

MARITIME CABOTAGE



October 22, 2007

Board of Directors

Philip Grill
Matson Navigation Company
Chairman of MCTF Board

Thomas Allegretti
The American Waterways Operators

Charles Crangle
American Maritime Officers

James Henry
Transportation Institute

Robert Magee
American Shipping Group

Frank Pecquex
Maritime Trades Department
AFL-CIO

James Rausch
Dredging Contractors of America

Chuck Raymond
Bob Zuckerman
Horizon Lines

Michael Roberts
Crowley Maritime Corporation
Venable LLP

Eric Smith
Overseas Shipholding Group

Allen Walker
Shipbuilders Council of America

Jim Weakley
Lake Carriers' Association

Federal Emergency Management Agency
Office of Chief Counsel
Room 835
500 C Street, SW
Washington, DC 20472

Re: Docket ID FEMA-2007-0007 / National Response
Framework
Federal Register, Volume 72, Number 175, Page 51833

To Whom It May Concern:

The Maritime Cabotage Task Force ("MCTF") is pleased to provide these comments to the Federal Emergency Management Agency's ("FEMA") request for comments related to the National Response Framework ("NRF"). The MCTF is the most broad-based coalition representing the U.S. maritime industry. Comprised of more than 400 American companies, associations, shipyards, labor organizations, defense groups, and others interested in maintaining America's strong domestic maritime industry, the MCTF is a leading advocate for the protection of U.S. maritime cabotage laws.

We commend FEMA for its efforts to develop a revised strategy, which incorporates lessons-learned, in order to better respond to natural disasters or terrorist incidents. Specifically, we appreciate FEMA's recognition of the memorandum of agreement between the Maritime Administration ("MARAD"), the Department of Energy ("DOE"), and Customs and Border Protection ("CBP") (Energy Annex, ESF #12-8). This critical MARAD-DOE-CBP document calls for these three Federal agencies to coordinate on whether national defense considerations warrant waiver of U.S. cabotage laws for the movement of energy supplies. It also requires an assessment of the availability of U.S.-flag assets prior to the issuance of any waivers. We strongly support this memorandum.

The Energy Annex establishes the crucial criteria – the MARAD-DOE-CBP memorandum – for determining if and under what

circumstance Jones Act waivers should be issued. The other annexes to the NRF should be harmonized to reflect these standards. For example, the Transportation Annex provides that one of the concepts embodied in the document is to ensure a single point to obtain key transportation information, and that one of the initial response activities that it supports is “coordinating the issuance of regulatory waivers and exemptions” (ESF 1-3, Line 24). Additionally, the Mass Evacuation Incident Annex references the DOE’s ability to initiate various waiver requests, including Jones Act waivers from the Department of Commerce or DHS (EVAC-7). Harmonizing each of these annexes to reflect the structure incorporated in the MARAD-DOE-CBP memorandum for the issuance of Jones Act waivers will help ensure consistency in the implementation of the NRF. It will also help ensure that available U.S.-flag assets are identified and utilized before granting any type of waiver or exemption to cabotage laws.

While we recognize that there may be instances where a Jones Act waiver is unavoidable, in the interest of national security, we do not believe that it should be the standing strategic policy of this nation to encourage the non-enforcement of, or waivers to, the coastwise laws. The American merchant marine is fully capable of meeting domestic maritime transportation needs in almost all circumstances. It is extremely rare, even in an emergency, that qualified vessel capacity is not available to meet genuine needs. An *allegation* that qualified vessels are not available will sometimes be made, but a quick investigation into the nature of the requirement and the vessels available almost always results in finding that the waiver is not, in fact, needed.

Further, depending on the nature of the emergency, waiving the Jones Act may be precisely the wrong action to take. In fact, the use of Jones Act qualified vessels in a national emergency is consistent with FEMA’s goals because it ensures the participation of U.S. citizen-owned equipment and U.S. merchant mariners who have undergone thorough background checks to obtain their Transportation Worker Identification Credential (“TWIC”). Particularly in the context of an emergency resulting from a homeland security incident, waiving the Jones Act could place a vital (and mobile) portion of our domestic transportation network into the hands of foreign citizens, potentially including those who would exacerbate the harm. Similarly, the American workers and companies who have sustained the loss in an emergency should not be displaced by (or forced to compete with) tax-advantaged companies and sub-minimum wage foreign workers at a time when the Americans’ needs may be the greatest.

It is important to understand that Jones Act waivers allow foreign companies, which are not required to comply with U.S. tax, labor or environmental laws, to operate in the United States in direct competition with American companies. Foreign-flag vessels operate under the laws of the country in which the vessel is registered (i.e. Liberia, Panama, etc.). Jones Act waivers give foreign companies and foreign-flag vessels preferential treatment over their U.S. counterparts, a disservice to the U.S. economy, U.S. workers, and U.S. companies at a time when support for domestic entities should be at its highest.

In the event a Jones Act waiver is needed, in the interest of national security, we strongly recommend severe limitations on the waiver, including geographic restrictions, constraints on the vessel type that may be used under the waiver, and time limitations for use of such a waiver. We also believe that prior to issuing a Jones Act waiver, MARAD must make a determination that no U.S.-flag vessels are available for service.

U.S. coastwise laws are vital to the nation's economic, national and homeland security. While strategic planning efforts by FEMA, DHS and others are vitally important to our response efforts, they must not undermine the essence of our nation's maritime laws and favor foreign companies over American shipping operators. Instead, FEMA and DHS should seek to work with the nation's domestic maritime industry to avoid the need to for administrative waivers of the coastwise laws.

We thank you for the opportunity to comment on the NRF and urge you to consider our suggestion to work with MARAD to prioritize the utilization of U.S.-flag vessels in response activities prior to the issuance of cabotage waivers.

Sincerely,

A handwritten signature in black ink that reads "Philip Grill". The signature is written in a cursive, flowing style.

Philip Grill
Chairman
Maritime Cabotage Task Force