

**Testimony of
Daniel B. Maffei
Chairman, Federal Maritime Commission
Before
Subcommittee on Coast Guard & Maritime Transportation
House Committee on Transportation & Infrastructure
April 27, 2022**

Good morning, Chairman Carbajal and Ranking Member Gibbs, I am grateful to have this opportunity to testify in support of the Federal Maritime Commission Fiscal Year 2023 Budget Request.

The Commission is seeking \$34,683,500 to support its operations in the coming Fiscal Year. This is a \$1,815,000—or 5.2%—increase from our Fiscal Year 2022 enacted budget and represents a substantial expansion in our enforcement and consumer assistance capabilities.

This investment is needed. Demand for Commission services is not dissipating. Our Office of Consumer Affairs and Dispute Resolution Services continues to receive voluminous requests from the public for assistance. Aggravated shippers continue to share information with us about unsatisfactory service—all of which is reviewed for potential violations of the law. There has been a noticeable uptick in litigation initiated at the Commission, both in small claims as well as formal complaints before our Administrative Law Judge. Our Area Representatives and Bureau of Enforcement personnel are pursuing all possible leads to identify possible enforcement actions.

Not only is the demand for Commission services not dissipating, the reasons why people contact us do not appear to be going away anytime soon.

The global, ocean-linked, supply chain system continues to suffer from conditions that undermine its effectiveness and provide no obvious or easy solutions. Congestion, diminished reliability, and shipper competition for scarce resources—in this case space aboard vessels—all work in tandem to force rates up. The longer demand remains at historic levels, the longer it will take for the system to return to some semblance of its normal operating rhythm.

Make no mistake, no part of the world escapes the consequences of a system operating at the limits of its capabilities and at the maximum of its capacity. This is not unique to the United States. No major shipping nation in the world has not experienced similar problems. However, given the strong demand of U.S. consumers and U.S. manufacturers for goods, commodities, and industrial inputs, effects of global supply chain problems are particularly pronounced in our Nation.

Shippers' frustration with ocean carriers and congested ports is understandable, but the problem is fundamentally not that simple. Far from carrying less cargo, ocean carriers are carrying record setting volumes of containers into the United States. Our seaports are being much more productive and handling much more cargo volumes. The biggest challenge is not to get the ocean carriers and seaports to carry and process more cargo, but how to address and resolve issues in the U.S. domestic networks and infrastructure that are even more severe limitations on the supply chain's capacity. The availability of intermodal equipment, warehouse space, intermodal train service, trucking, and enough workers in each of those sectors, remain challenges to getting more cargo off our ports and to destination with more certainty and reliability.

Foundationally, these are complicated, interconnected, and global problems that can only be addressed by many parties and organizations demonstrating leadership and taking responsibility for matters where they can make a difference. There is no one government agency, nor one company capable of unilaterally addressing the myriad causes that have so totally disrupted the international ocean freight delivery system.

As I noted above, many parties have turned to the Federal Maritime Commission for help during this disruptive period. We have responded as comprehensively, aggressively, and creatively as possible within the bounds of our present authorities. Among our initiatives are the following:

- We have increased investigative and enforcement activity, paying particular attention to ocean carriers.
- We have initiated a new focus on addressing fees and surcharges with the goal of bringing greater transparency to rates.
- We have increased the monitoring requirements of ocean carrier alliances and continue to assess if further changes are necessary.
- We have invested in our Bureau of Trade Analysis and their ability to conduct oversight of the markets and alliances by adding staff with backgrounds in data science and analysis.
- We have provided guidance to shippers on bringing complaints at the Federal Maritime Commission and we are seeing an increase in both formal and especially informal docketed proceedings being filed.
- We have reviewed hundreds of pieces of correspondence sent to the Commission for potential actionable enforcement actions.
- The Bureau of Enforcement has continued to investigate for any illegal conduct in the marketplace and stands ready to prosecute potential violations by any entity under our jurisdiction.
- We have consulted with counterpart competition authorities, the European Union, and the People's Republic of China, regarding our respective efforts to ensure a competitive marketplace for ocean transportation services, as well as observations and conclusions from each regime's monitoring work.
- I directed, following conversations with Commissioner Dye, that the FMC created the Vessel-Operating Common Carrier Audit Program to help ensure with compliance on the Commission's interpretive rule on detention and demurrage and other important regulations.

Much of the focus on actions the Commission can take to address pandemic-related impacts to the supply chain comes under the auspices of Fact Finding 29 led by Commissioner Dye. In July of last year, the Commission issued a set of eight Interim Recommendations based on what she had learned from her work. The Commission unanimously embraced her recommendations and has acted on each that did not require legislative change to implement. Specifically:

- The Commission issued an Advanced Notice of Proposed Rulemaking in February to solicit feedback if a new rule governing demurrage and detention billing practices would benefit the trade and should apply to marine terminal operators and non-vessel operating common carriers in addition to vessel-operating common carriers.
- The Commission issued three policy statements in December 2021 providing new guidance to shippers and others on bringing private party complaints at the Federal Maritime Commission. These policy statements address barriers identified by the trade community as disincentives to filing actions at the agency.
 - The Commission reiterated that shippers associations and trade associations may file a complaint alleging a prohibited act violation under 46 U.S.C. Chapter 411. This allows these organizations to protect the interests of their members while also providing shippers with a degree of separation and insulation from potential retaliation.
 - The Commission reiterated that a party who brings an unsuccessful complaint is not automatically required to pay the other party's attorney fees. The Commission will look favorably upon complainants who raise non-frivolous claims in good faith, who litigate zealously but within the rules and for proper purposes, and who comply with Commission Orders.
 - The Commission emphasized that it broadly defines both who can bring a retaliation complaint, as well as the types of shipper activity that is protected under the existing retaliation prohibitions. This policy statement also addresses the proof necessary for certain retaliation complaints.
- Commissioner Dye issued an advisory in February outlining options shippers have for filing demurrage and detention complaints at the Federal Maritime Commission. Her statement provides links to information on the Commission's website that can be helpful to individuals in determining which avenue to address their complaint and the information necessary to initiate a proceeding. Finally, she outlines the differences between filing a complaint and reporting potential violations of the law that might be investigated by the Commission's Bureau of Enforcement.
- On a related note, a multimedia presentation explaining Commission procedures is in final stages of production and will soon be posted to the Commission's website.
- As referenced above, an Export Advocate has been assigned to CADRS to work directly with U.S. export shippers in addressing and resolving the unique challenges they face.

The U.S. domestic freight transportation system has been strained for years. It has operated sufficiently, but with essentially no excess capacity to absorb shocks to the system. Previous significant disruptions demonstrated shortcomings in our networks and infrastructure and revealed the need to realize more capabilities to move cargo. One obvious response is to build more capacity. To that end, I applaud the Congress' passing of bipartisan legislation on infrastructure that includes funding for ports. That will certainly help.

An additional approach is to find ways to use existing infrastructure more efficiently. Improving information sharing among all those involved in moving containerized trade is a way to achieve that goal. Toward that end, I asked Commissioner Carl Bentzel to take on the Maritime Transportation Data Initiative which is identifying data constraints that impede the flow of ocean cargo and add to supply chain inefficiencies. His work has three key objectives: cataloging the status quo in maritime data, storage, and access across the transportation chain; identifying key gaps in data definitions/classification; and developing recommendations for common data standards and access policies/protocols. Since its launch in December, Commissioner Bentzel has held weekly sessions with representatives from all sectors of the maritime freight supply chain to gain their expertise on how data can contribute to the long-term reliability of the domestic cargo delivery system. Commissioner Bentzel will hold a Maritime Data Summit on June 1, 2022, where he will present his findings and receive feedback from industry participants.

In addition to addressing the concerns of cargo shippers, the Commission has been active on issues related to the passenger cruise industry. The COVID pandemic created a significant disruption to this industry that employs hundreds of thousands of Americans and is a vital part of the economies of several states. To do everything we could to help, the Commission initiated Fact Finding 30 under the direction of Commissioner Louis Sola. In March 2022, the Commission adopted a final rule recommended by Commissioner Sola that establishes more rights and options related to refunds for cruise passengers when a cruise line has cancelled or delayed a voyage. These changes not only provide more remedies to consumers, they help reestablish the public's confidence in being able to book a cruise voyage.

Our newest Commissioner, Max Vekich, was sworn-in on February 15, 2022, and he brings to the Commission decades of experience in industry working as a longshoreman. Commissioner Vekich is very interested in issues related to port competitiveness and the role smaller and regional ports can play in creating supply chain resilience and options for shippers.

For my part, I have no higher priority as Chairman than using the authority and jurisdiction of the Commission to help U.S.-based exporters access shipping services and reach overseas markets.

I directed our Vessel-Operating Common Carrier Audit Team to expand its scope and evaluate how 11 key shipping lines serve U.S. export shippers, and in particular agricultural shippers. Responses will provide better insight into market trends and performance and identify where opportunities exist for individual lines to improve or increase access to service offerings. The Audit Team completed their first round of discussions last week and the Commission will be briefed on the initial findings in the coming weeks.

As I testified above, we have added an Export Advocate to our Office of Consumer Affairs and Dispute Resolution Services (CADRS), and I have directed both CADRS and the Bureau of Enforcement (BoE) prioritize any case that involves exporters.

Further, the BoE is examining the business practices of five independent ocean carriers drawn to the U.S. markets by high freight rates to determine how those companies are serving the export markets and if they are meeting their legal obligations.

This is all in addition to other ongoing efforts such as Commissioner Dye's work with Supply Chain Innovation Teams toward solutions to some of the most challenging issues exporters face. These include insufficient equipment availability, inefficient container return procedures, and the lack of reliable information regarding vessel calls and deadlines for delivering cargo for loading.

I honestly believe we are doing everything we can within our current authority, however I am very openminded to ideas. I will do the most I can to support U.S. exporters and I will note here my support for versions of the Ocean Shipping Reform Act going through Congress that is detailed in other places.

A valuable channel for receiving input is the Congressionally established Federal Maritime Commission National Shipper Advisory Committee, which is off to a very strong start. This group of 24 individuals representing exporters and importers has approached their duties with a seriousness and sense of purpose that is impressive. They are holding their fourth meeting in six months today and we are happy to have them at the Commission in person for the first time.

Over the past year, the Commission has worked hard on many fronts to make a difference where we can and within the bounds of our authorities. I am proud of the work we have done, which is all the more significant when one considers the relatively small size of the Commission—approximately 115 fulltime equivalent personnel. With more resources we can do more and the budget we are seeking provides us with that opportunity.

An increase in our budget will allow me to add personnel to the Bureau of Enforcement, the Office of Consumer Affairs and Dispute Resolution Services, and the Office of the Administrative Law Judges. We are moving forward with hiring actions in each of those functions that will permit the Commission to assist more people, investigate more allegations of wrongdoing, and provide more rapid consideration of litigation. The requested Fiscal Year 2023 budget will allow us to grow to approximately 150 fulltime personnel. Almost 80% of the 36 new positions the Commission will create will be in enforcement and consumer assistance functions, greatly expanding the abilities to assist consumers, investigate complaints, and pursue those who have broken the law.

A significant demand for Commission services already exists and if legislation pending before Congress is enacted into law, our workload will certainly escalate significantly. This is the right time to invest in the ability of the Commission to meet the needs of our regulated community and we appreciate the support we are receiving from both the Congress and the Administration to grow our capabilities.

Thank you for your attention. I look forward to your questions.