Dream* is a 43-foot Hans Christian sailboat that was built overseas in 1980 and is presently owned by Mr. and Mrs. Gordon Van Wieren of Charlevoix, Michigan.

Last year when Mr. Van Wieren retired as Superintendent of Schools in Charlevoix, Michigan, he embarked on a plan to establish a sailboat chartering service in Charlevoix. He has expended considerable resources to fix the boat and to bring it up to Coast Guard standards. He is a licensed master.

Last fall, he began correspondence with the U.S. Coast Guard in St. Ignace, Michigan for the purpose of getting his boat licensed. During the period he was advised that the U.S. cabotage laws prohibit foreign-built vessels from being used commercially in the U.S. coastwise trade.

It is my understanding that there is no existing charter service of this type in Charlevoix and that nothing in H.R. 5197 would waive Coast Guard inspection requirements.

Finally, I would ask that the certificate of documentation, Mr. Van Wieren's letter of April 17, 1992, and the abstract of title be placed in the hearing record [The information can be found at the end of the hearing.]

PREPARED STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE
FROM MASSACHUSETTS

Good morning, Mr. Chairman, I am here this morning to ask for your support for an amendment I intend to offer at the Subcommittee markup that would permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel *High Calibre* (U.S. official number 587630). Generally, I support the requirements imposed by Section 27 of the Merchant Marine Act of 1920; however, certain situations dictate a waiver of the strict citizenship and build requirements of Section 27. I feel that this is one of those circumstances that justifies a waiver.

My constituent, Addison E. Wilson Jr. of Brewster, Massachusetts, recently purchased a 40-foot Pacemaker Sportfisherman yacht. The yacht is U.S.-built and was manufactured in Egg Harbor, New Jersey, in 1976. Mr. Wilson purchased the yacht in July 1991 from HMY Yacht Sales Inc. of Dania, Florida for a purchase price of \$89,000. When he purchased the yacht he explained to the salesman that he was purchasing the vessel to conduct charter fishing trips. The yacht brokers were not aware of any restrictions on the *High Calibre*, and Mr. Wilson was unaware of the Jones Act requirements.

Mr. Wilson will be retiring in three years and would like to use his vessel for charter fishing. Mr. Wilson plans to operate out of Orleans, Massachusetts in the summer and out of Naples, Florida during the wintertime. Upon applying to the Coast Guard for a coastwise trading document, Mr. Wilson was informed that his vessel was ineligible because a previous owner had not been a U.S. citizen. I also wrote to the Coast Guard and was informed that a legislative waiver was the only way Mr. Wilson could receive the coastwise trading endorsement on his official document.

Mr. Wilson has made a substantial investment in the *High Calibre*, and he hoped to enjoy his investment by entering the charter market. If Mr. Wilson cannot charter his vessel, he will be forced to sell it, and he feels that this could cause him severe financial harm.

In view of these circumstances, I feel a waiver of the Jones Act is warranted.

PREPARED STATEMENT OF HON. OWEN B. PICKETT, A U.S. REPRESENTATIVE
FROM VIRGINIA

Mr. Chairman, on May 7 of this year, I introduced H.R. 5128 to authorize a certificate of documentation for the *Reddy Jane* as a commercial vessel. The *Reddy Jane*, United States official number 928388, is a 36-foot wooden boat manufactured in 1964 by the American company, Chris Craft.

The *Reddy Jane* was built and recently rebuilt in American yards.

Mr. Latina "Lat" M. Combs, the vessel's current owner, is a citizen of the United States. He wants to convert this recreational craft into a licensed commercial fishing vessel. Mr. Combs, however, is unable to provide the Coast Guard with a complete registry of previous owners of the *Reddy Jane*.

With your permission, Mr. Chairman, I will submit for the record a letter I received from the boat's owner requesting favorable consideration by this Subcommittee of the private relief bill introduced on his behalf. (ED. NOTE: Mr. Combs' letter can be found at the end of the hearing.) Mr. Combs regrets that he is not able to be here today to testify in person on H.R. 5128. He cannot afford the loss in income that would result from being away from his lunch delivery business. Mrs. Combs cannot operate their delivery truck alone.

Lat Combs invested in the *Reddy Jane* to fulfill a lifetime dream to own and work his own commercial fishing boat and to create an opportunity wherein he could share this dream with his wife. Mr. and Mrs. Combs are currently self-employed in a small lunch vending business. Mrs. Combs, as a result of a physical disability, will soon have to discontinue that work.

Mr. Combs borrowed over \$12,000 to purchase and outfit the *Reddy Jane* for charter and commercial fishing as a joint venture with his wife. Prior to the purchase, he was assured by the seller of the boat that it was fully documented for any use in the waters of the United States. Only when registering the craft with the Coast Guard did Mr. Combs become aware of the Jones Act and that this vessel carried insufficient documentation to qualify for coastwise privileges under the Act.

Mr. Chairman, Mr. and Mrs. Combs are very hardworking people of humble origins. Mr. Combs served his country honorably in Vietnam as a corporal in the United States Marine Corps. For over a year, Mr. and Mrs. Combs have been trying to find information on all previous owners of the *Reddy Jane* as required by the

Coast Guard to document the vessel under the Jones Act. This search has depleted their resources. If the Combs' are unable to put the *Reddy Jane* to work, they will soon become unable to afford the boat's slip rental, user fees, and upkeep.

Section 27 of the Jones Act provides that only a vessel built in the United States, documented under the laws of the United States, and owned by a citizen of the United States may operate in the coastwise trade of the United States. Section 27 also provides that a vessel that has acquired the right to engage in the coastwise trade and is later sold foreign or is placed under foreign registry may not engage in the coastwise trade.

Though the Jones Act prohibits foreign-built, -owned, and -documented vessels from engaging in the U.S. coastwise trade, a U.S.-built vessel does not permanently lose its right to engage in the fisheries of the United States if, in its past, it was sold to an alien or if it was placed under foreign registry.

Due to circumstances beyond their control, Mr. and Mrs. Combs are unable to obtain a complete history of ownership of the *Reddy Jane*. According to law, the Coast Guard cannot and will not issue a document granting coastwise trading or fisheries privileges for the *Reddy Jane*. The facts surrounding this particular vessel involve one of the statutory prohibitions. The only mechanism available to the boat's owners for acquiring these privileges is special legislation authorizing the Secretary of Transportation to issue the necessary documentation.

H.R. 5128 authorizes a certificate of documentation for the *Reddy Jane*. This legislation, in my opinion, is meritorious, and I commend it to the Subcommittee along with my request for favorable consideration.

The Combs' situation is both compelling and deserving of remedial action by Congress. Mr. Combs can afford to keep his boat only if he can put it to commercial use. He cannot employ the *Reddy Jane* as a commercial fishing boat without Coast Guard documentation. I, therefore, urge this Subcommittee to act promptly and affirmatively on H.R. 5128.

PREPARED STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman, thank you for this opportunity to speak on my bill, H.R. 5148, which would permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the *Sea Horse*.

My constituent, Mr. Steve McMurry, of Sitka, Alaska, is a former logger who sold his home to buy the *Sea Horse*, and moved to Alaska. Mr. McMurry bought the 50-foot yacht, whose hull was built in 1968 in Vancouver, Canada. He cannot use his vessel in the coastwise trade since the hull was built outside the United States, though it has been owned by U.S. citizens. At the time he purchased the *Sea Horse*, Mr. McMurry was not aware that U.S. law prohibited him from commercially using it since the hull was Canadian-built. He states that he would use the vessel commercially during the summer months in Alaska in a charter business for recreation and sportfishing.

I believe that passing my bill to permit Mr. McMurry to use his vessel for business would be appropriate, and I hope that the Committee will move this bill forward.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. HELEN DELICH BENTLEY, A U.S. REPRESENTATIVE FROM MARYLAND

Thank you, Mr. Chairman. I want to commend you, Mr. Chairman, and Mr. Lent, the Ranking Minority Member, for calling today's hearing, and I want to thank both of you and the Committee's staff for your quick response to my request for including H.R. 5190 on today's agenda.

Mr. Chairman, my bill to allow coastwise privileges for the *North Atlantic* should be non-controversial. Although the chain of ownership for the *North Atlantic* is not complete, there is no indication that the vessel was ever registered under a foreign flag.

The *North Atlantic* is a 42-foot wooden sportfishing boat built in 1972 by Kulas Custom Sea Skiffs, Inc., in Keyport, New Jersey. The Kulas Custom Sea Skiffs company no longer is in business and, therefore, its records are no longer accessible; so it is impossible to accurately retrace the complete chain of ownership of this boat.

Its current owner, Mr. Gerv C. Griffin, of Middle River, Maryland, who lives in my congressional district, is with me today to answer any questions the Committee may have.

Mr. Griffin purchased the *North Atlantic* in August 1990. Because the chain of ownership is not complete, the Coast Guard denied Mr. Griffin coastwise privileges. He wishes to employ the *North Atlantic* as a charter fishing boat. In addition, he plans to provide scuba diving excursions in Chesapeake Bay and at Ocean City, Maryland.

Mr. Chairman, there is no suspicion that this American-made 42-foot vessel was owned by anyone other than American citizens. When H.R. 5190 eventually comes before the Subcommittee for markup, I deeply would appreciate your support and the support of my colleagues.

That completes my testimony, Mr. Chairman. Mr. Griffin and I would be happy to answer any questions Members may have.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. WAYNE T. GILCREST, A U.S. REPRESENTATIVE
FROM MARYLAND

Mr. Chairman, I am very pleased to offer testimony in favor of my bill, H.R. 4987, before the Merchant Marine Subcommittee. This legislation would authorize the issuance of a certificate of documentation for the *Blithe Spirit*, the *Bluejacket*, and the *Jubilee*.

I will say just a brief word about why these vessels have been unable to receive Coast Guard documentation for commercial operation. The *Blithe Spirit* is a 39-foot marine trader trawler. Mr. Cave bought the vessel in 1990 for pleasure use, but learned from the previous owner that it had been used for commercial purposes. Only in the past year after being laid off by the county government did Mr. Cave decide to use the boat for a small inland charter business. Although the boat is fitted with nearly all equipment made in the U.S., the boat was built in Taiwan. Because it was constructed overseas, only this legislation will enable Mr. Cave to realize his charter business.

The *Bluejacket* is a 31-foot vessel which the owner, Mr. William Macindoe, purchased from an American dealer. He intended to use the vessel for commercial use, but found out, only after purchasing the vessel and receiving his Coast Guard license as a master ocean operator, that the *Bluejacket* could not be used for the purposes he had intended. This bill would enable him to receive commercial documentation from the U.S. Coast Guard.

Finally, the *Jubilee* is a 34-foot marine trader trawler. Upon retirement, Mr. Brandon Belote decided to use his boat for commercial purposes and invested close to \$12,000 to have it overhauled, only to find out that the vessel had been built in China. This bill would also allow Mr. Belote to use his vessel for commercial purposes.

These owners have invested heavily in a future dependent on a charter business. Without passage of this legislation, these plans are dashed, and an important part of the tourism economy in the First District will be thwarted.

Thank you, Mr. Chairman, for the chance to testify this morning about the obstacles facing these boat owners in their quest to start up a new business. I urge consideration of H.R. 4987 as a remedy to their problems.

PREPARED STATEMENT OF HON. NEIL ABERCROMBIE, A U.S. REPRESENTATIVE
FROM HAWAII

Mr. Chairman, thank you for including four bills which I have introduced to grant special exemption from the Jones Act in today's hearing. (H.R. 4469, H.R. 5226, H.R. 5227, and H.R. 5228).

The first, H.R. 4469, would grant exemption to a 47-foot cutter-rigged yawl, *Hazana*, so that she may carry passengers on cruises between the Hawaiian islands of Oahu and Molokai. As there is no vessel currently active on this route, *Hazana* will be able to provide another view of Hawaii, one now only seen by a selected few.

Hazana has a special history. Built in Holland in 1979, *Hazana* was severely damaged in a hurricane at sea in 1984. In turn, Jeff L. Hossellman, a U.S. citizen and resident of Hawaii, purchased the vessel from an insurance company as a total loss for \$42,000. Mr. Hossellman has since rebuilt the vessel in the United States and can proudly claim she now has a market value of approximately \$150,000.

The second bill, H.R. 5228, would grant exemption to a 28-foot vessel, *Delphinus II* which was purchased from the U.S. manufacturer, Delta Boats Inc., in Florida on May 3, 1990 by Marine Charters Inc. The corporation had three directors at this time, two U.S. citizens and one Japanese national. When a name change application

was requested by Marine Charters, Inc. through the U.S. Coast Guard Seattle office, Marine Charters, Inc. was informed that the Coast Guard had a problem with a foreign national being a director in a three-director corporation which needs two directors for a quorum. Marine Charters Inc. promptly amended its bylaws, increasing the number of its directors to four, three U.S. citizens and one foreign national. Through this action, the corporation fully satisfies the citizenship requirement for vessel documentation. However, a waiver is necessary for the corporation to gain coastwise recreation status. *Delphinus II* was built in the United States and would be used to continue a dive tour operation in Maui.

My third bill, H.R. 5226, would exempt an 11-year-old boat, *Touch of Class*, for use as a six-passenger charter fishing boat in the waters off Maui, Hawaii. Although *Touch of Class* was built in Taiwan, it has been redesigned for comfort with American-made engines. *Touch of Class*, a 50-foot trawler type vessel, has 2 electric heads, 3 staterooms, a large galley salon, flybridge, forward and aft decks, and Ford Lehman engines. The owner has already acquired a commercial charter fishing permit to operate in Maui waters and awaits a Jones Act waiver before he can begin his operations.

The fourth bill, H.R. 5227, would grant exemption to the vessel *Liquid Gold*, which is currently homeported in Honolulu—Kailua-Kona, Hawaii is the hailing port. Although *Liquid Gold* was built in the United States, it was at one time owned by a Venezuelan. Because of this prior alien ownership, the vessel has not been eligible for coastwise trade restrictions under the Department of Transportation regulations. An exemption would reverse this ineligibility so that the owner, Mr. Dahlberg, could seek a trade change from pleasure to fisheries for *Liquid Gold*.

Mr. Chairman, your assistance in these matters is greatly appreciated. As you are well aware, I am a strong supporter of American maritime enterprise. I believe these exemptions fully comply with the spirit of the law. Again, thank you for your time and attention.

PREPARED STATEMENT OF HON. C. THOMAS McMILLEN, A U.S. REPRESENTATIVE
FROM MARYLAND

Good morning, Mr. Chairman, I am here this morning to ask for your support for legislation I have introduced which would waive the requirements of the Merchant Marine Act of 1920 for the vessels *A Weigh of Life* and *Fifty-Fifty*. While I am supportive of the Merchant Marine Act, it would appear that denying coastwise trading privileges to these vessels is not in keeping with the intent of the Act.

Last year (1991), Mr. Francis E. Donaldson purchased a 1989 40-foot, Pace Motor Vessel, the *A Weigh of Life*, from Associated Yacht Brokers, located in Stevensville, Maryland. Mr. Donaldson's intent was to use the vessel for commercial charter fishing off the Atlantic Coast. At that time he was unaware of the restriction of the Merchant Marine Act of 1920. After purchasing the vessel, he asked the U.S. Coast Guard to commercially document the vessel. It was at that point that Mr. Donaldson learned the vessel could not be commercially documented because the hull was made in Taiwan, even though all of the hardware, the engines and machinery were made and fitted in the U.S.A.

The second vessel, the *Fifty-Fifty*, has an interesting history. Not only was the vessel owned by a rather famous star in the golden age of radio and television (ED. NOTE: Arthur Godfrey), but the *Fifty-Fifty* was also owned by the State of Maryland and served as both the official State yacht and, for a time, the residence of Governor Mandel. The current owner of the vessel, Mr. John K. Clifford provided me with a memorandum in support of this legislation. Mr. Clifford makes the case far better than I, and I have submitted the memorandum for the record to aid in your deliberations.

I would like to thank the Members of the Committee for this opportunity. I would also like to complement the staff on their high degree of professionalism and thank them for the cooperation that they have extended to me and my staff.

MEMORANDUM IN SUPPORT OF A BILL TO ALLOW THE MOTOR VESSEL
"FIFTY-FIFTY" TO ENGAGE IN COASTWISE TRADE

JOHN K. CLIFFORD

The *Fifty-Fifty* is a U.S.-documented 65-foot motor vessel. All her prior owners have been U.S. citizens and attached hereto is a copy of her Abstract of Title. Of particular note are two prior owners—the famous radio/television star, Arthur Godfrey, and the State of Maryland. While owned by the State of Maryland (Depart-

ment of Natural Resources [DNR], she was the Governor's yacht; and for almost one year during Governor Mandel's administration, the vessel became "Government House" replacing the land-bound structure on State Circle former referred to as the Governor's Mansion but renamed "Government House."

The vessel was operated by DNR which chartered the vessel to various other State agencies for entertaining both public and private company officials. The *Fifty-Fifty* was a familiar sight cruising the Bay with 35 or so passengers aboard. Maryland has a very aggressive and successful marketing program for recruiting businesses to locate in the State. A cruise on the *Fifty-Fifty* was an important part of the program as Maryland emphasized the quality of life in the Chesapeake Bay area as an inducement to employees and officers of businesses considering relocating in Maryland.

The vessel was declared surplus by the State, and I purchased the vessel with the express and sole purpose of continuing its charter activities. Immediately upon acquiring the vessel, she was inspected by representatives of the American Bureau of Shipping at the General Ship Repair in Baltimore, Maryland. The American Bureau experts recommended that the vessel be scrapped. It then was painfully clear to me why the State sold the vessel. Frankly, by that time, I was at the point of no return so I elected to embark upon a restoration program which now is into its seventh (7th) year. The work to rebuild the vessel has cost over \$300,000. All work has been done in Maryland shipyards and by Maryland contractors. The total spent on the restoration to date is twice what the vessel cost when new. The Coast Guard Abstract reveals that U.S. Customs duty was paid on the vessel upon its importation to the U.S. at the Port of Miami where the Deputy Collector of Customs made the appropriate notation in the Abstract on February 18, 1959.

The vessel was built during a period in time when "Made in U.S." were the magic words and that meant that all her machinery was American made. This includes the Detroit Diesels (main propulsion), ONAN Generator, Sperry Auto Pilot, and all navigation equipment. She now has a new steel bottom courtesy of Maryland shipyards, and herein the irony. New steel installed in Maryland most likely came from Korea, whereas when the keel was layed originally in 1955, it is a virtual certainty that the steel came from the United States.

As a former naval officer in World War II and a licensed U.S. Coast Guard master, I share the concern of the Coast Guard for safety. By requiring a certificate of inspection, the Coast Guard is able to keep unseaworthy vessels off the charter market. When I purchased the *Fifty-Fifty* and embarked upon the massive restoration, I had absolutely no idea that the vessel had a fatal disability and the charter activity by the State of Maryland would be held to be illegal by existing Coast Guard regulations. I was advised by the Coast Guard, first verbally and then in writing, that Coast Guard officials are not permitted even to inspect the vessel. Attached hereto and marked Exhibit "B" is a letter from the Coast Guard which, in material part, is quoted:

"A coastwise endorsement is required for certification; 46 U.S.C. 12106(b) permits only those vessels with a document endorsed for coastwise trade to engage in coastwise trade. Paragraph (a) of the same section requires the vessel to have been built in the United States, captured in war or ****. Your vessel cannot be inspected for certification WITHOUT THE ENDORSEMENT." (emphasis added).

"Only an act of Congress will allow your vessel to be endorsed for coastwise trade. This has been done in the past and I recommend that you contact your congressional Representative's office and discuss this possibility."

In view of the vessel's unique history, an application is being filed to have the vessel listed on the National Historic Registry.

The vessel has been listed in the data base of Coast Guard Station Baltimore of vessels being available for spill response in connection with the formation of a "mosquito fleet" which would augment the U.S. Coast Guard and State resources. Attached hereto is a letter dated 03 January 1990 from the Coast Guard regarding the "mosquito fleet" as well as a letter from Congressman McMillen supporting the concept. All this is set forth as an indication of my desire to participate on a volunteer basis in helping preserve the Chesapeake Bay.

The recession has desecrated the boating industry and more vessels and jobs are being lost. The "day charter" business almost is nonexistent in the Annapolis area except for one large special purpose vessel which takes out people for brief harbor cruises.

In an effort to keep us "afloat," we were planning a series of cruises from Annapolis to Atlantic City. No vessel is servicing that route, and we have been encouraged

by people who "know the market" that it might be successful. To undertake this route, we would generate more than fifteen (15) jobs by hiring three (3) additional full crews. This also has a significant ripple effect as diesel fuel is a big item (proposed 20 cent tax on diesel fuel and the vessel would burn almost 500 gallons per trip), annual hauling and maintenance which keeps a crew of three (3) busy, materials and supplies, etc. If the *Fifty-Fifty* is not allowed to "work," it will be not only a severe financial hardship but a financial disaster. I will have no alternative other than to decommission the vessel and the normal crew of 3 will be out of work. Also there will be no more shipyard work.

A vessel this age requires high maintenance and its configuration is such it does not lend it for purely private use. The State remodeled the vessel to carry the 35+ passengers and it was perfect for its intended use. Now to find that the vessel is prohibited from doing what it did in the preceding ten (10) years renders the vessel worth a fraction of its inherent value and cost.

If the vessel is not allowed to "work," what will happen is that it will be sold for around one-third of the restoration costs and will end up in Florida as a hybrid condo "live-aboard," tied to a dock to waste away. The bottom line would be existing jobs lost, no new jobs generated, and the end of a line for a magnificent vessel. That would be a pity!

[ED. NOTE: Enclosure can be found in the subcommittee files.]

PREPARED STATEMENT OF HON. CHRISTOPHER COX, A U.S. REPRESENTATIVE
FROM CALIFORNIA

Thank you very much, Mr. Chairman, for the opportunity to speak today before the Subcommittee in support of my legislation, H.R. 5163, which would permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the *Wild Goose*. The 136-foot yacht, now owned by Mr. Alex Kozloff of Irvine, California, was the late actor John Wayne's pride and joy for the last 13 years of his life. Now the yacht is undergoing substantial renovation to return it to the state it was in during John Wayne's lifetime, so that the many fans and admirers of John Wayne can share and enjoy this experience.

Unfortunately, the *Wild Goose*, which has a long history of service to the United States as a U.S. Navy minesweeper during and after World War II, was owned briefly by a Canadian and now is unable to engage in U.S. coastwise trade. My legislation will enable the *Wild Goose* to engage in U.S. coastwise trade, so that the substantial investment that Mr. Kozloff and his partners have made to restore the yacht can be enjoyed by the Duke's fans and others.

Since Mr. Kozloff was not aware of the foreign ownership at the time of purchase, and since the boat has a long and distinguished history in service to both our country and to one of our most beloved Americans, I urge the Committee to grant the waiver for *Wild Goose*.

Again, Mr. Chairman, I would like to thank you and the other Members of the Subcommittee for your consideration of this matter.

102D CONGRESS
1ST SESSION

H. R. 3005

To clear certain impediments to the licensing of a vessel for employment
in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1991

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

A BILL

To clear certain impediments to the licensing of a vessel
for employment in the coastwise trade and fisheries of
the United States.

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 sections 12105, 12106, 12107, and*
4 *12108 of title 46, United States Code, and section 27 of*
5 *the Merchant Marine Act, 1920 (46 App. U.S.C. 883),*
6 *as applicable on the date of this Act, the Secretary of the*
7 *department in which the Coast Guard is operating may*
8 *issue a certificate of documentation for the vessel Miss*
9 *Joan, State of Ohio, registration number 3250 XK.*

102D CONGRESS
1ST SESSION

H. R. 3086

To clear certain impediments to the licensing of a vessel for employment
in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1991

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

A BILL

To clear certain impediments to the licensing of a vessel
for employment in the coastwise trade and fisheries of
the United States.

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 sections 12105, 12106, 12107, and
4 12108 of title 46, United States Code, and section 27 of
5 the Merchant Marine Act, 1920 (46 App. U.S.C. 883),
6 as applicable on the date of this Act, the Secretary of the
7 department in which the Coast Guard is operating may
8 issue a certificate of documentation for the vessel Barge
9 MM 262 United States official number 298924.

102D CONGRESS
2D SESSION

H. R. 4191

To clear certain impediments to the licensing of the vessel SOUTHERN YANKEE for employment in the coastwise trade of the United States.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1932

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

A BILL

To clear certain impediments to the licensing of the vessel SOUTHERN YANKEE for employment in the coastwise trade of the United States.

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 sections 12105, 12106, and 12107
4 of title 46, United States Code, and section 27 of the Mer-
5 chant Marine Act, 1920 (46 App. U.S.C. 883), the Sec-
6 retary of the department in which the Coast Guard is op-
7 erating may issue a certificate of documentation for the
8 vessel SOUTHERN YANKEE (official number 976653)
9 authorizing the vessel to engage in the coastwise trade of
10 the United States.

102D CONGRESS
2D SESSION

H. R. 4469

To clear certain impediments to the licensing of the vessel HAZANA for employment in the coastwise trade of the United States.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 1992

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

A BILL

To clear certain impediments to the licensing of the vessel HAZANA for employment in the coastwise trade of the United States.

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 sections 12105, 12106, 12107, and
4 12108 of title 46, United States Code, and section 27 of
5 the Merchant Marine Act, 1920 (46 App. U.S.C. 883),
6 as applicable on the date of the enactment of this Act,
7 the Secretary of the department in which the Coast Guard
8 is operating may issue a certificate of documentation au-
9 thorizing the vessel HAZANA, Hawaii State Registration

1 Number HA9219D, to engage in the coastwise trade of
2 the United States.

102D CONGRESS
2D SESSION

H. R. 4719

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel ~~50-50~~.

FIFTY-FIFTY

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1992

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

A BILL

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel 50-50.

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 section 27 of the Merchant Marine
 4 Act, 1920 (46 U.S.C. App. 883) and section 12106 of title
 5 46, United States Code, the Secretary of the department
 6 in which the Coast Guard is operating may issue a cer-
 7 tificate of documentation for employment in the coastwise
 8 trade of the United States for the vessel ~~50-50~~; United
 9 States official number 272866. **FIFTY - FIFTY**

102D CONGRESS
2D SESSION

H. R. 4802

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Mariposa.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1992

Mr. JONES of North Carolina introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Mariposa.

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 section 27 of the Merchant Marine
4 Act, 1920 (46 App. U.S.C. 883) and section 12106 of title
5 46, United States Code, the Secretary of the department
6 in which the Coast Guard is operating may issue a cer-
7 tificate of documentation for employment in the coastwise
8 trade of the United States for the vessel Mariposa, United
9 States official number 982102.

102D CONGRESS
2D SESSION

H. R. 4987

To clear certain impediments to the licensing of a vessel for employment in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1992

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

A BILL

To clear certain impediments to the licensing of a vessel for employment in the coastwise trade and fisheries of the United States.

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 sections 12105, 12106, 12107, and
 4 12108 of title 46, United States Code, and section 27 of
 5 the Merchant Marine Act, 1920 (46 App. U.S.C. 883),
 6 as applicable on the date of this Act, the Secretary of the
 7 Department in which the Coast Guard is operating may
 8 issue a certificate of documentation for the following ves-
 9 sels:

- 1 (1) **BLITHE SPIRIT**.—(United States official
 2 number 584730).
 3 (2) **BLUEJACKET**.—(United States official num-
 4 ber 973459).
 5 (3) **JUBILEE**.—(United States official number
 6 582812).

102D CONGRESS
2D SESSION

H. R. 5094

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel A WEIGH OF LIFE.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1992

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

A BILL

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel A WEIGH OF LIFE.

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 section 27 of the Merchant Marine
4 Act, 1920 (46 U.S.C. App. 883) and section 12106 of title
5 46, United States Code, the Secretary of the department
6 in which the Coast Guard is operating may issue a cer-
7 tificate of documentation for employment in the coastwise
8 trade of the United States for the vessel A WEIGH OF
9 LIFE, United States official number 973177.

102D CONGRESS
2D SESSION

H. R. 5128

To authorize a certificate of documentation for the vessel REDDY JANE.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1992

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

A BILL

To authorize a certificate of documentation for the vessel
REDDY JANE.

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 sections 12105, 12106, 12107, and
4 12108 of title 46, United States Code, and section 27 of
5 the Merchant Marine Act, 1920 (46 App. U.S.C. 883),
6 as applicable on the date of the enactment of this Act,
7 the Secretary of the department in which the Coast Guard
8 is operating may issue a certificate of documentation for
9 the vessel REDDY JANE (official number 928388).

72D CONGRESS
2D SESSION

H. R. 5148

To clear certain impediments to the licensing of a vessel for employment
in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1992

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

A BILL

To clear certain impediments to the licensing of a vessel
for employment in the coastwise trade and fisheries of
the United States.

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 sections 12105, 12106, 12107, and**
4 **12108 of title 46, United States Code, and section 27 of**
5 **the Merchant Marine Act of 1920 (46 App. U.S.C. 883),**
6 **as applicable on the date of this Act, the Secretary of the**
7 **Department in which the Coast Guard is operating may**
8 **issue a certificate of documentation for the vessel**
9 **Seahorse, United States official number 516343.**

^

102^D CONGRESS
2^D SESSION

H. R. 5163

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Wild Goose.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1992

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

A BILL

To authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Wild Goose.

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 section 27 of the Merchant Marine
4 Act, 1920 (46 U.S.C. App. 883) and section 12106, of
5 title 46, United States Code, the Secretary of the depart-
6 ment in which the Coast Guard is operating may issue
7 a certificate of documentation with appropriate endorse-
8 ment for employment in the coastwise trade of the United
9 States for the vessel Wild Goose, United States official
10 number 290117.

102^D CONGRESS
2^D SESSION

H. R. 5190

To clear certain impediments to the licensing of a vessel for employment
in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1992

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

A BILL

To clear certain impediments to the licensing of a vessel
for employment in the coastwise trade and fisheries of
the United States.

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 sections 12105, 12106, 12107, and
4 12108 of title 46, United States Code, and section 27 of
5 the Merchant Marine Act, 1920 (46 App. U.S.C. 883),
6 as applicable on the date of this Act, the Secretary of the
7 department in which the Coast Guard is operating may
8 issue a certificate of documentation for the vessel NORTH
9 ATLANTIC, United States official number 695377.

102D CONGRESS
2D SESSION

H. R. 5197

To clear certain impediments to the licensing of a vessel for employment
in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1992

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

A BILL

To clear certain impediments to the licensing of a vessel
for employment in the coastwise trade and fisheries of
the United States.

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 sections 12105, 12106, 12107, and
4 12108 of title 46, United States Code, and section 27 of
5 the Merchant Marine Act, 1920 (46 App. U.S.C. 883),
6 as applicable on the date of this Act, the Secretary of the
7 department in which the Coast Guard is operating may
8 issue a certificate of documentation for the vessel the Day
9 Dream, United States Official number 644805.

102D CONGRESS
2D SESSION

H. R. 5226

To authorize a certificate of documentation for the vessel Touch of Class.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1992

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

A BILL

To authorize a certificate of documentation for the vessel
Touch of Class.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CERTIFICATE OF DOCUMENTATION.**

4 Notwithstanding sections 12106, 12107, and 12108
5 of title 46, United States Code, and section 27 of the Mer-
6 chant Marine Act, 1920 (46 App. U.S.C. 883), as applica-
7 ble on the date of enactment of this Act, the Secretary
8 of Transportation may issue a certificate of documentation
9 for the vessel Touch of Class, United States official num-
10 ber HA8762E.

102D CONGRESS
2D SESSION

H. R. 5227

To authorize a certificate of documentation for the vessel Liquid Gold.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1992

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

A BILL

To authorize a certificate of documentation for the vessel
Liquid Gold.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CERTIFICATE OF DOCUMENTATION.**

4 Notwithstanding sections 12106, 12107, and 12108
5 of title 46, United States Code, and section 27 of the Mer-
6 chant Marine Act, 1920 (46 App. U.S.C. 883), as applica-
7 ble on the date of enactment of this Act, the Secretary
8 of Transportation may issue a certificate of documentation
9 for the vessel Liquid Gold, United States official number
10 618121.

102D CONGRESS
2D SESSION

H. R. 5228

To authorize a certificate of documentation for the vessel Delphinus II.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1992

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

A BILL

To authorize a certificate of documentation for the vessel
Delphinus II.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. AUTHORITY TO ISSUE.**

4 Notwithstanding sections 12106, 12107, and 12108
5 of title 46, United States Code, and section 27 of the Mer-
6 chant Marine Act, 1920 (46 App. U.S.C. 883), as applica-
7 ble on the date of enactment of this Act, the Secretary
8 of Transportation may issue a certificate of documentation
9 for the vessel Delphinus II, United States official number
10 958902.

STENY H HOYER
5TH DISTRICT MARYLAND

CHAIRMAN
DEMOCRATIC CAUCUS

CO-CHAIR
COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

DEMOCRATIC STEERING
AND POLICY COMMITTEE

Need

Congress of the United States
House of Representatives
Washington, DC 20515-2005

May 18, 1992

APPROPRIATIONS COMMITTEE

TREASURY, POSTAL SERVICE
GENERAL GOVERNMENT

LABOR,
HEALTH AND HUMAN SERVICES,
EDUCATION

DISTRICT OF COLUMBIA

RECEIVED

MAY 18 1992

COMMITTEE ON MERCHANT MARINE
AND FISHERIES

The Honorable Walter B. Jones
Chairman
Committee on Merchant Marines and
Fisheries
1334 Longworth HOB
Washington, D.C. 20515

Dear Walter:

I am writing this letter in support of H.R. 4719, Congressman Tom McMillen's private relief legislation to authorize the Coast Guard to issue a certificate of documentation for employment in the coastwise trade of the United States for the vessel The Fifty-Fifty.

Due to the rich and illustrious history of The Fifty-Fifty, it would be unfortunate if the vessel were forced to cease operation in Maryland waters. The tremendous restoration efforts undertaken by its current owner, Jack Clifford, would be wasted and much needed jobs that could be provided by employment of the vessel in the coastwise trade would be lost without a certificate of documentation. I would greatly appreciate your favorable consideration of this bill when your committee holds hearings on private relief legislation.

With warmest regards, I am

Sincerely yours,


STENY H. HOYER

May 14, 1992

U.S. HOUSE OF REPRESENTATIVES
Committee on Merchant Marine and Fisheries
Room 1334, Longworth House Building
Washington, D.C. 20515-6230

ATTN: Subcommittee on Merchant Marine

RE: REDDY JANE (Official number 928388)

Dear Sirs:

When I purchased the REDDY-JANE (x Sneaky Snake), I was under the belief that the documentation the boat had was sufficient for commercial use.

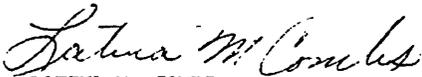
I would like the request the Committee see fit to grant the proper documentation so that I may put this fine old boat to work.

The REDDY JANE is a sound vessel, with great potential as a work boat. In the beginning, two people will be employed, and the potential for growth is unlimited.

Without your assistance, as well as the proper papers for this boat I will be forced to sell it.

Thanking you in advance for your cooperation in this matter.

Sincerely,



LATINA M. COMBS
REDDY JANE



CLASSIC CHARTERS OF CHARLEVOIX

% Gordon and Susan Van Wieren • 12735 Pe-Ba-Shan Lane • Charlevoix, MI 49729 • (616) 547-2195

April 17, 1992

Ms. Rebecca Die
Ford Building
Room 538, 3rd and D Street, S.W.
Washington, D.C. 20007-
20515

Dear Ms. Die:

As per our telephone conversation I am writing this letter to explain my predicament with the Jones Act.

Last year when I decided to retire as Superintendent of Schools in Charlevoix, Michigan I embarked on a plan to establish a sailboat chartering service here in Charlevoix. I purchased a 43-foot Hans Christian Sailboat because of its superior construction and stability. Upon retirement I embarked on a full year renovation project to bring the boat up to what I consider a standard for chartering. I also took classes and studied for a Captain's License. In December of 1991 I was granted a license to serve as "Master of Great Lakes or Inland Steam, Motor or Auxiliary Sail Vessels of not more than 30 gross tons, also, operator of uninspected passenger carrying vessels as defined in the Act of August 26, 1983, upon near-coastal waters."

I have incurred a tremendous amount of expense in not only renovating the boat but becoming qualified as a captain.

Last fall I began correspondence with J. L. Converse, Commander, U. S. Coast Guard in St. Ignace, Michigan for the purpose of seeking information on getting my boat licensed by the Coast Guard. Mr. Converse was very cooperative and forwarded material regarding licensing of the boat. I recently began to pursue the process of licensing and found that the Jones Act prohibits boats built outside of the U.S. from being used commercially in the United States. Because my boat was built in Taiwan I have a real problem.

The boat was purchased on December 12, 1991. Enclosed you will find copies of the Certificate of Documentation, the Bill of Sale, my Master Captain's License, and a brochure which fully describes the vessel.

I do appreciate your prompt reply by telephone and I hope all the needed information is enclosed. If additional information is needed please feel free to call me at area code 616-547-2195.

Your cooperation in this matter is appreciated, and I am looking forward to your reply.

Sincerely,

Gordon Van Wieren



PART II: TRANSFER OF CERTAIN VESSELS FROM THE NATIONAL DEFENSE RESERVE FLEET TO NONPROFIT ORGANIZATIONS, OR TO ALLOW NONPROFIT ORGANIZATIONS TO SCRAP NDRF VESSELS AND USE THE PROCEEDS THEREFROM

PREPARED STATEMENT OF HON. WALTER B. JONES, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

We will now receive testimony on several bills that would allow the transfer or use of vessels from the National Defense Reserve Fleet (NDRF).

In particular, we have before us H.R. 2832, a bill I introduced, which would authorize the transfer of three vessels to the nonprofit organization Life International. In addition, we also have before us H.R. 3036, introduced by Mr. Anderson and H.R. 1043, introduced by Mr. Rohrabacher, which would authorize the transfer of vessels from the NDRF to Assistance International, Inc., a nonprofit organization.

Another bill, S. 1973, would authorize the transfer of a vessel to the city of Warsaw, Kentucky, for the promotion of economic development and tourism. Also, the National Historic Museum Fleet of San Francisco and the Association for the Preservation of the Presidential Yacht *Potomac* will propose that they be allowed to scrap NDRF vessels and use the proceeds for their nonprofit purposes.

PREPARED STATEMENT OF HON. DANA ROHRBACHER, A U.S. REPRESENTATIVE FROM CALIFORNIA

I appreciate this opportunity to present testimony in support of H.R. 1043, my bill to allow Assistance International, Inc. to acquire three vessels for use in vocational training programs consistent with A.I.D. microenterprise programs.

Assistance International, Inc. is a volunteer-based organization which seeks to teach and implement the principles of capitalism and entrepreneurship to the Third World. This organization sends successful entrepreneurs (volunteers), teamed with local experts, to lesser developed nations where cottage industries are developed. These businesses offer employment, self-sufficiency and esteem to areas that have only known poverty and dependence.

The three vessels that Assistance International Inc. is seeking to acquire, M/V *Mizar*, M/V *Mirfac*, and R/V *Conrad*, would be used to train students from the Caribbean and Central America in the operation of these types of vessels. Additionally, the *Mizar* would serve as the regions' first mobile disaster task force, helping people who are harmed by hurricanes, earthquakes, and fires. The *Mirfac* is primarily a cargo vessel, which would train students in marine diesel mechanics, carpentry, and other shipboard skills.

The R/V *Conrad* is, in addition to its training mission, a research-type vessel that would act as a floating facility for university scholars and economic experts to define viable, ongoing marine economic programs.

I urge the Subcommittee to favorably consider the request of Assistance International, Inc. to acquire these vessels.

102D CONGRESS
1ST SESSION

H. R. 1043

To direct the Administrator of the Maritime Administration to convey property to Assistance, International, Inc.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 20, 1991

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

A BILL

To direct the Administrator of the Maritime Administration to convey property to Assistance, International, Inc.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. CONVEYANCE OF VESSELS.

4 The Administrator of the Maritime Administration shall
5 convey, without compensation, all right, title, and interest of
6 the United States in and to the vessels "M.V. MIZAR" and
7 "M.V. MIRFAC" to Assistance, International, Inc. for use
8 in emergencies, vocational training, and economic develop-
9 ment programs.

1 SEC. 2. DELIVERY.

2 Delivery of the vessels conveyed pursuant to section 1
3 shall occur at the location of the vessels on the date of enact-
4 ment of this Act.

102D CONGRESS
1ST SESSION

H. R. 2832

To amend Public Law 97-360.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 1991

Mr. JONES of North Carolina introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend Public Law 97-360.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That Public Law 97-360 (96 Stat. 1718-19), as amend-
4 ed, is amended by striking sections 6 and 7 and inserting
5 in lieu thereof:

6 "SEC. 6. This Act, shall apply to the United States
7 Ship General Nelson M. Walker, P2-SE2-R1. This Act
8 shall also apply to vessels transferred to the National De-
9 fense Reserve Fleet under section 7.

10 "SEC. 7. The following vessels shall be transferred
11 to the National Defense Reserve Fleet:

1 "(a) United States Ship General William O.
2 Darby, P2; and

3 "(b) United States Ship Plymouth Rock, LDS-
4 29.

5 "SEC. 8. This Act shall expire by its terms on Octo-
6 ber 22, 1996."

102D CONGRESS
1ST SESSION

H. R. 3036

To direct the Secretary of Transportation to convey certain vessels to Assistance, International, Inc.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1991

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

A BILL

To direct the Secretary of Transportation to convey certain vessels to Assistance, International, Inc.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CONVEYANCE OF VESSELS.**

4 (a) **CONVEYANCE.**—Notwithstanding any other law,
5 the Secretary of Transportation may convey, without com-
6 pensation and by not later than September 30, 1996, all
7 right, title, and interest of the United States Government
8 in and to the vessels M.V. MIZAR, M.V. MIRFAC, and
9 R.V. CONRAD to the nonprofit corporation Assistance,
10 International, Inc. (hereinafter in this Act referred to as

1 the "recipient"), for use in emergencies, vocational train-
2 ing, and economic development programs.

3 (b) **CONDITIONS.**—As a condition of any vessel con-
4 veyance under this section, the recipient shall agree—

5 (1) to use the vessel solely for nonprofit activi-
6 ties;

7 (2) to not use the vessel for commercial trans-
8 portation purposes in competition with any United
9 States-flag vessel;

10 (3) to make the vessel available to the Govern-
11 ment whenever use of the vessel is required by the
12 Government;

13 (4) that whenever the recipient no longer re-
14 quires the use of the vessel for its nonprofit activi-
15 ties, the recipient shall—

16 (A) at the discretion of the Secretary,
17 reconvey the vessel to the Government in as
18 good a condition as when it was received from
19 the Government, except for ordinary wear and
20 tear; and

21 (B) deliver the vessel to the Government at
22 the place where the vessel was delivered to the
23 recipient;

24 (5) to hold the Government harmless for any
25 claim arising after conveyance of the vessel, except

1 for claims against the Government arising during
2 use of the vessel by the Government under para-
3 graph (3) or (4); and

4 (6) to any other conditions the Secretary con-
5 siders appropriate.

6 (c) **DELIVERY.**—The Secretary shall deliver each ves-
7 sel conveyed under this section to the recipient—

8 (1) at the place where the vessel is located on
9 the date of the enactment of this Act;

10 (2) in its condition on July 25, 1991, except for
11 ordinary wear and tear occurring after that date;
12 and

13 (3) without cost to the Government.

102D CONGRESS
1ST SESSION**S. 1973**

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1991

Referred to the Committee on Merchant Marine and Fisheries

AN ACT

To authorize the Secretary of Transportation to transfer a vessel to the City of Warsaw, Kentucky.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. AUTHORITY TO CONVEY VESSEL.**

4 Notwithstanding any other provision of law, the Sec-
5 retary of Transportation may convey to the City of War-
6 saw, Kentucky, without consideration, for use by the City
7 for the promotion of economic development and tourism,
8 all right, title, and interest of the United States in a vessel
9 which—

10 (1) is in the National Defense Reserve Fleet on
11 the date of the enactment of this Act;

12 (2) has no usefulness to the United States Gov-
13 ernment; and

1 (3) is scheduled to be scrapped.

2 **SEC. 2. CONDITION.**

3 At the request of the City of Warsaw, Kentucky, the
4 Secretary of Transportation is authorized to deliver the
5 vessel referred to in section 1—

6 (1) at the place where the vessel is located on
7 the date of the approval of the conveyance;

8 (2) in its condition on that date; and

9 (3) without cost to the United States Govern-
10 ment.

11 **SEC. 3. TERMINATION OF AUTHORITY.**

12 The authority of the Secretary of Transportation
13 under this Act to convey a vessel to the City of Warsaw,
14 Kentucky, shall expire 24 months after the date of the
15 enactment of this Act.

Passed the Senate November 14 (legislative day, No-
vember 13), 1991.

Attest:

WALTER J. STEWART,

Secretary.

RONALD V. DELLUMS
8TH DISTRICT, CALIFORNIA

CHAIRPERSON
COMMITTEE ON THE
DISTRICT OF COLUMBIA

ARMED SERVICES COMMITTEE

CHAIRPERSON
SUBCOMMITTEE ON
RESEARCH AND DEVELOPMENT
PERMANENT SELECT COMMITTEE
ON INTELLIGENCE



Congress of the United States
House of Representatives

May 19, 1992

Honorable Walter B. Jones
Chairman,
Committee on Merchant
Marine and Fisheries
1334 Longworth H.O.B.
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request your support for legislation that I intend to introduce which will serve a great public interest and make wise use of surplus vessels from the National Defense Reserve Fleet (NDRF). Specifically, my legislation will enable the Association for the Preservation of the Presidential Yacht *Potomac* to obtain the rights, title and interest of a surplus vessel in the NDRF and use the funds from the sale of the ship for the purpose of completing the restoration of the *USS Potomac* and to defray its operating expenses.

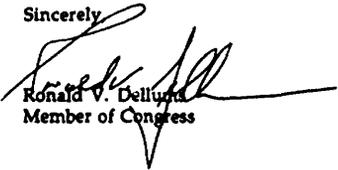
The *USS Potomac* is the Presidential Yacht of the late President Franklin D. Roosevelt. It has undergone extensive refurbishment and has recently been certified as a National Historic Landmark. The vessel will be docked at the Franklin Delano Roosevelt Memorial Pier in Oakland, California. This ship will constitute the only memorial to President Roosevelt, west of the Rocky Mountains. The *Potomac* will also be used as a floating classroom for Northern California schoolchildren studying the Great Depression, the World War II years, and the New Deal.

The Association is a non-profit, public benefit corporation whose purpose is to "organize, direct and sustain the community effort necessary to restore, operate and preserve the Presidential Yacht *Potomac*, an historic vessel of national significance in order to provide continual educational opportunities for members of the public."

Last year, the POTOMAC Association submitted an application to the Maritime Administration to obtain title of a vessel to be "mothballed" from the National Defense Reserve Fleet. Unfortunately it was MarAd's interpretation that the preservation of the *Potomac* would not specifically function as a memorial to merchant mariners, and therefore the Association would not qualify to receive title to a vessel under this program.

Since the *Potomac* will serve such an historic and educational purpose to the citizens and visitors of Northern California, I believe that it would be an extremely wise and appropriate use of a surplus NDRF vessel to allow the POTOMAC Association to obtain title to such a vessel to help defray additional refurbishment and operating costs. I hope that your Committee will support passage of such legislation this year. Thank you.

Sincerely,


Ronald V. Dellums
Member of Congress

ANY REPLY TO THIS LETTER
SHOULD BE ADDRESSED TO
OFFICE CHECKED

- recd*
- CARLOTTA SCOTT
ADMINISTRATIVE ASSISTANT
 - ROBERT BAUER
SPECIAL COUNSEL
 - 2128 BAYVIEW BUILDING
WASHINGTON DC 20519
OOB 228-2881
 - DONALD R. HOPKINS
DISTRICT ADMINISTRATOR
H. LEE HALLERMAN
DISTRICT COUNSEL
 - 201 12TH STREET, SUITE 108
OAKLAND CA 94612
O 415 763-0370
 - 1728 ORCHARD STREET
BERKELEY CA 94703
O 415 848-7787
 - 3732 MT Diablo Blvd. Suite 180
LAFAYETTE CA 94549
O 415 282-9125

5-27-92

U. S. House of Representatives
Committee on Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

Re: Assistance International

Dear Mr. Jones:

On behalf of Assistance International, I want to thank you for the opportunity of presenting our request to the committee for the Conrad and the Tioga County.

After Mr. Taylors questions regarding lobster and shrimp, I am afraid that in our effort to be brief, we may have left the wrong impression regarding our involvement in those industries.

Allow me to clarify this matter concerning the Conrad and the Tioga County. These vessels primary function will be that of Marine Vocational Training. This will include all standard ship-board skills and in addition will include marine construction skills, diesel engine repairs, welding, electricity, disaster relief and more.

The secondary use of these vessels will be for the formulation of new industry within the country including marine construction, transportation infrastructure, fisheries, fisheries management, and conservation. As an example, the shrimp and lobster grounds in all of Central America are currently being over harvested and this over harvesting is one of the primary areas of concern for the governments of that area. They would like to see a cut back in the over producing areas by utilizing quotas and other resource management tools that have been proven successful in U.S. waters. In addition, they would like to have their existing local fishermen retrained for new species that will meet the protein requirements so desperately needed by the local population. Thus, in addition to meeting the food needs of their people they will increase the economic stability of the country and therefore minimize the potential for future civil unrest.

In summary, these vessels will be put to good use and will not only help the Central American people, but we here in the U.S. as well, as they are used to provide Vocational Training, Disaster Relief, Economic Development, Food Source Development and Resource Management. In each and every area of assistance the end result is civil peace through economic stability thus giving the neighbors of our country a hand up instead of a hand out.

Sincerely,


Captain Fred Stabbert

**ASSISTANCE INTERNATIONAL
REQUEST**

**The Moter Vessel Tioga County
an L.S.T.**

and

**The Robert D. Conrad
A Research Vessel**

ASSISTANCE INTERNATIONAL

**P.O. BOX 955 Longbeach, Ca. 90801 OFFICE (310)432-3016 FAX (213)435-4277
17618 S.E. 102ND Renton, Wa. OFFICE (206) 226-7680 FAX (206) 226-6222**

UTILIZING PRACTICAL ENTREPRENEUR

**RECYCLING SHIPS, INDUSTRIAL PLANTS, FACTORIES, MACHINERY
AND VOCATIONAL TRAINING**

**Chairman
Vice Chairman
Asst. Vice Chairman
Secretary
Agriculture
Planning and Bus. Development
Freight and Sea Transportation
Fisheries & Tug & Barge Ops.
Engine Repair and Training
Health Services
Marine Construction
Meat Production
Poultry
Shipyards & Dry Docks
Specialty Seafood Products
Environmental Services**

**Capt. Fred Stabbert
Admiral John Bell Johnson, Rt.
Capt. Dave Stabbert
Roberta Stabbert
Dr. Walter Clark
Capt. Dan Stabbert
Capt. Manny Aschmeyer
Capt. Richard Stabbert
William Bloom
Barbara Morgan R.N.
Capt. Stan Langaker
Gerald Ohs
Dr. Harold Woods
Wally Barber
Charles Cook
Bob Rosenfeld**

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2. Addendum "A" Committee Questions / Answers
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- ~~6. Addendum "E" Attached Bill~~

INTRODUCTION

Assistance International is 501.C3 not for profit organization founded in 1946 for the purposes of facilitating economic, social and cultural development within many nations including Canada, Alaska, and Central America. The Assistance goal has been to teach others "American Knowhow" thus enabling the recipients to raise their productivity and earning capacity.

Assistance International is an organization that utilizes dedicated pro bono experts (volunteers) in the field of health, agriculture and industry. These volunteers are successful entrepreneurs who are teamed with individuals who have a thorough experience in the local economy and culture. With this experience comes both the knowledge and respect for the customs, cultures and business ideologies practiced by the people of a particular region. The Assistance International team analyze the native abilities and natural resources and seeks practical solutions for developing them.

Assistance has been teaching and implementing the principals of capitalism and entrepreneurship to third world economic segments since 1947. The results are often amazing. With support and nurturing, a cottage industry can obtain an economic status that provides employment and esteem to thousands of individuals who previously had known only poverty. Instead of providing relief funds, Assistance has followed the principal of a hand up instead of a hand out.

The rewards are economic self sufficiency, pride and confidence based on self esteem. Economic freedom based on democratic principles is a natural consequence of sound economic growth and stability.

The proven principles of a hand up instead of a hand out has been proven in areas such as Central America where Assistance was the primary initial factor in developing the weaving industry in Guatemala. A small seed was planted and grew to flower and prosper. By retraining the local weavers in methods of dye technology and weave formation we were able to assist the weavers in becoming internationally competitive with their products thus increasing their daily income from \$.25 to \$2.00 per day. These weavers have leaned towards democracy. They look towards peace, not war. They see the real fruits of their labor not turmoil. They feed their children and honor and care for their aged. They grow as a people. The seeds of democracy once sown have a tendency to grow, but they must be nurtured until strong enough to be self sustaining.

Assistance attracts men and women who are truly dedicated and who work towards establishing these objectives. These men and women help to keep this country strong by spreading the word and deed of our system.

It is with our goal of a hand up instead of a hand out that we have set our sights on the Central American need for fisheries management, marine transportation and construction, and maritime related vocational training. In order to begin meeting these immediate needs we must have a minimum of two pieces of marine equipment.

The equipment that Assistance is requesting are two surplus vessels that are old and of relatively inconsequential value, but put to the right use these ships can make a great difference. The two vessels are the R/V Robert Conrad and the LST Tioga County.

The research vessel Robert Conrad is an ex research ship built in 1962 with a length of 212 feet. She has suffered extensive stripping and damage and is considered to be an ideal candidate for a fish reef. In our hands, this ship, previously destined for a fish reef will be renovated and activated as a floating fisheries management and studies facility for Central America. It will house research groups, educators, students, and business consultants as it plies the waters of the Caribbean as a base of operations for universities, fisheries management councils, and marine development groups. What was destined to lay at the bottom of the ocean now will be a shining, operating symbol of progress to a people who are desperately in need of examples to follow and imitate.

The LST Tioga County is a 1952 385' self propelled vessel that is scheduled to be scrapped. The Tioga County draws very little water enabling it to navigate in shallow coastal Caribbean waters. The Tioga County is an ideal platform for port and harbor construction. It is capable of housing a complete vocational training facility including personnel below decks and yet maintain sufficient operating area to support local projects such as cement and asphalt plants, a marine construction facility, as well as the ongoing integrated training program.

It is the answer to the desperate need for training of the areas youth and in addition it meets the immediate marine infrastructure requirements of the small coastal villages and harbors that have either an immediate need for cargo facilities in order to transport their local products to market or that must have either docks or breakwaters to support a local industry such as ocean harvesting and processing. Thus, a vessel previously scheduled for destruction will instead be used to train, create, and build up local industries so desperately needed along the Central American coast.

Assistance International, a non profit 501.C3 corporation, finances its various operations through corporate sponsors. It is not an organization of wealth. It is comprised of volunteers, dedicated experts committed to excellence. The impact made by these individuals is impressive and we believe vital. The marine expertise of the Assistance personel is unsurpassed in their ability to rennovate, convert, and operate equipment that previously was considered innoperable or of only scrap value.(see addendum "C") This ability combined with the financial support of the Assistance sponsors (see addendum "B") ensures both the efficiency and success of the Assistance ventures.

In summary there is a desperate cry for Assistance in Central America. With your help by assigning the two requested scrap ships to Assistance, we will be able to begin meeting the maritime needs of the region. The value of these vessels to the Assistance programs desperately needed in Central America far and again outweigh the limited funds that these vessels will generate in scrap revenue. The current combined scrap value price of these vessels is estimated to be \$130,000.00 to \$180,000.00. Per the attached vessel operational pro forma (see addendum "D") Assistance is committed to the renovation and mobilization of these vessels. In addition, if required, Assistance will stand behind its offer to reimburse the U.S. government for the scrap value of the vessels on a mutually agreeable term basis. We believe that the needs and the projects justify the use of these vessels and we are willing to stand behind this commitment not only with operational funds but with purchase funds if necessary. With our commitment to accountability in mind we have attached a summary of answers of the committes known concerns as well as financial profiles of the vessels.

Thank you again for your review and consideration of this request and please contact us with any questions that you might have.

Sincerely,



Captain Fred Stabbert

ADDENDUM "A"

ADDENDUM "A"

COMMITTEE QUESTIONNAIRE RESPONSE

Answers to questions submitted by the Committee on Merchant Marine and Fisheries.

Question #1

What is your estimate of the value of the R.V. Conrad?

Answer: The Conrad is listed on the records at 1072 tons. The vessel has been stripped and is in poor enough condition that it has been scheduled to be sunk and used as a fish reef. The scrap value on a small vessel such as this is currently up and is in the market of \$15- \$22 per ton for a high side total of \$23,584.00. Small vessels such as the Conrad donot bring high dollars for scrap due to their light steel, the expense of cutting up a small vessel, and the cost of towing a small vessel overseas to the dismantling yards.

Question 2#

What is your estimate of the value of the LST Tioga County?

Answer: The Tioga County is listed on the records at 2590 tons. The vessel is scheduled to be scrapped and has suffered both stripping and vandalism. The current scrap market price for this size of vessel is \$40.00 per ton for a total of \$103,600.00

Question #3

To your knowledge, has the Maritime Administration or any other Government Agency assessed the value of the two vessels?

Answer: Except for scrap value, we are not aware of any other assessments.

Question #4

Has there been an independent appraisal of the value of the two vessels?

Answer: No, not to our knowledge.

Question #5

Please provide the committee with any documents which address the value of the two vessels in question.

Answer: There are no documents in existence which address the value per Se. Value of these vessels which have no governmental or commercial value are assessed on scrap value.

Question #6

Please advise the Committee of three names, addresses and telephone numbers of the U.S. Government Offices who have knowledge of your proposal or to whom you have discussed this proposal.

Answer: Congressmen Anderson	202-225-6667
Robin Traylor	202-225-6667
Captain George Renard U.S.	202-2225-2415
Mr. Tony Schiavone	804-623-0289
Mr. George Clark HD DIV Reserve Fleet	202-366-5752
Mr. George Swanson F.E.M.A.	809-773-7789
Mr. Welford Walker A.I.D.	703-875-1101
Mr. John Deery A.I.D.	703-875-1106
Mr.H.T. Haller	202-366-5737
Maritime Administration	
Congressman Rohrabacher	202-225-6676
Mr. John Rollo	202-225-6676

Question #7

Who has possession of the vessels at the present time?
Who has designated these vessels for scrapping?

Answer: U.S. Navy and Marad

Question #8

Are these vessels controlled by MARAD or the Navy? Who is Captain Jeff Renard?

Answer: The Navy currently has possession of these vessels but has agreed to transfer these vessels to Marad for their transfer to Assistance.. Captain Renard is in charge of inactive ship disposal.

Question #9

What is A.I.D.'s involvement with this project?

Answer: A.I.D has no direct involvement other than the fact that Assistance International, Inc. is an official Contract A.I.D. Recipient and these ships will be used in connection with A.I.D. projects and National Projects, Vocational Training, and Economic Development Programs.

Question #10

Please provide evidence that Assistance International, Inc. has sufficient resources and abilities to complete this project.

Answer: A) For the past 45 years Assistance International projects have been funded through project income and corporate sponsorship on a project by project basis.

B) Please see addendum "B" and "C" for project sponsors and performance background..

Question #11

Please provide background information on other projects which have been undertaken by Assistance International, Inc.

Answer:

1. Assistance International is an A.I.D. contract recipient.
2. Assistance International has been engaged in vocational training and economic development programs on a full time basis since 1947 in the following areas:

Alaska, Guatemala, Haiti, Canada, Mexico, Costa Rica, Honduras, Columbia, El Salvador, Korea, Panama

3. Assistance International operated a self supporting training freight ship in central and South America for seven years, also operated a vocational training and medical program in Alaska and Canada for twenty five years.
4. Assistance International operated a textile training and marketing program in Central America for ten years.
5. Assistance International has provided technical management support for the construction, training, and operation of over twenty marine projects involving freight, petroleum, marine construction, and fishing which required extensive marine expertise.

Note: See Addendum "C" for additional information.

Question: 12:

Is the benefit to the United States government greater by selling these vessels for scrap and putting the funds into the reserve fleet or in transferring those vessels to Assistance International?

Answer: As a practical matter the costs to the government in the maintenance and cost of sale would exceed any revenues garnered from the sale.

The ultimate value to the United States in terms of real dollars is in the development of foreign trade markets. This is the cornerstone of Assistance International's economic development programs.

ADDENDUM "B"

SPONSORS

**AT&T
NICARAGUAN GOVERNMENT
ASSISTANCE INTERNATIONAL
ARWIN INDUSTRIES
A.I.D. OF U.S.A.
CORINTHIAN EXPEDITIONS**

ADDENDUM "C"

Addendum "C"

Assistance International, Inc, has operated the following vessels:

- 1. Willis Shank**
- 2. Nunivak**
- 3. Tasu Sound**
- 4. Locola Chief**
- 5. Chief**
- 6. Coos Bay**
- 7. Northern Warrior**
- 8. Polar Merchant**
- 9. Haida Chief**
- 10. Daphne**

The Coos Bay which operated in Central America as a training ship was funded by Assistance International, Inc. This funding exceeded 1 million dollars.

It has been the policy of Assistance International, Inc. to fund each project on a case by case basis.

On those projects which require additional funding, corporate sponsors are secured to promote and underwrite a particular economic aid project.

Capt. Fred Stabbert, prior to establishing Assistance International, Inc. (A501-C Corporation authorized AID receipt to receive U.S. Government owned excess property) operated sawmills, towboats, barges and construction companies, thus accumulating a vast amount of knowledge to be subsequently used in the operation of Assistance International.

The marine experience that Capt. Stabbert and his associates have gained since the formation of Assistance International, Inc. in 1947 parallels that of some of our nations most respected maritime entities such as Foss, Crowley and Moran to name a few.

This experience is invaluable when a PVO must utilize obsolete equipment and bring it up to acceptable standards for operating as a efficient safe vessel performing humanitarian the socio-economic development of third world countries.

The record will show that Assistance International, Inc. has operated a hospital and training ship, the M/V Willis Shank from 1947 to 1980 in Alaska, Canada, and Central America; the 365' M/V Coos Bay operated in Central and South America as a freighter and vocational training school teaching mechanics, welding, engine repair and electricity.

The most outstanding achievement of Assistance International, Inc. and Capt. Stabbert, and Associates was the operation of Marine Medical Missions, a 1,000 acre training facility, where Alaska natives were taught to become economically self sufficient by teaching them to log, preserve the forest, operate and repair all types of industrial and marine equipment.

Under this same program Assistance International, Inc. operated successfully eight World War II Army transport vessels. Calling on remote villages throughout Canada and Alaska and providing for the medical and spiritual needs of thousands of natives.

Project Guatemala - Assistance International, Inc. trained Guatemalan Weavers in all stages of weaving for U.S. markets. This weaving program transformed the modern looms, color fast dyes, and new methods to reduce shrinkage. This enabled the weavers to compete commercially for the first time on the world market. Assistance International, Inc. was directly responsible for this development. It was the culmination of 10 years of concentrated effort by Assistance International, Inc. The rewards of this project can be seen in the U.S. market place today.

The philosophy of Assistance International Inc. is to give a "hand up" rather than a "hand out" and Assistance International, Inc. achieves that philosophical goal by refurbishing and utilizing surplus excess property. However, resurrected equipment without properly trained manpower is useless, so Assistance International, Inc. combines trained men, equipment and resources, places them in an environment filled with encouragement and education surrounded by an infrastructure, a market for products and the result is a sound economic structure.

ADDENDUM "D"

M/V ROBERT D. CONRAD COST ANALYSES

MOBILIZATION

Removal from fleet layup	5,000.00
ABS LOADLINE	15,000.00
Electronic update	5,000.00
FCC & Permit renewals	5,000.00
Scientific Equipment	50,000.00
Interior & Machinery Renewal	75,000.00

Total	165,000.00
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ANNUAL OPERATING BUDGET

Insurance	35,000.00
Fuel	100,000.00
R&M	85,000.00
G&A	12,000.00
Supplies & Food	18,000.00
Crew	165,000.00

Total	415,600.00
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VO TECH OPERATIONS

Student Support	60,000.00
Fisheries Reserved Operator	160,000.00

Total	220,000.00
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Total Annual Operating Expense	635,600.00
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One Time Mobilization	165,000.00
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OPERATING SUPPORT

40% (254,240) Grant
60% (381,360) Charter

Commercial Fisheries research	60dys @ 2500.00 = 150,000.00
Charter Support - Studies	100dys @ 2500.00 = 250,000.00

M/V TIOGA COUNTY COST ANALYSES

MOBILIZATION

Removal from fleet layup	5,000.00
ABS LOADLINE	115,000.00
Electronic update	45,000.00
FCC & Permit renewals	5,000.00
Vo Tech Equipment	175,000.00

Total	395,000.00
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ANNUAL OPERATING BUDGET

Insurance	65,000.00
Fuel	185,000.00
R&M	85,000.00
G&A	12,000.00
Supplies & Food-\$3.00/dy/student/crew	26,000.00
Crew	165,000.00

Total	538,000.00
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VO TECH OPERATIONS

Student Support	82,150.00
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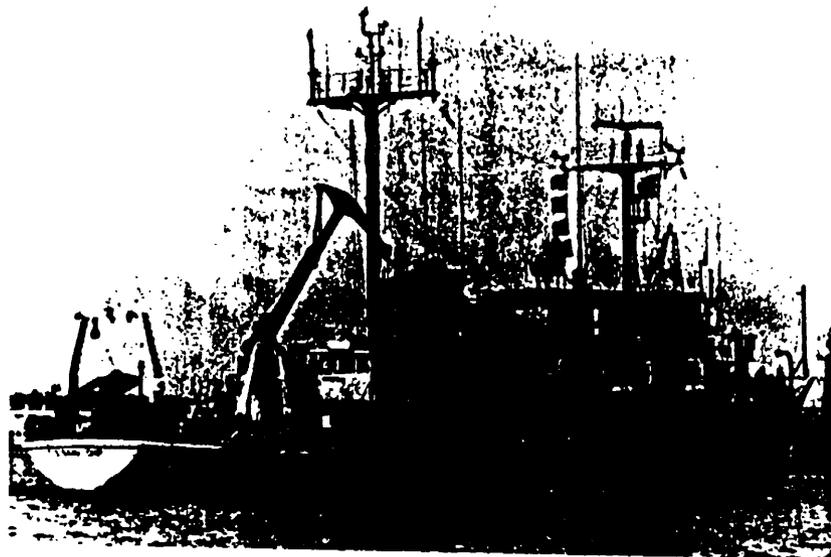
Total	82,150.00
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Total Annual Operating Expense	620,150.00
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One Time Mobilization	395,000.00
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OPERATING SUPPORT

Harbor and Port Service	4,750.00/dy
Contract & Harbor 180 / day	885,000.00



Robert D. Conrad



119

LST Tioga County

TESTIMONY OF MR. WHALEN, OF THE NATIONAL MARITIME MUSEUM
ASSOCIATION, BEFORE THE HOUSE SUBCOMMITTEE ON THE MERCHANT MARINE
SCHEDULED FOR 5/20/1992

My name is William J. Whalen. I am the Executive Director of the National Maritime Museum Association in San Francisco, California, a non-profit organization established to support the preservation of maritime history and historic resources. I come before you today to testify on behalf of the Association, in favor of legislation to allow proceeds from the sale of obsolete vessels to be directed to the support of the San Francisco Maritime National Historical Park

Three years ago, as directed by Congress, the National Park Service activated the San Francisco Maritime National Historical Park by consolidating the vessels of the California State Maritime Historical Park with the vessels, library, and collections of the San Francisco Maritime Museum.

The seven large ships of this National Park Service fleet tell the story of the distinguished heritage of America's merchant marine -- this is not a naval museum. These vessels are unique in all the world: they span the era of revolutionary changes in

marine technology -- from the use of wind power to steam, and from wooden construction to steel-plated hulls.

Each vessel represents a particular type with local, regional, and national significance: the World War II Liberty ship Jeremiah O'Brien built at South Portland, Maine in forty-five days; the scow Alma, a flat-bottomed schooner suited to the waters of California's Bay and Delta region; the three-hundred foot long ferryboat Eureka which carried passengers, automobiles and railroad cars across San Francisco Bay; the C.A. Thayer, one of only two survivors of a fleet of nine hundred lumber schooners that represent the coastwise commerce of the West; the steam schooner Wapama, last of the type that replaced the sailing schooners along the Pacific Coast; the deep-water, square-rigged Balclutha, which was built in Scotland, but became the last sailing packet in the Alaska salmon trade; the powerful ocean-going tugboat Hercules, product of a distinguished New Jersey shipyard; and the Eppleton Hall, whose side-lever steam engines evoke an earlier day in steam technology.

Almost forty years ago, the founders of this institution embarked with enthusiasm on the noble mission of saving ships that tell the story of America's rich maritime heritage. Unfortunately, the salvors underestimated the cost and effort required to maintain these National Historic Landmarks. As the fleet aged, the ships demanded more care than could be provided.

The crew of this new park are now building an organization capable not only of operating a world-class maritime museum, but also of maintaining one of the largest historic fleets in the world.

The restoration of the ships has begun, and notable work has already been accomplished. The steam tug Hercules has successfully been restored to operating condition, the Liberty ship Jeremiah O'Brien has been sent to drydock, the square-rigged sailing ship Balclutha's deckhouse has been restored, and the scow schooner Alma has been sent to a shipyard for a major rebuild.

These accomplishments and concurrent planning efforts have received the support of Congress. We support the proposed legislation because we see it as a cost-effective way to continue to support the restoration and maintenance efforts at the park.

The park has produced a Report to the Subcommittee of the Interior and Related Agencies on the Condition of the Ships at the San Francisco Maritime NHP and the Cost of Maintenance. This document outlines the preservation program priorities and fiscal needs of the ships.

Money is needed to restore the vessels. An estimated \$12.7 million for major restoration work will bring the ships to a

condition in which they can be maintained on a routine basis. This funding could be made available over a six-year period, the minimum time needed to accomplish the program.

We need additional money for maintenance. A proper level of routine care requires making up a current annual funding deficiency of \$711,000, in order to bring the total projected annual cost of protecting the investment and adequately maintaining the fleet of seven vessels, their moorings, and their gangways to \$1.9 million per year.

In addition to the cost of restoring the ships, there is the need to provide an adequate mooring facility at the Hyde Street Pier. Already completed are major upgrades to repair seismic damage from the 1989 Loma Prieta earthquake. An additional \$650,000 is needed for safety and code related upgrades to the electrical, lighting, and water systems on the pier; and \$648,000 for repairs to pier pilings.

The park's Museum Building, located adjacent to the ships, at Aquatic Park, is a streamline-moderne structure built by the Works Progress Administration in 1939. It is a National Landmark in its own right, and has serious rainwater leak problems which are threatening the integrity of the structure. Stainless steel window frames have rusted out and leak; the roofs leak and cause damage to interior murals; the skylights leak and damage basement

level workshops; the second floor of the building needs an elevator to provide handicapped accessibility; ceiling areas and walls with murals have been damaged by water intrusion; and an appropriate plaque honoring Sala Burton must be installed to comply with PL100-348 that established the park. The total one-time cost of this project is \$2.7 million.

The needs of the park are considerable, but the goals are attainable, and worthwhile. There is staff in place, able to carry out the work, and there is a quantifiable and realistic work plan. Therefore, the National Maritime Museum Association would like to strongly support the crafting of legislation to earmark proceeds from obsolete vessels in the National Defense Reserve Fleet to preserve the historic fleet at San Francisco Maritime. What more fitting way could there be to direct the proceeds from merchant vessels that have outlived their usefulness, than to support an institution dedicated to preserving the most striking examples of the history of our Merchant Marine? Thank you.



BATTLE OF THE ATLANTIC
HISTORICAL SOCIETY, INC.
Box 290298 Homecrest Station
Brooklyn, N.Y. 11229-0005
(718) ES 7-0713

Rec'd

RECEIVED

JUN 10 1992

20 May 1992

Hon. Walter B. Jones, M.C.
Chairman, House Committee on Merchant Marine
and Fisheries
Rm. 1334, Longworth House Office Bldg.
Washington, D.C. 20515-6230

Dear Chairman Jones:

We are sorry that we were unable to be present at today's hearing to submit our views in person to the committee. We hope that the following will serve the purpose instead.

As you know, BATLANT has an interest in some of the assets in the NDRF, inasmuch as we hope that the s/s AMERICAN VICTORY (official #248005) will be set aside for preservation as a World War II Merchant Marine memorial and permanent exhibit of America's war at sea, particularly the Battle of the Atlantic, and a venue for maritime training here in the port of New York.

We are confident that the Hon. Stephen Solarz, M.C. will shortly introduce the bill for the necessary enabling legislation, at which time we will outline our proposal in greater detail for you and the committee. At that time, with your assistance, BATLANT hopes that a proper Merchant Marine memorial in a historic vessel will at long last be established in the port of New York.

Sincerely yours,

B.D. Hammer

B.D. Hammer
Exec. Dir., BATLANT

Enclosures



BATTLE OF THE ATLANTIC
HISTORICAL SOCIETY, INC.
(BATLANT)
Box 290298 Homecrest Station
Brooklyn, N.Y. 11229-0005

PROPOSED BILL TO TRANSFER s/s AMERICAN VICTORY TO BATLANT

1. Be it enacted in the Senate and House that, notwithstanding any law, that the Secretary of Transportation convey to the Battle of the Atlantic Historical Society (BATLANT), Inc. the VC2-S-AP3 "Victory Ship" (a World War II cargo vessel) s/s AMERICAN VICTORY (official #248005), now lying at the James River NDRP.
2. The said vessel to be used by BATLANT as a Merchant Marine memorial, historical preservation, and for educational purposes.
3. The vessel shall be conveyed with an appropriate supply of spare parts and accoutrements furnished from vessels of the NDRP which are to be scrapped (pursuant to the Civilian Nautical School Act of 1957 and Merchant Marine Act of 1936).
4. If the United States has need for the vessel at some future point, as in a war or national emergency, BATLANT shall convey the vessel to the Secretary of Transportation.



THE BATTLE OF THE ATLANTIC HISTORICAL SOCIETY

(BATLANT)

Box 290293 Homecrest Station

Brooklyn, N.Y. 11229-0005

(718) ES 7-0713

BATLANT'S GOALS

1. Preserve SS AMERICAN VICTORY as a "living Merchant Marine memorial" (previously described in detail) in the Port of New York.
2. Lobby for the modification and completion of existing monuments maintained by American Battle Monuments Commission (ABMC) to include the names of ALL of America's war dead, i.e. U.S. Merchant Mariners killed or missing in actions by the enemies of the United States.
3. Modification of existing court finding or by administrative or Congressional action to include Merchant Mariners for eligibility, 3 September 1939-7 December 1941, 15 September 1945-31 December 1946, so as to conform with other services' eligibility for veterans' benefits and recognition.
4. Officially recognize U.S. Merchant Marine such that on all official occasions, when appropriate, the Merchant Marine song is included in honors rendered to all the services.
5. U.S. Government to commission an official history of the U.S. Merchant Marine actions in World War II, as was done with the other services, as well as a suitable documentary film.
6. Permit U.S. Merchant Mariners to be eligible to receive other U.S. Government decorations than what is currently permitted, and revive certain U.S. Merchant Marine decorations currently inactive.
7. Authorize the issuance of commemorative U.S. postage stamps series honoring the Merchant Marine of World War II.
8. Authorize the issuance of commemorative coins by the United States Mint honoring the U.S. Merchant Marine of World War II.

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY,
Washington, DC, May 19, 1992.

HON. WALTER B. JONES,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This letter is in regard to the hearing scheduled for Wednesday, May 20, 1992 before your Subcommittee on proposals to sell obsolete vessels in the National Reserve Defense Fleet and use the proceeds for ships at the San Francisco Maritime National Historical Park.

Because of the lateness of your invitation at the above referenced hearing combined with the lack of definitive bill upon which to base our testimony, we are unable to send a representative to appear before your Subcommittee on Wednesday. Upon your request we would be happy to provide you with our views on any legislation that is introduced on this issue.

Thank you for the opportunity to meet with your Subcommittee.

Sincerely,

PAMELA E. SOMERS,
Legislative Counsel.

RICHARD WOOD
Mayor

City of Warsaw

Established as Fredericksburg, 1818



Post Office Box 785
101 West Market Street
Warsaw, Kentucky 41095-0785
808-567-5931

HONORABLE WALTER JONES
ROOM 1334, LONGWORTH HOUSE
OFFICE BUILDING
WASHINGTON, D.C. 20515-6030

RECEIVED

AUG 07 1992

DEAR CHAIRMAN JONES:

I AM WRITING TO FOLLOW UP ON MY TESTIMONY GIVEN ON MAY 20, 1992, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES REGARDING S. 1923 TO TRANSFER A VESSEL FROM THE NATIONAL DEFENSE RESERVE FLEET TO THE CITY OF WARSAW.

SINCE THE HEARING, CLAUDE WIESNER OF AQUARIUS MARINE INC. (AMI) AND I MADE A PRELIMINARY INSPECTION TRIP TO BEAUMONT NATIONAL DEFENSE STORAGE SITE. WE SELECTED THE WHITTIER (DOCUMENT 4509157) AS THE SHIP WE BELIEVE MOST SUITABLE.

AMI WILL BE IN CHARGE OF THE ACTUAL MOVING OF THE SHIP. ATTACHED IS A WRITTEN ESTIMATE OF THE COST WHICH THE CITY OF WARSAW WILL TAKE FULL AND COMPLETE RESPONSIBILITY FOR PAYING. ALSO ATTACHED IS A DETAILED PLAN OF WHAT MUST BE DONE TO THE SHIP IN ORDER FOR AMI TO BRING IT FROM BEAUMONT TO WARSAW. THE THIRD ATTACHMENT IS A SIGNLD STATEMENT FROM THE MAYOR OF WARSAW AND CITY OFFICIALS STATING THAT THE CITY WILL TAKE FULL RESPONSIBILITY FOR ALL COST AND LIABILITY INCURRED ONCE THE SHIP LEAVES THE RESERVE FLEET.

ONE POINT WHICH WE WOULD LIKE TO SEE ADDED TO THE LEGISLATION IS THE MATTER OF MISSING GEAR THAT MAY HAVE BEEN STRIPPED FROM THE WHITTIER. IF THE WHITTIER IS MISSING ANY GEAR WHICH IS NEEDED FOR THE OPERATION OF THE SHIP, WE REQUEST THAT IT BE REPLACED WITH EQUIPMENT FROM ANOTHER SHIP. I UNDERSTAND THIS MATTER CAN BE EASILY TAKEN CARE OF BY ADDING THE LANGUAGE DURING CONSIDERATION.

THE ACTUAL MOVING DATE WILL BE DETERMINED BY THE LENGTH OF TIME IT TAKES TO COMPLETE THE WORK NEEDED TO READY THE SHIP FOR THE TRIP. THE WEATHER WILL ALSO BE A FACTOR IN DETERMINING THIS DATE.

Winslow Baker

WINSLOW BAKER
WHITTIER PROJECT MGR.
WARSAW CITY COUNCIL

City of Warsaw

Established as Fredericksburg, 1818


 Post Office Box 785
 101 West Market Street
 Warsaw, Kentucky 41095-0785

606-567-5931

ESTIMATE OF COST TO BRING WHITTIER FROM DEARBORN TO WARSAW

WORK TO BE DONE IN DEARBORN

1. REMOVE VESSEL FROM RESERVE FLEET TO SAFE HARBOR	\$14,500
2. KNOCK-DOWN & RE-ERECT MAST AND STACK WHEN IN WARSAW	173,783
3. WATER BLAST AND COAT EXTERNAL HULL AND SUPER STRUCTURE ABOVE WATER LINE	329,600
4. REMOVE CARGO HOLD COVERS AND VENTILATE	7,500
5. BOILER INSPECTION/CERTIFICATION (2 BOILERS)	20,000

WORK TO BE DONE IN ROUTE

1. LITERING VESSEL AT MOUTH OF OHIO RIVER	12,000
2. TOW BOAT TO ASSIST IN PASSAGE OF LOCKS AND DAMS ON OHIO	75,000

WORK TO BE DONE IN WARSAW

1. MOORING SYSTEM	350,000
2. PERSONNEL RAMPS	100,000
3. HULL ACCESS	50,000

 \$1,181,189

RICHARD WOOD
Mayor

City of Warsaw

Established as Fredericksburg, 1818



Post Office Box 785
101 West Market Street
Warsaw, Kentucky 41095-0785
606-567-5631

RESOLUTION

WHEREAS, THE CITY OF WARSAW IS VERY INTERESTED IN INCREASING THE ECONOMIC CLIMATE OF ITS COMMUNITY;

WHEREAS, THE CITY BELIEVES THAT OBTAINING A SHIP FROM THE NATIONAL RESERVE FLEET, WILL INCREASE TOURISM IN THE COMMUNITY, RESULTING IN ECONOMIC DEVELOPMENT OF THE COMMUNITY;

WHEREAS, THE CITY BELIEVES THAT PRIVATE SECTOR FINANCING IS AVAILABLE TO MAKE THIS A VIABLE PROJECT;

NOW THEREFORE, BE IT RESOLVED THAT THE CITY IS PREPARED TO TAKE FULL RESPONSIBILITY FOR ALL COST AND LIABILITY INCURRED ONCE THE SHIP LEAVES THE RESERVE FLEET.

E.R. Wood, Mayor
MAYOR E.R. WOOD

DATE: *10/1/98*

ATTEST: *Barbara Baker*



U.S. Department
of Transportation

Maritime
Administration

Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

17 DEC 1991

Mr. E. Glenn Isaacson
The Association for
the Preservation of the
Presidential Yacht Potomac
530 Water Street
P.O. Box 2064
Oakland, CA 94604

Dear Mr. Isaacson:

Thank you for your recent letter concerning your efforts on behalf of the Association for the Preservation of the Presidential Yacht Potomac. I understand fully your disappointment in my ruling that the Association is not eligible to participate in the program established by Public Law 101-595, the Merchant Mariner Memorial Act of 1990 (Memorial Act).

I want to assure you that this ruling in no way implies that we are not mindful of President Roosevelt's pivotal role in the rebirth of the American merchant marine. It was his foresight in recognizing the strategic and economic importance of a strong private fleet that guaranteed our superior performance throughout World War II. Nevertheless, the intent of the Memorial Act is very clear, and that is to aid in the establishment of memorials to merchant seamen.

I had the privilege of meeting with the late Mr. James Roosevelt in the early 1980's, at the formative stage of your Association's efforts, and I have followed the progress on this worthy project since that time. While the Congress clearly did not authorize assistance to projects such as yours under the Memorial Act, that does not mean that they would necessarily be unreceptive to a proposal from you to establish a similar authority.

Again, I regret we cannot use the Memorial Act mechanism to assist your project. You have my very best wishes for success.

Sincerely,


CAPTAIN WARREN V. LEBACK
Maritime Administrator

The Association for the
Preservation of the
Presidential Yacht Potomac

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Treasurer
Daniel T. Hodgson,
Project Manager

November 12, 1991

Captain Warren G. Leback
Maritime Administrator
U. S. Department of Transportation
Maritime Administration
400 Seventh Street, S.W.
Washington, D. C. 20590

Dear Captain Leback:

We have your letter of 6 September, 1991 and are compelled to write you this letter to make clear the extraordinarily strong connection between the USS POTOMAC, President Franklin D. Roosevelt and the merchant mariners.

The USS POTOMAC is a designated landmark which is dedicated to recalling and preserving the history and significance of President Roosevelt, his administration, the Roosevelt era as an historic period, the POTOMAC itself and, most importantly, the personal, forceful interest that President Roosevelt took in ships and the rebuilding of the merchant fleet in particular.

More than any other single person, President Roosevelt is responsible for the existence of a United States Merchant Marine fleet and the putting of the American sailor to sea on American ships.

One only needs to recall the Merchant Marine Act of 1936, the foundation stone legislation which has led to the existence of a United States fleet. The Lend-Lease program that got shipbuilding restarted in a major way in the United States, the Liberty Ship and Victory Ship programs which changed the face and nature of the

Captain Warren G. Leback
November 12, 1991
Page 2

shipping industry and created countless thousands of merchant marine opportunities for United States seamen.

In this century, President Roosevelt is the preeminent figure connected to the merchant marine and its mariners. The POTOMAC was his floating White House and was known throughout the world. What more obvious tie could there be between a President determined to rebuild a merchant fleet than to have, use and foster the notion of a ship as a place of national significance.

On the POTOMAC, and in the Interpretive Center to be built adjacent to her home port pier in Oakland, the full story of the rebuilding and manning of the merchant marine fleet that emerged in the Roosevelt era will be told in appropriate exhibitry and will be a permanent memorial to the merchant mariners that manned these ships.

But for President Roosevelt's dedication to the establishment of a merchant marine in the United States it would be likely that the ranks of the merchant mariner would be a mere fraction of what they were and are today. Therefore, what better memorial to the merchant mariner than to have their history housed on the same ship with that of President Roosevelt, their greatest supporter and sponsor of so many directly related legislative milestones, including those concerned with maritime labor organizations.

The USS POTOMAC is and will be a living, floating memorial to President Roosevelt, the merchant marine and merchant mariners.

The Association urges your prompt review of this material in light of your letter and thanks you for your continued considerations.

Sincerely,



E. Glenn Isaacson
President



U.S. Department
of Transportation
Maritime
Administration

Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

06 SEP 1991

Mr. Glenn Isaacson
President
The Association for the
Preservation of the
Presidential Yacht Potomac
530 Water Street
P. O. Box 2064
Oakland, California 96404

Dear Mr. Isaacson:

Reference is made to your letter of May 23, 1991, and the accompanying material regarding the Association for the Preservation of the Presidential Yacht Potomac's (the "Association") interest in Public Law 101-595, the Merchant Mariner Memorial Act of 1990 (the "Act").

It is noted from Article II of the Association's Articles of Incorporation that:

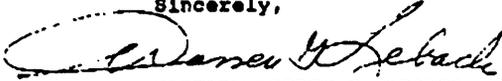
"the specific purpose of this corporation is to organize, direct and sustain the community effort necessary to restore, operate and preserve the Presidential Yacht Potomac, a historical vessel of national significance, in order to provide continual educational opportunities for members of the public."

That is certainly an admirable cause. However, it does not comport with either the letter or the intent of section 709 of the Act.

As commonly defined, and as contemplated by the Act, merchant mariners are seafarers who serve or served aboard merchant vessels. Merchant vessels are privately owned vessels employed in commerce and trade.

A key requirement of the Act is that funds raised from non-Federal sources prior to November 16, 1990, were specifically for establishing a memorial to merchant mariners. Preservation of the Potomac, the purpose for the Association's fund-raising activities prior to November 16, 1990, as indicated by the articles of incorporation, while admittedly desirable, would not serve as a memorial to merchant mariners. The Maritime Administration regrettably cannot, therefore, accept your application for funding assistance under the Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Warren G. Leback". The signature is written in dark ink and is positioned above the typed name.

CAPTAIN WARREN G. LEBACK
Maritime Administrator

The Association for the
Preservation of the
Presidential Yacht Potomac

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Cornell C. Moser

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J.S. Bell, Ronald W. DeLuca
Dennis Feinstein
John Henning
Ray Hoag

February 30, 1991

Dr. H. Gordon Howe
Lore Anderson
Cornell C. Moser
Joseph C. Morford
Ambassador M. J. Morfield
U.S. Sen. Thomas P. O'Neill
U.S. Sen. Jennings Randolph
Elliott Roosevelt
Walter Sorenson
Fayne Sorenson
Stephen
Sen. Pete Wilson

Ms. Linda Somerville
Vessel Transfer and Disposal Officer
Maritime Administration
U.S. Department of Transportation
Room 7234
400 Seventh Street S.W.
Washington, D.C. 20390

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John C. Furr
Walter Sorenson
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Walter Sorenson
Project Manager

Dear Ms. Somerville:

I am writing to apply, under Section 709 of Public Law 101-595, for rights, title and interest in a National Defense Reserve vessel that is to be scrapped, on behalf of the Association for the Preservation of the Presidential Yacht Potomac.

The Association is a non-profit organization that has raised more than \$3.7 million from both public and private sources to restore the U.S.S. Potomac to the condition it was in when it served, from 1935 to 1944, as President Franklin Delano Roosevelt's "Floating White House" (see attached).

The ship, which is now nearly 100 percent restored, has been certified as a National Historic Landmark. It will be docked at the Franklin Delano Roosevelt Memorial Pier, constructed at a cost of some \$450,000, in Oakland, California and will constitute the only memorial West of the Rocky Mountains to the wartime President.

The vessel, which is now operative, will be used also as a floating classroom for school children who are studying about the Great Depression, the New Deal, and the years leading up to World War II. Among President Roosevelt's major accomplishments, of course, was his success in initiating and persuading Congress to pass the Merchant Marine Act that was critical in preparing the merchant marine for the key role it played in World War II. This aspect of the Roosevelt years will be highlighted in the educational program that will be conducted on the U.S.S. Potomac.

530 Water Street

• P.O. Box 2064

• Oakland, CA 94604

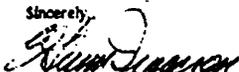
• (415) 839-7533

Ms. Linda Somerville
February 20, 1991
Page 2

During her nine years of presidential service, the U.S.S. Potomac ranged the East Coast, from Maine to Florida. It was used to entertain visiting royalty, including the King and Queen of England, and leaders of the Free World. The ship was used by the President as a means of relaxing from the strenuous burdens of the presidency, and used as well for business meetings with his cabinet and top advisors, for press conferences, fireside chats, and for a secret and historic meeting with Prime Minister Winston Churchill prior to America's entry in the war (August, 1941).

James Roosevelt, the eldest son of the President, has served as Chairman of the Association, which is comprised of leaders from business, labor and the general public. National Co-Chairmen are businessman Cornell Maier and labor leader Lane Kirkland. The National Advisory Council includes Senator Alan Cranston and Governor Pete Wilson of California, Congressman Ron Dellums and former Speaker Thomas P. O'Neill, Frank Sinatra, Bob Hope, Marian Anderson, Margaret Truman Daniel and many other distinguished Americans.

Sincerely,



E. Glenn Isaacson
President

EO 12812



AMERICAN MERCHANT MARINE VETERANS MEMORIAL COMMITTEE, INC.

Established to build a commemorative statue honoring American Merchant Seamen



January 11, 1991

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 Queens, California

Ms. Linda Somerville
 Vessel Transfer & Disposal Officer
 400 7th Street, S.W. - Room 7324
 Washington, D. C. 20590

Re: Reserve Fleet Vessel - Scrap
 Telecon December 26, 1990

Dear Ms. Somerville:

The American Merchant Marine Veterans Memorial Committee, Inc., Federal Tax Exemption # 95-405784C, and the Association for the Preservation of the Presidential yacht POTOMAC, Tax Exemption # 82-060669, hereby advise you that we are teamed together to equally share in the proceeds of a vessel scrapping with the benefits to be used for our respective memorials.

Both are non-profit organizations that have met the requirement to have raised, before the enactment of the section, at least \$100,000 from non-federal sources for use for establishing a memorial to merchant mariners. (see enclosure)

The American Merchant Marine Veterans Memorial Committee, Inc. is composed of a Board of Directors and members who are unpaid volunteers who raised the necessary funds to erect a national memorial honoring merchant mariners who served in the American Merchant Marine in peace and in war. The memorial was dedicated on National Maritime Day, May 22, 1989, with state, local and federal officials attending, including Sen. John Drenth, Congresswoman Helen D. Bentley and Congressman Glenn Anderson.

The memorial is located on the waterfront at the entrance to the Maritime Museum in the Port of Los Angeles, City of San Pedro, California. Enclosed please find a copy of an artistic rendering of the memorial.

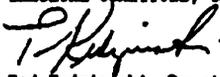
While the memorial has already been dedicated, our Committee has the responsibility for the upkeep and maintenance of the memorial. We are also conducting a continuous effort to do the necessary research to secure a complete list of all American mariners who gave up their lives for their country, beginning with the American Revolution. We hope to expand the memorial and erect additional plaques and columns with the names of these valiant mariners.

P.O. Box 1659 Wilmington, California 90748-1659 • (213) 834-3461

We would appreciate your earliest favorable response.

Very truly yours,

AMERICAN MERCHANT MARINE VETERANS
MEMORIAL COMMITTEE, INC.



Ted Ledzierski, President

TK:ll
Encl.

cc: Potomac Association
AMMVC Officers & Board of Directors
Hon. Glenn Anderson, Congressman 32d District, Ca.

(*) Association for the Preservation of the Presidential yacht
POTOMAC will forward required information under separate
cover.

Paul Dempster, Vice President
POTOMAC ASSOCIATION
U.S.S. POTOMAC
66 Jack London Square
Oakland, Ca. 94604



TRI-COASTAL MARINE

11 May 1992

Walter Jones
 Chairman of Subcommittee on Merchant Marine
 1339 Longworth, HOB
 Washington D.C. 20515

Re: Use of revenue from the scrapping of Reserve Fleet vessels
 for preservation of historic ships at the San Francisco
 Maritime National Historical Park.

Dear Mr. Jones,

As a country with a long seafaring history, we retain precious few reminders of our maritime heritage. One of those reminders is the fleet of historic ships in San Francisco. I have worked for the preservation of historic ships in many areas of the country, and nowhere is there a collection of ships more representative of our heritage than the eight vessels of Maritime Park -- seven of which are National Historic Landmarks. As with most things of value, the ships at San Francisco require responsible stewardship. Although much hard work has gone to the preservation and maintenance of the fleet, the resources necessary to restore the vessels to a maintainable condition have never been available. As a result, the future of the fleet remains tenuous.

The scrapping of the Reserve Fleet offers us an appropriate and timely means of securing the future of the historic ships by providing the funding necessary for their preservation. According to recent estimates, the cost of bringing the ships up to a maintainable condition is approximately \$ 12.7 million. Of greatest urgency is the restoration of the wooden ships of the fleet, the largest collection of such vessels in the world. Without extensive restoration, these ships cannot be effectively maintained. Within a few short years, they will likely be beyond the point of salvation -- a tragic loss. I urge you to give serious consideration to the proposed legislation to utilize funds from the scrapping of Reserve Fleet vessels to preserve the historic fleet at San Francisco.

Sincerely,

Don Birkholz, Jr.

Don Birkholz, Jr. 200 Burrows Street, San Francisco, California 94134 (415) 467-6184

Walter P. Rybka 1108 17th Street, Galveston, Texas 77550 (409) 762-8555



PART III: H.R. 5030, TO ESTABLISH AN ALTERNATIVE PENALTY FOR CERTAIN VESSELS IN THE COASTWISE TRADE OF THE UNITED STATES AND PUERTO RICO

PREPARED STATEMENT OF HON. WALTER B. JONES, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

We will now hear from various shipping companies with regard to Congressman Colorado's bill, H.R. 5030.

H.R. 5030 is a private bill that exempts nine specific vessels from the first sentence of Section 506 of the Merchant Marine Act, 1936, if the vessel owners (the Puerto Rico Maritime Shipping Authority and Sea-Land) agree to pay back the construction-differential subsidy (CDS) in an amount proportionate to the CDS paid and the remaining economic life of the vessel.

The Maritime Administration (MARAD) has issued four different interpretations of the first sentence of Section 506 as it pertains to the U.S. trade in Puerto Rico. The U.S. District Court in the District of Columbia recently ruled that MARAD's final statutory interpretation of Section 506 was arbitrary and capricious.

Congressman Colorado has introduced H.R. 5030 to resolve this issue.

There are many different points of view on this legislation, and I welcome the testimony from all of you.

102D CONGRESS
2D SESSION

H. R. 5030

To establish an alternative penalty for operation of certain vessels in the coastwise trade between the United States and Puerto Rico.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1992

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

A BILL

To establish an alternative penalty for operation of certain vessels in the coastwise trade between the United States and Puerto Rico.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. AUTHORITY TO ENGAGE IN COASTWISE TRADE**

4 **UPON PAYMENT OF PENALTY.**

5 Notwithstanding the first sentence of section 506 of
6 the Merchant Marine Act, 1936 (46 App. U.S.C. 1156),
7 a vessel of the United States with any of the official num-
8 bers 544303, 530999, 520694, 514261, 517450, 529004,
9 515155, 518444, or 516464 may engage in the coastwise
10 trade between the continental United States and Puerto

1 Rico if the owner of the vessel pays to the Secretary of
2 Transportation an amount which bears the same propor-
3 tion to the principal of any construction-differential sub-
4 sidy paid by the Secretary with respect to the vessel under
5 title V of that Act, as the remaining economic life of the
6 vessel bears to the entire economic life of the vessel.

April 30, 1992

CONGRESSIONAL RECORD—Extension of Remarks

E1157

the employees, offering a choice of about 500 different plans. But the Federal program is only partly successful because it has a few flawed satellite rules outlined by Jackson Hole.

The consequences. Jackson Hole-compatible plans require two changes in Federal tax law. They would limit how much in the way of premiums employers are allowed to provide tax-free. Currently, employer-paid premiums are fully deductible, no matter how vast. By imposing a tax cap, employers had employees would be encouraged to choose low-cost managed care plans, like health maintenance organizations, over high-cost fee-for-service plans. Under managed care, providers are paid capitated fees independent of how many services they actually provide. That's an important break on many budgets.

Second, Jackson Hole-compatible plans would deny tax deductibility to small employers that refuse to join large groups to buy medical insurance. Small employers going it alone pay premiums according to their claims, compelling them to discriminate against job applicants who seem likely to become chronically ill.

For nearly 15 years, the Jackson Hole gang had little to show for its thoughtful work. But suddenly, the ground is starting to shake.

In January John Cornwell, California's Insurance Commissioner, proposed a Jackson Hole-compatible plan that would include every Californian and would be financed with only minimal help from Washington.

At the Federal level, Representative Tim Cooper, Democrat of Tennessee, but sponsored a Jackson Hole-compatible plan that limits tax deductions to the cost of basic coverage. Small businesses that refuse to join a large purchasing group would be denied tax-deductible insurance. Universal Medicaid late a managed care program for every uninsured American.

The larger Congress never looking really to national insurance, universal tax credits or employer-paid plans, the better managed competition looks. All at once, two managed competition plans have become part of the debate. Jackson Hole-compatible deserves to be the standard by which to judge all the rest.

INTRODUCTION OF LEGISLATION REGARDING MARITIME TRADE IN PUERTO RICO

HON. ANTONIO J. COLORADO

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 29, 1992

Mr. COLORADO. Mr. Speaker, today, I rise to introduce legislation to provide much needed assistance to the people of Puerto Rico by aiding our small Puerto Rico Maritime Shipping Authority in providing continued service to the citizens of our Commonwealth and to the people in the mainland United States.

Mr. Speaker, the bill I introduce today would provide relief to the agency from further regulatory interpretations which could frustrate our economic well being in the future. Specifically, it would amend section 506 of the Merchant Marine Act of 1920 (48 App. U.S.C. 1156) by allowing nine vessels built with construction differential subsidy [CDS] and which are currently operating from the mainland United States to the Commonwealth of Puerto Rico, to be exempt from any provisions of section

506 of the future regulatory interpretations which would require a foreign voyage when carrying maritime cargo in and from our Commonwealth.

These so-called regulatory interpretations involving exclusively maritime trade to and from the Commonwealth of Puerto Rico began over 4 years ago—in 1988—when our Puerto Rico Maritime Shipping Authority (PRMSA) purchased five Lancer class containerhips to replace our aging, small fleet of roll-on/roll-off carriers for use in the Jones Act trade. Shortly after PRMSA obtained the vessels, the Maritime Administration issued a ruling solely interpreting how section 506 was to be applied to Puerto Rico. From 1988 through February 1990, four subsequent interpretations were issued. Early in 1991, the U.S. District Court for the District of Columbia ruled that MarAd had been arbitrary and capricious in its interpretations of its rulings, and sent the matter back to MarAd for further consideration. This is where the matter rests, but only for the moment.

For over 50 years, section 506 of the Merchant Marine Act defines certain permitted combined foreign/domestic trades which could be served by vessels built with construction differential subsidy without any percentage restrictions on the amount of domestic cargo to be carried on those trades. There was an automatic payback requirement for the subsidy, a payback proportional to the amount of domestic revenue earned compared to total revenues. In prior MarAd opinions, MarAd had specifically stated that this payback mechanism constituted the sole obligation of the subsidized vessel operator, and was the specific method chosen by Congress to reconcile the interests of all parties. Then, by a series of rulings starting in 1988, MarAd singled out Puerto Rico and imposed a minimum foreign cargo requirement of 25 percent. This proposed requirement renders operators extremely inefficient and is potentially devastating to PRMSA.

These rulings were recently rejected by a district court decision, and the whole matter now stands in limbo, back before the agency.

It is the stated purpose of the Puerto Rico Maritime Shipping Authority to provide low-cost quality intermodal transportation service to Puerto Rico. The Authority has stated solely to insure that the island Commonwealth will always have a viable transportation alternative, never to be held hostage to other shipping interests. The economy of Puerto Rico has always been sensitive to the slightest economic change, and any legislative initiative or regulatory action, particularly concerning our shipping capability, can have a profound impact upon the island.

Recognizing this reality, not only in Puerto Rico, but also in other island nations and provinces as well, the Congress passed the Caribbean Basin Initiative to help develop economies in this region. The CBI has meant much to our region of the world, and to Puerto Rico in particular. It continues to remain difficult, however, to attract business to Puerto Rico, or to have new enterprises locate there when over 70 percent of the vessel cargo carrying capacity to Puerto Rico remains subject to the uncertainty posed by 506 for the last 3 years.

Mr. Speaker, the removal of this uncertainty will surely help the development and the reduction of the chronic unemployment rate in Puerto Rico, now at 17.5 percent.

Mr. Speaker, who will benefit from enactment of this legislation? The most obvious and most immediate beneficiaries of any legislative exemption to section 506 will be the American flag operators which service the island: The Puerto Rico Maritime Shipping Authority, and its agent, Puerto Rico Marine Management, Inc., and Sea-Land Service, Inc. The real beneficiaries of a change in the ruling, however, will be the people in the mainland United States of America and in the Commonwealth of Puerto Rico who are the recipients of cargo between these two locations.

Commercial products come to Puerto Rico from almost every State in the Nation, and our cargo moves through many ports of call: New Orleans, LA; Jacksonville, FL; Charleston, SC; Baltimore, MD; and Edison, NJ. In fact, seaborne transportation of goods produced by the citizens of Puerto Rico accounts for over \$11 billion in revenue and generates well over 100,000 jobs in the continental United States.

Another interesting point is that Puerto Rico is currently carrying a disproportionate burden share of the transportation costs associated with financing the U.S. merchant marine. This represents an additional cost of 6 percent of all goods purchased in Puerto Rico. To the extent that an exemption of the 506 requirement—which also affects trade to these areas—will be granted, the entire Commonwealth and its people will benefit.

Mr. Speaker, this amendment will not cost the U.S. Government any funds. On the contrary, as proposed, for an operator to take advantage of this grandfather clause for Puerto Rico, an operator will have to repay the then current outstanding unamortized CDS amount. In the case of the five vessels operated by PRMSA, that will be approximately \$4.5 million.

Will the legislation cause the loss of jobs? To the contrary, this legislation will save jobs. If our shipping authority is forced to go out of business because this problem is not corrected, all of our ports of call will be impacted, as will the shipping workers on the mainland and in Puerto Rico. Jobs will be lost in San Juan, New Orleans, Jacksonville, Charleston, Baltimore, and Edison, NJ.

Mr. Speaker, we cannot allow this injustice to continue. We need a legislative remedy now to insure that the Commonwealth of Puerto Rico will be protected against any further potential arbitrary and capricious rulings from MarAd in the future. I call upon my distinguished colleagues on the House Merchant Marine and Fisheries Committee to help us solve this serious problem. The text of my bill is enclosed.

VOCATIONAL EDUCATION

HON. LEE H. HAMILTON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 29, 1992

Mr. HAMILTON. Mr. Speaker, I am inserting my Washington report for Wednesday, April 29, 1992, into the CONGRESSIONAL RECORD:

VOCATIONAL EDUCATION

Preparing people to be part of the changing world is a complex and constantly changing process. Vocational education is based on the idea that the educational system should help people prepare for employ-

EXECUTIVE DIRECTOR
PUERTO RICO MARITIME SHIPPING AUTHORITY
BEFORE THE MERCHANT MARINE SUBCOMMITTEE
OF THE HOUSE OF REPRESENTATIVES
MERCHANT MARINE AND FISHERIES COMMITTEE
UNITED STATES CONGRESS

My name is Rafael Fábregas. I am the Executive Director of the Puerto Rico Maritime Shipping Authority. I appreciate the opportunity to appear before you in support of H.R. 5030.

The purpose of H.R. 5030 is "To establish an alternative penalty for operation of certain vessels in the coastwise trade between the United States and Puerto Rico."

The Puerto Rico Maritime Shipping Authority, known as "PRMSA", or "Navieras de Puerto Rico"¹, was established by Act No. 62, as Amended, of the Legislature of Puerto Rico, approved June 10, 1974. Act No. 62 created PRMSA and defined its duties, powers and responsibilities. The Act is preceded by a Statement of Motives which explains the extraordinary dependence of the economy of Puerto Rico on external trade, and especially on its trade with the United States of America. The bulk of that commerce is conducted by ocean transportation. Since the Statement of Motives is so important to an understanding of the function of Navieras de Puerto Rico, I have attached it to my testimony.

Although the Statement of Motives recites facts pertaining to the decade preceding its enactment, the same dependence on ocean transportation prevails when one examines recent trade data almost 20 years later. Navieras de Puerto Rico's external trade, exports plus imports, has been larger than the island's gross product for the 10 years between 1981 and 1991. In 1990, for example, the value of Puerto Rico's external trade was approximately \$35 billion of which trade with the United States represented approximately \$28 billion or 78%.

PRMSA was created in 1974 by purchase of the assets of two and the stock of one of the three major carriers then serving Puerto Rico, Sea-Land Service, Inc., Seatrain Lines, Inc. and Transamerican Trailer Transport, Inc. This provided PRMSA with a combination of roll-on/roll-off trailership service and containership services; and at the time of its creation, PRMSA carried nearly 90% of the liner cargoes between the mainland and Puerto Rico. As PRMSA's vessels aged, however -- especially the containerships which were well into their useful lives when Navieras de Puerto Rico purchased them -- it was necessary to replace the tonnage. By 1988, most of the containerships had been retired; the roll-on/roll-off trailerships had become uneconomical to operate, and the costs of building new vessels in United States shipyards was prohibitive. It was at this point that U.S. Lines filed for bankruptcy and hence their vessels became available. U.S. Lines' Lancer vessels were smaller than those utilized in the transpacific or transatlantic trades, and were ideal for Navieras de Puerto Rico's mixed Puerto Rico/Caribbean services. Moreover, because of the bankruptcy, the age of the Lancer vessels (17-20 years in 1988), and their condition after a two year lay-up, the price of the Lancers was a fraction of the cost of a new one built in a United States yard. PRMSA eventually bought these vessels at auction for approximately \$44.125 million, and invested another \$45.7 million in repairs and reconfiguration in United States shipyards. The vessels are now extremely well suited for PRMSA's Puerto Rico/Caribbean service.

¹Navieras de Puerto Rico is a registered trade name of the Puerto Rico Maritime Shipping Authority.

At the time PRMSA bought the Lancer vessels, we were aware that, having been built with construction-differential subsidy, the vessels would be subject to the requirements of Section 506 of the Merchant Marine Act, 1936. PRMSA determined that the statute should pose no problem since PRMSA intended to use the vessel in a mixed domestic/foreign service, to enhance Puerto Rico's participation on the trade generated by the Caribbean Basin Initiative and also intended to promote the development of Puerto Rico as a hub for Caribbean commerce. Navieras de Puerto Rico was prepared, pursuant to the provisions of Section 506, to remit to MarAd a proportionate amount of the original construction-differential subsidy, that portion relating to its carriage of domestic cargoes, as the law required.

I wish to stress that, at the time we purchased the Lancer vessels, the Maritime Administration had administered the Merchant Marine Act for over 50 years, and had never deemed that the amount of domestic cargo on a joint voyage be limited, either in percentage or in any other terms, nor had it ever determined that foreign cargo had to compromise a stated percentage of a ship's carryings. To the contrary, in its only pronouncement on the issue, in Seatrains Lines, Inc., 12 SRR 346, (1971), the Maritime Subsidy Board had said:

As relevant to Seatrain's contentions, the legislative history of Section 506 indicates that this Section was designed to avoid the types of unfair competition that existed against domestic operators under the ocean mail subsidy contracts. The vehicle selected to provide that protection against unfair competition was a proportioned repayment of CDS as relating to revenue from domestic trading. It was chosen as a compromise between advocates for a completely protected domestic trade and advocates for unrestrained operation who desired to have available for national defense purposes bigger and faster ships that would otherwise be possible. Since Section 506 was a compromise, it was expressly recognized that some unfair advantage might remain, but it was apparently considered that repayment for subsidy would best balance the conflicting interest.

We relied upon these statements of MarAd when we purchased the Lancer vessels at the bankruptcy auction and when we reconfigured them, for a total investment of approximately \$90 million dollars.

Since Navieras de Puerto Rico was formed in 1974, other steamship companies have entered the Puerto Rico trade. At present, Navieras estimates its share of the market at approximately 43% to 45%. Its other competitors are Sea-Land, Inc. ("Sea-Land"), Trailer Marine Transport, Inc. ("TMT"), Marine Transportation Services Sea-Barge Group, Inc. ("Sea-Barge"), and Trailer Bridge, Inc. We estimate -- and these are only estimates -- that Sea-Land's share of the Puerto Rico market is approximately 15%, TMT's 30%, and Sea-Barge's and Trailer Bridge 10%. Only Navieras de Puerto Rico and Sea-Land operate self-propelled vessels; TMT, Sea-Barge and Trailer Bridge, Inc. are tug and barge carriers. Navieras de Puerto Rico's service is now exclusively containership. The remaining two trallerships in the fleet are to be disposed of. Only Navieras serves a full range of Atlantic Coast and Gulf Ports, specifically New Jersey, Baltimore, Charleston, Jacksonville, and New Orleans. New Jersey is also served by Sea-Land while TMT serves the North Atlantic area through Pansauken, New Jersey. No carrier other than Navieras serves Baltimore or Charleston on this trade. There is both containership and barge service at Jacksonville. Sea-Barge is the only carrier serving Miami, again with barges. Sea-Land and Navieras serve New Orleans, and TMT serves the Gulf at Lake Charles, Louisiana. We estimate that PRMSA's and Sea-Land's vessels constitute 58% of total annual capacity Southbound and Northbound, and 73% of capacity in the North Atlantic trade.

Self-propelled vessels serve a function which barge operations cannot match. The average speed of the Lancers is 22 knots, whereas average speed for barges is 9 knots. Puerto Rico imports a large portion of its foodstuffs, usually in refrigerated or temperature controlled containers. Because of time and container maintenance considerations, the overwhelming preponderance of this traffic, which constitutes approximately 10% of all traffic to Puerto Rico, moves on self-propelled vessels. Moreover, higher speed vessels considerably reduce inventory costs for shippers of all commodities.

Our introduction of the Lancer vessels did not harm any of the competitors. On the contrary, because of the substantial investment referred to above, we estimate our capital costs to be higher than the tug and barge operators. No benefits of the subsidy originally received by U.S. Lines were passed on to us. In fact, our capital costs are higher now than they would have been had we built the vessels when U.S. Lines built them, but without any U.S. Government aid. Moreover, our capacity now is almost exactly what it was in 1988 before we purchased the vessels.

The fact that our introduction of the Lancers has not hurt any of our competitors is shown by Sea-Barge's notable growth in the last four years. During that time, Sea-Barge, which entered the trade with only a weekly service to and from Miami, has doubled its service by extending it to Jacksonville, and then recently announced an increase in its barge capacity. During this four-year period, there has been no equivalent growth in the trade as a whole. Therefore, in theory and in fact, our introduction of the Lancers vessels has harmed no Jones Act operator.

We believe that Navieras de Puerto Rico has made a significant contribution to the purposes and policies expressed in the Merchant Marine Act, 1936. We have saved the Lancer vessels which we purchased from the scrap heap to which they were apparently destined, there having been no bidders for these vessels outside of ourselves and Sea-Land. I have already adverted to the huge investment in reconfiguration and repair that we have made, thus providing continued support for United States shipyards at a time when all commercial business was at its lowest ebb. We continue to supply that business for shipyards as we engage in periodic drydocking and other repairs of the vessels. Navieras de Puerto Rico and the Government of the Commonwealth of Puerto Rico are supporters of the policies expressed in the Jones Act, namely the stimulation of the merchant marine industry through reserving domestic off shore trade to United States-flag vessels built and repaired in United States shipyards. As is well known, the United States fleet has shrunk drastically. The latest figures available to us, for 1991, indicated that there were only 83 containerhips in the United States non-military fleet, of which several were Jones Act vessels. Navieras de Puerto Rico believes that its commercial operation of its five Lancer vessels makes a very significant contribution to the availability of United States flag container shipping.

In connection with this last point, it is our understanding that the U.S. Army is investing in a Containerized Ammunition Distribution System ("CADS") and has already invested considerable sums in purchasing containers, flat racks, and sea sheds, all looking toward the movement of military units and supplies in containerhips. The commercial trend, both U.S. and worldwide, is away from roll-on/roll-off vessels and toward containerhips, as by far the most economical intermodal transportation method. For these reasons, as well as the others explained in my statement, it is very important that all U.S. flag containerhips be retained in viable commercial operation. I believe that H.R. 5030 is in line with that goal.

I thank you very much for the opportunity to have appeared before you today.

Act of the Puerto Rico Maritime Shipping Authority

Act. No. 62

Approved June 10, 1974

STATEMENT OF MOTIVES

Foreign trade is an activity which has a powerful bearing on the whole economic and social development of Puerto Rico. More than 98 per cent of the foreign trade of Puerto Rico moves by sea. In terms of the value of shipments, Puerto Rico's external trade has increased at an annual rate of 11 per cent in the period comprised between 1964 and 1973. In 1973 external trade represented 94 per cent of the gross national product. During the same year, 255.3 million dollars were paid in maritime freight on import. The great dependence of Puerto Rico in maritime transportation for its development is evident.

The maritime transportation system is therefore, a fundamental element to the well being of the people of Puerto Rico. Its efficiency, adjustment and operation in the pursuit of the general welfare must constitute the basic aspects of a public policy which the government of Puerto Rico cannot ignore.

The upward trend of maritime freight during the last years and the present operation of existing maritime transportation services require governmental attention to protect the general welfare of the people. Therefore, it is undeferrable that the government of Puerto Rico's assumes an active role in the directing and operating responsibility of maritime transportation. It is in consideration of this need that the Legislature of Puerto Rico establishes a public instrumentality responsible for the maritime transportation between Puerto Rico and abroad, which will provide this essential service wholly or partially, as long as the public interest, health and welfare of its citizens may require.

The Legislature of Puerto Rico intends that this instrumentality acquires and operates shipping lines and terminal facilities as a public service, and that in doing so, it shall not be subject to the antitrust laws nor any other limitation that could hinder the effective discharge of the endeavor that this act has imposed on the public instrumentality hereby established.

TESTIMONY OF MICHAEL D. SHEA, PRESIDENT,
MARINE TRANSPORTATION SERVICES SEA-BARGE GROUP, INC.
IN OPPOSITION TO H.R. 5030
BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE
MAY 20, 1992

My name is Michael D. Shea. I am president of Marine Transportation Services Sea-Barge Group, Inc ("Sea-Barge"). I am here to state the strenuous opposition of Sea-Barge to H.R. 5030. Since graduation from the Merchant Marine Academy in 1965, I have served as an officer in the U.S. Merchant Marine, then in various executive positions with Lykes Bros. Steamship Co., Inc., and finally in my present job with Sea-Barge. I am accompanied by Edward Schmeltzer of the Washington, D.C. law firm of Schmeltzer, Aptaker & Shepard.

Sea-Barge has provided intermodal service between continental United States and Puerto Rico via Florida ports for nearly seven years. We now offer service twice each week from Florida to Puerto Rico with four sets of tugs and barges: two tug/barge sets provide weekly sailings between Miami, Florida and San Juan, Puerto Rico and the other two sets operate weekly between Jacksonville, Florida and San Juan. The South Florida barges can each carry an average of 520 TEUs and generally leave Miami every Friday night and arrive at San Juan Wednesday evening. The vessels operating between Jacksonville and San Juan average 690 TEU capacity. They generally leave Jacksonville on Tuesday evenings and arrive in San Juan on Sunday evenings.

I want to impress upon the Committee that (1) H.R. 5030 would cut the heart out of section 506, a fundamental part of the Merchant Marine Act, 1936, without which the Act could not have been passed; (2) as recently as 1987 Congress, in a singularly strong action, made it plain that it would not tolerate Administration action to avoid the intent of section 506; (3) H.R. 5030 is not a mere technical change to avoid unnecessary regulation--it is instead a Bill to allow subsidized ships to compete fully with non-subsidized vessels built in U.S. yards and thereby change the commercial balance in the Puerto Rico trade; and (4) the need of Puerto Rico for ocean transportation can and will be met fully without enactment of H.R. 5030.

1. H.R. 5030 Would Cut The Heart Out Of A Fundamental Provision Of The Merchant Marine Act, 1936.

Section 506 is an essential part of the Merchant Marine Act, 1936. Without that section there would have been no enactment. Section 506, which relates to subsidies that would be paid by the government for construction in U.S. yards of vessels to be operated in foreign trade, together with similar provisions relating to subsidies for operation of such vessels, was enacted to assure unsubsidized ship lines in domestic trades that they would not face serious competition from subsidized ships. Section 506 was among the hardest fought provisions of the 1936 Act. Without section 506, the 1936 Act for subsidizing vessels of the American Merchant Marine in foreign trade would not have been passed.

The Supreme Court in Seatrain Shipbuilding Corp. v. Shell Oil Co., 444 U.S. 572 (1980), described the protection afforded to non-subsidized, American-built vessels as follows:

It was recognized from the outset that substantial limits would have to be placed upon the entry of subsidized vessels into the domestic trade. Any other result would have been disastrous for the unsubsidized Jones Act Fleet for which that trade was (and is) reserved. Burdened by higher construction costs, greater outstanding debt, and higher

operating expenses, that fleet would simply have been unable to compete with new vessels enjoying the benefits of the 1936 Act.

The congressional response to this problem as it relates to the CDS program was § 506. Basically, that section confines subsidized vessels to the foreign trade. Congress recognized, however, that an entirely rigid prohibition on entry into domestic commerce might be impractical--incidental domestic operation on one segment of a voyage in foreign trade might well be efficient, and other circumstances might also arise in which some flexibility would be desirable. Accordingly, Congress permitted subsidized vessels to carry domestic cargoes on one leg of certain foreign voyages and provided in addition that the Secretary could authorize such vessels actually to enter the domestic trade for six months or less in any or less in any year upon finding that such entry would be "necessary or appropriate to carry out the purposes of this chapter." In an effort to ensure that subsidized vessels operating in the domestic trade pursuant to these exceptions would compete on an equal footing with unsubsidized vessels similarly employed, Congress required the repayment of that portion of the outstanding subsidy allocable to the vessel's domestic activities.

444 U.S. at 486-87 (emphasis added). The same message was delivered in a series of decisions of U.S. Circuit Courts of Appeals.

In a Memorandum Opinion dated January 31, 1992,¹ Judge Lamberth of the U.S. District Court for the District of Columbia described section 506 protection as follows:

The court recognizes that, as MarAd points out, one of the Act's primary policies is to protect the Jones Act fleet from being displaced by the subsidized fleet, and that this is achieved by preventing CDS-built vessels from engaging in domestic trade, either directly or by way of sham foreign voyages. Thus, it is evident that MarAd must set some sort of minimum foreign cargo limit to assure that voyages in foreign trade are bona fide.

. . . .

A plain reading of the statute seems to indicate that the foreign cargo limitation should be set at the level at which the domestic cargo carried on a CDS-built vessel is incidental to foreign cargo that is carried on that voyage. Such a limitation would truly protect the Jones Act fleet because it would assure that voyages in foreign trade are bona fide; they would not be taken but for the purpose of transporting the cargo to foreign ports. Any limit that allows CDS-built vessels to carry more than this amount of

¹ Marine Transportation Services Sea-Barge Group, Inc. v. Busey, et al., No. 89-2278 (D.D.C. Jan. 31, 1992) (hereinafter "Slip Op.").

domestic cargo would allow sham voyages in foreign trade, thus giving CDS-built vessels a competitive advantage over the Jones Act fleet in domestic trade.

Slip Op. at 28-30.

2. Congress, As Recently As 1987, Enacted Legislation To Preserve The Vitality Of Section 506.

On the basis of guidance from a series of court cases, the Maritime Administration adopted a regulation which would have allowed tankers to operate in the domestic trade after a full payback of subsidy. Your Committee would have no part of this, and in the Supplemental Appropriations Act of 1987, Public Law No. 100-71, § 505, 101 Stat. 391, 471 (1987), Congress enacted the following provision:

None of the funds appropriated or made available by this or any other Act . . . for purposes of administering the Merchant Marine Act, 1936 . . . shall be used by . . . [MarAd] to propose, promulgate, or implement any rule or regulation . . . with respect to the repayment of construction differential subsidy for the permanent release of vessels from the restrictions in section 506 of the Merchant Marine Act, 1936 . . . Provided, That such funds may be used to the extent such expenditure relates to a rule which conforms to statutory standards hereafter enacted by Congress.

As far as I can determine, Congress thus far has enacted no statutory standards which would enable CDS vessels to be released from the restrictions in section 506, even by full repayment of CDS, i.e., full repayment of CDS plus full interest computed on the basis of the formula set forth in MarAd's rules on full repayment, at 46 C.F.R. § 276.3.

There is no reason for Congress now to abandon its carefully thought out policies for protection of the Jones Act fleet from competition with vessels that were subsidized to engage in the foreign trade in competition with foreign ship lines.

3. H.R. 5030 Is Not A Mere Technical Change To Avoid Unnecessary Regulation--It Is A Bill To Allow Subsidized Operators To Compeate Fully, And Unfairly With Unsubsidized Vessels.

Puerto Rico Maritime Shipping Authority ("PRMSA") and Sea-Land Service, Inc. ("Sea-Land) knew full well, when they purchased the LANCERS, that it was illegal to use them essentially in domestic trade. Indeed, when they purchased the ships they had to, and did, agree with MarAd that the vessels would be fully bound by section 506. They agreed that the vessels would "be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic Coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States" 46 U.S.C. app. § 1156 (emphasis added).

The purchase, and agreement by PRMSA and Sea-Land to be bound by section 506, could not have been a thoughtless action. The vessels, after all, cost millions of dollars; the purchase had to be undertaken with the guidance of lawyers who fully understood the Merchant Marine Act, 1936; and the ship lines had to be fully aware that the LANCERS could not be operated lawfully in the

domestic trades of the United States except on an incidental basis. Yet PRMSA and Sea-Land, immediately upon delivery, operated the LANCERS almost exclusively to the Puerto Rico trade and devoted their efforts to frustrating attempts by Jones Act operators to appeal to the Maritime Administration and to the courts for the protection to which Jones Act operators are entitled under section 506.

Recently, on January 31, 1992, the U.S. District Court instructed MarAd to make a statutory determination which would limit CDS vessels to "bona fide" voyages in foreign trade, with only "incidental" operation in domestic trade. Slip Op. at 28. Under these circumstances it would be unconscionable for Congress to allow PRMSA and Sea-Land to make a sham of the section 506 restrictions to which these carriers knowingly agreed to be bound.

When Sea-Barge, and other operators of Jones Act vessels, devote their resources to the development of shipping services in the domestic trades, they do so with a confidence that the law enacted in 1936, and continued in force since then, would protect them from the fierce, unfettered competition of subsidized vessels. The commercial balance in domestic trades, until the entry of the LANCERS in the Puerto Rico trade, has been built on the foundation of section 506 protection. Congress should not change this balance in the Puerto Rico trade by enacting H.R. 5030. If Congress does enact H.R. 5030, will it be able to withstand the demands for similar legislation by operators of a multitude of CDS vessels who would find it highly profitable to operate ships in liner trades to Alaska and Hawaii and ultimately to operate tankers in the coastwise and intercoastal trades?

Section 506 is not a technical provision which requires all common carriers to obtain certificates of convenience. It is, instead, a limitation that has to be accepted only by ship lines who have chosen to receive the benefits of a governmental subsidy.

4. The Ocean Transportation Needs Of Puerto Rico Can And Will Be Met Fully Without Enactment Of H.R. 5030.

Puerto Rico will have excellent shipping service without enactment of H.R. 5030. This service will be provided either by (i) a combination of CDS ships on bona fide voyages in foreign trade with a stop at Puerto Rico, together with barge service; or (ii) by comprehensive service of large tug/barge fleets; or, (iii) if required by the market, tug/barge service together with fast self-propelled ships built in U.S. yards without subsidy which would be attracted to the trade.

Sea-Barge has never taken the position that CDS vessels can provide only token service in the Puerto Rico trade. We have urged only that CDS vessels be used primarily for foreign trade and incidentally for domestic trade. "Incidental," as we understand the word, cannot mean more than 50 percent of the capacity of the vessel or of the revenue earned by the vessel. In the Puerto Rico trade, incidental would mean utilization of somewhere between one-half and two-thirds of the vessel in foreign trade and somewhere between one-half and one-third in domestic trade.

Sea-Barge has never objected to LANCER calls at Puerto Rico on voyages to real foreign markets such as Brazil and Argentina. Such voyages would shield Jones Act operators in the Puerto Rico trade from the full thrust of subsidized competition. Such service, moreover, would allow CDS vessels to provide service to Puerto Rico without destroying the careful balance of the policies of the Merchant Marine Act. If PRMSA and Sea-Land would see fit to stop their CDS vessels at Puerto Rico on such truly foreign voyages, the Puerto Rico capacity of the CDS fleets,

together with present tug and barge services, would more than meet the need for shipping services between Puerto Rico and continental United States.

If PRMSA and Sea-Land do not want to utilize their subsidized vessels on foreign voyages which call at Puerto Rico but would instead withdraw these ships from the Puerto Rico trade, tug and barge services alone could, and would, fill the shipping needs of the trade. Tug and barge combinations now operate between Pennsauken, New Jersey on the Delaware River and Puerto Rico; between Jacksonville and Miami, Florida and Puerto Rico; and between Lake Charles, Louisiana and Puerto Rico. Until recently, a tug and barge service was operated between Mobile, Alabama and Puerto Rico. A breakbulk barge service between Pensacola, Florida and San Juan recently has been inaugurated. Tug and barge services are available to supply all necessary shipping requirements in the Puerto Rico trade.

Some of the barges in the trade can carry in excess of 1,000 TEUs. Although the capacity of the CDS ships is substantially greater, at 1,200 TEUs, than some of the barges in the trade, the additional tug/barge sailings that would be required would necessarily afford more frequent sailings than are provided by the larger CDS ships. Moreover, transit time would not be a problem. Tug and barge sets generally operate between a single continental port and a single port in Puerto Rico, that is, transit time is not delayed by calls at several ports on the way to or from Puerto Rico. The barges of Sea-Barge leave Miami on Friday night and arrive in San Juan for unloading on the following Wednesday evening or Thursday morning. Our North Florida voyages leave Jacksonville on Tuesday evening and arrive at San Juan for unloading on Sunday evening or Monday morning. Transit time from North Atlantic ports by tug/barge sets would not be substantially greater than the Jacksonville voyages. The barges of Crowley Maritime Corporation leave Pennsauken, New Jersey on Thursday and arrive at San Juan for unloading on the following Thursday. The transit time for service from the New York/New Jersey area to Puerto Rico can be made in six days.

The barges now operating in the Puerto Rico trade provide full roll on/roll off service, full lift on/lift off service, and breakbulk service. Barges, moreover, provide service equivalent to that of the LANCERS for automobiles and other specialized cargo. I can assure you that if there is a need for additional Puerto Rico service, it would be provided by Sea-Barge and probably by a number of other tug and barge operators who are in the trade or would be attracted to the trade.

If there is a serious and substantial need for faster service than provided by tugs and barges, the market will attract self-powered, non-subsidized vessels. Fast, modern, unsubsidized U.S.-built vessels now operate, and for years have been operating, in the domestic Alaska and Hawaii trades. Expensive ships were built in U.S. yards by Total Ocean Trailer Express, Inc. and Sea-Land in the Alaska trade and by Matson Navigation Company, Inc. in the Hawaii trade. More to the point, a fleet of large, extremely fast, roll-on/roll-off vessels was built by a company called TTT which operated profitably for years in the Puerto Rico trade. TTT was purchased by PRMSA sometime around 1975. Recently PRMSA withdrew these fast, unsubsidized, U.S.-built vessels from the trade.

CONCLUSION

To summarize my comments, Sea-Barge opposes H.R. 5030:

(1) because section 506 was enacted to protect unsubsidized U.S.-Flag ships from unfair competition by ships built with subsidy;

(2) because no subsidy is paid to build or operate ships in the coastwise trade and the Jones Act fleet still needs section 506 protection;

(3) because the U.S. government paid subsidy on the Sea-Land and PRMSA ships so that they would be operated in the foreign commerce of the United States, in competition with foreign-flag vessels, and not in domestic commerce against U.S.-flag vessels; and

(4) because private individuals should not be allowed to do an "end-run" around the administrative process, frustrate both Congressional and judicial intent, and obtain a personal exemption from a law with which they specifically agreed to comply, but now they find inconvenient.

Statement of
Crowley Maritime Corporation
Represented by
Jack M. Park
Vice President, Governmental Relations

Before the
Subcommittee on Merchant Marine
of the
Committee on Merchant Marine and Fisheries

May 20, 1992

Concerning
H.R. 5030 - A Bill to Establish An
Alternative Penalty for Operation of
Certain Vessels in the Coastwise Trade
Between the United States and Puerto Rico

Good Morning, Mr. Chairman and members of the Subcommittee. My name is Jack Park; I'm Vice President, Crowley Maritime Corporation, for Governmental Relations.

Crowley Maritime Corporation is one of the largest of the U.S.-flag carriers with extensive common carrier and contract cargo services in both the domestic and international trades. We operate close to 400 vessels. Included in our domestic services are operations between the mainland and the principal non-contiguous domestic jurisdictions - Puerto Rico, Alaska and Hawaii. This year we are celebrating our 100th year of service.

We wish to take this opportunity to state the position of Crowley Maritime Corporation ("Crowley") concerning a proposal to change over 50 years of existing law and allow certain vessels built with construction differential subsidy ("CDS") to engage exclusively in domestic service between the continental United States and Puerto Rico. The proposal, contained in H.R. 5030, comes from the Puerto Rico Maritime Shipping Authority ("PRMSA") to enable it to operate five Lancer containerships unrestricted by the foreign trade requirement of Section 506 of the Merchant Marine Act of 1936. If passed, the legislation would also allow Sea-Land Service to operate three taxpayer-subsidized Lancers and another CDS-built vessel in an exclusively domestic service in competition with unsubsidized carriers. The proposal is being advanced as an end-run around litigation and agency proceedings involving this very issue. Indeed, it is important to note that the litigation and agency proceedings are (i) not concluded but rather are ongoing and (ii) the Lancer vessels at this stage of the administrative proceedings have not been foreclosed from the Puerto Rican trade. Clearly the bill before this Committee, in addition to being substantively deficient, is extremely premature. More about this later.

Crowley is firmly opposed to the proposed legislation. Crowley subsidiary Trailer Marine Transport ("TMT") is the second largest carrier in the trade. TMT has just enhanced its service to Puerto Rico so that it now offers three weekly departures from Jacksonville, and two other departures from the North Atlantic (Pennsauken, New Jersey) and Gulf (Lake Charles, Louisiana). Crowley employs more than 2,000 men and women in Puerto Rico and several mainland cities to offer the best service available in the trade. Importantly, TMT's service -- unlike the services of PRMSA and Sea-Land -- is provided on vessels built without one dime of taxpayer subsidy. Instead, TMT developed and paid for its triple-deck ro/ro barges specifically for this trade.

It is absolutely unfair to allow PRMSA, Sea-Land or any other carrier to use vessels paid for by U.S. taxpayers to compete with our unsubsidized service. It is especially unfair when one considers that unsubsidized U.S.-flag carriers such as Crowley have relied upon the well-thought-out Merchant Marine Act of 1936 while carriers such as PRMSA purchased these vessels with full understanding of the limitations on their usage. Congress recognized the inequities of allowing such government-assisted vessels competing with other U.S.-flag vessels built without such assistance and prohibited their use in the domestic trades except under well-defined circumstances. Essentially what Congress did was to state that such vessels could only be used in the domestic trade where that activity was incidental to a bona fide voyage in foreign trade. CDS was meant to compensate U.S. carriers for the high ship construction costs we face relative to foreign carriers. The bargain struck by Congress in granting CDS was that subsidy could not be used for vessels operating in the domestic trades since it wasn't needed there to offset the foreign carriers' advantage. It is inconceivable that Congress would now go back on that bargain, allow vessels built with taxpayers' money to operate in domestic trades where there is no foreign competition and where they can use the advantage of subsidy to compete unfairly against unsubsidized U.S.-crewed and U.S.-owned carriers.

Congress should not be changing the rules midstream to benefit one carrier at the disadvantage of others who understood, relied upon, and accepted Congress's decision on these matters. PRMSA made a commercial decision when, in 1987, it bought the Lancers based on its understanding of the law. They knew from the outset the scope of the restrictions. Other carriers made different decisions based upon the clear mandate of the law. There was never any doubt that CDS vessels could not trade exclusively in the Jones Act trade. Nor was there any doubt about the costs and difficulties of attempting a payback or buyout of CDS. For Congress to now change the law to suit PRMSA would effectively shift the burden of PRMSA's mistake to carriers who understood and relied upon the law in the first place.

The following additional arguments are made in opposition to the PRMSA proposal:

1. Repayment of the subsidy does not level the playing field. The carriers who took subsidy should not be allowed to shift their vessels to whichever trade, foreign or domestic, provides the best opportunities at a given time. The Supreme Court recognized this. Seatrains Shipbuilding Corp. v. Shell Oil Co., 444 U.S. 572, 588 (1980). Further, from an economic and accounting standpoint, the proposed repayment does not come close to paying back the value the government gave when it granted the subsidy. Considering just inflation, the proposed repayment is very small in today's dollars. Also, if you compare ship construction and finance costs today with those of the late 1960's/early 1970's, when the Lancers were built and the subsidy paid, the amount PRMSA wants to pay now to buy out the CDS on their ships is almost insignificant. Most importantly, in seeking to avoid a repayment of interest, owners of the nine vessels would be receiving the benefit of an interest-free loan on the value of the unamortized portion of the subsidy paid for the period from the date of construction to the present time. PRMSA would be receiving an unfair advantage, representing interest, of \$19.3-million dollars as of June 1, 1992 on their five ships.¹

2. The Lancers can continue to serve Puerto Rico on a stop-off basis. PRMSA bought the Lancers and phased-out its ro/ro ships on the correct understanding that the Lancers could be used on an incidental stop-off basis (stopping at Puerto Rico enroute to or from a foreign port) under existing law. The only thing that appears to be at issue is the share of foreign trade cargo PRMSA will have to carry on each voyage, a matter which continues to be the subject of litigation and Maritime Administration consideration. It is important to remember the following facts in considering the proposed bill:

- (i) the Lancer vessels under current MarAd interpretation are entitled to call at Puerto Rico as part and parcel of a bona fide foreign voyage;
- (ii) the Lancers in fact have taken advantage of this current MarAd interpretation and are presently serving the Puerto Rican market as part and parcel of a bona fide foreign voyage;
- (iii) the litigation in the federal courts did not prohibit the current usage of the Lancers in the Puerto Rican trade;
- (iv) the federal court has simply asked MarAd to reconsider its interpretation of the law and, if it comes to the same conclusion, to justify

¹ The basis is the regulation contained in 46 CFR 276.3. The formula used for the computation was devised by MarAd for the repayment of CDS for three tankers to enter the domestic trades in the mid-1980's.

- it; and
 (v) even if MarAd sets the foreign trade share at the highest level suggested (50%), it would not legally or practically preclude continued stop-off service at Puerto Rico.

This legislation is premature in that it is attempting to fix a problem that does not necessarily exist.

3. Shipping capacity in the Puerto Rico trade would not decline if the proposal is not adopted. Whatever MarAd decides, a large share of the capacity provided by the Lancers would likely remain in the trade. But even if the Lancers were to drop out entirely, sufficient capacity can be made available to fill the void.

4. PRMSA does not deserve special protection just because it is a state-owned company. If anything, state-owned companies merit closer scrutiny because of their ability to absorb losses -- at taxpayer expense -- of a magnitude that would wipe out private businesses and that harm competing private enterprise. Congress has long recognized this by enacting special rules for controlled carriers. 46 U.S.C. app. §1708. The Puerto Rican Government argues that the purpose of PRMSA is to provide low cost quality intermodal transportation service to Puerto Rico. Low cost quality intermodal transportation service to Puerto Rico is not dependent on PRMSA. There is more than enough shipping capacity in the trade provided by carriers that are extremely competitive. New carriers can and do enter the trade with greater ease than in most domestic trades because of the short distance between Puerto Rico and the mainland and the excellent intermodal infrastructure that exists in the Southeast part of the United States. The Puerto Rican Government claims they carry a disproportionate burden share of the transportation costs associated with financing the U.S. merchant marine. They claim this burden is five percent of all goods purchased in Puerto Rico. There is no doubt a differential cost to Puerto Ricans, as well as Hawaiians and Alaskans, because of the requirement for U.S.-built and U.S.-crewed vessels in the offshore domestic trades, but it is questionable whether it is as high as 5%. In any event, it is a small price to pay for the overall benefits gained.

I will be pleased to try to answer any questions you may have.

Please feel free to call on us if we can provide further information on this issue.

STATEMENT OF PHILIP M. GRILL
 VICE PRESIDENT,
 MATSON NAVIGATION COMPANY, INC.
 ON

H. R. 5030
 A BILL TO ESTABLISH AN ALTERNATE PENALTY FOR OPERATION
 OF CERTAIN VESSELS IN THE COASTWISE TRADE BETWEEN THE UNITED
 STATES AND PUERTO RICO BEFORE THE SUBCOMMITTEE ON MERCHANT
 MARINE COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF
 REPRESENTATIVES

MAY 20, 1992

Mr. Chairman and Members of the Subcommittee,
 I am Philip M. Grill, Vice President of Matson Navigation
 Company, Inc. ("Matson"). I appreciate this opportunity to
 present Matson's views on H.R. 5030, a bill that would permit
 certain vessels built with Construction Differential Subsidy
 (CDS) to operate exclusively in the coastwise trade between the
 continental United States and Puerto Rico.

Matson opposes this bill because its effect is contrary to
 the Congressional purposes and goals expressed in the Merchant
 Marine Act, 1936 (the "Act") namely the promotion and development
 of our American merchant marine, including our domestic trade
 fleet, as well as our foreign trade fleet. Both fleets are vital
 to our nation's commerce and national security; while government
 promotion of the U.S.-flag foreign trade fleet remains an
 important, though sometimes difficult objective, we believe that
 its promotion must not come at the expense of the domestic trade
 fleet.

Matson is proud of its long history as a carrier in the
 domestic shipping trades. We have provided service to Hawaii
 without interruption since 1882, including service during World
 Wars I and II as agent of the U.S. Government. Today, Matson
 operates an efficient fleet of eight container and combination
 container and roll-on/roll-off vessels between U.S. Pacific Coast
 ports on the Mainland and the Port of Honolulu on the Island of
 Oahu carrying primarily containerized cargo and automobiles to
 Hawaii. Cargo destined for the Neighbor Islands of Hawaii, Kauai
 and Maui is transhipped in Honolulu from Matson's line-haul
 vessels to its container and ro/ro barges for delivery to four
 Neighbor Island ports. On the return trip from Honolulu to the
 U.S. Pacific Coast, Matson's fleet carries Hawaii's agricultural
 products as well as automobiles, household goods and other cargo.
 As an exclusively domestic operation, Matson's Hawaii service
 receives no government subsidy for vessel construction or
 operation.

Matson strives to provide a high level of service to its
 customers, commensurate with their needs and the needs of the
 state of Hawaii as a whole. To maintain its high level of
 service, Matson has regularly invested millions of dollars in
 equipment for the U.S. Pacific Coast/Hawaii trade, including over
 \$500 million for the U.S.-built vessels and barges employed in
 our offshore domestic service. This huge investment includes the
 construction of a new containership at National Steel and
 Shipbuilding Company in San Diego at a contract cost of \$129
 million. This is the first new commercial vessel to be built in
 a U.S. shipyard since 1987. It will be delivered to Matson this
 summer and will immediately enter our Hawaii service.

The Domestic Offshore Trades

The domestic offshore commerce segment of the U.S. Merchant
 Marine serves the domestic trades between the continental United
 States and domestic communities such as Hawaii, Alaska and Puerto
 Rico. Domestic offshore commerce carriers have a substantial
 impact on the employment of thousands of maritime and longshore
 workers throughout the United States.

The services provided by domestic offshore commerce carriers are essential to the economies of the states of Hawaii and Alaska, and the Commonwealth of Puerto Rico. Hawaii and Puerto Rico are island economies which are dependent on regularly-scheduled, U.S.-flag ocean common carrier service to provide the "pipeline" through which needed goods are delivered, and through which the products of these islands can reach Mainland markets. Although Alaska is part of the Mainland, its distant location means that its economy is similarly dependent on American ocean common carriers.

The domestic offshore communities must be assured of a U.S.-flag domestic commerce fleet which is dedicated to serving them, regardless of the changing economics of international shipping operations. There can be no assurance that domestic carriers will be able to make investments, such as the one-half billion dollars that Matson has invested in its Hawaii fleet, if they are faced with unrestricted competition from vessels built with construction-differential subsidy provided by the federal government under Section 506 of the Act.

The Construction-Differential Subsidy Program

When Congress developed the Merchant Marine Act, 1936, it recognized the need for providing government aid in the construction of new vessels to be used in the foreign commerce of the United States. Title V of the Act became the vehicle through which this government aid was furnished. No application for such government aid could be approved until there was a determination, among other things, that "the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency". The construction-differential subsidy provisions in Title V do not provide for such government aid to be applied to vessels that would meet the requirements of the domestic commerce of the United States. In fact, there was strong support for the complete exclusion of vessels built with CDS from domestic commerce where they would unfairly compete with vessels that were not constructed with CDS.

The controversy was resolved by the compromise incorporated in Section 506 of the Act. That section requires that the owner of a vessel built with CDS shall agree that the vessel shall be operated exclusively in foreign trade, with four very limited combination foreign and domestic trade exceptions. In addition, the Secretary may consent in writing to a temporary 6-month transfer of a vessel built with CDS to a service not covered by the CDS agreement. If the vessel was operated on one of the combination voyage exceptions, the owner had to pay to the government that proportion of 1/25th of the CDS paid for the vessel as the gross revenue derived from the domestic trade bore to the gross revenue derived for the entire voyages completed during the preceding year. In case of a temporary transfer, the owner had to pay to the government an amount which bears the same proportion to the CDS as the temporary transfer period bore to the entire economic life of the vessel.

The H.R. 5030 Modification to the Construction-Differential Subsidy Program

The purpose of H.R. 5030 is to permit nine specific vessels now engaged in the coastwise trade between continental United States and Puerto Rico to do so throughout the remaining economic lives of the vessels and without engaging in any foreign trade operations. Unrestricted, exclusively domestic coastwise trade operation of vessels built with CDS is directly contrary to the intent of Congress as expressed in the provisions of Title V of the Act and the plain reading of Section 506. Enactment of H.R. 5030 would have the following adverse results:

H.R. 5030 would discourage future investment in ships that conform to the cabotage law restrictions in Section 27, Merchant Marine Act, 1920 (the "Jones Act"). Jones Act operators committed to provide quality service in the domestic trades should not be penalized by allowing lower cost CDS ships to enter the domestic trades on an unrestricted basis.

H.R. 5030 results in unequal competition. The payment of CDS to aid in constructing a vessel represents an interest free loan which the owner must repay to the government, without interest, only for the portion of the time that the CDS vessel engages in domestic trade operations. On the other hand, the owner of a vessel built in the United States without CDS has a much higher initial vessel cost, subject to interest expense, and is placed at a substantial competitive disadvantage.

H.R. 5030 discourages building new ships for domestic trade operation and this discourages investment in United States shipyards. As CDS vessels become older and less competitive in foreign trades, they can be dumped into the domestic trade to compete with the vessels built without CDS. This would lead to domestic trade being monopolized by older, inefficient and unsafe ships.

H.R. 5030 is a further example of government by exception rather than by consistent application of long established policies and principles. When the nine ships identified H.R. 5030 were offered for sale in 1988, Matson and other companies which operate exclusively domestic services did not bid on them for domestic trade use because of the domestic trade restrictions in Section 506. To allow the purchase of the nine ships for combined foreign and domestic trade operations and then to repeal the law and permit unlimited domestic trade operation for the remaining lives of the vessels is a complete frustration of the Congressional policy on which Title V was based. It sends a signal to the maritime industry that there are no rules -- that the law does not mean what it says. It destroys the stable regulatory and statutory environment which is necessary in the capital intensive maritime industry where long-term planning of major capital commitments is an absolute necessity to maintain an efficient, quality ocean transportation business. Board room decisions, such as Matson's commitment of \$129 million in a new containership, must already contend with very complex market and competitive considerations. The complete abrogation of the limitations found in Section 506 to bestow a windfall benefit on two companies that purchased these nine CDS ships in 1988 with full knowledge of the law would send a message to the maritime industry that even the most fundamental elements of our maritime policies are not to be taken seriously. Business cannot be conducted in such an environment.

Finally, H.R. 5030 would set a precedent of using an economic argument as a basis for changing statutory maritime policy. These arguments have been put forward before in other statutory maritime contexts and rejected. They should be rejected here, as well.

Twenty-Five Year Old CDS Vessels Should Be Banned From The Domestic Trade

Section 506 does not contain an affirmative statement that a CDS vessel may be employed in domestic trade after the vessel completes the first 25 years of its life, a period that has been called the entire economic life of a CDS vessel. Congressional policy should encourage the use of safe, modern, U.S.-built vessels in domestic trade and shipyards to build and repair those vessels. Permitting over 25-year old CDS vessels to be employed in domestic trade, either on a combination voyage or a solely domestic voyage, defeats such a policy. The doubt as to whether a CDS vessel can lawfully engage in any domestic trade operation

after it reaches its 25th year should be resolved by a clear-cut statutory prohibition against such domestic trade operation. Restricting 25-year old vessels to foreign trade would protect unsubsidized, domestic operators in the domestic trade from unfair competition and encourage investment in new Jones Act ships so that the domestic trades do not become a dumping ground for old, unsafe, but cheap, tonnage.

H.R. 5030 Vessels Must Be Restricted to Puerto Rico

If Congress should determine that there are special circumstances in the coastwise trade between continental United States and Puerto Rico that necessitate an exception to the policy set forth in Title V of the Act, then the bill should be amended on line 9 of page 1, immediately after the official numbers of the vessels, to read "may engage in the coastwise trade only between the continental United States and Puerto Rico during the remaining operating life of the vessel". This revision would make it clear that the vessels would not be able to operate in any other domestic trade either on solely domestic or combined foreign and domestic voyages for which no justification for an exception has been established.

Thank you for considering the views of Matson Navigation Company, Inc..

Record

STATEMENT OF
 TOTEM RESOURCES CORPORATION
 BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE
 UNITED STATES HOUSE OF REPRESENTATIVES
 CONCERNING H.R. 5030

May 19, 1992

Mr. Chairman and members of the Subcommittee: I am Robert B. McMillen, President and Chief Executive Officer of Totem Resources Corporation. I appreciate the opportunity to submit this statement to the Subcommittee opposing H.R. 5030 and all other efforts to weaken the 1936 Act's separation of the subsidized international fleet and the unsubsidized Jones Act fleet.

I would like briefly to describe Totem Resources Corporation ("TRC") and its role in the unsubsidized domestic trades. TRC is a Seattle-based holding company for three maritime companies:

- Totem Ocean Trailer Express ("TOTE") is an unsubsidized carrier operating two U.S. built, U.S. flag vessels in the trade between the Pacific Northwest and Alaska. TOTE's vessels have been built and operated without a single dollar of subsidy, and TRC recently acquired a third unsubsidized vessel for this service.
- Foss Maritime is a Jones Act tug and barge company active up and down the entire West coast, including Alaska. It operates a fleet of over 125 modern, well-equipped vessels, all of which were built in U.S. yards and are U.S. flag and U.S. crewed.
- Interocean Management Corporation is a Philadelphia-based company which provides ship management and operations services for U.S. flag vessels. It not only manages ships for a variety of U.S. flag carriers but also manages ships for the United States Maritime Administration.

These three companies provide jobs for approximately one thousand employees, primarily in the States of Alaska and Washington.

TRC has no objection to subsidizing United States vessels so they can compete fairly with foreign vessels in international trades, but we strenuously object to allowing those subsidized vessels to compete with the Jones Act vessels, which have never had the benefit of subsidy dollars. All TRC asks for is a level playing field, but allowing vessels built with CDS subsidy to

operate in a Jones Act trade flies in the face of the essential policies of the Merchant Marine Act of 1936. Therefore TRC strenuously opposes legislation allowing subsidized vessels to operate in Jones Act trades.

H.R. 5030 is the latest in a series of efforts to legitimize use of the subsidized Lancer-class vessels in competition with Jones Act carriers. Sea-Land and PRMSA have been trying since 1988 to get permission to use the subsidized Lancers in the Puerto Rico trade, even though the carriers knew when they acquired those vessels that they could not be used in domestic trades, and even though the price they paid for the vessels presumably reflected those restrictions against domestic use.

Every time their position has received a fair hearing, it has been rejected. MARAD initially and secretly advised Sea-Land that it could use the Lancers in Puerto Rico in 1988, but when that action became known, the protests that followed caused MARAD to acknowledge that its prior advice was contrary to law. MARAD then started another proceeding, which again allowed use of the Lancers in the Puerto Rico trade. This time MARAD's action was struck down by the court on January 31, 1992, in Marine Transportation Services Sea-Barge Group, Inc., v. Busey, (Civ. A. 89-2278) (D.D.C. 1992), which held that a CDS vessel could only carry domestic cargo if the domestic cargo was "incidental" and that in order for a voyage to be a bona fide foreign voyage it must be the case that the voyage "would not be taken but for the purpose of transporting the cargo to foreign ports." Now the proponents of this legislation are trying once again to gut Section 506's critical protection of the Jones Act trades from subsidized competition.

Although H.R. 5030 on its face is limited to particular vessels and to the Puerto Rico trade, in reality it affects all Jones Act trades. Even though the bill is a response to the unique circumstances surrounding acquisition of the Lancers, H.R. 5030 would likely be held up as a precedent for operating

other CDS vessels in other domestic trades. There are approximately 48 such vessels, and the owners of all of them could argue that they should receive the same special benefits as the owners of the Lancers. Dumping 48 subsidized vessels into Jones Act trades would be devastating, and the mere prospect of those vessels would seriously inhibit investment in new Jones Act tonnage.

Allowing subsidized vessels to compete in unsubsidized trades would discourage the existing carriers from adding or replacing unsubsidized capacity -- a particularly poor public policy at a time when domestic shipyards are desperately in need of work. For example, TRC recently acquired a third Jones Act vessel for its Alaska service. We would have been reluctant to do so if we believed that vessel might have to compete against vessels built with taxpayer dollars.

TRC will vigorously oppose any and all efforts to admit subsidized vessels into Jones Act trades. In the 1936 Act, Congress carefully and deliberately kept the subsidized vessels out of domestic trades. It was right to do so then, and it is right to do so now. Thank you for considering TRC's views.

Table III

Gross Income and Employment Accounted for by Puerto Rico's Purchases
From the United States, by State, Year Ending June 30, 1968

State	Income (\$ million)			Employment (000)			Principal products
	Direct	Indirect	Total	Direct	Indirect	Total	
U.S. Total	3259.1	3712.9	7072.0	62.9	76.5	139.4	
ALABAMA	89.1	56.2	145.3	1.0	1.2	2.0	Used cars, indus. chemicals, textile products, paper & paperboard.
ALASKA	24.1	50.9	75.0	-	0.1	0.2	Petroleum.
ARIZONA	6.3	37.9	44.2	-	1.1	1.1	Meat products.
ARKANSAS	36.1	25.4	61.5	0.7	0.6	1.3	Meat products, agricultural products, beverages.
CALIFORNIA	3.0	291.0	294.0	0.1	10.6	10.6	Food products.
COLORADO	1.6	47.7	49.3	-	1.0	1.0	Industrial chemicals, food products, wood products.
CONNECTICUT	25.8	45.4	71.2	0.5	1.1	1.6	Fabricated metal products, drugs, used cars.
DELAWARE	9.5	17.6	27.1	0.2	0.3	0.5	Industrial chemicals, plastic raw materials, synthetic fibers.
DIST. OF COL.	4.3	12.4	17.3	0.1	0.3	0.3	Used cars.
FLORIDA	221.6	111.9	333.5	4.4	3.5	7.9	Used cars, industrial chemicals, preserved fruits and vegetables.
GEORGIA	120.8	85.6	206.5	2.5	2.1	4.6	Used cars, textile products, industrial chemicals.
HAWAII	-	8.9	8.9	-	0.3	0.3	
IDAH0	-	12.3	12.4	-	0.3	0.3	
ILLINOIS	232.1	175.2	407.3	4.1	3.2	7.6	Fabricated metal prod., soaps & toilet goods, drugs, plastic prod.
INDIANA	112.7	85.2	197.9	2.2	1.7	3.9	Drugs, plastic products, steel mill products.
IOWA	40.4	47.0	87.4	0.6	0.7	1.4	Agricultural products, used cars, meat products.
KANSAS	15.0	37.1	52.1	0.3	0.7	1.0	Agricultural products, meat products.
KENTUCKY	58.6	45.9	104.5	1.0	1.0	2.0	Used cars, industrial chemicals.
KENTUCKY	58.6	45.9	104.5	0.6	1.0	1.6	Industrial chemicals, beverages.
LOUISIANA	7.0	14.6	21.7	0.2	0.3	0.5	Paper products, footwear, used cars.
MAINE	15.7	45.8	61.5	0.2	1.0	1.2	Electrical equipment, industrial chemicals.
MARYLAND	45.4	75.4	120.8	1.0	1.3	2.3	Instruments, used cars, plastic products.
MICHIGAN	152.4	183.1	335.5	2.7	2.5	6.1	Motor vehicles, fabricated metal products, drugs.
MINNESOTA	67.4	59.6	127.0	1.4	1.2	2.6	Paper products, used cars, computer equipment.
MISSISSIPPI	65.6	27.0	92.6	1.5	0.6	2.1	Used cars, industrial chemicals, household furniture.
MISSOURI	67.4	61.8	129.2	1.3	1.4	2.6	Alcoholic beverages, used cars, industrial chemicals.
MONTANA	-	10.5	10.5	-	0.2	0.2	
NEBRASKA	11.1	26.2	37.3	0.2	0.6	0.8	Meat products.
NEVADA	-	14.3	14.3	-	0.4	0.4	
NEW HAMPSHIRE	7.5	12.4	20.0	0.2	0.2	0.5	Used cars.
NEW JERSEY	226.7	119.1	345.8	4.2	2.6	6.8	Drugs, toilet goods, indus. chem's, preserved fruits & vegetables.
NEW MEXICO	0.1	16.7	16.7	-	0.3	0.3	
NEW YORK	246.6	226.7	473.2	3.9	4.5	8.3	Drugs, toilet goods, plastic products, used cars.
NORTH CAROLINA	177.7	193.9	371.6	4.4	2.7	7.1	Textile products, used cars, industrial chemicals.
NORTH DAKOTA	3.6	11.2	14.8	-	0.1	0.2	Agricultural products.
OHIO	245.8	184.9	430.8	4.1	3.5	7.5	Detergents, fabricated metal products, rubber and plastic products.
OKLAHOMA	13.2	64.9	78.1	0.3	0.8	1.0	Agricultural products, plastic products.
OREGON	0.2	34.3	34.5	-	1.0	1.0	
PENNSYLVANIA	254.9	164.3	419.2	4.7	3.5	8.2	Drugs, electrical equip., steel mill prod., fabricated metal prod.
RHODE ISLAND	7.3	12.1	19.5	0.2	0.3	0.5	Jewelry, used cars.
SOUTH CAROLINA	87.0	56.6	143.6	2.2	1.6	3.8	Textile products, industrial chemicals, used cars.
SOUTH DAKOTA	4.1	8.6	12.7	0.1	0.1	0.2	Meat products.
TENNESSEE	170.6	66.4	237.0	3.3	1.5	4.8	Industrial chemicals, used cars, household appliances.
TEXAS	120.2	421.0	541.2	2.1	5.3	7.4	Industrial chemicals, beverages, semiconductors.
UTAH	0.2	16.1	16.3	-	0.4	0.4	
VERMONT	2.9	5.8	8.6	0.1	0.2	0.2	Used cars, instruments, dairy products.
VIRGINIA	97.4	75.5	172.9	1.7	1.7	3.4	Used cars, industrial chemicals.
WASHINGTON	0.4	50.9	51.2	-	1.6	1.6	
WEST VIRGINIA	20.4	29.2	49.6	0.4	0.5	0.9	Industrial chemicals.
WISCONSIN	101.0	77.6	178.6	1.7	1.5	3.2	Fabricated metal products, machinery, beverages.
WYOMING	0.2	17.0	17.2	-	0.2	0.2	

Dash (-) signifies nil or negligible. Small discrepancies in addition are due to rounding.
*Based on direct income accruing to final producers.

(SOURCE: Economic Associates, Inc., Washington, D.C.)

Rec'd

HEARING OF SUBCOMMITTEE ON MERCHANT MARINE
REGARDING H.R. 5030

Statement Of Kadampanattu Corporation

Kadampanattu Corporation (K Corp.) owns two Jones Act vessels that now operate in the Puerto Rico trade. K Corp. also owns a subsidy-built vessel not currently operating in the Puerto Rico trade.

The bill as currently written benefits nine vessels owned by two large carriers in the Puerto Rico trade to the further major detriment of existing and potential competitors. If the law is going to be changed, K Corp. believes that it should be even-handed and apply to all subsidy-built vessels.


John D. McCown
Vice President
Kadampanattu Corporation

COMMONWEALTH OF PUERTO RICO

OFFICE OF THE GOVERNOR
SAN JUAN, PUERTO RICO 00901

Recd

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MAY 22 1992

COMMITTEE ON MERCHANT MARINE
AND FISHERIES

May 20, 1992

The Honorable Walter B. Jones
Chairman
Merchant Marine Subcommittee
Committee on Merchant Marine and
Fisheries
1334 Longworth House Office Bldg.
U. S. House of Representatives
Washington, DC 20515-6230

Dear Mr. Chairman:

I would like to state the official support of the Government of the Commonwealth of Puerto Rico to H. R. 5030, introduced by Congressman Antonio J. Colorado, the Resident Commissioner from Puerto Rico.

This bill is very important to the people of Puerto Rico because it helps ensure that Puerto Rico will continue to be served by a first-class Jones Act fleet such as the one formed by the Lancer vessels operated by the Puerto Rico Maritime Shipping Authority (PRMSA) and by Sea-Land, Inc. It is essential for the continued economic development of Puerto Rico to have vessels which can cover the Puerto Rico-United States trade route as quickly as possible. These Lancers travel at more than twice the speed of barges which are the only available substitutes in the Jones Act fleet.

I know that you understand that as an island, Puerto Rico is a main player in the Jones Act. Puerto Rico's trade with the mainland United States exceeds \$27 billion. This represents over 80 percent of Puerto Rico total external trade. It is precisely because Puerto Rico's trade with the mainland United States is so vital to Puerto Rico that during my first term as Governor of Puerto Rico I took the necessary measures to form PRMSA, a carrier dedicated to serve the Puerto Rico-United States trade route.

The Honorable Walter B. Jones
Page 2

U. S. citizens living in Puerto Rico, with a per capita income half of that of the state of Mississippi, have to pay significantly more for their food than their fellow citizens in the Mainland. In spite of this fact, Puerto Rico has always contributed to the objectives of the Jones Act and our decision to form PRMSA makes us an even more integral part of the U. S. Merchant Marine. We were proud and honored when Navieras was able to send the S.S. Ponce to service in the Persian Gulf during Desert Storm Operation.

The Lancer vessels covered by H. R. 5030 represent an improvement of the PRMSA fleet necessary to continue serving the people of Puerto Rico effectively. PRMSA rescued these vessels from being scrapped by purchasing them from the trustee of the bankrupt U. S. Lines for over \$44 million. PRMSA then spent more than \$45 million repairing and reconfiguring these vessels. This, of course, was all done in U. S. shipyards.

Today we ask for relief from the imposition of an unrealistic and highly restrictive foreign trade requirement on these vessels. If you do not act in favor of H. R. 5030, these vessels will not be able to continue serving the Puerto Rico-United States trade route.

I am sorry that I cannot be before you, but I have authorized Mr. Colorado to speak on behalf of my administration in support of this legislation.

Cordially,



Rafael Hernández-Colón



CAMARA DE COMERCIO DE PUERTO RICO

C.P.R. Antonio Gonsky Flores

PRESIDENTE

May 19, 1992

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MAY 19 1992

COMITE DE ASISTENTES
1992

The Honorable Walter B. Jones, Chairman
House Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of Chamber of Commerce of Puerto Rico, I am writing to express our support for H. R. 5030, recently introduced by Congressman Antonio Colorado, of Puerto Rico, and referred to your Committee.

The Chamber of Commerce of Puerto Rico is one of the oldest chambers in the nation. Its mission is to promote a healthy economic, political, technological and social environment for the development of private enterprise in Puerto Rico. With its 1,800 members and its 60 affiliated associations, the Chamber of Commerce of Puerto Rico is the largest federation of businesses and associations in Puerto Rico. Membership runs from the largest and oldest companies in Puerto Rico and multinational corporations to very small and middle-sized businesses.

The U. S. is the major market for most Puerto Rican products. Nearly 85 percent of our exports goes to the Mainland. On the other hand, the U. S. remains the principal exporter to Puerto Rico. Because Puerto Rico is an Island, its trade is almost completely dependent on ocean transportation. U. S. coastwise shipping laws requires that service between domestic ports, including services from and to Puerto Rico, be carried on U. S. built and U. S. manned vessels operating under U. S. flag, which are more costly than foreign operated vessels. As a result of this situation Puerto Rican consumers bear the largest share of the cost of subsidizing the U. S. merchant marine fleet. Requiring a minimum foreign cargo of 25 per cent, on vessels receiving a construction differential subsidy, would result in higher costs to our economy for domestic water transportation.

Somos Voz y Acción de la Empresa Privada

P.O. Box 3780 San Juan Puerto Rico 00911 787-3780 Tel (809) 731-5050



Hon. Walter B. Jones
May 19, 1992
Page 2

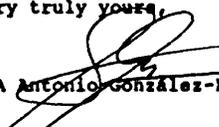
H. R. 5030 will provide the necessary relief from this burden at no cost to the U. S. Government, assuring adequate and continuous shipping services between Puerto Rico and the United States, which is matter of utmost concern to the people of Puerto Rico and to our members.

We understand that a public hearing will be held on May 20 to consider H. R. 5030. Please inform the members of the Committee of our support to this legislation and let us know if we can be of further assistance to you.

H. R. 5030 is vitally important to the future and economic well-being of the people of Puerto Rico and to our business community. Again, we strongly support H. R. 5030 and urge the Committee to recommend it favorably.

Thank you for your consideration.

Very truly yours,


CPA Antonio González-Flores

mca/c-jones

• DE PUERTO RICO •

PUERTO RICO MARINE MANAGEMENT, INC.

PO BOX 3170 EDISON NEW JERSEY 08818 • (908) 225 2121 • NY (212) 269 8698

May 15, 1992

The Honorable Walter B. Jones, Chairman
House Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

My name is Miguel A. Rossy. I am currently the Chairman of the Board of Directors of Puerto Rico Marine Management, Inc., the operations company for the Puerto Rico Maritime Shipping Authority ("PRMSA"). I have almost thirty years experience in the maritime industry having served as an executive with many different shipping companies during that period. A substantial portion of that time has been spent in the U.S. trade to Puerto Rico and the Caribbean. I appreciate the opportunity to present my views to you in support of H.R. 5030.

PRMSA was created in 1974 by purchase of the assets and stock of the three major carriers then serving Puerto Rico, Sea-Land Service, Inc., Seatrain Lines, Inc. and Transamerican Trailer Transport, Inc. This provided PRMSA with a combination of roll-on/roll-off trailership service and containership service, and, at the time of its creation, PRMSA carried over 90% of the liner cargoes between the mainland and Puerto Rico. As PRMSA's vessel's aged, however -- especially the containerships which were well into their useful lives when PRMSA purchased them -- it was necessary to replace the tonnage. By 1988, most of the containerships had been retired; the roll-on/roll-off trailerships had become uneconomical to operated, and the costs of building new vessels in United States shipyards was prohibitive. Due to the 1986 bankruptcy filing of United States Lines, Inc., their Lancer vessels became available at about this time. U.S. Lines' Lancer vessels were smaller than those utilized in the transpacific or transatlantic trades, and were ideal for PRMSA's mixed Puerto Rico/Caribbean services. Moreover, because of the bankruptcy, the age of the Lancer vessels (17-20 years in 1988), and their condition after a two year lay-up, the price of the Lancers was a fraction of the cost of a new building in a United States yard. PRMSA eventually bought these vessels at auction for approximately \$44.125 million, and invested another \$45.7 million in repairs and reconfiguration in United States shipyards. The vessels are now extremely well suited for PRMSA's Puerto Rico/Caribbean service.

The Honorable Walter B. Jones, Chairman
May 15, 1992
Page Two

Since PRMSA was formed in 1974, other steamship companies have entered the Puerto Rico trade. At present, PRMSA estimates its share of the market at approximately 45%. Its other competitors are Sea-Land Service, Inc. ("Sea-Land"), Trailer Marine Transport, Inc. ("TMT"), and Marine Transportation Services Sea-Barge Group, Inc. ("Sea-Barge"). PRMSA estimates -- and these are only estimates -- that Sea-Land's share of the Puerto Rico market is approximately 15%, TMT's 30%, and Sea-Barge's 10%. Only PRMSA and Sea-Land operate self-propelled container vessels; TMT and Sea-Barge are tug and barge carriers. Only PRMSA serves a full range of Atlantic Coast and Gulf Ports, specifically New York, Baltimore, Charleston, Jacksonville, and New Orleans. New York is also served by Sea-Land while TMT serves the North Atlantic area through Pennsauken, New Jersey. No carrier other than PRMSA serves Baltimore or Charleston. Through these ports where PRMSA calls, we provide service, via truck and railroads, to all the states in the United States having business with Puerto Rico and the Caribbean Islands. There is both containership, and barge service at Jacksonville. Sea-Land and PRMSA serve New Orleans, and TMT serves the Gulf at Lake Charles, Louisiana. We estimate that PRMSA's and Sea-Land's vessels constitute 58% of total annual capacity Southbound and Northbound, and 73% of capacity in the North Atlantic trade.

Self-propelled vessels serve both a commercial and a military function which barge operators cannot match. The average speed of the Lancers is 22 knots, whereas average speed for barges is 9 knots. Puerto Rico imports most of its foodstuffs, usually in refrigerated or temperature controlled containers. Because of time and container maintenance considerations, the overwhelming preponderance of this traffic, which constitutes approximately 10% of all traffic to Puerto Rico, moves on self-propelled vessels. Moreover, higher speed vessels considerably reduce inventory costs for shippers of all commodities. Self-propelled vessels, unlike barges, have substantial military usefulness in times of national emergencies.

Our introduction of the Lancer vessels did not harm any of our competitors. No benefits of the subsidy originally received by U.S. Lines were passed on to us. In fact, our capital costs are higher now than they would have been had we built the vessels when U.S. Lines built them, but without any U.S. Government aid. Moreover, our capacity now is almost exactly what it was in 1988 before we purchased the vessels.

The Honorable Walter B. Jones, Chairman
May 15, 1992
Page Three

The fact of our introduction of the Lancers four years ago has not hurt any of our competitors is shown by the expansion of our competitors in this trade. Sea-Barge, which entered the trade with only a weekly service to and from Miami, has doubled its service by extending it to Jacksonville, and then recently announced an increase in its barge capacity. Crowley has increased the capacity of its barges and the frequency of its service from Jacksonville. A new competitor, Trailerbridge, has recently entered the trade from Jacksonville with a substantial commitment of equipment for its weekly service. During this four year period, there has been no equivalent growth in the trade as a whole. Therefore, in theory and in fact, our introduction of the Lancer vessels has harmed no Jones Act operator.

I thank you very much for the opportunity to submit these comments.

Very truly yours,

/s/ Miguel A. Rossy

Miguel A. Rossy
Chairman

MAR:sjl

PUERTO RICO MARINE MANAGEMENT, INC.

P.O. BOX 3170, 212 FERNWOOD AVENUE, EDISON, NEW JERSEY 08818 • (908) 225-2121 • N.Y. (212) 619-6510

Charles I. HiltzheimerPRESIDENT
CHIEF EXECUTIVE OFFICER

May 14, 1992

The Honorable Walter B. Jones, Chairman
House Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

My name is Charles Hiltzheimer. I am President and CEO for Puerto Rico Marine Management, Inc., agents for Navieras de Puerto Rico.

I offer my statement in support of H.R. 5030 and apologize that prior commitments preclude my appearance before this Committee today.

The issues before this Committee concern the 8 Lancer Class vessels purchased at Bankruptcy Auction during 1988; 5 vessels purchased by the Puerto Rican Government, and 3 purchased by Sea Land. All 8 vessels currently operate in the United States/Puerto Rico domestic trade. The Lancer vessel deployment provides the equivalent of 7 voyages per week between ports on the East, Southeast, and Gulf coasts to Puerto Rico.

The southbound capacity provided by these Lancer vessels equates to 4200 FEU per week or 218,400 FEU annually. Southbound utilization of capacity averages about 85% or 185,000 southbound loads per year. During the peak shipping seasons, vessel capacity is more fully utilized.

These 8 vessels currently carry more than 60% of the southbound cargo to Puerto Rico. The remaining 35% to 40% moves by barge carrier.

Aside from the legal and regulatory issues that have been raised, I believe it is absolutely essential for members of the committee to understand the consequences of restricting or inhibiting the utilization of these vessels in the Puerto Rico trade.

The Honorable Walter B. Jones
Page 2
May 14, 1992

I submit the following observations, based upon my knowledge and professional experience in the Maritime Industry for over 35 years.

1. There is no viable alternative use for the Lancer Class vessels. Capacity is too small to be cost competitive and operating cost is too high for foreign commerce trades served by much larger, more cost efficient vessels.
2. There are no suitable Jones Act vessels with comparable capacity and speed, nor are there sufficient tugs and barges available to accommodate the cargoes carried by the Lancer fleet.

Current barge service provides 8 voyages per week providing a capacity of about 148,000 FEU southbound. I estimate that barge capacity utilization is at about 82% or 121,000 loads per year.

At optimum, only 27,000 loads per year could be accommodated by present unused barge capacity or only 14% of cargoes presently carried by Lancer vessels.

In order to accommodate the balance of southbound cargo carried by Lancer vessels today, I calculate that it would require a minimum of 8 additional barge voyages per week, or an additional 416 voyages per year.

This would require a supplemental fleet of 16 to 20 barges (minimum 350 FEU size) and 16 to 20 tugs; just to accommodate today's cargoes.

San Juan's ports and terminals would have to gear up for 24 hour, 7 days per week barge unloading to prevent a huge potential bottleneck created by 3 barge arrivals in San Juan nearly every day of the year.

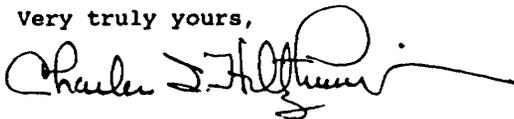
I submit that the additional tug and barge resources required to lift the present cargo carried by the Lancer fleet does not exist. Therefore, transportation to Puerto Rico would be materially impaired for the foreseeable future.

I repeat, there are no Jones Act qualified vessels available (given required capacity and speed) to replace the Lancer vessels.

The Honorable Walter B. Jones
Page 3
May 14, 1992

In conclusion, it is unquestionably both prudent and equitable to certify these Lancer class vessels for the Puerto Rico trade, without undue regulatory interference so that the public may continue to be served with a reasonably effective service.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles I. Hiltzheimer". The signature is written in dark ink and is positioned above the printed name.

Charles I. Hiltzheimer

CIH:las



Ave. Ponce de León 420 • Hato Rey, P.R. 00919 • Telf. (809) 759-9445 / Fax (809) 756-7670

Record

ING. DANIEL LEBRON
Presidente

LCDO HECTOR JIMENEZ JUARBE
Vicepresidente Ejecutivo

May 18, 1992

The Honorable Walter B. Jones, Chairman
House Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

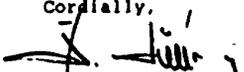
Congressman Antonio J. Colorado introduced H.R. 5030 to relieve the Puerto Rico Maritime Shipping Authority (PRMSA), from Section 506 of the Merchant Marine Act of 1936, which requires "foreign voyage" when carrying maritime cargo to and from the Commonwealth of Puerto Rico. H.R. 5030 has been referred to your Committee. This legislation is needed in order to help PRMSA to provide continued service to the citizens of the Island and the people in the mainland of United States.

The Puerto Rico Manufacturers Association who groups more than 1,800 business firms from the manufacturing and service sectors, supports H.R. 5030. It is our belief that the restriction imposed by Section 506, SUPRA, is extremely negative to the best interests of the Commonwealth of Puerto Rico, the PRMSA, Sea-Land Services Inc. and the improvement of maritime traffic between the continental U.S. and Puerto Rico.

We understand that a public hearing will be held on May 20 to consider H.R. 5030. Please inform the members of the Committee of our support to this legislation and let us know if we can be of further assistance to you. H. R. 5030 is vitally important to the future and economic well-being of the people of Puerto Rico and our business community.

Again, we strongly support H.R. 5030 and urge the Committee to recommend it favorably. Thank you for your consideration.

Cordially,


Héctor Jiménez Juarbe

nr

Presidente Saliente: MANUEL L. DEL VALLE. Vicepresidentes: LUIS DAVILA, MIGUEL A. NAZARIO, NATALE S. RICCARDI, ANTONIO RODRIGUEZ. Secretario: LUIS E. MARINI. Tesorero: BARTOLOME GAMUNDI. Directores Regionales: ENRIQUE M. CARDONA (San Juan), WALESKA RIVERA (Barrancones), CANDIDO JIMENEZ (Vieja Baya), JORGE IVAN RUIZ (Arecibo), FERNANDO FERNANDEZ (Aguadilla), ISRAEL HILERIO (Mayagüez), LUIS MATOS (Ponce), EDGARDO RODRIGUEZ (Caguas), LUIS R. ACEVEDO (Humacao), ALFREDO R. NADAL (Carolina), FRANCISCO GARCIA (Fajardo), JOSE R. GIERBOINI (Guayama). Director por Representación: DENISE SANTOS. Representantes de los Miembros Asociados: JOSE M. COBIAN, EMILIO E. PINERO, TRISTAN REYES OLESTRA, AURELIO TORRES PONSÁ.


NORSHIPCO
NORFOLK SHIPBUILDING & DRYDOCK CORPORATION

 PO BOX 2100
 NORFOLK VIRGINIA 23501-2100
 Inter 823-813 Cable NORSHIPCO
 Telephone 804/494-4000

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MAY 21 1992

 COMMITTEE ON MERCHANT MARINE
 AND FISHERIES

May 18, 1992

 The Honorable Walter B. Jones, Chairman
 House Committee on Merchant Marine & Fisheries
 1334 Longworth House Office Building
 Washington, D.C. 20515-6230

Dear Mr. Chairman:

I am writing to you in support of H.R. 5030, a bill to exempt nine CDS-built vessels from future interpretations of Section 506 of the Merchant Marine Act of 1936, as it pertains to foreign cargo requirements in the Puerto Rico trade.

This legislation will be considered by your Committee in a hearing this Wednesday, May 20th. And, although Norshipco has no direct interest in rulings by the Maritime Administration on cargo requirements for CDS-built vessels, we do have concern for the survival of Navieras, the Puerto Rico shipping line.

 Norshipco has performed extensive conversion and repair work on two of Navieras' Lancer-class vessels, amounting to over \$14 million. Like any ship repair yard striving to survive in our own right, any work we receive is important to maintaining jobs in our shipyard.

Your support for H.R. 5030 is appreciated.

Sincerely,

 John L. Roper, III
 President and Chief Executive Officer

The Port of New Orleans

J. Ron Brinson
President and
Chief Executive Officer

May 6, 1992

BY FAX: (202) 225-3354

The Honorable Walter S. Jones
241 Cannon House Office Building
Washington, D.C. 20515-3301

Dear Congressman Jones:

I am writing on behalf of the Port of New Orleans to request your support for legislation recently introduced by Congressman Colorado of Puerto Rico, H.R. 5030.

This bill would exempt certain vessels in the Puerto Rican trade from the provision of Section 506 of the Merchant Marine Act, or from any future regulatory interpretations which require unreasonable "foreign voyage" requirements when carrying maritime cargo between the Port of New Orleans and Puerto Rico.

H.R. 5030 has been referred to the House Committee on Merchant Marine and Fisheries and is expected to be considered in markup session by the Subcommittee on Merchant Marine on Thursday, May 7. It is our understanding that it may be offered as an amendment to the FY 93 maritime authorization bill at that time.

Please do everything you can to see that this bill is adopted. For the Port of New Orleans, the Puerto Rican trade amounted to more than 1 million tons in 1991, some 14.3 percent of the total general cargo tonnage. Navieras de Puerto Rico and Sea-Land Services, the major carriers in the trade between Puerto Rico and the mainland, have long-term

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS
POST OFFICE BOX 60048 • NEW ORLEANS, LOUISIANA 70160
TEL: 504-522-2551 • CABLE: CENTROPORT

The Hon. Walter B. Jones
Page 2
May 6, 1992

terminal leases with the Port of New Orleans that yield over \$2 million annually.

In a time when ports in the Gulf and South Atlantic are struggling to identify new markets and maintain existing cargo flows against the rising turbulence of market forces, the stability of the Puerto Rican trade is extremely important.

Thank you for your consideration.

Sincerely,


J. RON BRINSON

JRB/svd

LAW OFFICES
VAUGHAN & LAWRENCE, P. A.
 83 BROAD STREET
 CHARLESTON, SOUTH CAROLINA 29401

WILLIAM H. VAUGHAN, JR.
 PHILIP L. LAWRENCE
 W. SANDWELL VAUGHAN
 HARRIST E. VAUGHAN

POST OFFICE BOX 1688
 CHARLESTON, SC 29408
 TELEPHONE: (803) 782-0680
 TELEFAX: (803) 782-0688

May 6, 1992

OUR FILE NUMBER:

92020VOV

The Honorable Walter B. Jones
 241 Cannon House Office Bldg.
 Washington, DC 20515-3301

Dear Congressman Jones:

I am writing on behalf of the South Carolina State Ports Authority to request your support for legislation recently introduced by Congressman Colorado of the Commonwealth of Puerto Rico, H.R. 5030.

This bill would exempt certain vessels in the Puerto Rico trade from the provisions of Section 506 of the Merchant Marine Act, or from any future regulatory interpretations, which require unreasonable foreign cargo requirements when carrying maritime cargo between our port and Puerto Rico.

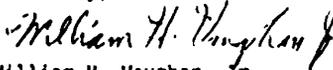
H.R. 5030 has been referred to the House Committee on Merchant Marine and Fisheries, and is expected to be considered in markup session by the Subcommittee on Merchant Marine on Thursday, May 7. It is our understanding that it may be offered as an amendment to the FY 93 Maritime authorization bill at that time.

Please do everything you can to see that this bill is adopted.

Without this exemption the Puerto Rico Maritime Shipping Authority tells us that it would be forced to eliminate its call at Charleston in order to schedule the foreign trade. This would mean a loss of approximately 1,336 jobs in South Carolina. It would also increase costs to persons in South Carolina, Georgia, North Carolina, Tennessee, and Kentucky who do business with Puerto Rico.

Thank you for your consideration.

Sincerely,



William H. Vaughan, Jr.
 General Counsel for
 South Carolina State Ports Authority

WHVjr/lde

STEVENS SHIPPING & TERMINAL COMPANY
 STEAMSHIP AGENTS CHARTERING BROKERS STEVEDORES WAREHOUSE & TERMINAL OPERATORS
 2031 TALLEYRAND AVENUE, SUITE 202
 PORT CENTRAL OFFICE BUILDING
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BRANSON, GA
 CHARLESTON, S.C.
 FERNANDINA, FLA.
 GEORGETOWN, S.C.
 JACKSONVILLE, FLA.
 KINGS BAY, GA
 NEW YORK, N.Y.
 PORT CANAVERAL, FLA.
 SAVANNAH, GA

July 13, 1992

The Honorable Gerry E. Studds
 House Committee on Merchant Marine & Fisheries
 Room 237
 Cannon House Office Building
 Washington, D.C. 20515

Dear Congressman Studds:

The purpose of this letter is to express Stevens Shipping and Terminal Company's support of H.R. 5030 which is currently before your committee. H.R. 5030's purpose is to exempt 9 vessels built with Construction Differential Subsidies from future interpretations of Section 506 of the Merchant Marine Act of 1936 as it relates to foreign/domestic cargo mix in the Puerto Rican Trade.

The legislation as it is proposed would harm no one and in fact benefit many. Not only the general public of the Island of Puerto Rico, but the many people in ports on the eastern and gulf coasts of the United States whose jobs are directly dependent on the Puerto Rican Trade.

While our expertise does not allow us to address the legal ramifications, let us address these practical facts:

1. U.S. Lines was the original beneficiary of the Construction Differential Subsidy.
2. PRMSA acquired 5 of the Lancer Class vessels at bankruptcy auction. The cost to PRMSA to acquire and return the vessels to operating conditions was higher than the initial construction cost without C.D.S.
3. Logistically, there is no other practical application for the Lancer fleet, and their return to service with PRMSA alone provided American shipyard jobs for repair and reconfiguration in excess of 45 million dollars.
4. Forcing PRMSA to carry 25% of the cargo foreign would work economic hardships on PRMSA with the additional port call requirement as well as reduce the tonnage

STEVENS SHIPPING & TERMINAL COMPANY
JACKSONVILLE FLORIDA 32204

available to carry cargo to Puerto Rico. This in turn could drive up freight rates and increase commodity costs to the people of Puerto Rico who already are faced with high cost and over 17% unemployment.

5. Should PRMSA be unable to continue in their Puerto Rican trade, the result would be further loss of jobs in Puerto Rico and all along the Eastern and Gulf coasts of the U.S.
6. The direct economic impact of PRMSA in the port of Jacksonville, Florida alone includes approx. 80-100 I.L.A. jobs, 175,000 annual manhours in I.L.A. work and 6.65 million in annual wages including benefits for that work. These figures can almost be multiplied by the number of ports that would be affected. The trickle down benefit in terms of jobs in related industry and even consumer jobs is almost immeasurable.
7. Finally and most importantly, this bill does not seek something for nothing. It simply seeks a replacement penalty to carrying the 25% foreign parcel of cargo. While carrying that 25% foreign parcel of cargo puts no real additional money into the U.S. treasury, the alternative offered by H.R. 5030 does, to the tune of approximately 4.5 million dollars. That figure is fairly calculated by applying the percentage of remaining useful life of the vessels against the initial C.D.S.

Considering that the port of Jacksonville has 5 carriers with regular service to Puerto Rico, and that two of these services have been initiated since the Lancera came into service, it cannot be said that their introduction has hurt their competition or the trade in general. Being therefore unable to find fault with this legislation, we respectfully urge your favorable recommendation of H.R. 5030.

Thank you for the opportunity to present our company's point of view, and thank you in advance for your consideration.

STEVENS SHIPPING & TERMINAL COMPANY
JACKSONVILLE FLORIDA 32208

Very truly yours,

Philip B. Sordian

Philip B. Sordian
Vice President

cc: Ms. Cher Brooks
Mr. Kip Robinson
Mr. Randy Flood

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARINE TRANSPORTATION SERVICES
SEA-BARGE GROUP, INC.,

Plaintiff,

v.

JAMES BUSEY, Acting Secretary,
U.S. Department
of Transportation,

UNITED STATES DEPARTMENT OF
TRANSPORTATION,

WILLIAM A. CREELMAN, Deputy
Maritime Administrator,

UNITED STATES MARITIME
ADMINISTRATION,

Defendants.

PUERTO RICO MARITIME SHIPPING
AUTHORITY,

Plaintiff,

v.

JAMES BUSEY, Acting Secretary,
U.S. Department of
Transportation,

UNITED STATES DEPARTMENT OF
TRANSPORTATION,

WILLIAM A. CREELMAN, Deputy
Maritime Administrator,

UNITED STATES MARITIME
ADMINISTRATION,

Defendants.

Civil Action No. 89-2278
(RCL)

FILED

JAN 31 1992

Clerk, U.S. District Court
District of Columbia

Civil Action No. 90-0969
(RCL)

SEA-LAND SERVICE, INC.,

Plaintiff,

v.

JAMES BUSEY, Acting Secretary,
U.S. Department
of Transportation,

UNITED STATES DEPARTMENT OF
TRANSPORTATION,

WILLIAM A. CREELMAN, Deputy
Maritime Administrator,

UNITED STATES MARITIME
ADMINISTRATION,

Defendants.

Civil Action No. 90-0980
(RCL)

FILED

JAN 31 1992

Clerk, U.S. District Court
District of Columbia

ORDER

This case comes before the court upon Marine Transportation Services Sea-Barge Group, Inc. ("Sea-Barge")'s motion for summary judgment, Sea-Land Service, Inc. ("Sea-Land")'s motion for summary judgment, Puerto Rico Maritime Shipping Authority ("PRMSA")'s motion for summary judgment and the Federal Defendants' motion for summary judgment. For the reasons stated in the memorandum opinion issued this date, it is hereby ORDERED that:

1. The court DECLARES that the United States Maritime Administration's ("MarAd's") Final Statutory Interpretation of the Fourth Exception to Section 506 of the Merchant Marine Act of 1936, as amended, 46 U.S.C. § 1156 (1975 and Supp. 1991) ("Section 506"), is arbitrary and capricious.

2. Sea-Barge's motion for summary judgment is GRANTED insofar as MarAd's Final Statutory Interpretation is arbitrary and

capricious; is DENIED insofar as construction-differential subsidy ("CDS") vessels must not carry at least 50 percent foreign cargo to qualify as a foreign voyage under the Fourth Exception to Section 506; is DENIED insofar as transhipped cargo must not be deemed domestic cargo for the purposes of Section 506; and is DENIED insofar as the court cannot require MarAd to enforce its interpretation of Section 506.

3. Sea-Land's motion for summary judgment is GRANTED insofar as MarAd's Final Statutory Interpretation is arbitrary and capricious; is DENIED insofar as MarAd has the statutory authority to prescribe an acceptable level of domestic carriage for a CDS vessel.

4. PRMSA's motion for summary judgment is GRANTED insofar as MarAd's Final Statutory Interpretation is arbitrary and capricious; is DENIED insofar as MarAd's Final Statutory Interpretation and October 27 letter are not unintelligible; is DENIED insofar as MarAd's itinerary restriction is not inconsistent with Section 506; and is DENIED insofar as PRMSA was not denied its right under the Administrative Procedure Act ("APA") to notice and opportunity to comment on MarAd's June 6 Opinion.

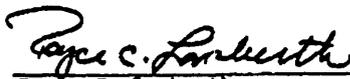
5. Federal Defendants' motion for summary judgment is DENIED insofar as MarAd's Final Statutory Interpretation is arbitrary and capricious; is GRANTED insofar as transhipped cargo need not be deemed domestic cargo for the purposes of § 506; is GRANTED insofar as the court cannot require MarAd to enforce its interpretation of § 506; is GRANTED insofar as MarAd has the statutory authority to

prescribe an acceptable level of domestic cargo for a CDS vessel; is GRANTED insofar as MarAd's June 6 Opinion does not violate the APA; is GRANTED insofar as MarAd's Final Statutory Interpretation is not unintelligible; is GRANTED insofar as MarAd's itinerary restriction is not inconsistent with § 506; and is GRANTED insofar as PRMSA was not denied its right under the APA to notice and an opportunity to comment on the June 6 Opinion.

6. MarAd is ORDERED to make new a determination in accordance with this order and accompanying memorandum opinion. In the meantime, these cases shall stand DISMISSED on the dockets of this court.

7. MarAd shall serve on plaintiffs, and provide other interested parties with, notice of any proposed new interpretation of the Fourth Exception to Section 506 that is made in accordance with this opinion and shall provide all interested parties with the opportunity to submit comments on its new interpretation in accordance with the APA. If any plaintiff does not believe that MarAd's new interpretation of the Fourth Exception to Section 506 complies with the court's order, any plaintiff may seek further relief by reopening its case by motion within 30 days of MarAd's final determination on remand.

SO ORDERED.



Royce C. Lamberth
United States District Judge

DATE: JAN 31 1992

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARINE TRANSPORTATION SERVICES
SEA-BARGE GROUP, INC.,

Plaintiff,

v.

JAMES BUSEY, Acting Secretary,
U.S. Department
of Transportation,

UNITED STATES DEPARTMENT OF
TRANSPORTATION,

WILLIAM A. CREELMAN, Deputy
Maritime Administrator,

UNITED STATES MARITIME
ADMINISTRATION,

Defendants.

PUERTO RICO MARITIME SHIPPING
AUTHORITY,

Plaintiff,

v.

JAMES BUSEY, Acting Secretary,
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UNITED STATES DEPARTMENT OF
TRANSPORTATION,

WILLIAM A. CREELMAN, Deputy
Maritime Administrator,

UNITED STATES MARITIME
ADMINISTRATION,

Defendants.

Civil Action No. 89-2278
(RCL)

FILED

JAN 31 1992

Clerk, U.S. District Court
District of Columbia

Civil Action No. 90-0969
(RCL)

SEA-LAND SERVICE, INC.,
 Plaintiff,

v.

JAMES BUSEY, Acting Secretary,
 U.S. Department of
 Transportation,

UNITED STATES DEPARTMENT OF
 TRANSPORTATION,

WILLIAM A. CREELMAN, Deputy
 Maritime Administrator,

UNITED STATES MARITIME
 ADMINISTRATION,

Defendants.

Civil Action No. 90-0980
 (RCL)

FILED

JAN 31 1992

Clerk, U.S. District Court
 District of Columbia

MEMORANDUM OPINION

These cases come before the court on several motions and cross motions for summary judgment and the oppositions and replies thereto concerning the proper interpretation of Section 506 of the Merchant Marine Act of 1936, as amended, 46 U.S.C. § 1156 (1975 and Supp. 1991) ("Section 506"). On January 31, 1990, and as amended on February 28, 1990, the United States Maritime Administration ("MarAd") issued a Final Statutory Interpretation of the disputed provision in Section 506. Numerous parties are involved in the present litigation: plaintiff in the first case, Civil Action No. 89-2278, Marine Transportation Services Sea-Barge Group, Inc. ("Sea-Barge"), defendants James Busey, Acting Secretary of the Department of Transportation, the Department of Transportation, Deputy Maritime Administrator William A. Creelman, and MarAd (referred to collectively as "Federal Defendants"),

intervenor/consolidated-plaintiff Sea-Land Service, Inc. ("Sea-Land"), and intervenor/consolidated-plaintiff Puerto Rico Maritime Shipping Authority ("PRMSA").¹ All parties have filed motions or cross-motions for summary judgment concerning the Final Statutory Interpretation and, in some cases, several other directives, issued by MarAd.

I. FACTS

Sea-Barge operates ocean-going tugs and barges between ports in the United States (Miami and Jacksonville, Florida), and ports of Puerto Rico. The Department of Transportation is responsible, inter alia, for implementing the terms of the Merchant Marine Act. Some of the Department of Transportation's duties have been delegated to the MarAd.

PRMSA is a common carrier operating vessels in the trade between ports on the United States Atlantic and Gulf Coasts, Puerto Rico, the Dominican Republic, the U.S. Virgin Islands, Haiti, and Trinidad.

Sea-Land operates as a common carrier in international, foreign and domestic off-shore trades, including operations

¹ On April 15, 1991, this court issued an order consolidating two other related actions with Civil Action No. 89-2278, the first case for pretrial purposes. Those two cases are Puerto Rico Maritime Shipping Authority v. James Bussey, et al., Civil Action No. 90-969 (D.D.C. filed April 26, 1990), and Sea-Land Service, Inc. v. James Bussey, et al., Civil Action No. 90-980 (D.D.C. filed April 26, 1990).

The court has also granted the motion of American President Lines, Ltd. for leave to participate as amicus curiae. American President Lines, Ltd., urges the court to limit its interpretation of the disputed Section 506 provision "to voyages in the trade between the U.S. mainland and Puerto Rico." Amicus Curiae Brief of American President Lines, Ltd. at 1.

involving combined domestic and foreign cargos ("mixed-use voyages") that operate between the United States and Puerto Rico and foreign countries in the Caribbean. In March, 1988, Sea-Land bought three Lancer vessels² and PRMSA bought five Lancer vessels, at a United States Marshal's auction following the bankruptcy of United States Lines, Inc. The vessels had been built in the 1960's for United States Lines with the aid of construction differential subsidies ("CDS") pursuant to the Merchant Marine Act of 1936, 46 U.S.C. § 101 RE ENCL. (1982) ("the Act").

In a letter dated April 21, 1988, Sea-Land asked MarAd to confirm that Section 506 and the relevant CDS contractual provisions did not prohibit the operation of the Lancer vessels on following itinerary: Elisabeth, New Jersey to San Juan, Puerto Rico to Jacksonville, Florida to San Juan to Kingston, Jamaica to New Orleans, Louisiana to San Juan to Elisabeth. Sea-Land stated that at least one container of cargo (presumably the same one) would be carried from Elisabeth to Kingston and one container of cargo would be carried from Kingston to Elisabeth.³ In addition, Sea-Land stated that the crew would be on "foreign articles" for the entire

² All Sea-Land's and PRMSA's Lancer vessels were built by the same United States shipyard according to the same basic specifications and are considered sister ships. The first vessel was named the S.S. American Lancer; all sister ships carry the "Lancer" designation. Statement Of Material Facts Not In Dispute In Support Of (PRMSA's) Motion For Summary Judgment In C.A. No. 90-0960 And Cross-Motion For Summary Judgment In C.A. No. 89-2278 ("PRMSA's Undisputed Facts"), at 3 n.4.

³ One container carries approximately twenty long tons of cargo and is commonly referred to as a [... tonnage equivalency Unit ...] or "TEU."

voyage. Administrative Record ("A.R."), at 1480.⁴ By letter dated May 16, 1988 ("May 16 Letter"), MarAd approved the proposed itinerary as permissible using the Lancer vessels provided that Sea-Land: (1) carried one hundred long tons of cargo (five TEUs), "in the foreign commerce of the United States" for each such voyage; and (2) "advertised to offer cargo carriage between the U.S. and foreign ports and ardent effort shall be made to solicit and secure such cargoes." A.R. at 1482.

Several interested parties questioned the May 16 Letter in letters written to MarAd. A.R. at 1484-91. In light of these letters, MarAd, on September 7, 1988, indicated that it would reconsider the informal advice given in the May 16 Letter and would receive comments on the issue from interested parties. A.R. at 1492-93. Interested parties in the Caribbean and Hawaiian trades became aware of the dispute and submitted informal comments through November of 1988. A.R. at 1368-1501.

On June 6, 1989, MarAd issued a Final Opinion and Order for "Docket A-179" ("June 6 Opinion"), discussing the meaning of the "Fourth Exception" to Section 506.⁵ A.R. at 1269-1334. The June 6 Opinion held that the term "may stop" means "may stop once" at a United States possession or territory either in the course of a

⁴ Haina, Dominican Republic and Kingston, Jamaica are foreign ports. Puerto Rico is an island possession or territory within the meaning of Section 506. A.R. at 1287.

⁵ The text of the fourth exception is set forth *infra*.

foreign voyage or "once inbound and once outbound,"⁶ and that Sea-Land's itinerary consisted of several voyages. A.R. at 1288, 1308 and 1331. The June 6 Opinion also indicated that there was a need to establish guidelines on the cargo-mix issue. On June 12, 1989, MarAd published a notice in the Federal Register, 54 Fed. Reg. 24976, referring to the June 6 Opinion and inviting comments on the appropriate cargo-mix under the Fourth Exception of Section 506. MarAd stated that the reason it solicited comments was because:

[t]he owners and operators of CDS-built vessels need to know the scope of operations which will not jeopardize or breach their CDS contracts. The Jones Act vessel operators and owners need to know such scope so that they can make reasonable business decisions on their operations.

On August 14, 1989, Sea-Barge filed suit in this court claiming that MarAd's failure to issue a rule that prohibits the carriage of more than 50 percent domestic cargo in the mixed Puerto Rican/Caribbean trades violated Section 506 of the Act. Complaint at ¶ 33. Sea-Barge asked the court to issue such a 50 percent interpretation or to order MarAd to do so. On September 27, 1989, this court issued an order dismissing Sea-Land and PRMSA as defendants in the Sea-Barge action and directing the Federal Defendants to file dispositive motions within thirty days unless MarAd agreed to issue an interim interpretation of Section 506 within that time frame. On October 27, 1989, MarAd issued its Interim Statutory Interpretation, A.R. at 721-775, which provided that:

⁶ This interpretation is hereinafter referred to as the "itinerary restriction" or the "may stop once" interpretation.

[e]ffective immediately for voyages for which cargo is not booked, but for all voyages no later than November 27, 1989, to be considered a bona fide voyage in foreign trade under the Fourth Exception of Section 506, each voyage of a CDS-built vessel may stop once inbound and once outbound at Puerto Rico and, at a maximum at any time during the voyage, carry domestic cargo equal to 75 percent of the total capacity of the vessel on each voyage. Operators involved in such service must report cargo carriage on a semiannual basis. Interested parties may submit their views on this interim interpretation until November 27, 1989. MarAd will consider those views before issuing a final interpretation.

AR at 775. The Interim Statutory Interpretation was published in the Federal Register as a proposed final rule and comments were invited. On January 31, 1990, MarAd issued its Final Statutory Interpretation, A.R. 308-35, which held:

For the reasons set forth [in this Final Statutory Interpretation and] in the June 6, 1989 Opinion and Order, [and] the October 27, 1989 Interim Statutory Interpretation . . . MARAD concludes as its Final Statutory Interpretation the following:

Effective on and after March 1, 1990, with respect to CDS-built container vessels carrying cargo between the U.S. mainland and foreign countries, via Puerto Rico, to be considered a bona fide voyage in the foreign trade under the Fourth Exception of Section 506, each voyage of a CDS-built vessel may stop only once inbound and once outbound at Puerto Rico, and, at a minimum, the vessel must carry foreign cargo equal to 25 percent of the total TEUs carried on the vessel on each voyage on a round trip basis. Operators involved in such service will be required to report cargo carriage on a quarterly basis.

A.R. at 334-35. On February 28, 1990, MarAd issued an Addendum, A.R. 64a-71, which modified the Final Statutory Interpretation as follows:

Effective on and after April 1, 1990, with respect to CDS-built container vessels carrying cargo between the U.S. mainland and foreign countries via Puerto Rico, to be considered a bona fide voyage in the foreign trade under the Fourth Exception of Section 506, each voyage of a CDS-built vessel may stop only once inbound and once outbound at Puerto Rico, and, at a minimum, the vessel must carry foreign cargo

equal to 25 percent of the total TEUs carried on the vessel on a voyage basis. Failure to meet that level of carriage will result in a rebuttable presumption, that the voyage is not one in foreign trade. This rebuttal is effective in normal circumstances, but MARAD retains the right to assure that the carrier has taken sufficient steps to carry significant quantities of foreign cargo on each voyage in deciding whether the presumption has in fact been rebutted. The failure of quarterly results to achieve the required results can be excused only by MARAD finding that circumstances caused by *force majeure* precluded the operation of CDS-built vessels from otherwise meeting the 25 (percent) requirement. Operators involved in such service will be required to report cargo carriage on the same quarterly basis.

A.R. at 71.

On April 9, 1990, MarAd declined requests for review of the Final Statutory Interpretation or the Addendum. A.R. at 1-2.

On April 25, 1990, Sea-Barge filed its Second Amended Complaint which seeks the following relief: (1) a declaration that CDS-built vessels may not be operated in the United States/Puerto Rico trade unless at least 50 percent of the cargo capacity of each vessel on each transit between two ports is reserved for cargo in the foreign trade of the United States; (2) a declaration that cargo of foreign origin or destination that is transhipped⁷ by a CDS-built vessel between a port in the continental United States and a port in Puerto Rico be excluded from the calculation of

⁷ Transhipped cargo is cargo that is shipped between the United States and Puerto Rico, but whose origin or destination is a foreign port. Sea-Barge defines transhipped cargo as that which is shipped "from a European port destination to Puerto Rico, which [is then] transferred at a continental U.S. port to a C.D.S. vessel for the final leg of the movement to Puerto Rico; or U.S. origin cargo destined for a foreign Caribbean port, and carried on a C.D.S. vessel to Puerto Rico prior to transfer to another vessel for the final leg of carriage to its destination." Sea-Barge Memorandum of Points and Authorities in Support of its Motion for Summary Judgment.

foreign cargo necessary to meet the requirements of Section 506; (3) judgment that the Federal Defendants have violated the Administrative Procedure Act ("APA"); (4) an order that the Federal Defendants rescind the last paragraph of the June 6 Opinion which purports to authorize continued use of subsidized vessels in the United States/Puerto Rico trade; (5) a permanent injunction enjoining Federal Defendants from violating the Merchant Marine Act; and (6) other relief which the court deems appropriate.

Sea-Barge then filed a motion for summary judgment which contained three requests. First Sea-Barge asked the court to find that Section 506 is clear on its face as a matter of law and that MarAd's Final Statutory Interpretation is arbitrary and capricious insofar as it finds that 75 percent of the capacity of any CDS vessel can be used to transport domestic cargo on the foreign trade routes discussed in the Final Statutory Interpretation. Sea-Barge Motion at 1-2. Second, Sea-Barge asked the court to issue an order declaring that the CDS vessels at issue in the disputed trade must carry foreign cargo amounting to at least 50 percent of its total domestic and foreign cargo at all times. Third, Sea-Barge asked that the court find that transhipped cargo should be deemed to be domestic cargo for purposes of Section 506.

As intervenors, both Sea-Land and PRMSA individually cross-moved for summary judgment.⁸ Sea-Land argued that it is entitled

⁸ In support of its motion, Sea-Land submitted its Memorandum Of Sea-Land Service, Inc. In Support Of Cross-Motion For Summary Judgment And In Opposition To Plaintiff's Motion For Summary Judgment ("Sea-Land Cross-Memorandum"). In support of its motion, PRMSA submitted its Memorandum Of Points And Authorities Of

to summary judgment dismissing the Second Amended Complaint insofar as Section 506 does not support a construction that CDS-built vessels in the disputed trade must carry foreign cargo amounting to at least 50 percent of its total domestic and foreign cargo. Sea-Land also argued that Sea-Barge's claim that transhipped foreign cargo should be treated as "domestic" cargo was neither properly presented to nor decided by MarAd and is therefore not presently susceptible to judicial review. Similarly, PRMSA urged dismissal of Sea-Barge's Second Amended Complaint because Section 506 does not authorize MarAd to impose percentage limitations on domestic cargoes. PRMSA also argued that the Final Interpretation is arbitrary and capricious.

On April 26, 1990, both Sea-Land and PRMSA filed independent actions which, as is explained above, have been consolidated with the first lawsuit. In its complaint, Sea-Land asks the court to: (1) declare that Federal Defendants have arbitrarily and capriciously interpreted Section 506 in violation of the APA; (2) enjoin the Federal Defendants from enforcing, and require them to rescind, the Final Statutory Interpretation and MarAd's determination of what constitutes a voyage in foreign trade; (3) enjoin Federal Defendants from issuing any other future statutory interpretations superimposing any numerical standard or other arbitrary and capricious standard on Section 506; (4) award Sea-Land costs and reasonable attorneys' fees; and (5) grant such other

Intervenor-Defendant [PRMSA] In Support Of Cross-Motion For Summary Judgment ("PRMSA Cross-Memorandum").

relief as the court deems appropriate.

PRMSA asks the court, in its complaint, to: (1) issue an injunction requiring Federal Defendants to rescind the June 6 Opinion, the October 27 Letter, and the Final Statutory Interpretation; (2) declare that the Federal Defendants lack the authority to make the findings and issue the restrictions in those rulings; (3) declare that, by issuing those rulings, Federal Defendants exceeded their statutory authority and violated the APA's proscriptions against decisions issued without notice and opportunity for comment as well as arbitrary and capricious and not in accordance with law; and (4) grant such other relief as it deems appropriate.

Sea-Land and PRMSA have moved individually for summary judgment with respect to their consolidated cases. Both Sea-Land and PRMSA assert that MarAd lacks the statutory authority to prescribe an acceptable level of domestic carriage for operators of CDS-built vessels. Sea-Land also alleges that MarAd's definition of voyage is arbitrary, capricious and contrary to law. PRMSA claims that MarAd's June 6 opinion, regarding the itinerary restriction and the agency's authority to establish a foreign cargo percentage limitation, violates the APA because it was considered and issued without notice and hearing for PRMSA. PRMSA further asserts that the Final Statutory Interpretation and October 27 Letter are unreviewable because they are unintelligible. PRMSA also alleges that MarAd's definition of voyage and its decision on the itinerary restriction are inconsistent with the plain language

of Section 506.

Federal Defendants, in their motion for summary judgment, ask the court to: (1) affirm MARAD's Final Statutory Interpretation; (2) grant summary judgment in favor of Federal Defendants; and (3) dismiss Sea-Barge's, Sea-Land's and PRMSA's complaints.

II. LEGAL STANDARD

The language of Rule 56(c) of the Federal Rules of Civil Procedure indicates that summary judgment is appropriate when examination of the record as a whole reveals "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In examining the record, the court must view all inferences in the light most favorable to the non-moving party. Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The scope of a court's review of an agency's exercise of its rulemaking authority is limited. United Mineworkers of America, International Union v. Dole, 870 F.2d 662, 665 (D.C. Cir. 1989). Pursuant to Chevron, the court must first consider whether Congress manifested an "unambiguously expressed intent" that resolves the dispute of the statute's meaning. Abbott Laboratories v. Young, 920 F.2d 984, 987 (D.C. Cir. 1990), cert. denied sub nom. Abbott Laboratories v. Kessler, ___ U.S. ___, 112 S. Ct. 76 (1991) ("Abbott Labs") (quoting Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43(1984)). The language of the statute in question is the best indication of congressional intent. Abbott Labs, 920 F.2d at 987. If the statute clearly

speaks to the issue, then the reviewing court need not defer to the agency's interpretation because the court is in as good a position as agency to interpret and apply the statute. The court may also look to the statute's legislative history to determine whether Congress clearly addressed the issue. See id. at 988.

On the other hand, if the language of the statute does not clearly address the issue at hand, the court must then proceed to the second step of Cheyron and ask whether the agency's construction "falls within the bounds of reasonableness." Id. The court in Abbott Labs stated that "[t]he 'reasonableness' of an agency's construction depends on the construction's 'fit' with the statutory language as well as its conformity to statutory purposes." Id. It is in this context that agencies are to use their discretion when interpreting the statute and that the reviewing court is to defer to their expertise and judgment.

When reviewing an agency's action under the second step of Cheyron, the APA applies. Pursuant to the APA, a court reviewing agency action will hold unlawful and set aside agency action, findings and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A) (1982). In general, this standard of review is highly deferential and presumes agency action to be valid. See Environmental Defense Fund, Inc. v. Costle, 657 F.2d 275, 283 (D.C. Cir. 1981) (citing Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971)). The court must affirm the agency's decision if a rational basis for that decision exists,

even if the court disagrees. Castle, 657 F.2d at 283. While deferential to agency action, the court's review of the facts must be searching and careful; the agency's action must be based on a consideration of relevant factors. Id. The scope of the court's review of agency action is usually confined to the full administrative record before the agency at the time the agency action was taken. Yolpa, 401 U.S. at 825.⁹

The standard that the United States Court of Appeals for the District of Columbia has applied when determining the validity of a rule promulgated under the Act is arbitrary or capricious was set forth in Independent U.S. Tanker Owners Comm. v. Dole, 809 F.2d 847, 854 (D.C. Cir.) cert. denied sub nom. Atlantic Richfield Co. v. Independent U.S. Tanker Owners Comm., 484 U.S. 819 (1987) ("ITOC II"). In that case appellants challenged the Secretary of Transportation's rule which permitted CDS-built vessels to operate in domestic trade if they agreed to repay the unamortized portion of the subsidy plus interest. Id. at 850. The Secretary stated that the rule was designed to serve such interests as economic efficiency, use of underemployed resources, increased competition and deregulation. Id. at 853.

The court in ITOC II first addressed the Secretary's authority to promulgate such a rule and found that she had the authority under the statute to do so. Id. at 850-51. The court then

⁹ Because the Declaration of Michael D. Shea, attached as Exhibit 2 to Sea-Barge's motion for summary judgment, was not part of the administrative record before MarAd, the court will not consider it.

considered whether the Secretary's rule was arbitrary or capricious, an abuse of discretion or otherwise not in accordance with law. *Id.* at 851-55. In doing so the court reviewed the APA's standard for rulemaking and noted that when an agency makes a rule it should provide a "concise general statement" of the basis and purpose of that rule. *Id.* at 852 (citing 5 U.S.C. § 553(c) (1982)). The court stated that "such a statement should indicate the major issues of policy that were raised in the proceeding and explain why the agency decided to respond to these issues as it did, particularly in light of the statutory objectives that the rule must serve." *ITOC II*, 809 F.2d at 852 (cites omitted).

The court then reviewed the objectives of the Merchant Marine Act¹⁰ and held that the rule failed to meet this standard. *Id.* The court stated that the rule did not adequately explain how it served the objectives of the Act and why alternative measures were rejected in light of those objectives. *Id.* The court held that "[t]he Secretary's treatment of these objectives, and the concerns raised about them in the comment proceedings, is cursory at best." *Id.* The court concluded that:

the Secretary must spell out in more detail how her decision to adopt this rule and reject alternative measures by relying on policies of competition and deregulation can be squared with the statutory objectives that Congress specified as the primary guidelines for administrative action in this area. . . . [I]n the absence of any such discussion, this court can only conclude that her action is "arbitrary, capricious . . . or not otherwise in accordance with law."

¹⁰ The Act is reviewed in detail *infra*.

Id. at 554 (citas omitted).

The Court of Appeals for this circuit applied this same standard when reviewing a rule promulgated by MarAd in Independent U.S. Tanker Owners Comm. v. Skinner, 884 F.2d 587 (D.C. Cir. 1989) cert. denied ___ U.S. ___, 110 S. Ct. 1932 (1990). In that case the court upheld a similar rule which allowed a subsidized vessel to operate in domestic trade if it repaid its CDS with interest. Id. at 589. The court upheld this rule because the agency stated upon adopting the rule that it promoted two statutory objectives; ensuring that the "most suitable types of vessels" made up the merchant marine and helping to ensure that the merchant marine will be a well balanced fleet. Id. at 592. The court noted that MarAd had adequately considered the rule's effect on domestic trade, foreign commerce as well as national security. Id. at 593-94. Further, the court found that MarAd had properly examined each of the alternatives presented and "persuasively argue[d] that . . . the rule better serves the Act's overall goals." Id. at 594.

In a third case the Court of Appeals for this circuit reviewed still another rule by MarAd which permitted a CDS-built vessel to continue to receive subsidy payments after engaging in two domestic voyages. American Trading Transportation Co., Inc. v. United States, 841 F.2d 421 (D.C. Cir. 1988). MarAd, in this decision, merely stated that its rule was "necessary and appropriate to carry out the purposes of the Act." Id. at 424.

The court, in striking down the agency's rule, stated that it had two responsibilities when reviewing a substantive decision by

MarAd. Id. The court held that it first had to ensure that the decision was not arbitrary or capricious, and second that it must "examine the procedure MarAd employed in reaching its decision to ensure that they would comply with the APA and any applicable statutory or constitutional requirements." Id. (citing Independent U.S. Tanker Owners Comm. v. Lewis, 690 F.2d 908 (D.C. Cir. 1982) ("ITOC I")¹¹ (in which the court held that the APA required that MarAd state the basis and purpose of its decision so as to enable the court to determine what major policies were ventilated by the informal proceeding and why the agency reacted to them as it did)). The court vacated the lower court's holding which upheld MarAd's disposition because the decision failed to follow the standard set forth in ITOC I. American Trading, 841 F.2d at 422-23. The court stated that "MarAd should not have rested on repetition of the words of the statute, but should have stated, concretely, the rationale for its rulings." Id. at 425 (citing ITOC I, 690 F.2d at 924).

Fortunately, there is no lack of guidance, both from Congress and the Court of Appeals for this circuit, regarding the purpose of the Merchant Marine Act. The primary purpose of the Act was stated by Congress:

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

¹¹ This analysis is slightly different from the standard that was set forth by the court in ITOC II. This difference may be explained by the fact that in ITOC I the court reviewed an informal adjudication whereas in ITOC II the court reviewed a rulemaking. In the present case, the court is reviewing a rulemaking.

domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping services essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

46 U.S.C. § 1101 (1982) (emphasis added).

Since the cost of building, maintaining and operating ships is much higher in the United States than it is abroad, Congress has taken various steps to maintain a competent merchant marine with trained American sailors and capable United States flag ships. ITOC I, 690 F.2d at 912. Under the Jones Act, except for some very limited exceptions, Congress has reserved the domestic commerce of the United States for vessels "built in and documented under the laws of the United States and owned by persons who are citizens of the United States." 46 U.S.C. § 883 (Supp. 1991). The unsubsidized domestic fleet is commonly referred to as the "Jones Act fleet."

Such protective legislation, however, is not possible in foreign commerce. ITOC I, 690 F.2d at 912. Thus, Congress has, for many years, authorized subsidies for ships that are built in the United States that are to be used in foreign trade. Id. Under the Construction-Differential Subsidies program, the government may pay up to 50 percent of the construction costs of a vessel needed

for the United States' foreign maritime trade. *Id.* CDS's are designed to promote the foreign commerce capacity of the United States merchant marine. CDS's are available only for vessels which are to be engaged in the foreign commerce of the United States. 46 U.S.C. § 1151 (Supp. 1991); see 46 U.S.C. § 1159 (Supp. 1991). Moreover, the CDS is gauged by the cost differential in building a given vessel in a United States shipyard as compared to a foreign shipyard. 46 U.S.C. § 1152(b) (Supp. 1991).

For obvious reasons, the Jones Act fleet is incapable of competing with the subsidized fleet. ITOC I, 690 F.2d at 912. Thus, in order to protect the entire merchant marine, a second purpose of the Act is "to protect the unsubsidized domestic fleet from displacement by the subsidized fleet, while still ensuring adequate domestic shipping capacity." Atlantic Richfield Co. v. United States, 774 F.2d 1193, 1203 (D.C. Cir. 1985). See also American Trading Transportation Co. v. United States, 791 F.2d 942, 948 (D.C. Cir. 1986).

The Supreme Court has recognized that the domestic operation of subsidized vessels could disadvantage the Jones Act fleet. In Seatrain Shipbuilding Corp. et al. v. Shell Oil Co. et al. 444 U.S. 572 (1980), the Court stated that:

{i}t was recognized from the outset that substantial limits would have to be placed on the entry of subsidized vessels into the domestic trade. Any other result would have been disastrous for the unsubsidized Jones Act fleet for which that trade was (and is) reserved. Burdened by higher construction costs, greater outstanding debt, and higher operating expenses that fleet would simply have been unable to compete with new vessels enjoying the benefits of the 1936 Act.

Id. at 586-87.

Congress protects the Jones Act fleet by limiting subsidized vessels' participation in domestic trade to "narrowly circumscribed conditions." Atlantic Richfield Co., 774 F.2d at 1204 (footnote omitted). These conditions are the four exceptions set forth in Section 506. Section 506 states:

Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

46 U.S.C. § 1156.¹³

¹³ The last sentence excluding availability of an operating-differential subsidy ("ODS"), for vessels operating wholly, albeit only temporarily, in the domestic trade supports the interpretation that vessels constructed with a CDS are supposed to be used in the foreign commerce of the United States. The statutory provision concerning granting of an ODS indicates that such a subsidy is

III. DISCUSSION

Section 506 states six permissible uses of CDS vessels. The voyage at issue in this case involves the so-called fourth exception to the exclusive use in foreign trade requirement ("Fourth Exception").¹³ The Fourth Exception permits the use of a CDS vessel "on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States" as long as a proportion of the CDS is repaid as provided by Section 506. The Fourth Exception applies to the present dispute because this case involves the permissibility of voyages in trade in which CDS-built vessels carry both domestic and foreign cargo, and call at ports of the United States, an island possession and a foreign country.

Finding the Fourth Exception applicable to the present dispute, the court must determine whether there is any genuine

available for vessels which are to be used in the "foreign commerce of the United States." 46 U.S.C. § 1171 (Supp. 1991). Given the availability of an ODS only for voyages in foreign commerce, the express exclusion of an ODS for vessels temporarily assigned to wholly domestic service--the last provision of Section 506--provides support for a construction of the other provisions of Section 506 which requires that the voyages be in foreign commerce. The requisite minimum amount of foreign commerce then becomes the central issue.

¹³ There is a semantic dispute as to the proper terminology to use for the disputed provision of Section 506. Because Section 506 states six permissible uses of CDS vessels, the different permissible uses can be referred to as alternative permissible uses, or "exceptions" to the first permissible use, which requires exclusive use in foreign trade. Because MarAd referred to the disputed provision as the "Fourth Exception," the court will do so as well.

issue of material fact as to whether MarAd's interpretation of that exception is arbitrary and capricious according to the standard enumerated supra. This determination requires the court to analyze three aspects of MarAd's interpretation: (1) the definition of "voyage in foreign trade;" (2) the definition of "may stop;" and (3) whether transhipped cargo must be considered to be domestic or foreign cargo for purposes of Section 506.¹⁶

Under the standard enumerated in ITOC II, the first question the court must address is whether MarAd has the authority to issue this rule. The Fourth Exception uses the terminology "on a voyage in foreign trade." No provision in the Merchant Marine Act expressly defines or sets parameters as to what level of foreign cargo constitutes a voyage in foreign trade. Similarly, the Act does not define "may stop" or address the issue of transhipped cargo.

It is clear that MarAd has the authority to issue this rule. The Supreme Court has recognized both explicit and implicit congressional grants of authority to administrative agencies to implement statutory schemes. Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984). The Supreme Court has also recognized that Congress gave the Secretary of Transportation "broad authority to oversee administration of the

¹⁶ American President Lines' AMICUS request that the interpretation of Section 506 be limited to the Puerto Rico trade cannot be granted because the disputed provision, by its own terms, applies to more than just the Puerto Rico trade.

[Merchant Marine] Act." Seatrain, 444 U.S. at 585.¹⁵ See also Liberty Maritime Corp. v. United States, 928 F.2d 413, 419 (D.C. Cir. 1991). The applicable Department of Transportation Regulation explicitly delegates to the Maritime Administrator the "authority to . . . [c]arry out the Merchant Marine Act." 49 C.F.R. §1.66(e) (1990).

Thus, the court must address the second question under the ITOC II analysis, which is whether the agency's action was arbitrary or capricious. Again, the court must focus on whether MarAd demonstrated how its decision furthered the purpose and policies of the Act and whether it adequately considered all alternatives presented.

MarAd's rule in the present case does not meet the standard set forth by the Court of Appeals for this Circuit and is therefore arbitrary and capricious. In its Final Statutory Interpretation, MarAd both reviewed the procedural background that led to its final interpretation and discussed policies and purposes of the Merchant Marine Act. A.R. 318-19. MarAd recognized that one purpose of the Act was to protect the Jones Act fleet from displacement by the subsidized fleet. MarAd then noted that setting any percentage limit on the amount of domestic cargo that a CDS vessel may carry and continue to receive its subsidy is difficult, but that this difficulty should not deter it from doing "its duties." Id. at

¹⁵ The language in Seatrain actually referred to the Secretary of Commerce rather than the Secretary of Transportation. The 1981 amendment to the Merchant Marine Act substituted the Secretary of Transportation for the Secretary of Commerce. [Pub. Law 97-31].

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Next, MarAd reviewed the alternatives that were presented by various parties in response to the notice requesting comment that was published in the Interim Statutory Interpretation. MarAd rejected one party's¹⁶ suggestion that the rule should be based upon relative cargo volumes because it was unrealistic. *Id.* at 324. PRMSA contended that a 25 percent limit was arbitrary and capricious because bona fide voyages in foreign trade may carry less than this amount of foreign cargo. MarAd dismissed this argument because even if a bona fide voyage in foreign trade could carry less than 25 percent of foreign cargo, a limit under 25 percent would "allow too great a possibility of permitting sham foreign voyages." *Id.* at 324-25. MarAd stated that the 25 percent limit assures that voyages in foreign trade will be bona fide. *Id.* Further, MarAd stated that its rule also has the advantages of being self-executing, fair to all participants and easily administered. *Id.* at 325.

MarAd also refused to accept PRMSA's proposal that MarAd adopt a policy that considers a voyage to be one in foreign trade if the revenue generated from the foreign trade segment exceeds the incremental cost of providing that service in conjunction with domestic service. *Id.* at 327. MarAd rejected this proposal because it would not put a meaningful limit on the carriage of domestic cargo in the Puerto Rican trade and because such a limit would not demonstrate that a voyage is a bona fide voyage in

¹⁶ This party, Natson, is not involved in the present cases.

foreign trade. *Id.*

The final alternative that MarAd considered was presented by Sea-Barge. MarAd refused to accept Sea-Barge's proposal that the foreign cargo limit be set at 50 percent because of the six-month waivers that appear in the second sentence of Section 506. *Id.* at 328. MarAd stated that the six-month waivers are separate exceptions and are easily distinguishable from the Fourth Exception because the Fourth Exception is much more limited. *Id.*

MarAd then declared that it "reviewed whether this Final Statutory Interpretation would contravene the purposes and policy of the Act, and has concluded it would not." *Id.* at 328-299. In support of this statement MarAd rejected Sea-Barge's claim that the 25 percent rule has and would continue to cause it commercial harm because Sea-Barge has failed to substantiate such claims. *Id.* at 329-30. Similarly, MarAd did not accept FRMSA's claim that it needs to use CDS vessels for shipping from the United States to Puerto Rico because FRMSA did not demonstrate how such trade would be jeopardized by the 25 percent foreign trade requirement. *Id.* at 330.

MarAd concluded by stating that the "25 percent minimum foreign cargo of the total cargo, measured in TEUs, is the appropriate standard for carriage of foreign cargo on a voyage and is fully justified on the basis of its legal interpretation." *Id.* at 331. MarAd reached this conclusion "[f]or the reasons set forth in the June 6, 1989 Opinion and Order, the October 27, 1989 Interim Statutory Interpretation and above." *Id.* at 334.

After releasing its Final Statutory Interpretation, MarAd issued the Addendum to clarify that Interpretation. *Id.* at 64a. In this Addendum, MarAd addressed PRMSA's assertion that the Final Statutory Interpretation would make it difficult to handle their cargo because carriage decisions are often not made until the last minute before departure. *Id.* at 67. MarAd also considered Sea-Land's argument that the rule made it "impossible to develop safely and efficiently a vessel stowage plan under the conditions imposed by the final interpretation." *Id.* at 68. MarAd then considered Sea-Barge's claim that Section 506 must be given full effect even if it restricts the operation of CDS vessels. *Id.* at 69.

MarAd recognized that the Final Statutory Interpretation would result in some unnecessary disruption of shippers' ability to ship cargo. *Id.* Thus, MarAd concluded by holding that the 25 percent foreign cargo standard would remain the rule, but that its rule would not be measured strictly on a voyage by voyage basis. *Id.* Rather, MarAd instituted the presumption standard. According to the Addendum, a failure to meet the 25 percent requirement on a particular voyage will result in a rebuttable presumption that the voyage is not in foreign trade, but that in order to provide appropriate operating flexibility the presumption may be rebutted by the cumulative results of voyages completed in a quarter in this trade where the total quarterly results do meet the 25 percent minimum foreign cargo. *Id.*

MarAd's Interim Statutory Interpretation, which set the 25 percent limit on foreign cargo requirement for CDS vessels, also

stated that subsidized vessels may only stop once inbound and once outbound at Puerto Rico for a voyage to be considered a voyage in foreign trade for the purposes of the Fourth Exception. *Id.* at 772. MarAd provided two rationales for this rule. First, MarAd stated that the Secretary retained the authority to consent to full-time domestic service for six months out of the year, and that if the percentage level of foreign cargo were set at 50 percent and shippers got a six month waiver, the total percentage of foreign cargo carried for the year would be 25 percent. *Id.* at 772-73. Second, MarAd stated that "[i]t is highly unlikely that every voyage will carry the maximum amount of domestic cargo." *Id.* at 773. In its Final Opinion of June 6, 1989, MarAd held that "may stop" in the Fourth Exception means "may stop once," *id.* at 1287-88, 1294-95, and that MarAd has the authority to determine what mix of domestic and foreign cargo constitutes *bona fide* foreign trade for the purposes of § 506. *Id.* at 1328-31.

There is no genuine issue of material fact, and according to the law of this Circuit, MarAd's rule interpreting the Fourth Exception to Section 506 in this case is arbitrary and capricious. Neither the Final Statutory Interpretation, the Interim Statutory Interpretation nor the June 6 Opinion, satisfies the standards for reasonableness set in *ITOC II* or *I*. MarAd did restate the purpose, policy and history of the Act in the Final Statutory Interpretation, and then asserted that the 25 percent rule does not contravene the policy of the Act. This showing, however, does not pass muster. MarAd must not merely parrot the language of the

statute and state that its rule furthers the purpose and policies of the Act. Rather, MarAd must demonstrate how its rule furthers the purpose and policy of the Act. Nowhere in its rule or in the Administrative Record does MarAd explain why or show how its 25 percent minimum foreign cargo requirement coupled with the "may stop once" interpretation will further the underlying purpose of the Act.

MarAd also considered the alternatives presented by various interested parties and rejected them because they would not adequately serve the purpose of the Act. MarAd rejected PRMSA's and Sea-Land's suggestion that there be no percentage limit. MarAd similarly rejected Sea-Barge's 50 percent minimum foreign cargo limit as well as PRMSA's suggestion that the determination be based upon the relative revenues earned on the foreign versus domestic segments of the voyage. But again, MarAd never stated, "concretely" or otherwise, how or why its Final Statutory Interpretation serves or furthers the policy of the Act.

The court recognizes that, as MarAd points out, one of the Act's primary policies is to protect the Jones Act fleet from being displaced by the subsidized fleet, and that this is achieved by preventing CDS-built vessels from engaging in domestic trade, either directly or by way of sham foreign voyages. Thus, it is evident that MarAd must set some sort of minimum foreign cargo limit to assure that voyages in foreign trade are *bona fide*.¹⁷

¹⁷ The court rejects Sea-Land and PRMSA's assertion that the repayment provisions in Section 506 will serve the policies of the Act. Although MarAd does not state any reasons why it rejected

In the present case, however, MarAd fails to demonstrate how its 25 percent rule will protect the Jones Act fleet from displacement by the subsidized fleet. MarAd merely states in a conclusory fashion that a limit under 25 percent would create too great a possibility for sham voyages and that its 25 percent rule will assure that voyages in foreign trade are bona fide. Such a conclusory statement, however, does not satisfy the requirement that MarAd explain how its rule serves the objectives of the Act. See ITOC II, 809 F.2d at 852. MarAd also does not state why it reacted as it did in choosing 25 percent. See ITOC I, 690 F.2d at 908. Further, MarAd's rule is deficient in much the same way that its rule in American Trading was lacking; that it merely repeats the words of the statute and its policy but did not provide a rationale for choosing 25 percent instead of any other limit. American Trading, 842 F.2d at 525. MarAd's rationale for its rule, that it will protect the Jones Act fleet from displacement by preventing sham foreign voyages by CDS-built vessels, only shows that there must be some limit on the amount of domestic cargo that CDS-built vessels may carry on subsidized foreign voyages.

A plain reading of the statute seems to indicate that the foreign cargo limitation should be set at the level at which the

this assertion (MarAd only addressed FROSA's incremental cost argument) it appears that repayment of the appropriate proportion of the CDS will not adequately protect the domestic fleet from unfair competition by the subsidized fleet. In addition to the Supreme Court's "cream skimming" argument, Satrain, 444 U.S. 588, another explanation may be that by receiving the subsidy CDS vessels are able to defer their construction costs over time whereas domestic shippers must pay their entire construction cost up front.

domestic cargo carried on a CDS-built vessel is incidental to foreign cargo that is carried on that voyage. Such a limitation would truly protect the Jones Act fleet because it would assure that voyages in foreign trade are bona fide; they would not be taken but for the purpose of transporting the cargo to foreign ports. Any limit that allows CDS-built vessels to carry more than this amount of domestic cargo would allow sham voyages in foreign trade, thus giving CDS-built vessels a competitive advantage over the Jones Act fleet in domestic trade.

There are two problems with MarAd's rule. The first problem is that the court is unclear why the limit on the domestic cargo that may be carried by CDS-built vessels should be measured purely in terms of the volume of foreign and domestic cargo that is being carried as opposed to also considering the value of that cargo. MarAd does not explain how it can determine, based only on a percentage of foreign versus domestic cargo that is measured strictly in terms of volume, whether a foreign voyage is bona fide. MarAd does not demonstrate why a CDS-built vessel carrying foreign cargo that makes up only a small percentage of the vessel's total cargo, say less than 25 percent, but which is more valuable to ship than all of the domestic cargo on board and accounts for most of the profit made on that voyage, is not engaged in a bona fide voyage in foreign trade. It seems that in such a case the domestic cargo on board is incidental to the foreign cargo despite the fact that it accounts for a great majority in terms of volume of the total cargo that is being shipped.

The court recognizes that MarAd rejected PRMSA's suggestion that a voyage in foreign trade should be measured in terms of the revenue earned from the domestic versus foreign legs of the voyage because it would not provide a meaningful limit and because it would not assure bona fide voyages in foreign trade. MarAd, however, does not explain why the value of the foreign and domestic cargo should never be considered, even if it is considered in conjunction with a percentage limit based on volume. MarAd also does not demonstrate why a rule considering profit would not assure bona fide voyages in foreign trade.

The second problem is that even if MarAd adequately explained why bona fide voyages in foreign trade should be measured solely in terms of the volume of foreign versus domestic cargo carried, the court is unable to determine why MarAd's 25 percent minimum foreign cargo requirement assures that voyages in foreign trade are bona fide whereas any other percentage limit between zero and 50 would not. MarAd does not show, by way of statistical evidence, market research or otherwise, that domestic cargo which amounts to 75 percent or less of the total cargo on board a CDS-built vessel engaged in a voyage in foreign trade is incidental to the foreign cargo being shipped. Thus, MarAd does not demonstrate why or how CDS-built vessels which carry more than 75 percent of domestic cargo are likely to be engaging in sham voyages in foreign trade but that CDS-built vessels which carry less than 75 percent of domestic cargo are likely to be engaging in bona fide voyages in foreign trade.

MarAd states that its 25 percent limit is a clear-cut, bright-line rule that is easy to administer. This argument cannot be disputed. But, it is equally clear that this rationale would also hold true for any other percentage level that could be selected.

The court is uncomfortable with its decision to remand this case back to MarAd since that course appears to be inconsistent with other areas of APA law in which the reviewing court is more deferential to the agency. Often, the burden of proof lies with the party challenging the agency's action to demonstrate that the agency's action is arbitrary or capricious rather than with the agency to show that its action is not arbitrary and capricious because it furthers the purpose of the statute. See National Small Shipments Traffic Conference, Inc. v. I.C.C., 725 F.2d 1442, 1455 (in which the court held that "aggrieved parties bear the burden of demonstrating to the court that challenged agency action merits reversal.") See also Stuart-James Co. v. S.E.C., 857 F.2d 796, 800 (D.C. Cir. 1988), cert. denied 490 U.S. 1098 (1989); Mazaleski v. Transdell, 562 F.2d 701, 717 n.38 (D.C. Cir. 1977); McLeod v. I.N.S., 802 F.2d 89, 95 (3d Cir. 1986). The ITOC II standard is, however, the law of this circuit regarding Section 506 and the court is bound to follow that law.

It is important to note that the court does not pass on the issue of whether the 25 percent minimum limit on foreign cargo is a good or bad rule, or whether it furthers and serves the purpose and policies of the Act or not. It could be that given the nature of the shipping industry, the impracticality of judging such issues

on a case by case basis and the need for a clear-cut rule that MarAd's rule is the best available. In practice, MarAd's 25 percent rule may in fact be the best approximation of the level at which the domestic cargo on board a CDS-built vessel is incidental to the foreign cargo on board and thus CDS-built vessels carrying less than this amount of foreign cargo are likely to be engaged in sham voyages in foreign trade whereas CDS-built vessels carrying over this amount are truly engaging in bona fide voyages in foreign trade. The point is that the court is unable to determine from the Administrative Record whether this rule in fact furthers the underlying policy of the Act.

Since the court must remand this case back to the agency there is no need for the court to address at this time the issues of whether the MarAd's itinerary restriction also furthers the policy of the Act or whether transhipped cargo should be considered as domestic or foreign cargo for the purposes of the Fourth Exception. It may be advisable, however, for MarAd to consider these issues when reconsidering this rule. Both issues should be addressed in terms of how they bear on the question of whether the domestic cargo on board a CDS-built vessel is incidental to the foreign cargo carried. It appears that transhipped cargo should be treated as domestic cargo because for the purposes of the individual voyage in question this cargo is merely being shipped either from a United States port to Puerto Rico or vice versa.

PRMSA claims that MarAd's June 6 Opinion, with regard to the issues of the need for a statutory interpretation, MarAd's

authority to establish cargo-mix guidelines and the itinerary issue violated the APA's notice and hearing requirements. PRMSA asserts, in essence, that the June 6 Opinion was a rulemaking and that it did not receive adequate notice and opportunity to comment prior to its promulgation.

The APA requires agencies to provide adequate notice of its proposed rulemaking to allow "interested parties a reasonable opportunity to participate in the rulemaking procedure." Florida Power & Light Co. v. United States, 846 F.2d 765, 771 (D.C. Cir. 1988), cert. denied 490 U.S. 1045 (1989) (citing 5 U.S.C. § 553 (1982)). Such notice must provide both adequate time for comments and rationale for the rule to allow interested parties the opportunity to comment meaningfully. Id. (cites omitted).

MarAd satisfied these requirements prior to issuing its rule in this case. Before issuing its June 6 Opinion, MarAd invited interested parties to comment on the preliminary determination that it made in its May 16 letter. A.R. 1492-93. Furthermore, between the time that MarAd issued its June 6 Opinion and its Final Statutory Interpretation, PRMSA has had ample opportunity to submit its comments on these issues. MarAd gave notice and has received comments from interested parties on at least two occasions: after MarAd published its June 6 Opinion it gave notice inviting comments regarding the acceptable level of domestic carriages, A.R. 1266-67, and in its Interim Statutory Opinion MarAd requested that interested parties submit their comments regarding the interim interpretation. Id. at 775. This notice provided both adequate

time for comments as well as MarAd's rationale for its rule. Accordingly, PRMSA's claim on this issue shall be denied.

Lastly, Sea-Barge asserts that MarAd has failed to enforce the June 6 Opinion or its subsequent interpretations of Section 506 and that this failure has allowed CDS-built vessels to engage in "virtually unfettered" domestic trade. Points and Authorities in Support of Motion for Summary Judgment of Sea-Barge, 30. Sea-Barge states that the court should retain jurisdiction over this case and require MarAd to submit to the court, within thirty days of the court's order, its plan for enforcing compliance with the court's ruling. *Id.* at 32.

As the government properly points out, the court cannot require MarAd to enforce its interpretations of Section 506. The APA precludes judicial review of agency actions that are committed to the agency's discretion by law. 5 U.S.C. § 706(a)(2) (1988). The United States Supreme Court, in Heckler v. Chaney, 470 U.S. 821, 831 (1984), held that judicial review is not available for an agency's refusal to take enforcement steps. The court stated that "an agency's decision not to prosecute or enforce . . . is a decision generally committed to an agency's absolute discretion. *Id.* (citing United States v. Batchelder, 442 U.S. 114, 123-24 (1979); United States v. Nixon, 418 U.S. 683, 693 (1974); Yaca v. Sipas, 386 U.S. 171, 182 (1967); Confiscation Cases, 7 Wall 454 (1869)).

The Court recognized that an agency's decision not to enforce is only presumptively unreviewable, and that this presumption "may

be rebutted where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers." *Meckler*, 470 U.S. at 832-33 (footnote omitted). The Court noted that Congress may limit or regulate an agency's authority to exercise its enforcement power. *Id.* at 833.

In the present case, *Sea-Barge* does not point to, and the court cannot find, any language in the Act which limits MarAd's enforcement authority regarding Section 506. Accordingly, MarAd's enforcement authority regarding Section 506 was left by Congress to MarAd's discretion. As a result, MarAd's decisions to enforce this section are not reviewable by this court.

A separate order shall issue this date.



 Royce C. Lamberth
 United States District Judge

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