

STATEMENT OF CAPTAIN DONALD J. MARCUS, PRESIDENT
INTERNATIONAL ORGANIZATION OF MASTERS, MATES &
PILOTS, AFL-CIO

ON BEHALF OF

AMERICAN MARITIME OFFICERS
AMERICAN RADIO ASSOCIATION
MARINE ENGINEERS' BENEFICIAL ASSOCIATION
MARINE FIREMEN'S UNION
MARITIME TRADES DEPARTMENT, AFL-CIO
SEAFARERS INTERNATIONAL UNION
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

TO THE

SUBCOMMITTEE ON COAST GUARD AND MARITIME
TRANSPORTATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

ON

“CARGO PREFERENCE COMPLIANCE WITH AND
ENFORCEMENT OF MARITIME'S BUY AMERICAN
LAWS”

September 14, 2022

Mr. Chairman and Members of the Subcommittee:

Good morning. I am Captain Donald Marcus, President of the International Organization of Masters, Mates & Pilots, AFL-CIO. I am pleased to appear today and to submit this statement on behalf of the International Organization of Masters, Mates & Pilots as well as the following seafaring and transportation labor organizations: American Maritime Officers, American Radio Association, Marine Engineers' Beneficial Association, Marine Firemen's Union, Maritime Trades Department, AFL-CIO, Seafarers International Union, Sailors' Union of the Pacific, and Transportation Trades Department, AFL-CIO. The full enforcement and enhancement of America's U.S.-flag cargo preference shipping requirements are critically important to our organizations and to the jobs of the thousands of American mariners we represent. Our labor organizations are united in our vigorous support of the U.S.-flag cargo preference shipping requirements, and we thank this Subcommittee for holding this hearing and giving us the opportunity to express our views.

Together, our maritime labor unions represent the vast majority of United States Coast Guard (USCG) licensed and unlicensed American maritime personnel who work aboard commercial vessels of all types and who are among the most highly trained and qualified mariners in the worldwide maritime industry. Our unions and the licensed and unlicensed American merchant mariners we represent have never turned away from the challenges that must be faced to preserve the democratic way of life at home and overseas. As they did at the founding of our nation, during World War II and in every conflict before and since, the men and women of the United States-flag merchant marine stand ready to sail into harm's way whenever and wherever needed by our country to enhance America's military and economic interests and to support and supply our armed forces deployed overseas.

Without the U.S.-flag vessels and U.S. citizen licensed and unlicensed merchant mariners ready and available to provide the commercial sealift readiness capability needed by the Department of Defense, our nation would be forced to entrust the support, supply, and security of our forces overseas to foreign flag vessels and foreign crews who may not support U.S. defense operations and objectives. To do so would be to jeopardize the lives of American servicemen and women who will no longer be guaranteed the supplies and equipment they need to do their job in support of our country.

As stated by United States Transportation Command (USTRANSCOM) Commander General Stephen Lyons in November 2020, "With 85 percent of our forces based in the continental United States, nearly 90 percent of our military equipment is expected to deploy via sealift in a major conflict. In order to deploy those forces, we require safe, reliable and ready U.S.-flagged vessels [and], mariners to crew those ships. . ."

We thank you, Mr. Chairman, the members of this Subcommittee and Committee, and numerous other members of the House of Representatives for your strong support for the U.S.-flag maritime industry and for your efforts to preserve and create jobs for America's maritime workforce. We especially appreciate the action taken by this Committee to enact legislation requiring the Comptroller General to perform an independent audit regarding the enforcement of existing cargo preference shipping requirements by all Federal agencies and departments. We are hopeful that this audit will provide a clearer understanding of the degree to which Federal agencies may be, for whatever reason, acting contrary to the law and bypassing U.S.-flag, U.S.-crewed vessels in favor of foreign flag, foreign crewed vessels to move U.S. government cargoes. To fully achieve the goals and objectives of the U.S.-flag cargo preference shipping requirements, it is essential that the maximum amount of government generated cargoes move on U.S.-flag vessels consistent with the requirements of law.

We also appreciate President Biden's recognition of the importance of the maritime industry, and his Administration's commitment to a greater adherence to America's domestic Made-in-America and Buy American laws and policies as reflected in his Executive Order 14005 issued January 25, 2021. We are especially pleased that this Executive Order includes within its scope the domestic preference laws for maritime transport. This Administration has made clear that Ship American is a key component of our Nation's Buy American and Hire American policies and should be treated as such. As the President has stated, "I understand that merchant ships do not sail, and U.S. merchant mariners do not work, unless they have cargo to carry. I strongly support America's cargo preference laws."

Significantly, Executive Order 14005 strengthened the oversight and enforcement over the implementation of our cargo preference requirements and created a Made-In-America Office (MIAO) to help ensure his Administration's policies were being followed.

More specifically, the guidance issued by the White House to supplement the President's Executive Order states that the Made In America Office "will work with relevant agencies to review how best to ensure agency compliance with cargo preference requirements in order to maximize the utilization of U.S.-flag vessels, in excess of any applicable statutory minimum, to the greatest extent practicable." The guidance also notes that "cargo preference is necessary for the U.S. to encourage and aid the development and maintenance of an American merchant fleet (and mariner base) . . . to serve as a naval and military auxiliary in time of war or national emergency." We applaud President Biden for acting to ensure that Ship American requirements are implemented and enforced throughout his Administration.

It is interesting to note that this action by President Biden is the most significant step taken to ensure full compliance with the spirit and letter of our nation's cargo preference shipping requirements since the April 1962 Presidential Directive issued by President John F. Kennedy. That Directive, a response to the "worldwide economic and defense burdens facing the United

States,” directed all executive branch agencies to comply fully “with the purpose of our various cargo preference laws.”

President Kennedy’s Directive, like President Biden’s Executive Order, reflects the fact that the cargo preference statutes were not being “implemented in a manner to achieve fully their purpose,” which is that “U.S. government generated cargoes move in privately-owned U.S.-flag commercial vessels whenever such vessels are available at fair and reasonable rates.” In response, President Kennedy’s Directive makes clear, as does President Biden’s Executive Order, that the 50 percent requirement for U.S.-flag vessels in the law “is a minimum, and it shall be the objective of each agency to ship a maximum amount of such cargoes on U.S.-flag vessels.”

As this Subcommittee knows, existing U.S.-flag cargo preference shipping requirements mandate that a percentage of U.S. taxpayer financed government exports and imports be transported on privately-owned U.S.-flag commercial vessels, to the degree such vessels are available at fair and reasonable rates. The Cargo Preference Act of 1954 as amended requires that no less than 50 percent of government financed civilian cargoes shall move on privately-owned U.S.-flag commercial vessels. The Cargo Preference Act of 1904 (10 USC 2631) requires that all defense cargo be transported on U.S.-flag ships to the extent such vessels are available at fair and reasonable rates as does Public Resolution 17 which requires 100 percent of certain Export-Import Bank financed cargoes be carried on U.S.-flag ships also if available at fair and reasonable rates.

Reductions in cargo preference requirements and the failure by U.S. government agencies to fully enforce these cargo preference laws result in less cargo for U.S.-flag ships which means fewer U.S.-flag ships in operation and fewer U.S. mariners. In fact, since U.S.-flag cargo preference shipping requirements for food aid cargoes were arbitrarily slashed from 75% to 50% in 2012, the U.S.-flag fleet has plummeted by 26% according to the Maritime Administration - more than triple the impact initially forecast – contributing to the current maritime manpower shortage which has been exacerbated by the direct and indirect impacts of the COVID 19 pandemic on our industry.

The cargo preference statutes and policies, taken in conjunction with the Maritime Security Program and the soon-to-be-implemented Tanker Security Program, provide U.S.-flag vessels with a critical base of cargo, and thereby give U.S.-flag vessels the opportunity to stay active while they compete against lower-cost and oftentimes tax-free foreign flag vessels for the carriage of commercial cargoes in the U.S. foreign trades. This in turn helps to ensure that the U.S.-flag vessels and their American crews remain available to the Department of Defense in time of war or other international emergency.

It is important to understand that every U.S.-flag oceangoing vessel regardless of type and regardless of whether it is enrolled in the Maritime Security Program, has important military utility by providing the employment base necessary to maintain the cadre of American merchant mariners needed by the Department of Defense. Consequently, the full implementation of all cargo

preference requirements applicable to the carriage of all types of U.S. government cargoes helps guarantee that American maritime jobs will not be outsourced to the benefit of foreign maritime workers and that the dangerous decline in the number of available American merchant mariners will not worsen.

To reiterate: Without the capability provided by the U.S.-flag international fleet and its civilian American mariner workforce, the Department of Defense would be forced to either dedicate its resources to replicate, at significant cost to the American taxpayer, the commercial sealift readiness capability provided by our industry or to entrust the security of our Nation and the safety and supply of American troops to foreign flag of convenience vessels crewed by foreign nationals who cannot be counted on to support U.S. defense operations. To do so would be to jeopardize the lives of American servicewomen and men who will no longer be guaranteed the supplies and equipment they need to do their job in support of our country.

We can begin to address this shortfall in the American maritime manpower pool by rejecting misguided and unwarranted attempts to weaken or repeal existing U.S.-flag cargo preference shipping requirements and by ensuring that greater amounts of government-generated cargoes move on U.S.-flag ships, thereby increasing the size of the U.S.-flag fleet and the number of American merchant mariners to crew the vessels needed to meet Department of Defense requirements. As stated in 2015 by General Paul Selva, former Vice Chairman of the Joint Chiefs of Staff: “A strong mariner base is critical to not only crewing the merchant fleet in peacetime, but our DOD surge capacity in wartime. . . the mariner base is at the point where future reductions in U.S.-flag capacity puts our ability to fully activate, deploy, and sustain forces at increased risk.”

Therefore, we call on Congress to forcefully reject the Concurrent Resolutions introduced in the House of Representatives and Senate that attempt to leverage the war in Ukraine to justify a waiver of cargo preference. These resolutions not only ignore the impact such a waiver would have on America’s commercial sealift readiness capability, but totally disregard the impact it would have on the jobs of American merchant mariners. The reality is that if these Resolutions were enacted, the Federal government will relinquish all control over the carriage of U.S.-taxpayer financed food aid cargoes to foreign flag foreign crewed ships.

Most importantly, contrary to what the sponsors of these Resolutions would have us believe, existing U.S.-flag cargo preference shipping requirements are not impeding our government’s efforts to export food aid. If and when the United States Agency for International Development (USAID) begins to utilize the funding made available by Congress to respond to the worldwide food aid crisis and either the volume of food aid cargo exceeds available U.S.-flag tonnage or U.S.-flag vessels are not available at fair and reasonable rates, existing law already allows for the waiver of the cargo preference Ship American requirements. In short, the resolutions are completely unnecessary.

Secondly, despite the efforts of the late Congressman Elijah Cummings and numerous members of this Committee, Congress has failed to undo the damage caused our industry through the arbitrary reduction in cargo preference shipping requirements for food aid cargoes enacted in 2012. Beginning in 1985, no less than 75 percent of the gross tonnage of international food aid cargoes was reserved for U.S.-flag vessels to the degree such vessels are available at fair and reasonable rates. In addition, the law at that time further stipulated that the Department of Transportation would reimburse the food aid programs for any cost premium associated with the use of U.S.-flag vessels for more than 50 percent of the food aid cargoes. In this way, we would be maximizing the use of U.S.-flag vessels while minimizing the impact on the budget for the food aid programs.

It is time to rectify this situation and restore, at a minimum, the requirement in place from 1985 – 2012 that at least 75 percent of the gross tonnage of international food aid cargoes be carried on U.S.-flag vessels in conjunction with the reinstatement of the reimbursement mechanism. As stated in 2018 by General Darren McDew, then-Commander, United States Transportation Command: “a higher cargo preference requirement may incentivize increased government use of existing U.S.-flag vessels and stem the current decline of the fleet.”

Thirdly, we ask that Congress provide the Maritime Administration with whatever additional authority may be necessary to enable the Maritime Administration to fully administer and enforce the cargo preference statutes. Section 3511 of the Duncan Hunter National Defense Authorization Act of 2009 (PL 110-417) clarifies that the Department of Transportation through the Maritime Administration is the lead Federal agency responsible for the administration, interpretation, and enforcement of the cargo preference requirements. The primary purpose of this provision is to minimize if not eliminate interagency disputes over the applicability of cargo preference by clarifying the authority of the Department of Transportation/Maritime Administration to be the final arbiter.

The need for such authority within the Maritime Administration is best illustrated by the unilateral refusal by USAID to use U.S.-flag vessels to carry food aid to Yemen. Since P.L 480 cargoes are the single largest source of civilian agency cargoes, and the Yemen program now accounts for 40% of the PL 480 budget, this is a serious and pressing matter for our industry.

Compounding the arbitrariness on the part of USAID is the lack of transparency in its application of waivers that exclude U.S.-flag carriers from participating in the Yemen program. The agency initially stated that it had excluded American carriers from the program because it believed American carriers are unreliable and then claimed that the carriage of cargoes to Yemen is too dangerous for American vessels and American crews – despite the fact that U.S flag vessels and their American crews are the only vessels that can be consistently relied upon by our government and that American mariners have never refused to sail into dangerous waters in support of a United States policy or objective.

Most recently, and most disturbingly, USAID stated that it would no longer discuss with our industry potential avenues to restore U.S.-flag participation in the program and indicated that American carriers would be excluded from participation based on cost relative to foreign carriers, contrary to the fair and reasonable rate requirements in the law.

In conclusion Mr. Chairman, we would again emphasize that the dangerous decline in the American maritime manpower pool must be reversed as we re-examine our critical national security supply chain. Congress and the Administration must focus on ways to stop the further loss of U.S.-flag vessels and the resultant outsourcing of American maritime jobs, and actively work to increase the number of vessels operating under the U.S.-flag to create and support more maritime job opportunities for Americans. It is imperative to ensure that our country has the U.S.-flag commercial sealift capability and trained American mariners needed to support the Department of Defense throughout its supply chain.

The full implementation of the cargo preference requirements to transport U.S. government cargoes helps guarantee that American maritime jobs will not be outsourced and lost to foreign maritime workers. Congress and the Administration should expand the application of cargo preference for non-defense U.S. government impelled cargoes. Additionally, the Department of Defense should regularly and actively ensure compliance with current U.S. cargo preference laws by Department of Defense entities, including contracting officers, as well Department of Defense contractors and subcontractors.

A strong, viable, privately-owned United States-flag maritime industry serves as a critical line of defense against the total domination of the world's oceans and the carriage of international trade by those nations that do not adhere to our commitment to fair trade and open seas. From the founding of our Nation to today, American merchant mariners have served with distinction and courage, never hesitating to sail into war zones to supply and support American troops deployed anywhere in the world, and too often sacrificing their own lives for our protection. We submit that full compliance with cargo preference laws is an investment the U.S. Government must make to maintain and increase the commercial sealift readiness capability necessary to support our national security and to protect our national economy.

Thank you again for the opportunity to express the views of America's seafaring and transportation labor organizations on the importance of our nation's U.S.-flag cargo preference shipping requirements. We stand ready to provide whatever additional information you may require and to work with you and your colleagues to strengthen and grow our U.S.-flag merchant marine.