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**United States House of Representatives
Committee on Armed Services
Subcommittee on Seapower and Expeditionary Forces
Honorable Gene Taylor, Chairman**

Testimony regarding
**Federal Ship Financing Guarantee Program
Maritime Administration
Title XI Loan Guarantee Program**
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Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you very much for inviting me to appear before you today to discuss the Maritime Administration ("MarAd") federal loan guarantee program administered under Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 53701). Your invitation stated that you were particularly interested in my views on the availability of Title XI program guarantees for vessel construction period financing, and more generally, with the Title XI program's desirability for long-term post-delivery vessel financing as compared with that which is available in the commercial market.

I plan to discuss these two subject matters in my oral testimony, and thereafter turn to a more general discussion of the Title XI program and my suggestions for several modest "course corrections."

1.0 Construction Period Financing.

The "shipyard risk" associated with a shipyard's successful completion of a vessel under construction is perhaps the most difficult financing problem that vessel purchasers face in any transaction. Financial institutions are loath to assume shipyard risk even when bonding may be available. In situations in which the shipyard has a sufficiently robust parent, the shipyard's parent may provide or guarantee this financing or bonding, and the purchaser's problem can be accordingly solved.

However, there are many excellent, small and medium sized United States shipyards that cannot provide this financing or obtain bonding, or find the impact of bonding on their vessels delivered price prohibitive. These shipyards should be participants in the construction of the Passenger and Ro/Pac ferries needed for transportation on our American Marine Highways. This is the very sort of problem -- for which no adequate private sector solution is available -- which the MarAd Title XI program should address.

MarAd has provided these financing guarantees in the past. However, this is now a market from which MarAd, chastened by its many critics, has itself largely withdrawn. Congress should address this problem by directing MarAd to meet this need by making use of the Title XI program in some fashion. Perhaps this can be done by MarAd in a context of shipyard pre-certification, and MarAd assistance in whatever bonding or re-insurance arrangements may be required. But there is a clear role for a MarAd solution to this problem. It is needed. And, I would suggest that the solution to this problem should be addressed in connection with your Committee's current legislative efforts.

2.0 Long-Term Permanent Financing.

There is general agreement upon the need for a national transportation policy that will include the use of our Great Lakes and Ocean Coastal waters. But where are the Container and Roll-on /Roll-off ("Ro/Ro") vessels that will be needed? How is this to be achieved? Many of us believe that the principal problem is the absence of available financing.

In some circles today it is common parlance that there is adequate long term private sector financing available for new vessel construction such that there is no need for the MarAd Title XI program. This is true today, as it has been for many years, in financing new vessel construction for the petroleum sector. In my law practice, I have been professionally involved in such petroleum sector vessel financing for more than 30 years.

However, this is not true for the new Container and Ro/Ro vessels that are needed in our Great Lakes and Ocean Coastal trades. These vessels have and will cost in the range of \$150 million to \$250 million. The owners of these vessels will have no long term charters, but will be in "build the ships and customers will come" situations. There will be no 20 year or 25 year vessel financing without a Title XI or similar government guarantee program (except in the very unusual situation of a strong parent company guarantee).

And, this is apparently also true for the less costly fast passenger and light vehicle ferries such as the Lake Express service across Lake Michigan and the Hawaii Superferry inter-island project. Hawaii SuperFerry Chairman John Lehman, and Lake Express President Kenneth Szallai, have each publicly stated that the Title XI program was an essential element of their ferry vessel financing structure.

3.0 General Discussion: Current Problems & Solutions.

3.1 American Marine Highways.

I believe that everyone in this room today will agree that many of our major Interstate highways, and their bridge and tunnel connectors, are at or have already materially exceeded their design capacities. We will also agree that the major and ever worsening congestion problems that we are experiencing can no longer be solved by new highway, or bridge or tunnel construction. And, we see our Great Lakes and Ocean Coastal waterways, our American Marine Highways, empty of the passenger and cargo vessels that might provide a part of our solution. Where are the vessels and how are we to achieve a solution?

I am here today to testify to the essential role that the MarAd Title XI program has played during the past 35 years in financing Container and Ro/Ro vessels for our existing U.S. flag blue water fleet, and to suggest that with certain minor "course corrections" this same MarAd Title XI program can play a similarly important role in providing construction period and long-term permanent financing for the vessels that will be needed in the coming decades to transport our citizens and freight on our American Marine Highways.

We can see clearly before us these available empty "highways." But we also have before us a MarAd Title XI financing guarantee program that can facilitate the private sector financing for the needed vessels, once this program is redirected and refocused with leadership provided by this Congress.

3.2 History & Current Program Application.

The MarAd Title XI program was added to the basic Merchant Marine Act, 1936, package when the 1936 Act sponsors recognized that some form of U.S. government credit support would be essential to achieving the 1936 Act objectives. It has been an important element in the financing of large ocean going U.S. flag vessels almost since its 1938 "Mortgage Insurance" beginnings.

Over the years, the Title XI program has been employed in the financing of Great Lakes and Ocean going vessels needed to provide essential national transportation services. As originally enacted in 1938, and as incorporated in the 1970 Act program, and redesigned in the Federal Financing Act of 1972, the Title XI program was intended for use in financing vessels employed in essential transportation services in peacetime and that would be available to meet national defense needs in time of war.

It was only in 1972 that this MarAd policy was abandoned, and that the Title XI guarantee authority was first used to finance the construction of drilling vessels and other non-transportation assets. I would suggest that your Committee should consider the return of the Title XI program to its original purposes. MarAd should administer the program in a fashion that will achieve the Congressional policy as stated in the 1936 Act and the 1970 Act, and limit the programs use to new vessel construction and closely related objectives.

Consistent with these transportation objectives, Congress should maintain the use of the authority for assisting in the financing of vessel dry docks and shipyard modernization, and

Congress should authorize the expansion of the guarantee authority to include the terminal and dockage facilities that will be essential to these expanded coastwise Container and Roll on/Roll off services. The use of the program to finance any other non-transportation assets should be strictly limited to Congressionally mandated exceptions to these general rules.

3.3 Congressional Funding & Oversight.

I would suggest that the Committee consider a revised MarAd Title XI program that would be authorized and funded for a seven-year or similar period with monies adequate to provide guarantee authority and program administration sufficient to meet current and projected United States national transportation and national security needs, as these needs are identified and defined by Congress. The MarAd Title XI program should "course corrected" with financing guarantees limited to vessel types and services keyed to defined national transportation and national security needs.

MarAd should be directed to revise its "letter commitment" procedures to more closely conform to commercial practice, and should issue letter commitments that include Congressional funding as a condition to the issuance of the Government guarantee. This will greatly facilitate the financing of the new private sector Great Lakes and Ocean Coastal vessel services that are needed. This will also enable MarAd to come before Congress seeking funding for a list of qualified vessel guarantee projects rather than seeking a "blank check" in the annual authorization and appropriations process.

Congress could in this fashion oversee and control the use of the guarantee authority by means of the authorization and appropriations process. Congress should require that MarAd present to Congress the projects that MarAd has approved (conditioned upon Congressional appropriations) as a part of the MarAd yearly requests for Title XI authorization and funding. This would enable Congress oversight in assuring that the Title XI guarantee authority is being used to fulfill Congressionally mandated goals.

3.4 National Transportation "Start Up Services" & Lease Financing.

Title XI program financing regulations, such as those governing debt equity ratios and working capital, should be examined and revised to confirm their suitability to meeting the needs appropriate to a national transportation "Start Up Services" program. For many new ventures in the decade following the enactment of the 1970 Act, vessel leasing was the vessel financing method of choice. Leasing is particularly attractive to vessel operators in many start up situations

because of the need for working capital and the inability of such start ups to make full use of federal income tax vessel depreciation deductions. As a contribution to the process of developing the outlines for such a "Start Up Services" program, I will be submitting for the record a paper that I have prepared that explores the uses of the MarAd Title XI program, and of MarAd's capital construction fund ("CCF") tax deferral program, in this context.

4.0 Thank You & Concluding Thoughts.

I have appreciated this opportunity to appear before you to testify in response to your invitation of March 9th. My Seward & Kissel colleagues and I look forward to working with your Committee in any way in which we can assist your efforts to develop policies that will enable the United States to achieve and maintain:

"a merchant marine (1) sufficient to carry its domestic water-borne commerce . . .; (2) capable of serving as a military and naval auxiliary in time of war or national emergency; (3) owned and operated as vessels of the United States by Citizens of the United States; (4) composed of the best-equipped, safest and most suitable types of vessels and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient facilities for building and repairing vessels"

as mandated by Section 101 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 50101).

Thank you for your time and attention.