

STATEMENT OF THE HONORABLE JOHN GAUGHAN, MARITIME ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS WITH RESPECT TO THE READY RESERVE FORCE COMPONENT OF THE NATIONAL DEFENSE RESERVE FLEET.

NOVEMBER 17, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY. MY NAME IS JOHN GAUGHAN, AND I AM THE MARITIME ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION (DOT). I AM PLEASED TO APPEAR THIS MORNING TO PRESENT THE VIEWS OF DOT WITH RESPECT TO THE ISSUES THE COMMITTEE RAISED ON THE READY RESERVE FORCE (RRF) COMPONENT OF THE NATIONAL DEFENSE RESERVE FLEET. ACCOMPANYING ME ARE MR. LEE SANTMAN, DIRECTOR OF THE OFFICE OF SHIP OPERATIONS, MR. TIM ROARK, CHIEF, DIVISION OF MARINE ACQUISITION, AND MR. MICHAEL J. MCMORROW, CHIEF, DIVISION OF ADMINISTRATION, OFFICE OF THE CHIEF COUNSEL.

MR. CHAIRMAN, FOLLOWING WORLD WAR II, THE ISSUE OF THE ESTABLISHMENT AND MANAGEMENT OF CIVILIAN VESSEL ASSETS FOR USE IN NATIONAL EMERGENCIES WAS ADDRESSED BY CONGRESS. THE CONGRESS DETERMINED THAT THIS RESPONSIBILITY PROPERLY RESIDED WITH A CIVILIAN AGENCY AND THIS WAS CODIFIED AS THE MERCHANT SHIP SALES ACT OF 1946 WHICH DIRECTED THE ESTABLISHMENT OF THE NATIONAL DEFENSE RESERVE FLEET (NDRF). CONGRESS PLACED CERTAIN LIMITATIONS ON THE USE OF THE NDRF, MANDATING THAT VESSELS IN THE NDRF COULD NOT BE USED TO COMPETE WITH COMMERCIAL VESSELS IN THE

MARKETPLACE. BY PLACING THE RESERVE FLEET UNDER THE CONTROL OF A CIVILIAN AGENCY, CONGRESS ENSURED THAT THE VESSELS WOULD NOT BE USED IN COMPETITION WITH PRIVATE MERCHANT SHIPS.

IN 1976, WITH GROWING RECOGNITION THAT THE SEALIFT REQUIREMENTS OF THE DEPARTMENT OF DEFENSE (DOD) WERE CHANGING, THE ASSISTANT SECRETARY OF NAVY AND THE ASSISTANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS JOINTLY AGREED TO UNDERTAKE A PROGRAM TO UPGRADE VESSELS THAT WERE PART OF THE NDRF TO A HIGHER STATE OF READINESS. THIS AGREEMENT WAS EVIDENCED BY A MEMORANDUM OF AGREEMENT (MOA) DATED NOVEMBER 2, 1976.

PURSUANT TO THIS MOA, VESSELS IN THE NDRF, WHICH HAD A 30 DAY OPERATIONAL STATUS REQUIREMENT, WERE UPGRADED SO THAT THEY COULD BE BROKEN OUT OF LAYUP AND PLACED ON BERTH WITHIN 5, 10 AND 20 DAYS. NAVY FUNDS WERE USED FOR THE UPGRADING WORK, AND FUNDS FOR MAINTENANCE OF THE RRF WERE APPROPRIATED TO THE MARITIME ADMINISTRATION.

IN OCTOBER OF 1982, THE 1976 MOA WAS REVISED WITHOUT CHANGING THE ROLES OF NAVY AND THE MARITIME ADMINISTRATION OR THE ROLE OF THE SECRETARY OF TRANSPORTATION TO EXECUTE AND IMPLEMENT THE RRF PROGRAM. HOWEVER, FUNDING FOR THE MAINTENANCE OF THE RRF WAS TRANSFERRED AT OMB'S REQUEST BEGINNING IN 1982 TO THE NAVY BUDGET. THE BASIS FOR TRANSFERRING FUNDING OF THE RRF PROGRAM TO THE NAVY BUDGET WAS THAT FUNDS FOR THE RRF WOULD COMPETE WITH FUNDING FOR OTHER MILITARY REQUIREMENTS, AND IN THIS WAY INSURE THAT THE REQUEST IS OF SUFFICIENT PRIORITY.

IN 1984, AS FUNDING BECAME AVAILABLE TO ACQUIRE MILITARILY USEFUL BUT COMMERCIALY OBSOLETE MERCHANT VESSELS FOR LAYUP IN THE RESERVE FLEET, FUNDS APPROPRIATED TO NAVY WERE TRANSFERRED TO DOT, AND MARAD ACQUIRED THE VESSELS FOR THE RRF. THIS PROCEDURE WAS REFLECTED IN THE 1982 MOA, AND WAS FOLLOWED UNTIL 1987.

DURING 1986, THE NAVY EXPRESSED SOME CONCERN WITH CERTAIN ASPECTS OF MARAD'S CONTRACTUAL PROCEDURES FOR HANDLING THE SHIP ACQUISITIONS. IN PARTICULAR, THEY FELT THAT THE DOT PROCUREMENT REVIEW PROCESS WAS NOT FUNCTIONING QUICKLY ENOUGH. I MADE A NUMBER OF MANAGEMENT AND ORGANIZATIONAL CHANGES AND TOGETHER WITH THE OFFICE OF THE SECRETARY MODIFIED PROCEDURES WHICH STREAMLINED THE CONTRACTING AND REVIEW PROCESS.

NEVERTHELESS, THE NAVY DECLARED ITS INTENTIONS TO CONDUCT FUTURE RRF SHIP PURCHASES ITSELF. AFTER REVIEWING THE MANAGEMENT AND PROCEDURAL CHANGES MADE BY MARAD TO ACCOMMODATE NAVY'S ACQUISITION CONCERNS, THE DEPARTMENT OF TRANSPORTATION VIEWED THE MODIFIED MOA AS UNNECESSARY. AT THE SAME TIME, THE NAVY ALSO PROPOSED A REVISION OF THE EXISTING MOA THAT WOULD HAVE IMPLEMENTED THE NAVY'S POSITION THAT THE RRF IS SEPARATE AND DISTINCT FROM THE NDRF.

MR. CHAIRMAN, THE DISAGREEMENT BETWEEN DOT AND THE NAVY THAT IS THE SUBJECT OF TODAY'S HEARING DID NOT ARISE UNTIL 1986 WITH REGARD TO THE FY 1987 ACQUISITION WHEN THE NAVY NOTIFIED US THAT, INSTEAD OF MARAD PERFORMING THE PROCUREMENT AS HAD

TRADITIONALLY BEEN DONE, THE NAVY WOULD USE THE FUNDS TO DIRECTLY ACQUIRE THE VESSELS THEMSELVES. IN ADDITION TO THE STATUTORY PROBLEMS THIS PRESENTS, THERE ARE ALSO CERTAIN ASSOCIATED PROBLEMS CONCERNING THE PROPER DOCUMENTATION OF VESSELS ACQUIRED IN THIS MANNER FOR THE RRF, AND THE TYPE OF CONTRACT TO BE USED FOR THE OPERATION OF ACTIVATED VESSELS.

MR. CHAIRMAN, THE ISSUES BETWEEN DOT AND NAVY BOIL DOWN TO:
1) WHETHER THE NAVY OR MARAD HAS THE STATUTORY AUTHORITY TO OWN, MAINTAIN AND CONTROL USAGE OF CIVILIAN VESSELS HELD IN RESERVE FOR NATIONAL EMERGENCY SITUATIONS; AND 2) WHETHER DOD PROCUREMENT AND CONTRACTING PROCEDURES PRECLUDE THE USE OF SHIP MANAGERS.

MR. CHAIRMAN, WE CONTINUE TO BE OF THE FIRM VIEW THAT NOTWITHSTANDING FUNDING THROUGH THE NAVY, THE RRF REMAINS A COMPONENT OF THE NDRF FOR WHICH THE SECRETARY OF TRANSPORTATION IS RESPONSIBLE.

THE POSITION OF THE DEPARTMENT IS:

- THE ONLY STATUTORY AUTHORITY FOR A RESERVE OF GOVERNMENT OWNED MERCHANT TYPE SHIPS IS THE MERCHANT SHIP SALES ACT OF 1946 (50 APP. U.S.C. 1744), PURSUANT TO WHICH THIS AUTHORITY IS ASSIGNED TO THE SECRETARY OF TRANSPORTATION.

- ADDITIONAL STATUTORY PROVISIONS CREATE A LONGSTANDING SCHEME OF LEGISLATION WHICH SUPPORTS THE FUNDAMENTAL CONCLUSIONS STATED ABOVE; E.G., THE VESSEL TRANSFER STATUTE (40 U.S.C. 483A) AND THE ESTABLISHMENT OF THE VESSEL OPERATIONS REVOLVING FUND (46 U.S.C. 1241A).

- THE DEFENSE APPROPRIATIONS/AUTHORIZATION ENACTMENTS ESTABLISH THAT THE RRF STANDS APART FROM PROPERLY AUTHORIZED NAVAL VESSEL FLEETS, AND NOTHING IN THE LEGISLATIVE RECORDS SUPPORTS TRANSFERRING THE NDRF OR ANY PORTION OF THE NDRF FROM THE SECRETARY OF TRANSPORTATION TO THE NAVY.

AN ISSUE INVOLVING RESPONSIBILITY FOR THE RRF AROSE OVER A NAVY REQUEST FOR TRANSFER OF AN RRF SHIP. UNDER AUTHORITY OF THE MERCHANT SHIP SALES ACT OF 1946, THE DEPARTMENT HAS BROKEN OUT VESSELS FROM THE RRF FOR THE NAVY FOR AT SEA TESTING. THE DEPARTMENT HAS NEVER DENIED TRANSFERS TO THE NAVY FOR SUCH ACTIVATION, TESTING AND EXERCISE OF RRF SHIPS. THEREFORE, OUR REPLY TO THE NAVY'S REQUEST WAS THAT THE SHIP WOULD BE MADE AVAILABLE SO LONG AS IT DIDN'T COMPETE WITH THE PRIVATE SECTOR. NAVY REPLIED THAT THE CONDITIONS WERE UNACCEPTABLE.

CONTRACTING PROCEDURES HAVE ALSO BEEN AN AREA OF DISAGREEMENT BETWEEN MARAD AND NAVY. UNFORTUNATELY, MR. CHAIRMAN, THE DEBATE WHICH STARTED OVER THE NEED FOR SOME CHANGES IN OUR CONTRACTING PROCEDURES AND WHICH WAS SUBSEQUENTLY EXPANDED TO SEPARATE THE RRF FROM THE NDRF AND ELIMINATE MARAD'S ROLE IN THE ACQUISITION OF COMMERCIAL SHIPS HAS NOW COME TO QUESTION THE MANNER IN WHICH MARAD CONTRACTS FOR MAINTENANCE AND OPERATION OF RRF VESSELS.

FOR THE FIRST SEVEN YEARS OF THE RRF PROGRAM, THE DEPARTMENT FOLLOWED COMMON INDUSTRY PRACTICE DATING FROM WORLD WAR II AND ENGAGED GENERAL AGENTS TO BE RESPONSIBLE FOR ACTIVATION AND OPERATION OF SHIPS IN THE RESERVE. IT WORKED EXTREMELY WELL FOR THREE PERIODS OF CONFLICT WHERE OUR ARMED FORCES HAVE BEEN ENGAGED. AS IN THE CASE OF THE SHIP ACQUISITION PROCESS, THE NAVY DEMANDED THAT OUR EXISTING GENERAL AGENTS AGREEMENTS BE TERMINATED AND THAT INDEPENDENT CONTRACTORS BE INSTITUTED IN THEIR PLACE. MY THRUST, HOWEVER, WAS TO AGAIN DETERMINE WHAT SPECIFIC CHANGES NEEDED TO BE MADE TO ACCOMMODATE NAVY'S CONCERNS. IN THE MEANTIME, I WAS ALREADY AWARE OF A NUMBER OF CHANGES NECESSARY IN THE EXISTING AGREEMENT JUST TO COME UP TO DATE WITH RECENT F.A.R. AND T.A.R. REQUIREMENTS.

A GOOD FAITH EFFORT WAS MADE BY MARAD TO DEAL WITH EACH AND EVERY POINT EXPRESSED BY THE NAVY. AMENDMENTS TO THE OUTSTANDING REQUEST FOR PROPOSAL (RFP) WERE MADE TO ACCOMMODATE THE NAVY'S VIEWS WITHOUT COMPROMISING MY ABILITY TO MEET THE NAVY'S 5, 10, AND 20 DAY CALL UP WHEN SUCH "NO NOTICE" ACTIVATIONS ARE IMPLEMENTED. NEVERTHELESS, THE NAVY HAS MAINTAINED THE POSITION THAT IT WOULD NOT RELEASE FUNDS FOR AWARDS UNDER OUR SHIP MANAGER SOLICITATION BECAUSE WE WOULD NOT MAKE ALL THE CHANGES NAVY REQUESTED. CURRENTLY, PROPOSALS IN RESPONSE TO THE SOLICITATION ARE IN HAND AND ARE BEING EVALUATED.

MR. CHAIRMAN, IT IS OUR VIEW THAT THE RESPONSIBILITY AND EXPERTISE TO DETERMINE THE MOST EFFECTIVE WAY TO ACQUIRE, MAINTAIN, AND ACTIVATE RESERVE FLEET VESSELS, AS WELL AS THE APPROPRIATE TYPE OF CONTRACTUAL MECHANISM TO MEET THIS GOAL IS AN INHERENT AND INSEPARABLE ELEMENT OF THE STATUTORY DUTY VESTED EXCLUSIVELY IN THE SECRETARY OF TRANSPORTATION BY THE CONGRESS IN ENACTING THE 1946 ACT.

MR. CHAIRMAN, THAT CONCLUDES MY PREPARED STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU OR THE MEMBERS OF THE SUBCOMMITTEE MAY HAVE.