

FISCAL YEAR 2009 BUDGET: FEDERAL MARITIME COMMISSION

(110-115)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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U. S. House of Representatives
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April 14, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Fiscal Year 2009 Budget – Federal Maritime Commission

PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will convene at 10:00 a.m. on April 15, 2008, in Room 2167 of the Rayburn House Office Building to receive testimony on the Federal Maritime Commission's ("FMC") fiscal year 2009 budget request.

BACKGROUND

The President requests \$24 million in FY 2009 for Federal Maritime Commission activities, which is an increase of approximately \$1.9 million (7.8 percent) over the total amount enacted in FY 2008 for the Commission.

Obligations by Program Activities

The President requests \$8 million for formal proceedings; \$1 million for the Inspector General; \$11 million for operations and \$4 million for administrative costs.

The FMC is authorized for five years. That authorization expires at the end of fiscal year 2008 and the FMC needs to be reauthorized by Congress this year.

History

The Federal Maritime Commission was established August 12, 1961, as an independent regulatory agency by Reorganization Plan No. 7. Prior to that date, the Federal Maritime Board had

responsibility for the regulation of ocean commerce and the promotion of the United States Merchant Marine. Under Reorganization Plan No. 7, U.S. shipping laws were separated into two categories: regulatory and promotional. The responsibility of promoting an adequate and efficient U.S. Merchant Marine was assigned to the United States Maritime Administration ("MARAD"), now located within the Department of Transportation. The newly formed FMC was charged with the administration of the regulatory provisions of the shipping laws.

When the Shipping Act passed in 1984, major deregulatory changes were made in the regulatory regime for shipping companies operating in the U.S. foreign commerce. In 1998, Congress passed the Ocean Shipping Reform Act that had additional deregulatory amendments and modifications to the Shipping Act of 1984. This legislation was a significant pro-market shift in shipping regulations.

Functions

The principal statutes or statutory provisions administered by the Commission are contained in subtitle IV of title 46, United States Code. This includes filing of tariffs and service contracts under chapter 405; regulation of controlled carriers under chapter 407; regulation of ocean transportation intermediaries such as freight forwarders under chapter 409; and actions to address unfair foreign shipping practices under chapters 421 and 423.

The Federal Maritime Commission's regulatory responsibilities include:

- Regulating certain activities of international shipping lines (called "ocean common carriers"), marine terminals operators, and ocean transportation intermediaries that operate in the U.S. foreign commerce or the trade between individuals or legal entities in U.S. with different countries. (An Ocean Transportation Intermediary is either an ocean freight forwarder or a non-vessel operating common carrier. An ocean freight forwarder is an individual or company that dispatches shipments from the United States via common carriers and arranges or books space for those shipments on behalf of shippers. They also prepare and process the documentation and perform related activities pertaining to those shipments. A non-vessel operating common carrier is a common carrier that extends itself out to the public to provide ocean transportation. It does not operate the vessels by which ocean transportation is provided, and is a shipper in relation to the involved ocean common carrier.)
- Overseeing the financial responsibility of cruise ship lines and other passenger ship operators, ensuring they have the resources to pay compensation for personal injuries or non-performance.
- Monitoring the laws and practices of foreign governments which could have a discriminatory or otherwise adverse impact on the U.S. maritime trade and U.S. shipping industry and administers bilateral trade sanctions to persuade foreign governments to remove adverse conditions.
- Enforcing special regulatory requirements applicable to shipping lines controlled or owned by foreign governments (so-called "controlled carriers")
- Reviewing and regulating agreements between marine terminals and/or shipping lines (which enjoy statutory immunity from the antitrust laws) and service contracts between shipping lines and their customers.

- Licenses and regulates ocean transportation intermediaries in the U.S., and ensures all maintain evidence of financial responsibility. These intermediaries include freight forwarders, who make bookings and process paperwork for shipper customers (roughly analogous to a travel agent for freight), and "non-vessel-operating common carriers", who act as resellers of space on shipping lines' vessels.
- Reviewing common carriers' privately published tariff systems for accessibility and accuracy.

The Commission is authorized by chapters 421 and 423 of title 46, United States Code, to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may inflict penalties to address actions by carriers or foreign governments that adversely affect shipping in the U.S. foreign oceanborne trades or that impair access of U.S. flag vessels to ocean trade between foreign ports.

The Commission conducts informal and formal investigations as a part of its regulatory responsibility. If a person or company is unable to settle a dispute that involves a possible violation of the Shipping Act, that person or company may file a complaint to the Commission. The complaint will be referred to the Commission's Office of Administrative Law Judges. If the Administrative Law Judge ("ALJ") is unable to decide the case merely by reading written evidence, a hearing may be conducted that is similar to trial in which witnesses will appear and give testimony under oath. The ALJ's initial decision may be appealed to the Commission by the filing of exceptions by the parties within 22 days, or may be reviewed by the Commission on its own motion. If there are no exceptions to the initial decision, it becomes administratively final 30 days after the date of issuance.

Organization

The Commission is typically composed of five Commissioners appointed to five-year terms by the President with the advice and consent of the Senate. Not more than three members of the Commission may belong to the same political party. The Chairman of the Commission is designated by the President.

The Chairman is the administrative officer and chief executive of the agency. Presently, the Chairman's position is vacant. Therefore, all four Commissioners are responsible for the day-to-day management of the agency including hiring and establishment of Senior Executive Service ("SES") positions, renovations to the Commission offices, and other personnel and administrative matters.

The Commission's organizational units consist of: Office of the Secretary; Office of the General Counsel; Office of Administrative Law Judges; Office of the Inspector General; Office of the Executive Director; Office of Equal Employment Opportunity; Bureau of Consumer Complaints and Licensing; Bureau of Enforcement and Bureau of Trade Analysis. The Executive Director assists the Chairman in providing executive and administrative direction to the bureaus in the Commission. The offices and bureaus are responsible for the Commission's regulatory programs or providing administrative support.

In fiscal year 2007, the Commission was authorized a total of 119 full-time equivalent positions and had a total appropriation of \$20 million. In the President's FY 2009 budget, 131 full-time equivalent positions have been requested. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in Los Angeles, New York, Miami, New Orleans, and Seattle.

FEDERAL MARITIME COMMISSION BUDGET REQUEST
(in millions)

Program	FY2008 Enacted	FY2009 Authorized	FY2009 President's Budget	Diff. of FY2009 Pres. Budget and FY2008 CR	
				\$	%
Formal Proceedings	7.0	None	8.0	1.0	14%
Inspector General	1.0	None	1.0	0	0%
Operations	10.0	None	11.0	1.0	10%
Administrative	4.0	None	4.0	0	0%
Total	22.0	None	24.0	2.0	9%

WITNESSES

Commissioner A. Paul Anderson
Commissioner
Federal Maritime Commission

Commissioner Joseph E. Brennan
Commissioner
Federal Maritime Commission

Commissioner Harold J. Creel Jr.
Commissioner
Federal Maritime Commission

Rebecca F. Dye
Commissioner
Federal Maritime Commission

HEARING ON FISCAL YEAR 2009 BUDGET: FEDERAL MARITIME COMMISSION

Tuesday, April 15, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON COAST GUARD AND MARITIME
TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:05 a.m., in Room 2167, Rayburn House Office Building, the Honorable Elijah E. Cummings [Chairman of the Subcommittee] presiding.

Mr. CUMMINGS. This hearing is called to order.

This morning's hearing is on the proposed fiscal year 2009 budget and the institutional management of the Federal Maritime Commission which was created to regulate international shipping. The Commission has been operating under a five-year authorization of its budget which is due to expire on September 30th of this year.

This is the first opportunity the Subcommittee has had in several years to examine the activities of the Commission. I have heard many concerns about the management and programmatic direction of the Federal Maritime Commission.

For the past year and a half, the Commission has been without a chairman. Mr. Anderson has been nominated by the President for an additional term on the Commission and will be the chairman if he is confirmed. However, at the present time, the four commissioners who are about to testify have been jointly responsible for the daily administration of the Commission as well as for establishing the Commission's policy positions.

During their tenure, the 2006 Federal Human Capital Survey of FMC employees found alarmingly the following:

Only 56 percent of the employees thought the FMC was a good place to work.

Only 50.2 percent of the employees said they were able to recruit people with the right skills.

Only 54 percent of the employees have high respect for the agency's senior leaders.

Only 48 percent of the employees think that complaints, disputes and grievances are resolved fairly.

Only 40 percent of the employees believe that the agency's leaders generate high levels of motivation and commitment in the workforce.

Interestingly, only 27.3 percent of the employees think that pay raises are dependent on how well employees perform their jobs.

These numbers are troubling. They are alarming and should cause all of us great concern as is the fact that the general counsel of the Commission has found it necessary to file EEO grievances against the Commission.

The Subcommittee is also very concerned that despite the significant administrative responsibilities the four current commissioners are now exercising, the four commissioners do not regularly meet face to face to discuss either the management of the agency or its policy decisions.

Similarly, the Subcommittee is concerned about the process of ghost voting through which a commissioner may apparently sign blank voting sheets in advance of the conduct of any vote and then through a phone call—through a phone call—direct staff on how they are to fill in the blanks on a voting sheet when a vote is called. Such a process does not indicate that votes are the result of the deliberative examinations that should be a hallmark of the Commission's consideration of any administrative or policy decision.

The Subcommittee is further troubled by reports of excessive spending to renovate the chairman's office and the chairman's conference room particularly at a time when the Commission does not even have a chairman. There is something awfully wrong with this picture.

The Subcommittee also understands that a commissioner may not be in the office for days or weeks at a time, though an FMC commissioner is among the highest paid employees in government. Civil servants in the FMC are required to come to work five days a week except for vacations and official travel, and the same standard should be kept by the commissioners who certainly cannot adequately manage a Federal agency and lead its employees when they are a thousand miles away.

Today we no longer can tolerate the old patronage system that distributed benefits and goodies to people who are not expected to do any real work. That day is long gone.

Perhaps because of the circumstances we have just outlined, an outside management consultant hired by the Commission in 2005 and 2006 found the following:

Lack of trust existed at all levels in the organization and especially in the leadership. Women and minorities felt disenfranchised, which is obviously a finding that is of great concern to me, and conflict abounded between and among individuals and groups of people including managers and the senior executives.

No leadership team existed and managers did not know how to give or receive feedback to employees or customers. No staff meetings were being held, and there was little interaction with the maritime industry the FMC is expected to regulate. Further, no vision or operational values were exhibited.

The agency was adverse to change. People were fearful to suggest improvements. Empowerment was not in the agency's vocabulary.

These are the findings. These aren't my words; these are theirs. The organization operated in a "command and control manner".

The executive director ruled with an iron hand. The culture was "his way or the highway."

The Bureau of Enforcement, in particular, operated with a hammer mindset rather than with the goal of examining how the agency could work in partnership with industry and individuals.

The automation of processes, both inside the agency and the processes that connected the industry it serves, were outdated and no plan existed to improve them.

There was little interaction between the commissioners and their staff.

The evidence we have before us presents a picture of an agency that appears to be broken and dysfunctional.

I am eager to hear from the commissioners. I notice that they seem to be a little concerned about some of the things I just read, and I would love to hear your response. In particular, I would like to hear from Mr. Anderson who has been nominated to head this agency and what you are going to do to improve the management policies and strategic vision of the Federal Maritime Commission.

With that, I recognize our distinguished Ranking Member, Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman, and thank you for holding this hearing.

Welcome to the commissioners.

We are meeting to review the fiscal year 2009 budget request for the Federal Maritime Commission. The Commission has responsibilities to oversee U.S. interest in the maritime trade and to enforce international and domestic shipping regulations.

The President has requested about \$24 million for the Commission which is an increase of nearly 8 percent over the amounts appropriated for the current fiscal year. The Subcommittee is on record as being in support of the proposed levels, and I look forward to working with the Chairman to reauthorize the Commission later this year.

I do want to bring up one matter of concern, and perhaps during testimony and questions this could be addressed, and that has to do with the Japanese Government.

Ten years ago, the Japanese Government, pressured by our Administration and the Federal Maritime Commission, signed an agreement promising to open its port and stevedoring market to the U.S. and other foreign competition. However, the Administration has reported to the Congress just within the last month that the Japanese side has failed to live up to its commitments, and the Japanese market for port and stevedoring services remains closed.

Meanwhile, the Japanese maritime companies, protected from competition at home, have continued to expand their port operations in the United States. Now one Japanese carrier has approached the FMC and demanded the right to stevedore its own vessels even in a privately owned maritime terminal owned and controlled by U.S. stevedoring companies.

We continue to be concerned about the apparent imbalance and unfairness between the closed Japanese market for port services compared to the open U.S. stevedoring and terminal sector that we have. In my opinion, the FMC should not take actions that needlessly aggravate this imbalance or further undermine or harm U.S. maritime companies and their interests.

Furthermore, I would ask that the FMC reexamine why the agreements to open Japan's port and stevedoring market did not produce results and to report to the Committee what steps could be and should be taken to encourage Japan to honor its commitments and to bring the two countries' port markets back into balance.

I want to thank the Commissioners for appearing this morning, and I look forward to hearing your testimony.

Thank you, Mr. Chairman. I yield back.

Mr. CUMMINGS. Thank you very much, Mr. LaTourette.

We are very pleased to have been joined by the distinguished Chairman of the Transportation Committee, Mr. Oberstar.

Mr. Oberstar.

Mr. OBERSTAR. Well, thank you for the long hours you put in, Mr. Chairman, to prepare for this hearing and, Mr. LaTourette, as always, for your participation and splendid contribution to the work of the Subcommittee.

We meet at a sad moment for me, a troubling moment in the history of the Federal Maritime Commission. I have served on the Merchant Marine and Fisheries Committee along with the then Public Works Committee for my very first term in Congress in 1975 until the present, and I have never seen the FMC in such a state as it is today.

First of all, it has been five years since we have had the FMC up here before the Committee to explain its budget. Over that time, there have been serious management problems. Outside observers have said, well, they don't have a chairman.

They don't have a chairman. They have an acting chairman, but they have four commissioners. They all can carry on the work of the chairman. They ought to be doing oversight of the activities of the Commission.

But what was troubling to me was the Federal Human Capital Survey of FMC employees found that 56 percent—that is a pretty low number—thought the FMC was a good place to work. Only 54 percent had high respect for senior leaders.

If any of us on this Committee had that kind of report, we would be back home, shoveling dirt and standing on street corners and knocking on doors and talking to people.

There are reports of ghost voting. I have never had that happen before. Some of the commissioners aren't even in Washington when they vote. They call in their vote to staff and tell them how to fill in a pre-signed ballot.

There are reports that some commissioners haven't been at the Commission in weeks, all the while getting paid to do the work of the Commission. Now the civil service employees have to put in 40 hours a week.

I wonder what standard the commissioners have. These are presidential appointee jobs, but they are not feather-bedding jobs where you get paid but don't show up.

The FMC's Inspector General issued a report finding that staff and attorneys at the Commission violated the Federal acquisition regulations when purchasing \$36,000 worth of furniture for the chairman's suite, but commissioners told the IG they had no knowledge of that expenditure.

Well, how can commissioners who have to vote to approve a travel request for a commission staff member not know about or not be asked to vote on \$36,000 for furniture? That is a lot of furniture for a chairman's office. You could furnish a few houses with that.

That money wasn't in the Commission's budget, and I expect an explanation from this panel of where the money was found.

It is troubling when the general counsel of an agency finds it necessary to file an EEO complaint against her own agency. I have never seen that happen, not in this agency.

And, the maritime industry is well aware of these problems. I hear about it wherever I travel from port communities to labor organizations to business groups who are saying, what is going on at the Commission? That is why we have hearings.

Well, I think it is important for this Committee to conduct this hearing and to follow up on it and hear the responses we get from the commissioners and to ensure that we do, Mr. Chairman and Mr. LaTourette, whatever is necessary to make sure that the FMC is a place, once again, where people enjoy their jobs, respect their commissioners, respect their leadership and have a vision for the future.

I look forward to the testimony.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Coble.

Mr. COBLE. No opening statement, Mr. Chairman.

Mr. CUMMINGS. Mr. Bishop.

Mr. BISHOP. I have an opening statement, Mr. Chairman, but in the interest of time I will submit it for the record.

Mr. CUMMINGS. Very well and thank you very much.

At this time, we will now hear from our commissioners: Commissioner Paul Anderson, Commissioner Joseph E. Brennan, Commissioner Harold J. Creel, Jr. and Commissioner Rebecca F. Dye.

Mr. Anderson.

TESTIMONY OF COMMISSIONER A. PAUL ANDERSON, FEDERAL MARITIME COMMISSION; COMMISSIONER JOSEPH E. BRENNAN, FEDERAL MARITIME COMMISSION; COMMISSIONER HAROLD J. CREEL, JR., FEDERAL MARITIME COMMISSION; AND COMMISSIONER REBECCA F. DYE, FEDERAL MARITIME COMMISSION.

Mr. ANDERSON. Thank you, Mr. Chairman, distinguished Members of the Subcommittee and the Committee.

It is a pleasure to appear before you today to present the President's fiscal year 2009 budget for the Federal Maritime Commission. It is an honor to be here today with my colleagues: Joe Brennan, Hal Creel and Rebecca Dye.

The President's budget for the Commission provides for \$23,953,000 for fiscal year 2009. This represents a 7.8 percent increase or \$1,881,000 over the fiscal year 2008 appropriation.

Since our last budget hearing before the Committee in 2006, the Commission has witnessed several important changes in the U.S. foreign commerce, and the Commission has substantially revised and updated many of its internal processes. I would like to provide some of the highlights in the state of the U.S. trades over the last

year as well as identify some of the significant current events, programs and initiatives at the Commission.

Fiscal year 2007 was another year of growth in the U.S. liner trades. Total cargo volume in U.S. liner exports grew by 12 percent, offsetting a slight decline in imports for the first time in years. Notably, cargo growth in imports from Asia slowed substantially this fiscal year, though China continued to be the leading trading partner in liner cargo with the United States.

As you know, the European Commission has recently eliminated the block exemption from European Commission competition laws and is currently reviewing the exemption for non-ratemaking consortia agreements among liner carriers. The block exemption is set to expire on October 1st, 2008, and the consortia exemption is currently due to expire in April, 2010.

The repeal of the block exemption in the E.U. will result in the elimination of rate discussion agreements in the European trades including the U.S.-E.U. trade lanes. It is estimated that approximately 6 out of the 227 carrier agreements currently filed with the Commission will need to be restructured or eliminated to ensure compliance with the E.U. guidelines.

The Commission will monitor the transition very closely and will have a better indication of the immediate and long-term effects on the U.S.-European trades after the termination of the exemption in October of 2008.

The Commission has also been monitoring significant developments in marine terminal operator agreements which address supply chain and operational issues including port congestion, security, air pollution and environmental concerns. The Ports of Los Angeles and Long Beach have filed an agreement with the Commission permitting them to discuss, consult and agree on the establishment and implementation of programs and strategies to improve port-related transportation infrastructure and to decrease port-related air pollution.

The ports are currently in the process of developing a Clean Truck Program as a first initiative under the joint Clean Air Action Plan. The ports' goal is to significantly reduce air pollution from port drayage trucks by replacing or retrofitting an estimated 16,000 trucks servicing the ports over a five-year period.

The Commission is actively monitoring the agreement's activities, and our staff has met with a variety of industry stakeholders concerning the implementation of this program. We will continue to remain engaged throughout the development and implementation of the Clean Truck Program.

The Commission has continued its cooperation with other agencies to improve our enforcement capabilities and to assist maritime security efforts. Cooperation with U.S. Customs and Border Protection has expanded into joint field operations to investigate any suspected violating of both agency statutes or regulations.

We are also in the process of assisting national maritime security efforts by working to share our informational resources with other Federal agencies including Customs and Border Patrol and the Department of Homeland Security through the International Trade Data System and the Automated Commercial Environment portal.

These efforts will allow the Commission to provide access to its extensive informational resources containing background information on entities regulated by the Commission, some of the most complete resources identifying persons engaged in U.S. foreign commerce. Once completed, the ACE ITDS system will provide greater transparency of the Nation's supply chain.

Over the last fiscal year, the Commission has streamlined access to our informational resources by automating our Ocean Transportation Intermediary Licensing process and by modernizing our databases containing extensive information on the entities we regulate. Completion of these projects ensures that the Commission is able to efficiently meet the needs of the industry.

At this point, Mr. Chairman, we respectfully request favorable consideration of the President's budget and are more than happy to answer questions.

Thank you.

Mr. CUMMINGS. Thank you very much.

It is my understanding that the other commissioners will not be doing opening statements. Is that correct?

Mr. ANDERSON. That is correct, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

Mr. Anderson, how many management meetings, or let me go back and say this.

Mr. Oberstar and I spoke about some of the concerns that we have, and this entire Congress, I think, have a few things we seem to all agree on, but one of them is that the taxpayers' money must be spent effectively and efficiently. It is quite appropriate that I make that statement on this day.

To that end, I want to ask you a few questions about how you all manage the agency and how you all earn the money that the taxpayers work so hard to put into our Federal coffers.

How many management meetings have the four of you held since Chairman Blust left in June of 2006? In other words, how many times have the four of you gotten together to actually discuss management of the agency and policy issues?

Mr. ANDERSON. Mr. Chairman, as you may know, the Sunshine Act governs our ability to meet as a group. So the four of us getting together to meet has not happened on regular basis. However, in groups of two, which we are allowed to do, have happened quite frequently since Chairman Blust has left.

Mr. CUMMINGS. How many times, though, have you all met?

Mr. ANDERSON. I would say dozens of times.

Mr. CUMMINGS. No, no, no, no. Let me go back to my question. How many times since Chairman Blust left have the four of you met together? Like if you put a circle and all of you were sitting there together like you are now, how many times have you all done that?

Mr. ANDERSON. Two or three times and as well in two closed hearings as well to discuss management issues.

Mr. CUMMINGS. When was the last time that happened?

Mr. ANDERSON. About six weeks ago.

Mr. CUMMINGS. In the past year, how many eight-hour days have you spent at the FMC headquarters?

Mr. ANDERSON. I don't recall exactly how many days but in the past year, hundreds, 150. I don't have an exact number for you, Mr. Chairman.

Mr. CUMMINGS. Were you there last week?

Mr. ANDERSON. I was not there last week.

Mr. CUMMINGS. Were you on vacation?

Mr. ANDERSON. Yes.

Mr. CUMMINGS. And the week before that?

Mr. ANDERSON. Yes, I was. I was there.

Mr. CUMMINGS. How many days were you there that week, do you know?

Mr. ANDERSON. I believe I was there four days. Yes, four days.

Mr. CUMMINGS. Let me ask you this, would you submit for me over the last year how many times you have been there? You can submit that for the record. Would you do that?

Mr. ANDERSON. Yes, I will, Mr. Chairman.

Mr. CUMMINGS. You said something that I just want to make sure I have some clarity on. You said the Sunshine Laws have certain effect on certain things. Can you explain that?

Mr. ANDERSON. It is my understanding, Mr. Chairman, based on our counsel, that since I have been at the Commission we are limited to meeting with no more than two commissioners at any given time so that we don't have a violation of the Sunshine Law which would require us to notice a meeting.

Mr. CUMMINGS. So you understand you can meet, but you just have to have open meetings. You understand that, right?

Mr. ANDERSON. Yes, I do.

Mr. CUMMINGS. Help me with this. Is it that you didn't want to have an open meeting? Is that what you are trying to say?

That is the only reason of relevance I can see. Maybe I am missing something.

Mr. OBERSTAR. Mr. Chairman?

Mr. CUMMINGS. Yes. I yield to you.

Mr. OBERSTAR. What is wrong with an open meeting?

Mr. ANDERSON. Nothing is wrong with an open meeting.

Mr. OBERSTAR. Well, why don't you want to have them?

Mr. ANDERSON. Well, we were. We were meeting on a regular basis with each other and in pairs of two, and then our counsels worked very closely together. We had day to day contact with each other on a regular basis.

I can speak for myself. I speak to several of my colleagues on evenings, over the weekends, as I have been on vacation. We are in constant communication with each other since the time that we have been co-equally managing the Commission.

Mr. CUMMINGS. Have you signed blank notational voting sheets in advance and then had your staff fill in the blanks when you were not present at the Commission to participate in a vote? Have you ever done that?

Mr. ANDERSON. Mr. Chairman, I have. I have voted through the notation process which allows for us to vote by notation. It is the process where we can do, and I have done where I have indicated my vote via, after comprehensive discussions and reading the material, with my counsel, yes.

Mr. CUMMINGS. Then you instructed your staff to fill in your voting card or whatever you use?

Mr. ANDERSON. Mr. Chairman, since I have been at the Commission, that has been an accepted procedural way to vote at the Commission. I have voted, indicated my vote either verbally or via e-mail on occasion to my counsel.

Mr. CUMMINGS. For how many votes did you instruct your staff to fill in the blanks on the voting sheets?

Mr. ANDERSON. I don't have a count for you.

Mr. CUMMINGS. Will you get that information for me, please?

Mr. ANDERSON. Yes, I will, Mr. Chairman.

Mr. CUMMINGS. Who meets in the notational process? How does that work?

Mr. ANDERSON. Generally—and I am happy to have my colleagues if they want to add any light to this—since I have been at the Commission and it is my understanding that for as long as the Commission has been under the current structure, it has voted through a notation process by which the purpose of these are for administrative or acknowledging. In many cases, you are not voting aye or nay. It is just noted that you received a piece of information or noting that we have received something from outside the agency, for the record that we have received that.

So, in most cases, Mr. Chairman, the notation process, we are not actually voting, or in many of the cases. I could not give you a percentage. We are voting procedurally just to acknowledge some information that has been provided to our office by either staff or outside entities. So the notation process allows a very seamless functioning of the commissioners to vote.

Generally, these are not on issues. So that I can be clear, these are not issues where we voted at hearings or we voted on issues where we took public testimony and things of that nature. These would be procedural notices to the Commission on items that are related to the Commission.

Mr. CUMMINGS. Is there any time devoted to group deliberation with regard to these?

Mr. ANDERSON. No, not since I have been at the Commission. We have never had a group deliberation on a notation item. That is not how the notation process is worked.

It has been set up. I have been there four years. I do not know how that was originally established, but that is the procedural way when I came to the Commission, it was identified to me as the process of voting at the Commission.

Mr. CUMMINGS. How much time is required before a vote is taken on a notational vote?

Mr. ANDERSON. It depends on the item, sir. It could be that we have received an amendment to an agreement that just might be, for example, an agreement that we monitor. It might be adding one company to that liner agreement, and we are to note and vote that we have noted that the liner has been added to a long list of agreements.

In other cases, it is again on informational notation that we have received a memorandum or something from an outside entity, and we are just voting noted that we received that information.

Mr. CUMMINGS. Do you think that notational voting should be reserved for emergencies perhaps or is it?

Mr. ANDERSON. I believe that it has allowed the Commission, since I have been there, to operate in a way that we can respond very quickly. The process allows for, in most cases, Mr. Chairman, notations, and in some cases, a week before the vote is due. In some cases, it is a 24, 48 hours, depending on the urgency of the vote.

Mr. CUMMINGS. Can you give me an idea, and then I will turn it over to Mr. LaTourette? Can you give me an idea, just give me a range, of what you all earn?

Mr. ANDERSON. I believe it is currently \$146,000.

Mr. CUMMINGS. Very well.

Mr. LaTourette.

Mr. LATOURETTE. Thank you very much and thank you for coming here today.

In my opening remarks, I talked a little bit about the situation with the Japanese Government. Mr. Anderson or any of the commissioners, if you could just talk to me a little bit about what some of us perceive to be unfair competition, and that is that terminal ownership and port service operations in our Country are generally free and open to foreign interests. In some foreign ports, however, U.S. individuals interested in owning port terminals—

Mr. CUMMINGS. Would the gentleman yield?

Mr. LATOURETTE. Sure.

Mr. CUMMINGS. It seems like Mr. Creel might be having difficulty hearing you. Can you hear, Mr. Creel, sir?

Mr. CREEL. I can hear fine.

Mr. CUMMINGS. All right, fine.

Mr. LATOURETTE. Can you discuss with me just a little bit, first of all, the Japanese situation and, second of all, how the FMC works with foreign governments to increase assets and opportunities for United States' interests abroad?

Mr. ANDERSON. Thank you.

On Japan, the staff of the general counsel has met with Department of State staff and a visiting delegation, and we are requested to remove the reporting requirements about the Japanese port practices. This predates my joining the Commission all the way back to 1996 when we first instituted the state-owned provisions with the Japanese Government.

While the FMC is not prepared to do so at this time, I would think it would be fair also to hear from my colleagues on their points as well because it would be a joint consideration.

Mr. LATOURETTE. Mr. Creel?

Mr. CREEL. Thank you, Mr. LaTourette.

I can speak to this. I actually was around in 1996 and was chairman at the time. Mr. Chairman, when we took the action against Japan, the problems there, as you know, were a matter of access by U.S.-flag vessels or vessels calling in the U.S. Non-Japanese vessels were denied entry if they didn't comply with certain practices. In other words, there was discriminatory treatment for non-Japanese vessels.

They were also subject to what was called a prior consultation process which was deemed by the vessel owners as being burden-

some, and because that required prior consultation with the port authority before changing a port call which is not something that is normally done. That proceeding is actually still open.

Just background, a little bit more on that particular issue, the Commission did take action and voted against all Japanese-flag vessels into the U.S. because of this unfair treatment being shown to vessels calling in the U.S.

That issue, that immediate issue was resolved. There was \$100,000 per vessel call levy that was posted on all Japanese vessel calls. That was addressed through negotiations between the State Department and the Japanese Government. Basically, as an independent agency, the FMC carries the big stick to be able to do this, yet the ultimate negotiations are up to the State Department to resolve this diplomatically, and that did happen.

However, that proceeding is still open. It is my understanding that there are still some problems that have not been resolved under the agreement that was reached with the Japanese. I have just been hearing recently about that.

As to the NYK terminal operator issue, I am aware of that problem or that issue in Florida. I don't want to prejudge that, but I will certainly look into that per your suggestion.

Mr. LATOURETTE. Well, on that issue, am I correct that NYK has made a demand upon or has approached the FMC and demanded the right to stevedore its own vessels?

Mr. CREEL. I believe that is right, yes, sir.

Mr. LATOURETTE. I would hope it would be the position of the Commission, until the Japanese Government lives up to its agreement of 10 years ago, that we not modify the agreement and give them more, right?

Mr. CREEL. I would just say that back in 1996 when we carried out the action that we did, there were a lot of people surprised about the agency and how small we are and the independent authority we have to address unfavorable treatment of U.S. vessels. So we will certainly look into that and do what we can do, and we will follow up with you on that as well.

Mr. LATOURETTE. I appreciate that.

Mr. Anderson, in your testimony, you talked about the Ports of Los Angeles and Long Beach. I understand you to say that they have forward to the Commission an agreement or a proposal, is that right?

Mr. ANDERSON. That is correct.

Mr. LATOURETTE. Does that proposal require action on behalf of the Commission, on the part of the Commission? Do you have to do something about it?

Mr. ANDERSON. We would, yes. It is a marine terminal agreement as proposed by the Ports of L.A. and Long Beach which includes rate discussions and other areas, and they have made this as one of the areas of change of the dynamics of, I think, our U.S. intermodal operations between ports, rail, trucks that has had a profound impact on the way business is being done in ports around the Country.

In the Ports of L.A. and Long Beach case, they have a Clean Air Action Plan that has been proposed by local government that the ports must meet over a period of many years. In an attempt to

meet that, the ports have filed plans and changes in their agreements that would require trucking companies to be part of the agreement as employee-owned trucking companies. Some of these provisions will cause them to come under review by the Commission.

Mr. LATOURETTE. Does the Commission have the authority to reject their proposal?

Mr. ANDERSON. We would. Commissioner Creel, any help?

I believe that they would have to go to Federal court if we did not allow the marine terminal agreement to go into effect.

Mr. LATOURETTE. That is what I am asking. So they are asking for your approval of the agreement.

My time is expired. Let me just say this. In looking at Los Angeles-Long Beach, the clean air goal is a laudable one, but in my observation they achieve it by limiting competition among who can use the terminal.

So my question to whoever wants to answer it, one is—and I think you have answered it—that you actually have to approve it. If you don't approve it, they have additional recourse. But I am wondering whether or not what they have submitted to the Commission and what the Commission will look at in determining whether or not to approve their plan is how the decrease in competition or availability will affect the costs associated with transporting cargo in and out of the ports.

I guess yes or no.

Mr. CREEL. Can I answer longer than yes or no?

Mr. LATOURETTE. Sure, subject to what the Chairman allows.

Mr. CREEL. We do not have the authority to disapprove the agreement, any agreement. We have the authority to go to Federal district court to get an injunction to prevent, a preliminary injunction to prevent the agreement from going into effect. It is a pretty big step.

We do have the authority to review the agreement for anti-competitive effects, also to see if there is any prohibition, any of the Shipping Prohibitions Act that have been violated. We are doing that now.

There are two agreements on file, one between the two ports, L.A. and Long Beach, the other between the two ports and the West Coast Marine Terminal Operators agreement. On the second agreement, we have asked for additional information. So, on that one, the parties have to come back to us with additional information. Then the agreement will go into effect within 45 days automatically after we receive that information.

This is something I would like to talk to you about further in terms of potential legislative amendments to address that.

Mr. LATOURETTE. I would appreciate that.

Thank you, Mr. Chairman.

Mr. CUMMINGS. No problem.

Mr. Oberstar.

Mr. OBERSTAR. Mr. Anderson, I want to understand, as you are in sort of an acting position, how you manage the day to day business. How do you do this? Do you communicate long distance with staff when you are not actually at the Commission?

Mr. ANDERSON. No, sir. Mr. Chairman, I am not acting. I am co-chairing.

Mr. OBERSTAR. But you are the lead person on the Commission.

Mr. ANDERSON. Well, no, sir, not actually. I have not been confirmed by the Senate. I have been designated as chairman if I am confirmed.

I have taken great care and been very reserved in my approach to stepping forward and taking the lead at the agency. I think my colleagues and anybody in this industry would agree. I felt and many counseled to me was that you are not chairman, and I have not acted in that capacity by either projecting myself in that manner or have done anything that would lead anybody with any reasonable, objective observation to think that I was chairman.

Mr. OBERSTAR. In the findings of the Inspector General and in response to questions from Mr. Cummings, there are long periods of time when you are actually physically not present at the Commission.

Mr. ANDERSON. There are times where I think that, I am sure during times of vacation and other personal matters, I have not been actually at the Commission. However, I think that, like anybody in today's world, I am in constant touch with my staff, the staff of the Commission, my colleagues on the days that I am not physically sitting in the office.

Mr. OBERSTAR. You have mentioned vacation a couple of times at least. How many days vacation are commissioners permitted?

Mr. ANDERSON. Sir, I think.

Mr. OBERSTAR. Who regulates that?

Mr. ANDERSON. Presidential appointees are considered to be on all the time, and as such they do not have vacation.

Mr. OBERSTAR. You don't have any statutory limitation on time for leave?

Mr. ANDERSON. Sir, my understanding is that when we get a time report, that it would show zero hours vacation constantly.

Mr. OBERSTAR. So you can be absent physically from the Commission but participate in the vote by filling out a sheet of paper or a voting sheet and then direct staff to indicate the vote, is that correct?

Mr. ANDERSON. Mr. Chairman, I have.

Mr. OBERSTAR. You and the other commissioners?

Mr. ANDERSON. And other commissioners through the notation process which allows for that to happen, and there are many reasons.

Again, I want to be clear, getting back to an earlier question as to why we do not meet face to face, and there are many reasons not to meet in an open meeting that I did not clarify in the earlier statement: personnel issues, for example, or protected agreement issues or contract and internal budget issues where we don't meet openly. Those are several reasons and there are others that would be the reason we use a notation process. That is my understanding of the Commission.

Mr. OBERSTAR. On those kinds of issues, you meet two by two?

Mr. ANDERSON. That is correct.

Mr. OBERSTAR. Mr. Chairman and Mr. LaTourette, that is very much like proxy voting which we outlawed here during the very

first Republican year of majority in the House, took away the proxy voting. Maybe we ought to do the same here.

If you were considering financial issues regarding cruise lines or the laws and practices of foreign governments, wouldn't you consider that to be important enough to meet in Full Committee?

I don't mean to load all the questions on you, Mr. Anderson, since you are a bank of four. Someone else can step up and answer.

I think we have lost the air in this room, but that is all right.

Mr. CREEL. Yes, sir.

Mr. OBERSTAR. You would meet as four. You would consider those in an open session. You would consider that to be appropriate.

Mr. CREEL. Yes, sir.

Mr. OBERSTAR. Has the Commission taken time to review the U.S.-China maritime bilateral and observe whether it is working as intended, whether the dwindling American-flag fleet is getting a fair shake?

Speak up. You are all before us. You are certainly not on vacation right now.

Mr. ANDERSON. I will speak, Mr. Chairman. We regularly talk to our Bureau of Trade Analysis.

I can speak for myself. Every opportunity I have to meet with an American executive who is in the foreign trades, operating liner vessels and doing business in China, I personally ask them how their business access is in China. I seek out not only the opinions of our staff, but I seek out the opinion of people that are in the business of operating ships in those trades because I feel it is very important to get a balanced view on what is going on.

But, yes, we do regularly also as well get briefings on the status of that trade.

Mr. OBERSTAR. I spent a fair amount of time in 1999, at request of the State Department, in negotiation. Members of Congress can't negotiate, but it was conversations with Minister Pung of the Maritime Administration of China in reopening the talks, formal negotiation talks between the U.S. and China. I am very happy that ultimately Secretary Mineta was able to sign an agreement.

I think it is a very important matter for the Commission to follow up on, but if you are not meeting in open session and considering these issues, I wonder what kind of oversight you are actually conducting over the trade with this most important trade partner of ours.

Ms. DYE. Mr. Oberstar?

Mr. OBERSTAR. Yes.

Ms. DYE. Before the agreement was signed, the Commission had a briefing from the Maritime Administration officials which, as you are aware, actually handled the talks.

Mr. OBERSTAR. Yes, they actually did the negotiation, right?

Ms. DYE. Yes, the FMC is very interested in providing ocean carriers access to the Chinese market.

We were also concerned that American shipping intermediaries be able to do business in China, and I am very pleased that the Maritime Administration was able to negotiate some entryway for the shipping intermediaries and we were able to play a part in that. We continue to monitor that for which we are grateful.

Thank you.

Mr. OBERSTAR. I think Mr. Cummings has indicated an interest in holding a hearing at a later time on a broader range of issues of this nature.

Let me come back to this matter of the former general counsel of the Commission filed an EEO complaint. I understand that the Commission hired outside counsel. Did you vote on the attorney to retain to defend the Commission?

Mr. CUMMINGS. Anybody want to answer?

Mr. ANDERSON. Yes, Mr. Chairman. I believe we sought outside counsel. Under the sole contract provisions, we sought out through the Bureau of Public Debts Services. Since the Commission is a borderline small micro-agency, we sought their advice on seeking a sole-source contract on hiring outside counsel.

At the time that we were informed of the informal filing of an EEO complaint by the general counsel, it was Wednesday of Thanksgiving. Prior to that, two days before, our only EEO employee, our director, since we are a small micro-agency had left to go to another agency to take another job at a larger agency. So we were without any counsel and advice to the Commission, Wednesday before Thanksgiving, and shortly thereafter I believe the Commission felt that we needed independent counsel to represent us.

We sought counsel from the Bureau of Public Debts contracting process. They authorized us to hire an approved employment attorney to represent the Commission.

Mr. OBERSTAR. Then the Commission hired an attorney based in Ohio. Were there no EEO case experienced attorneys in the Washington area? How did the Commission come to reach way out?

That is not too far. Ohio is really not that far, but it is well beyond Washington.

Mr. ANDERSON. Mr. Chairman, it was someone that had been referred to me, that I did not know at the time.

Mr. OBERSTAR. You did not have a personal or professional relationship?

Mr. ANDERSON. No. It was referred to me by somebody that knew this individual as an Ohio super lawyer, well respected and former deputy general counsel of the EEOC and referred to us. We contacted that person.

Mr. OBERSTAR. That person made the reference to you of this attorney?

Mr. ANDERSON. That is correct.

Mr. OBERSTAR. It was not any personal relationship. Okay, that said, it is interesting to have that at variance with other information we have, but thank you for your response.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

We are very pleased to have with us the Ranking Member of the Full Committee, Mr. Mica.

Mr. MICA. Thank you for yielding and I guess also for conducting this hearing.

It is supposed, I guess, on the fiscal year 2009 budget of the Federal Maritime Commission. One of the things that concerns me in just listening to this is we find another agency without a chairman, the sort of situation we find ourselves in with other agencies. How long has the chairmanship been vacant, Ms. Dye?

Ms. DYE. It has been vacant since November, 2006.

Mr. MICA. So I read under your charter that I guess the agency operates by all the remaining members directing the business of the Commission, is that how it is?

Ms. DYE. Yes, sir, that is correct. By statute, the authority devolves to the entire Commission.

Mr. MICA. All the terms are five years. When does yours expire?

Ms. DYE. Mine expires in June of 2005.

Mr. MICA. What?

Ms. DYE. In June of 2005.

Mr. MICA. That is when you started. So it would be 2010?

Ms. DYE. Oh, 2010. Thank you.

Mr. MICA. A 2010 expiration.

Ms. DYE. Yes.

Mr. MICA. Yours, Mr. Creel?

Mr. CREEL. Mine is next June.

Mr. MICA. Next June.

Mr. BRENNAN. Mine is June 30, 2008.

Mr. MICA. Okay. Mr. Anderson?

Mr. ANDERSON. I am serving currently in an expired term after being renominated.

Mr. MICA. So you still get to serve. The Commission positions have to be confirmed too by the Senate, don't they?

Mr. ANDERSON. That is correct. I was renominated for another five-year term. My term expired June 30th of 2007. I was renominated in August of 2007, and I have had a hearing before the Senate Commerce, Science and Transportation Committee in October.

Mr. MICA. But they still allow you to serve?

Mr. ANDERSON. But it still allows you to serve in an expired term.

Mr. MICA. There must be one vacant or somebody didn't want to show up today. One vacant?

Mr. ANDERSON. There is one vacant.

Mr. MICA. Well, it doesn't seem the way to run an aviation agency or a maritime agency without somebody designated and specifically in charge and confirmed by the Senate.

I see you asked for a 7.8 percent increase. What is the bulk of the increase, Mr. Creel? Do you know?

Mr. CREEL. [Remarks off microphone.]

Mr. MICA. This is a massive agency, 140 persons. What is it? An authorized FTE?

Mr. CREEL. A hundred and twenty-one currently.

Mr. MICA. How many?

Mr. CREEL. We have about 121 currently onboard.

Mr. MICA. You have more positions authorized. Then you have some vacancies?

Mr. CREEL. That is right. We have a number of vacancies now that we are in the process of filling.

Mr. MICA. But the biggest increase would be in personnel costs?

Mr. CREEL. That is correct, the within grade promotions or within grade pay increases, the cost of living increases.

Mr. MICA. You are authorized for 119 positions, and your budget asks for 131 and you don't have positions that are filled.

Mr. CREEL. That is right.

Mr. MICA. So what are the new positions you are requiring?

Mr. CREEL. The 16 positions that we are recruiting for, they will be filled by the end of the fiscal year. But you asked for new positions, right?

Mr. MICA. Yes. That is what this is about, I think, is trying to find out.

Look at your budget request. It is a 7.8 percent increase. You have X number of positions, some not filled. You are authorized for 119. You want to go to 131. We want to see what you are going to use the money for.

Mr. CREEL. Right.

Mr. MICA. Mr. Brennan, you are awfully quiet. Do you want to say something? We want to pick on everybody equally here.

Mr. BRENNAN. If I could, I would like to comment on the issue of not having a chairman. I mean, it is like a four-headed monster.

Mr. MICA. He said that. Where is the press? He said a four-headed monster. That was not Mica.

Mr. BRENNAN. Well, to put it in perspective, it would be like the House of Representatives having four speakers with equal authority.

Mr. MICA. Well, we have nobody in charge.

Mr. BRENNAN. That is the position we are in. I mean, we need a chairman. I recognize the Chairman. I respect what you said on the basis—

Mr. MICA. I would like to run the Committee without a Chairman for a while.

[Laughter.]

Mr. OBERSTAR. Not a chance.

Mr. MICA. That would be strong.

Mr. BRENNAN. But my point is this is one of the problems this agency has.

Mr. MICA. I don't mean to make light of it. It is a serious situation.

The other thing too I notice is it is a small operation.

I have been very impressed with the Maritime Administration. What is his name? Connaughton, yes, he seems to be the only one with his act together from this Administration, with a vision for transportation.

I asked the question. I guess at one time, before 1961, it was together, the Maritime Administration and your Commission, and separated off. Would you recommend any re-look at that and then is the Commission too big? Maybe we should go to three. It appears it is even difficult to operate with five.

Any thoughts?

We will start with Ms. Dye. All of you can respond: Ms. Dye, Mr. Creel, Mr. Brennan and Mr. Anderson.

Ms. DYE. Mr. Mica, I would be delighted to talk with you about all those issues and several other policy issues as well when you are available. I do have my personal feelings on the best way to approach these issues. I am not sure they are shared by my colleagues.

But, of course, there are all sorts of different administrative advantages to five-member or three-member boards.

Mr. MICA. So you would keep the five-member board?

Ms. DYE. Five-member commissions and three-member boards.

Mr. MICA. You just need somebody?

Ms. DYE. The Surf Board operates very well over in the Department of Transportation with its three members. So there are several alternatives.

Mr. MICA. The question was raised about you not meeting enough. How often do you formally meet or did you meet like in 2007? I have no idea.

Ms. DYE. We met twice in 2007.

Mr. MICA. Twice?

Ms. DYE. Yes sir.

Mr. MICA. Do you do the rest of the business, as was described, through sort of a proxy vote with nobody in charge?

Ms. DYE. Our notation process actually is authorized under a Commission order, so there is a formalized way to proceed when we vote on paper by notation. It is employed frequently and, of course, much more frequently now that we have all been required to participate in each vote on administrative matters due to the absence of a chairman.

Mr. MICA. So keep it the same number and somebody in charge. Then what about the question of re-looking at any combination of the administration, would the Commission now keep it the way it is?

Ms. DYE. Yes, sir. I believe that the Federal Maritime Commission can operate to the advantage of the American citizen with some changes.

Mr. MICA. Mr. Creel?

Mr. CREEL. Yes, sir. I agree, as well, with Commissioner Dye.

Anyway, I believe that we should keep the Maritime Administration and the Federal Maritime Commission separate because they were separated for a reason and that still stands today.

Mr. MICA. You are the regulators.

Mr. CREEL. We are the regulators. They are the promoters of the industry. And so, it would seem that those two things together were inconsistent. I think those reasons are still valid.

I think it is also critically important to retain the FMC as an independent agency. As we were talking about earlier with Mr. LaTourette, it gives us the ability to take independent action against the vessels of foreign countries if they are doing something that is offensive to vessels that call in the U.S. or U.S.-flag vessels.

That is a very unique authority, and I think that retaining that authority is essential, and I think that the shipping public would agree with that.

Mr. MICA. Most of the goods coming into the United States are foreign-flagged and almost all the cruise ships, foreign-flagged.

Mr. CREEL. Absolutely.

Mr. MICA. Also, somebody said 90 percent of the imported goods that enter the United States are on those vessels.

Mr. CREEL. That is right. About everything you see around you, maybe not in here but that is in commerce today in the United States was brought on a ship, especially anything that is not extremely high value that would be on an airplane.

Mr. MICA. You are the only agency then that is vested with the responsibility for regulation in that regime?

Mr. CREEL. That is correct from the trade aspect.

Mr. MICA. Mr. Brennan, I don't want to take too much time.

Mr. BRENNAN. I share much of what he said. I mean, I think we are meeting our principal responsibility, and that is oversight over the carriers who have an exemption from antitrust, meaning they can get together and talk about rates. I think we have been effectively meeting that responsibility.

Mr. MICA. Mr. Anderson?

Mr. ANDERSON. I believe too, Mr. Mica, that the Commission is fulfilling a very necessary responsibility.

Coming from the maritime industry, as you may recall, working for a United States Jones Act company for 10 years in the operation of vessels, I have seen it from both sides, and I believe that the Commission fulfills a very important role, also consumer protection with the cruise lines and some of the other areas as well as a very unique niche that we have in the maritime security where we contribute to Customs and Border Patrol and Homeland Security efforts.

Mr. MICA. Thank you.

Mr. CUMMINGS. Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman, and thank you very much for holding this hearing.

I am struck by the juxtaposition of three things: one, a Federal Human Capital Survey that suggests very poor morale on the part of the workforce of the Commission; second, I guess an understanding buttressed by testimony this morning that the 8-hour work day and the 40-hour week are exceptions rather than the norm for commissioners; and then, finally, a 10 percent increase in staff which I know the raw numbers are small, but we have precious few departments across the span of the Federal Government that are increasing their staff by 10 percent in any 1 year outside of the Pentagon and perhaps the Department of Homeland Security.

I think one of the basic precepts of management is if morale is poor, staff performance is less than optimal. I think another precept of management is that if the staff perceives that they are working harder than their leadership, that serves to be a disincentive for them to put out their maximum effort.

And so, my question is: Is a 10 percent increase in staff absolutely essential or, with better leadership, with more commitment from the commissioners and better personnel management practices, would you have a more productive staff and thus not need to increase the staff by, as I say, what is a very generous percentage in this climate?

I will put that to any one of the commissioners.

Ms. DYE. Mr. Bishop, we are not actually asking for increases in staff levels. We have lost a lot of people, and so we are working hard right now to backfill and get those positions filled again.

Mr. BISHOP. If I may, my understanding is that the enacted budget for fiscal year 2007 authorized 119 full-time equivalent positions and the proposed budget authorizes 131 full-time equivalent positions. So that is where I get the number of the 10 percent increase in staff.

Ms. DYE. Staff tells me that 119 was our actual level, not the authorized level.

Mr. BISHOP. So the 131, you are saying, does not represent a growth, that that is the baseline and 119 represents attrition and vacancies that have not been filled?

Ms. DYE. Yes, sir, I believe that is correct.

Mr. BISHOP. But would you believe that the Commission is functioning appropriately at the level of 119?

Ms. DYE. No, sir.

Mr. BISHOP. I am sorry.

Ms. DYE. No, sir. I believe that we do actually need to get back up to strength, to fill those positions.

Mr. BISHOP. Let me ask this question. The management study that was conducted spells out some pretty compelling challenges: lack of trust, lack of leadership, lack of vision, opposition to change, poor information management and lack of interaction between the commissioners and the staff. Do you agree that those findings are accurate and, if so, what do each of you intend to do about a condition that I think any reasonable person would consider to be unfortunate, if not extremely difficult?

Ms. DYE. Unfortunately, Mr. Bishop, I do agree that many of those things are true, and I am ready and willing and anxious to change the work environment at the Commission, and I appreciate your question.

Mr. BISHOP. I thank you for that response, and I don't mean to put you on the spot, but are there impediments that constrain your readiness or your eagerness to put in place the kinds of changes that would need to be made?

Ms. DYE. No, sir, not on my part. There are no impediments on my part.

Mr. BISHOP. So, may I ask then why it has not happened?

Ms. DYE. I believe that the commissioners need to work together and make a conscious decision together with a focus to change that environment, and I believe that we can do that.

Mr. BISHOP. Do you believe that the commissioners need to be more physically present than they currently are in order for that focus to be realized?

Ms. DYE. I believe that we can. Yes, sir, I do.

Mr. BISHOP. All right. How about the rest of your colleagues?

Mr. CREEL. Yes, sir, if I could just go back for one second to clarify a little bit on the numbers, the employee numbers.

Mr. BISHOP. Okay.

Mr. CREEL. One thing that I forgot to mention earlier to Mr. Mica was we don't have the chairman and the chairman's staff. That makes up some of the numbers. Also, we are a commissioner and a commissioner's counsel short too. So that also fits into the mix.

Let me tell you. I have been at the Commission for 14 years. I was the longest serving chairman, under President Clinton.

I have a personal affinity for the place and the people there. I know the people individually. I know their personal stories. They come to me and talk to me about work issues and even about personal issues sometimes.

The worst thing I have heard here today is the lack of confidence and the lack of happiness about the employees working there. When I first came on, I was really amazed at how dedicated the staff is there, and I mean that from the bottom of my heart.

We have lost some people that were damn good employees and should not have gone and, yes, it is our fault.

Granted, we have had an awkward situation. We don't have a chairman. We kept thinking we were going to get a chairman. That issue bled over into a lot of different areas including management and the perceived role of employees of the agency.

I think we have turned a corner. I know that we are making an effort to do that. As Commissioner Dye said, it starts with us. Poison goes downhill, and people pick it up. If we are having issues, they pick it up, and that is not fair.

We need to act like grownups, address our issues and do what is in the best interest of the government, of our constituents and the people that work there. I mean you look at the number of people that have been in the agency for 20, 30 years. I mean it is phenomenal, and we have a responsibility to honor that and to make them enjoy where they work and to feel like what they do is worthwhile.

And so, I am the first one to admit the problem starts here and it should stop here. Whatever we need to do to make it work, I am committed to doing that. I know the rest of us, of the commissioners are.

We will report back to you on this. You are right in deserving an explanation on that capital survey. So anything we can do to address this, I will personally commit to.

Mr. BISHOP. Thank you.

Mr. Chairman, I know my time is expired. I just want to say that my understanding of this very depressing survey is that it was taken at around the time the prior chairman left. So let me just caution all of you that we ought not to view the absence of the chairman as the principal reason why morale is as low at least as it appears to be. Whatever the reasons are, they go far beyond the absence of a chairman.

Thank you, Mr. Chairman. I appreciate your indulgence.

Mr. CUMMINGS. Thank you, Mr. Bishop.

Let me go back and just follow up on what Mr. Bishop said and was asking and go to you, Mr. Brennan and you, Mr. Anderson.

Mr. Anderson, particularly you, since you are right in line to be the chairman, I am sure the findings of this survey must concern you. This survey has been out since 2006. When did you come on board?

Mr. ANDERSON. In 2003, the end of 2003.

Mr. CUMMINGS. What are your plans?

Ms. Dye and Mr. Creel have committed to trying to improve on this situation, and I am so glad that they did not pooh-poo the feelings of employees, and I really appreciate that. These are human beings with families, who work hard every day and give the government their blood, their sweat, their tears, and they deserve to be able to come into a working environment that they feel good about.

All of us know that no working environment is going to be perfect, but when you have pretty much half of your employees saying they don't like where they work or they feel that the leadership is not at all motivational or what have you, it should concern all of us.

And so, Mr. Anderson, since the President wants you to be the chairman, I am just wondering what you plan to do. First of all, what do you think of the survey?

Mr. ANDERSON. Mr. Chairman, I think that the survey is disappointing, but again I am not that familiar with the numbers. It did take place in 2006 when it was reported. I think there is obviously room for improvement.

I come from, as you know, the private sector, and I have been so impressed with the quality of the people that I have been able to work with while in government. It has been an honor to serve with people that are dedicated. We have 30 and 40-year employees at the agency.

To clarify it, the reason a number of the vacancies that took place that we currently have are because of retirements which I think all government agencies are facing with the Baby Boomers starting to retire. We have lost some good people, but there is room for improvement.

My philosophy in leading, Mr. Chairman, is very simple. First, any organization, whether it is private, public, your church or what have you is only as good as the people that work there. If they are not happy, it is hard to be a good, efficient, working operation in a government agency or a business.

I also believe in continuous improvement. There is plenty of room for improvement to get where our people are happy. If you are happy where you work, it impacts every other area of your life, and that is my sincere belief. You are happy at home, and you are happy with your family. Work is very important.

I would strive very hard to provide the necessary leadership by having management meetings on a regular basis, interacting with the employees. Something I learned from an old boss of mine, he was 78 and he used to call it management by walking around, talking to people, finding out. What is the clerk that you never see? What are they thinking?

The other area that I would see is bringing in industry experts, which they are glad to do. I have recently spoken, of course with the permission of my colleagues, to the cruise industry president of CLIA to come up with his staff and have an all day meeting with the Commission to talk about industry trends.

Also, I have talked to some other industry professionals from the World Shipping Council. Can we bring them in so that we are getting some of the best leading-edge people that are out there in the industry operating to help us better understand what is actually happening? It is very difficult to just read and understand what the industry is about.

I also believe that I would foster people getting out and seeing the industry, where we could go out and visit ports, visit marine terminal operators and have industry professionals sort of share with us what they do on an ongoing basis in the all important area

of trade for this Country. Intermodal trade is critical to the future of this Country.

Mr. CUMMINGS. Let me ask you this, can you all do some of those things now?

See, what is happening is I don't know when the Senate is going to do their thing. I don't have a clue. In the meantime, we have people who have to come to work every day, and you mentioned some nice things.

Let me tell you one of the things that concerns me and has always concerned me about hearings is that folks will come in here, they will make commitments, and then we may not hear from them for another two years. They know the players are going to change, and so the next thing you know it is the same old, same old over and over and over again.

One of the things that the Chairman has emphasized to us and I have learned it from him is to try to stay on top of these issues. That is when the commitments are made, make sure commitments are kept.

So I am going to ask you all since you all are acting jointly and you all do all this voting, however you may do it, that you do some the things that you just said. Will you do that, the four of you?

Mr. ANDERSON. Mr. Chairman, I will give you my commitment. If your staff has the time, I will come back in, whether I am chairman or not, while I am at the Commission and meet with them and give them updates.

Mr. CUMMINGS. Why don't we do that? Why don't we get an update, say, in two months? How about that?

Mr. ANDERSON. That is great.

Mr. CUMMINGS. From today.

Mr. ANDERSON. That is great.

Mr. CUMMINGS. Let me ask you this. Let me tell you what really concerns me, though, Mr. Anderson. Then I will ask Mr. Oberstar if he has anything else.

Let me tell you what concerns me, something you just said a moment ago. I asked you about this survey, and you—correct me if I am wrong—indicated that you were not that familiar with it. Is that what you indicated?

Mr. ANDERSON. I am familiar with the capital survey. At first, when another member, forgive me.

Mr. CUMMINGS. Mr. Bishop.

Mr. ANDERSON. Mr. Bishop mentioned a study, and I wasn't aware of a study.

I am familiar with the capital survey that was done. I believe that was done Government-wide two, two and a half years ago, and I think the results that you are quoting from are from that capital survey. That was widely distributed through the agency, and we had numerous reminders of people to participate in the survey.

However, we did not get, during that time, and I am not trying to project this onto the former chairman there, but we didn't get a lot of that kind of information back to us. That is one area where it would have been very helpful.

A number of us and a big advantage to having co-managed here, Mr. Chairman, is that we have had the ability to learn a number

of things within the agency that ordinarily commissioners were not getting the benefit of knowing about.

Mr. CUMMINGS. I want to yield to Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman.

Mr. Anderson, you just said something that causes great alarm for me, and I just want to make sure I understood you correctly. I referred to a management study conducted by Don Cole. If I heard you correctly, you just testified that you were unfamiliar with that study. Is that correct?

Mr. ANDERSON. Yes, I am.

Mr. BISHOP. Now it is my further understanding that Mr. Cole has a lawsuit pending against the Commission because he is alleging that he has not been fully paid over a three-year period.

So, one, I am to understand that a management study was conducted of Commission staff about which commissioners or at least you, Mr. Anderson, are not aware and, secondly, that study has resulted in a lawsuit about which commissioners are also not aware. Am I correct in both of my understandings and, if I am correct, could you please tell me how this state of facts could come to be?

Mr. ANDERSON. Mr. Chairman, I can answer for myself. I am not aware of the study you are referring to. It was in late 2006. It came to our attention that a management consultant who had previously worked solely for the previous chairman wanted to meet with the Commission to extend a contract, a contract to which we had never known about nor previous knowledge because he worked solely at the discretion of the previous chairman.

It was my understanding, as it was explained to me, that he was the chairman's personal consultant. Whatever that may mean, I was not privy to the management study that you are referring to.

Mr. BISHOP. If I may, is your understanding shared by your three colleagues? Do any of you have any knowledge of this study and of the lawsuit that goes beyond what Mr. Anderson has just said?

Mr. BRENNAN. Mr. Congressman, if you are referring to a Cole study for which the government spent \$200,000, to the best of my knowledge, there was no formal written report and, secondly, there is no pending lawsuit. There was some dispute, and I think, along with what Mr. Anderson said, this was pretty much done by the prior chairman on his own determination.

I do not think there was anything in writing whatsoever. That is correct. There is nothing in writing, nothing, zero.

Mr. BISHOP. Mr. Creel?

Mr. CREEL. I have not seen a Cole report.

I can give you a little background, and, again, I think we have to be a little careful here because there is the potential for litigation here. A little bit of history, this contractor started back in, I think it was, 2003. It was under the auspices of the chairman who did the hiring and hands-on administration of the contract.

There were a couple of problems with the way the FMC handled that. I am not trying to put the blame, but we Commissioners weren't involved in this contracting, but the FMC did not handle that correctly according to our Inspector General who has done an audit of that contracting process or procedure.

Again, to be a little careful here, so the agency did a couple of things wrong in the way it set up the contract. I think, first and

foremost, there were no deliverables. This agreement, I mean this report, I am not familiar with.

Mr. BISHOP. I am going to interrupt you. I am told by staff that there is, in fact, a written report, that we in fact have a copy.

Mr. CREEL. I would like to see it.

Mr. BISHOP. I am sure the Chairman would be happy to share it.

Mr. CUMMINGS. We would be happy to get it to you.

Mr. CREEL. I am sorry.

Mr. BISHOP. I am taking too much of the Chairman's time, but let me just say that this, if nothing else, seems to me to underscore the necessity of the four of you meeting together, all four of you, much more frequently than is currently the case. If that requires compliance with Sunshine Laws, then so be it.

I think the fact that there is so much going on that some of you seem to be hearing about for the first time today and some of you seem to have a level of knowledge that eclipses the level of knowledge that some of your colleagues have, and I find it just shocking, frankly, that the four of you don't all have the same level of knowledge. I think an easy way to help remedy that is to simply meet more often and share what you each know with one another and then share it with your staff.

Thank you, Mr. Chairman. I yield back.

Mr. CUMMINGS. Thank you.

Ms. Dye, have you seen the report, the Cole report?

Ms. DYE. Mr. Chairman, I do remember a majority commission vote which actually suspended Mr. Cole's contract before he was able to come to Washington to deliver his final report to us.

Mr. CUMMINGS. Go ahead.

Ms. DYE. If I remember correctly, that is why we didn't receive his final report on that.

Mr. CUMMINGS. Well, we do have the report.

Ms. DYE. I would very much like to see it.

Mr. CUMMINGS. We will get it to you, get you a copy.

Before going to Mr. Oberstar, I just want to echo what Mr. Bishop just said, and he basically went down the path that I was traveling.

I think that, Mr. Anderson, the reason why it concerns me about this lack of knowledge of the report and whatever, if there is anything that has the ability to take the foundation out or effect my agency that I am about to head or I am interested in heading, I make it my business to know about it. I mean I don't think there is anybody in this room who would go into a situation where they did not have complete knowledge of what they were about to head. It doesn't make sense, and that concerns me. It also concerns me.

I am not going to repeat what Mr. Bishop said because he said it eloquently, but we have to do better. We really do.

Mr. Creel, you said you have been around for 14 years. If people saw this on C-SPAN, knowing that we have folks making 140 some thousand dollars. I mean the people in my district, if you were making \$80,000, they would think that was a lot of money.

But to hear some of the testimony that we have heard today is quite concerning. It should concern all of us. It really should. I can

understand, as Mr. Bishop has said, if you are not meeting, I think it just leads to this dysfunctional type situation.

Mr. Oberstar.

Mr. OBERSTAR. Excuse me, Mr. Chairman. I am a little distracted about a rather disturbing development. One of the presidential candidates is proposing to suspend the gas tax for this summer, and the tens of thousands of jobs that we will lose as a result of that makes \$36,000 alterations on the chairman's office sound like peanuts.

But that decision was made. Who made that decision if you commissioners didn't come together and vote on it? Mr. Creel?

Mr. CREEL. Yes, sir. That was made by or the decision was made by our Office of Administration, I think, as part of the normal replacement of furniture.

Having sat in those chairs myself for a number of years, it was time to replace them. In fact, the conference table was former Chairman Helen Bentley's dining room table and some of the upholstered furniture was former Chairman Elaine Chao's.

Mr. OBERSTAR. She wouldn't mind donating. She would get a pretty good tax break from that.

Mr. CREEL. We don't have a cook anymore, though.

But no, seriously, it was my own personal belief that it probably would have been better to replace that furniture before getting a new chairman as was part of normal replacement. I mean it was on the schedule to be replaced anyway.

Mr. OBERSTAR. But it is not that the commissioners didn't act on it. You knew about it. You just didn't vote on it or you didn't have a formal meeting to discuss this.

You said this is normal procedure that the executive director, senior executive service person makes that decision without confirmation by the Commission?

Mr. CREEL. Well, it is part of a plan to replace furniture throughout the agency.

Mr. OBERSTAR. Well, where did the money come from to do that?

Mr. CREEL. I believe that was from savings from attrition that we had over the course of the year and that there was no chairman.

Mr. OBERSTAR. The loss of jobs and loss of personnel meant that the Commission wasn't paying that out in salary to staff. Therefore, you took that money to commit it to furniture upgrade or replacement.

Mr. CREEL. I believe so.

Mr. OBERSTAR. I don't have any problem with upgrading furniture and you ought to have a decent place in which to work, but it is the process by which this is done.

Mr. CREEL. I agree with you, and this certainly brings it home that we have to start working together as a group and realizing that this is likely to be the scenario. I mean early on.

Mr. OBERSTAR. That is a significant statement: working together as a group. You have four very intelligent people. I have known Ms. Dye since the time she served on the Merchant Marine and Fisheries Committee staff and then on the staff of this Committee.

I have known Mr. Brennan from the time he served in Congress, all too briefly. He should have stayed. He would be on this panel, asking questions.

Mr. Creel, I remember your previous service.

You are very capable people. You ought to be able to get together and figure these things out and work as a Commission without a chairman. You have a headless horseman here, but you can do this work.

Mr. Brennan?

Mr. BRENNAN. If I might comment, we expected from month to month that there would be a chairman. The chairman does the administrative work.

As I said before, you folks couldn't run the House of Representatives with four speakers. You know it is tough enough with one speaker. That is a problem, but it is no ongoing excuse. We have to address it.

In regard to furniture, so the idea won't be there that we are going crazy, I have been there eight years. We have acquired one map. That is it.

Mr. OBERSTAR. Well, it is a pretty sad state of affairs the way the Commission has to be run. But, look, just take hold of it. Will you? Take charge of this Commission. It is an important function.

We are going to have a subsequent hearing on the substantive matters with which the Commission is entrusted, and Mr. Cummings is preparing for that. Mr. LaTourette, I am sure, relishes the opportunity. I do, and I look forward to having that hearing.

Be prepared.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Creel, you look like you are getting ready to jump out of your seat. Did you want to say something?

Mr. CREEL. I am sorry. I didn't mean to look like that.

Mr. CUMMINGS. That is all right.

Mr. CREEL. Mr. Chairman, I just wanted to say, back to the personnel and their satisfaction, one thing that I have noticed over the course of the years there that is frustrating, both from this level and also from the level of those in the jobs, is that there is a lack of upward mobility. Some people that have been there for years and years and years, who are extremely capable and know the industry know their jobs, know the agency, but there are not necessarily positions for them to move into.

That is something that I don't know how we address it, but I would like to address it. I can think of a handful of people right now that are extremely qualified for other jobs that aren't there.

Mr. CUMMINGS. I think that perhaps, going back to something Mr. Anderson said, maybe when you all bring in some of these outside experts. The cruise industry, I think you mentioned, people that seem to be doing it right. Perhaps they can give you some information that might be helpful.

I think there are a lot of agencies, private and public, that have that problem. There are people that have studied this thing and found ways to keep people motivated and so forth and so on. I just hope that you will do the things that you said, Mr. Anderson.

I was just telling Mr. LaTourette that I am sure it does create a problem when you are trying to operate with four people, but there is some kind of way that we still have to operate. And so, I hope you will take heed.

Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman, and I want to thank you all for your testimony today.

One of the reasons that I like working with Chairman Cummings is that he has taken Chairman Oberstar's observation that we shouldn't just have hearings and then everybody goes on their way and comes back a couple years later and we find ourselves in the same position. So I welcome his observation that we will get a report back within 60 days, and I look forward to the Commission embracing some of those changes.

I am also cognizant of the fact and in my conversation with the Chairman that it is not unusual for a commission or a board or an agency in the Federal Government, at the wind-down of an administration, to be short some members. There aren't a lot of people that are jumping at the opportunity to get a six-month assignment before the new administration comes in.

But I do want to focus on this Cole report for just a second because this hearing, I think, has indicated that the Commission can do better in its oversight just as the Congress can do better in its oversight, but I am not a big fan of coming to hearings and finding out something for the very first time.

So my question to each of you, and I think you have answered it, but before coming to this hearing today and either hearing Mr. Bishop's questions or the Chairman's questions, were you any of you aware that this Mr. Cole, whomever he happens to be, had submitted something in writing?

Mr. Anderson, did you know that?

Mr. ANDERSON. No, I was not aware there was any report in writing.

Mr. LATOURETTE. Mr. Brennan, I think you said.

Mr. BRENNAN. I was not. The general counsel, he is not aware of it.

Mr. LATOURETTE. Mr. Creel?

Mr. CREEL. No, I am not. I am not aware of that.

If I could also make a point on the Cole contract, to make the other side of the point, I was saying the agency had some shortcomings in the way it handled the procurement. I feel very strongly about where the majority of the Commission is on this issue, and that is to seek \$56,000 in reimbursement which is being very liberal and giving Mr. Cole a lot of leeway.

There were no receipts for a number of things. There were invoices that said just professional fees and travel, no hotels or no airlines or some airlines, some hotel receipts. He would charge \$2,000 a day when he did one thing as opposed to \$250 an hour. It was always billed in increments of a half day at \$1,000 or \$2,000.

Anyway, I feel very strongly that what we are doing is in the best interest of the government and the people to recover that money. So I want to make that clear.

Mr. LATOURETTE. All right. Thank you.

Ms. Dye, just the same question, before coming here today, were you aware that this Mr. Cole person had put something in writing?

Ms. DYE. I was not aware of a specific report in writing, but I was aware that he had a final report that he was prepared to give to the Commission. As I said before, I wanted to see the work that he had, that the government had paid for at that time, and I look forward to seeing it from the Committee.

Mr. LATOURETTE. But, basically, that report wasn't forwarded to the Commission because there was some dispute between the Commission and Mr. Cole as to whether he should be paid and how much he should be paid.

Ms. DYE. Following an Inspector General audit of the contract, the contractual arrangements for his payment, the Commission voted to suspend the contract. Since his contract had already expired, the Commission's vote cancelled his final visit at which time he would have delivered a report. Whether or not that report had been formalized in writing at that time, how he would have delivered that, I am not aware.

But, as I said, I wanted to see it then; I would be delighted to see it now.

Mr. LATOURETTE. I think we would all want to see it.

Mr. Chairman, I would just say that apparently the staff has a copy of Mr. Cole's report. You are going to give it to the Commission. I think we would all be anxious to take a look at it.

I do have to say what I am hearing here is that you have a contractor who was hired by the former chairman outside of the normal way that somebody should have been hired. He has been paid a lot of money. Mr. Creel at least, the longest serving chairman in the history of the Commission, thinks that there is some discrepancies in the bill. Apparently, after his contract was not renewed and his report was not delivered, he is seeking payment and has delivered the report to the Committee and not the Commission.

To me, that seems a little fishy, and I would just ask if we are going to have a follow-up hearing, perhaps we could ask Mr. Cole to join us and not only share his thoughts on the operation of the Commission but also his activities and how he chose to bill the government for the services that he has billed the government for.

I thank you, and I yield back my time.

Mr. CUMMINGS. Thank you.

Let me just say this, Mr. LaTourette, and I am glad you raise the issues that you did. I was just checking with the staff to find out how we got the report, and they tell me we got the report from the Senate staff because they had it connection with the confirmation of Mr. Anderson. So we will make sure you get it and the commissioners get it.

Mr. Mica.

Mr. MICA. When did you get nominated, Mr. Anderson, for chairman?

Mr. ANDERSON. It was in August. I believe it was 15th of 2007.

Mr. MICA. In 2007, but there has been no chair since?

Mr. ANDERSON. November of 2006.

Mr. MICA. Unbelievable. I mean I can't blame the Commission, but imagine trying to run a Subcommittee without a Chairman. Imagine trying to run a Committee, an administration.

It is a small operation that only has, what, 100 and whatever number of employees. People talk about having low morale and disgruntled employees when there is no one in charge. I just can't imagine. It is not your fault. There is something wrong with this process of not being able to have someone in charge.

I won't get into that. I tried to find out a little bit about what you wanted to do with some of the additional money.

One of the things that impresses me with your mission is you are responsible for an important role, and that is oversight and regulation primarily of the foreign shipping activity because, again, there are so many flagged vessels and cruise ships and others that are outside U.S. flagging.

I would like to ask all four of you a question about how is there any possibility or any way or what could we do to increase U.S. employment, U.S. flagging, U.S. recapturing of some of this segment of the international maritime and shipping business. Are there any things that can be done or is this just something we have lost forever?

I like to pick on Ms. Dye, and we will go south from there.

Ms. DYE. Yes, Mr. Mica. One of the reasons that we reformed the Ocean Shipping Act in 1998 was to support and encourage greater U.S. exports.

I have been talking recently to the staff and Commissioner Creel and I had a brief conversation about the fact that lately and ironically, because of the fall of the dollar, that U.S. exports have increased although imports still dwarf the percentage of exports, but that is very encouraging to us. I am interested to make sure that the Commission is doing everything it can to make sure that containers get where they need to be, so U.S. exporters can keep that sale and get their goods to their foreign markets as soon as possible.

So, yes, I think that we are always on the lookout to make sure that our U.S. businesses get as great a share of the worldwide marketplace as possible.

Mr. MICA. Mr. Creel, you have been around a while. Any hope of us getting back into the market and anything we can do?

Mr. CREEL. Mr. Mica, it is all a matter of dollars, of course. There are tax incentives for U.S. owner-operators. There is a U.S. build requirement. Talking about the Jones Act, it is just domestic, U.S. build, U.S. crew requirements. I know that even some of the U.S. maritime unions have offered to be competitive on wages, and I think that would be helpful.

It is hard to compete on the shipbuilding issue with foreign countries that subsidize their shipbuilding so heavily or their ship operations as well since we don't subsidize that.

Mr. MICA. One of the things I have tried to encourage—I will inject it since you didn't get a chance—is transit by short sea shipping because we have so much potential on the coast and waterways to increase the volume and take it off the highways. It certainly has to be much more fuel efficient when a trucker now spends \$1,000 to fill up his or her tank and also the damage that is done.

I am going to hold a little forum and try to get some more interest in short sea shipping which we might get a few more people involved. It might make sense, and it may be attractive.

Mr. Brennan?

Mr. BRENNAN. I would just say 20 years ago, when I was serving on the House Armed Services Committee, there was great discussion and concern about losing the capacity to have American ships, losing the skills. Twenty years later, I am not sure any progress has been made.

What can you do about it? I don't know. Maybe some variation of the Jones Act. I think that spells protectionism and things of that sort and all the ramifications that take place from that.

Mr. MICA. Okay. Mr. Anderson?

Mr. ANDERSON. Yes, Mr. Mica. Coming from maritime operations, it has been part of my background and a Jones Act industry. The Jones Act has served a very necessary purpose over the last century for many reasons, but as we have seen at the Commission, global dynamics change the way some things should be looked.

I believe, as some of my colleagues have indicated, it is all about the dollar of operating U.S.-flag ships versus foreign-flag ships. I think the tax incentives that have been in the past have been helpful.

But I think looking at one possibility is looking at the consideration of allowing foreign-built ships to be U.S.-flag and operated by U.S. crews. I think that is an area that we could. I know our maritime academies are full. They can't handle any more capacity. That is something that I think is a good indication for the future for U.S.-flag.

You mentioned short sea shipping on marine highways. Today, there is a conference for that in Norfolk, today and tomorrow, on short sea shipping. I know this Committee approved some funding. I think that is critical to the long-term infrastructure needs of the United States' transportation system as well as promoting more U.S. seaborne jobs for our union workers and for United States citizens.

Mr. MICA. Well, I don't get to see a four-headed monster too often, Mr. Chairman. Actually, they don't look bad. Personally and individually, they are of fairly attractive countenance. But operationally, it is a nightmare as we heard described.

I don't know what to do. We need to get somebody in charge and get the agency back on track.

Thank you. I yield back.

Mr. CUMMINGS. Thank you very much, Mr. Mica.

Let me just say this as we close. I want you to understand that one of the people that I have just gained a phenomenal amount of respect for is Sean Connaughton. I think he is one of the best things you all have going, seriously. He has been extremely responsive.

I have listened to him talk about educating folk, our kids, so that they can move into the maritime industry, and he seems to be very, very committed.

And so, when you all talk about people working in the agency that are committed, if he is an example of the type of people you

are talking about, Mr. Creel, I got to tell you, you are talking about one of the finest people that I have met since I have been in the Congress, and I have been here now some 13 or 14 years.

The other thing that I wanted to say is on the short sea shipping thing. I want to make sure. I agree with Mr. Mica. It is something that we definitely need. We have been pushing on this end, trying to do everything that we can, and I agree with Mr. Anderson that it would be a tremendous boost for all of us.

I was just asking staff. We have some legislation in Ways and Means now on short sea shipping. We haven't been able to get it moved, but we understand that maybe they are waiting for a bigger vehicle to include it. It is something that just makes sense to me, a lot of sense.

Did you want to say something, Mr. Creel?

Mr. CREEL. I like short sea shipping because I travel on I-95 a lot.

Mr. CUMMINGS. Is that right?

I made a mistake. Mr. Connaughton is the head of MARAD, and I just want you to know that he is a good man.

This hearing is adjourned.

[Whereupon, at 11:55 a.m., the Subcommittee was adjourned.]

Congressman Tim Bishop (NY-01)
Statement for the Record
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
April 15, 2008

Mr. Chairman, thank you for holding this hearing and inviting these panelists to participate in this discussion.

Historically, the Federal Maritime Commission's primary responsibility is to regulate ocean commerce and promote U.S. Merchant Mariners. The agency oversees ocean common carriers, terminal operators, and transportation intermediaries, as well as oversight of some financial aspects of passenger vessels, foreign interests in U.S. shipping, and shipping agreements.

The Commission is composed of five members, appointed to five-year terms by the President with the advice and consent of the Senate. There is a political dimension that prohibits more than three members of the Commission from being either Democrat or Republican. The Commission is responsible for the daily management of the agency including personnel and administrative matters.

The President's FY2009 budget provides an additional nine percent (or \$24 million) to the Federal Maritime Commission over last year's \$22 million to fulfill its duties.

As Members of Congress, it is our responsibility to determine if a federal agency has fulfilled its mission as prescribed by Congress and what level of funding is appropriate to continue that mission.

As a Member of this Subcommittee, I look forward to listening to the testimony of the Federal Maritime Commission to better understand what they have been up to, what they are doing, and what they have planned for the future.

Thank you and I yield back.

A handwritten signature in black ink, appearing to read "Tim Bishop". The signature is written in a cursive, flowing style.

STATEMENT OF
THE FEDERAL MARITIME COMMISSION
PRESENTED BY
THE HONORABLE A. PAUL ANDERSON
COMMISSIONER, FEDERAL MARITIME COMMISSION
800 NORTH CAPITOL ST., N.W.
WASHINGTON, D.C. 20573
(202) 523-5721

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
April 15, 2008

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you today to present the President's fiscal year 2009 budget for the Federal Maritime Commission. With me today are my fellow Commissioners, Joseph E. Brennan, Harold J. Creel, Jr., and Rebecca F. Dye.

The President's budget for the Commission provides for \$23,953,000 for fiscal year 2009. This represents an increase of 7.8%, or \$1,881,000, over our fiscal year 2008 appropriation. This budget provides for 131 workyears of employment.

Our fiscal year 2009 budget request contains \$17,106,000 for salaries and benefits to support the Commission's programs. This is an increase of \$1,467,000 over our fiscal year 2008 appropriation. This includes all salaries, including those for employees hired in fiscal year 2008, promotions, and within-grade increases. The funding includes annualization of the fiscal year 2008 cost of living adjustment increase, and an anticipated 3.0 percent fiscal year 2009 cost of living adjustment.

Official travel has been increased by \$24,000 over our fiscal year 2008 level of \$261,000. As you know, the Commission sought approval to reprogram travel funding in FY 2007, which funds were then used to finance much-needed IT upgrades. With an earlier approval of the Commission's FY 2008 budget, we expect to spend this year's appropriated funds allocated for travel

needs. Travel remains an essential aspect of our effort to provide better service to the ocean transportation industry and to accomplish our oversight duties more effectively.

Administrative expenses will have increased \$390,000 net over fiscal year 2008. Roughly one-quarter of this amount, or \$91,000, reflects an anticipated increase in rent from GSA for our Washington headquarters space. Other commercial and government contracts would increase \$334,000. These increases are partially offset by expense reductions for furniture and equipment. Administrative expenses to be funded in fiscal year 2009 support our customary business expenses, such as for telephones, postage, and supplies.

As in previous years, the Commission's budget contains primarily non-discretionary spending. These items represent the basic expenses any organization faces in order to conduct its day-to-day operations, and are crucial to allow us to meet the responsibilities Congress has entrusted to this agency.

State of the U.S. Trades

Since 1916, the Commission and its predecessor agencies have effectively administered Congress' directives for oversight of the ocean transportation industry. Working with the industry, we have developed a regulatory system that allows for necessary oversight with minimal disruption to the efficient flow of U.S. imports and exports. I would like to highlight the state of the U.S. trades as well as identify some of the significant current events, programs and initiatives at the Commission:

In fiscal year 2007, the total cargo volume of U.S. liner exports shipped worldwide grew by 12 percent due largely to the weak value of the U.S. dollar relative to foreign currencies, which made U.S. goods more affordable abroad. Total liner imports to the U.S. declined slightly, by a little over one percent, for the first time in many years. However, import cargo still exceeded export cargo, an imbalance of approximately one (1.0) twenty-foot equivalent container units ("TEU") of goods exported out of the U.S. for every 1.8 TEUs of cargo imported into the U.S.

As in preceding years, China was the leading trading partner in liner cargo with the U.S.; over half of all U.S. liner cargoes (both imports and exports) are concentrated in

trade with countries in Northeast Asia. Cargo growth in imports from Asia slowed substantially by the end of fiscal 2007, to less than one percent, down from a growth rate of 15 percent in fiscal year 2006. Some of this drop can be attributed to the corresponding declines in the U.S. housing market, rising costs of energy and fuel, as well as to product safety issues recently highlighted in the case of certain goods made in China. Conversely, U.S. liner exports to Asia grew by 11 percent, up from a 6 percent increase in the preceding fiscal year.

Containership capacity on the world market continued to grow at a steady pace ahead of demand. Additional capacity growth is anticipated for the future because of the considerable number of containerships on order. Many newbuildings now have individual vessel capacities of 10,000 TEUs or more. Concentration in the liner shipping industry likewise increased during the fiscal year, with the top ten ocean carriers in control of 60.5 percent of the world's containership capacity, up from 53 percent in the preceding fiscal year.

Current Events, Programs and FMC Initiatives

Over the past year, the Commission has continued to monitor the international liner trades, focusing in large part on agreement activities relating to ocean common carriers and marine terminal operators. Consistent with shifts in trade volumes and the introduction of new vessels, membership changes and agreement modifications are filed with the Commission in those carrier rate discussion agreements that operate in the U.S. trades. We have also continued our licensing and enforcement initiatives and worked to provide a forum for the industry to resolve disputes through our consumer affairs office. The Commission has also succeeded in updating many of its information-gathering processes and has improved public access to our informational resources.

The Commission recently issued an order reviewing the lawfulness of allowing licensed ocean transportation intermediaries ("OTIs") to utilize unlicensed and unbonded agents to provide NVOCC and ocean freight forwarding services to the public. The Commission has been charged by Congress under section 19 of the 1984 Act to protect the shipping public through licensing and bonding of those providing OTI services. From the time Congress first required licensing and bonding in 1961 to the present, the Commission has consistently rejected

the utilization of unlicensed agents to provide OTI services. This decision, issued by a majority of the Commission in response to a petition filed with the Commission, underscores Congressional intent to require OTI licensing as a means to protect the shipping public from unqualified and potentially unscrupulous operators, to preserve the integrity of the licensing process, and to uphold the financial responsibility requirements made applicable to OTIs under the NVOCC Act of 1990. We believe that the decision also aligns the Commission with the nation's security interests by ensuring a safe and transparent supply chain.

The Commission has also been actively monitoring agreements that address supply-chain and operational issues such as port congestion, security, air pollution and environmental concerns that affect local communities and the industry, including, in particular, the Clean Truck Program ("CTP") in the Port of Los Angeles and the Port of Long Beach ("the Ports"). The cities of Los Angeles and Long Beach, acting through their Harbor Boards, filed the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement* ("the Agreement") with the Commission to allow them to discuss and agree upon a joint program to address environmental and transportation infrastructure issues at their Ports. Under the Agreement the Ports developed the San Pedro Bay Ports Clean Air Action Plan ("CAAP") to address diesel emissions from multiple port sources, including heavy-duty trucks used in cargo drayage, ocean-going vessels, cargo-handling equipment, harbor craft, and railroad locomotives.

The Ports' first major initiative under the CAAP was the development of a proposed Clean Truck Program ("CTP"). The CTP proposed to reduce diesel emissions by drayage trucks up to 80 percent over 5 years by replacing or retrofitting approximately 16,000 trucks with the assistance of a port-sponsored subsidy. The program anticipated the Ports using their tariff authority to limit access to port terminals to certain qualified licensed motor carriers ("LMCs") as concessionaires under contract to the cities. Those LMCs would own the retrofitted and replacement trucks and be required to hire employee drivers. The LMC "concession/employee driver only" provision, recently adopted by Los Angeles but not by Long Beach, eliminates the existing system in Los Angeles under which LMCs primarily contracts for the movement of cargo and then dispatches independent owner-operator truckers to haul the cargo. In addition, the CTP

proposal included a temporary Truck Impact Fee to be assessed on the LMC concessionaires that use "dirty" trucks during the 5-year phase-out period. A related development regarding the implementation of aspects of the CAAP was the recent filing of the Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement. This agreement provides authority for the parties to cooperate on the administration and operation of port programs relating to port security, infrastructure, or clean air, such as the testing and implementation of TWIC and the administration of certain CAAP programs (possibly using PierPASS).

Because the Commission has oversight responsibility to monitor agreements filed with it and to act upon potential violations of the Shipping Act, the Commission met with concerned parties, including staff and executives from the Ports, organizations representing marine terminals, shipping lines, truckers, railroads, importers and exporters, local government officials, community activist groups, organized labor, academics, and officials from air quality agencies. These meetings have provided insight into the competitive effects of the programs proposed by the parties. The Commission met formally on November 28, 2007 to consider the proposed Clean Trucks Program, and continues to closely monitor developments at the Ports. The Commission is actively assessing the development and competitive impacts of a comprehensive CAAP for LA-Long Beach given its critical importance as a trade gateway to the Far East. The Commission's assessment will, in part, be facilitated by a request for additional information recently sent to the Port/MTO implementation agreement. The Commission currently awaits receipt of the parties' responses to the request for additional information, and looks forward to further discussions with the agreement parties regarding the impact and implementation of programs thereunder.

As noted earlier, shifts in trade often gives rise to a need for the Commission to review changes to agreements in our U.S. ocean trade lanes. In the Transpacific trade, Commission staff examined the competitive impact of expanding the geographic scope of the *Transpacific Stabilization Agreement* ("TSA") to include the Indian Subcontinent; and the competitive impacts anticipated from the announcement that TSA would add CMA-CGM, S.A., Mediterranean Shipping Company, S.A. and Zim Integrated Shipping Services Ltd., as members. Although the addition of carrier parties increased TSA's market position,

anticompetitive concerns at present are mitigated by the decline in rate levels in the Transpacific trade over the past year.

In another significant development relating to marine terminal agreements, the Commission analyzed an agreement between and among ocean common carriers participating in the Ocean Carrier Equipment Management Association ("OCEMA"). Under OCEMA, ocean common carriers and marine terminal operators have established regional chassis pools at marine terminals and inland intermodal terminals in the South Atlantic region of the United States. The Commission allowed the agreement to become effective upon determining that the agreement likely would enhance efficiency at the marine terminals and inland intermodal terminals. We will, of course, continue to monitor developments in these and other important agreement areas.

Within the Commission, our operating bureaus have updated their processes and assigned personnel where needed to enhance efficiency in order to better respond to the needs of the industry. Following written notice to Congress, the Commission added an Area Representative (AR) based in Houston, TX, in response to the significant growth in container volumes transiting the port. The new AR will serve Houston and other ports and transportation centers within the geographic area.

In addition to their monitoring and investigative functions, ARs represent the Commission within their areas of responsibility, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. In short, ARs play a vital role in the collection and dissemination of information. The ARs enable the Commission to better interact with the industry and, most importantly, ensure the success of the Commission's licensing, compliance and enforcement initiatives. These efforts contribute to national security efforts in verifying the accuracy of the Commission's informational resources, and making those resources available as needed by other Federal investigatory/enforcement bodies.

During fiscal year 2007, the Bureau of Certification and Licensing (BCL) implemented electronic filing of an automated Form FMC-18, *Application for an Ocean Transportation Intermediary License*, permitting filers a modern, optional method to complete OTI applications on-line, scan and attach required documents, and submit the application electronically.

The filing system incorporates significant security features for the purpose of protecting applicant data, and detecting and preventing unauthorized system intrusions. Further, BCL has completed modernization of our Regulated Persons Index ("RPI"). Through the RPI, the agency posts on its website a list identifying those OTIs which are currently licensed, bonded, and have provided their tariff location, if required. The RPI assists carriers and the shipping public in ascertaining whether an OTI has met FMC requirements and is therefore a reputable company with whom to do business. That list is actively employed by U.S. Customs and Border Protection ("CBP") and other Federal agencies in conjunction with homeland security initiatives. These initiatives have resulted in a more user-friendly interface for the industry by streamlining the licensing process and by providing improved access to the Commission's informational resources.

The Commission continues to exchange enforcement information with CBP in accordance with an effective Memorandum of Understanding. Cooperation with CBP has expanded into joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation often includes local police and U.S. Citizenship and Immigration Services (formerly INS) officers. FMC Area Representatives also conferred with CBP regarding ongoing matters of mutual interest such as misdescriptions of shipments inbound from China, and other industry malpractices.

The Commission is pleased to report a welcome decline in the number of household goods complaints received this year, possibly attributable to formal action and outreach undertaken in the previous year. As we previously advised this Committee, the Commission commenced a formal investigation against nine household goods moving companies operating in violation of the Shipping Act in 2006. The Commission's preliminary investigation had indicated that these companies were unlawfully doing business as unlicensed NVOCCs without proof of financial responsibility or published tariffs, and were engaging in conduct that created significant risk of financial harm to the shipping public. In order to mitigate the threat posed by these companies, the Commission obtained a preliminary injunction from the U.S. District Court for the Southern District of Florida. The injunction prohibits the respondents from operating in violation of the Shipping Act and remains in effect pending ongoing formal proceedings at the Commission. This coordinated

approach will be employed in the future wherever needed to protect the shipping public from harm.

The Commission continues to address restrictive or unfair foreign shipping practices under section 19 of the Merchant Marine Act, 1920 ("Section 19"); the Foreign Shipping Practices Act of 1988 ("FSPA"); and the Controlled Carrier Act of 1978. Section 19 empowers the Commission to make rules and regulations to address conditions unfavorable to shipping in our foreign trades; FSPA allows the Commission to address adverse conditions affecting U.S. carriers in our foreign trades that do not exist for foreign carriers in the United States. Under the Controlled Carrier Act, the Commission can review the rates of government-controlled carriers to ensure that they are not below a level that is just and reasonable.

Last year, several U.S. NVOCCs complained to the Commission that the Chinese Ministry of Communications was implementing licensing regulations on U.S. NVOCCs in an uneven and confusing way, and not in accordance with the method agreed upon by the U.S. and the PRC in the Maritime Bilateral Agreement. With the clearance of the State Department and the Maritime Administration, the Commission drafted a cable to the U.S. Embassy in Beijing, China, outlining the concerns that had been raised and asking for the Embassy's assistance in clarifying these matters with Chinese authorities. The Maritime Administrator raised these concerns directly with the Chinese Ministry of Communications in the context of bilateral consultations in late November 2007. The Commission continues to monitor this situation and will keep Congress apprised of any developments.

Finally, the Commission's oversight of ocean common carriers, ocean transportation intermediaries, including ocean freight forwarders and NVOCCs, and marine terminal operators, is an important element in the effort to protect our Nation's seaports. The FMC has a wealth of information available to assist our Nation's efforts to secure not only our seaports but the entire supply chain. Unique among federal agencies, the FMC regulates virtually all entities involved in liner shipping, receiving, handling, and transporting cargo and passengers in foreign commerce. Our unique mission affords us the opportunity to assist front-line security efforts by providing information regarding the backgrounds of all parties utilizing our Nation's

supply chain - including those with direct access to our seaports.

The Commission is currently assisting national security efforts by working to share its informational resources with other federal agencies, including the CBP and the Department of Homeland Security, through the International Trade Data System (ITDS) and the Automated Commercial Environment (ACE) portal. An updated Memorandum of Understanding with Customs is in process of negotiation and will solidify the cooperative relationship between the two agencies, particularly with respect to the sharing of information. For its part, the Commission expects to provide access to its extensive informational resources and databases containing background information on entities regulated by the Commission - some of the most complete databases identifying OTIs and other persons engaged in U.S. foreign commerce. Once completed, the ACE/ITDS system will provide greater transparency of the Nation's supply chain.

The Commission stands ready to contribute more significantly to the nation's current and long-term efforts to improve maritime security in ways closely related to our current mission and responsibilities. Among these are closer scrutiny of licensees and other regulated transportation entities; better information gathering and sharing with other agencies; and ensuring greater transparency for container cargo. Enhancing these areas would allow the FMC to provide greater value, including access to our informational resources and use of such data in cargo screening and targeting, to other Federal agencies more directly charged with the responsibility for preventing terrorist attacks on, or by means of, ocean shipping. As the Congress continues to refine the roles and duties of agencies and industry in the safeguarding of our national security, we are committed to providing our technical expertise and assistance to those agencies on the front lines of securing our ports and vessels.

Mr. Chairman, we hope that these comments have served to give you a clear indication of the important work to be accomplished by the Federal Maritime Commission. We respectfully request favorable consideration of the President's budget for the Commission so that we may continue to perform our vital statutory functions in fiscal year 2009 and beyond.