
**Statement of
The Honorable Elijah Cummings
Subcommittee on the Coast Guard and Maritime Transportation
Hearing On
“Rebuilding Vessels Under the Jones Act”
June 11, 2008**

Today’s hearing will enable us to closely examine a critical subject in U.S. maritime transportation – and that is the rebuilding of Jones Act vessels in foreign shipyards. I thank Mr. Taylor for his outstanding work in protection of the Jones Act, and I note that he personally requested this hearing be held by the Subcommittee.

Vessels that ply the coastal trade in the United States providing service between domestic destinations must comply with the requirements of the Jones Act, meaning that they must be built in a U.S. shipyard, owned by an American, and crewed by Americans. A provision added to the Jones Act in 1956 – and now known as the “Second Proviso” – requires that these vessels also be rebuilt in U.S. shipyards.

However, that 1956 action did not define the term “rebuild” and by 1960, vessels were using U.S. shipyards to install middle sections, called “mid-bodies,” that had been built in foreign shipyards into Jones Act vessels. In response, Congress revised the Second Proviso in an effort to close the loophole that allowed the mid-bodies to be installed in domestic vessels.

Not until 1996, however, did the Coast Guard, issue regulations to clarify the specific standard that would be applied to determine whether a Jones Act vessel had been rebuilt in a foreign shipyard. These regulations state:

- Regardless of its material of construction, a vessel is deemed rebuilt when a major component of the hull or superstructure not built in the United States is added to the vessel.
- For a vessel of which the hull and superstructure is constructed of steel or aluminum—
 - A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes more than 10 percent of the vessel’s steelweight prior to the work.
 - Further, a vessel may be considered rebuilt when work performed on its hull or superstructure constitutes more than 7.5 percent but not more than 10 percent of the vessel’s steelweight prior to the work.
 - A vessel is NOT considered rebuilt when work performed on its hull or superstructure constitutes 7.5 percent or less of the vessel’s steelweight prior to the work.

There currently appears to exist a lack of clarity regarding what can be done to a vessel in a foreign shipyard within the parameters that have been established by these regulations. Specifically, there is confusion regarding what constitutes a “major component” of a hull or superstructure. Further, there is also a concern among some in the Jones Act trade that the

standards that have been set forth have been inconsistently applied, particularly in terms of calculating vessel steelweight.

These issues have been the subject of several recent court cases, including one that examined a Jones Act vessel that was converted from a container ship to a Roll-on/Roll-off vessel. Part of the work on that vessel was completed in a Chinese shipyard and part was done in the United States. In this case, the Coast Guard did not count the amount of steel removed when making the calculation of steelweight to determine whether the vessel was still eligible for the coastwise trade; rather, it counted only the amount of steel added.

Another case involved the installation in a Jones Act vessel of an inner hull, which essentially converted the vessel from a single hull to a double hull to meet the standards of the Oil Pollution Act of 1990. In this case, the Coast Guard determined that a second hull was not a major component of the hull or superstructure since the inner hull was not separable from the outer hull because of the manner in which it was constructed. In ruling on this case, a U.S. court stated that the manner in which a component is added to a vessel – whether piece-by-piece or wholesale – is irrelevant to considerations of whether the component is a major component.

In summary, one of the overarching issues we will examine today is the lack of transparency to this assessment process.

Shipyards and vessel owners must continually submit Freedom of Information Act requests to the Coast Guard to find out what letter opinions the service has issued because the Coast Guard does not post these letters on the internet. In contrast, the Customs and Border Protection agency posts its letter rulings regarding the transportation of merchandise in the Jones Act trade on the internet so that the maritime industry can see their current interpretations.

Additionally, once someone has received a Coast Guard letter ruling, it is difficult, if not impossible, to obtain the background information regarding how the Coast Guard came to the conclusion expressed in the letter. This makes it difficult for the Coast Guard to obtain the views of both sides of an issue before it makes a decision.

The issues before the Subcommittee today are complex, but they are critical to ensuring that the provisions of the Jones Act are appropriately enforced and that all of the vessels certified for the coastwise trade are competing on a level playing field.

Finally, I would like to note that the Subcommittee invited both Seabulk and Matson Navigation, both of which are subject to litigation regarding the extensive work they have had done to their ships in China, to testify today. They declined our invitation.

Without their testimony, I believe that it will be very difficult for the Subcommittee to decide on any statutory waivers of the Jones Act requirements that might be proposed for these companies if they should need them as a result of current court cases.