

STATEMENT OF WILLIAM A. CREELMAN, DEPUTY MARITIME ADMINISTRATOR,
DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON MERCHANT
MARINE OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES ON H.R.
3921, "DOMESTIC COMMERCE IMPROVEMENT ACT."

FEBRUARY 7, 1990

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, MY NAME IS WILLIAM A. CREELMAN. I AM DEPUTY MARITIME ADMINISTRATOR OF THE MARITIME ADMINISTRATION IN THE DEPARTMENT OF TRANSPORTATION. I AM ACCOMPANIED TODAY BY ROBERT J. PATTON, JR., ACTING CHIEF COUNSEL. I AM PLEASED TO PRESENT THE VIEWS OF THE MARITIME ADMINISTRATION ON H.R. 3921, THE "DOMESTIC COMMERCE IMPROVEMENT ACT."

THE MARITIME ADMINISTRATION (MARAD) TESTIFIED LAST YEAR AT TWO OVERSIGHT HEARINGS ON THE JONES ACT (SECTION 27 OF THE MERCHANT MARINE ACT, 1920, AS AMENDED, 46 APP. U.S.C. 883). AT THAT TIME, WE REAFFIRMED THE BUSH ADMINISTRATION'S FIRM COMMITMENT TO PRESERVE THE INTEGRITY OF THE JONES ACT. UNITED STATES-OWNED AND MANNED SHIPS IN THE COASTWISE TRADE CARRY MORE TONNAGE THAN DO OUR SHIPS IN THE FOREIGN TRADE, AND ARE VITAL TO THE EMPLOYMENT OF THOUSANDS OF SEAMEN AND WORKERS IN UNITED STATES SHIPYARDS, PORTS AND TERMINALS. FURTHERMORE, THESE UNITED STATES CITIZEN-OWNED AND MANNED SHIPS OPERATING IN OUR COASTAL WATERS ARE IMMEDIATELY AVAILABLE IN TIME OF NATIONAL EMERGENCY.

H.R. 3921 HAS FOUR AREAS. THE FIRST IS SECTION 2 OF THE BILL WHICH WOULD AMEND THE SECOND PROVISIO OF THE JONES ACT TO REQUIRE THAT A COASTWISE-QUALIFIED VESSEL HAVE ALL OF ITS "MAJOR

WORK," AS DEFINED IN THIS SECTION, PERFORMED IN THE UNITED STATES. THIS TERM WOULD REPLACE "REBUILDING" IN THE CURRENT LAW. SECTION 2 DEFINES "MAJOR WORK" AS WORK ON A VESSEL THAT CHANGES ITS BASIC CHARACTERISTICS, INCLUDING THE CONSTRUCTION OF MAJOR COMPONENTS OF THE HULL OR SUPERSTRUCTURE, WHICH RESULTS IN ALTERATION TO OR DELETION FROM PASSENGER OR CARGO-CARRYING CAPACITY OR, WITH RESPECT TO A PASSENGER VESSEL, ITS HOTEL OR PUBLIC SPACES, OR THE ALTERATION OF THE CATEGORY OR NATURE OF SERVICE OF THE VESSEL. ADDITIONALLY, THE SECRETARY WOULD BE AUTHORIZED TO DETERMINE OTHER CHANGES TO THE VESSEL THAT MAKE IT "ESSENTIALLY A NEW VESSEL," AND, THEREFORE, SHOULD BE CONSIDERED MAJOR WORK. EMERGENCY REPAIRS ARE EXCLUDED FROM THE DEFINITION OF MAJOR WORK.

THIS NEW DEFINITION APPEARS TO BE INTENDED TO BROADEN AND TO SPECIFY MORE CLEARLY THE CONDITIONS UNDER WHICH WORK ON A VESSEL MUST BE PERFORMED IN UNITED STATES SHIPYARDS TO RETAIN COASTWISE TRADING PRIVILEGES. HOWEVER, THE INTRODUCTION OF NEW TERMS, SUCH AS "MAJOR WORK" AND "BASIC CHARACTERISTICS," COULD BE CONFUSING AND WOULD REQUIRE INTERPRETATION BY THE U.S. COAST GUARD, WHICH COULD CREATE NEW INTERPRETATION QUESTIONS. THE SUBCOMMITTEE MAY WISH TO PROVIDE AN EXPRESSION OF CONGRESSIONAL INTENT TO PROVIDE GUIDANCE TO THE U.S. COAST GUARD IN THE INTERPRETATION OF THESE PROVISIONS. IN ANY EVENT, MARAD DEFERS TO THE U.S. COAST GUARD ON THE APPROPRIATE LANGUAGE AND INTERPRETATION.

THE SECOND AREA IS SECTION 3 OF THE BILL WHICH WOULD REPEAL THE BOWATER AMENDMENT, SECTION 27A OF THE 1920 MERCHANT MARINE ACT, AND REPLACE IT WITH A NEW "LIMITED COASTWISE ENDORSEMENT" IN CHAPTER 121 OF TITLE 46. AT THE 1989 OVERSIGHT HEARINGS, MARAD DISCUSSED THE BOWATER AMENDMENT AND EXPRESSED ITS OPPOSITION TO A NEW, EXPANSIVE OPPORTUNITY FOR FOREIGN-OWNED COMPANIES TO COMPETE IN THE DOMESTIC TRADES.

WE HAVE SEVERAL COMMENTS REGARDING THESE NEW PROVISIONS. REGARDING QUALIFICATIONS, THE BOWATER AMENDMENT NOW REQUIRES A CORPORATION TO BE ENGAGED PRIMARILY IN A MANUFACTURING OR MINING INDUSTRY IN THE UNITED STATES. H.R. 3921 REQUIRES THAT THE "COMMERCIAL ENTERPRISE" OF A CORPORATION, SEEKING TO DOCUMENT A VESSEL WITH A LIMITED COASTWISE ENDORSEMENT, OR ITS PARENT OR SUBSIDIARY, PRIMARILY CONSIST OF "THE MANUFACTURE, PRODUCTION, EXTRACTION, OR PROCESSING OF PRODUCTS, RAW MATERIALS, COMMODITIES, OR MINERALS IN THE UNITED STATES OR ANY TERRITORY, DISTRICT, OR POSSESSION." THESE ACTIVITIES ARE CONSIDERABLY MORE INCLUSIVE OR BROADER THAN CURRENT LAW.

FURTHER, THE AGGREGATE BOOK VALUE OF THE VESSELS OWNED BY A QUALIFYING CORPORATION WOULD NO LONGER BE RESTRICTED TO LESS THAN 10 PERCENT OF THE AGGREGATE CORPORATE ASSETS. ADDITIONALLY, SECTION 3 WOULD INCREASE THE TONNAGE LIMIT FOR A SELF-PROPELLED VESSEL FROM LESS THAN 500 GROSS TONS TO LESS THAN 1,200 GROSS TONS. THESE QUALIFICATION CHANGES WOULD APPEAR TO SIGNIFICANTLY EXTEND THE NUMBER OF CORPORATIONS ELIGIBLE FOR A LIMITED

COASTWISE ENDORSEMENT AND SIGNIFICANTLY INCREASE THE NUMBER OF VESSELS ELIGIBLE TO ENGAGE IN THE COASTWISE TRADE. MARAD HAS SOME CONCERN THAT THE FISHERIES MAY BE INCLUDED AND REQUESTS CLARIFICATION ON THIS POINT. IF FOREIGN-OWNED FISHING VESSELS COULD QUALIFY FOR COASTWISE TRADE UNDER THESE PROVISIONS, THEY COULD COMPETE WITH VESSELS OWNED BY SECTION 2 CITIZENS. SUCH EXPANSION IS INCONSISTENT WITH THE NARROW BASIS OF THE BOWATER AMENDMENT. WE ARE UNAWARE OF ANY JUSTIFICATION FOR THIS EXPANSION AND ACCORDINGLY OPPOSE THESE PROVISIONS.

SECTION 3 WOULD ALSO ALTER THE PROCEDURAL ASPECTS OF THE BOWATER AMENDMENT. A QUALIFYING CORPORATION WOULD NO LONGER HAVE A STATUTORY OBLIGATION TO FILE A CERTIFICATE UNDER OATH, NOR WOULD A PARENT OR SUBSIDIARY OF THE CORPORATION HAVE TO FILE A CERTIFICATE UNDER OATH, TO OBTAIN A LIMITED COASTWISE ENDORSEMENT. U.S. COAST GUARD REGULATIONS (46 CFR PART 68) NOW PROVIDE THAT A CORPORATION'S PRIVILEGES TO DOCUMENT VESSELS AND OPERATE THEM IN COASTWISE TRADE CEASE WHEN IT NO LONGER MEETS THE STATUTORY CRITERIA WHICH PRESENTLY INCLUDE SUCH A FILING REQUIREMENT. MARAD BELIEVES THE OMISSION OF THE REQUIREMENT TO FILE A CERTIFICATE UNDER OATH LESSENS THE INCENTIVE TO COMPLY WITH THE NEW PROVISIONS.

REGARDING CHARTERING OUT, UNDER THE PROVISIONS OF SECTION 3, ANY DOCUMENTED VESSEL OWNED BY OR CHARTERED IN TO A QUALIFYING CORPORATION MAY ENGAGE IN COASTWISE TRADE IN TWO SITUATIONS. IN

THE FIRST SITUATION, THE VESSELS MAY ENGAGE IN COASTWISE TRADE IN DIRECT SERVICE TRANSPORTING PRODUCTS, PERSONNEL, OR COMMODITIES FOR THE CORPORATION OWNING OR CHARTERING THE VESSEL, OR ITS PARENT OR SUBSIDIARY. THIS IS CONSISTENT WITH CURRENT LAW.

IN THE SECOND SITUATION, A CHARTERER MUST QUALIFY AS A UNITED STATES CITIZEN UNDER SECTION 2 OF THE SHIPPING ACT, 1916, AS AMENDED (46 APP. U.S.C. 802), BUT NO OTHER RESTRICTIONS ARE PLACED ON OUT-CHARTERS. THIS PROVISION REPEALS A NUMBER OF SAFEGUARDS, INCLUDING THE EXISTING PROHIBITION IN THE BOWATER AMENDMENT ON NONCONTIGUOUS DOMESTIC VESSEL OPERATION. THE PRESENT LAW PERMITS A BOWATER CORPORATION TO PLACE ITS VESSELS "UNDER DEMISE OR BAREBOAT CHARTER AT PREVAILING RATES FOR USE OTHERWISE THAN IN THE DOMESTIC NONCONTIGUOUS TRADES" ONLY TO A COMMON OR CONTRACT CARRIER REGULATED BY THE INTERSTATE COMMERCE COMMISSION. THE CARRIER MUST QUALIFY AS A SECTION 2 CITIZEN UNDER THE 1916 SHIPPING ACT AND NOT BE CONNECTED, DIRECTLY OR INDIRECTLY, BY WAY OF OWNERSHIP OR CONTROL, WITH THE BOWATER CORPORATION. WE OPPOSE THE ELIMINATION OF THE SAFEGUARDS IN CURRENT LAW AS PLACING IN JEOPARDY THE EXISTING JONES ACT VESSELS THAT WOULD COMPETE WITH THESE CHARTERED VESSELS.

REGARDING CHARTERING IN, MARAD PUBLISHED A POLICY IN 1975 OF NOT APPROVING BAREBOAT OR DEMISE CHARTERS OF VESSELS IN THE COASTWISE TRADE TO PERSONS WHO DO NOT MEET THE STANDARDS OF SECTION 2(a) OF THE 1916 SHIPPING ACT. UNDER THESE STANDARDS, TO

BE CONSIDERED A UNITED STATES CITIZEN, THE PRESIDENT OR CHIEF EXECUTIVE OFFICER AND THE CHAIRMAN OF THE BOARD OF A QUALIFYING CORPORATION, PARTNERSHIP, OR ASSOCIATION MUST BE UNITED STATES CITIZENS. THE QUALIFYING ENTITY MUST BE ORGANIZED UNDER UNITED STATES LAWS. ADDITIONALLY, A MAJORITY OF THE NUMBER OF DIRECTORS NECESSARY TO CONSTITUTE A QUORUM MUST BE CITIZENS. FINALLY, CITIZENS MUST OWN A 75 PERCENT INTEREST IN THE CORPORATION. THE BASIS FOR NOT APPROVING BAREBOAT OR DEMISE CHARTERS TO NON-CITIZENS IS THAT THESE CHARTERERS ASSUME MANY OF THE INDICIA OF OWNERSHIP, INCLUDING POSSESSION AND DIRECT CONTROL OF THE VESSEL. MARAD'S POLICY IS BASED ON THE PREMISE THAT NON-CITIZENS SHOULD NOT OBTAIN THE ECONOMIC BENEFITS OF DOMESTIC COASTWISE TRADE, WHICH IS RESERVED BY LAW TO SECTION 2 CITIZENS.

MARAD BELIEVES THAT THE BILL SHOULD BE AMENDED TO PROHIBIT CORPORATIONS WITH LIMITED COASTWISE ENDORSEMENTS FROM BAREBOAT OR DEMISE CHARTERING IN OF DOCUMENTED VESSELS. TIME CHARTERS OF VESSELS WITH COASTWISE ENDORSEMENTS TO QUALIFYING CORPORATIONS COULD BE PERMITTED, BECAUSE TIME CHARTERS DO NOT INCLUDE THE SAME INDICIA OF OWNERSHIP. HOWEVER, TIME CHARTERS SHOULD BE LIMITED TO SELF-PROPELLED VESSELS OF LESS THAN 500 GROSS TONS (1,200 GROSS TONS, IF THIS BILL IS ENACTED), SINCE QUALIFYING CORPORATIONS COULD OWN ONLY VESSELS OF THAT SIZE.

SECTION 3 OF H.R. 3921 WOULD ALSO AMEND SECTION 9 OF THE 1916 SHIPPING ACT (46 APP. U.S.C. 808) TO PERMIT THE CHARTERING IN (ON EITHER A BAREBOAT OR TIME CHARTER BASIS) OF COASTWISE DOCUMENTED VESSELS TO A CORPORATION QUALIFYING FOR A LIMITED COASTWISE ENDORSEMENT WITHOUT APPROVAL BY THE SECRETARY. MARAD BELIEVES THAT THE SECRETARY SHOULD HAVE THE DISCRETION TO REVIEW THESE CHARTERS. AS STATED ABOVE, IT IS MARAD'S OPINION THAT BAREBOAT CHARTERING IN SHOULD NOT BE PERMITTED.

MARAD BELIEVES THAT THIS BILL, AS CURRENTLY WRITTEN, COULD POTENTIALLY CREATE A FOREIGN-OWNED AND CONTROLLED RIVAL FLEET WHICH COULD OPERATE IN DOMESTIC WATERS IN COMPETITION WITH THE U.S.-CITIZEN OWNED JONES ACT FLEET. UNDER THE PROPOSAL, IT WOULD APPEAR THAT MANY CORPORATIONS, WHICH CANNOT NOW UTILIZE THE NARROW EXCEPTION TO THE JONES ACT IN THE BOWATER AMENDMENT, COULD QUALIFY FOR THE NEW LIMITED COASTWISE ENDORSEMENT. BY BUYING OR CHARTERING IN DOCUMENTED VESSELS AND CHARTERING THEM OUT TO SECTION 2 CITIZENS WITHOUT SAFEGUARD RESTRICTIONS, QUALIFYING CORPORATIONS COULD ACTIVELY PARTICIPATE IN THE COASTWISE TRADE. MARAD REMAINS OPPOSED TO ANY EXPANSION OF EXISTING LAW ON ENGAGING IN DOMESTIC TRADE WHICH WOULD CREATE AN OPPORTUNITY FOR FOREIGN-OWNED CORPORATIONS TO COMPETE WITH THE JONES ACT FLEET.

A FINAL CHANGE UNDER SECTION 3, ON WHICH WE WANT TO COMMENT, IS THE ELIMINATION OF THE MERCHANDISE FORFEITURE PROVISION IN THE BOWATER AMENDMENT IF A VESSEL TRANSPORTS MERCHANDISE FOR HIRE IN VIOLATION OF EXISTING SECTION 27A. SINCE THE VESSELS QUALIFYING

FOR LIMITED COASTWISE ENDORSEMENTS WOULD BE ENGAGING IN DOMESTIC TRADE, MARAD BELIEVES THE PENALTIES IN THE PRESENT LAW WHICH APPLY TO VIOLATIONS OF THE JONES ACT BY COASTWISE-QUALIFIED VESSELS SHOULD ALSO APPLY TO VESSELS QUALIFYING UNDER THE NEW PROVISIONS AND REQUESTS CLARIFICATION ON THE PENALTY ISSUE. IF VESSELS WITH LIMITED COASTWISE ENDORSEMENTS ARE TO BE ACCORDED, IN SOME MEASURE, PRIVILEGES SIMILAR TO THOSE OF CITIZEN-OWNED JONES ACT VESSELS, THEY SHOULD BE SUBJECT TO SANCTION FOR ABUSE OF THOSE PRIVILEGES.

THE THIRD AREA IS QUITE LIMITED. SECTION 4 OF THE BILL WOULD REDEFINE AN "INDIVIDUAL WHO IS A CITIZEN OF THE UNITED STATES" TO INCLUDE AN INDIVIDUAL WHO IS EXCLUSIVELY DOMICILED IN THE NORTHERN MARIANA ISLANDS. WE HAVE NO OBJECTION TO THIS CHANGE.

THE FINAL AREA IS SECTION 5, WHICH WOULD ADD A NEW SECTION TO CHAPTER 121 OF TITLE 46, REQUIRING, AMONG OTHER THINGS, DREDGES TO BE BUILT IN THE UNITED STATES AND CONTINUOUSLY DOCUMENTED UNDER SECTION 12106 OF TITLE 46 IN ORDER TO ENGAGE IN DREDGING IN THE UNITED STATES NAVIGABLE WATERS AND THE EXCLUSIVE ECONOMIC ZONE. THE OWNER, CHARTERER, OR OTHER OPERATOR MUST MEET THE CITIZENSHIP REQUIREMENTS UNDER SECTION 2 OF THE 1916 SHIPPING ACT. A GRANDFATHER PROVISION IS INCLUDED FOR CHARTERS APPROVED UNDER SECTION 9 OF THE 1916 SHIPPING ACT BEFORE AUGUST 1, 1989, APPARENTLY PRECLUDING AN EXTENSION OF TIME CHARTERS TO NON-

CITIZENS AFTER THAT DATE. THE BASIC PROPOSAL WOULD REVERSE CURRENT LAW (46 APP. U.S.C. 292), AS INTERPRETED BY THE U.S. CUSTOMS SERVICE, WHICH ONLY REQUIRES THAT A DREDGE BE UNITED STATES-BUILT TO ENGAGE IN DREDGING IN THE UNITED STATES.

THIS SECTION WOULD ALSO PERMIT THE U.S. COAST GUARD TO DOCUMENT A DREDGE FOR COASTWISE TRADE WHICH IS CURRENTLY ENGAGED IN DREDGING IN THE NAVIGABLE WATERS OF THE UNITED STATES OR WITHIN THE EXCLUSIVE ECONOMIC ZONE, PROVIDED THE DREDGED MATERIAL HAS NO VALUE. THIS SECTION APPEARS TO EXTEND THE GRANDFATHER PROVISION IN PUBLIC LAW 100-329 TO TRANSPORTATION OF VALUELESS MATERIAL IN THE NAVIGABLE WATERS. THIS LAW ALLOWS PREVIOUSLY FOREIGN- REGISTERED, U.S.-BUILT DREDGES TO TRANSPORT VALUELESS MATERIAL ONLY FROM A COASTWISE POINT IN THE NAVIGABLE WATERS TO A POINT WITHIN THE EXCLUSIVE ECONOMIC ZONE.

THE DREDGING PROVISIONS IN SECTION 5 GENERALLY TIGHTEN THE JONES ACT PROVISIONS WHICH RESERVE COASTWISE TRADE TO VESSELS THAT HAVE BEEN BUILT IN THE UNITED STATES AND DOCUMENTED UNDER UNITED STATES LAWS, AND HAVE NOT AT ANY TIME BEEN PLACED UNDER FOREIGN FLAG OR OWNERSHIP. HOWEVER, THESE PROPOSED CHANGES TO THE DREDGING STATUTE HAVE NOT BEEN ADDRESSED IN PREVIOUS HEARINGS. WE ARE NOT AWARE OF THE IMPETUS BEHIND THESE PROPOSALS OR THE PRACTICAL RESULT INTENDED, GIVEN THE INCLUSION OF THE

GRANDFATHER PROVISIONS. IT IS NOT CLEAR TO US WHAT THE NET IMPACT OF THESE PROPOSALS WILL BE. WE BELIEVE THESE MATTERS SHOULD BE FULLY DEVELOPED ON THE RECORD.

TO SUMMARIZE, MR. CHAIRMAN, MARAD BELIEVES THE PROPOSED CHANGES IN SECTION 2 OF H.R. 3921 TO SECTION 27 OF THE 1920 MERCHANT MARINE ACT WHICH WOULD REPLACE THE TERM "REBUILDING" WITH "MAJOR WORK" INTRODUCE NEW TERMS WHOSE MEANING IS UNCLEAR AND OPEN TO NEW INTERPRETATION WHICH COULD CREATE MORE UNCERTAINTY THAN UNDER EXISTING LAW. WE BELIEVE THE SUBCOMMITTEE'S INTENT MIGHT BE BETTER SERVED BY GIVING THE U.S. COAST GUARD GUIDANCE IN ITS INTERPRETATION OF THE PRESENT LAW.

MARAD IS OPPOSED TO OPENING UP COASTWISE TRADE TO FOREIGN-OWNED CORPORATIONS AS PROPOSED IN SECTION 3 OF THE BILL BY REPEALING THE BOWATER AMENDMENT TO THE 1920 MERCHANT MARINE ACT. THE NEW LIMITED COASTWISE ENDORSEMENT PROVISIONS DO NOT APPEAR TO IMPROVE DOMESTIC COMMERCE, BUT RATHER TO OPEN TO FOREIGN COMPETITORS THE COASTWISE TRADE WHICH HAS BEEN HISTORICALLY RESERVED TO SECTION 2 CITIZENS.

THE NEW DREDGING PROVISIONS IN THE LAST SECTION OF THE BILL RAISE MANY ISSUES WHICH, WE BELIEVE, SHOULD BE FULLY DEVELOPED ON THE RECORD. THEREFORE, WE HAVE NO POSITION ON THIS SECTION AT THIS TIME.

11

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT, AND I WILL BE GLAD TO ANSWER YOUR QUESTIONS AND THOSE OF THE OTHER MEMBERS OF THE SUBCOMMITTEE.