

DEPARTMENT OF TRANSPORTATION  
U.S. COAST GUARD  
STATEMENT OF CAPTAIN J. F. MCGOWAN  
ON THE U.S. PASSENGER VESSEL DEVELOPMENT ACT (H.R. 3821)  
BEFORE THE  
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES  
JUNE 14, 1994

Thank you Mr. Chairman. I am Captain Jack McGowan, Deputy Chief of the United States Coast Guard's Office of Marine Safety, Security and Environmental Protection. I appreciate the opportunity to meet with you this morning and discuss the Coast Guard's concerns with H.R. 3821, the U.S. Passenger Vessel Development Act. I hope my recommendations for resolving these concerns will be helpful to the Committee in ensuring the level of safety required of all vessels carrying passengers from U.S. ports.

As the members of this Committee are aware, the Coast Guard has been aggressively pursuing a program to: identify and eliminate regulations that are outdated; duplicate acceptable alternative standards; facilitate the ability of our domestic maritime industry to compete in the international arena. This program is called Maritime Regulatory Reform (MRR), and it charts a new course toward safety at sea, protection of the marine environment, and the regulation of our domestic maritime industry. The Coast Guard wants to ensure foreign vessels that, as a result of H.R. 3821 are registered in the U.S., do not compromise the existing safety standards we have worked hard over the years to establish.

**MAINTAINING ACCEPTABLE STANDARDS OF SAFETY**

As you know, the Coast Guard is a world leader in improving maritime safety standards. We are concerned about any proposal that would require us to place a Coast Guard Certificate of Inspection on a passenger vessel based solely on the fact that it possessed a valid SOLAS document issued by another government. Possession of an international safety certificate is no guarantee that a vessel is built, equipped, crewed and maintained to acceptable international safety standards. We want to be sure that this Bill does not tie our hands when it comes to verifying whether a particular vessel is in a condition to safely carry passengers from our ports. With this in mind, we believe that H.R. 3821 can be drafted in such a way to accomplish the "reflagging" you desire, while providing the levels of safety essential to protect passengers and the marine environment.

**ACCEPTING SOLAS REGULATIONS AS EQUIVALENT TO DOMESTIC LAWS AND REGULATIONS**

Section 4 of the Bill would amend Section 2113 of Title 46 United States Code. The proposed amendment provides that a documented vessel with an interim coastwise passenger trade endorsement is deemed to comply with parts B, C, and J of Title 46 United States Code if the vessel met the standards for passenger vessel construction under the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, commonly referred to as SOLAS 74/78, as amended. Parts B, C, and J of Title 46

concern the inspection and regulation of vessels, loadlines of vessels, and measurement of vessels respectively.

Enactment of the amendments contained in Section 4 of this Bill would create a serious inspection problem for the Coast Guard, and could jeopardize the safety of the passengers carried on vessels certificated under the authority of this amendment. Allow me to elaborate and provide you with a better understanding of why we have objections. I'll also suggest some changes to this Bill that will resolve our concerns regarding acceptance of the vessels certificated under this proposed legislation.

#### LIMITATIONS OF THE SOLAS TREATY

First and foremost, the Coast Guard's concern is for safety. The Section 4 amendments explicitly provide that compliance with the SOLAS 74/78 standards is sufficient to meet the requirements specified in Title 46 United States Code, parts B, C, and J. However, SOLAS 74/78 alone doesn't satisfy all of the safety areas covered by our domestic laws and regulations. In practice, SOLAS 74/78 is intended to be applied in concert with regulations established by the government which has registered the vessel and the vessel's classification society. For example, many SOLAS 74/78 regulations allow individual governments to set their own performance standards for the particular safety system or component addressed in the SOLAS regulations. Foreign performance standards may not always provide the level of safety necessary to be accepted as a prima facie equivalent to corresponding U.S. requirements.

In addition, there are important areas which SOLAS 74/78 doesn't cover at all, including technical details pertaining to hull structure. Such matters would only be addressed by the flag state, if at all. Most governments, including the United States, incorporate classification society rules and standards to regulate these areas. For instance, Coast Guard regulations incorporate by reference certain standards and rules established by the American Bureau of Shipping (ABS). These rules have been examined and satisfy the Coast Guard's concerns for hull structures. However, other classification societies' rules which have been accepted by foreign governments have not been similarly examined and may not necessarily provide an equivalent level of safety to the ABS rules.

Finally, just because a vessel meets rules specified in the SOLAS Convention does not mean that it automatically meets the Coast Guard's safety standards. There are other international maritime safety and pollution prevention treaties which address matters not covered by SOLAS 74/78. Compliance with these treaties establishes that a vessel meets the minimum internationally acceptable standards for safety, sanitation, crewing and pollution prevention.

Vessels inspected and certificated by the Coast Guard under present law meet these various international conventions. Our regulations either parallel the international requirements, or

the international requirements themselves have achieved the force and effect of U.S. law through other legal mechanisms.

We do, of course, permit many foreign flag passenger vessels to enter our ports and embark passengers every day. We allow these vessels to trade in our waters because the existing statutory scheme authorizes the Coast Guard to ensure that these ships meet our safety standards. I believe we can use this program as the model to achieve the aims of your Bill.

#### THE COAST GUARD'S CONTROL VERIFICATION PROGRAM

To embark passengers at U.S. ports, foreign flag passenger vessels must meet rigorous Coast Guard examination requirements. These examinations, known as Control Verification Examinations (CVE), are carried out under the authority of title 46 USC 3505. Upon successfully meeting these exam requirements, a vessel is issued a Control Verification Certificate which is valid for twelve months, subject to quarterly re-examinations. (A foreign passenger vessel may not embark passengers from our ports unless it has a valid Control Verification Certificate.)

Briefly, the CVE process determines whether foreign flag passenger ships are in substantial compliance with relevant international SOLAS maritime safety conventions. During a CVE, the Coast Guard also determines whether the vessel is in compliance with applicable domestic requirements. As I mentioned previously, SOLAS 74/78, and the other applicable international

conventions, allow the various governments some latitude in interpreting requirements and setting performance standards for particular safety systems or components installed on their own vessels. The plan review process includes a review of the vessel's construction plans by the Coast Guard's Marine Safety Center, Washington D.C. The vessel design, equipment, and arrangements are reviewed and examined to determine compliance with applicable international standards as interpreted by the United States. The Coast Guard has recorded a number of interpretations and set performance standards with the International Maritime Organization (IMO) which promote the highest levels of safety. Foreign flag passenger vessels wishing to embark passengers from the U.S. must meet the Coast Guard's interpretations and performance standards. In addition, on board examinations are carried out by Coast Guard marine safety inspectors to verify whether the vessel is actually designed and outfitted as indicated on its approved plans. We also check its lifesaving, firefighting, machinery, navigation, and pollution prevention equipment to make sure that it complies with applicable requirements. Inspectors also assess crew proficiency in firefighting and ship evacuation situations.

Many, but not all, foreign governments and classification societies are familiar with our CVE process and have designed and equipped their vessels to meet the Coast Guard's interpretations and performance standards. Thus, mere possession of international certificates is not always sufficient to authorize the vessel to embark passengers from U.S. ports.

### EQUIVALENCY THROUGH CONTROL VERIFICATION

We feel that foreign passenger vessels which hold a valid Control Verification Certificate have demonstrated a level of safety sufficient to allow them to operate in the coastwise passenger trade on the interim basis as proposed in this Bill. Of course, the vessel would have to be maintained in full compliance with the conditions for a Control Verification Certificate during the entire term of its interim coastwise trade endorsement. This program could also be open to those foreign passenger vessels which do not currently have a Control Verification Certificate, but which successfully go through the process of obtaining one.

Therefore, the Coast Guard would have no objection to an amendment to title 46 which adheres to the requirements for a U.S. Coast Guard Control Verification Certificate to be in compliance with parts B, C, and J of Title 46 United States Code, Subtitle II. Such an amendment would also provide that the vessel may be documented with an interim coastwise passenger trade endorsement.

### ADDITIONAL AREAS OF COAST GUARD CONCERN

Before I conclude, we have several technical concerns which I would like to submit for the record, which I have provided as an appendix to my statement.

H.R. 3821 amends subtitle II of Title 46 USC. As such, it should not have provisions with limited duration, which is what this

Bill would do. If this codification is still desired, we recommend that the Bill provide as a standard Coastwise endorsement with a "sunset" for the new interim sections.

Thank you for allowing me to provide the Coast Guard's views on this Bill. We look forward to working with you to make the necessary improvements. I'd be happy to answer any questions which you may have.

## APPENDIX I

Proposed sec. 12113(a)(2) requires ownership by or charter to a person who is a citizen within the meaning of proposed sec. 2(e) of the Shipping Act, 1916 (sec.5 of this Bill). It is unclear who would be responsible for determining citizenship of the charter under this provision.

Proposed sec. 12113(a)(3), potentially conflicts with the provisions of Section 4 of the Bill, proposed sec. 2113(b). Proposed sec. 2113(b) implies that satisfaction of SOLAS construction standards will satisfy tonnage standards. Thus, arguably a vessel is deemed to comply with tonnage, including the requirements of title 46, Chapter 143, if it satisfies SOLAS construction standards. Beside the point that construction standards would seem to have little to do with tonnage admeasurements, proposed sec. 12113(a)(3) seems to specifically require compliance with Chapter 143. Deeming compliance with tonnage by satisfaction of construction standards, as stated in proposed sec. 2113(b), would not be consistent with any previous maritime practice.

Proposed sec. 12113(a)(4) uses the term "ferry" which is not defined in title 46, U.S. Code.

Proposed sec. 12113(b) states that the Secretary may require the owner or charterer to enter into "one or more" contracts to build

a vessel in the United States. Clarification is needed as to whether the contracts can be changed, or what happens if a contract is breached. It also states that vessels for such contracts must have a total berthing capacity that is 80 percent of the capacity for the vessel for which the endorsement is issued. Does this mean each contract must be for a vessel with 80% of the endorsed vessel's capacity? Or does it mean that if two contracts are formed, then each vessel contracted for may have 40% capacity as that of the endorsed vessel; 4 vessels, then 20% etc.?

Proposed sec. 12113(d) discusses termination of a demise charter under "subsection (a)(2)(B)". There is no such provision. We assume it means (a)(2). Also, the endorsement may continue for up to six months, on "any terms and conditions" prescribed by the Secretary. This language is too vague because it contains no guidance on which to base a condition or term.

Proposed sec. 12113(e)(1)(A)(i) is confusing when read with proposed sec. 12113(b) which appears to require entry into a contract for a new U.S. built vessel prior to issuing the interim endorsement. Proposed subsection (e) would permit entry into a contract 24 months after issuance of the endorsement. Proposed paragraph (C) of subsection (e)(1) requires construction to begin within 3 years of the issuance of the interim endorsement. Since it is difficult to determine when construction "begins", we recommend using the date the vessel is delivered rather than when construction begins.

Proposed sec. 12113(a) employs a new trade endorsement "interim coastwise passenger" without defining it. Proposed sec. 12113(f) prohibits certain vessels from operating in "any trade that is served by" another particular type of passenger vessel, unless certain criteria are met. It is unclear what is meant by "any trade" served by another similar vessel and it is unclear who would make and enforce this determination. Furthermore, it appears that under the proposed language, a U.S. passenger vessel could "bump" the one with the special endorsement merely by deciding to operate in the same area.

Section 3(c) of the bill amends section 9 of the Shipping Act, 1916. If the effect of proposed subsection (e) is to authorize a vessel to be placed in foreign registry and maintain U.S. registry, we object to it. Clarifying language should make it clear that the U.S. registry cannot be maintained if the vessel is to be placed under foreign registry. In other words, we are not creating an exception to 46 U.S.C. § 12102.