



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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January 12, 2018

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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 State of the U.S. Flag Maritime Industry”

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will hold a hearing on Wednesday, January 17, 2017, at 10:00 a.m., in 2167 Rayburn House Office Building to examine the state of the U.S. flag Maritime Industry. The Subcommittee will hear testimony from the U.S. Coast Guard (Coast Guard or Service), the Maritime Administration (MARAD), and representatives of the maritime industry.

BACKGROUND

U.S. Merchant Marine

The U.S. merchant marine is the fleet of U.S. documented (flagged) commercial vessels which carries goods to 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. These vessels are operated by a cadre of U.S. licensed officers and engineers and unlicensed seafarers. 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. Government-owned sealift vessels activated from reserve status and crewed by American mariners carried an additional 35 percent of the total cargo.

The merchant marine was formally recognized in statute with the passage of the *Merchant Marine Act of 1920* (46 U.S.C. Subtitle V). Section 50101(a) of title 46, United States Code, states that “[i]t 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 “[i]t 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 41,000¹ non-fishing related commercial vessels flagged and operating in the United States. The vast majority of these vessels are engaged in domestic waterborne commerce, generally referred to as the “U.S. coastwise trade,” moving 115 million passengers² and nearly \$300 billion worth of goods³ between ports in the United States on an annual basis. Each year, the domestic coastwise fleet carries nearly 900 million tons (877 million in 2016) of cargo⁴ through the inland waterways, across the Great Lakes, and along the Atlantic, Pacific, and Gulf of Mexico coasts, contributing \$100 billion in economic output.⁵

Of the over 41,000 U.S. flagged vessels, approximately 82 are employed currently in international commerce moving goods between U.S. and foreign ports.⁶ Over the last 35 years, the number of U.S. flagged vessels sailing in the international trade dropped from 850 to 82 vessels. The percentage of international commercial cargoes carried on U.S. flagged vessels has fallen from 25 percent in 1955 to approximately 1.5 percent today.⁷ Within the international U.S. flag fleet, 60 vessels are enrolled in the Maritime Security Program.⁸ Under this program, militarily useful oceangoing commercial vessels receive annual operating stipends of \$3.5 million to provide military sealift for the United States Transportation Command within the Department of Defense (DoD).

U.S. Shipbuilding Industry

The United States has a long tradition of producing some of the most modern and sophisticated vessels in the world. Today, U.S. shipyards of all sizes deliver a wide variety of commercial vessels including patrol boats, tugs, barges of all sizes, ferries, ocean going container and roll-on/roll-off (RORO) vessels, tankers, and oil and gas development support vessels among many others. The U.S. commercial shipyard industry, as well as its supplier base, is essential to maintaining the government shipbuilding and ship repair industrial base.

According to a 2013 report issued by MARAD, the U.S. shipbuilding and repairing industry is comprised of establishments that are primarily engaged in operating shipyards (e.g., fixed facilities with drydocks and fabrication equipment). Shipyard activities include ship construction, repair, conversion and alteration, as well as the production of prefabricated ship

¹ USACE, Waterborne Transportation Lines of the United States Calendar Year 2016, <http://www.navigationdatacenter.us/veslchar/pdf/WTLUS2016.pdf>

² National Strategy for the Marine Transportation System: Channeling the Maritime Advantage 2017-2022, http://www.cmts.gov/downloads/National_Strategy_for_the_Marine_Transportation_System_October_2017.pdf

³ Economic Contribution of the US Tugboat, Towboat, and Barge Industry, <https://www.marad.dot.gov/wp-content/uploads/pdf/Econ-Impact-of-US-Tugboat-Towboat-and-Barge-Industry-lh-6-22-17.pdf>

⁴ The U.S. Waterway System 2016 Transportation Facts & Information, <http://www.navigationdatacenter.us/factcard/FactCard2016.pdf>

⁵ American Waterways Operators, Industry Facts, <http://americanwaterways.com/initiatives/jobs-economy/industry-facts>

⁶ U.S. Department of Transportation Maritime Administration United States Flag Privately-Owned Merchant Fleet Report November 2017

⁷ MARAD Calculation using CBP, Census, and commercial data sources

⁸ This program is authorized under Chapter 531 of title 46, United States Code.

and barge sections and other specialized services. The industry also includes manufacturing and other facilities outside of the shipyard, which provide parts or services for shipbuilding activities within a shipyard, including routine maintenance and repair services from floating drydocks not connected with a shipyard.

Currently there are 117 shipyards in the United States, spread across 26 states, that are classified as active shipbuilders. In addition, there are more than 200 shipyards engaged in ship repairs or capable of building ships, but not actively engaged in shipbuilding. The majority of shipyards are located in the coastal states, but there also are active shipyards on major inland waterways such as the Great Lakes, the Mississippi River, and the Ohio River. Employment in shipbuilding and repairing is concentrated in a relatively small number of coastal states, with the top five states accounting for 62 percent of all private employment in the shipbuilding and repairing industry. In 2011, the U.S. private shipbuilding and repairing industry directly provided 107,240 jobs, \$7.9 billion in labor income, and \$9.8 billion in gross domestic product (GDP) to the national economy. Including direct, indirect, and induced impacts, on a nationwide basis, total economic activity associated with the industry reached 402,010 jobs, \$23.9 billion of labor income, and \$36.0 billion in GDP in 2011.

The federal government, including the U.S. Navy, U.S. Army, and U.S. Coast Guard, is an important source of demand for U.S. shipbuilders. While just one percent of the vessels delivered in 2011 (15 of 1,459) were delivered to U.S. government agencies, eight of the 11 large deep-draft vessels delivered were delivered to the U.S. government.

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 the Jones Act and the Military-to-Mariner Program.

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 registered or “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 to be eligible for a coastwise endorsement to be 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 the U.S. 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.

U.S. Customs and Border Protection (CBP) determines whether the cargo to be moved on a vessel constitutes "merchandise" under section 55102 of title 46, United States Code. CBP also determines whether the movement of that cargo is transportation and subject to the Jones Act. The U.S. flagged industry has raised concerns about whether CBP is adequately enforcing the Jones Act in the Gulf of Mexico. In response, CBP established the National Jones Act Division of Enforcement within its New Orleans Field Office, but concerns still exist among U.S. flagged coastwise operators.

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 Secretary of Homeland Security under subsection 501(a), at the request of the Secretary of Defense and to the extent the Secretary of Homeland Security considers it necessary in the interest of national defense. Under subsection 501(b), the Secretary of Homeland Security may waive requirements for the use of a coastwise endorsed vessel for the purposes of national defense, only after a determination by the MARAD Administrator that no U.S. flagged, owned, built, and crewed vessels are available. Both authorities have been used sparingly by the Executive Branch, and most commonly to respond to instances of natural disasters or national emergencies.

As a recent example, in response to the need to move fuel supplies to areas affected by Hurricanes Harvey and Irma, the Secretary of Homeland Security used the subsection 501(a) authority on September 8, 2017, to issue a waiver on the use of a coastwise endorsed vessel for a seven day period to facilitate the movement of refined petroleum products (including gasoline, diesel, and jet fuel) shipped from New York, Pennsylvania, Texas, and Louisiana to South Carolina, Georgia, Florida, and Puerto Rico. Then on September 11, 2017, the Secretary extended the waiver through September 22, 2017. The extension also expanded the waiver's geographic scope -- adding New Jersey,

Delaware, Maryland, New Mexico, Mississippi, Alabama, and Arkansas to the list of states of origin; and adding North Carolina, Virginia, and West Virginia to the list of receiving states for refined petroleum products. On September 28, 2017, the Secretary again used the 501(a) authority to issue a 10-day waiver to facilitate movement of all products to be shipped from U.S. coastwise points to Puerto Rico to facilitate emergency response after Hurricane Maria. The U.S. flagged industry did not support the use of the 501(a) authority in either case, stating there was adequate U.S. flagged vessel capacity. In the case of Puerto Rico, cargo distribution was stalled at port terminals due to lack of functioning island infrastructure and other factors needed to move the supplies inland, not the lack of capacity of U.S. flagged vessels.

Military-to-Mariner Program

A healthy maritime sector is vital to our economy and national security. A significant proportion of U.S. mariners are nearing retirement age, prompting a potential future shortage of available and experienced maritime professionals which could impact military sealift and U.S. maritime commerce. Trained mariners separating from military service (e.g., Navy, Marine Corps, Coast Guard, Army), could help compensate for a potential shortage. Maritime stakeholders are aware of this looming workforce attrition and have expressed concern that more should be done now to maximize the potential of this highly-trained, dedicated, and proficient labor pool.

Originally formed in 1992, the Merchant Marine Personnel Advisory Committee (MERPAC) was statutorily authorized in section 310 of the *Howard Coble Coast Guard and Maritime Transportation Act of 2014* (46 U.S.C. 8108). MERPAC advises the Secretary of Homeland Security, through the Commandant of the Coast Guard, on matters relating to personnel in the United States Merchant Marine including training, qualifications, certification, documentation, and fitness standards and other matters, as assigned. MERPAC meets twice a year and as of February 2017, has made 88 recommendations to streamline the process for military mariners to obtain their U.S. Merchant Mariner credentials and increase the participation of each military service in maintaining crosswalks and course approvals.

Section 305 of the *Howard Coble Coast Guard and Maritime Transportation Act of 2014* (P.L. 113-281) encouraged opportunities for sea service veterans by authorizing the Secretary of Homeland Security to issue an officer endorsement to a military mariner who: (1) has at least three months of qualifying service on a vessel of the uniformed services within the seven-year period immediately preceding the date of application; and (2) satisfies all other requirements for such a license. Section 305 also requires the Secretary to issue a sea service letter to a member or former member of the Coast Guard within 30 days of making such a request for an officer endorsement.

Section 568 of the *National Defense Authorization Act for Fiscal Year 2017* (P.L. 114-328) requires the Secretaries of Defense and Homeland Security to report to Congress on how the DoD can better harmonize active duty training requirements for military service members with the credentialing requirements for similar civilian merchant marine industry positions. Additionally, the Secretaries were directed to

identify and rectify gaps that exist between current military standards and commercial credentialing standards. The DoD transmitted the report to Congress on September 28, 2017.

International Convention on Standards of Training, Certification and Watchkeeping (STCW)

The STCW, sets qualification standards for masters, officers, and watch personnel on seagoing merchant ships. The STCW was adopted in 1978 by conference at the International Maritime Organization (IMO) in London, and entered into force in 1984. The IMO implements the convention which is designed to ensure global standards are in place to train and certify seafarers among all flag states. The Coast Guard enforces STCW requirements as implemented under U.S. law for U.S. flagged carriers.

In 2010, after a two-year comprehensive review of the entire STCW Convention and the STCW Code, the IMO adopted the “Manila Amendments”. In 2011, the Coast Guard proposed changes to amend its regulations to fully harmonize and incorporate the requirements for national licenses with those of the Manila Amendments.⁹ On December 24, 2013, the Coast Guard published a Final Rule to incorporate the 2010 Amendments into U.S. regulations. Full implementation of the 2010 Amendments took effect on July 1, 2017.

⁹ August 1, 2011 Proposed Rule (RIN 1625-AA16) outlines the changes to U.S. regulations proposed by the Coast Guard.

WITNESS LIST

Panel I

Rear Admiral John Nadeau
Assistant Commandant for Prevention Policy
United States Coast Guard

Rear Admiral Mark H. Buzby, USN Ret.
Administrator
Maritime Administration

Panel II

Captain Andrew McGovern
President
The United New Jersey Sandy Hook Pilots Association

Mr. Matt Woodruff
President
American Maritime Partnership

Mr. James Henry
Chairman
USA Maritime

Mr. Aaron Smith
President and Chief Executive Officer
Offshore Marine Service Association

Mr. Matthew Paxton
President
Shipbuilders Council of America

Mr. Bill Van Loo
Secretary Treasurer
Marine Engineers' Beneficial Association