

U.S. CABOTAGE LAWS: PROTECTIVE OR DAMAGING?

A STRATEGY TO IMPROVE CRUISE VESSEL COMPETITIVENESS AND TRAFFIC TO U.S. PORTS¹



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Master's Project
Commercial Diplomacy
Monterey Institute of International Studies

Advisors:
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Professor Bill Monning

April 30, 2002

¹ This project has been researched and prepared by Kathleen Magee for the Master of Arts in Commercial Diplomacy (MACD) at the Monterey Institute of International Studies (MIIS).

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Foreword by Kathleen Magee:

I chose the topic of cabotage because it affects my life personally and is so representative of such a broad array of constituents. My father works in shipping, and I remember sitting in on a very heated Jones Act debate with him when I was in high school. The debate was held in a union hall in Tacoma involving Rob Quartel (who had run for a Senate seat and was at the time the founder and leader of the Jones Act Reform Coalition) versus the labor union.

The (personally) difficult part of doing a project on U.S. cabotage laws, is that my father works for a Jones Act company, and is a supporter of the Jones Act. In choosing to do the project, I had to form my own conclusions, and do research outside of what I had known personally. What I found, is that the debate itself has many facets. In shipping circles, the debate takes on a deeper meaning. Regardless of what side of the debate one finds oneself, the Act has roots to the beginnings of American history. It contains elements of domestic economic policy, international trade policy, national security, local economic development and labor issues. I personally found the discovery process is fascinating, and all I ask of readers is to think constructively, and to draw their own conclusions.

Definitions

Billet: A crew position on a ship. Generally speaking each billet supports the employment of two sailors, and each billet is matched by a room on the ship. Examples of billets are: captain, chief mate, 2nd mate, 3rd mate, etc.

Cabotage. In shipping, the transport of goods or persons between ports within a single country. The term is from the French verb “caboter,” to sail between the capes.

Cruise ship. A ship formerly associated with passenger transportation now almost exclusively used for entertainment.

Dry dock: A basin for receiving a vessel for repairs, capable of being pumped dry (to repair vessel and scrape marine growth from bottom).

Freighter: A ship designed to carry all types of general cargo, or "dry cargo."

Jones Act. A statute requiring that vessels carrying goods or passengers between US ports must be built and documented in the United States and be, owned and operated by US citizens. The original Act dates from 1898, and was, subsequently incorporated into the Merchant Marine Act of 1920. Similar cabotage laws date from the earlier days of the American Republic.

Longshoreman: A laborer who works at loading and discharging cargo.

Master: A term for the captain, a holdover from the days when the captain was literally, and legally, the "master" of the ship and crew.

Registry: The ship's certificate determining the ownership and nationality of the vessel.

Tanker: A ship designed to carry various types of liquid cargo, from oil and gasoline to molasses, water, and vegetable oil.

The Passenger Vessel Act of 1886. The act states, “That foreign vessels found transporting passengers between places or ports in the United States, when such passengers have been taken on board in the United States, shall be liable to a fine of two hundred dollars for every passenger landed.”

Acronyms

AAPA: Acronym for the American Association of Port Authorities

LASH. Acronym for Lighter Aboard Ship. Describes a shipping system whereby barges are loaded at a port of embarkation (usually in shallow water) and floated to a mother ship upon which the barges are lifted and stowed. The mother ship then makes the ocean crossing at high speed and discharges the barges at the port of disembarkation.

MARAD: Maritime Administration, a promotional agency of the U.S. Department of Transportation.

MCTF: the Maritime Cabotage Task Force, Coalition of shipbuilders, and unions which seeks to protect maritime cabotage laws.

MEBA: Marine Engineers Beneficial Association. This is the oldest American maritime union, it represents engineering officers on many U.S. ships.

NITL: National Industrial Transportation League, a coalition of American Industrial and Agricultural shipping interests. Generally speaking these interests purchase shipping services and do not own ships themselves.

RORO. Acronym for Roll-On Roll-Off. This describes a shipping system whereby highway trailers or vehicles are driven aboard a ship via ramps, instead of being lifted aboard via cranes. These are particularly useful ships for short run commercial ferry service or longer run military moves of tracked and wheeled vehicles.

SCENARIO

For the purposes of this project, I have positioned myself as a representative of the American Association of Port Authorities (AAPA). The AAPA is an alliance representing the interests of 150 ports, 300 firms and individuals in the western hemisphere. The AAPA protects and advances the common interests of its diverse members through advocacy for government policies that expand opportunities for member ports. The goal of the AAPA is to generate greater economic benefit for ports and port cities.

From the perspective of the AAPA, I will present evidence as to why reform of U.S. cabotage should take place. My goal is to explore an approach to generate more cruise vessel traffic between U.S. ports. The proposed solution is the elimination or reform of cabotage laws, to enable more ships to travel between more U.S. ports, and bring more tourism dollars to coastal (port) towns. The increase in tourism will contribute to more jobs in and around these towns in the hospitality industry, and in other industries as well.

Memorandum

To: The President of the American Association of Port Authorities, Mr. Kurt Nagle
From: Kathleen Magee, deputy director port and maritime affairs
RE: The campaign to reform cabotage and increase cruise ship competitiveness
DATE: April 3, 2002

EXECUTIVE SUMMARY



Issue

Ports in the United States have been losing cruise business. The reason is two fold. First, few U.S. ports are visited by the most competitive cruise ships, the foreign flagged cruise ships, because they are restricted in their coastwise movement between U.S. ports. Second, U.S. ports are losing cruise business because the most legally mobile ships, the U.S. flagged cruise ships are subjected to high cost requirements on shipbuilding and crewing. These costly shipbuilding and crewing requirements render existing U.S. flagged cruise ships uncompetitive, and create a strong disincentive to flag U.S.. It is the goal of the American Association of Port Authorities (AAPA) to reform U.S. cabotage laws as they apply to cruise ships in order to: increase the mobility of foreign flagged cruise ships; and while decreasing the costs of the U.S. cruise ships to make them more competitive. The desired result of this reform would be the increase in cruise vessel traffic to U.S. ports, and the increase in economic benefit and employment these visits bring. One port who would stand to benefit is Seattle, which due to cabotage restriction on foreign flagged movement has lost an enormous amount of business to Vancouver³.

However, in order to be successful with reform, it is necessary to take into account the interests of the opposition. To date, the Pro-Cabotage movement has successfully defeated other attempts at cabotage. The opposition is Pro-cabotage because they believe that cabotage will: maintain a ready reserve fleet of U.S. ships, sailors, and shipbuilding capability for times of war. The Pro-cabotage coalition therefore consists of the shipbuilding unions, maritime unions, and defense interests. For successful reform it is necessary to show that the U.S. ready reserve would be better preserved by lowering costs to compete with foreign competition, rather than increasing the restrictions which have accelerated the demise of the U.S. flag.

Background

The Pro-Cabotage movement believes that cabotage is necessary to protect the U.S. domestic shipping market and the jobs associated with the U.S. shipping industry from low cost foreign competition. The U.S. shipping industry is considered necessary for supplying a ready reserve of capable shipbuilders, U.S. ships, and capable captains and crew for use in times of war. Cabotage defenders strongly believe that restrictions on ship coastwise movement; ownership; crewing; and shipbuilding, will help protect this

³ In 1997 the Port of Vancouver had approximately 409,000 embarkations and several thousand visits, Seattle by comparison only received 50 port calls in 2001.

ready reserve. Cabotage restrictions are applied equally to cargo ships and passenger ships, without any distinction.

Unfortunately, American cabotage laws have not only eroded this reserve, but also hampered the economic growth associated with cruise ship traffic. This is because:

- Transportation and cruise services between U.S. ports are restricted to ships that are owned by Americans, built at relatively high cost U.S. shipyards and manned by higher cost U.S. citizen sailors and service workers. These ships are subject to U.S. corporate taxation as if they are a domestic business, even though they may be involved in international trade.
- Foreign flagged and owned vessels are manned by international crews and are substantially less expensive to build and operate, however, these vessels may not call between two American ports without visiting a foreign port of call in between. Often this creates such an onerous economic hardship and a logistical hardship due to a tight schedule, that non-U.S. flagged ships effectively cannot serve between two U.S. ports.

U.S. cabotage laws have provided such limited benefit to the U.S. cruise industry that despite a huge increase in the demand for cruise ship vacations by Americans; there are only a small handful of U.S. flag cruise ships; virtually no cruise ship building in the U.S.; and hardly any jobs available for U.S. sailors.

The few remaining U.S. flagged cruise ships have survived by serving niche markets, which foreign flagged operators cannot enter. The following recommendations are made keeping in mind that with reform a balance must be struck to preserve those existing U.S. flag operators, while promoting economic benefit, while maintaining the necessary ready reserve.

Recommendation

The following steps must be taken for the maximum positive economic effect of reform:

1. The Jones Act must have its requirements modified to allow:
 - a.) The freedom to build U.S. domestic cruise vessels anywhere.⁴
 - b.) The Citizenship requirement for the crew should allow for: the option of filling all non-navigation and non-engineering positions and the preponderance of hotel, service, and entertainment positions to be by crew that are either U.S. citizens or non-U.S. citizens.⁵
2. The IRS tax-code should be amended to provide a personal income tax holiday to crew members when the cruise ship is engaged in international trade. The coalition should firmly support the proposed Merchant Marine Cost Parity Act of 2001 (H.R. 3262), which would provide such a tax holiday to U.S. sailors.

⁴ Similar to the freedom that U.S. domestic airlines and trucking companies possess. Example, Delta airlines can build airplanes with airbus; U.S. trucking companies may buy Mercedes trucks abroad.

⁵ This would allow for U.S. vessels to have a more competitive labor cost while maintaining the important national security billets.

3. Amend the IRS tax code to provide an investment tax credit for any cruise ship operator building a ship in an American shipyard. The tax credit should be set at a rate that would adjust the final capital cost to a level similar to that of a foreign built ship.⁶
4. It is recommended that PVSA be reformed to allow foreign flagged ships to serve all coastal ports.
5. Service between ports on U.S. inland waterways, including rivers, sounds, bays and lakes which are currently protected by PVSA and served by U.S. flag cruise operators will continue to be reserved for U.S. flagged operators. The idea is to eliminate the foreign touch port, while requiring that a cruise vessel after serving an inland port serve its next port through international waters.⁷
6. National Parks such as Glacier Bay shall continue to be reserved for U.S. flagged operators only.

⁶ This would create an incentive to build U.S. and protect shipbuilding capacity and skills.

⁷ Foreign flagged operators may not operate ferries or provide such a service.

ISSUE

The Problem with Cabotage⁸

Ports in the United States are losing cruise vessel traffic to foreign ports because of restrictive cabotage laws such as the Passenger Vessel Services Act (PVSA) and the Jones Act. The main reasons are: restricted mobility of foreign flagged cruise ships between ports, and the higher costs associated with U.S. flagged ships complying with Cabotage laws. Although many attempts have been made to reform cabotage, these attempts have met with forceful resistance despite the current state of the U.S. flagged cruise ship fleet, and the compelling economic evidence that would warrant reform. The consequences of not reforming to U.S. port city economies is:

- The loss of the most legally mobile cruise ships in the U.S.; that is the U.S. flagged cruise ship. These ships can legally call between any port but cannot compete in foreign markets with foreign ships due to substantially higher costs.
- The continual “pass up” of some coastal ports due to a schedule crunch induced by the need for Foreign flagged ships to reach a foreign port within a reasonable amount of time (a week). This disadvantages consumers, particularly those living remotely from foreign “touch” ports.
- Loss of competition as cruise companies either go bankrupt or merge with one another.
- The continuing loss of cruise traffic to foreign ports, versus more attractive U.S. ports specifically due to the current cabotage requirement.
- The continuing loss of revenues and jobs associated with cruise traffic; which includes jobs in the ports, the hospitality industry, tourism industry, transportation industry, retail, etc.

The U.S. flagged ships are handicapped with higher imposed costs, the foreign flagged ships are handicapped with the foreign port call restriction.

The situation will continue indefinitely unless the United States relieves its restraints on Foreign cruise vessel mobility between U.S. ports and alters its restrictive policies toward U.S. ships which help to create an economic disadvantage. The opportunity cost to the American Economy is substantial and will be discussed in the course of this paper.

⁸ See definition of Cabotage p 4.

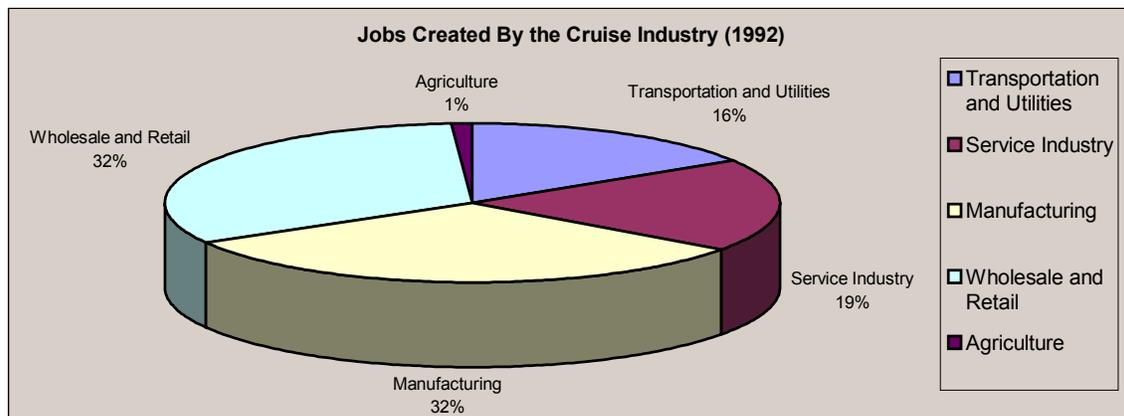
Why Is This Issue important?

Simple, the Cruise industry creates jobs throughout the economy.

Based on a 1993 study done by Price Waterhouse Coopers⁹, the cruise industry provided 450,166 full time jobs, the break down of the total across the industries can be seen below. By 1996 this number had increased to 584,878.

The Cruise Industry Creates Jobs Throughout the Economy¹⁰

Transportation and Utilities	52,961
Service Industry	62,483
Manufacturing	103,740
Wholesale and Retail	105,542
Agriculture	4,004
Total in 1992	450,166
Total in 1996	584,878



- Jobs in transportation and utilities include shipboard employees, and airline personnel
- The service industry includes hotel workers and restaurant employees
- Manufacturing includes petroleum refiners, ship repair workers, and print shop workers
- Wholesale and retail trades include distributors providing food and beverages, and gift shop employees
- Agriculture includes ranchers and farmers who supply the cruise industry with their produce¹¹

⁹ International Council of Cruise Lines brochure: Price Waterhouse Coopers study 1993

¹⁰ Price Waterhouse Coopers Study (ICCL brochure)

¹¹ Price Waterhouse Coopers Study (ICCL brochure)

The United States is benefiting greatly from the cruise industry. However, it is important to remember that the United States is not benefiting as *much as it could be*.

In a study done by Price Waterhouse Coopers, the amount of employment generated by Cruise related spending has grown by the year 2002 to 54.8% since 1997. (See Chart titled “*Estimated Jobs created. . .*” below). Total wages and taxes to the U.S. economy paid by the cruise industry will be \$570,000,000 in the year 2002. It is important to remember that these figures represent the Cruise industry serving the U.S. market as a whole, U.S. flagged and foreign.

Estimated Spending in the U.S. Economy Associated With the North American Passenger Cruise Industry, 2002 (In billions of dollars)¹²

	1997	2002	% Change
<i>Total Passenger Revenues</i>	<i>\$7.79</i>	<i>\$13.03</i>	<i>67.3%</i>
Total Wages and Taxes Paid by Cruise Lines	\$0.44	\$0.57	29.3%
<i>Total U.S. Spending (excluding Wages and Taxes)</i>	<i>\$11.62</i>	<i>\$18.34</i>	<i>57.8%</i>

Estimated Jobs created by the Total Spending in the North American Passenger Cruise Industry

	1997	2002	% Change
<i>Total Employment Generated by Cruise- Related Spending</i>	<i>176,433</i>	<i>273,200</i>	<i>54.8%</i>

Again, this issue is important because the cruise industry creates jobs, and with reform of U.S. cabotage laws, the cruise industry has the potential to create even more jobs and economic benefit for port cities.

¹² Source: WEFA Inc PwC 1998 Survey of Cruise Lines

I. Introduction

I. A. The Role of the Cruise Industry

Until the 1970's, the cruise industry was focused more on "passenger transportation." Immigrants came from the old world to the new on passenger ships. American flagged passenger vessels provided back-up transportation for military troops, and were as early as the civil war, the Spanish-American war, and World War I. The need for passenger ships to provide transportation for military troops essentially ended with the advent of fast, modern air transportation. Passenger vessels have not been used by the U.S. military since the Korean War in the 1950's.

Today cruise ships primarily provide entertainment service and advertising interesting Ports of Call. Cruise ships are rarely used as a method of transportation. Despite this, the United States code regarding Cabotage has remained unchanged, and the policy of the 1800's and early 1900's remains the same. According to the United States Code for the Merchant Marine Act:

It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.¹³

The loss of U.S. military need for cruise ships combined with failed public policies with respect to the U.S. flagging requirements have resulted in the U.S. missing out on the current boom. Currently U.S. flagged cruise vessels are a dying breed, in 2000 there were only 7,000 deadweight tons left¹⁴ versus 1,205,000 deadweight tons of foreign flagged ships. (See chart below). However, although the ships are not militarily useful, the crews that man them and the metal trades workers, and shipyards that build them are militarily useful and are becoming critically scarce. This will be addressed later in the paper.

¹³ U.S. Code <http://www4.law.cornell.edu/uscode/unframed/46X/ch24.html>

¹⁴ There were 14 U.S. flagged cruise ships in existence in 2000.

**World and U.S. Merchant Fleets in Thousands of Deadweight Tons,
April 1, 2000¹⁵**

	U.S. Flag	All Flags
Container Ships	2,990	63,967
Dry Bulk	579	276,196
Tanker	8,515	324,503
Roll-on/Roll-off	554	14,542
Cruise/Passenger	7	1,205
Other	696	82,875
Total	13,341	763,288

A.2 Domestic Port Economic Impact

U.S. public ports generate a lot of jobs for the U.S. economy, the Cruise industry makes up a small portion of this overall impact, the AAPA would like to increase the positive effects that the cruise industry has had on a few ports, to more local U.S. ports.

The U.S. public port industry consists of more than 100 public port authorities and agencies located along the Atlantic, Pacific, Gulf and Great Lakes coasts, as well as in Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands.¹⁶

Public ports generate significant local and regional economic growth, including job creation. According to the AAPA's most recent study, in 1996 the Direct Impact of Ports' activities to the U.S. economy was:

- Commercial port activities in 1996 provided direct employment for 1.4 million Americans.
- Port activity contributed \$74.8 billion to the U.S. Gross Domestic Product (GDP) and personal income of \$52.7 billion in 1996.
- Port activities in 1996 accounted for federal taxes of \$14.7 billion, and state and local tax revenues amounting to \$5.5 billion.¹⁷

The same study by the AAPA concluded that in the year 1996, the *Compilation of direct, indirect, and induced economic impact of port activities to the U.S. economy* was:¹⁸

¹⁵ ROLE OF THE MARITIME INDUSTRY IN THE UNITED STATES, U.S. Department of State
<http://usinfo.state.gov/journals/ites/1000/ijee/trans-maritime.htm>

¹⁶ The American Association of Port Authorities: <http://www.aapa-ports.org/industryinfo/portfact.htm>

¹⁷ The American Association of Port Authorities: <http://www.aapa-ports.org/industryinfo/portfact.htm>

¹⁸ <http://www.aapa-ports.org/industryinfo/portfact.htm>

- To create 13 million jobs
- To generate \$494 billion in personal income
- To contribute \$1.5 trillion in business sales
- \$743 billion to the Nation's GDP
- \$200 billion in Federal, State and local taxes

II. Background: Understanding Flagging, and Cabotage

Overview

This section discusses the international commitments that have been with regards to ship operations, safety, and registration.

II. A. International Shipping Requirements¹⁹

All ocean - going vessels involved in international commerce must have a country of registry in order to operate in international waters. Accordingly, most countries, including the U.S., provide these registration services or *flags* of registry. Due to favorable laws designed to promote the economic health of shipping companies the predominant countries offering flags of registry for cruise vessels are the United Kingdom, Liberia, Panama, Norway, Netherlands, Bahamas and to a much lesser extent, the United States.²⁰ These nations provide vessel owners with competitive ship registry services and maritime expertise, and are all member states of the International Maritime Organization (IMO)²¹.

In the international shipping industry, there are a number of factors that must be met for a valid registry: the flag state must be an IMO member nation which has adopted all of the IMO's maritime safety Resolutions and Conventions; Secondly, the flag state should have an established maritime organization that is capable of enforcing all international and its national regulations. Usually this is the nation's Coast Guard, a recognized Classification Society, and various health or communication regulatory agencies. Major flag registries provide maritime expertise and administrative services; require annual safety inspections prior to issuance of a passenger vessel certificate; and utilize recognized classification societies to monitor its vessels compliance with all international and flag state standards.

Flag states also have certain rules and requirements for vessels that fly their flags. These include crew nationality, crew composition, ship owner citizenship and ship building requirements that include both safety features and flag country content in the materials used.²²

¹⁹ This information was obtained from the International Council of Cruise Lines
<http://www.iccl.org/imi.htm>

²⁰ SEE APPENDIX FOR FLAGGING RULES IN COUNTRIES OTHER THAN U.S.

²¹ The IMO is responsible for establishing international standards for cruise ship safety, design and construction. The IMO is an affiliate of the United Nations. <http://www.iccl.org/policies/accessibility.htm>

²² See Appendix for examples of registry requirements in some popular countries of registry

The crewing, ship construction and ownership requirements to flag a vessel in the United States are among the most restrictive of the maritime nations. The regulations for U.S.-flag vessels engaged in coastwise trade mandates that all officers and pilots and 75% of other onboard personnel be U.S. citizens or residents. In addition, U.S. flag vessels engaged in coastwise trade must be owned by U.S. citizens and constructed in U.S. ship yards. This construction requirement applies to the entire hull and superstructure of the ship and the majority of materials outfitting the vessel.

All vessels, regardless flag, must comply with SOLAS²³ standards and other internationally recognized conventions. The flag state has the primary responsibility for ensuring that its vessels meet all established international guidelines. The flag state conducts annual ship examinations, which include a thorough inspection of the vessel and its safety systems. As a result of these examinations, a vessel is certified to be in compliance with all international safety standards. The effort of the flag state is augmented by an additional annual survey conducted by a classification society to certify a vessels seaworthiness and structural integrity.

Port states, that is, those countries at whose ports a vessel calls, also play an important role in this regulatory framework. The United States, a major port state represented at the IMO by the U.S. Coast Guard, has a reputation for its vigorous enforcement of SOLAS standards. To ensure compliance with SOLAS safety requirements, the Coast Guard conducts quarterly inspections on all vessels embarking passengers at U.S. ports. This cooperative effort between flag and port states provides a maritime safety enforcement system, which has proven effective over the years.

Because of the cost of these requirements as well as tax laws outlined above for U.S. flag registry, ***nearly 90% of the commercial vessels calling on U.S. ports fly a non-U.S. flag.*** Therefore, vessels with international registries, are not unique to the cruise industry. ***A majority of the major U.S. controlled shipping companies engaged in international commerce have chosen to operate under flags other than that of the United States. This is because foreign crew costs are 1/3 to 1/2 that of American crew costs, and American ship costs are 25% to 100% more than that of foreign ships according to virtually every industry and government source.***

Although a majority of cruise vessels fly non-U.S. flags, the United States and its ports derive substantial economic benefits from cruise industry operations. A recent study by WEFA, Inc. concluded that the cruise industry was responsible for generating 214,901 full-time jobs for U.S. citizens. The study also concluded that the industry, its passengers and its U.S. suppliers purchased \$15.5 billion on U.S. produced goods and services in 1999. These jobs and expenditures contribute greatly to the overall U.S. economy.²⁴ This

²³ International Convention on Safety of Life at Sea (1974) (SOLAS 74) as amended (1998) requires that passenger ships carry an approved lifejacket (Personal Flotation Device - PFD) for every person onboard the ship. Additionally, a number equal to 10% of the number of passengers onboard and that are suitable for children must be carried. However, the number of children's lifejackets carried must not be less than the number of children onboard. <http://www.iccl.org/policies/lifejackets.htm>.

²⁴ International Council of Cruise Lines: <http://www.iccl.org/imi.htm>

local economic benefit occurs to port communities regardless of the nationality of the flag is responsible for many port cities to being ambivalent as far as U.S. cabotage laws are concerned. This complicates reaching political consensus for reform.

II.B. Background and History of U.S. Cabotage

Overview

This section provides an overview of the setting, history, and motivation behind the passage of the main two laws which created U.S. cabotage: the Passenger Vessel Services Act, and the Jones Act. There is some discussion of other flagging restrictions in general as well.

B. Background and History of U.S. cabotage

The United States, as well as other nations, protects its domestic transportation industries through cabotage laws. "Cabotage" from the French word "caboter" means to sail coastwise or by the capes. The "capes" being visible points on the shore.

U.S. Maritime Cabotage Laws include 31 separate enactments governing the transportation of cargo and passengers between two points in the United States, its territories and possessions, and all dredging, towing, salvage and other marine operations and fishing in U.S. waters. These laws reserve to U.S.-flagged vessels the right to transport cargo and passengers between U.S. ports. Cabotage laws also apply to forms of transportation other than water carriers such as airlines, however, this paper is devoted exclusively to water carriers.

The cabotage statute enacted in 1789 imposed tonnage duties on the entry of every vessel transporting products in the coastwise trade unless the vessel was built and owned by U.S. citizens. An 1817 law reserved transportation of merchandise between U.S. ports to U.S. flag vessels on penalty of forfeiture of the merchandise. Tonnage duties were levied on U.S. vessels that failed to have the required percentage of U.S. citizens in their crews

The current cabotage statute for ownership, construction, and crewing of *cargo and passengers* is the Merchant Marine Act of 1920, and its amendment, the Jones Act.²⁵ The Passenger Services Act of 1886, is the statute covering cabotage as it applies to *passengers transported between U.S. ports.*²⁶ A point worth noting is that when these acts were originally passed, ships provided a substantial portion of citizen transportation. Today ships primarily provide a cruise and entertainment experience and are rarely used for transportation.

In fact, until the advent of modern air travel in the 1950's, several U.S. flag companies operated large passenger vessels constructed and operated with federal subsidies in the transatlantic, Latin America, Caribbean, and Pacific routes. These federal subsidies were

²⁵ The Jones Act refers to Section 27 of the Merchant Marine Act of 1920, which requires that all water transportation of goods between U.S. ports be on U.S.- built, owned, crewed, and operated ships.

²⁶ <http://www.hawaii.gov/dbedt/he7-99/psa.html>

intended to offset both the differential in shipbuilding costs and crew wages versus cheaper foreign competition.

The U.S. is not alone in having cabotage laws. The Maritime Administration solicited information on cabotage laws from fifty - six maritime nations and received fifty-three responses. Only six countries reported no restrictions. Forty-three reported crewing restrictions, thirty - seven have ownership restrictions, thirty provide a domestic fleet subsidy, six have a domestic construction requirement and fifteen have reflagging restrictions.(*SEE APPENDIX FOR LIST*)

B.1 The Passenger Services Act

The basic act which created the Passenger Vessel Act of 1886 was created on June 19 of 1886 by the forty ninth Congress, and can be found in U.S. law under Chapter 421²⁷ Section 8, 24 Stat. 8. This basic act states, “That foreign vessels found transporting passengers between ***places or ports in the United States***, when such passengers have been taken on board in the United States, shall be liable to a fine of two dollars for every passenger landed.”

The Fifty Fifth Congress amended the act on February 17, 1898. Chapter 26²⁸, section 2, 30 Stat. 248. The amendment changes the penalty from two dollars to two hundred, which shows a crack down on foreign transport of passengers in the US. According to the amendment, Sec 8 (shall now read): “No foreign vessel shall transport passengers between ports of places in the United States, either directly or by way of foreign ports or places in the United States, either directly or by way of a foreign port, under a penalty of two hundred dollars for each passenger so transported and landed.” The law now appears in the United States Code under 46 App. USCA 289 (1996) as: “No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.” (*To see a demonstration of the legal itineraries a Foreign flagged cruise vessel might follow, see the Passenger Vessel Services Act under Legal Analysis*).

There was also a national security concern. This was the congress that declared war on Spain.

B.2 The Jones Act

After the close of World War I, the Senate Commerce Committee, whose chairman was Senator Wesley L. Jones of Washington, conducted a study to determine what should be done with the many vessels owned and operated by the U.S. government. As a result congress enacted the Merchant Marine Act of 1920, containing a policy declaration that it was necessary for the national defense and for the proper growth of foreign and domestic commerce that the U.S. have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a navel or military auxiliary in time of war or national emergency, ultimately to be owned

²⁷ Chap 421 An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes

²⁸ An act to amend the laws relating to navigation

and operated privately by U.S. citizens. This Act is known as the Jones Act, and Section 27. The Act required that no merchandise transported by water between U.S. ports is to be carried "in any other vessel than a vessel built and documented under the laws of the United States and owned by persons who are citizens of the United States."

The 1920 recodification of *U.S. Cabotage laws increased the citizen stock ownership requirement from 50% to 75%* and established standards (patterned generally upon a 1918 law) for determining when the 75% stock ownership requirement had been met.²⁹

Although separate acts, the Jones Act and Passenger Vessel Services Act are often confused and/or lumped together by policy makers.

B.3 Background on Flag restrictive laws in general

Laws recognizing the importance of a domestic merchant marine fleet go back date back as far as the 17th century (British "Navigation Acts", French régime of the Colbert Ordinances and of the "exclusif colonial"). Under such regimes the external trade of a country had to be transported by ships flagged in the country manned with nationals and where colonial traffic was reserves to the flag of the country. The United Kingdom abolished this model in 1847 but traces of it remain in the legislation of numerous countries. One of the outcomes of these laws was to enforce an almost total lack of trade and communication between nearby Caribbean islands that happened to be "owned" by different European powers.

In the United States, among some of the measures passed by the first Congress in 1789 was a law restricting registration for coastal trades and fisheries to U.S.-built and U.S.-owned vessels. U.S.-flag vessels were also given preferential treatment with respect to tonnage taxes and cargo import duties.

Throughout the 20th century, successive Congresses and Presidents have sought to ensure that the United States had sufficient private, commercial marine fleet capacity to protect the nation's commercial and defense interests. The Merchant Marine Act of 1936 provided direct subsidies to builders and operators of U.S.-flag ships. Though now phased out, these subsidies provided the capacity for the massive and successful effort to supply and move American troops during World War II. An extension of the notion of cabotage laws and local economic interests occurred in 1978 when the Outer Continental Shelf Act (OCS) became law. Under the OCS Act, offshore structures attached to the continental shelf are considered American territory, just like any domestic port, and therefore traffic between rigs and shore is considered "coastwise trade" for the purpose of the law. The U.S. OCS and the resources-mineral and otherwise-it contains have long been considered American property. However, it was not until 1976 that fishery resources within a 200-mile "exclusive economic zone" (EEZ) were also claimed, and until 1978 that oilrigs, and the jobs dependent on them, were likewise protected under the law. These laws, and others pertaining to the U.S. maritime industry, can be found in Title 46

²⁹ <http://www4.law.cornell.edu/uscode/unframed/46X/ch24.html>

of the United States Code.³⁰ *What they all have in common is the notion of some degree of national security, safety/environmental control, and economic protection or preservation. (See Appendix for the list of major cabotage supporting Nations).*

II C. Political Stakeholder Background

Overview

The political stakeholder background introduces the two major factions in the dispute over U.S. cabotage laws: The Pro-Cabotage side, and the Pro-Cabotage Reform side. Each side of the argument is broken down into the political party support, and the various interests that fall on either side of the argument. The coalitions which represent the interests of each side are: The Jones Act Reform Coalition and the Maritime Cabotage Task Force. The AFL-CIO Maritime Trades Department is also considered part of the Maritime Cabotage Task Force, and is singled out for being a particularly strong member of the Pro-cabotage coalition.

C.1 Overview of Stakeholders involved

Overview of Stakeholders involved	
Pro-Cabotage	Pro- Reform
Political Party Support: Democrat; Hard line Republican <ul style="list-style-type: none"> • Defense Interests: Ready reserve • Shipyards • Unions: AFL-CIO maritime trades • U.S. Flagged Ships • Coalition: Maritime Cabotage Task Force • President has stated support for the Jones Act 	Political Party Support: Moderate Republican <ul style="list-style-type: none"> • Free Traders • Travel and Tourism Agencies • Agricultural Interests • Port Authorities • Port Cities • Business, Entrepreneurs • Foreign Cruise Interests • Coalition: The Jones Act Reform Coalition

In general, on the Pro-Cabotage side, the political parties supporting Cabotage laws are: Democrats and hard line Republicans. Democrats support the laborers for Cabotage, and hard line Republicans support the defense interests, or the maintenance of the *ready reserve*. On the Pro-Reform side, Moderate Republicans who are pro-business and/or free traders have been seeking cabotage reform. Other Pro-cabotage interests include: the unions whose jobs depend on the U.S. flag business; the U.S. flagged ship operators themselves, who wish to maintain restrictions on the coastwise movement of foreign flagged operators; and Defense interests who wish to maintain shipbuilding skills, ships, and crew for the ready reserve. On the Pro-Reform side, Travel and tourism agencies side with Port Authorities and Port cities in wanting more economic well-being through cabotage reform. Agricultural interests believe that cabotage reform will lead to lower shipping and freight costs for their goods. Businesses would like more choice in

³⁰ <http://www.sice.oas.org/dispute/wto/tract04e.asp>

investment; while foreign flagged operators would like more choice in itineraries for their U.S. passengers.

C.1.1 The Jones Act Reform Coalition:³¹

In 1995, former Federal Maritime Commissioner, Rob Quartel, formed the Jones Act Reform Coalition (JARC).³²

During the first half of 1995, articles in the print media were running negative to the Jones Act (85% were unfavorable according to Brad Mulholland, CEO of Matson Navigation, a Jones Act company, in a speech given at Paul Hall Memorial Lecture). There were problems on Capitol Hill as the House Merchant Marine and Fisheries Committee, long a defender of the Jones Act, was eliminated. “Deregulation” was the buzzword in the Congress and Walter Jones Jr. was circulating a “dear colleague” letter calling for the end of the Jones Act. It was in this atmosphere that Rob Quartel Formed JARC.³³

Quartel is bright, articulate and had a nose for getting media attention. He wanted to do away with the Jones Act and had the support of large agricultural, chemical, and other bulk shippers to mention a few.³⁴ (See list of JARC, anti-cabotage, supporters in Appendix).

C.1.2 The Maritime Cabotage Task Force:³⁵

The Maritime Cabotage Task Force (MCTF) was formed in the fall of 1995 to counter JARC’s efforts. It was and is the largest maritime coalition ever assembled and has over 400 members from all segments of the maritime industry and extending to related interest. The MCTF organized a public relations campaign to get the media involved, participated in every forum where Quartel appeared³⁶, and successfully countered JARC’s move on the Hill. One of the most visible accomplishments of the MCTF was obtaining 242 co-sponsors to H.Con Res. 65, a House resolution supporting the Jones Act.³⁷

Because the MCTF was so effective in countering JARC’s efforts to repeal the Jones Act, JARC’s final efforts were to more narrowly attack the Jones Act by calling for the elimination of the U.S. building requirement. This effort was effectively blocked when

³¹ The following information was provided by Alan Butchman, former Under Secretary of Transportation under the Carter Administration, currently a Washington D.C. lobbyist.

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ The following information was provided by Alan Butchman, former Under Secretary of Transportation under the Carter Administration, currently a Washington DC lobbyist.

³⁶ Including the Propeller Club debate which I saw in the fall of 1996 in the Port of Tacoma, Washington.

³⁷ Ibid

the National Industrial Transportation League (NITL)³⁸ evidenced no interest in taking a look at the Jones Act. Quartel left for a dot.com business venture and JARC withered.³⁹

The MCTF was very concerned about the NITL's expression of interest and approached them suggesting a joint meeting when shippers had concerns and try to work them out on a business basis rather than in the political arena. Thus far this has worked and the NITL has not instituted a political challenge to the Jones Act.⁴⁰ (See list of MCTF, pro-cabotage, supporters in the Appendix)

C.1.3 AFL CIO- Maritime Trades Department⁴¹

A strong and powerful stakeholder, the AFL-CIO is headed by representatives such as Michael Sacco. Mike Sacco is president of the Seafarers International Union, AFL-CIO vice president, and president of the AFL-CIO Maritime Trades Department. The MTD has at least 2 million workers in its member union.

The Maritime Trades Department of the AFL-CIO (MTD) petitioned the U.S. government to promote coordinated international activity against substandard shipping before the United Nations Commission on Sustainable Development (CSD). The MTD upheld that "it is impossible to sustain a safe marine environment as long as shipowners have the option of documenting their vessels under registries that ignore internationally recognized safe operating standards." The CSD then asserted that steps should be taken to ensure *all flag states meet existing rules and regulations*. Moreover, it urged the IMO to "evaluate whether existing regulations on marine pollution...are sufficient to provide adequate protection to fragile coastal zones from adverse impacts as a result of tourist vessel activity."⁴²

The MTD also has urged Congress and the administration to adopt a coherent policy on trade. It opposes renewing China's Most Favored Nation status, expanding NAFTA or including maritime services in any multilateral trade agreement. The department further recommends that all international trade pacts must include enforceable protections of workers' rights and measures to prevent U.S. companies from abandoning their workforce.⁴³

The MTD backed the 1997 U.S.-Flag Cruise Ship Pilot statute (P.L. 105-65), and with union-contracted American Classic Voyages Co. signed an agreement to build two large passenger cruise ships at Ingalls Shipbuilding, these vessels were to be the first such vessels to be built in an American shipyard in more than 40 years. This move was thought to mark the rebirth of an American-flag large passenger cruise ship industry. The MTD has vowed to fight attacks on the Passenger Vessel Services Act and other

³⁸ National Industrial Transportation League: major shipper interests General Motors, Dupont, Con-Agra, JCPenny's, Sears, Wal-Mart

³⁹ provided by Alan Butchman

⁴⁰ Ibid

⁴¹ http://www.aflcio.org/convention99/ec_rep_mtd.htm

⁴² provided by Alan Butchman

⁴³ Ibid

important maritime programs.⁴⁴ *In addition, the MTD was able to gain support to establish a legislated monopoly for this venture in Hawaii for 25 years. This clearly demonstrates their clout on maritime cabotage issues.*

The MTD has effectively argued against an amendment, which was filed that would have suspended "build American" requirements in cabotage laws. The MTD remains vigilant about any attempts made to reform or repeal cabotage law.⁴⁵ (See list of MTD members in the Appendix).

II D. Legal Background

Overview

The legal background section provides an overview of some of the legislation and legislators involved regarding U.S. cabotage laws. The domestic legal background begins with the legislators and legislation, then moves on to the programs created to support the U.S. flagged shipping industry for defense purposes (The Maritime Security Program), and concludes with other issues such as citizenship which have arisen with regards to U.S. cabotage laws.

D.1 Domestic Legal Background

Domestically, shipping services are governed by: the Departments of Transportation and Labor, the Maritime Administration (D.O.T.), the Coast Guard, the Federal Maritime Commission, the Environmental Protection Agency, and other federal units.

As already mentioned, starting in 1995, there has been a concerted effort to repeal the Jones Act; that effort continued into 1998. These proposed amendments, and repeals failed to gain enough support, in the U.S. congress, because protectionist fears tend to win over any economic arguments that might be made.⁴⁶ Again, it is worth pointing out that the Jones Act and Passenger Services Act, although different pieces of legislation are usually considered a common situation by critics and supporters alike.

In a 15 April 1996 letter to colleagues in the House of Representatives, the entire membership of the House Merchant Marine Oversight Panel reaffirmed its support for the so-called Jones Act (Section 27, Merchant Marine Act 1920). In 1997, proponents of the status quo (Joe Moakley (D-Mass.) and Gerald Solomon (R-N.Y.) introduced House Concurrent Resolution 65. The resolution, which states specifically that: "the Jones Act and related statutes are critically important components of our Nation's economic and military security and should be fully and strongly supported," won overwhelming support from 245 other members of the House.⁴⁷ *The MTD played the leading role in accomplishing this astounding level of support in Congress.*

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ www.navyleague.org

⁴⁷ www.navyleague.org

The Resolution inspired the creation of the Jones Act Reform Coalition. The Coalition had been trying to repeal the act, but abandoned the effort, thinking it hopeless, and shifted to a strategy of only *modifying* the Act.

As a solution to the problem of preserving the ability to build ships for reasons of national security was a proposed subsidy. As of 1 June 1996, the Congress had not acted on HR 1350, a subsidy called "the Maritime Security Act of 1995." The Act would provide \$1 billion in subsidies over a 10 year period for approximately 50 militarily useful merchant ships. The US Maritime Security Act dated October 1996, which creates a ten year, US\$ 1 billion program providing payments to owners and operators of US vessels in return for a commitment to provide sealift support in time of war or national emergency, constitutes an exception.⁴⁸ Only tankers and general cargo ships are considered by the Maritime Security Act as militarily important. No cruise or passenger ships have been enrolled, proving lack of interest by the military in these types of vessels.

Then-Assistant Secretary of the Navy John Douglass, in one of his last acts before leaving office, urged Senate Merchant Marine Subcommittee Chairwoman Kay Bailey Hutchinson (R-Texas) to resist efforts to amend the Act. "The Jones Act is vital to our national security and to the future of the U.S. Navy," wrote Douglass. He said that his letter was in anticipation of a Senate Commerce, Science, and Transportation Committee hearing on proposals to amend or repeal the Jones Act. The hearing was announced June 1996 by Senator John McCain (R-Ariz.), the chairman of the Senate Commerce Committee. Senator McCain told Senator Jesse Helms (R-N.C.) that: "It appears that the Jones Act has a negative economic impact on American consumers." Senator McCain said that he supports improving the efficiency of the domestic water transportation system.⁴⁹

The hearing was held in mid-September and discussion centered on S. 2390, the Freedom to Transport Act of 1998, introduced by Helms and Senator Sam Brownback (R-Kan.). Their bill would allow U.S. documentation of bulk ships of 1,000 gross tons and larger, *not* built in the United States, for the transportation between U.S. ports of forest products, other bulk cargo (including agricultural products), and/or livestock. The bill also would allow the voluntary return of these ships to foreign registry without approval by the secretary of Transportation (as is required by the Shipping Act of 1916 for other U.S.-flag ships).

One week after the Jones Act hearing, Senator McCain announced his intention to introduce a bill to allow foreign-built U.S.-flag cruise ships into the U.S. domestic trades. Allowing foreign-built ships to enter the cruise trade under the U.S. flag is not an unprecedented proposal, but his bill set no limit to the length of time the ships would be

⁴⁸ most of the information contained in this section 996 and 1997 annual reports of the OECD Maritime Transport Committee, which are available on the website:

<http://www.oecd.org/dsti/sti/transport/sea/prod/ar>

⁴⁹ www.navyleague.org

permitted to operate under the U.S. flag, and included no requirement (as is customary) to replace them in the near future with ships built in U.S. shipyards.⁵⁰

However, the greatest difference in Senator McCain's proposal is the casual inclusion in the bill of provisions to also allow up to 30 foreign-flagged ships to carry passengers in the domestic economy of the United States for two cruises each year, for a maximum duration of 30 days per year. Unfortunately, Senator McCain's bill failed to generate support and never made it out of committee. He announced later that, "I want to put everyone on notice that we are going to come back to this issue early next year and keep working on it until it is resolved."⁵¹ Sadly, here it is 2002, and little progress has been made domestically with regards to reforming U.S. cabotage laws. However, pressure is increasing internationally for U.S. domestic reform from the WTO and OECD. Part of the reason they have been so unsuccessful is that so many of their own member countries support cabotage laws, often for the same national security reasons as the U.S.. (See the list of these nations in the Appendix.)

D.1.1. The Maritime Security Program:⁵²

Due to their size and complexity of operation, cruise ships employ three times the number of critical navigation and engineering personnel per vessel as other commercial ships. The Maritime Security Program says a lot about the value that the DOD places on maintaining jobs for U.S. Seafarers for Security reasons.

The Maritime Security Program (MSP) became law in 1996, amending the Merchant Marine Act of 1936 and replaced the Operating Differential Subsidy (ODS) that for 60 years had been the principal means of ensuring the availability of commercial, U.S. flag shipping for military needs. Under ODS, payments were made to compensate for the higher operating costs of U.S. flag vessels with U.S. crews. The MSP program provides nothing to cruise ship operators. The MSP program provides approximately \$100 million per year for 47 ships, which will be available to the U.S. government during time of military need. The program is authorized for 10 years but needs annual appropriations. Note, this works out to approximately \$2.1 million per ship, and was designed to offset a minimum 100% cost disadvantage for U.S. versus foreign crew costs per ship per year (\$2.1 million versus \$4.1 million).⁵³ ***As important as the ships are, the billets for trained seamen are just as important. Had the program not been enacted, these ships would have continued to exist, but as foreign flagged ships, manned by foreign seamen.***

Jones Act carriers in the domestic trades wanted to make sure that subsidy recipients could not use that subsidy to compete in the domestic trades. At this time SeaLand operated in all three of the domestic offshore trades as well as having an international component. To assure that subsidized competitors would not enter into the domestic

⁵⁰ www.navyleague.org

⁵¹ www.navyleague.org

⁵² The following information was provided by Alan Butchman, former Under Secretary of Transportation under the Carter Administration, currently a Washington D.C. lobbyist.

⁵³ Ibid

market, efforts went for about four years (1993-1996) and ended successfully with the inclusion of a prohibition on “receiving a subsidy payment when participating in non-contiguous domestic trade... and no changes on sailings, capacity offered, and ports of call . . . unless a party obtains permission from the Secretary of DOT based on a finding that service is inadequate or the service provided would result in unfair competition or was otherwise contrary to the objects and policy of the Act. “ PL 104-239 sec 656(a)(1) And any increase in the level of service for a MSP recipient was limited to an increase in real gross product of the State. (Sec 656 (d)⁵⁴). The purpose was to protect the billets for citizen sailors on domestic ships as well as their companies and vessels from the potentially ruinous subsidized competition.

D.1.2 Maritime Security Program II (MSP II)⁵⁵

With MSP due to expire on September 20, 2005, the interested parties are deeply involved in negotiations on MSP II. They have been told by MARAD and friends in Congress to agree on a program and then bring it to them. Last year Central Gulf became concerned that U.S. citizenship requirement for participation might be dropped and attempted to rally other domestic carriers (Crowley, Matson, TOTE) to go to the Hill. Mike Sacco asked the Jones Act companies to give the parties a chance to work up a program that he committed to bring to the domestic carriers for their consideration before presenting it to MARAD and Congress.⁵⁶

The outlines of a proposal are starting to appear. It would be a 20 year program for up to 60 ships with a yearly payment of \$3.5 million per ship and a documentation citizen with a security agreement (with DOD) would be able to hold a MSP II contract directly (rather than through a ship management company). However, there are significant unresolved issues such as what happens to the current management companies holding contracts for NOL-APOL and Maersk-Sealand for example. The MM&P and MEBA contracts expire simultaneously with MSP I. And what will the domestic carriers reaction be to the weakening of the U.S. citizenship requirement for participation in the program. Note, that this amount of subsidy implies almost a 300% cost differential between U.S. crew costs and third world crew costs.⁵⁷

The point is that from a public policy perspective, the DOD believes that American crews are so vital to the National Security that the tax - payers should pick up the cost differential.

D.2 Citizenship Requirement for Ownership:⁵⁸

The 1996 Coast Guard Authorization bill loosened the rules involving U.S. ownership of vessels in the domestic trade in order to provide easier access to capitol. It permitted lease financing of vessels even if the lending institution was not a U.S. citizen. TO quote from

⁵⁴ Ibid

⁵⁵ Provided by Alan Butchman

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ The following information was provided by Alan Butchman, former Under Secretary under the Carter Administration, currently a Washington D.C. lobbyist.

the Conference Report (No/ 104-854) the new Section 1113 (e) “would permit a coastwise endorsement for non-U.S. citizen ownership where: 1) ownership is primarily a financial investment in the vessel without the ability and intent to control the vessel’s operations by a person not primarily engaged in the direct operation or management of vessels and 2) where the owner has transferred to a qualified American citizen full possession, control and command of the U.S. build vessel in a demise (bareboat) charter and the demise charterer is considered the owner pro hac vice during the charter term. It is intended that banks, leasing companies or other financial institutions qualify as owners of U.S. flag vessels under this section even if they have a vessel owning and operating affiliate so long as the majority of the aggregate revenues of any such group are not derived from the operation or management of vessels by group members.”⁵⁹

The Coast Guard administers the 1996 law by issuing (or refusing to issue) documentation for vessels eligible to operate in domestic commerce. In May 2001 the Coast Guard issued proposed rules implementing the 1996 law. The MCTF and Adsteam and 70+ others filed comments.⁶⁰ ***The critical issue here is that Congress and the Coast Guard are willing to loosen ownership and financial restrictions in order to attract capital investment in U.S. flag and Jones Act ships without modifying crew citizenship restrictions.***

D.2.1 More Citizenship Issues:⁶¹

It turns out that the Adsteam situation was only round one of the fight to preserve the U.S. ownership requirement of the Jones Act. AS the Coast Guard rulemaking continued, Northland Holdings (Adsteam) purchased the domestic operations of Jore, a tug and barge company with interest in the Northwest and Hawaii. At first, those of us concerned about foreign invasion of domestic trades thought that Northland had again used the vessel-leasing route. However, it appears that Northland pursued a different route. It seems that Northland bought the Jore assets and time chartered the ships from Jore.⁶²

It has then become apparent that this was potentially a larger loophole for foreign ownership than vessel lease financing and on further inspection, the U.S. ownership provision of the Jones Act seemed porous indeed.⁶³

About 10 years ago, MARAD did propose to look more closely at time charters to non-citizens that may have permitted foreign interests to inappropriately participate in the Jones Act trades. However, MARAD ran into some resistance and dropped the effort. The MCTF is currently exploring administrative and legislative options to address this problem.⁶⁴

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ provided by Alan Butchman

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

II E. Economic Background

Overview

The economic background touches on the costs that these cabotage restrictions have raised as market barriers for U.S. flagged ship entrants. The section also demonstrates the economic gains the U.S. economy currently receives from the cruise industry, and shows those ports which have benefited most from the cruise industry. The business which cabotage restrictions have given to foreign ports may also be seen later in the section.

E.1 The barriers faced by U.S. flagged cruise ships:

New entrants in the U.S. cruise vessel market have a choice to make: how to flag their ship. A new entrant as a U.S. flagged vessel has several key challenges to overcome:

- The competitive advantage of the existing ship operators, both U.S. flagged and Foreign flagged.
- Difficulty in finding investors, who must be U.S. citizens
- High shipbuilding costs to build a ship according to U.S. ship flagging requirements, i.e. using U.S. shipyards and labor.
- High crewing and operating costs, i.e. using U.S. citizens to crew the ship

E.2 Foreign Competitive Advantage in Operating Ships

There are several competitive advantages to being a foreign flagged cruise ship, they are:

- No citizenship requirements for ownership, or crew
- No corporate income tax, as required for U.S. flagged operators
- Ship construction costs approximately 1/2 to 2/3 the cost of U.S. built ships.
- Crew costs approximately 1/2 the costs of a U.S. crew.

The main disadvantage is that in order to operate in U.S. waters, all foreign flagged ships must make a trip to a foreign port, which makes planning itineraries a tricky.

E.3 The Comparative Costs In Shipbuilding

As a foreign flagged ship, the shipbuilding costs of building a cruise ship in a foreign shipyard are far less than that of building a cruise ship in a U.S. shipyard. According to some studies, the price differential is estimated to be 182% higher to build in the United States, versus abroad, in others it was 40%. (See chart below titled "*Findings on Price Differentials for Shipbuilding. . .*"). There are no comparisons of large U.S. cruise ships to large foreign cruise ships, because no large U.S. cruise ships have been built.

These particular studies were done on container ships, which have none of the added "hotel" expenses of a lobby, furnishings, bars, casinos, plush sleeping quarters, etc. they provide a "bare bones" idea of ship structural costs without the added expense of frills. Small U.S. shipyards, which are only able to build small cruise ships (100-400 guests) are more competitive with their foreign counterparts. Large U.S. shipyards, capable of building the largest cruise ships have a significantly wider cost differential versus their

foreign counterparts. Even a price differential of 40% for the structure of a cruise ship is a significant advantage to the foreign flagged operator. (See comparative chart below)

FINDINGS ON PRICE DIFFERENTIALS FOR SHIPBUILDING BY SEVERAL DIFFERENT STUDIES⁶⁵

	U.S. COSTS HIGHER BY
CBO REPORT (1984) AVERAGE	182%
MARITIME ADMINISTRATION (1996) (tanker)	47%
COLTON & COMPANY (1996) (Container)	40%

COMPARATIVE COSTS II⁶⁶

	<u>US Vessel</u> US Built US Standards US Financed	<u>Model Vessel</u> Foreign Built US Standards US Financed	<u>Foreign Vessel</u> Foreign Built Intl. Standards Foreign Financed
Shipyard Labor Costs ⁶⁷	23,375,000	13,050,000	13,050,000
Material	20,000,000	20,000,000	20,000,000
US Regulation	3,630,000	3,630,000	
Finance	1,225,125	1,225,125	826,250
Total Capital Cost	49,005,000	37,905,125	33,876,250
As Percent of U.S.		77%	69%
Estimated Subsidy	0	8,524,625	8,923,500
Net of Subsidy	49,005,000	46,429,750	42,799,750
Adjusted Share		95%	87%

The table above, titled Comparative Costs II is from the Maritime Cabotage Task Force's Post Hearing Brief on the Economic Effects of significant U.S. import restraints. Note: the two factors attributed to making up a large difference in the costs between a US Vessel and a Foreign are the shipyard labor costs and the US regulation cost. The point being that foreign subsidies and tax credits often are responsible for the difference in capital costs between US and foreign build ships.

⁶⁵ Post Hearing Brief of the Maritime Cabotage Task Force on "Economic Effects of Significant U.S. Import Restraints"

⁶⁶ Post Hearing Brief of the Maritime Cabotage Task Force on "Economic Effects of Significant U.S. Import Restraints"

⁶⁷ It is my understanding that this cost is ship building labor cost

E.4 The Impact Of The Cruise Industry On Jobs (Crewing), And Shipbuilding Labor

The American Association of Port Authorities credits the cruise industry as a major source of income. “The cruise passenger industry, which depends upon ports, in 1997 spent \$6.6 billion on goods and services in the U.S. Those expenditures generated 176,433 U.S. jobs. Total economic impact of cruise lines, passengers and their suppliers was \$11.6 billion. The top five U.S. cruise port cities are Miami, Fort Lauderdale, Port Canaveral, Los Angeles and New York.”⁶⁸

Given the fact that there now are few U.S. flagged ships to sail between two or more ports, it becomes more apparent that were there to be some commerce between the more popular ports to some smaller port cities, that this would generate a good amount of revenue for the ports and create more jobs. Furthermore, requiring foreign cruise ships to make foreign port calls between American port calls limits the ability of these ships to test more American maritime markets.

Only one port in the U.S. dominates the cruise industry above all others, Florida. Florida is not only dominant because the weather is warmer, but also because Florida makes an easy embarkation point from which foreign flagged companies can meet the cabotage requirement while satisfying customers with exotic ports of call. However, the Florida itinerary is getting old, and foreign flagged companies are turning their eyes to newer more exciting itineraries with different and unusual ports of call. As was confided by one source, the huge incentive to foreign flagged companies to have PVSA reformed is the ability to be able to serve Hawaii easily. The latest study on Hawaii’s share of the cruise market shows that in 1997, it occupied only 1.4% of the world’s cruise market.⁶⁹ This percentage cannot be much larger today, because American Classics Voyages was granted a 25-year monopoly and went bankrupt, and today few foreign flagged cruise lines serve Hawaii.

⁶⁸ Source - 1997 Price Waterhouse Coopers Study <http://www.aapa-ports.org/industryinfo/portfact.htm>

⁶⁹ Cruise Lines International Association (CLIA) analysis.

II F. Background: Various International Trade Organizations

Overview

The section provides information about international organizations, namely the OECD and the WTO in which maritime services are discussed. Both the OECD and the WTO have put pressure on the U.S. to reform its policies with regards to shipping subsidies and cabotage. Therefore both are mentioned as international organizations with an interest in cabotage reform.

F.1 The OECD

The OECD has also recognized the importance of maritime services, and adopted common shipping principles. OECD countries agreed on these principles in 1987, and updated the principles in 2000, the Principles provide for⁷⁰:

- The maintenance of open trades and free competitive access to international shipping operations, maritime auxiliary services and multimodal transport involving a maritime legislation.
- Coordinated response to external pressure, based on full consultations between Member countries.
- The involvement by Member countries to preserve free competitive access and the provision of choice to the shippers.
- A common approach to the application of competition policy to the liner shipping sector.
- Measures relating to safety, the environment and substandard shipping.

The United States Congress has still not passed the enabling legislation necessary to ratify the OECD accord. The European Union, South Korea and Norway have signed the agreement. Japan has not. Differences of opinion surfaced as to the effect the OECD agreement would have on Jones Act provisions requiring the U.S. domestic tonnage be built in American yards. The European Union argues that American shipyards building under the Jones Act could face financial counter-measures when bidding on foreign contracts. *The OECD may exert more pressure in the future than it currently does now.*

F.2 The World Trade Organization (WTO)

The WTO gives several good, economic reasons for liberalizing trade in services in general, and these certainly apply to maritime passenger services. These are: increased competition, lower prices, innovation, higher employment, greater transparency, and technology transfer.⁷¹

Some think that the greatest threat to the Jones Act can be found in the international trade negotiation arena. *Many countries view the U.S. maritime area (particularly cabotage)*

⁷⁰ <http://www.oecd.org/dsti/sti/transport/sea/act/principl.htm>

⁷¹ http://www.wto.org/english/tratop_e/serv_e/gats_factfiction3_e.htm

as both protected and a desirable business sector in which to participate.⁷² It is the combination of this envy for participation in such a huge market along with most WTO countries' own internal cabotage restrictions that has made the WTO a much less effective voice than it might otherwise be.

The 1994 Uruguay Round GATT agreement includes a permanent grandfather for the U.S. build requirement of the Jones Act and other cabotage laws. However, this Agreement also provides that the WTO would review the exemption no later than 2000 and thereafter every two years for as long as the exemption is in force “for the purposes of examining whether the conditions which created the need for the exemption still prevail.” During the first review Panama, Japan, and the EU questioned whether the exemption should continue and the DOT and USTR insisted the need for exemption still existed.⁷³

The WTO Report issued in 2000 after the review stated that the maritime transport sector “continues to rank among the most protected sectors of the U.S. economy” and cited the cabotage laws that reserve domestic routes to U.S. operators, U.S. maintenance of cargo preference requirements, and the provision of “a fixed payment to U.S. flag vessel operators” through the Maritime Security Program.⁷⁴

The WTO is engaged in the preliminaries to a new round of negotiations called the “Doha Round” which is scheduled to conclude by January of 2005. And this date may be extended.⁷⁵

Some of the countries that have agitated to put maritime services on the table are Japan, Korea, Norway, Hong Kong, the EC, Singapore, Chile, Australia and Columbia.⁷⁶

The Maritime Industry through the U.S. Maritime Coalition stays in close contact with the USTR and MARAD to watch developments and to generate industry support from the Hill when needed.⁷⁷ *Particularly since September 11th 2001, national security concerns trump free trade concerns in Congress.*

Summary

The reform or repeal of the Jones Act through the WTO is a possibility. The Maritime Cabotage Task force and other stakeholders will remain vigilant to ensure that the U.S. government does not weaken on this issue.

Domestically, there has been a trend of selling U.S. owned international companies to foreign interests (Lykes to CP; APL to NOL; SeaLand to Maersk) to the point where there is virtually nothing left of the U.S. owned international fleet. The U.S. ownership

⁷² Information provided by Alan Butchman, former Under Secretary of Transportation under the Carter Administration, currently a Washington D.C. lobbyist.

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

element of the Jones Act is currently under attack. Adsteam's usage of the vessel lease financing as a potential vehicle to buy into the U.S. domestic trade supports this theory.

The Coast Guard, while blocking this particular route, has not prevented Adsteam from attempting a different route by buying assets and time chartering the ships in this purchasing of Jore. ***The U.S. domestic market is attracting more attention from foreign maritime interests.***⁷⁸ In every case of the sale of a U.S. flagged shipping company to a foreign interest, with the sole exception of the Adsteam case, the domestic Jones Act part of the company was not sold to foreign interests but rather was spun off separately because of legal concerns. Adsteam used a loophole in the leasing provisions of the law to acquire control of a very small Jones Act tug and barge firm called Jore when Pro-cabotage forces were asleep at the switch. This purchase is being contested through the Coast Guard and may be overturned.

⁷⁸ Information provided by Alan Butchman.

III. A Comprehensive Analysis

III A. Policy Analysis

Overview

Provides analysis of the policy behind U.S. cabotage laws, and why the policy is not applicable to cruise ships, and critiques the performance of the cabotage laws with relation to this policy. Also demonstrates the arguments of the opposition as to why cabotage should continue.

A.1 Are Cruise ships being used for National Defense?

As mentioned previously, the policy of the U.S. cabotage is considered necessary for national defense through the protection of the merchant marine, and to have commercial ships and crew available to serve as a naval or military auxiliary in time of war or national emergency. However, passenger ships have not been used in times of war for auxiliary ship or for transport of troops for half a century. *The ships may not be national defense assets. However, their trained officers and engine personnel are national defense assets that are in very short supply. Shipbuilding and repair facilities and their skilled builders are also defense assets.*

A.2 Should Congress continue to rely on cabotage as a method to protect U.S. ships from competition and preserve ships for use in times of war?

In their current form, cabotage laws have not protected U.S. flagged cruise ships from foreign competition, rather it has made U.S. flagged cruise companies uncompetitive and subjected them to incredibly high costs. The United States no longer uses these vessels for military purposes, therefore the legal environment should be changed to reflect the current state of affairs.

A.3 Why should Cabotage be changed?

Because foreign ships are becoming increasingly competitive by:

- Building larger ships to handle more people, and reduce the need to build additional ships, while lowering the per berth costs for passengers.
- Building faster ships, which can hit more ports, including foreign ports; i.e. foreign ships can visit almost all of the same ports supposedly protected and preserved under cabotage for U.S. flagged operators

Because the opportunity cost of not reforming cabotage means:

- Cabotage redirects cruise ships and passenger revenue to foreign ports such as Vancouver, which costs domestic ports such as Seattle in jobs and revenue.
- U.S. entrepreneurs have little to no incentive to flag under the United States, knowing that they will automatically be subject to much higher costs, and the chances of success are minimal.

- Existing U.S. flagged companies are struggling with bankruptcy and having to diversify their fleet with some foreign flagged ships to survive. Remember, these relatively uneconomic ships lose their protected market with the onset of the North American winter weather.

A.4. What are the reasons cited for being Pro-Cabotage?

The arguments on the side of the Pro-Cabotage groups are:

- Cabotage necessary for National Security
- Cabotage is also necessary to protect wages
- Safety
- Environmental standards for ships.
- Foreign Subsidies and favorable tax rules unfairly tilt the playing field

A.4.1 National Security

The first argument in states that cabotage protects and preserves the ship building capacity for times of war. Or to provide a large enough skill base to support naval repair and overhaul needs.

National Security, has PVSA done what it was supposed to do?

Harsh criticism has come from Professor Clinton H. Whitehurst Jr.'s paper called "Defining America's Sealift Capability: U.S. or Foreign Flagged Ships?"⁷⁹ Insinuating that MARAD has exaggerated the number of U.S. flagged ships available for times of war:

Sometimes words are more important than the reality they describe. Such is the case with respect to the Maritime Administration's (Marad) year 2000 decision to count everything that floats when describing the nation's maritime posture. In about the time it takes a con artist to hide a pea under a walnut shell, the U.S. flag fleet increased from 251, excluding ocean carriers, ocean going ships (1000 tons or over, self propelled, deep draft ships) to approximately 37,000+ vessels of which approximately 29,000+ were cargo carrying.

When questioned as to whether these 29,000 or 37,000+ additional vessels would be available to support a Persian Gulf type contingency, the then Maritime Administrator replied "Probably not," but added that their crews would be available. The implied assumption that crews on the Staten Island ferry could quickly fill crew vacancies on a LASH or RORO, or that barges in the coastal and inland water trades would be equally efficient in moving military cargo across oceans to destinations thousands of miles from mainland U.S. load out ports, is disingenuous at best. At worst it encourages a false sense of security with respect to our military sealift capability.⁸⁰

⁷⁹ <http://www.strom.clemson.edu/opinion/whitehurst/collection.pdf>

⁸⁰ Ibid

Professor Whitehurst, a retired member of the U.S. marine corps, and an authority on the subjects of economics and military has concluded that the U.S. does not have enough ships in its “fleet” of U.S. flagged ships to use in a war. The conclusion is that the U.S. may have to borrow vessels from foreign flagged ships, and the Professor suggests more diplomacy to ensure the ships in times of war.⁸¹ Unfortunately, Professor Whitehurst also advocates stricter enforcement of cargo preference laws, namely the Jones Act and Passenger Vessel Services Act as a solution to this problem. His point being, that both a pool of trained seamen and some associated ships are needed because there are approximately two sailors for every billet (position) on a Jones Act ship. To cover for vacations, shore side training and illness that extra citizen-sailors are always available to man ready reserve ships.

By now the reader should understand the strenuous National Security argument in favor of maintaining a large pool of U.S. citizen sailors as well as the strength of the coalition of the MTD- AFL-CIO, the DOD, MARAD, the shipyards and their collective political allies in Congress. There has never been an effective counter argument made by the anti-cabotage people that addresses the man-power issue. (See Table 1 on Militarily Useful Vessels below).

⁸¹ see appendix: Table 1 U.S. Flag, Ocean Going, Militarily Useful Merchant Vessels

TABLE 1⁸²	
U.S. FLAG, OCEAN GOING, MILITARILY USEFUL MERCHANT VESSELS(a)	
(Self propelled vessels 1000 gross tons and over)⁸³	
Privately owned ships in foreign trade. Includes vessels in the VISA program. Does not include dry bulk or tug-barge vessels.	85
Privately owned ships in coastal and non-contiguous trades Does not include dry bulk or tug-barge vessels or passenger vessels. Includes vessels in the VISA program.	100
Military Sealift Command(MSC) vessels. Includes 15 pre-positioned ships, 13 maritime pre-positioned ships, eight pre-positioned logistics ships, 2 aviation logistics ships in reduced operating status and 31 chartered ships in the Sealift Program. Does not include naval auxiliaries operated by MSC or Special Mission Ships.	69
Maritime Administration Ready Reserve Force (RRF) ships. Includes Liquid carriers, RoRos, containerships, LASH and break bulk freighters	88
TOTAL	342

A.4.2 Wages, Ship Safety, and the Environment

The second argument upholds the belief that cabotage laws protect national economic interests, in particular, American jobs and businesses from low-wage, unsafe foreign competitors.⁸⁴ Pro cabotage politicians and coalitions point to the fact that foreign flagged vessels are crewed by foreign nationals who are paid substandard wages, and foreign flagged vessels are not bound by U.S. labor, health, safety and immigration law and regulation. Another favorite argument is that more protection like the Jones Act and Passenger Vessel Services Act is necessary because foreign flagged vessels have an unfair advantage by being subsidized by their governments, and do not pay U.S. income taxes.⁸⁵

82 (a) Source: Maritime Administration, Office of Statistical and Economic Analysis. “Deployment of U.S. Flag Oceangoing Self Propelled Merchant Vessels of 1000 gross tons and Over as of October 1, 2000,” “Cargo Carrying U.S. Flag Fleet by Areas of Operation, January-June 2000.” and Military Sealift Command, Defense Transportation Journal (April 2000). Some authors exclude liquid carriers when defining “militarily useful” vessels. This is an oversimplification. Liquid carriers are militarily useful. The necessary caveat is to identify this tonnage by amount and type when describing total tonnages.

⁸³ Whitehurst Jr., Clinton H.: “Defining America’s Sealift Capability: U.S. or Foreign Flagged Ships?” <http://www.strom.clemson.edu/opinion/whitehurst/collection.pdf>

⁸⁴ Ibid

⁸⁵ For example, the testimony of Mr. Borski http://commdocs.house.gov/committees/Trans/hpw105-65.000/hpw105-65_1.HTM

A.4.2.1 Safety and Flags of Convenience

In a typical "flag of convenience" (FOC) arrangement, a ship is owned in one country, registered in another, and crewed from still another--or from several countries.

Those who are pro- cabotage argue that aboard these ships, working and living conditions are commonly deplorable, and crews are often poorly trained or not trained at all. Some proponents of cabotage charge that ships under FOC registries are often maintained inadequately, and they are prone to groundings, collisions and sinkings.

Due to FOC shipping and the competitive pressure it puts on shipping states is the "second register," under which traditional maritime nations ease shipping and crewing standards under their flags. Norway, the United Kingdom, France, Germany and Japan are among the countries now hosting "second registers."⁸⁶

A.4.3 Environmental Standards

American Vessels are required to meet stricter environmental standards for both the ship and the crew: this includes performance monitoring, training, record keeping, enforcement. Often state standards such as California air pollution requirements are enforced as well. American enforcement of U.S. flagged vessels is considered simpler because it does not involve international diplomatic pressures.

A.4.4 Title XI Loan Guarantee

Finally, the Maritime Administration (MARAD) a promotional agency of the U.S. Department of Transportation needs to be concerned about government loan guarantees to ship owners. Loan defaults by uneconomic shipping companies can cost the treasury large sums.⁸⁷ Indeed, the default on two U.S. flag cruise ships under construction at Ingalls Shipyard in Mississippi by American Classic Cruises may cost the U.S. hundreds of millions.

A.5 Who wants Cabotage Reform/Repeal?

Domestically, pressure to reform the cabotage laws has come from: the cruise industry, business entrepreneurs, foreign countries, and local governments of port towns/cities (such as Seattle and San Francisco). Internationally, Japan, the European Union, the Nordic countries, and other foreign interests have demanded that GATS negotiations include the Jones Act and other U.S. cabotage laws.

Those advocating reform of the cabotage laws, both domestically and internationally, take issue with these points. Some argue that the defense justification no longer applies because technological change has made ocean shipping a non-viable method for achieving many national defense goals. This is particularly so in terms of troop deployment via ships versus vehicles or fuel for example. Further, defense needs require

⁸⁶ <http://www.google.com/search?q=cache:www.amo-union.org/Newspaper/Sections/News/mtd.htm+U.S.+Passenger+Vessel+Act+of+1886+WTO&hl=en>

⁸⁷ (AMERICAN CLASSICS \$300 million DEFAULT TITLE XI)

specially built craft rather than modified commercial vessels. No U.S.-flagged, ocean-going passenger vessels have been built in the United States since 1951, and there was only one U.S.-flagged passenger vessel currently in operation, the *S.S. Independence* operating in Hawaii.⁸⁸ Others argue that maritime wages are increasingly set in an international marketplace and those foreign government subsidies of foreign vessels.⁸⁹

A.5.1 The International Stakeholders who want Reform/Repeal of Cabotage

Shipping services worldwide are already governed by: the United Nations' International Maritime Organization, the International Labor Organization, the International Council of Cruise Lines Formulating and Enforcing Competition Law in a Global Economy, and the International Chamber of Commerce. Large international buyers of transportation services are not pro-cabotage. American agricultural interests are also generally not in favor of U.S. flag cargo reservations or cabotage laws. Their voice is the National Industrial Transportation League (NITL).

A.5.1.1 The WTO

Fortunately, as was said before in the background, Maritime Services are being negotiated in the GATS, and the U.S. grandfather clause will be reviewed every two years. Currently, the U.S. maintains that U.S. cabotage will not be on the negotiating table, despite strong opposition from the EU, Norway, and Japan. In other words, U.S. cabotage does not currently violate any GATS principles, even though it restricts market access, and could be seen as a trade barrier. However, were we not dealing with services, but instead goods, several GATT principles and law would in fact be violated.

For example, GATT Article V on Freedom of Transit, section 2 states: “There shall be *freedom of transit through the territory of each contracting party*, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. *No distinction shall be made* which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, *of vessels* or of other means of transport.”

The \$200 fine per passenger based on discrimination of the ship owners, and flag is also in violation of GATT **Article VIII Fees and Formalities** connected with Importation and Exportation, which says, “1.(a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.”

The main GATT principles to be upheld in GATS⁹⁰ are: MFN Treatment (under Article II), Transparency, Market Access⁹¹, Non discrimination, and National Treatment. Market

⁸⁸ The *S.S. Independence* is part of American Classic Voyages, which unfortunately filed for bankruptcy in October of 2001.

⁸⁹ Ibid

⁹⁰ http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm

⁹¹ to be granted in specified sectors, Maritime is on the list, however, U.S. cabotage is not

Access is different in GATS from GATT, so far in that: “The granting of market access is a negotiated commitment undertaken by individual Members in specified sectors. It may be made subject to one or more of six types of limitations enumerated in Article XVI(2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in a sector, the value of transactions, the legal form of the service supplier, or the participation of foreign capital.”⁹²

Summary

There are currently twenty-nine WTO Members who have commitments in international shipping services. Of these twenty nine, twenty one include both freight and passenger transportation services. The most important limitations include foreign equity ceilings, nationality requirements for ownership and registration of vessels under the national flag, requirement to appoint a local agent, limitations on government owned cargoes, discriminatory taxation and discriminatory port charges.

The MTD board urged that U.S. merchant fleet promotion laws and policies not be on the agenda in forthcoming service trade negotiations to be supervised by the World Trade Organization. Making it easier to make such arguments is the fact that most major WTO members have their own cabotage laws.

III B. Legal Analysis

Overview

Provides an analysis of the current legal framework of Cabotage laws governing Cruise ship operation in United States Code, and other laws which may affect cruise ship operation in the United States, although not considered “cabotage.” Also includes an example of Senator John McCain’s proposed bill for mild Cabotage reform, S.127.

B.1 Cabotage Laws

There are two main cabotage laws, which govern cruise ship operations in the United States.

- The Passenger Vessel Services Act (PVSA)
- The Jones Act

B.1.a. The Passenger Vessel Services Act

The Passenger Vessel Services Act appears in the United States Code under 46 App. USCA 289 (1996) as: “No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.”

⁹² http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm

B.1.a.1 A Demonstration of Foreign Flagged Cruise Itineraries created under the Passenger Vessel Services Act

In the following two scenarios, current itineraries used by a foreign flagged operator, Holland America line, are demonstrated to show how they conform to the Passenger Vessel Services Act⁹³. A third scenario not illustrated is that of the “cruise to nowhere.” A cruise to nowhere is also legal under the passenger vessel services act. This cruise involves sailing from the port of embarkation, and can involve tour around an island or along the shores, and then returning to the same port for disembarkation.

B.1.a.1.1. Scenario 1

Scenario 1 involves two examples of an itinerary where the port of embarkation is the same port of disembarkation, with a foreign port visit made between (Alaska and Hawaii cruise). The foreign ports used to conform with the PVSA, are Vancouver, Canada and Ensenada, Mexico. The port of Vancouver is usually chosen as a port of embarkation or “touch” port in any cruise, which is advertised as: Pacific Northwest, Alaska, Glacier, etc. The port of Ensenada is often used in any cruise advertised as: California, Hawaii, etc..

⁹³ hollandamerica.com

<p>Scenario 1: Port of Embarkation is the same Port of Disembarkation, with a foreign port visit between</p>	<p>Billed as Alaska Cruise</p> 	<table border="1"> <thead> <tr> <th>Day</th> <th>Port</th> </tr> </thead> <tbody> <tr><td>0</td><td>Seattle, Washington</td></tr> <tr><td>0</td><td>Scenic cruising Puget Sound</td></tr> <tr><td>1</td><td>Scenic cruising Queen Charlotte Islands</td></tr> <tr><td>2</td><td>Juneau, Alaska</td></tr> <tr><td>3</td><td>Scenic cruising Hubbard Glacier</td></tr> <tr><td>4</td><td>Sitka, Alaska</td></tr> <tr><td>5</td><td>Ketchikan, Alaska</td></tr> <tr><td>6</td><td>Scenic cruising Vancouver Island</td></tr> <tr><td>6</td><td>Victoria, British Columbia</td></tr> <tr><td>7</td><td>Seattle, Washington</td></tr> </tbody> </table>	Day	Port	0	Seattle, Washington	0	Scenic cruising Puget Sound	1	Scenic cruising Queen Charlotte Islands	2	Juneau, Alaska	3	Scenic cruising Hubbard Glacier	4	Sitka, Alaska	5	Ketchikan, Alaska	6	Scenic cruising Vancouver Island	6	Victoria, British Columbia	7	Seattle, Washington															
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4	At Sea																																						
5	Hilo, Hawaii																																						
6	Honolulu, Hawaii																																						
7	Nawiliwili Kauai, HI																																						
8	Lahaina Maui, Hawaii ¹																																						
8	Scenic cruising Na Pali Coast, Kauai																																						
9	Kona, Hawaii																																						
9	Evening passing Kilauea Volcano, Hawaii																																						
10	Cruising the Pacific Ocean																																						
11	At Sea																																						
12	At Sea																																						
13	At Sea																																						
14	Ensenada, Mexico ²																																						
15	San Diego, CA.																																						

B.1.a.1.2. Scenario 2

Scenario 2 involves a second choice of itinerary that a foreign cruise operator has under the PVSA, in which a foreign port is used for the embarkation, and then every other port along the cruise may be domestic, including the port of disembarkation. The example

used is a cruise which is billed as a cruise of Alaska, in which the cruise embarks from Vancouver, B.C., and disembarks in Seward Alaska.

<p>Scenario 2: Port of Embarkation is Foreign, Port of Disembarkation is Domestic</p>	<p>Billed As Alaska Cruise</p>	
		
	<p>Day</p>	<p>Port</p>
	0	Vancouver, British Columbia
	1	Cruising the Inside Passage
	2	Ketchikan, Alaska
	3	Juneau, Alaska
	4	Skagway, Alaska
5	Sitka, Alaska	
6	Scenic cruising Hubbard Glacier	
7	Seward, Alaska	

B.1.b. The Jones Act

The Jones Act (U.S.C. 46 chapter 24 and appendix) establishes that no merchandise transported by water between U.S. ports is to be carried "in any other vessel than a vessel built and documented under the laws of the United States and owned by persons who are citizens of the United States." The Jones Act also prevents foreign cruise ships from transporting passengers between U.S. ports and restricts access to U.S. rivers and canals.⁹⁴ The "Act" requires that *citizen stock ownership requirement be 75% , that citizen crewing be 75%, and that ships be built within the United States.*⁹⁵

B.1.c. The Puerto Rico Passenger Ship Act

The Puerto Rico Passenger Ship Act, Public Law 98-563 (46 App. U.S.C. 289c (1996) essentially extends the Jones Act and Passenger Services Act requirements to all U.S. property, including Puerto Rico.

B.2 Corporate Income Tax

One major complaint of U.S. flagged ship operators is of the Income tax that they are required to pay, while foreign competitors are not.

In attempting to determine what effect reform or repeal might have on taxation, some have asked, would foreign flagged corporations be subject to U.S. income taxes if legislation were adopted to waive the PVSA?

According to Legislative Attorney of the American Law Division, Marie Morris:

⁹⁴ www.fb.com/views/focus/fo96/fo0715.html

⁹⁵ <http://www4.law.cornell.edu/uscode/unframed/46X/ch24.html>

The U.S. taxes foreign corporations on income received from sources within the United States. Internal Revenue Code (IRC) 863 (c) (3) defines any income received from or in connection with the use of a vessel as “transportation income.” Under IRC 863 (c) (1) all transportation income attributable to transportation, which begins and ends in the United States is treated as derived from sources within the United States. Under IRC 863 (c) (2) 50% of all income from transportation, which begins or ends (but not both) in the United States is treated as from sources in the United States. Thus, under these rules, a foreign flag vessel engaged in the coastwise trade would have 100 percent U.S. source income if the vessel went from U.S. port to U.S. port. This is true even if the ship traveled in international waters between ports.⁹⁶ If the foreign flag vessel went from a U.S. port to a foreign port and then returned to the same or a different U.S. port, 50% of the outbound voyage and 50% of the inbound voyage would be U.S. source income.

IRC 883 (a)(1) excludes from the gross income of foreign corporations income derived from the international operation of a ship or ships if the country of the foreign corporation grants an equivalent exemption to corporations organized in the United States. *Providing all the requirements of IRC 883 were met*, if a foreign flag ship from a country that grants an equivalent exemption to United States corporations made a round trip voyage from the United States to a third foreign country and back to the United State, the income from the roundtrip voyage would qualify for the international shipping income exclusion under IRC 883 (a)(1).⁹⁷

B.3 An example of a Proposed Bill to reform Cabotage laws:

B.3.1 The United States Cruise Vessel Act S. 127⁹⁸

S. 127 will allow the temporary and restricted operation of large, United States – owned, United States flag, United States citizen crewed foreign built cruise vessels in the domestic cruise market. It requires the repair, modernization, upkeep and construction of large modern cruise vessel in United States shipyards.

S.127 will allow American companies to temporarily operate foreign built cruise vessels as U.S. flagged ships, if:

⁹⁶ P.L.R. 9348001

⁹⁷ Letter from Marie Morris of American Law Division to Strom Thurmond on the subject of Taxation of coastwise trade if carried on by foreign corporations. May 19, 1997, Library of Congress.

⁹⁸ Introduced on May 3, 2001 to the Senate Committee on Commerce, Science and Transportation by Committee Chairman Senator John McCain. The bill is Co-sponsored by Senator Barbara Boxer, John Breaux, Conrad Burns, Max Cleland, Dianne Feinstein, Ernest Hollings, Kay Bailey Hutchinson, Daniel Inouye, Barbara Mikulski, Zell Miller, Frank Murkowski, Paul Sarbanes, Gordon Smith and Strom Thurmond.

- The company enters into a contract to build replacement cruise vessels in an American shipyard.
- The company first demonstrates to the satisfaction of the Secretary of Transportation that it has the financial ability and resources and other requirements necessary to fulfill its contract to construct replacement cruise vessels in the United States.
- The foreign built cruise vessel is repaired and maintained in an American ship repair facility.
- The foreign built cruise vessel is crewed by United States citizens when operating under the United States-flag and between American ports
- The foreign built cruise vessel operating under the United States flag operates in full compliance with all applicable U.S. laws, regulations, and tax obligations

This bill is essentially a temporary waiver of the shipbuilding requirement. One company was granted this waiver so that it could operate a cruise between U.S. ports using “borrowed” foreign vessels with the promise of replacing these foreign vessels in five years with U.S. vessels. This company was American Classic Voyages, the borrowed foreign ship was the “Patriot,” however, since September 11, American Classic Voyages (and other cruise companies) have been struggling. In October of 2001, American Classic Voyages declared chapter 11 bankruptcy. There are now no more large, U.S. flagged cruise companies operating at the present. This waiver might have been enough to help American Classics to launch a successful cruise operating between the Hawaiian Islands, however, with the difficulties in attracting customers due to recent events, we will never know if the waiver would have been enough.

B.4 Special Bill to which provided Department of Defense Funding specifically for American Classics to Operate in Hawaii

Section 8109 of Public Law 105-56 approved October 8, 1997 (111 STAT. 1203, 1244), the DOD Appropriations Act for FY 98 provides:

SEC 8109. From funds made available by this Act for the Maritime Technology Program up to \$250,000 shall be made available to assist with a pilot project that will facilitate the transfer of commercial cruise ship shipbuilding technology and expertise to United States yards, utilize the experience and expertise of existing U.S. –flag cruise ship operators, and enable the operation of a U.S. flag foreign built cruise ship, and two newly constructed U.S. flag cruise ships: *Provided*, That a person (including a related person with respect to that person) who, within 18 months after the date of enactment, enter into a binding contract for construction of two cruise ships, which contract shall provide for the construction of two cruise ships of equal or greater size than the cruise ship being operated by such person on the date of enactment and shall require the delivery of the first cruise ship no later than January 1, 2005, and the second cruise ship no later than January 1, 2008, may document with a coastwise endorsement a cruise ship constructed pursuant to this section and a foreign –built cruise

ship otherwise in compliance with 46 U.S.C. 289, 883, and 12106 until such date which is 24 months after the delivery of the second cruise ship or any subsequently delivered cruise ship: *Provided further*, that a person (including a related person with respect to that person) within the meaning of 46 U.S.C 801 may not operate a U.S. flag foreign built cruise ship, or any other cruise ship, in coastwise trade between or among the islands of Hawaii, upon execution of the contract referred to in this section and continuing throughout the life expectancy (as that term is used in 46 U.S.C. App 1125) of a newly constructed U.S. flag cruise ship referred to in this section, unless the cruise ship is operated by a person (including a related person with respect to that person) that is operating a cruise ship in coastwise trade between or among the islands of Hawaii on the date of enactment, except if any cruise ship constructed pursuant to this section operates in regular service other than between or among the islands of Hawaii: *Provided further* that for purposes of this section the term “cruise ship” means a vessel that is at least 10,000 gross tons (as measured under chapter 143 of title 46, United States Code) and has berth or stateroom accommodations for at least 275 passengers: *Provided further*, that for purposes of this section, unless otherwise defined in this section, the term “person” means a corporation, partnership or association the controlling interest of which is owned by citizens of the United States within the meaning of 46 U.S.C. 802 (b). . .⁹⁹

American Classic Voyages would have also received this Department of Defense funding for the building of their U.S. ships after borrowing their foreign ships until 2005. Even this amount of money, \$250,000 and the use of foreign ships was not enough to save American Classic Voyages after the loss in sales due to September 11.

⁹⁹ “Passenger /Cruise Vessels: Hawaiian Cruise Trade” p 365

III. C. Economic Analysis:

Overview

The economic analysis examines: the loss of a source of revenues to U.S. ports; the market and structural barriers faced by those who would be U.S. flagged cruise ships, and how that affects U.S. ports; establishes the economic need for cabotage reform, and evidence of the economic impact of reform.

Every economic analysis of the problem with the U.S. flagged cruise industry comes down to three major issues: 1) the relative capital cost disadvantage of building a cruise ship in the United States; 2) the relative crew cost disadvantage of United States crews; 3) the large disparity in corporate income taxes and personal income taxes of the crew.

C.1 An Example of Revenues Redirected due to Cabotage:

Americans make up most of the clientele for Pacific Northwest and Alaska cruises, however, foreign ships and foreign ports gain most of the benefit.

According to David Stowe, Chairman for the Vancouver (British Columbia) Port Authority, "The cruise sector has grown to become a vital part of the B.C. economy, contributing annually \$508 million. Each ship that passes through our waters leaves \$1.5 million in economic benefits."¹⁰⁰ Again, this \$508 million is a very generous gift on the part of the United States to Canada via our own cabotage laws. If cabotage were repealed, there would no longer be a need for shipping companies to make the trip to "distant" foreign ports such as Vancouver, and at least some of these revenues could go towards port towns in the United States, such as nearby Seattle. The Seattle Port Authority projects that in the year 2002, Seattle will see 250,000 cruise vessel passengers, this number could be much higher with reform of Cabotage.

Port of Seattle Cruise Passengers¹⁰¹:

Cruise Passengers: 1993 - 2001	
Year	Total Passengers
1993	10,820
1994	13,887
1995	9,518
1996	10,398
1997	7,152
1998	8,783
1999	6,615
2000	119,002
2001	170,495

¹⁰⁰ http://www.portvancouver.com/media/news_2001_04_26.html

¹⁰¹ Source: Port of Seattle Records: <http://www.portseattle.org/factstat/stats/harbor/01passengers.htm>

2002 Estimate ¹⁰²	
Estimated passengers	250,000

This growth in cruise passenger traffic to Seattle is good, but it is still not caught up to Vancouver B.C., which had about 408,703 cruise passengers visit in 1997.

Port	Cruise Passenger Visits, Embarkations ¹⁰³			Share of All N.A. Ports		
	1997	1993	1990	1997	1993	1990
Vancouver	408,703	259,613	194,674	7.40%	6.30%	6.10%

C.2 The Comparative Costs of Ship Operating

The following table displays the relative proportion of cruise vessel costs for foreign flagged and U.S. flagged cruise ships. As can be seen in the chart, the relative proportion of ship wages cost are much higher for a U.S. flagged vessel, than the foreign flagged vessel. This is assuming that the base cost for Food, Hospitality, Port Cost, Fuel, Entertainment, Maintenance/Repair, Dry Dock are the same.

The overall cost penalty to the U.S. flagged ship paying U.S. crew wages was estimated to be 33%, that is approximately 10% higher than its foreign competitor.

Relative Proportion of Vessel Operation Costs, Foreign flag versus U.S. flag¹⁰⁴

Major Operating Expense	Foreign Flagged Cruise ship	U.S. Flagged Cruise ship
Food	16%	14%
Hospitality (Hotel)	5%	4%
Port Cost	10%	9%
Fuel	12%	10%
Entertainment	7%	6%
Wages	23%	33%
Maintenance/Repair	8%	7%
Dry dock	1%	1%
Depreciation	18%	16%
Total	100%	100%

¹⁰² Source: Port of Seattle Records: <http://www.portseattle.org/factstat/stats/harbor/01passengers.htm>

¹⁰³ Table from Cruise Lines International Association Brochure, Destination Analysis 1997, 1994, and 1990

¹⁰⁴ Percentages are an approximation; U.S. minimum wage compared to mean foreign wages on ships.

C.3 Ship Crewing Costs

The major area of crew cost savings for the foreign operator comes from his ability to employ 3rd world labor for the required hotel and steward services. In a comparison of crew costs, the following estimates are given for crew wage rates for Foreign Flagged Cruise ships and U.S. flagged Cruise Ships for officers and the other positions on the ship. Assuming a total crew of 647: with 34 officers, and 613 other workers (including hotel staff, bar staff, etc). (See Charts below).

- The difference in wage rates per officer is about + \$50,000 a year for a U.S. officer versus a foreign officer. For 34 officers, this difference makes for a total cost differential per year of +\$1,700,000 for a U.S. cruise ship's U.S. officers.
- The difference in wage rates per non-officer crew is a daily difference of +\$95.00, or +\$34,675 a year for each U.S. non-officer crew member on a U.S. flagged cruise ship. For a crew of 613, this difference makes for a total differential per year of + \$22,544,625 for the U.S. flagged ship operator with a U.S. crew.
- The Sum of the differences makes for an extra crew cost of \$22,544,625 + \$1,700,000 = +\$24,244,625 yearly for a U.S. flagged operator to have a U.S. crew.

Comparison of Crew Wage Rates¹⁰⁵

Total Crew of (647)	Foreign Flagged Cruise Ship Wages	U.S. Flagged Cruise Ship Wages
Officers (34)	(\$192.00/day)	(\$329.00/day)
Other Crew (613)	(\$30.00/day)	(\$125.00/day)

Comparison of Yearly Crew Costs

	Foreign Flagged Cruise Ship Wages per year	U.S. Flagged Cruise Ship Wages Per Year
Officers (34)	\$2,380,000	\$4,080,000
Other Crew (613)	\$6,712,350	\$27,968,125
Total Crew (647)	\$9,503,500	\$32,048,125

¹⁰⁵ Wage differential estimates provided by Richard Berkowitz

C.4 An Economic Analysis of the Differential in Capital Costs Between the U.S. Build and Flagged Cruise Ship and a Foreign Flagged and Build Cruise Ship

**Comparison of U.S. Built vs. Foreign Built¹⁰⁶
 Cruise Ship of ACV Hawaii Class
 (Assumes 25% Differential)**

Cruise Company	Original Cost	Annual 25yr Depreciation	Monthly Debt Service @ 7%	Year One Interest	Year Ten Interest
U.S. flag ship	\$450,000,000	\$18,000,000	\$2,783,697	\$27,366,075	\$21,347,693
Foreign flag ship	\$335,000,000	\$13,400,000	\$2,072,300	\$20,372,525	\$15,892,272

Annual Effect on Income Statement	Domestic Ship		Foreign Ship	
	Year One	Year Ten	Year One	Year Ten
Depreciation Straight Line/Year	\$18,000,000	\$18,000,000	\$13,400,000	\$13,400,000
Interest/Year	\$27,366,075	\$21,347,693	\$20,372,525	\$15,892,272
Total Interest and Depreciation/Year	\$45,366,075	\$39,347,693	\$33,772,525	\$29,292,272

The U.S. build ship has an annual capital cost of almost a million dollars a month higher than the Foreign build ship in the first year of operation, declining only slightly each year there after.

Note: In year one and assuming a one-week voyage the additional capital cost burden to the owner of the U.S. built ship is approximately \$222,000/voyage. This is an extremely conservative estimate. The original capital cost often varies by 100% and not the 25% estimated above. In fact, the Hawaiian ships were never actually built, so it has never been proven that the differential is this small. However, had these ships been built \$222,000 (difference in cost of U.S. v.s. foreign) divided by the number of passengers, say: 2000 passengers; the cost would be ($\$222,000/2000 =$) \$111 per person per voyage

U.S. ships must charge \$111 a week for each of 2000 passengers over what a foreign ship with the same number of passengers would charge per week, to cover the extra cost of capital. This is only the additional capital cost. The incremental crew cost for U.S. flagged crew would add at least another \$200 per week per passenger. ***At \$311 extra per passenger for a family of four this would be \$1200 extra per voyage just for sailing***

¹⁰⁶ Thanks to David Bergsvik for assisting with the financial calculation of this information.

with a U.S. flagged cruise ship. A differential of this size is enough to make a U.S. flagged cruise ship uncompetitive.

Cruise ship customers are average U.S. wage earners, therefore, they have very limited disposable income for expensive vacations, and if they have a choice, the customer will choose the less expensive cruise company. It is identified later in this report that the average income per cruise passenger is \$64,000/year.

C.5 Economic Impact Study findings on reforming the PVSA

During the same testimony on the Effect of the PVSA on the Domestic Cruise Industry, John Poimiroo, Deputy Secretary For Tourism, California Trade And Commerce Agency presented the following evidence:

The State of California completed a study on the economic impact of proposed changes to the Passenger Vessel Services Act of 1886. If S. 803 is passed, total passenger visits to California alone would increase by more than 30 percent. This would result in a 35 to 60 percent increase in revenues, jobs, payroll and taxes, including a doubling of longshore positions supported by the cruise industry.

The job growth potential is particularly striking. By the year 2003, cruise-related jobs and payroll in California alone would increase 140 percent. Compare this to overall employment in California, which is projected during that period to increase 9 percent.

Additionally, by 2003, tax revenues collected by local, State and Federal Governments from cruise ship calls at California ports would increase by over 170 percent to almost \$113 million. I've read projections from various sources that estimate the impact of the cruise industry in America today—even without the ability of foreign ships to call freely at ports—as being almost \$6.5 billion in tax revenue to the United States.

Our study shows that 477 additional port calls would be stimulated at California ports through a waiver to the Act, an increase of 166 percent, bringing almost 688,000 more travelers to our State, who would spend almost \$400 million visiting California, and that's per year.¹⁰⁷

III. D. Commercial Analysis

Overview

The commercial analysis provides further evidence that the cruise market in the U.S. is growing; that the U.S. flagged fleet is not growing with the market due to cabotage; and ports are losing traffic due to cabotage requirements on the movement of the foreign flagged ships.

¹⁰⁷ Testimony of John Poimiroo, http://commdocs.house.gov/committees/Trans/hpw105-65.000/hpw105-65_1.HTM

D.1. Are shipbuilding and crewing costs too high?

Yes, the shipbuilding and crewing costs associated with flagging a cruise ship as U.S. are too high for U.S. flagged ship operators to compete with foreign flagged operators. There is no incentive for a new entrant into the cruise market to flag their ship as “U.S.” What has been happening is for new entrants, who may have flagged U.S., to forego the extra costs, and start a cruise company under foreign flag.

To demonstrate the shrinking of U.S. flagged ships, the U.S. Department of State published the following findings for the year 2000. (See chart below titled “World and U.S. Merchant Fleets in Thousands of Deadweight Tons, April 1, 2000”). As can be seen, there are 1,205,000 deadweight tons of foreign flagged ships operating in the world, and only 7,000 deadweight tons of U.S. flagged cruise ships. The exact number of U.S. flagged ships operating in the U.S. market is 14, and there are 122 foreign flagged ships also operating in the U.S. market.¹⁰⁸

**World and U.S. Merchant Fleets in Thousands of Deadweight Tons,
April 1, 2000¹⁰⁹**

	U.S. Flag	All Flags
Container Ships	2,990	63,967
Dry Bulk	579	276,196
Tanker	8,515	324,503
Roll-on/Roll-off	554	14,542
Cruise/Passenger	7	1,205
Other	696	82,875
Total	13,341	763,288

D.2 Is the Cruise Market Growing?

The short answer is yes, the cruise market is growing, currently there is a short-term challenge caused by the tragedy of September 11. The Cruise Industry News Annual for 2000 predicted the Market capacity would expand by 1.3 million from 2000 to 2001, and the number of ships build to meet that capacity by 15, an 11.7% increase from the previous year. This would have happened, had not September 11th seriously damaged the cruise industry, short-term costs and damages were high to the industry, those that do not go bankrupt due to high financial leverage will survive through consolidation.

The following table shows the projected growth in the North American cruise fleet. Suffice to say that the projected growth does not include new U.S. ships.

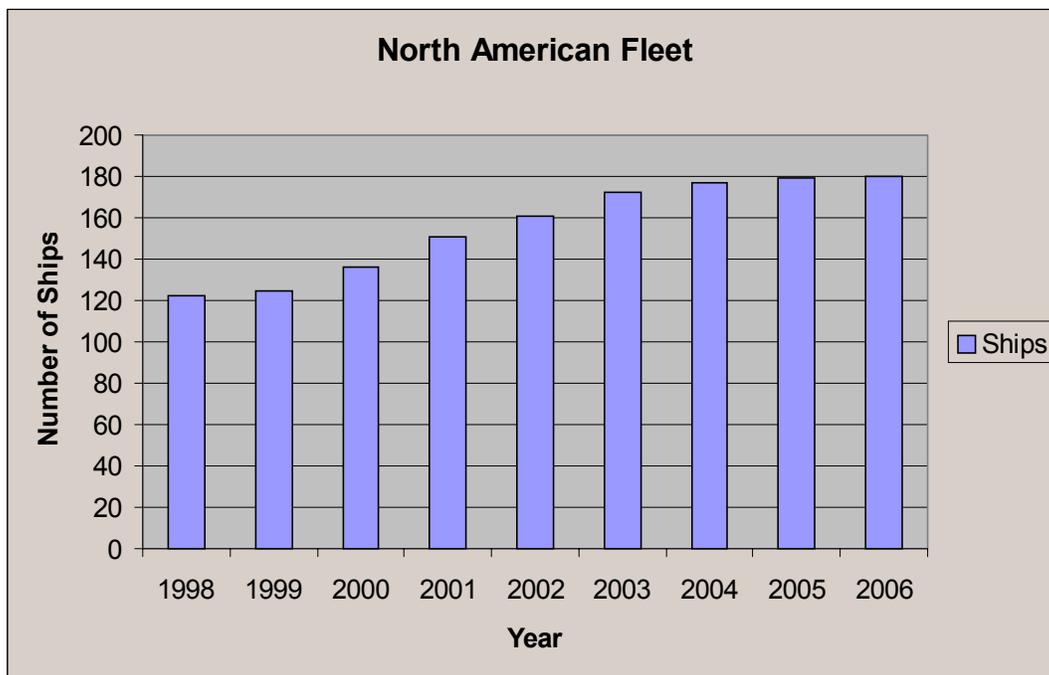
¹⁰⁸ As shown in another chart “Break Down of World Cruise Industry by Region in 2000” (under section: Where are the ships located?).

¹⁰⁹ ROLE OF THE MARITIME INDUSTRY IN THE UNITED STATES, U.S. Department of State
<http://usinfo.state.gov/journals/ites/1000/ijee/trans-maritime.htm>

North American Cruise Fleet¹¹⁰

North American
 Fleet of Cruise Ships (Cruise Industry News Annual 2000)

	1998	1999	2000	2001	2002	2003	2004	2005	2006
Ships	122	125	136	151	161	172	177	179	180
Berths	123,096	133,150	149,146	173,068	192,138	213,684	224,958	228,758	230,758
Market Capacity	6,537,285	7,146,995	8,024,255	9,131,915	10,049,475	11,100,835	11,644,535	11,814,535	11,894,535
Percent change from previous year	11.80%	9.30%	12.30%	13.80%	10.00%	10.50%	4.90%	1.50%	0.70%



D.3 What is the Largest Market for Cruise Ships?

The Cruise Industry New Annual for 2000 broke down the largest cruise passenger capacity for cruise ships by region, which placed North America as the largest at 70% over other large regions, such as Europe and the Far East.

¹¹⁰ Cruise Industry News Annual 2000 Thirteenth Edition

Passenger Capacity by Region¹¹¹
 NORTH AMERICA: 70%
 FAR EAST: 16%
 EUROPE: 14%

A more detailed break down on the regions within North America where passengers come from is provided below. As can be seen, the overwhelming majority of the passengers from North America are from the United States, and not Canada. Most Passengers come from either the Atlantic or Pacific Coast.

Regions	Passengers ¹¹²			Share of Total World		
	1997	1993	1990	1997	1993	1990
New England	274,373	229,307	181,900	5.10%	4.80%	4.80%
Middle Atlantic	729,287	661,916	510,238	13.60%	13.90%	13.50%
South Atlantic	1,347,782	1,090,748	760,561	25.00%	23.00%	20.10%
East North Central	546,124	556,215	441,738	10.20%	11.70%	11.70%
East South Central	142,493	127,407	90,013	2.60%	2.70%	2.40%
West North Central	212,077	194,961	141,872	3.90%	4.10%	3.80%
West South Central	291,546	243,259	170,595	5.40%	5.10%	4.50%
Mountain	206,621	187,165	121,785	3.80%	3.90%	3.20%
Pacific	791,989	847,654	729,567	14.70%	17.80%	19.30%
Not Identified	0	0	178,953	0	0	4.70%
United States	4,542,292	4,138,632	3,327,222	84.40%	87.20%	88.10%
Puerto Rico	81,222	11,968	12,858	1.50%	0.20%	0.30%
Canada	240,331	194,636	161,398	4.50%	4.10%	4.30%
North America	4,863,845	4,345,236	3,501,478	90.40%	91.50%	92.70%
Rest of the World	516,609	402,721	274,434	9.60%	8.50%	7.30%
Total World	5,380,454	4,747,957	3,775,912	100%	100%	100%

D.4 Where are the Cruise Ships Located?

Not surprisingly, the largest amount of ships are located in North America, 136 ships versus 82 ships in Europe and 22 ships in Asia and the South Pacific. Again, 14 ships in the world are U.S. flagged cruise ships¹¹³, so at least 122 of these ships are foreign flagged.¹¹⁴

¹¹¹ Cruise Industry News Annual 2000 Thirteenth Edition

¹¹² Cruise Lines International Association Analysis.

¹¹³ World and U.S. Merchant Fleets in Thousands of Deadweight Tons, April 1, 2000

¹¹⁴ 90% of ships operating in the U.S. market are foreign flagged, so 122 ships of 136 are foreign flagged and 14 are U.S. flagged.

Break Down of World Cruise Industry by Region in 2000¹¹⁵

World Cruise 2000	North America	Europe	Asia/South Pacific
240 ships	136 ships	82 ships	22 ships
9,200,000 Passengers	6.5 million Passengers	1.2 million Passengers	1.5 million Passengers
80% Occupancy	81% Occupancy	74% Occupancy	82% Occupancy
\$13 billion in sales	\$9.8 billion In sales	\$1.8 billion In sales	\$1.5 billion In sales

D.5 Who Are the Largest Players?

The Cruise Industry Annual indicated that there were four companies in 2000, which were dominating the world market, namely Carnival Cruises at 28.6%. In response to September 11th challenges and to better compete with Carnival Cruises, Princess Cruise Lines (P&O) was to merge with Royal Caribbean which would give the companies a joint market share of 27.6%. This merge has been met with strong objections from Carnival Cruises, and it remains to be seen if it will actually take place.

The Four largest operators in the cruise market have all foreign flagged ships. Their crews live overseas. Their corporations pay virtually no U.S. taxes. Their ships are all built abroad. (See breakdown in box below)

<p>FOUR COMPANIES COMMAND 75% OF THE WORLD MARKET:¹¹⁶</p> <p>CARNIVAL CRUISES (Israeli): 28.6%</p> <p>ROYAL CARIBBEAN cruises (British): 18.9%</p> <p>STAR CRUISES (Asian): 18.7%</p> <p>P&O (European): 8.7%</p> <p>*Note: P&O is to merge with ROYAL CARIBBEAN*</p>

¹¹⁵ Cruise Industry News Annual 2000 Thirteenth Edition

¹¹⁶ Cruise Industry News Annual 2000 Thirteenth Edition

D.6 The Duration of Cruises

As would be expected, cruise durations tend to be short to reflect the U.S. consumer’s vacation patterns. This need also puts a time constraint on foreign flagged companies which must pick up their U.S. passengers, and meet the cabotage foreign port “touch” requirement in less than a week. Since 87% of cruises last only 8 or less days, this indicates that the average cruiser is participating in the job force. (See break down below of Category Shares on durations of cruises).

Category Shares ¹¹⁷			
Duration of Cruise	1980	1998	Percent Change
2 to 5 days	24.3%	32.4%	8.1%
6 to 8 days	59.1%	54.7%	-4.4%
9 to 17 days	15.4%	12.5%	-2.9%
18+ days	1.2%	0.4%	-0.8%
Total	100%	100%	

D.7 Summary of Commercial Analysis:

The realities of competitiveness in the shipping market are best summarized by the U.S. Department of State:

In the commercial market, intense competition in the international shipping market has put companies in all countries under enormous pressure to reduce costs. Many countries, including key U.S. trading partners, restrict outside competition to their national shipping companies in their home markets. Other countries give their shipping industries substantial advantages in operating costs by allowing the employment of foreign mariners from low-wage countries and through tax advantages that U.S. ship owners do not enjoy. Such conditions have adversely affected the U.S. industry. In 1970, for example, only four countries had more merchant shipping than the privately owned U.S.-flag fleet. By 2000, the United States slipped to 11th rank by tonnage and 26th by number of ships. Seagoing jobs have decreased by nearly 24 percent since 1990, to 10,458 billets. While the labor supply exceeds available jobs in normal times, the reduced pool of trained seafarers could create difficulties when trying to find crews for a large number of ships in an emergency.¹¹⁸

There are currently 88 ready reserve fleet ships in lay up (see Table 1 under National Security, Section III Political Analysis). These ships require 4,000 seafarers to operate them in an emergency.

¹¹⁷ Cruise Lines International Association study

¹¹⁸ **ROLE OF THE MARITIME INDUSTRY IN THE UNITED STATES**, U.S. Department of State <http://usinfo.state.gov/journals/ites/1000/ijee/trans-maritime.htm>

E. Political Analysis

Overview

The political section provides an analysis of the main stakeholders and their interests. The tables provide overviews of all interest parties. The “Table of stakeholders” is broken down into two general groups: Pro-Cabotage and Reformers/Repealers of Cabotage. The members of the Pro-cabotage group is discussed, and the legislators with shipbuilding interests are identified and assessed. Legislators who have supported cabotage reform bills previously have also been identified.

Table of Stakeholders

Pro Cabotage	Reformers/Repealers of Cabotage
Government Agencies	
<ul style="list-style-type: none"> • Department of Defense • Department of Transportation 	<ul style="list-style-type: none"> • Department of Commerce • Senate Committee on Commerce and Transportation • United States Trade Representative (USTR)
Coalitions/Organizations	
<ul style="list-style-type: none"> • Cruising America Coalition • Jones Act Reform Coalition • International Maritime Organization • Maritime Cabotage Task Force • Transportation Institute 	<ul style="list-style-type: none"> • American Society of travel agents • American Association of Port Authorities • International Council of Cruise Lines • Alaska Division of Tourism
Unions	
<ul style="list-style-type: none"> • Maritime Trades Department of the AFL CIO • Atlantic Marine S.Y. • Shipbuilders • American Maritime Officer’s Union • Seafarers International Union 	
Business	
<ul style="list-style-type: none"> • Cruise West • American Classic Voyages • Various U.S. domestic Liner companies 	<ul style="list-style-type: none"> • Walt Disney Cruise • Carnival • Princess • Royal Caribbean • Norwegian

International Stakeholders	
	<ul style="list-style-type: none"> • World Trade Organization • OECD • UNCTAD • USTR

E.1 Who are the Proponents of Cabotage?

Supporters of cabotage are primarily made up of: labor unions, U.S. shipyards (which build the ships), and the U.S. companies that own the ships. The Department of Defense and the Maritime Administration also offer support. This is a powerful coalition of interest groups with many supporters in Congress, including a few which hold key positions on committees which would receive any new proposals on reforming cabotage.

E.1.1 Legislators Who represent Shipbuilding States

Below is a list of Legislators from Shipbuilding states:

Senator Trent Lott (R. Miss.)	Represents Ingalls Shipbuilding * Former Senate Majority leader, now minority leader
Senator John Breaux (D. LA)	Represents Avondale Shipbuilding
Senator Olympia Snowe (R. ME)	Represents Bath Shipbuilding *on Senate Committee for Commerce, Science, and Transportation
Senator Patty Murray (D. WA)	Represents Todd's Shipyard *Also chairs Senate Transportation Committee
Congressman Don Young (R. AK)	Represents Kechikan Shipyard *Chairs House Trans Committee
Congressman Duncan Hunter (R. CA)	Represents Nassco Shipbuilding
Senator Rick Santorum (D. PA)	Represents Kvaerner Shipbuilding
Senator John Warner (R. VA)	Represents Newport News Shipbuilding

One senator to keep in mind who may make a proposed bill be voted down in committee is Senator Patty Murray of Washington State. Senator Patty Murray is Pro-Jones Act, represents Todd's Shipyard, and chairs one of the Committees in which a bill proposing cabotage reform would be heard, the Senate Transportation Committee.

Another Senator who may make reform difficult is Senator Trent Lott. Senator Trent Lott is Pro Jones act, represents a shipbuilding state, and also happens to be the Senate

Minority Leader, and could but pressure on the democratic majority to vote down a reform bill, which had made it out of committee.

E.2 Legislators Who Might Support Cabotage Reform:

In the following Table, the legislators who co-sponsored a cabotage reform bill, S.127, are listed. Those legislators who are also members of the Senate committee on Commerce, Science, and Transportation are highlighted in light grey. Those legislators who are important, but their stance on reform legislation may remain in question are shaded (dotted appearance).

Legislators Who Co-Sponsored S.127

Jessie Helms (R- N.C)	Has Co-sponsored Several Cabotage Reform Bills Very pro-reform Retiring, but still powerful Agricultural interests, wants cheaper shipping
John McCain (R-AZ)	Ranking Republican of the Senate Committee on Commerce, Science, and Transportation JARC member Sponsor to several cabotage reform bills, including S.127
Frank Murkowski (Alaska, R.)	member of the Finance Committee's International Trade Subcommittee
Congressman Don Young (Alaska, R.)	12th highest ranking member of the entire House; 6th highest ranking Republican member Committee on Transportation and Infrastructure (Chairman) Ex Officio Member on all subcommittees Committee on Resources (Vice-Chairman)
Strom Thurmond (R- South Carolina)	Pro- Jones Act Reform Has Sponsored and Co-sponsored several cabotage reform bills Member of the Armed Services Committee; Judiciary Committee Oldest member of the Senate, and longest serving
Barbara Boxer (D- CA)	*member of the Senate Commerce, Science, Transportation committee Has co-sponsored S.127 to help the U.S. flag be more competitive California would stand to benefit greatly from reform
Conrad Burns (R-MT)	Co-sponsored S.127 Committee on Appropriations *Committee on Commerce and Transportation Committee on Energy and Natural Resources Montana agricultural interests.
Dianne Feinstein (D-CA)	Member of the Judiciary Committee, Appropriations Committee, Energy and Natural Resources Committee Co-sponsored S.127 California economic interests

Kay Bailey Hutchinson (R-Tx)	Co-sponsored S.127 Has also co-sponsored bills to approve more MARAD funding for shipbuilding Some Agricultural interest Could support reform bills if keep U.S. shipping in mind
John F. Kerry (D-Massachusetts)	*member of the Senate Commerce, Science, Transportation committee Although Pro Jones Act, has co-sponsored S.127 to help the U.S. flag be more competitive
Zell Miller (D-GA)	Co-sponsored S.127 Strong Agricultural interests
Harry Reid (D-NV)	Co-sponsored S.127 Transportation interests: aviation, ground Labor interests **Would Support further reform?
Charles Schumer (D-NY)	Co-sponsored S.127 Energy and Natural Resources Committee; Judiciary; Banking, Housing and Urban Affairs New York Economy Top priority Seeking Tax holidays to boost consumer spending
John Breaux (D. LA)	*member of the Senate Commerce, Science, Transportation committee Although Pro Jones Act, has co-sponsored S.127 to help the U.S. flag be more competitive ** <i>Any bill proposing reform should take into account shipbuilding to have Sen. Breaux's support</i>
Max Cleland (D-Georgia)	*Member of the Senate Committee on Commerce, Science and Transportation Co-sponsored S.127
Ernest Hollings (D-South Carolina)	*Chairman for Senate Committee on Commerce, Science and Transportation *Pro-Labor *Anti-Free trade *Co-sponsored S.127 **Will sponsor more reform??
Daniel Inouye (D- Hawaii)	*Also a member of the Senate Committee on Commerce, Science, and Transportation. *Pro-Jones Act, however, open minded if U.S. ship interests are protected Hawaii could benefit greatly from PVSA and cabotage reform. Inouye has helped co-sponsor other cabotage reform bills.
Barbara Mikulski (D- MD)	Appropriations Committee; Health, Education, and Labor Pensions Committee Subcommittee on transportation; subcommittee on Commerce; subcommittee on Foreign Operations Co-sponsored S.127
Paul Sarbanes (D-MD)	Co-Sponsored S. 127 Agriculture interests, economic interests Member Senate Committee on Banking, Housing, and Urban

	Affairs; Joint Economic Committee; Foreign Realtions; Committee on the Budget
Gordon Smith (R- Oregon)	*Member of the Senate Committee on Commerce, Science, and Transportation *Co-sponsored S.127

Representative Don Young, although a representative of a shipbuilding state, also represents a state which is major cruise destination and would stand to gain economically from cabotage reform. He is for reform, and has introduced bills previously to attempt cabotage reform. He is not a crusador for the cause cabotage reform, but rather a U.S. maritime protector who will accept modest reform. As Chairman on the Senate Committee on Transportation and Infrastructure, Don Young is a good ally to have and is open-minded.

Other politicians who are pro-cabotage reform are: Sen. Jessie Helms, who has agricultural interests which would benefit from reform; Senator John McCain of Arizona, who now leads the JARC, and is a free trader; Sen. Frank Murkowski of Alaska; and Sen. Strom Thurmond.

The members of the Senate Committee on Commerce, Science, and Transportation who co-sponsored S.127 and may support another reform bill, and pass such a bill from committee to be heard in the Senate are: Sen. Gordon Smith, Sen. Daniel Inouye, Sen. Ernest Hollings (Chairman), Sen. Max Cleland, Sen. John Breaux, Sen. John Kerry, Sen. Barbara Boxer, Sen. Conrad Burns, and Sen. John McCain.

The following legislators have all co-sponsored previous bills proposing Cabotage reform such as S.127¹¹⁹ and might be counted on to support more reform in the Senate: Sen. Strom Thurmond, Sen. Barbara Boxer, Sen. Conrad Burns, Sen. Dianne Feinstein, Sen. Kay Bailey, Sen. John F. Kerry, Sen. Zell Miller, Sen. Harry Reid, Sen. Charles Schumer, Sen. John Breaux, Sen. Max Cleland, Sen. Ernest Hollings, Sen. Daniel Inouye, Sen. Barbara Mikulski, Sen. Paul Sarbanes, and Sen. Gordon Smith.

E.3 The Committees Who Would Hear Bills on Cabotage or Cabotage Reform

E.3.1 The Senate Committee on Commerce, Science and Transportation¹²⁰

Senator (Ernest) Fritz Hollings, (D-SC)	Chairman
Senator John McCain, (R-AZ)	Ranking Republican

The Chairman of the Senate Committee on Commerce, Science and Transportation is Senator Fritz Hollings. Senator Hollings is interested in: helping South Carolina's

¹¹⁹ See Appendix for S.127 summary

¹²⁰ <http://commerce.senate.gov/>

economy, and U.S. labor; he is very against the GATT and NAFTA. Although Senator Hollings transportation interests seem to be more geared toward the airlines industry and the FAA; he may desire to preserve cabotage for all sectors, including maritime services. Perhaps if there is enough support for cabotage reform for the cruise industry from U.S. labor interests and South Carolina Port interests, he could be convinced.¹²¹

Senator John McCain of Arizona is the leader of the Jones Act Reform Coalition, and has proposed bills to amend the PVSA and maritime cabotage laws such as the United States Cruise Vessel Act (S.127), which has been passed with out amendment by the committee and is scheduled for the Senate. He would be an excellent choice to propose more reform bills, and perhaps with more recommendations concerning U.S. shipbuilding and navigation, he will succeed.¹²²

E.3.2 The House Committee on Transportation and Infrastructure, Coast Guard and Maritime Transportation, and its members

Rep. Don Young (R-Alaska)	Chairman, Transportation & Infrastructure Committee *Proposed Merchant Marine Cost Parity Act *Pro-cabotage Reform
Rep. James Oberstar (D-MN)	Ranking Democrat, Transportation Committee
- Rep. Frank LoBiondo (R-NJ)	Chairman, Coast Guard & Maritime Transportation Subcommittee *Assistant Majority Whip
Rep. Corrine Brown (D-FL)	Ranking Democrat, Coast Guard Subcommittee

Other important members to have on board with the proposed reform and/or actively engaged in stopping the proposed bill are: on the subcommittee on Coast Guard and Maritime Transportation. These are another pool of potential supporters to help the reform bill get out of committee. The members of the subcommittee are listed below:

¹²¹ <http://www.senate.gov/~hollings/issues.html#infrastructure>

¹²² <http://www.senate.gov/~mccain/>

**Committee on Transportation and Infrastructure
(Subcommittee) Coast Guard and Maritime Transportation
Membership 107th Congress**

REPUBLICAN	DEMOCRAT
Chairman	
Frank A. LoBiondo, (NJ)	Corrine Brown, (FL)(Ranking)
Howard Coble, (NC)	James A. Barcia, (MI)
Wayne T. Gilchrest, (MD)	Gene Taylor, (MS)
Jim DeMint, (SC)	Peter A. DeFazio, (OR)
Rob Simmons, (CT)	James L. Oberstar, (MN)(ex officio)
Don Young, (AK)(ex officio)	

Members of the Subcommittee on Coast Guard and Maritime Transportation Committee, Representative James L. Oberstar introduced the Merchant Marine Cost Parity Act of 2001 (H.R. 3262) with Representative Don Young as co-sponsor. This Act gives a tax break to U.S. sailors while participating in international trades.¹²³ Again, certain members of these committees may be helpful in the passage of reform, as long as their constituent interests are addressed (in this case crewing and the U.S. flag).

¹²³ See summary of HR 3262 in the Appendix

IV. Recommendations

To create more cruise traffic between U.S. ports, the laws which make up cabotage will have to be changed. Emphasis should be given to the current state of affairs regarding the dwindling number of U.S. flagged ships, the rapid growth of the cruise industry, and the loss of revenue to foreign ports. Reforming the laws to:

- Allow access of foreign ships to all coastal ports
- To allow U.S. flagged vessels more choice in building and crewing

However, in order to be successful in enacting changes in this legislature, the needs of the U.S. maritime stakeholders must be addressed. Although some reform of these laws will take place, these reforms should attempt to make as many stakeholders benefit from this reform as possible. With this in mind the following must also be recommended:

- The Jones Act must have its requirements modified to allow:
 - a.) The freedom to build U.S. domestic cruise vessels anywhere.
 - b.) The Citizenship requirement for the crew should allow for: the option of filling all non-navigation and non-engineering positions and the preponderance of hotel, service, and entertainment positions to be filled by crew are U.S. citizens or non-U.S. citizens.¹²⁴
- The IRS tax-code should be amended to provide a personal income tax holiday to crew members when the cruise ship is engaged in international trade. A similar proposal is the Merchant Marine Cost Parity Act of 2001.¹²⁵ It is recommended that the coalition support this act, or propose more tax cuts if this act does not pass.
- Amend the IRS tax code to provide an investment tax credit for any cruise ship operator building a ship in an American shipyard to be applied to earnings in order to reduce the effective taxation rate. MARAD is the federal agency to be entrusted with identifying the differential in cost between U.S. and foreign build. The size of the Investment Tax Credit (ITC) would be adjusted by the IRS to reflect that differential at the time of contracting for the new ship.
- It is recommended that PVSA be reformed to allow foreign flagged ships to serve all coastal ports. (Note: foreign flagged vessels would be required to pay federal corporate tax rates while engaged in American domestic commerce.)
- Inland waterways, including rivers, and lakes which are currently protected by PVSA and served by U.S. flag cruise operators will be reserved for U.S. flag operators only (excluding the Great Lakes).
- National Parks such as Glacier Bay will continue to be reserved for U.S. flag operators only.

¹²⁴ This would allow for U.S. vessels to have a more competitive labor cost while maintaining the important national security billets.

¹²⁵ This would have the immediate effect of providing the crew with additional income arguable averaging between 10 and 30% for those periods, thus reducing upward wage pressure.

V. Comprehensive Strategy

A number of steps will have to be taken to implement the recommendations. Key to success is the ability of the AAPA to build the most inclusive coalition possible. A strong media campaign is necessary to educate the public on these matters and compel stakeholders to influence politicians. The coalition of stakeholders will be spearheaded by the AAPA as a core member and an umbrella for a much larger campaign to the American public called "Let's bring more tourism dollars to our Ports."

Once the stakeholders and a larger following under the campaign has been established, the members of the campaign will engage in a strategy which involves a media strategy, political strategy, and a legislative strategy. The strategy focuses mainly at the United States national level, although other strategies, which may take place at the international level, will be included.

Domestic Strategy

1) Political

It will be the goal of the AAPA to initiate a campaign involving several politicians, such as Senator John McCain of Arizona to provide leadership in the amending of these bills, or introducing of new legislation.

2) Legislative

These politicians along with the support of the coalition of stakeholders will propose legislation outlining the necessary changes to be made to Cabotage laws as they pertain to cruise vessels.

International Strategy

1) Political

Have other WTO member countries encourage the United States Trade Representative (USTR) to negotiate Maritime Services.

V.A. Domestic Strategy

The AAPA will make its greatest efforts at the domestic level. The key to getting legislation changed on cabotage as it applies to cruise ships is to: sufficiently quell fears from other Jones Act vessel owners and operators of non-passenger vessels; to convince labor unions that there are more jobs to be had with change than without; to build a large coalition of entrepreneurs, businesses and sectors which is as diverse as possible; and to convince enough legislators that their stakeholders really want change.

The strategy for the legislators will initially focus on winning the Senate vote and then the House. Historically the passing bills in the Senate has been a much more difficult battle than passing bills in the House. This case is no different. The Coalition will first focus on winning over legislators of the senate. At first the Coalition will have to focus specifically members of the Senate Committee on Commerce to help pass the proposal on to the Senate, and then the coalition will have to convince at least 51 members of the Senate to approve such a proposal.

V.A.1. The Coalition for Reform

The Coalition for Reform of U.S. cabotage as it applies to cruise ships will consist of: the main group under which the reform was proposed, the AAPA; and other groups which have supported cabotage reform in the past, such as the Jones Act Reform Coalition.¹²⁶ The following other groups are expected to also be brought on board, who will lend diversity and strength to the coalition:

- **Small Cruise Operators** (U.S. flag): will be brought on board by reform of Jones Act Requirements which have raised their costs and made it difficult to compete with foreign flagged ships. These operators will favor most aspects of reform, including: tax benefits, lower cost labor alternatives, foreign build options, U.S. shipyard tax benefits, and the continued reservation of inland waterways and national parks (such as Glacier Bay) for U.S. flagged operators only.
- **Foreign Flagged Operators** will be glad to have more freedom in itinerary choices with the recommended reform of the PVSA; and it goes without saying that they will be required to meet U.S. federal tax requirements while operating domestically; however will have access to U.S. build tax credits.
- **International Council of Cruise Lines, and the International Cruise Lines Association:** who have already stated their support for Jones act and PVSA reform.
- **Travel Agents and Tourism:** American Society of Travel Agents will support this reform as they will be able to offer more choices in itineraries for tourists.
- **Reformer Legislators** (As mentioned in Political Analysis): will appreciate the liberalization and economic benefit which reform will bring.
- **Entrepreneurs and Business:** will be interested in investing in cruise lines and or travel/tourism sectors, who would benefit from this liberalization.
- **Agricultural interests:** Farming coalitions, Elevator coalitions, will support proposed reform if believe it will lead to further reform of the Jones act with regard to U.S. flag cargo shipping reservations. There are a number of U.S. flag cargo reservations for international shipments related to Exim- Bank financed exports or PL. 480 international food shipments.
- **Oil interests:** who ship on tankers might also be in favor of reform if believe it will lead to further liberalization of cargo shipping and less costly new ship construction requirements.

International Organizations:

International Organizations such as the WTO and OECD will support this proposed liberalization of Maritime Services, especially because it does not involve the use of subsidies.

V.A.2 Strategy for the Opposition

Taking Interests into Consideration:

- **Marine Engineer's Benefit Association (MEBA)** will like the guarantee of skilled engineers for U.S. flagged cruise operators, and will also like our

¹²⁶ See list of JARC members in the Appendix

- coalition's support for tax breaks for the U.S. flag, such Merchant Marine Cost Parity Act of 2001 (H.R. 3262)
- **Master's, Mates, Pilots Union:** Will support the proposed U.S. citizen requirement for navigation for U.S. flagged operators.
 - **Department of Defense (DOD):** will appreciate the guarantee of able-bodied seamen in the proposed U.S. citizen sailor requirements for navigation officers for U.S. flagged operators.
 - **Metal Trades Unions:** Should support changes that create incentives for foreign and domestic companies to build U.S. ships in U.S. shipyards.

Quelling Opposition's Fears:

- **Shipyards (Nasco, Ingalls, Avondale, Bath, Kechikan, Kvaerner, Newport news):** Although shipbuilders would prefer to maintain the U.S. flagged requirement for cruise ship operators, the proposed tax credit for contracting with U.S. shipyard may bring more business than the current situation.
- **Legislators from Shipbuilding states:** If constituent interests are met as far as shipbuilding goes, these legislators may not actively attempt to stop a bill proposing reform.

Anticipating other Issues which may be raised:

- **Environmental concerns:** Maritime services liberalization does not necessarily mean a relaxation of Environmental standards, and the pro-reform coalition would be open to suggestions of new environmental standards.
- **Port Security:** The coalition strongly supports the proposed "**Port and Maritime Security Act of 2001**" (S.1214.ES¹²⁷; HR3013.IH¹²⁸) The Senate and House are currently involved in discussing the Port and Maritime Security Act of 2001, which would establish a Port Security Task Force to advise the Secretary of Transportation with respect to coordinating programs to enhance the security and safety of U.S. seaports against crime and terrorism and set aside funding to help ports increase their security measures. The coalition for reform firmly believes that it is important to improve security measures while not unduly or unnecessarily hampering trade in goods and services. The coalition supports the current coordinated efforts being undertaken by the Coast Guard, Federal Bureau of Investigations, Immigration and Naturalization Services, and many other agencies in monitoring port and ship safety. *(For more information on this subject, please see the Appendix for the supplementary Section VI., on Security.)*

V.A.3. The Financing the Campaign for Reform

(See Budget in Appendix)

Fundraising will require actively seeking contributions from the members of the AAPA, the members of the JARC, the ICCL, etc. The following system for contributions was designed to meet the needs of the budget for the proposed 30-month campaign: the goal

¹²⁷ Engrossed in the Senate

¹²⁸ Introduced into the House

is to raise enough monthly donations for a total of \$1,870,000 over 30 months; or about \$62,400 per month for 30 months.

See the breakdown of donors solicited and the levels of monthly contribution displayed in the table below:

LEVEL	DONATION/MONTH	# OF DONORS SOLICITED
The Admiral	\$1000/Month	10
The Captain	\$750/Month	20
The Commodore	\$500/Month	30
The Ensign	\$250/Month	50
The Bosun	\$50/Month	200

The campaign will have a board of advisory, which will be made up of the top contributors to the campaign, the “Admiral” level. All contributors of the Commodore level and above will receive a monthly update newsletter on the progress of the campaign. The contributors of the Ensign level and Bosun level will receive letter updates of major events in the progress of the campaign every six months. All contributors are invited to half yearly conferences and briefings to be sponsored by different local port authorities.

The proposed budget was purposefully made “fat” in the hopes of being able to have the most effective campaign. The staff will consist of: a Washington D.C. consultant who has the connections and ties to make an effective lobbyist on behalf of the reform effort; a campaign coordinator and assistant to the coordinator; interns; and a clerk.

If fundraising does not go well, the budget can be trimmed down. For example, the campaign headquarters could be located inside the AAPA building in Alexandria, Virginia; and not have its own office in Washington DC. A few of the trips scheduled could be cut, but the trips are considered an expensive, but necessary part of the campaign to spread the newest cabotage “reform” ideas nationwide to: Propeller clubs, AAPA meetings, commerce meetings, Coalition briefings and so on. Other areas of the budget could also be trimmed down, but it is our hope to raise in excess of the projected costs for the campaign.

V.A.4. Legislative Strategy

The plan for the coalition is to introduce a bill proposal for cabotage reform in the Senate Committee for Commerce, Science and Transportation by Senator John McCain of Arizona. This is in coordination with the plan to focus initial efforts on the Senate, and then the House.

The legislative strategy consists of a general action plan to propose a reform bill, an example of what such a bill would look like, and the process the proposed bill would go through in the U.S. legislature.

Procedural

V.A.4.1. Propose Bills

A member of the House or Senate must introduce the recommended proposed bills for reform of the Passenger Vessel Services Act and reform of the Jones Act to the Congress. In all likelihood, the proposed bill for cabotage reform would be proposed by Senator John McCain, due to his unique position on the Senate Committee for Commerce, Science and Transportation, and his continual active role in proposing cabotage reform.

V.A.4.1.a Draft Text:¹²⁹

The following is proposed language for the bill to reform Cabotage restrictions as they apply to Cruise Vessels:

A Bill¹³⁰

To revise the laws of the United States appertaining to cruise vessels operating in domestic and international trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Findings

Congress finds the following:

(1) It is in the interest of the United States

(A) to maximize economic return from the growing trade in cruise ships sailings to and from U.S. ports by encouraging the use of United States labor, supplies, berthing and repair facilities, and other services, and

(B) to encourage the growth of new enterprises including the transportation of passengers on luxury cruise ships between ports in the United States.

(2) In addition to promoting economic benefits to the United States from the cruise ship industry, there is a need to ensure that our reserve of ready reserve captains and engineers continues to be in supply.

(3) The City of Vancouver, British Columbia receives substantial economic benefit by providing services to cruise ships in Alaskan trade. Vancouver has benefited from the cruise ship industry through direct and indirect employment of people, and receives \$560 million per year from the cruise industry directly.

¹²⁹ Language borrowed from S.668 105th Congress. Introduced by Senator Frank Murkowski on April 30, 1997 to the Committee on Commerce, Science and Transportation; S.127 as introduced by Senator John McCain in the Senate January 22, 2001.

¹³⁰ Ibid

(4) The transfer of cruise ship-based economic activity from Vancouver, British Columbia to United States ports could yield additional Federal revenues of nearly \$100,000,000 a year and additional State and local government revenues of approximately \$30,000,000.¹³¹

Sec.2. Cruise Vessels

(a) Definitions.- For the purposes of this section:

(1) Cruise Vessel.- The term "cruise vessel" means a vessel greater than 5,000 deadweight tons which provides a full range of luxury accommodations, entertainment, dining, and other services for its passengers.

(A) has a fixed smoke detection and sprinkler system installed throughout the accommodation and service spaces, or will have such a system installed within the time period required by the 1992 Amendments to the Safety of Life at Sea Convention of 1974; and

(B) Meets the eligibility requirements for a certificate of inspection under section 1137 (a) of the Coast Guard Authorization Act of 1996 (46 U.S.C. App. 1187 nt.), and complies with applicable international agreements and associated guidelines referred to in section 1137 (a)(2) of that Act (46 U.S.C 1187 nt.).

(2) U.S. flag cruise vessel.- The term "U.S. flag" cruise vessel applies to a vessel which –

(A) Is owned by a person that is a citizen of the United States for the purpose of operating a vessel in the coastwise trade.

(B) Has a navigation and engineering crew of U.S. citizens.

(3) Itinerary. The term "itinerary" means the route traveled by a cruise vessel on a single voyage that begins at the first port at which the vessel calls before the last port at which passengers disembark, and ends at that last port of disembarkation.

(b) Waiver.- passengers may be transported in a foreign flagged cruise vessel between coastal ports in the United States, but not inland waterways, rivers, lakes, sounds, or bays. (Waives PVSA foreign port touch requirement).

(c) Tax break- there are two such Tax breaks offered:

(2) Tax break with regards to U.S. crews engaged in international trades and service are not required to pay income taxes for the pay they receive while engaged in international trade.

(3) Tax credit with regards to cruise ships build in U.S. shipyards. All cruise ships build in U.S. shipyards will be provided with a tax credit to be applied to earnings. The size of the tax credit shall be decided by the Secretary of Transportation, and will be tailored to match the differential between the contract of a U.S. shipyard versus a foreign shipyard substitute.

¹³¹ S.668 105th Congress. Introduced by Senator Frank Murkowski on April 30, 1997 to the Committee on Commerce, Science and Transportation.

(d) Coastwise Trade- Upon showing satisfactory to the Secretary of Transportation, by the owner or charterer of a cruise vessel, that service aboard such vessel qualified to engage in coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for service in the coastwise trade between ports in the United States.

Sec. 101. Domestic Cruise Vessel

(a) In General the Secretary shall issue a certificate of documentation with coastwise endorsement for eligible cruise vessels not built in the United States to operate in domestic itineraries in the transport of passengers in the coastwise trade between ports in the United States, if the vessel meets the requirements of this title.

(b) Authority. The authority of the Secretary to issue a certificate of documentation under subsection (a) begins on the day after the date of enactment of this Act.

(c) Application only required, Notwithstanding subsection (b), the Secretary may issue certification of documentation under subsection (a) any date after the enactment of this Act if:

(1) the vessel meets the requirements of this title.

(d) Rights under application not transferable. The right to receive a certification of documentation pursuant to an application described in subsection (c) may not be transferred by the applicant to any other person. For purposes of this subsection, the transfer of that right to a successor in interest to the applicant in connection with the reorganization, restructuring, acquisition, or sale of the applicant's business shall not be considered another person.

Sec. 102 Cruise Ship construction

Construction Contract

(1) In General, a cruise vessel to be operated in coastwise trade will not be required to contract to build in the United States. (Thus repealing the Jones Act Shipbuilding Requirement for Passenger ships)

(2) However, any cruise company which contracts a cruise ship with a U.S. shipyard will be eligible for a tax credit to be applied to earnings. The Secretary of Transportation shall be entrusted with identifying the appropriate tax credit.

Sec. 103 Certain Operations Prohibited:

No foreign flagged vessel engaged in coastwise trade shall:

- (1) Operate as a ferry*
- (2) Regularly carry for hire both passengers and vehicles or other cargo; or*
- (3) Operate along inland waterways, rivers, bays, sounds, lakes*
- (4) Operate in National Parks, such as Glacier Bay*

Sec. 104 Cruise ship Crewing Requirement

(1) In General, a U.S. flagged cruise ship engaged in coastwise trade will be required to have all steerage positions filled by U.S. citizens.

- (2) *All other crewing positions, which are non-navigation and non-engineering shall be open to U.S. citizens or foreign nationals.*

Sec. 105 Report

The Secretary shall issue an annual report on the number of vessels operating under certificate of documentations granted under Section 101 (a), and on the progress of construction on vessels contracted to build in U.S. shipyards under Section (102).

Sec. 107 Enforcement

Breach of operation restrictions by foreign flagged operator; or Crewing Requirement of U.S. flagged operator. The Secretary shall revoke coastwise endorsement.

Title II- Other Provisions

Sec. 201 Application with Jones Act and other Acts.

(1) *This Act modifies the Jones Act (U.S.C. 46 chapter 24) requirements as they pertain to U.S. flagged cruise ships.*

(2) *This Act modifies the PVSA. (U.S.C. 46 App. USCA 289) to allow foreign flagged transport between U.S. coastal ports, without the foreign port “touch” requirement, while reserving inland waterways for U.S. flagged operators.*

(3) *This Act modifies the Puerto Rico Passenger Ship Act (Public Law 98-563) to allow cruise ships to touch U.S. coastal property.*

Sec.202 Glacier Bay and Other National Park Service Area Permits

- (a) *In General. The Secretary of the Interior, after consultation with the Secretary of Transportation, shall issue permits to United States- flag vessels carrying passengers for hire to enter Glacier Bay, or any area within the jurisdiction of the National Park Service.*

(#####)

V.A.4.2 Committee Action

The reform for the bills will then be referred to the appropriate committees for comment and revisions. The hearings will be held and reports issued containing the revised bill, committee's recommendations and background information. Once revised, a bill will again be brought before the House or Senate for debate.¹³²

The two committees a bill proposing cabotage reform would go to are either: the Senate Committee on Commerce and Transportation, or the House Committee on Transportation and Infrastructure. Both committees have heard previous proposals on reform of the

¹³² Although some bills are referred to a conference committee, composed of both Senate and House members, to reconcile differences in similar bills in both Chambers. If the Conference committee reaches a compromise, it will prepare a written conference report to be submitted to each chamber

PVSA and the Jones Act. In this case, the strategy begins with the Senate, and the bill would be assigned to the Senate Committee on Commerce, Science and Transportation.

V.A.4.3 Vote

Members of both Chambers vote on the final version of the bill.

V.A.4.4 Presidential Action

A bill approved by both House & Senate is sent to the President. The President may comment on the bill and then sign or veto it. If he signs it, the bill becomes law. It is rare for the President to veto a bill, however, if he vetoes it, it will go back to Congress for redrafting or Congress may override the veto with 2/3rds majority vote in both Houses. If the President does not return the bill to Congress with his objections within 10 days, the bill automatically becomes a law. If Congress adjourns before the 10 - day period, the bill is vetoed. (pocket veto).

It is necessary here to have a large enough coalition with enough support to ensure that: there are at least fifty-one votes in the Senate; and that the president does not veto the bill. If the President does veto the bill, it would be difficult to get 2/3rds majority to override the veto, and the redrafting of the bill may cause a loss of support in the coalition.

V.A.4.5 Laws

Once signed by the President, the bill is now a law, and will be given a public law number and issued in printed form first as a slip law. It will then be bound into the Statutes at Large. In six years the new law will be incorporated into the U.S. Code.

V.B. International Strategy

WTO: GATS

Have other WTO member countries encourage the United States Trade Representative (USTR) to negotiate Maritime Services as they pertain to cruise vessels under GATS by leveraging:

- Rate schedules??¹³³
- Cabotage rights in their country, for aviation/trucking??¹³⁴

V.C. Media Strategy to Reach Legislators

The Media campaign to influence legislators will focus on Washington DC, Maryland, Virginia.

The outlets used to reach legislators will consist mainly of newspaper editorials, op-eds, and paid ads. The particular papers used will be the: Washington Post, and the New York Times, due to their widespread distribution, use by politicians, and their political commentary.

¹³³ Recommended by Ambassador to the Dominican Republic, Bob Pastorino

¹³⁴ Ibid

V.D. Public Relations Strategy

V.D.1. Target Audience: Consumers, Cruise vessel customers, Port Communities

According to Cruise Lines International Association: in 1998, most cruise passengers:

- Have average incomes: which range between \$20 k- \$60K and Up, the mean income was \$68 K in 1998
- Over 50% are female: 54% female, 46% male
- The majority are over 41 years old: the mean age in 1998 was 50.
- And over 70% are married: In 1998 73% were married versus 27% single
- The majority of U.S. passengers originate in the South Atlantic region at 25% of the total for the U.S. (85% of the world total of cruise passengers are from the U.S.); 17.8% come from the Pacific time zone; 13.9% from the Mid-Atlantic; 11.7% from the South Atlantic.

Therefore, keeping this information in mind when targeting consumers or customers of the cruise lines, media outlets to educate the public should be targeted at middle class, married consumers, 30 and up, living in coastal states along the Pacific and Atlantic. The media outlets used should consist primarily of: Newspaper and magazine Op-ed pieces in the New York Times, Washington Post, and if possible, magazines geared toward vacationing, and/or family (such as: Family Circle).

V.D.2 Target Audience: Business, Investors, and Entrepreneurs

Since many cruise companies have headquarters in North America, the campaign which targets entrepreneurs, investors and business should be targeted toward Atlantic and Pacific port cities and areas in which cruise companies have their established headquarters, and such as:

- California (*Crystal Cruises, Princess Cruises, World Explorer Cruises*);
- Rhode Island (*American Canadian Caribbean Line*);
- Illinois (*American Classic Voyages Co.*);
- Louisiana (*American Hawaii Cruises, Delta Queen Steamboat Company, Delta Queen Coastal Voyages, United States Lines*);
- Florida (*Cape Canaveral Cruise Line, Carnival, Celebrity, Commodore Cruise Line, Costa Cruise Lines, Cunard Line Limited, Disney Cruise Line, Norwegian Cruise Line, Orient Lines, Premier Cruise Lines, Radisson Seven Seas Cruises, Regal Cruises, Renaissance Cruises, Royal Caribbean International, Seabourn Cruise Line, Silversea Cruises, Star Clippers, Windjammer Barefoot Cruises*);
- Missouri (*Clipper Cruise Line*);
- Washington State (*Holland America Line, Windstar Cruises*);
- New York (*Lindblad Expeditions, Royal Olympic Cruises*); (*First European Cruises, Mediterranean Shipping Cruises, Golden Sun Cruises*)
- New Jersey (*Sea Cloud Cruises, Hapag-Lloyd Cruises*)

- Virginia (*Peter Deilmann Europamerica Cruises*)
- And Start ups should be heavily targeted, such as:
- SeaAmerica Cruises in Hollywood, Florida

Ideally, a conference would be held in a hotel ballroom in each of these states, in the event that the budget is tight, conferences will be limited: to AAPA headquarters in Alexandria, Virginia; a conference visit to Miami, Florida; a conference visit to Seattle, Washington; and a conference visit to San Diego California. These conferences will be strictly informative for the sole purpose of raising interest in investors, businesses, and entrepreneurs in the potential gains to be made from the proposed cabotage reform. Leaflets and handouts will be distributed to attendees on the commercial and economic impacts of the cruise industry, how cabotage limits these possibilities, and what business could stand to gain from reform. To limit the potential for the convention turning into a heated debate with Pro-cabotage hard liners, tickets to the convention will be sold through the AAPA, and applicants for tickets will be screened.

The outlets of media used will involve paid advertisements to advertise the conferences and Op-eds to inform and influence the business community to attend. These ads and op-eds will appear in local newspapers such as: the San Diego Union-Tribune, the LA Times, the Seattle Post Intelligencer, the Tacoma News Tribune, the Washington Post, the Washington Business Journal, the New York Times, and the Miami Herald.

V.D.3 Target Audience: Labor

The Public relations campaign to reach labor should send a several campaign representatives on several trips to shipbuilding states where the Maritime Trades Department has a presence, such as: Alabama, Alaska, California, Connecticut, Florida, Hawaii, Illinois, Kansas, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Texas, Virginia, Washington State, Washington D.C..

Local port authorities and propeller clubs within the states mentioned above will host talks and public exchange of dialogue. The campaign to move labor in favor of cabotage reform should focus on the need to give U.S. shipyards more business through tax credits, and the coalition's support for the Merchant Marine Cost Parity Act of 2001 (H.R. 3262).

Ideally, these conferences would not need security, however, perhaps there should be a guard or two on duty to see that no one attempts to turn the convention from a friendly exchange of ideas into a scene.¹³⁵

¹³⁵ Speaking from experience, these forums can become very heated, as Rob Quartel's Propeller club debate did.

Media outlets to be utilized to advertise of these forums are: port newsletters or Propeller club newsletters; and paid advertisements in local news-papers. Op-eds would also be used, but only in local newspapers to offer a new and labor oriented perspective to the issue of cabotage reform.

V.D.4 Other Audiences to be addressed:

Environment and Security

In addition to the other groups mentioned above, Op-eds will be written by the coalition to address issues of Environment and Port security. Op-eds addressing environmental concerns with cruise traffic will: demonstrate the environmental impact of alternative sources of tourism versus cruise ships; and suggest methods for improving environmental standards with regards to cruise ships, while utilizing the economic benefit that cruise ships bring to make further environmental improvements to port cities.

Security assurances in Op-eds and paid ads may be necessary. Such op-eds would mention the current proposed Port Security Act, and the AAPA's readiness to meet this issue; while reassuring the public that the appropriate measures will be taken, the strongest message will be that cruise vacations will be safer than ever. Such op-eds should go in local and nationally distributed papers and magazines.

APPENDIX

**Exhibits or summaries of research materials, policy memoranda,
interviews and other appropriate material**

"U.S.-flagged cruise ships at a disadvantage"
By Jeffrey D. Krida 3/11/02¹³⁶

On behalf of the entire Cruise West staff, I am writing to express our concern about Sen. Ted Stevens' recent comments supporting changes to the Passenger Vessel Services Act.

How are U.S. companies supposed to compete against foreign companies allowed to set up shop in our own backyard without having to follow the same rules as the rest of us?

The only advantage that we have as a U.S. company is the ability to offer "all Alaska cruises." Reserving the domestic trade for domestic companies is a common practice followed by other industries. This should apply to the cruise industry as well. After all, we would not allow a foreign hotel operator to come into downtown Anchorage to build a hotel with foreign supplies and foreign workers completely exempt from building codes, wage and labor laws, OSHA rules, taxes and all other domestic regulations that protect our workers and promise them a safe working environment and fair wage. Further, we would not allow that hotel operator to operate that hotel in downtown Anchorage using foreign workers, and again, allowing them to operate exempt from wage and labor laws, safety rules and taxes. No hotel in Anchorage or any other American city could stay in business against a competitor with such an advantage! It would be similarly impossible for small U.S. cruise lines to succeed on such an unlevel playing field.

We do not understand why Sen. Stevens would support changes in the Passenger Vessel Services Act that only benefit these foreign operators and encourage more large-scale cruise activity. In fact, changing the Passenger Vessel Services Act will not provide additional benefits to Alaska, but only add to the profits of the foreign companies who take advantage of all that Alaska has to offer.

There are many other reasons not to change the law. However, if the law is to be changed, consider that the following would have to take effect in order to level the playing field:

- Foreign flag ships should only be allowed to operate between U.S. ports if they were owned and operated by U.S. corporations;
- U.S. corporations operating foreign flag ships should be subject to all federal and state corporate income taxes on their profits;
- U.S. corporations operating foreign flag ships should have to comply with all federal and state wage and hour laws where they operate;
- U.S. corporations operating foreign flag ships should be subject to a one-time tax equal to the federal and state taxes that would have been assessed to their ships had their ships been built in U.S. shipyards;

¹³⁶ Article from March 11, 2002 Juneau Empire (Newspaper). The Article was written in response to the annual address to the Alaska State legislature by Senior U.S. Senator Ted Stevens (R. Alaska). Senator Stevens, a ranking member of the Senate Appropriations Committee, proposed in his address to create better economic benefit for South East Alaskan Ports by modifying the PVSA to allow foreign flag cruise ships all the rights and privileges of the U.S. flag, without the constraints of the Jones Act. The address was given in February of 2002.

- U.S. corporations operating foreign flag ships would pay a tax that is equal to the amount of local and state taxes (including sales tax, use tax and inventory tax) paid by U.S. flag passenger vessels operating in the locale of their registry; and,
- U.S. corporations operating foreign flag ships would be prohibited from operating those foreign flag vessels on routes and itineraries already served by U.S. flag passenger vessels of any size.

If these minimum restrictions are not included in any amendment to the U.S. Passenger Vessel Services Act, the result would be disastrous for U.S. cruise lines. As an alternative, you could exempt current U.S. cruise operators from all wage and labor laws, health and safety rules, federal, state and local taxes and create some sort of rebate for the added cost of building our vessels in U.S. shipyards and operating our vessels under more costly rules since we entered the trade. Of course, we realize that such an alternative is no more practical for the U.S. cruise industry that it would be for the U.S. hotel industry or any other U.S. industry, but that is what it would take to eliminate the advantages enjoyed by foreign cruise operators.

In addition to paying federal and state income taxes on profits, complying with all wage and labor laws, paying sales taxes on newly build or newly acquired vessels, U.S. flagged cruise ships also employ crews of U.S. residents who each contribute to U.S. federal income taxes with every paycheck.

I respectfully ask that legislators consider carefully how amendments to the U.S. Passenger Vessel Services Act would affect companies like Cruise West, a family owned, American company providing jobs to U.S. citizens, paying U.S., state and local taxes, and showing the best of America to visitors from around the world since 1973".

Campaign Budget

Office (Wash. DC)	\$/Month	Annual	30 month campaign
<i>Staff</i>			
Consultant	\$8,000/month	\$96,000	\$240,000
Campaign Coordinator	\$6,000/month	\$72,000	\$180,000
Assistant to the Coordinator	\$4,000/month	\$48,000	\$120,000
Interns (2)	\$2,500/month	\$30,000	\$75,000
Clerk/receptionist	\$3,300/month	\$39,600	\$99,000
Volunteer expenses	\$500/month	\$6,000	\$15,000
Rent	\$2,000/ month	\$24,000	\$60,000
Phones (5)	\$800/month	\$9,600	\$24,000
<i>Desks/ Chairs (5)</i>	<i>\$1,500</i>		
Fax (1)	\$200/month	\$2,400	\$6,000
<i>Computers (5)</i>	<i>\$6,000</i>		
Supplies	\$250/month	\$3,000	\$7,500
Postage	\$200/month	\$2,400	\$6,000
Printing	\$1000/month	\$12,000	\$30,000
<i>Media</i>			
Newspaper paid ads	\$1000/month	\$12,000	\$30,000
White Papers	\$1000/month	\$12,000	\$30,000
Travel	(2 trips/month) \$7000 (2 trips)	24 trips \$84,000	\$210,000
Membership/subscriptions	\$12,000/month	\$144,000	\$360,000
Total Expenses	\$57,250	\$597,000	\$1,492,500
Total Income (80% of solicited)	\$71,563	\$746,250	\$1,865,625
Cash Flow	+\$14,313	+\$149,250	+\$373,125

Op-Ed

Kathleen Magee
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Are Cruise Ships Environmental?

Monterey has been courted as of late by a variety of cruise ship companies. The Monterey Commerce Department and local activists have been sparing over these potential cruise ship visits to Monterey Bay. The Commerce Department sees the great local economic benefit to be had from the increase in tourism to Monterey, while local activists worry that these ships pose a threat to Monterey Bay's sea-life. However, there are several questions Monterey's citizens should ponder before making their choice on the matter. For instance, does the presence of these ships necessarily have to mean a threat to the environment?

Every spring Monterey hosts hundreds of tourists from all over the United States, and many are from abroad. These tourists arrive to Monterey via conventional methods, by car, by plane, and by bus. The overwhelming majority must arrive via car. This increase in car traffic to Monterey causes traffic congestion and public parking crunches. Environmentally, the extra cars contribute to air pollution and even water contamination due to automotive spills and leaks, which wind up in watersheds and in the bay. By comparison, cruise ships cause far less crowding on the streets, and far less air pollution than the cars. Cruise ships can easily bring in tourist dollars, while minimizing the crowding.

However, I'm sure some skeptics would ask, "yes, but what about the emptying of the bilge tanks in our bay?" This is a solvable problem, Monterey's Port can set a requirement that these cruise ships not empty their bilge tanks until returning to international waters. Monterey certainly can set this requirement for the cruise ships, and Monterey can even charge these cruise ships for landing. Revenues from this fee could be used to help protect the Bay and its marine life.

No matter what side of the debate one finds oneself, it is important first to explore all of the possibilities in this matter, and then to make sure that our local government knows what we, the citizens of Monterey want. Before turning away this opportunity for a boost to our local economy, minus the cars, we should set the standards by which these ships *may* operate in our Bay. The setting of standards does not mean that they will operate in our Bay, but it does mean that *if* they do, the Bay will be better protected.

Now is the time to become involved in the betterment of Monterey and the Bay. Think about the possibilities, and then let the city councilmen know.

-End-

White Paper

U.S. Cabotage: Protective or Damaging?

Introduction

Cabotage laws are restricting cruise ships companies, and causing ports in the United States to lose cruise business. The issue is whether cabotage laws are too restrictive, and what is gained from this restriction. The cruise industry is of great importance to the United States. The cruise industry generates millions of dollars in revenues and has created thousands of jobs. Because of this economic benefit, many U.S. port cities are advocating a change in U.S. cabotage laws. These ports claim that only a handful of U.S. ports are receiving the benefits of the cruise visits, and that if cabotage laws were changed, other ports may be visited as well. U.S. cabotage laws such as the Jones Act and the Passenger Vessel Services Act are considered the cause of this loss in revenue and reform of these laws could help change the current situation for the better.

The white paper examines the policy behind U.S. cabotage laws, and the commercial and economic consequences of and the legal aspects of these U.S. cabotage laws. It suggests what actions the U.S. Congress should take with regard to cabotage laws such as the Jones act and the Passenger Vessel Services Act as they apply to cruise ships in order to derive the most economic benefit from the Cruise ships' services.

Background

The fact is that over 90% of all cruise passengers are U.S. citizens.¹³⁷ Foreign flagged cruise ships dominate the cruise industry in the United States, and there approximately only 13 U.S. flagged cruise ships are remaining. In a study done by Price Waterhouse Coopers, the amount of employment generated by Cruise related spending has grown by the year 2002 to 54.8% since 1997. Total wages and taxes to the U.S. economy paid by the cruise industry will be \$570,000,000 in the year 2002.

Despite the economic benefits that foreign flagged cruise ship visits bring, there are laws which restrict their movements. Cabotage laws restrict the most competitive cruise ships, the foreign flagged cruise ships, in their coastwise movement between U.S. ports. Cabotage laws also restrict the most legally mobile ships, the U.S. flagged cruise ships to high cost requirements on shipbuilding and crewing. These costly shipbuilding and crewing requirements render existing U.S. flagged cruise ships uncompetitive, and create a strong disincentive to flag U.S. The U.S. flagged cruise ships are unable to compete with the foreign flagged cruise ships, because building requirements and crewing requirements have increased costs considerably.

Cabotage laws are generally thought necessary to protect the U.S. domestic shipping market and the jobs associated with the U.S. shipping industry from low cost foreign competition. The policy behind cabotage laws is to protect the U.S. shipping industry so that there exists a *ready reserve* of capable shipbuilders, U.S. ships, and capable captains and crew for use in times of war. The theory behind cabotage laws is that that restrictions on ship coastwise movement; ownership; crewing; and shipbuilding, will help protect this

¹³⁷ Quote from the International Council of Cruise Lines

ready reserve. Cabotage restrictions are applied equally to cargo ships and passenger ships, without any distinction.

High Costs and Loss of Competition

Unfortunately, American cabotage laws have not only eroded this reserve, but also hampered the economic growth associated with cruise ship traffic. This is because:

- The Jones Act¹³⁸ restricts transportation and cruise services between U.S. ports to ships that are owned by Americans, built at relatively high cost U.S. shipyards and manned by higher cost U.S. citizen sailors and service workers. Some studies estimate that U.S. shipbuilding costs are anywhere from 40% to 180% higher than ships built abroad.¹³⁹ These ships are subject to U.S. corporate taxation as if they are a domestic business, even though they may be involved in international trade.
- Foreign flagged and owned vessels are manned by international crews and are substantially less expensive to build and operate, however, the Passenger Vessel Services Act¹⁴⁰ prohibits these from calling two American ports without visiting a foreign port of call in between. Often this creates such an onerous economic hardship and a logistical hardship due to a tight schedule, that non-U.S. flagged ships effectively cannot serve between two U.S. ports.

No Ready Reserve

Despite a huge increase in the demand for cruise ship vacations by Americans; there are only a small handful of U.S. flag cruise ships; virtually no cruise ship building in the U.S.; and hardly any jobs available for U.S. sailors.

The few remaining U.S. flagged cruise ships have survived by serving niche markets, which foreign flagged operators cannot enter. The following recommendations are made keeping in mind that with reform a balance must be struck to preserve those existing U.S. flag operators, while promoting economic benefit, while maintaining the necessary ready reserve.

Conclusion:

Cabotage laws have seriously hampered the movement of the most competitive foreign flagged cruise ships, contributed to the demise of the U.S. flag, and caused a loss of potential economic benefits to be gained from the visits of these cruise ships. Cabotage laws have not achieved their policy objective, as the ready reserve is diminished. Reform of these laws is the best solution to reverse this trend, specifically reform which enhances the competitiveness by: reducing those costs which have been imposed on the U.S. flag, and allowing Foreign flagged vessels more freedom of movement. It is only through a reform of the Jones Act and the Passenger Vessel Services Act that U.S. port cities will see more cruise visits and receive greater economic benefit from them.

¹³⁸ (U.S.C. 46 chapter 24 and appendix)

¹³⁹ Maritime Cabotage Task Force Post Hearing Brief on Cabotage Restrictions.

¹⁴⁰ United States Code under 46 App. USCA 289 (1996)

Summary of Proposed Bill
S.127
The United States Cruise Vessel Act

Title I: Operations Under Certificate of Documentation - Directs the Secretary of Transportation to issue a certificate of documentation with a temporary coastwise endorsement for an eligible foreign-built cruise vessel to operate in domestic itineraries in the transportation of passengers in the coastwise trade between U.S. ports if the vessel meets certain requirements, including that: (1) the vessel operator promises that any repairs to it will be performed in a U.S. shipyard; and (2) such operator, with a specified exception, executes a contract with one or more U.S. shipyards for the construction of two or more cruise vessels with a total combined berth or stateroom capacity equal to at least that of the operator's vessel to which a certificate of documentation has been issued. Terminates the coastwise endorsement for an eligible cruise vessel 24 months after the delivery date for the replacement vessel(s) for it. Authorizes the operator of an eligible cruise vessel that has been issued a certificate of documentation, or a cruise vessel that has been constructed under contract, to place such vessel under foreign registry.

(Sec. 104) Prohibits eligible cruise vessels operating in domestic itineraries from operating as a ferry, regularly carrying for hire both passengers and vehicles or other cargo, or operating between or among the Hawaiian Islands.

(Sec. 105) Directs the Secretary to give priority to U.S.- built cruise vessels over other eligible foreign-built cruise vessels in a comparable market that have been issued a certificate of documentation if the Secretary, after notice and an opportunity for public comment, determines that the employment in the coastwise trade of an eligible foreign-built cruise vessel will adversely affect the coastwise trade business of any person operating a vessel not documented under this Act.

Title II: Other Provisions - Requires new or otherwise available permits for U.S.-flag vessels carrying passengers for hire into Glacier Bay or other National Park Service areas.

Summary of Proposed Bill
H.R.3262¹⁴¹
Merchant Marine Cost Parity Act of 2001 (Introduced in the House)

11/8/2001--Introduced.

Merchant Marine Cost Parity Act of 2001 - Amends the Internal Revenue Code to create an alternative tax on qualifying shipping activities in U.S. foreign trade. Sets forth a formula for determining taxable income from such activities. Provides for the allocation of taxable income among all persons considered operators on the basis of their ownership and charter interests in a qualifying vessel.

Sets forth the terms and conditions under which qualifying entities may make and revoke qualifying shipping tax elections, including the effects of temporarily ceasing to operate such a vessel or temporarily operating such a vessel in the U.S. domestic trade. Sets forth exclusions from gross income for electing entities. Allows a depreciation deduction for qualifying shipping assets for non-operating owners only. Disallows credits and deductions (including those for net operating loss) against tax imposed or income for electing corporations, as specified.

Permits the sale and subsequent replacement of qualifying shipping assets without recognized gain, as specified.

Treats certain income of merchant seaman as foreign earned income and therefore excludable from gross income.

Makes qualified vessels eligible for a certificate of inspection, as specified. Authorizes crews and operators of such vessels to make superceding agreements concerning controlling liability and damages for a crew member's injury or death when such owner/operator has approved evidence of financial responsibility.

¹⁴¹ Introduced by Subcommittee member of the Senate Committee on Commerce and Infrastructure: James Oberstar and Co-sponsored by the Chair of the House Committee on Commerce and Infrastructure: DonYoung

Summary of
The Port and Maritime Security Act of 2001
(S.1214.ES¹⁴²; HR3013.IH¹⁴³)

Establishes a Port Security Task Force to advise the Secretary of Transportation with respect to coordinating programs to enhance the security and safety of U.S. seaports against crime and terrorism.

Directs the Secretary to develop standards and procedures for conducting seaport vulnerability assessments.

Directs the Secretary to initiate a rulemaking proceeding to prescribe regulations to protect the public from threats of crime or terrorism from or to vessels in maritime transportation originating or terminating in a U.S. seaport, as well as to maritime or intermodal infrastructure associated with coastal, intercoastal, and inland marine terminals. Requires each port authority and marine terminal operator, or other entity connected with maritime commerce, for which a port security vulnerability assessment has been done to establish, subject to approval of the Captain-of-the-Port, a maritime transportation security program. Directs the Secretary to initiate a rulemaking to establish a program under which a port authority or marine terminal operator may access the Integrated Automated Fingerprint Identification System for employees first hired after implementation of such program who may have access to ocean manifests in the scope of their employment.

Directs the Secretary to establish seaport security committees to: (1) review seaport security vulnerability assessments; and (2) conduct an exercise periodically to verify the effectiveness of each seaport authority and marine terminal security plan.

Sets forth requirements calling for: (1) the development of voluntary security guidance to serve as a benchmark for the review of security plans; (2) the adoption of such guidance and development of seaport security standards by other countries; and (3) the development of standards for the training and certification of maritime security professionals.

Amends the Merchant Marine Act, 1936 to authorize the Secretary to make loan guarantees and provide grants for seaport security infrastructure improvements for eligible U.S. seaports.

Reauthorizes specified tonnage duties.

¹⁴² Engrossed in the Senate

¹⁴³ Introduced into the House

VI. Cruise Ship and Port Security now, and in the future

VI. A. Security and Safety on Cruise Ships Currently

A.1 International Council of Cruise Lines Statement on Cruise Ship safety and security¹⁴⁴

A.1.1 Cruise Ships Have Procedures In Place to Ensure A Very Safe and Secure Vacation

A cruise vessel is comparable to a gated community. It has 24-hour security, controlled access, and an official manifest of all passengers and crew onboard. The precautions our member lines take to ensure passengers' security include:

Background checks on prospective employees.

Visas issued by the U.S. State Department for onboard crewmembers; U.S. embassies abroad will not issue work visas to crewmembers with criminal records.

Highly trained security personnel onboard every vessel; in fact, every cruise ship is required by U.S. and international law to have a designated security officer onboard. Designated shoreside security representative for each cruise line, as required by both U.S. and international law, with internal shoreside security teams to manage and oversee onboard security policies and practices.

Security screening for all passengers and crew before embarking or disembarking any vessel with access strictly limited to documented employees and fare-paying passengers. Once onboard, all passengers and crew are accounted for on the ship's official manifest.

Established procedures to investigate, report and refer incidents of onboard crime to appropriate law enforcement authorities. ICCL member cruise lines cooperate fully with all U.S. law enforcement authorities, including the FBI and the U.S. Coast Guard Investigative Service, which, by statute, are tasked with investigating and prosecuting incidents involving Americans outside U.S. waters.

A.1.2 Crime Onboard Cruise Ships is Remarkably Low

Crime onboard cruise vessels is extremely rare as compared to similar incidents reported ashore. A passenger is safer on a cruise ship than in urban or rural America. A review of FBI annual crime statistics reveals that the number of reported shoreside aggravated sexual assaults occurring in urban or rural communities is at least 20 to 50 times greater than the total number of all reported shipboard assaults of any type.

A.1.3 Cruise Lines Have Strict Policies Governing Crew Conduct

Cruise lines dismiss crewmembers who violate rules against fraternization with guests. In fact, U.S. immigration laws require all shipping lines to repatriate crewmembers accused of crimes, and will initiate extradition proceedings if necessary.

¹⁴⁴ <http://www.iccl.org/pressroom/press12.htm>

A.1.4 American Cruise Line Passengers are Protected by U.S. Laws

Cruise lines operate within a very strict legal framework that gives both federal and state agencies, as well as international administrations, the authority to investigate crimes committed onboard cruise ships. In the unlikely event that an incident does occur, the FBI has the authority to investigate and prosecute alleged crimes involving Americans anywhere in the world. In addition, all passengers embarking or disembarking a foreign flag vessel in the United States have recourse to civil actions in U.S. courts.

When a cruise ship is in international waters, reporting procedures are the same regardless of the ship's flag. Just as in any shoreside resort or hotel, the victim of the alleged crime must decide to report an incident to the authorities. Once a cruise line official has been notified that an incident has occurred, every measure is taken to investigate, report all findings, and share evidence with the appropriate law enforcement authorities.

In sum, cruise ship passengers are afforded greater protection by Congress and the courts than any other vacationers in the world, and cruise lines consequently have a greater interest in deterring any wrongdoing onboard their ships.

A.1.5 Cruise Lines are Subject to Civil Liability in U.S. Courts

In any isolated instance of alleged sexual assault, U.S. courts have held cruise lines accountable to the most stringent legal standards, including civil damages in trials before U.S. juries. Federal law expressly prohibits cruise lines from disclaiming liability for any injury to passengers. Shoreside employers in U.S., on the other hand, are generally not held liable when, for example, an off-duty employee commits an unforeseen crime against a customer.

A.1.6 Passenger and Crew Safety Remains the Cruise Industry's Highest Priority

Cruising is one of the most popular vacation options, in large part because of its excellent safety record and the high level of quality service provided onboard cruise ships. The cruise industry is committed to providing a safe and secure environment for its passengers and crew.

VI. B Coast Guard Authorities Prior to September 11th

B.1 Current Coast Guard Authorities

The U.S. Coast Guard currently has primary responsibility for the promotion of safety of life and property at sea, the enforcement of all applicable Federal laws on, under, and over the high seas and United States waters. The agency also is charged with protecting the marine environment, conducting icebreaking activities, maintaining aids to navigation, and securing the safety of vessels, ports, waterways, and their related facilities.¹⁴⁵

¹⁴⁵ The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security
<http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

B.1.1 Inspections

Section 89 of title 14, United States Code, authorizes the Coast Guard to board any vessel subject to the jurisdiction, or operation of any law, of the United States in order to make inquiries, examinations, inspections, searches, seizures, and arrests for the violations of U.S. laws. The Coast Guard may order and force any vessel to stop and may engage in land, water, and air patrols. Federal law also authorizes the Coast Guard to control the anchorage and movement of vessels in the navigable waters of the U.S. in order to ensure the safety and security of U.S. naval vessels.¹⁴⁶

B.1.2 The Ports and Waterway Safety Act (PWSA)

The **Ports and Waterway Safety Act (PWSA)** provides the Secretary of Transportation with broad authority to regulate the movement and operation of a vessel subject to the jurisdiction of the United States. Coast Guard Captains of the Port may order vessels to operate as directed, to anchor, as well as require pre-arrival notices. The PWSA also authorizes the Secretary to respond to acts of terrorism against vessels and waterfront facilities and to investigate any incident that causes damage to a waterfront facility or affects the safety of a U.S. port. The Secretary of the Treasury is authorized to refuse or revoke a vessel's clearance when it may be liable to the U.S. for violation of the PWSA. During times when the President determines that national security is endangered, the Coast Guard may seize any vessel that fails to follow its directions within U.S. territorial waters. Under the above conditions, the Coast Guard may also fine or imprison the master and crew for noncompliance with its orders, as well as establish a Port Security Card Program. This program provides for the controlled access to waterfront facilities and vessels by individuals with an appropriate security background screening by the Commandant. When certain conditions exist, the Captain of the Port may be directed by the Commandant to establish a restricted waterfront area and prevent access of persons who do not hold a Port Security Card.¹⁴⁷

B.1.3 The Omnibus Diplomatic Security and Antiterrorism Act of 1986

In 1985, a U.S. citizen was killed during the terrorist seizure of the passenger vessel ACHILLE LAURO. In response to the vulnerability of passenger vessels and associated passenger terminals to acts of terrorism, Congress enacted the **Omnibus Diplomatic Security and Antiterrorism Act of 1986**. Title XI of this law constitutes the **International Maritime and Port Security Act** and authorizes the Coast Guard to require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism. The law also requires that passenger vessels and passenger terminal operators develop a plan of action for implementation of security measures at the ports and passenger vessels operating from those ports. The Coast Guard must examine and approve the security plans for passenger vessels and terminals and provide oversight to ensure that the plans are being properly implemented. Passenger

¹⁴⁶ The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security <http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

¹⁴⁷ The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security <http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

vessels are only allowed to embark from or disembark to terminals that hold an *approved* Terminal Security Plan.¹⁴⁸

Federal law further requires the Secretary to conduct *foreign port vulnerability* assessments for passenger vessels, should he find U.S. citizen passengers to be at a high risk of acts of terrorism directed against passenger vessels. The law also requires the issuance of travel advisories and authorizes the President *to suspend* certain passenger voyages for security reasons. This law does not apply to cargo vessels and terminals. Foreign port assessments are coordinated with the Department of State and the cruise ship industry. *This program has been perennially underfunded and only two assessments were completed last year.*¹⁴⁹

VI. C. The Coast Guard's Role In Port Security Post September 11th:

C.1 Coordination to Address the Challenges of Maritime Homeland Security¹⁵⁰

C.1.1 Port Security Efforts Part of Operation Noble Eagle and Enduring Freedom

Immediately following the events of September 11th, the Coast Guard launched the largest homeland port security operation since World War II. As part of **Operation Noble Eagle and Enduring Freedom**, the Coast Guard heightened security by establishing port and coastline patrols with 55 cutters, 42 aircraft and hundreds of small boats. *Over 2,800 U.S. Coast Guard reservists were called to active duty to support maritime homeland security operations in 350 ports.* Four of the six Port Security Units, which are self-contained rapid response units trained primarily in port and waterway security, were used to help patrol the Ports of New York and New Jersey, Boston, Seattle, and Long Beach in the weeks immediately following the September attacks. The Coast Guard enforced over 118 maritime security zones around navy vessels, cruise ships, nuclear power plants, and other potentially hazard facilities.¹⁵¹

Currently, the U.S. Coast Guard is enforcing a wide range of security measures on *all* ships entering U.S. ports. The Coast Guard has issued a temporary final rule changing the 24-hour Notice of Arrival requirement for ships entering U.S. ports to **96 hours before** arrival at the first U.S. port. New special rules apply for all vessels carrying dangerous cargoes and additional information is also required in the Advance Notice of Arrival. *The notice must now include a listing of all persons on board, crew and passengers, with date of birth, nationality, along with the appropriate passport or mariner's document number.* The Notice must also include the *vessel name, country of registry, call sign,*

¹⁴⁸ The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security
<http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

¹⁴⁹ The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security
<http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

¹⁵⁰ The Department of Transportation, United States Coast Guard Statement of Rear Admiral James Carmichael On Port Security Before the Subcommittee on Surface Transportation and Merchant Marine Committee on Commerce, Science and Transportation; United States Senate ; Port Everglades Florida, January 9, 2002

¹⁵¹ The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security
<http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

*official number, the registered owner of the vessel, the operator, the name of the classification society, a general description of the cargo, and date of departure from the last port, along with that port's name.*¹⁵²

The Coast Guard has created a pilot-armed escort program, called the Sea Marshals program, in the Ports of San Francisco, Los Angeles, and San Diego. This program is designed to reduce the threat of using a commercial vessel as a terrorist instrument. The Sea Marshal concept employs preventive measures to neutralize tactics that could be employed by terrorists attempting to gain control of a large commercial carrier. The Sea Marshals armed escort provides security for the pilot, master, and the bridge navigation team on board a vessel during its transit in U.S. navigable waters. According to the Coast Guard, further expansion of this program will depend on the availability of resources, as well as future port-specific security needs.¹⁵³

Each Coast Guard Captain of the Port may employ any security measures that he deems necessary to ensure the safety and security of the port. For example, the Coast Guard has required several facilities handling dangerous cargo to provide additional security personnel and other security improvements. Facilities not addressing Coast Guard security concerns may have their operations suspended or be subjected to civil penalties.¹⁵⁴

C.1.2 Passenger Vessel Security

The Commandant directed Coast Guard Captains of the Ports to implement *passenger vessel and passenger terminal security plans* to the maximum extent possible at security level III. Level III is implemented when the Commandant determines that the threat of an unlawful act against a vessel or terminal is probable or imminent and intelligence indicates that terrorists have chosen specific targets. *The Coast Guard is working closely with the operations and security personnel at the International Council of Cruise Lines*, which represents the bulk of large passenger vessels operating out of the United States. Level III passenger vessel and terminal security measures require restricted areas around the vessel which are enclosed with fences or walls and protected by intrusion detection systems and patrols. Other security measures include the screening of all baggage, cargo, and stores that are placed on the ship as well as the screening of passengers before they are allowed to board the ship.¹⁵⁵

C.1.1 Monitoring from the Air

Cruise ships are currently met at the sea buoy by armed pilot protection teams to ensure these foreign vessels are safely navigated into the Port of Miami and Port Everglades. A 100-yard moving exclusionary Security Zone is in effect around each cruise ship transiting the port. Security Zones are promulgated by the Captain of the Port in

¹⁵² The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security
<http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

¹⁵³ The Subcommittee on Coast Guard and Maritime Transportation Hearing on Port Security
<http://www.house.gov/transportation/cgmt/03-26-02/03-26-02memo.html>

¹⁵⁴ Ibid

¹⁵⁵ Ibid

accordance with the **Ports and Waterways Safety Act** authority for port security. Large fixed Security Zones are also in effect where multiple terminals berth groups of cruise ships and petroleum tankers.. The Coast Guard has also established **Naval Vessel Protection Zones** for a distance of 500 yards around all U.S. naval vessels in the navigable waters of the United States. These zones provide buffer areas to enable enforcement patrol craft to interdict potentially hostile boats before they can reach intended targets. The zones will remain in effect through June 15, 2002.

C.1.2 Physical Security on Land and Sea

Within the passenger terminals, where security plans (level I) had previously required only basic access control and credentialing, the Coast Guard implemented Security Level III, the highest level of security, established under International Maritime Organization guidelines. Security Level III is defined in each Coast Guard approved passenger terminal or ship security plan. All luggage and stores are screened to detect the introduction of prohibited weapons, incendiaries, and explosives aboard vessels.¹⁵⁶

Physical security of passenger terminals and water adjacent cruise ships in port is critical to effective security. Unlike airports, which have physical barriers to protect the runways and tarmacs from unauthorized public access, seaports often allow vehicles direct access to ship berths, and boats have access to the sides of cruise ship hulls unless protected by patrolled security zones. Coast Guard Port Security Teams, assigned full time to Port Everglades and the Port of Miami, conduct daily security "sweeps" of terminals and waterways before cruise ship arrivals, making sure guards are on duty, and that screening equipment is staffed by qualified personnel. These teams conduct continuous patrols of the terminals during passenger operations to ensure that cruise lines follow their approved security plan procedures.¹⁵⁷

C.1.3 Foreign Ports Of Call

Security concerns, especially for high capacity passenger vessels, also extend to foreign ports of call. After September 11th, the Government of the Bahamas requested Coast Guard assistance in assessing their ports for cruise ship operations. Under a US law (46 USC and 22 USC) containing provisions that encourage anti-terrorism assistance to foreign governments, the Coast Guard Captain of the Port Miami sent representatives to Nassau, the fourth ranked cruise ship port of call in the world, to begin a dialogue on this important security concern.¹⁵⁸

C.1.4 New Laws For Port Security

Within the ports, a new normalcy for security remains to be established by balancing security responsibilities among the federal, state, local and commercial maritime activities. Then those responsible must be resourced to execute security measures. The provisions of S.1214, HR 3437 and Florida's 311.12, the state's Port and Maritime

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Ibid

Security Act, are bold steps along that path. These bills recognize port needs. Senate bill S.1214 even recognizes private terminals in its provisions.¹⁵⁹

VI. D. THE FUTURE OF PORT SECURITY: The MDA Concept¹⁶⁰

(The Following are excerpts from an article by Admiral James M. Loy and Captain Robert G. Ross of the U.S. Coast Guard)

VI. D.1 Maritime Domain Awareness (MDA)

The concept of maritime domain awareness first appeared in the Coast Guard's 1999 Strategic Plan, which reads in part: "The Coast Guard will achieve the ability to acquire, track, and identify in real time vessels and aircraft entering America's maritime domain." This goal was not well defined, however, and much work was required to refine the concept further. Since the publication of the Strategic Plan—driven by the reports of the Hart-Rudman Commission, the Gilmore Commission, and the Graham Seaport Security Commission—the Coast Guard has gained a far greater understanding of the information needed to support the MDA concept properly. In particular, Coast Guard planners began to understand the importance of *having timely access to detailed information on vessels, cargoes, passengers, crews, and historical vessel and cargo itineraries.*¹⁶¹

While these commissions were working, the Coast Guard, in concert with the Maritime Administration and other agencies, embarked on the **Marine Transportation System (MTS) Initiative**. The MTS Initiative was established to address growing concern over the ability of the Nation's ports, waterways, and intermodal land/sea connections to meet future needs and to improve cooperation among the various Federal agencies and other entities delivering essential port and maritime services. As part of the problem-definition phase for the MTS Initiative, listening sessions were held around the country to allow the maritime industry and others to express their concerns. Some of the most frequent complaints concerned information collection and access. Specific objections included the multiplicity of different and partially overlapping advance notice requirements imposed by various Federal agencies and port authorities; the need to undergo multiple boardings once in port; the lack of real-time port status and navigation safety information; and the failure of agencies to provide Web-based means for providing required information.¹⁶²

As a result of the MTS Initiative, agencies became increasingly aware that the ability to move and process information rapidly had grown in importance to the Nation's overall transportation system. In a modern container port, more people move information than cargo. Just-in-time delivery requires in-transit visibility of cargo moving through the system to reduce inventory costs and improve productivity. The implications for MDA from these realizations are that much of the information needed for security purposes is

¹⁵⁹ Ibid

¹⁶⁰ "GLOBAL TRADE: AMERICA'S ACHILLES' HEEL" Admiral James M. Loy & Captain Robert G. Ross, U.S. Coast Guard February 2002
<http://www.homelanddefense.org/journal/Articles/displayarticle.asp?article=33>

¹⁶¹ Ibid

¹⁶² Ibid

already collected by the private sector and can contribute to a high degree of situation awareness.¹⁶³

D.1.2 An Interagency Coalition

Achieving MDA is beyond the capability of a single agency or government. The process is simply too complicated. Thus, the desired MDA capability will require a combination of discrete technologies, interoperability between numerous stand-alone systems, and the information analysis capability to take full advantage of that interoperability. The Coast Guard, recognizing that it was not in a position to achieve MDA in isolation, presented the concept to a number of other agencies that appeared to be natural partners in an MDA effort. The MDA concept was also presented to the staff of the National Security Council (NSC), who readily recognized and seized upon its potential.¹⁶⁴

Under NSC sponsorship, interagency discussions began in mid-2000 and ultimately led to an interagency memorandum of agreement signed on January 12, 2001, by the Department of Defense, the Immigration and Naturalization Service (INS), the Coast Guard, and the Bureau of Consular Affairs in the Department of State. The objectives of the memorandum are to create a maritime fusion center through extensive interagency cooperation and to exploit the expertise and data-mining capabilities of the signatories. The existing Coast Guard Intelligence Coordination Center, collocated at the National Maritime Intelligence Center in Suitland, Maryland, was selected to serve as the initial organizational foundation for the fusion center.¹⁶⁵

The MDA fusion center has been busy from its inception, but the level of activity has increased dramatically since September 11 and will increase further as MDA capability grows. The Coast Guard has already extended its advance notice of arrival requirement from 24 to 96 hours and significantly increased the amount of information that it requires. Lookout lists from the INS and other agencies are now cross-checked against crew and passenger lists, and Customs and INS are working to place the Advance Passenger Information System in the MDA fusion center. Some advance scrutiny of cargo information is also occurring. The analytic processes now being used are largely manual, but those involved are learning much that will be invaluable in the design of automated processes to handle significantly more data.¹⁶⁶

D.1.3 Extending U.S. Security Borders

One of the first steps in extending our security perimeters would be to obtain the cooperation of our North American Free Trade Agreement partners, Canada and Mexico, in creating comparable security measures at all North American ports of entry. Another step would be to expand existing trusted shipper programs to address security, thus allowing cargoes to move across borders without the kinds of delays that were experienced at the Ambassador Bridge after September 11. Details of such a system have

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ Ibid

¹⁶⁶ Ibid

not been developed, but both point-of-origin requirements and in-transit integrity protections are likely features.¹⁶⁷

Cooperative information exchanges between American and foreign customs services should be another key element in the future system. Confidence in the quality of the information could be enhanced through regular and continuous sharing, thus facilitating better enforcement of safety, security, and revenue laws at both ends of the trade route. For example, declared cargo identities would be less likely to change mid-voyage, as cargo verification could happen at both ends of the trade route. In addition to improving the U.S. domestic threat situation, this could also improve the international environment. Historically, ineffective border security and lack of governmental fiscal integrity—exacerbated by smuggling to avoid customs duties—have been major factors in the failure of emerging states. Failed states, such as Afghanistan under the Taliban, invariably become security threats to their neighbors and, by providing breeding grounds for discontent and terrorist impulses, to the larger global community. Reducing the potential for failure of emerging states is a worthy national and international goal, and MDA will be beneficial in efforts of that kind.¹⁶⁸

D.1.4 The IMO

The International Maritime Organization (IMO), a specialized body of the United Nations, sets international standards for ship construction, environmental protection, vessel traffic control, and the like. *IMO should develop international standards on transparency in vessel ownership and the identification of parties involved with or having a controlling interest in a ship.* Additionally, IMO should be an active participant in developing a system to track containers and other cargoes after they have been accepted for sea transport. This would help protect against the diversion of cargoes to unintended recipients or the substitution of an illegitimate cargo in a container at a trans-shipment point. Depending on the degree of cooperation by foreign customs services, an overseas presence by the U.S. Customs Service may be required to verify cargoes at the point of origin or possibly at the port of origin. The possibility also exists to create an international system for vetting shippers and carriers, either under IMO sponsorship or as an International Organization for Standardization standard.¹⁶⁹

The U.S. delegation voiced the need for IMO to become involved in improving international shipping security at the November 2001 meeting of the IMO Assembly. The U.S. position was strongly supported by IMO Secretary-General William O'Neil and received further support from 48 nations. The organization agreed to add maritime security to its work program, and a special meeting has already been scheduled for February 2002.¹⁷⁰

Finally, cooperative foreign information exchange is being used in national intelligence and law enforcement; this information also should be made available within the context

¹⁶⁷ Ibid

¹⁶⁸ Ibid

¹⁶⁹ Ibid

¹⁷⁰ Ibid

of MDA. Information on suspect individuals and organizations could easily be correlated with information on parties involved with specific ships and cargoes.¹⁷¹

D.1.5 Acting Globally and Locally

Local domain awareness is MDA at the tactical level, at sea or in port, where security and safety enforcement operations take place. Local security forces should have some degree of reach-through capability to source data needed in the event of an emergency (for example, cargo data while responding to an accident) and should be provided with warning notices or flags for suspicious inbound cargo or ships.

As also revealed in the MTS Initiative, ships have grown significantly larger over the last half decade, but ports and channels have not grown correspondingly larger and deeper. Thus, real-time information, such as water depth and currents, is becoming increasingly important for navigation safety. At best, such information might seem tangential from a security perspective; however, having these facts would be extremely important for responding to chemical and radiological incidents in U.S. ports and waterways. The Physical Oceanographic Real-Time System (PORTS), developed by the National Oceanic and Atmospheric Administration, would, if adequately funded, meet this need.¹⁷²

D.1.6 Technical Attributes

Maritime domain awareness remains at the conceptual stage, and many of the technical details remain undetermined. Already clear, however, is that MDA will require cooperative efforts across multiple government and commercial systems and entities.¹⁷³

Figure 1, focused primarily on international shipping, provides a partial view of the overall MDA concept and gives a sense of MDA's potential complexity. Key elements for successful MDA implementation will likely include:

- A data architecture that transcends agency and national lines to provide standardized and simplified data for multisource correlation and analysis
- A system allowing multiple databases to be accessed by appropriate entities without violating the statutory safeguards that govern most government databases
- Development of algorithms that would permit machine-based threat analyses based on large data sets.
- Pieces of the data architecture are already in place but are not yet robust enough to function as intended. For example, ships engaged in international trade are required to have a unique numeric identifier called a Mobile Maritime Service Identifier (MMSI).

The MMSI is, in essence, a ship's phone number for both the Global Maritime Distress and Safety System and for Automatic Identification System (AIS) transponders. As a unique ship identifier, MMSI has great potential for tracking specific ships across multiple databases. Another unique identifier is the Lloyd's Registry number. This number has the advantage of being carried by a ship for life; unlike an MMSI, it does not

¹⁷¹ Ibid

¹⁷² Ibid

¹⁷³ Ibid

change as a ship changes flag state registration. Neither of these ship identifiers provides 100 percent coverage, but they do provide starting points.¹⁷⁴

D.1.7 International Crew and Passengers

International or bilateral systems for identification of individuals, such as machine-readable passports required under the Visa Waiver Program (P.L. 106-396), also could play a role in maritime domain awareness. Similarly, an international identity system for the merchant mariners of the world would help address both the potential for terrorist infiltration of a ship's crew and the existing global problem of fraudulent merchant mariner licenses and documents. This system would be especially valuable when combined with appropriate national and international suspect lookout lists, such as the State Department Consular Lookout and Support System and the INS National Automated Immigration Lookout System II.¹⁷⁵

The extent to which any existing and future databases could be merged might be limited. National privacy laws and the need for legitimate businesses to protect proprietary data will dictate some limits on information sharing. For that reason, a means to provide the appropriate degree of access to users with differing authorizations is required. Good models already exist, such as Pennsylvania's Web-enabled statewide criminal Justice Network (JNET), which is the result of an initiative undertaken by former Governor Tom Ridge.¹⁷⁶

JNET provides a virtual single system based on open Internet technologies with standards that link information from diverse, seemingly incompatible systems of 16 different criminal justice agencies. The system enables agencies to share information but does not affect independent operating environments. As required by certain confidentiality statutes, each agency can determine the extent to which the others have access to its data. JNET is a secure extranet providing a secure publish and subscribe architecture featuring encryption and digital user/server authentication certificates. Appropriate and probably extensive security protocols will have to be in place before the intelligence community is willing, or even allowed, to participate in the MDA effort.¹⁷⁷

Major differences between the MDA concept and JNET approach will impact any MDA technical architecture significantly. These differences include both the level of predictive analysis and correlation across multiple databases called for in the MDA concept and the need to deal with literally hundreds of millions of separate ship, cargo, passenger, and crew data entries. Several of the databases on which MDA will be built, especially the U.S. Customs ACE system, are far larger than anything in JNET. Thus, MDA will undoubtedly require use of artificial intelligence, sophisticated data-mining techniques, and appropriate risk identification algorithms.¹⁷⁸

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ Ibid

¹⁷⁸ Ibid

Emerging information technologies show promise in providing significant security benefits. Knowing where a given shipment is at any moment can be critically important from an economic perspective. Cargo-tracking systems, such as container transponders and bar code systems of the type used by United Parcel Service, are now being used to track certain high-value cargoes. Bar code systems update custody and location information every time the cargo changes hands. Container transponders, in contrast, use satellite communications and the GPS (global positioning system) to generate a position update to a ground station at periodic intervals. Cargo-tracking systems of these kinds could be particularly well suited for ensuring that in-transit cargoes do not fall into the wrong hands and are not diverted from their legitimate itinerary, whether through simple theft or substitution of a contraband cargo for a legal one.¹⁷⁹

Transponders also can be placed on vessels with clear MDA implications. Two vessel transponder systems, designed with specific MDA use in mind, are entering service now. Both provide specific kinds of information, such as vessel name, a unique vessel identification number, and vessel position. Depending on the system, other information also may be available. Vessel Monitoring Systems (VMS) are being employed in fishery enforcement operations in several countries. VMS is not the name of a single system. Rather, it is a generic term used to describe any of a number of asset management systems using long-distance communications. VMS reporting rates are set at no greater frequency than required for the specific fisheries enforcement purpose. Typically, these range from once every 15 to 30 minutes to once every 24 hours. A number of U.S. fisheries already have adopted VMS requirements for fishery enforcement purposes, but broader national security or law enforcement purposes are generally prohibited at the present time.¹⁸⁰

The other vessel transponder with MDA potential is the Automatic Identification System (AIS). AIS is primarily a navigation safety and collision avoidance tool and differs significantly from VMS. First, AIS operates at a much higher reporting rate—as frequently as once every 2 seconds (radar sweep rates)—and is tightly controlled by technical standards to ensure interoperability across brand names. AIS employs a relatively short-range, VHF-FM line-of-sight communications protocol that operates without any satellite or land-based infrastructure. However, land, air, and possibly even satellite-based receivers can receive AIS signals, making it useful for MDA purposes.¹⁸¹

D.1.8 Conclusion on MDA

True maritime domain awareness will arise from the combination of historical data on ships, shippers, and involved parties of many types; advance-voyage-specific data on cargo, passengers, and crew; and systems to track the location of both individual containers in-transit and vessels at sea. This level of awareness, augmented by powerful analysis, will yield the kind of understanding necessary to improve the collective ability

¹⁷⁹ Ibid

¹⁸⁰ Ibid

¹⁸¹ Ibid

of the border control agencies to separate the good from the bad—to stop the bad while facilitating the good.¹⁸²

While there are no guarantees that the maritime transportation system will not be used to harm U.S. domestic interests, achieving the level of domain awareness described above will decrease the likelihood significantly. The MDA concept, solidly based on both civil authority and practical application of proven risk-management techniques, is a best-value measure for securing the homeland. Maritime domain awareness is an idea whose time has come.¹⁸³

FIGURE 1¹⁸⁴

*Customs Information generated from US and cooperating foreign Customs Services
CONCEPTUAL MDA INFORMATION FLOWS AND CENTERS OF ACTION
(Partial View Emphasizing International Shipping)

The MDA Concept: Building Security into International Shipping

- Focus on potential threats—for example, vessels, cargoes, crews, and passengers.
- Develop a common, integrated data architecture.
- Fuse traditional intelligence with information from public, private, commercial, and international sources.
- Develop risk indicators based on fused, multisource data.
- Push security perimeters out, ideally to the points of origin.
- Ensure transparency in international shipping.
- Foster active participation by U.S. trading partners—that is, achieve an international solution.
- Foster cooperation and integration across agency, national, public/private, and data system boundaries.
- Ensure shipper and carrier involvement in building maritime domain awareness.
- Provide incentives for cooperation by responsible shippers and carriers.
- Protect proprietary commercial data.
- Trust, but verify. Rigorously verify shipper and carrier compliance.
- Execute cued military or law enforcement responses to identified threats

¹⁸² Ibid

¹⁸³ Ibid

¹⁸⁴ Ibid

POPULAR COUNTRIES FOR CRUISE SHIPS TO REGISTER IN, AND THEIR FLAGGING REQUIREMENTS¹⁸⁵:

NORWEGIAN INTERNATIONAL SHIP REGISTER

The Norwegian International Ship Register ("NIS") has been a considerable success over the last ten years. It comprises more than 750 vessels of over 19.8 million gt.

Tax benefits

- *No income tax on income* from operating a NIS registered ship, owned by non-Norwegian interests.
- Usually no income tax in Norway where a NIS registered ship is owned by both Norwegian and foreign parties.
- Exemption from taxation for seafarers resident abroad, other than those in Nordic countries.

Ownership

Both Norwegian and foreign owned ships may be included on the NIS register.

- Foreign controlled ships do not need to be owned by a Norwegian company to be eligible for the register.
- Foreign owners must appoint an authorized representative in Norway to carry out management of the vessel.
- Parallel registration of vessels is not allowed in the NIS register.

¹⁸⁵<http://www.moorestephens.co.uk/website/uk.nsf/pages/sectors.shipping.flagfocus?OpenDocument&ExpandSection=6,3>

POPULAR COUNTRIES FOR CRUISE SHIPS TO REGISTER IN, AND THEIR FLAGGING REQUIREMENTS:¹⁸⁶

LIBERIA

The Liberian flag comprises over 1,860 ships amounting to approximately 60 million gt and continues to rank second among ship registers worldwide. The administration of the corporate and maritime registries has been managed by Liberian International Ship and Corporate Registry LLP ("LISCR") since 1 January 2000.

Ownership

- Ships over 1,600 nt may be registered by Liberian corporations, partnerships or nationals. Waiver of the Liberian ownership requirement can be obtained where there is a genuine need and a Liberian registered agent is appointed for the foreign maritime entity. Normally, vessels should be under 20 years old to be considered for registration.
- Liberian flag vessels, on bareboat charter, can be registered under a foreign registry. The certificates are issued for a two-year period and may be renewed for further periods.
- Registration in the Liberian register of foreign flag vessels on bareboat charter is permitted. Again certification is valid for two years with renewal.

Tax

- Earnings from *non-Liberian sources* arising from the operation, chartering or disposals of ships are *exempt from corporate income tax*.
- There are no capital gains taxes or estate duty in Liberia.

Fees

From July 2000, the Liberian registry has a new fee structure including:
Annual tonnage tax and fees

- Tonnage tax: \$0.10 per nt plus \$3,800 per vessel
- MIIPS: \$0.03 per nt plus \$2,000 per vessel
- Initial registration fees and taxes
- Registration fees: \$0.13 per nt (maximum \$3,900) plus \$1,500 per vessel
- Maritime fees: \$6,500 per vessel.

July 2000

¹⁸⁶<http://www.moorestephens.co.uk/website/uk.nsf/pages/sectors.shipping.flagfocus?OpenDocument&ExpandSection=6,3>

POPULAR COUNTRIES FOR CRUISE SHIPS TO REGISTER IN, AND THEIR FLAGGING REQUIREMENTS:¹⁸⁷

PANAMA

The Panama register is the largest open registry in the world. The total number of merchant vessels exceeds 5,250, comprising more than 100 million gt.

Ownership

- Ships may be owned by Panamanian companies or foreign companies. Foreign companies must appoint a local representative in Panama.
- A ship that is foreign registered but bareboat chartered to a Panamanian company is permitted to register in parallel on the Panama Register for a period of up to two years.

Entry requirements

- In general, there are no age restrictions for registering on the Panama Register. However, pre-registration inspections are required for vessel over 20 years old.

Taxation

- There is *income tax exemption for all revenue derived from the international operation of Panamanian registered vessels.*
- Panamanian registered companies which *do not carry on their business activities in Panama are not liable to income tax, nor are they required to make tax returns.*

April 2000

¹⁸⁷<http://www.moorestephens.co.uk/website/uk.nsf/pages/sectors.shipping.flagfocus?OpenDocument&ExpandSection=6,3>

POPULAR COUNTRIES FOR CRUISE SHIPS TO REGISTER IN, AND THEIR FLAGGING REQUIREMENTS:¹⁸⁸

BAHAMAS

The Bahamas flag comprises over 1,200 ships amounting to more than 27 million gt. Today it ranks in third place among ship registers worldwide.

Ships can be registered at the Nassau, London, or New York offices of the Bahamas Maritime Authority.

Ownership

- Ships that are either locally or foreign owned may be registered. Foreign owners, irrespective of nationality or country of incorporation, may register their ship under the Bahamian flag.
- For convenience, a foreign owner may form a Bahamian company to own the ship.
- Bahamian flag vessels, on bareboat charter, can be registered under a foreign registry.
- Bareboat registration onto the Bahamas register is permitted.

Tax

- There is no tax in the Bahamas on corporate income, capital gains, inheritance or dividends.
- The income of a Bahamian registered ship and any capital gain on her sale is tax free in the Bahamas, *whether a Bahamian company or a foreign company/individual owns the ship.*

October 1999

¹⁸⁸<http://www.moorestephens.co.uk/website/uk.nsf/pages/sectors.shipping.flagfocus?OpenDocument&ExpandSection=6,3>

U.S. Laws Governing *Employment* on U.S. Vessels/Vessels Engaged In Domestic Commerce¹⁸⁹

Jones Act- Requires that to engage in domestic commerce a vessel must be “US Documented”

46 U.S.C. 8103 and 12110 – Require that a U.S. documented vessel be commanded by a U.S. citizen master, and crewed by U.S. citizen officers and U.S. citizen or immigrant alien unlicensed seafarers (no more than 25%)/

8 C.F.R. 214.2 (d) – Prohibits employment of foreign crew in domestic movement of a vessel (or aircraft).

The chart above shows that as far as the U.S. crewing requirement and its relationship to immigration, the two coincide at 8 C.F.R. 214.2 (d) which extends the U.S. citizen and master crew requirements to any U.S. documented vessel without regard to the trade in which the vessel operates. The difference between the two is in sections 8103 and 12110 of Title 46 U.S. Code, which apply solely to a vessels operating in domestic commerce.¹⁹⁰

¹⁸⁹ Post Hearing Brief of the Maritime Cabotage Task Force on “Economic Effects of Significant U.S. Import Restraints.”

¹⁹⁰ Post Hearing Brief of the Maritime Cabotage Task Force on “Economic Effects of Significant U.S. Import Restraints.”

Costs to a typical cruise company

Portrays fixed and variable costs; variable costs depend on the ship's location, its registry, and many other factors.

Capital Cost of Ship- taking into account interest and depreciation:

Crew Cost

- A) Navigation and operating crew
- B) Hotel services crew (dancers, gaming personnel, bartenders, etc)

Insurance

- A) Hull and machinery
- B) Personal and indemnity
- C) War risk and miscellaneous

Maintenance and Repair

- A) Biennial dry docking

Fuel

Food and Provisions

Port Fees

- A) wharfage and dockage
- B) Tugs, Pilots, Linehandlers
- C) Port taxes, Customs, Immigration
- D) Miscellaneous – electricity, wastewater treatment, regulatory

Commissions and Fees for Sales

- A) For travel agents and Cruise Companies, package tours

General and Administrative

Headquarters

Office Rent

Telephone

Administrative Staff Salaries

Advertising

Miscellaneous Administrative

Income Tax (foreign flagged ships do not pay U.S. Income tax)

COMPARATIVE CONSTRUCTION/OPERATING COSTS¹⁹¹
 (Self Propelled, Deep Draft, Oceangoing Vessel/45,000 dwt Product Tanker)

	<u>US Vessel</u> US Built US Standards US Operated	<u>Model Vessel</u> Foreign Built US Standards US Domestic Trade	<u>Foreign Vessel</u> Foreign Built Intl. Standards International Trade
Total Capital Cost	49,005,000	37,905,125	33,050,000
Capital Cost (Daily)	16,802	13,001	11,331
Operating Cost (Daily)	14,449	14,449	5,803
Per Diem	31,251	27,450	17,134
As Percent of U.S. Vessel		88%	55%

COMPARATIVE COSTS II¹⁹²

	<u>US Vessel</u> US Built US Standards US Financed	<u>Model Vessel</u> Foreign Built US Standards US Financed	<u>Foreign Vessel</u> Foreign Built Intl. Standards Foreign Financed
Shipyard Costs	23,375,000	13,050,000	13,050,000
Material	20,000,000	20,000,000	20,000,000
US Regulation	3,630,000	3,630,000	
Finance	1,225,125	1,225,125	826,250
Total Capital Cost	49,005,000	37,905,125	33,876,250
As Share of U.S.		77%	69%
Estimated Subsidy	0	8,524,625	8,923,500
Net of Subsidy	49,005,000	46,429,750	42,799,750
Adjusted Share		95%	87%

World Cruise Fleet¹⁹³

	1998	1999	2000	2001	2002	2003
Ships	217	228	240	255	268	271
Berths	182,407	199,116	219,337	245,213	269,353	297,169
Market Capacity	9.3 million	10.3 million	11.5 million	12.8 million	14.1 million	15.5 million
% Capacity increase from the previous year		10.5%	11.5%	11.7%	10.4%	9.6%

¹⁹¹ Post Hearing Brief of the Maritime Cabotage Task Force on "Economic Effects of Significant U.S. Import Restraints"

¹⁹² Post Hearing Brief of the Maritime Cabotage Task Force on "Economic Effects of Significant U.S. Import Restraints"

¹⁹³ Cruise Industry News Annual 2000 Thirteenth Edition

The Jones Act Reform Coalition
Coalition Supporters

A.E. Staley Manufacturing Co., Inc	Chicago Board of Trade
AGP Grain Limited	Citizens Against Government Waste
Agribusiness Association of Iowa	Citizens for a Sound Economy
Agribusiness Association of Ohio	Colusa Elevator Company
Agricultural Retailers Association	Competitive Enterprise Institute
Alaska Coal Association	Consolidated Grain & Barge Company
Alaska Forest Association	Continental Grain Company
Alaska Miners Association	Countrymark Cooperative, Inc.
American Association of Exporters and Importers	Demeter, Inc.
American Commerce and Trade Corp.	D'Rven Corporation
American Farm Bureau Federation	E.I. du Pont de Nemours & Company
Americans for Tax Reform	Engelhard Corporation
American Potato Trade Alliance	English China Clays International
American Soybean Association	English River Pellets
The Andersons	Export & Logistics
Bartlett and Company	Farmers Elevator Association of Minnesota
Brown's of California	Farmers Grain Terminal, Inc.
California Grain and Feed	Federal Marine Terminals, Inc. (Eastport)
Jones Act Reform Coalition, Alaska	The Fertilizer Institute
Jones Act Reform Coalition, Puerto Rico	Garnac Grain Company, Inc.
Jones Act Repeal Coalition, Guam	Georgia Industry Association
J.R. Simplot	Georgetown Steel (GS) Industries, Inc.
W.B. Johnston Grain	Geo. S. Bush & Company, Inc.
Kerr Pacific Corporation	Goldsboro Milling Company
Louis Dreyfus Corporation	Grain & Feed Association of Illinois
Marbulk Shipping	Green Cove Maritime, Inc. Association
Mennel Milling Company	National Grain and Feed Association
Michigan Agri-business Association	National Grange
Missouri Ag Industries Council	National Taxpayers Union
Modern Mills Rockford, Inc.	National Turkey Federation
Montana Grain Growers Association	Nebraska Grain & Feed Association
Murphy Family Farms, Inc.	New York State Vegetable Growers Association
Nash Johnson & Sons' Farm, Inc.	North American Export Grain Association, Inc.
National Association of State Departments of Agriculture	Northwest Indiana Grain, LLC
National Barley Growers Association	Ohio Agri-Business Association
National Broiler Council	Oklahoma Grain and Feed Association
National Cattlemen's Beef Association	Oregon Wheat Growers League
Cameron Brokerage Company	Pacific Northwest Grain & Feed Association
Canadian Shipping Lines (CSL) International	Parker Ranch
Cargill, Inc.	Pendleton Flour Mills, Inc.
Carroll's Food, Inc.	Perdue Farms, Inc.

Cascade Maritime Agencies Ceres Consulting, LLC Chebanse Grain & Lumber, Inc. Chevron Shipping Company LLP Procter & Gamble Puerto Rico Manufacturers Association Rayonier, Inc. Riceland Foods, Inc. River Springs Cooperative Association Robinson & Belew, Inc. Salt Institute Sealaska Corporation Settlemyre Seed Company Smithfields Foods South Dakota Grain & Feed Association Southeastern Grain & Feed Association, Inc. Southside Elevator Steel Manufacturers Association Sunn Enterprises, Inc. Ty-Walk Liquid Sales, Inc. Total Logistics Resource, Inc Ulapalakua Ranch United Containers Guthrie Corporation	Phillips Petroleum Ponohalo Ranch Port of Corpus Cristi Authority Prestage Farms, Inc. Harvest States Cooperatives Hawaii Cattlemen's Council Hawaii Small Business Legislative Council Hondo, Inc. House of Rayford Farms, Inc. Indiana Agri-Business Association Idaho Barley Commission Jasper County (IN) Farm Bureau Co-op John P. Stewart, Inc. Usibelli Coal Mine, Inc. Voigt Maritime Washington State Potato Commission Western Independent Refiners Association Westway Trading Corporation Whitaker Farmers Cooperative Grain Co. Wilken-Alaska, Inc
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Maritime Cabotage Task Force
Supporters of Cabotage¹⁹⁴

A. H. Powers, Inc	Brady Marine Repair
Advance Boiler and Tank Co.	Brent Transportation Corporation
Adventure Cruises, Inc.	Bridgeport/Port Jefferson Steamboat
AFL-CIO Maritime Committee	Brotherhood of Locomotive Engineers
Afram Carriers, Inc.	Brotherhood of Maintenance of Way Employees
Ahrenkiel Ship Management U.S., Inc.	Buchanan Enterprises, Inc.
Air Line Pilots Association	C.G. Willis, Incorporated
Alaska Cargo Transport, Inc.	C.J.C., Inc
Alaska Sightseeing Tours	Calcasieu Shipyard, Inc.
Alaska Transportation	California Marine Cleaning, Inc.
Alfa-Laval, Inc.	Cape Fear Towing , Incorporated
All States Drilling & Blasting	Capital Fleet, Inc.
Allied Towing Corporation	Caterpillar, Inc.
Allouez Marine Supply Co.	Central Gulf Lines, Inc.
Amerada Hess Corporation	Central Radio Telegraph Co.
American Automar, Inc.	Channel Shipyard , Inc
American Bureau of Shipping	Chotin Carriers, Inc.
American Classic Voyages Co.	Christiana Marine Service Corporation
American Commercial Barge Line	Cleveland Shiprepair Co.
American Foreign Shipping , Incorporated	Cleveland Tankers Ship Management, Inc.
American Hawaii Cruise Lines	Clipper Cruise Line
American Heavy Lift Shipping Co.	Coalition for Peace Through Strength
American Industrial Motor Svce.	Coastal Barge Corporation
American Institute of Merchant Shipping	Coastal Marine
American Marine Constructors, Inc.	Coastal Towing, Inc.
American Maritime Congress	Colle Towing , Inc.
American Maritime Officers	Coltec Industries, Inc.
American Maritime Officers Service	Compass Rose Yacht Charters
American Overseas Marine Corporation	Connolly-Pacific
American Pacific Transport	Cooper Bessemer
American President Companies	Coscol Marine Corporation
American Security Council	Cove Shipping, Incorporated
American Steamship Company	Crescent Towing , Inc.
American Trucking Associations	Crowley Liner Services, Inc.
American Waterways Operators, Inc.	Crowley Maritime Corporation
American WorkBoats	Crowley Marine Services, Inc.
Ameron Protective Coatings	Cunningham & Walker Marine Consultants
Anixter Appleton	Designers & Planners, Inc.
Apex Marine Corporation	Devall Towing & Boat Service, Inc.
Argo International Corporation	Dixie Carriers, Inc.
Arkansas Valley Dredging , Inc. Carter	

¹⁹⁴ <http://www.mctf.com/members.htm>

Arnold Transit	Dixie Fuels Limited
Avondale Industries, Inc.	Dixie Marine, Inc.
B.B. Riverboats, Inc.	Dredging Contractors of America
Bauer Interiors, Inc.	Drew Chemical Corporation
Bayfront Marine, Inc.	Durocher Dock & Dredge, Inc.
Bay Houston Towing	Edward E. Gillen
Bay Shipbuilding	Elliott Bay Design Group, Ltd.
Bay Tankers, Inc.	Elliott Turbine
Bean Dredging Corporation	Empress River Casino
Belle Carol Riverboat Co.	Energy Transportation Corporation
Belt Maintenance	Erie Marine Enterprises
Bender Shipbuilding & Repair Co., Inc.	Erie Sand Steamship Co
Benson Electric	Express Marine, Incorporated
Bigane Vessel Fueling	Fabco Equipment, Inc.
Bird-Johnson	Farrell Lines, Inc.
Blackstone Valley Tourism Council	Fishing Vessel Owners Marine Ways
Blount Industries, Inc.	Florida West Coast Cruises, Inc.
Bludworth Bond Shipyard, Inc.	Food and Allied Service Trades
Blue Water Excursions	Department, AFL-CIO
Bollinger Quick Repair	Fort Sumter Tours, Inc.
Bossert Industrial Supply	Foss Maritime
Bourg Dry Dock & Service	Fraser Shipyards, Inc.
G&H Towing	Freeport Shipbuilding
Gage Corporation, Int.	Hallett Dock Co.
Gallagher Marine Construction Co., Inc.	Halter Marine Group, Inc.
Garner Environmental Services, Inc.	Hannah Marine Corporation
Gateway Riverboat Cruises	Harbor Docking & Towing , Inc.
General Electric Marine Service	Hatch & Kirk, Inc.
Gibson & Cushman Dredging Corporation	Hawaii Transportation Association
Goldstein and Price	Hawaiian Tug & Barge Corp./Young
Goodtime Cruise Line, Inc.	Brothers, Ltd.
Gray Line Water Tours, Inc.	Hendry Corporation
Great Lakes Conveyor Belt	Higman Towing
Great Lakes Dredge & Dock	Hone Heke Corporation
Great Lakes Towing	Hopeman Brothers, Inc.
Gulf Craft, Inc.	Houston Marine Training Svcs.
Gulf Marine Repair Corp.	HT&T , Inc.
In-Place Machining Co.	Hudson River Cruises, Inc.
Industrial Union Department, AFL-CIO	Hunter Marine Transport, Inc.
Inland Lakes Management, Inc.	Husky Terminal & Stevedoring, Inc.
Interior Design International	Hvide Marine Incorporated
Interlake Steamship Co.	Hvide Shipping Inc.
International Association of Machinists and	Hyde Products
Aerospace	J. Cortina, Inc.
International Brotherhood of Boilermakers,	J & D Services
Iron Ship	James Hughes, Inc.

International Brotherhood of Electrical Workers	Jamestown Metal Marine Sales, Inc.
International Brotherhood of Teamsters	Jeffboat/Louisiana Dock
International Longshoremen's and Warehousemen's Union	Jensen Maritime Consultants
International Longshoremen's Association, AFL-CIO	The Jore Group
International Marine Carriers, Inc.	John Bludworth Marine, Inc.
International Marketing & Business, Inc.	Jungle Queens, Inc.
International Organization of Masters, Mates & Pilots	Kadampanattu Corporation
International Ship Masters' Association	Kahlenberg Brothers
International Ship Repair & Marine Services, Inc.	Karl Senner, Inc.
International Union of Operating Engineers	KING , Inc.
Interocean Ugland Management Corporation	Kinsman Lines, Incorporated
Interstate Valweld	Kirby Corporation
Intracoastal Towing & Transportation Corp.	Kirby Tankships, Inc.
Island Tug & Barge	L & S Electric
Isles of Shoals Steamship Co.	Labor-Management Maritime Committee, Inc.
M. Rosenblatt & Son, Inc.	Laborers' International Union of North America
Manson Construction and Engineering	Lake Carriers' Association
Marcol Dredging	Lake Mead Cruises
Marine Contracting Corporation	Lake Michigan Carferry Service, Inc.
Marine Firemen's Union	Lake Michigan Contractors, Inc.
Marine Hospitality Corporation	Laughlin River Tours, Inc.
Marine Inland Transportation Co.	Liberty Bell Cruises
Marine Oil Service, Incorporated	Liberty Maritime Corporation
Marine Systems, Inc.	Loomis & Lapann, Inc.
Marine Transport Lines, Inc.	Luedtke Engineering
Marinette Marine Corporation	Luhr Bros., Inc.
Maritime Institute for Research and Industrial	Lykes Bros. Steamship, Inc.
Maritime Overseas Corporation	Lyon Shipyard, Inc.
Maritime Trades Department, AFL-CIO	Multicom
Maritrans GP Inc.	National Maintenance & Repair
Maryland Marine, Inc.	National Marine Engineers' Beneficial Association
Matson Navigation , Inc.	National Maritime Union
McAllister Brothers, Incorporated	National Shipyard Association
McAllister Towing and Transportation , Inc.	National Steel & Shipbuilding Co.
McDermott, Inc.	Navieras/NPR, Inc.
McDonough Marine Service	Neuman Boat Line, Inc.
McGinnis, Inc.	Neuman Cruise & Ferry Line
	New Orleans Steamboat Co.
	Nicholas Bachko , Inc.
	Norfolk Shipbuilding & Drydock Corporation
	North Ferry
	Nott

Medusa Corporation	Oahu Express
Memphis Queen Line, Inc.	Ocean Specialty Tankers Corp.
Merchant Mariners Fairness Committee	Offshore Marine Service Association
Mercury Sightseeing Boats	Offshore Marine Supply
Metal Trades Department, AFL-CIO	Oglebay Norton Co.
Michigan Maritime Trades Port Council, AFL-CIO	Olympic Tug & Barge, Inc.
Mid-South Dredging	Omega Products
Midland Enterprises	OMI Corporation
Midland Marine Corporation	OMR Transportation Co.
Midwest Energy Resources	Orgulf Transport
Missouri Barge Line	PPR Inc.
Missouri Dry Dock & Repair Co.	Pacific-Gulf Marine, Inc.
Moran Towing & Transportation , Inc.	Packer Marine, Inc.
Morania Oil Tanker Corporation	Padelford Packet Boat Co.
Mormac Marine Group Inc.	Passenger Vessel Association
R & J Transport	Penn Maritime, Inc
Rail Systems, Inc.	Peterson Builders, Inc.
River City USA	Petroleum Service Corporation
Riberboat Tours, Inc.	Phillips' Cruises & Tours
Runyon Industries, Inc.	Pine Bluff Sand & Gravel
RV Charters, Inc.	Piney Point Transportation
Sabine Towing & Transportation Co., Inc.	Pinnacle Marine Corporation
Sabine Transportation	Propulsion Controls Engineering
Sailors' Union of the Pacific	Puget Sound Freight Lines, IncorporatedT. L. James & , Inc.
Save Our Ships Campaign, Inc.	T.T. Barge Service, Inc.
Sayville Ferry Service, Inc.	Talen's Marine & Fuel, Inc.
Sea-Barge, Inc.	Tampa Town Ferry
Sea-Land Service, Inc.	Tenneco Newport News Shipbuilding & Dry Dock Co.
Seafarers International Union of North America	Tennessee Valley Towing
Sea Patriot	The Delta Queen Steamboat
Seaworthy Systems, Inc.	The Dubuque Diamond Joe
Service Marine Industries, Inc.	The Glostten Associates, Inc.
Sheet Metal Workers International Association	The Great Lakes Towing Company
Shipbuilders Council of America	The Ohio River
Shoreline Contractors, Inc.	The Rosie Paddleboats, Inc.
Southeast Shipyard Association	The Waterways Journal, Inc.
Southern Dredging , Inc.	Timco Industries, Inc.
Southern Towing	Timothy Graul Marine Design/TGMD, Inc.
Southwest Marine, Inc.	Todd Pacific Shipyards, Inc.
Southwest Shipyard, Inc.	Toledo Port Maritime Council
Spar Associates, Inc	Toledo Ship Repair
Stan Stephens Charters	Tom Naughton Associates
Stapp Towing , Inc.	Totem Ocean Trailer Express
	TPT Transportation Co.

Star Fleet	Transportation Institute
Star Line Mackinac Island Ferry	Transportation Trades Department, AFL-CIO
Stokes Towing , Inc.	Transportation-Communications Union
Suderman & Young Towing	Travel Systems, Ltd./M.S. Dixie II
Sun State Marine Services, Inc.	Turecamo Coastal & Harbor Towing Corporation
Superior Boat Works, Inc.	Turecamo Maritime
Union Dry Dock & Repair	Victor Fluid Power
United Association of Journeymen & Apprentices of the	Viking Boat Tours of Newport
United Automobile, Aerospace & Agricultural Implement	Virgin Island Fast Ferries
United Brotherhood of Carpenters and Joiners of America	W. S. Patterson
United States Maritime Coalition	Warrior & Gulf Navigation
United Steelworkers of America	Washington Island Ferry Line
United Steelworkers of America-Local 5000	Waterman Steamship Corporation
United Transportation Union	Water Taxi
Upper Lakes Towing	Waterways Cruises, Inc.
USS Great Lakes Fleet, Inc	Weeks Marine, Inc.
	Wendela Sightseeing Boats
	WESCO
	Westar Marine
	Westchester Marine Shipping
	West Coast Shipping
	Western Towing , Inc.
	Westport Shipyard
	Williams Steel
	Wisconsin Bearing
	Women's Propeller Club of the United States
	Women's Propeller Club of the United States, Port of San
	World Yacht Cruises
	W & O Supply, Inc.
	WP & RS Mars Co.
	Wright Dredging
	Ziegler, Inc.

Interviews

Interview 1:

Monday - May 21, 2001: 1:30pm –
Darrell Connor:
1735 New York Ave NW 5th floor.
Washington DC
tel: 202-783-8620.

Darrell has a very broad view of the industry. Darrell is a nonlawyer in the law firm of Preston Gates -- a DC branch of the Seattle firm of the same name. Darrell not only works closely with the Jones Act carriers as a support person for our Maritime Cabotage Task Force, but also works closely with American Classic Voyages. This is the group that operates in Hawaii and were the beneficiaries of legislation a couple of years ago which permitted foreign built cruise ship(s) to enter the Hawaiian trade in return for building replacement ships in US yards. The Preston firm has other cruise ship clients.

Interview 2:

Monday - May 21st: 3:00pm –
Jim Patti:
1775 K St NW suite 200.
Washington DC
tel: 202-463-6506.

Jim is the President of MIRAID (which is the research arm of the Masters Mates and Pilots union -- it has the same relationship to the union as the Transportation Institute has to the Seafarers' International Union (SIU)). Jim has worked very closely with Senator McCain's staff and interested parties in the commercial sector to try to craft a cruise ship bill that permits foreign built vessels to enter the US market (crewed by US crews and under US ownership) with replacement ships being built in US yards. McCain's bill (identical to his bill of last year) was recently voted out of the Senate Commerce Committee.

Contacts:

Rob Freeman – (Unable to meet)
Room 427 Hart Senate Office Building –
tel: 202-224-4852 –

Rob is Senate Commerce Committee Chairman McCain's staffer on the Surface Transportation and Merchant Marine Subcommittee. This is the subcommittee with jurisdiction over cruise ship issues. Rob is the primary staffer on the McCain cruise ship bill. I have requested this meeting but it is not confirmed.

Carl Bentzel – (Unable to meet)
Room 510 Dirkson Senate Office Building –
tel: 202-224-0411 –
Carl is the counsel for the Democrats on the Surface Transportation and Merchant Marine Subcommittee.

Interview 3:

Thursday - May 24th: 2:00pm

4:00pm –

Bill Woolf - Room 322 Hart Senate Office Building –
tel: 202-

224-6665 - Bill is on the personal staff of Senator Murkowski (R-AK) and handles fisheries and maritime issues. He staffs Murkowski on his legislation dealing with cruise ship grey water discharges. This is a different issue than the McCain bill but is one of importance to those dealing with the cruise industry.

Notes:

Recommends calling : Larry Evans (301) 423 – 3335; Ed Welsh (703) 807-0100

Interview 4:

Met on Tuesday, January 15, 2002

Randy Ray

President

US Cruise Ship Association

P.O. Box 979

Mercer Island, WA 98040

Office: 206-30-9880

Cell: 206-369-3100

Interview 5:

Jeff Krida of Cruise West

Seattle, WA

Met: Wednesday, January 16, 2002

Contact given: Cornell Martin American Classic Voyages VP of Government Affairs

Billy Tosan Chair of Merchant Marine and fisheries subcommittee

504-836-6994

cell: 504-450-6120

Rusty Savoie

504-529-1601

Senator John Breaux

WTC

Interview 6:

Met: Wednesday, January 16, 2002

Paul Grigsby of Holland America

300 Elliot Street

Seattle, WA

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28. The International Maritime Organization: www.imo.org
29. Unctad: www.unicc.org/unctad
30. World Maritime University: www.wmu.se
31. American Maritime Officer Union: <http://www.amo-union.org>