



Committee on Transportation and Infrastructure
U.S. House of Representatives

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Washington, DC 20515

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September 5, 2014

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Coast Guard and Maritime Transportation
FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation
RE: Hearing on “The Status of the Merchant Marine”

PURPOSE

On Wednesday, September 10, 2014 at 9:30 a.m., in 2167 Rayburn House Office Building, the Subcommittee on Coast Guard and Maritime Transportation will meet to examine issues impacting the U.S. merchant marine. The Subcommittee will hear from representatives from maritime industry and labor organizations.

BACKGROUND

U.S. Merchant Marine

The U.S. merchant marine is the fleet of U.S. documented (flagged) commercial vessels which carries imports and exports into and from the United States during peacetime and becomes a naval auxiliary to deliver troops and war materiel during wartime. The merchant marine also carries cargoes in the U.S. domestic trade. Throughout our history, the Navy has relied on U.S. flagged commercial vessels to carry weapons and supplies and ferry troops to the battlefield. During Operations Enduring Freedom and Iraqi Freedom, U.S. flagged commercial vessels transported 63 percent of all military cargoes moved to Afghanistan and Iraq. An additional 35 percent of the total cargo was carried on government-owned sealift vessels activated from reserve status and crewed by American mariners.

The merchant marine was formally recognized in the *Merchant Marine Act of 1920* (46 U.S.C. Subtitle V). Section 50101(a) of title 46, United States Code, states that “It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine...”. Sections 50101(b) and 51101 of title 46, United States Code, establish that “It is the policy of the United States to encourage and aid the development and maintenance of the merchant marine...” and that “merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States...”.

Currently, there are more than 40,000 non-fishing related commercial vessels flagged in the United States. The vast majority of these vessels are engaged in domestic waterborne commerce, moving over 100 million passengers and \$400 billion worth of goods between ports in the United States on an annual basis. Each year, the domestic fleet carries over a billion tons of cargo through the inland waterways, across the Great Lakes, and along the coasts, contributing \$100 billion in economic output.

Of the 40,000 U.S. flagged vessels, approximately 85 are currently employed in international commerce moving goods between U.S. and foreign ports. Over the last 35 years, the number of U.S. flagged vessels sailing in the international trade has dropped from 850. The percentage of international commercial cargoes carried on U.S. flagged vessels has fallen from 25 percent in 1955 to approximately 2 percent today.

There are currently 117 U.S. shipyards located in 26 states that are active shipbuilders. Of the 117, 10 are major shipyards currently building large naval vessels and oceangoing commercial ships. There are over 200 additional facilities engaged in ship repairs. Since 1983, the United States has lost approximately 300 shipyards.

The U.S. maritime industry currently employs more than 260,000 Americans. This includes approximately 65,000 mariners, 95,000 port workers, and 100,000 shipyard employees. These jobs represent approximately \$29 billion in annual wages.

U.S. Merchant Marine Laws and Programs

Since 1789, Congress has passed several laws to help keep the U.S. merchant marine competitive in the global economy and maintain a sealift and shipyard industrial capacity necessary for our national security. Current laws and programs include:

Jones Act

The Jones Act first came into effect as part of the *Merchant Marine Act of 1920* to encourage the development of a strong merchant marine for both national defense and economic security. The Jones Act contains a number of provisions designed to encourage a robust U.S. shipbuilding capacity and employment opportunities for U.S. mariners:

1. U.S. Owned and Flagged - Chapter 551 of title 46, United States Code, requires that merchandise and passengers being transported by water between two points in the United States must travel on vessels owned by U.S. citizens and flagged in the United States with an endorsement by the Coast Guard to participate in the coastwise (also known as “Jones Act”) trade;
2. U.S. Built - Chapter 121 of title 46, United States Code, requires vessels seeking a coastwise endorsement to have been built in the United States. Chapters 551 and 801 of title 46, United States Code, also place restrictions on the involvement of foreign owned, built, and flagged vessels in towing, dredging, and salvage activities in U.S. waters;

3. U.S. Crewed - Chapter 81 of title 46, United States Code, requires the master, all of the officers, and at least three-quarters of the crew to be U.S. citizens in order for a vessel to be flagged in the United States; and
4. Rebuild/Reflag Prohibition - Chapter 121 also prohibits vessels that were once eligible to engage in coastwise trade and then later sold to a foreign citizen, documented under a foreign registry, or rebuilt outside the United States from engaging in the coastwise trade (a vessel may be considered rebuilt when work performed on its hull or superstructure constitutes more than 7.5 percent of the vessel's steelweight prior to the work).

The Coast Guard is responsible for reviewing applications from vessel owners seeking a coastwise endorsement to participate in the Jones Act trade. The Coast Guard determines whether the owners meet the U.S. citizenship requirements and whether the vessel was built in the United States, or the extent to which it was rebuilt outside the United States, before it will issue a coastwise endorsement. Customs and Border Protection determines whether the cargo to be moved on a vessel constitutes "merchandise" under section 55102 of title 46, United States Code, and is therefore subject to the Jones Act.

Section 501 of title 46, United States Code, provides a mechanism to waive the Jones Act and other vessel navigation and inspection laws. The Jones Act can be waived by the Secretaries of Defense and Homeland Security in the interest of national defense. Waivers by the Secretary of Homeland Security first require a determination by the Administrator of the Maritime Administration (MARAD) that U.S. flagged, owned, built, and crewed vessels are not available to meet national defense requirements.

Domestic Shipbuilding Programs

In addition to the Jones Act, the federal government supports the viability of the domestic shipbuilding industry through a combination of laws and programs including:

1. Tariffs – Under the *Smoot-Hawley Act of 1930*, U.S. vessel operators are liable for a 50 percent duty on maintenance and repairs performed on their vessels at overseas shipyards.
2. Capital Construction Fund – First established by the *Merchant Marine Act of 1936* (46 U.S.C. 53501 et seq.), the Capital Construction Fund (CCF) enables U.S. vessel owners and operators to defer federal income taxes on their income by depositing the income in a CCF. Income deposited in a CCF may only be used to finance the construction, reconstruction, or acquisition of a vessel built or rebuilt in a U.S. shipyard. As of 2010, over 180 companies had established a CCF.
3. Title XI Federal Ship Financing Program – Established by Title XI of the *Merchant Marine Act of 1936* (46 U.S.C. 53701 et seq.), the Title XI program provides federal government loan guarantees to: (1) vessel operators for the purpose of financing or refinancing the construction or reconstruction of vessels in U.S. shipyards; or (2) U.S.

shipyards for the purpose of financing advanced shipbuilding technology for a facility located in the United States. Loan guarantees cannot exceed 87.5 percent of the project's actual cost.

No funds are requested for Title XI loan subsidies in MARAD's fiscal year 2015 budget request. There is currently \$73 million in Title XI loan subsidies available, which equates to approximately \$735 million in available loan guarantees. MARAD has pending applications for \$525 million in loan guarantees. MARAD's current Title XI loan portfolio includes 39 loan guarantee contracts valued at \$1.7 billion.

4. Small Shipyard Grants – Section 3508 of the *National Defense Authorization Act for Fiscal Year 2009* (P.L. 110-417) established the Assistance to Small Shipyards Grant Program. Under the program, U.S. owned and operated shipyards with less than 1,200 production employees are eligible to receive matching grants from MARAD to finance capital improvements and equipment purchases.

The fiscal year 2015 budget does not include funds for the grant program. To date, over \$171.9 million has been made available under the grant program. Since 2010, the number of grant applications has exceeded the funds available. Section 305 of H.R. 4005, the *Howard Coble Coast Guard and Maritime Transportation Act of 2014*, reauthorizes the program through fiscal year 2016 at \$10 million, the current authorized level.

Cargo Preference

To ensure sealift capacity and guarantee a skilled cadre of U.S. seafarers, several laws were enacted beginning in 1904 to require certain percentages of government impelled cargo to be carried on U.S. owned, flagged, and crewed vessels. Government impelled cargo is ocean-borne cargo moved either as a direct result of federal government involvement, or indirectly through financial sponsorship of a federal program, or in connection with a guarantee provided by the federal government. The following is a breakdown of the percentages of cargo required to be carried on U.S. owned, flagged, and crewed vessels under the Cargo Preference Program:

1. Military Cargo – 100 percent (governed by Military Cargo Preference Act of 1904, 10 U.S.C. 2631);
2. Export-Import Bank – 100 percent (governed by Public Resolution 17, 48 Stat. 500);
3. Federal Civilian Agencies Cargo – at least 50 percent (governed by Cargo Preference Act of 1954, 46 U.S.C. 55301 et seq.); and
4. Agricultural Cargoes – at least 50 percent (governed by the Food Security Act of 1985, 46 U.S.C. 55311 et seq.). Section 100124 of *MAP-21* (P. L. 112-141) reduced the level from 75 percent. The *Bipartisan Budget Act of 2013* (P.L. 113-76) eliminated funding for the 20 percent Excess Coast Differential reimbursement, a program created to reimburse federal agencies for the relatively higher cost of transporting agricultural cargoes on U.S. flag vessels.

Food For Peace

Under the Food for Peace program, the U.S. Agency for International Development (USAID) purchases agricultural commodities grown by U.S. farmers and distributes it to starving populations around the world. Pursuant to cargo preference laws, 50 percent of Food for Peace cargo must move on U.S. owned, flagged, and crewed vessels.

The President's FY 2015 budget proposes to restructure the Food for Peace program and cut funding available to purchase and transport U.S. agricultural commodities by 26 percent. This decrease in cargo is expected to further reduce the number of U.S. flagged vessels in the foreign trade and jobs for American mariners. The President's FY 2015 budget proposes to offset some of the job losses by providing an additional \$25 million to the Maritime Security Program (MSP) to support activities yet to be specified. Section 318 of H.R. 4005, would restore to 75 the percentage of agricultural cargo, including Food for Peace cargo, that must be carried on U.S. owned, flagged, and crewed vessels.

Enforcement

Section 3511 of the *National Defense Authorization Act for Fiscal Year 2009* (P.L. 110-417) authorized the Secretary of Transportation to audit cargos shipped by other federal agencies to determine compliance with cargo preference laws and to impose penalties, including fines, on agencies and individuals found in violation. The provision required MARAD to promulgate regulations to carry out the new authorities. MARAD has yet to publish such regulations. Section 316 of H.R. 4005 would require the Secretary to immediately determine which programs are subject to cargo preference and ensure such programs are conducted in accordance with the law.

Military Sealift Programs

Maritime Security Program

The Maritime Security Act of 1996 (P.L. 104-239) established MSP, replacing the Operating Differential Subsidy Program established under the *Merchant Marine Act of 1936*. The MSP provides direct financial assistance to the operators of U.S. owned, flagged, and crewed vessels to make their vessels available to support military sealift during times of war or national emergency. Currently, 13 vessel operators operating 60 vessels receive \$3.1 million per vessel per year under the MSP.

Ready Reserve Force

Section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744) established the National Defense Reserve Fleet (NDRF), a fleet of U.S. government owned vessels available for national defense and national emergencies. The NDRF is managed by MARAD. Of the 103 vessels currently in the NDRF: 21 are no longer useful and are set for disposal; 36 are being preserved for potential government use; and 46 are assigned to the Ready Reserve Force (RRF).

The RRF is primarily used by the Navy's Military Sealift Command (MSC) to support the transport of military equipment to the battlefield. RRF vessels are expected to be fully operational within 5 to 10 days and sail to designated loading berths. MARAD contracts with U.S. owned vessel management companies to provide maintenance, repairs, logistics support, activation, manning, and operations for RRF vessels. In addition to regular activation by the MSC, RRF vessels were activated recently in support of relief operations in the wake of Hurricane Sandy in November 2012. The RRF vessel M/V Cape Ray, which was activated in January 2014, recently completed its mission serving as an offshore facility to destroy Syrian chemical weapons.

RRF vessels have an average age of 31 years, though many are approaching 50 years old. Many of the vessels are now outmoded and inefficient to operate. Similar commercial vessels are usually replaced or renovated after 20 years. Given the condition of the fleet, MARAD is currently considering options to recapitalize the RRF.

Marine Highways Program

Section 1121 of the *Energy Independence and Security Act of 2007* (P.L. 110-140) directs the Secretary of Transportation to establish a short sea transportation program and designate short sea transportation projects to mitigate landside congestion or promote short sea transportation. Using this authority, the Secretary has designated 11 Marine Highway Corridors, 4 Connectors, and 3 Crossings.

Designated Marine Highway Projects may compete for Marine Highway Grants to acquire equipment and make other improvements to facilitate service along a designated Corridor. To date, \$7 million has been awarded to six entities for this purpose. MARAD's fiscal year 2015 budget does not include funding for further Marine Highway Grants. However, Marine Highway Projects are eligible to apply for grant funds under the Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grant program.

Liquefied Natural Gas Permitting

Section 304, of the *Coast Guard and Maritime Transportation Act of 2006* (P.L. 109-241) requires the Secretary of Transportation to develop and implement a program to promote the transportation of liquefied natural gas (LNG) to the United States on U.S. flagged vessels. It also amends the Deepwater Port Act of 1974 (33 U.S.C. 1503) to prioritize the processing of applications to import LNG through deepwater ports from companies that use U.S. flagged vessels for such importation.

As a result of the resurgence in American oil and gas production, MARAD is currently processing licenses for export of LNG. On July 30, 2014, Representatives Garamendi and Hunter introduced H.R. 5270, the *Growing American Shipping Act*. H.R. 5270 would ensure the export of LNG on U.S. flagged vessels is included in the promotion program, as well as extend the prioritization in the processing of deepwater port LNG import applications to export applications.

WITNESSES

Mr. Mark Tabbutt
Chairman
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Mr. Niels Johnsen
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Mr. Don Marcus
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Mr. Matthew Paxton
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