

STATEMENT OF KARL E. BAKKE, CHIEF COUNSEL, MARITIME
ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE
SUBCOMMITTEE ON MERCHANT MARINE OF THE HOUSE MERCHANT MARINE AND
FISHERIES COMMITTEE ON THE INTERMODAL SHIPPING ACT OF 1989.

JUNE 15, 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON MERCHANT MARINE. MY NAME IS KARL E. BAKKE, AND I AM CHIEF COUNSEL OF THE MARITIME ADMINISTRATION IN THE DEPARTMENT OF TRANSPORTATION. I WOULD LIKE TO GIVE YOU OUR VIEWS ON H.R. 2498, THE "INTERMODAL SHIPPING ACT OF 1989."

OUR VIEWS REFLECT AN OVERALL POLICY PERSPECTIVE ON THIS LEGISLATION, SINCE THE DEPARTMENT IS NOT DIRECTLY INVOLVED IN THE REGULATORY SCHEME. HOWEVER, H.R. 2498 IS INCONSISTENT WITH A DRAFT BILL THE SECRETARY OF TRANSPORTATION RECENTLY FORWARDED TO CONGRESS THAT WOULD ELIMINATE ALL INTERSTATE COMMERCE COMMISSION (ICC) REGULATION OF INTERSTATE WATER CARRIER AND RAIL PASSENGER TRANSPORTATION, AS WELL AS OTHER TRANSPORTATION INDUSTRIES. THIS DRAFT BILL WOULD ALSO TRANSFER VIRTUALLY ALL REMAINING JURISDICTION FOR REGULATION OF RAILROAD FREIGHT RATES, SERVICES, PRACTICES AND ABANDONMENTS INTACT TO THE DEPARTMENT OF TRANSPORTATION.

SECTION 6(g) OF THE DRAFT BILL PROVIDES THAT THE FEDERAL MARITIME COMMISSION (FMC) MAY NOT REGULATE TRANSPORTATION BY WATER CARRIERS WHICH IS NOW THE SUBJECT OF ICC JURISDICTION. OUR OVERALL POLICY PERSPECTIVE IS THAT NO REGULATION IN THIS AREA IS

NECESSARY. THE DRAFT BILL DOES NOT ADDRESS EXISTING REGULATORY AUTHORITY OF THE FMC OVER DOMESTIC OFFSHORE CARRIERS.

THE DOMESTIC OFFSHORE COMMERCE OF THE UNITED STATES INVOLVES THE TRADES BETWEEN U.S. MAINLAND PORTS AND PORTS IN ALASKA, HAWAII, PUERTO RICO, GUAM, THE U.S. VIRGIN ISLANDS, AMERICAN SAMOA, AND CERTAIN OTHER U.S. PACIFIC ISLANDS, AS WELL AS TRADE BETWEEN PORTS IN THESE OFFSHORE STATES, POSSESSIONS AND TERRITORIES. ENTRY INTO THE DOMESTIC OFFSHORE TRADES IS NOT SUBJECT TO REGULATION BUT, PURSUANT TO THE JONES ACT, THESE TRADES ARE GENERALLY RESERVED TO VESSELS CONSTRUCTED IN THE U.S. AND OPERATED BY U.S. CITIZENS UNDER THE U.S. FLAG. THE U.S. VIRGIN ISLANDS, AMERICAN SAMOA, AND THE COMMONWEALTH OF THE NORTHERN MARIANAS ARE CURRENTLY EXEMPT FROM U.S. CABOTAGE LAWS, AND MAY BE SERVED BY FOREIGN-FLAG VESSELS.

AT THE PRESENT TIME, RATES OR CHARGES FOR THE TRANSPORTAION OF CARGO BY COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE COMMERCE CAN BE SUBJECT TO TWO TYPES OF REGULATION. IF THE CARGO IS TRANSPORTED UNDER AN INTERMODAL JOINT THROUGH RATE, THE ICC EXERCISES JURISDICTION. A JOINT THROUGH RATE IS A SINGLE CHARGE PUBLISHED BY ONE CARRIER AND CONCURRED IN BY A CONNECTING CARRIER AS THE RATE THAT WILL APPLY IN A THROUGH MOVEMENT OF CARGO FROM A POINT OF ORIGIN ON THE LINE OF ONE CARRIER (e.g., KANSAS CITY) TO A POINT OF DESTINATION ON THE LINE OF THE OTHER (e.g., ANCHORAGE,

ALASKA). IN THE CASE OF A PORT-TO-PORT MOVEMENT (e.g., SEATTLE TO ANCHORAGE), THE FMC REGULATES RATES AND PRACTICES. THE MORE EXTENSIVE OF THE TWO TYPES OF REGULATION IS THE PUBLIC-UTILITY TYPE OF RATE REGULATION EXERCISED BY THE FMC UNDER THE INTERCOASTAL SHIPPING ACT, 1933, AND THE SHIPPING ACT, 1916.

IN RECENT YEARS, THE UNITED STATES HAS MOVED DECISIVELY TO REDUCE GOVERNMENT REGULATION OF INDUSTRIES OFFERING COMMERCIAL TRANSPORTATION SERVICES. DURING THIS PERIOD, LEGISLATION HAS BEEN ENACTED TO DEREGULATE OR SIGNIFICANTLY REFORM THE ECONOMIC REGULATION OF AIR, RAIL, TRUCK, AND MOST RECENTLY, OCEAN COMMON CARRIERS OPERATING IN THE FOREIGN COMMERCE OF THE UNITED STATES. INCLUDED IN EACH OF THESE STATUTES ARE PROVISIONS DESIGNED TO EASE THE BURDEN OF RATE REGULATION ON U.S. TRANSPORTATION COMPANIES, PARTICULARLY THOSE SUBJECT TO DOMESTIC REGULATION. IN THE ENACTMENT OF REGULATORY REFORM LEGISLATION, IT HAS GENERALLY BEEN FOUND THAT RATE REGULATION TENDS TO BE COUNTERPRODUCTIVE TO THE GOAL OF PROVIDING EFFICIENT, LOW-COST TRANSPORTATION SERVICE.

H.R. 2498 PROVIDES A STARTING POINT FOR THE DEBATE OVER WHETHER PARTIAL OR FULL DEREGULATION OF THE DOMESTIC OFFSHORE TRADES IS THE BEST SOLUTION. HOWEVER, IN ITS PRESENT FORM THE BILL IS UNSATISFACTORY FOR A NUMBER OF REASONS.

THE BILL WOULD CONTINUE REGULATION OF DOMESTIC INTERSTATE AND INTERCOASTAL WATERBORNE COMMERCE, ALBEIT BY THE FMC. CONSISTENT WITH THE DEPARTMENT'S DRAFT BILL TO SUNSET THE ICC, THE DEPARTMENT BELIEVES SUCH REGULATION IS ENTIRELY UNNECESSARY.

A CENTRAL COMPONENT OF THE BILL IS RETENTION OF PUBLIC-UTILITY TYPE RATE-MAKING IN THE DOMESTIC OFFSHORE TRADES, INCLUDING THROUGH MOVEMENTS. WE ARE VERY CONCERNED ABOUT THE IMPACT OF H.R. 2498 ON INLAND TRANSPORTATION MARKETS. AT PRESENT, INTERMODAL SHIPPERS CAN NEGOTIATE CONTRACT RATES FOR RAIL-WATER AND MOTOR-WATER MOVEMENTS SUBJECT TO THE ICC'S JURISDICTION. THE ABILITY TO ENTER INTO CONTRACTS PROVIDES GREATER FLEXIBILITY FOR SHIPPERS AND CARRIERS TO DESIGN TRANSPORTATION PACKAGES THAT BEST MEET THEIR MUTUAL NEEDS, WHILE ALSO PROVIDING GREATER CERTAINTY TO THE PARTIES. IN ADDITION, SOME INLAND TRANSPORTATION (SUCH AS COFC/TOFC TRAFFIC) HAS BEEN EXEMPTED FROM ICC REGULATION. WE BELIEVE THAT THE REFORMS OF THE MOTOR CARRIER ACT OF 1980 AND THE STAGGERS RAIL ACT HAVE PROVIDED SUBSTANTIAL BENEFITS TO SHIPPERS--BENEFITS WHICH MIGHT BE COMPROMISED IF THE DOMESTIC OCEAN INTERMODAL MOVEMENTS WERE TO BE SUBJECTED TO FMC JURISDICTION AS CONTEMPLATED BY H.R. 2498.

ONE SPECIFIC CONCERN IS THE NEW LICENSING REQUIREMENT FOR DOMESTIC OCEAN FREIGHT FORWARDERS. WE QUESTION THE NEED FOR SUCH ADDITIONAL REGULATION.

ANOTHER CONCERN IS THE BILL'S PROPOSAL TO EXEMPT FROM THE ANTITRUST LAWS A WIDE VARIETY OF AGREEMENTS AMONG CARRIERS, SO LONG AS THESE AGREEMENTS DO NOT DIRECTLY SET PRICES. IT IS PARTICULARLY TROUBLING THAT THESE AGREEMENTS WOULD NOT BE SUBJECT TO STRICT REGULATION BY THE FMC (WHICH IS NOT REQUIRED TO APPROVE THEM). WE ARE CONCERNED WITH THE BROAD SCOPE OF THIS EXEMPTION, WHICH COULD ALLOW REDUCTION OF COMPETITION IN A NUMBER OF WAYS. IT IS NOT NECESSARY FOR A GROUP OF PARTICIPANTS IN A MARKET TO SET PRICES IN CONCERT IN ORDER TO AFFECT MARKET CONDITIONS. SUCH JOINT ACTIONS AS THE ALLOCATION OF TRAFFIC, RATIONALIZATION OF CAPACITY, OR DECISIONS ABOUT THE NUMBER OF VOYAGES ON PARTICULAR TRAFFIC ROUTES COULD HAVE THE POTENTIAL TO REDUCE THE AMOUNT OF SERVICE PROVIDED -- HENCE A POSSIBLE INCREASE IN PRICES ABOVE COMPETITIVE LEVELS.

FINALLY, WE HAVE A BRIEF COMMENT ON THE ISSUE OF DUAL JURISDICTION OVER THE DOMESTIC OFFSHORE TRADES. WHILE WE ARE AWARE OF COMPLAINTS FROM SHIPPERS AND CARRIERS, WE DO NOT HAVE SYSTEMATIC DATA CONCERNING SHIPPER AND CARRIER COMPLAINTS OR OTHER INDICES OF HOW WELL TRANSPORTATION MARKETS ARE FUNCTIONING UNDER THE PRESENT SYSTEM OF DUAL JURISDICTION. CONSEQUENTLY, WE DEFER TO THE FMC ON WHETHER THERE IS A PRESENT NEED FOR CONSOLIDATION OF JURISDICTION, AS PROPOSED BY H.R. 2498, FOR REGULATION OF THE DOMESTIC OFFSHORE TRADES.

THAT CONCLUDES MY REMARKS, MR. CHAIRMAN. I WILL BE GLAD TO ANSWER ANY QUESTIONS.