STATEMENT SUBMITTED BY THE

AMERICAN MARITIME OFFICERS,

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,

MARINE ENGINEERS' BENEFICIAL ASSOCIATION,

MARINE FIREMEN'S UNION,

SAILORS' UNION OF THE PACIFIC

AND THE

SEAFARERS INTERNATIONAL UNION

TO THE

SUBCOMMITTEE ON OVERSIGHT

AND THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS

ON

MARITIME TAX REFORM

February 1, 2012

CHAIRMEN BOUSTANY and TIBERI, RANKING MEMBERS LEWIS and NEAL, and MEMBERS OF THE SUBCOMMITTEES:

On behalf of our respective American maritime labor organizations, we greatly appreciate the opportunity to submit this statement in conjunction with your Subcommittees' hearing on maritime tax reform proposals. Our maritime labor organizations collectively represent ships' Masters, Licensed Deck Officers and Licensed Engineers, and unlicensed merchant mariners working aboard U.S.-flag commercial vessels operating in our nation's foreign and domestic shipping trades. The provisions in the Internal Revenue Code pertaining to the construction and operation of U.S.-flag ships have a significant impact on the ability of U.S. shipping companies to compete for a larger share of America's foreign and domestic trade and, as such, directly affect the economic viability of the U.S.-flag fleet and the jobs of American merchant mariners.

History has repeatedly proven – and Congress has repeatedly affirmed – that the United States must maintain and support a strong, active, and competitive U.S.-flag merchant marine in order to strengthen our nation's economic, homeland and military security. Most importantly, in times of war U.S.-flag commercial vessels and their United States citizen crews have always responded to our nation's call, providing the commercial sealift capability and civilian maritime manpower necessary to support American troops overseas. In fact, since 2008, U.S.-flag commercial vessels and their U.S. citizen civilian crews have transported approximately 95 percent of the cargo needed to support our troops and their combat operations overseas.

Without the assured capability provided by the U.S.-flag merchant marine and its civilian manpower, American troops overseas will be dependent on foreign vessels and their foreign crews to deliver the material, supplies and equipment they need to do their job on our behalf. Our country should not increase the risk American troops already face by forcing them to rely on the whim of foreign shipping interests to provide them with what they need when they need it. Rather, our country owes it to our servicemen and women fighting to protect and advance America's interests to ensure that they will in fact be supported when they need it the most.

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

Similarly, General Norton A. Schwartz, then-Commander, United States Transportation Command, stated in 2008 that the civilian American merchant mariners who crew the vessels whenever and wherever needed by the Department of Defense *"are the people who ensure that the promises we've made to our service men and women are and always will be promises kept."*

Today, U.S.-flag commercial vessels are on the front lines in our nation's War against Terror, not only abroad in support of the Department of Defense and our troops, but here at home, as well. Only American maritime workers are subject to the background and security checks imposed by the Department of Homeland Security and implemented by the Federal Bureau of Investigation, the Coast Guard and the Transportation Security Administration to help prevent maritime-related security and terrorism incidents on our waterways and in our nation's ports. The operation of U.S.-flag vessels with American crews in our domestic trades means that foreign companies and foreign maritime workers who are not subject to United States government background and security checks will not have unlimited access to America's ports, port facilities and coastal and inland waterways.

It is, in our opinion, ill-advised for our government, especially at this dangerous time in our nation's history, to weaken the domestic shipping statutes and to thereby relinquish control over the timing and the cost of transporting America's domestic commerce. Rather, it is extremely important that our government take the steps necessary to ensure that our nation has the United States-flag commercial vessels and American citizen crews needed to support our troops, to protect and enhance America's economic and security interests at home and abroad, and to strengthen United States defense operations around the world.

We strongly believe that one way to achieve these goals is to ensure that America's tax laws encourage, rather than discourage, investment in the United States shipping industry.

Consequently, as set out below, we support the proposed changes in the tax law that are the subject of today's hearing as well as other important maritime tax reform initiatives that we believe will help foster the growth of the United States maritime industry and preserve and create jobs for American maritime workers. Without such changes in our tax laws, American dollars and American jobs will continue to be outsourced to the benefit of foreign flag fleets and foreign maritime workers. With such changes, America's tax laws and policies will help promote the construction, acquisition and operation of U.S.-flag vessels and the employment of American workers in American ports, aboard American ships, and in American shipyards and related service and supply industries.

HR 1533 - *SHORT SEA SHIPPING ACT OF 2011*

Our maritime labor organizations are part of a large maritime industry coalition comprised of shipping companies, ports and other interests that strongly supports HR 1533, the Short Sea Shipping Act of 2011. We are extremely grateful that you, Mr. Chairman, introduced this bill

along with Representatives Steve LaTourette and Brian Higgins, and we are equally grateful to the bipartisan group of Representatives who have chosen to cosponsor this important U.S.-flag shipping and maritime jobs initiative.

This enactment of this legislation is necessary to end the discriminatory double taxation imposed on cargo transported by American vessels between American ports, including ports on the Great Lakes, under the Harbor Maintenance Tax (HMT). As Congress and the Administration consider proposals to reform America's tax laws and to eliminate those provisions that prevent American companies from investing in the United States and from hiring Americans, we would strongly urge the enactment of HR 1533 as a significant means to encourage investment in the American shipping industry.

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

In other words, the enactment of HR 1533 and the resultant development of a marine highway system offer a greater potential for new employment in the domestic maritime industry than any other proposal or initiative presently before the Congress.

Today, cargo entering the United States is subject to the HMT. This will not change through the enactment of HR 1533. If that same cargo which has already been subject to the HMT upon its initial entry at a U.S. port is then transported by rail or truck to another destination within the United States, it is not taxed again under the HMT upon its arrival. However if, instead of moving by truck or rail to another destination within the United States, that same cargo is transported by a U.S.-flag vessel, it is taxed again upon its arrival under the HMT. This second discriminatory application of the HMT on cargo transported by water is what will be changed and eliminated through the enactment of HR 1533.

This discriminatory double taxation of cargo moving by water creates a significant economic disincentive for the owners of the cargo (i.e., shippers) to use waterborne transportation to move their cargo from one U.S. destination to another. Consequently, insofar as shippers understandably choose to avoid paying a tax more than once on the same cargo, the current application of the HMT has become one of the major impediments to the development of a marine highway system and the subsequent greater utilization of commercial vessels to transport cargo along America's coasts.

At a time when our economy is struggling to recover and the nation is working tirelessly to alleviate unemployment, eliminating this double taxation and encouraging the development of the marine highway system can result in significant benefits for the United States. In fact, this is why ending the double taxation of waterborne cargo under the HMT has achieved strong bipartisan Congressional support and the support of a diverse group of private interests.

For example, the Navy League of the United States, in its recent maritime policy statement, argued that "only a truly seamless, integrated, multimodal transportation system with an expanded Marine Highway System for freight movement will meet the nation's growing needs." The Navy League concluded by noting that "this double tax is a major disincentive for increased water transport."

Similarly, in a statement dated December 2009, the American Association of Port Authorities (AAPA) called for the end of the double taxation of waterborne cargo under the HMT. The AAPA stated that ending this double taxation "would remove a Federal disincentive to starting up this greener way to move freight."

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

We understand that the Congress may soon consider surface transportation legislation. We strongly urge that the Committee on Ways and Means ensure that language as contained in HR 1533 is included in The American Energy & Infrastructure Jobs Act or other surface transportation legislation in order to eliminate the double taxation of cargo moved by ship in domestic commerce and to encourage the development of a marine highway system.

This Committee and this Congress have an unprecedented opportunity to include domestic shipping as an integral component of our nation's domestic transportation network and to ensure that our industry is utilized to the fullest degree to facilitate the movement of cargo within our country. As noted in a statement submitted to the Committee on Ways and Means in 2009 by Congressman John Mica and twenty-nine of his colleagues, "America's coastal and inland waterways represent an underutilized alternative to the more common domestic cargo routes that utilize truck and rail." Referring specifically to the discriminatory double taxation affecting such transportation, Chairman Mica and his colleagues noted that "waterborne transportation faces several obstacles that have prevented the wider use of short sea shipping opportunities."

We again thank you, Chairman Tiberi, and your colleagues who have cosponsored HR 1533 for recognizing that the utilization of U.S.-flag vessels for the carriage of cargo along our coasts**,** inland waterways and on our Great Lakes will be a cost-effective, efficient, and environmentally-sound way to supplement and complement the rail and truck traffic that is already pushed to capacity in most major transportation corridors.

HR 104 – *REALIZE AMERICA'S MARITIME PROMISE ACT*

There is another legislative proposal relating to the Harbor Maintenance Tax that we and many others in our industry vigorously support: HR 104, the Realize America's Maritime Promise (RAMP) Act and its companion legislation, S 412. We greatly appreciate your decision, Chairman Boustany, to introduce this extremely important legislation along with Congressman Joe Courtney and we thank the 160 Representatives from both political parties who have cosponsored this bill.

At its core, the enactment of HR 104 will ensure that the funds collected under the Harbor Maintenance Tax (HMT) and deposited into the harbor Maintenance Trust Fund (HMTF) are in fact used for their intended purpose, namely, maintaining America's harbors and coastal waterways. However, expenditures for these purposes from the Harbor Maintenance Trust Fund have lagged far behind revenues, creating an unspent balance of approximately $6 billion in the HMTF at the end of Fiscal Year 2010, a balance that continues to grow as the need for these funds to be spent to maintain America's harbors and waterways continues to grow even greater.

We note and agree wholeheartedly with your statement, Mr. Chairman, that "To not maintain . . . harbors and ports impacts regional and national commerce, reduces our economic competitiveness, and increases risk of vessel groundings, collisions, and pollution incidents." Similarly, Senator Carl Levin, sponsor of S. 412, has stated that "The harbors and ports in the Great Lakes and around the country are critical hubs for the transportation of massive amounts of goods, including food, energy, and manufacturing supplies." He warned his colleagues and the Congress that "poor maintenance is a threat not only for shipping, but to every industry and family in America that consumes the goods flowing through them."

In fact, the failure to utilize the funds collected under the Harbor Maintenance Tax for their intended purpose is seriously and adversely affecting vessel navigation. Poor or non-existent maintenance means that navigation channels are getting narrower and shallower from sediment accumulation. It is estimated by the Army Corps of Engineers that almost 30 percent of vessel calls at U.S. ports are constrained due to inadequate channel depths. This means, of course, that vessels laden with American exports cannot carry all the cargo they are capable of carrying, lest they run aground, impeding our nation's ability to competitively sell American products in overseas markets.

HR 104 is, in our opinion, an essential component of our nation's campaign to revitalize American manufacturing and to increase the export of American made goods and products of all types. It will create thousands of good paying jobs for Americans in our ports and will eliminate a significant impediment to the economical and efficient waterborne transportation of America's foreign and domestic commerce. As stated by Congressman Frank LoBiondo, a cosponsor of HR 104 and the Chairman of the Coast Guard and Maritime Transportation Subcommittee: "Dredging harbors is one of the areas where spending money will make us money."

We are extremely pleased that the recently released draft of surface transportation legislation, The American Energy & Infrastructure Jobs Act, includes language that would achieve the objective contained in HR 104. We are especially grateful to Transportation and Infrastructure Committee Chairman John Mica and Water Resources Subcommittee Chairman Robert Gibbs for working diligently to have this provision included. As noted in the draft legislation's summary, "Waterborne trade at our nation's ports is vital to the American economy, and millions of jobs throughout the country are dependent upon the commercial shipping industry." We urge Congress to retain this provision in this legislation.

HR 1267 – *To Modify the Application of the Tonnage Tax*

Another important maritime tax reform initiative that we strongly support is contained in HR 1267, legislation to modify the existing tonnage tax regime applicable to certain U.S.-flag commercial vessels. This legislation, introduced by Congressmen Wally Herger and Earl Blumenauer, also enjoys bipartisan Congressional support.

Specifically, this legislation will make U.S.-flag vessels operating in the United States - foreign shipping trades eligible to be taxed under the tonnage based system enacted by Congress in the American Jobs Creation Act of 2004 (Public Law 108-357) regardless of the amount of time the vessels operate in the U.S. domestic shipping trades. This proposal will enable American shipping companies to compete on more equal terms for the carriage of America's export and import trade with foreign flag shipping operations.

Under existing tax law, the tonnage tax is presently available only to U.S.-flag vessels operating exclusively in the U.S. foreign trades, to vessels operating on the Great Lakes, and to U.S.-flag vessels that operate in the domestic trades for less than 30-days in each year. This 30-day limitation effectively precludes United States shipping companies which operate vessels in both the foreign and domestic trades from benefiting from the tonnage tax when they compete against foreign flag vessels in the international trades. As such, it discourages American shipping companies from investing in additional U.S.-flag vessel operations and prevents these companies from increasing their employment of American merchant mariners.

Our organizations strongly supported the enactment of the tonnage tax in 2004 because it helps American vessels compete on a more equal footing in the international shipping arena. A

significant number of foreign flag and foreign crewed vessels had already enjoyed the advantages of a tonnage tax and many foreign flag and foreign crewed vessels have long operated in what is essentially a tax-free environment, enabling them to capture more than 95 percent of all the commercial cargo entering and leaving our country. In response, Congress wisely enacted the tonnage tax, eliminating one of the tax-related disincentives to operating vessels under the U.S.-flag with U.S. citizen crews.

Unless the 30-day limitation is removed by this Congress, American shipping companies that operate vessels in the U.S. domestic trades will continue to be severely disadvantaged and effectively precluded from successfully expanding their operations into the U.S. foreign trades and recapturing a share of America's trade for American ships. Unless the 30-day limitation is removed, one of the primary objectives of the tonnage tax, namely, retaining, attracting and expanding U.S.-flag vessel operations, will not be fully realized as domestic shipping companies find themselves at a serious economic disadvantage as they compete against foreign flag vessels which have the benefit of operating under a tonnage tax regime.

As proposed, the 30-day limitation would be removed for all U.S.-flag vessels when they operate in the foreign trade. As a result, U.S.-flag vessels would continue to pay taxes under the current corporate tax rate for their operations in the domestic trades, and would be able to pay taxes under the tonnage tax regime when operating in the United States foreign trade in competition with foreign vessel operations.

We thank Congressmen Herger and Blumenauer and the cosponsors of this legislation for their leadership on this critically important maritime tax reform initiative. We ask that the Subcommittee on Select Revenue Measures and the Committee on Ways and Means work to remove the 30-day limitation on the eligibility of U.S.-flag commercial vessels under the tonnage tax regime so American shipping companies can begin to spend money in the United States and create jobs for American maritime workers.

HR 1031 – *AMERICAN SHIPPING REINVESTMENT ACT OF 2011*

A fourth extremely important maritime tax reform initiative is contained in HR 1031, the American Shipping Reinvestment Act of 2011. Once again, we are grateful to you, Chairman Tiberi, for sponsoring this legislation and to the bipartisan group of Representatives who have agreed to cosponsor this bill.

This legislation would repeal a provision in the Internal Revenue Code that prevents American shipping companies from investing in the United States. More specifically, HR 1031 would allow these companies to bring back to the United States pre-1987 earnings stranded overseas and to use these earnings for investment in U.S.-flag ships and shipping operations. These are

earnings that will not otherwise come back to be invested in the U.S. economy or be spent to support the U.S.-flag shipping industry.

This enactment of this legislation would spur domestic job growth by creating a broad and diverse range of well-paying jobs for American shipboard, shore-side and shipyard workers. Investment in the U.S. shipping industry would have a significant economic multiplier effect, spurring job growth in affiliated businesses.

Once again, we urge the Subcommittee on Select Revenue Measures and the Committee on Ways and Means to work to enact this legislation this year.

CAPITAL CONSTRUCTION FUND PROPOSALS

Finally, we would note that there are two proposals that relate to the qualified withdrawal and utilization of funds by American shipping companies that have a Capital Construction Fund. Both proposals would eliminate an existing impediment relating to the expenditure of funds in the United States for vessel construction and repair. The enactment of these proposals will help put Americans to work aboard commercial vessels and in American shipyards and related service and supply industries.

The existing Capital Construction Fund (CCF) program is contained in Chapter 535 of Title 46, United States Code. The primary purpose of the CCF program is to enable commercial shipping companies to accumulate the private capital necessary to expand, upgrade and modernize their U.S.-flag fleets. Taxes on the earnings deposited into a CCF are deferred until withdrawn by the company and used for their intended and statutorily authorized purposes.

We believe the existing Capital Construction Fund provisions should be amended to expand the definition of qualified withdrawal so that American companies have a greater opportunity to spend their own money in the United States and to help put American maritime workers to work.

First, while the existing CCF allows a company to withdraw its funds to build vessels in the United States, it does not specifically allow funds to be withdrawn by a company to be used for the maintenance and repair of its vessels in an American shipyard. This is, in our opinion, an unwarranted distinction that does little more than deny American ship repair yards of much-needed commercial business.

Expanding the permissible use of CCF funds to include maintenance and repair of vessels in U.S. shipyards will generate additional job opportunities for American workers in our shipyards. This will help reduce the outsourcing of vessel maintenance and repair work to foreign shipyards and the outsourcing of American jobs in this industry. Equally important, facilitating the maintenance and repair of U.S.-flag commercial vessels will enhance the competitiveness of U.S.-flag vessel operations and help achieve a more modern and environmentally-sound fleet.

The second change to the CCF that we support would expand the ability of American shipping companies to withdraw and use their CCF funds to acquire vessels built in American shipyards.

Under the current regulatory framework controlling the Capital Construction Fund companies are precluded from withdrawing and using their own money for the acquisition of U.S.-built vessels through a charter or capital lease payment. Rather, they may only do so to acquire a vessel through a mortgage or by an outright purchase. In our opinion, this limitation should be eliminated, especially in view of the wide spread use of charter arrangements in today's worldwide shipping industry. It is an unnecessary and highly impractical distinction in the allowable use by a company of its own money, and serves only to impede the growth and modernization of the U.S.-flag shipping industry.

This impediment and restriction limits the flexibility of American companies to pursue all options pertaining to the financing and acquisition of vessels. It limits the ability of U.S.-flag vessel operators to make the best decision when planning and implementing a vessel acquisition program oftentimes forcing a company to delay or abandon its plans because it does not have access to its own accumulated capital in its CCF.

As we have noted, the construction of commercial vessels in United States shipyards generates thousands of skilled jobs in the shipbuilding and related service and supply industries. After the vessels are constructed and delivered, jobs are created for Americans who work aboard ship – the men and women we are proud to represent – helping to ensure that the Department of Defense has the trained civilian seafaring personnel needed to crew the government and privately-owned vessels that are called into service in time of war or other international emergency.

It is important to note that neither proposed change will require the appropriation of any new Federal funds nor provide American shipping companies with any new tax incentive. Rather, both would simply expand the opportunity for U.S.-flag shipping companies to spend their CCF funds to build, maintain and repair commercial vessels in the United States.

CONCLUSION

In conclusion, we would again express our thanks to Chairman Boustany, Chairman Tiberi and the Members of both Subcommittees for holding this hearing and for giving us the opportunity to submit this statement on behalf of the seagoing workforce we proudly represent. It is time to eliminate the disincentives under the tax code that discourage American companies from investing in American shipping operations and which encourage the outsourcing of American maritime jobs. Your Subcommittees, the Ways and Means Committee and this Congress have it within their power to take the first steps necessary for America to begin to regain its position as a leading maritime nation, to increase the share of our export and import trade carried by American ships, and to put American maritime workers to work all while enhancing and strengthening our country's military, economic and homeland security.

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