Legislative Path to a New Maritime Transportation Strategy

A WHITE PAPER PREPARED BY
THE NAVY LEAGUE OF THE UNITED STATES

The nation's ability to deploy, project, and sustain forces and ensure secure commercial supply chains during conflicts with peer competitors depends on a sufficiently large and active oceangoing US-Flag fleet operating in foreign and domestic trades, along with an adequate pool of skilled U.S. citizen merchant mariners to crew each commercial and government owned reserve sealift vessel. Our ability to build and maintain a shipbuilding industrial base to construct ocean-going ships and Naval auxiliaries depend on national policies and legislation. This White Paper proposes numerous legislative options which would have profound impacts on U.S. sealift capacity. However, it must be understood that the formation of a new and comprehensive Maritime Transportation Strategy will be an arduous undertaking for which we recommend that Congress fully fund an all-encompassing study conducted by an independent third party.

STATEMENT OF THE PROBLEM

The current Maritime Transportation Strategy has failed to meet the policy objectives of the Merchant Marine Act of 1936, "..to encourage and aid the development and maintenance of a merchant marine necessary for the national defense and the development of domestic and foreign commerce: (1) sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times; (2) capable of serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated as vessels of the United States by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient facilities for building and repairing vessels." This alarming situation, as detailed below, is a result of inadequate or uncertain funding as well as unsuccessful programmatic approaches to implement the strategy delineated in the Act. A new U.S. maritime transportation strategy is needed to ensure these objectives are met in the future in order to safeguard the national defense and economic security of the United States.

The formation of a new and comprehensive Maritime Transportation Strategy will be an arduous undertaking for which we recommend that Congress fully fund an all-encompassing study conducted by an independent third party.

Today, the U.S.-flagged merchant marine is a fraction of what it was during the Cold War, the last period of Great Power competition. There are now about 180 ocean-going ships under U.S.-flag compared to 636 in 1990 and 1579 in 1970. About 96 of the current U.S.-flagged vessels are engaged only in domestic trade. The remainder operating in international trade are willing to do so as a result of government support programs, such as the Maritime Security Program or various cargo preference programs, and military charters. As a result, the U.S. moves roughly 1% of its maritime foreign trade in U.S.-flagged ships.

Currently, there are 8 major shipyards building large oceangoing military and commercial vessels, compared to 20 in 1999. Four of these shipyards build military vessels exclusively. The lack of near-term demand for domestic ship replacements has diminished orders for large commercial ships. This could result in the closure of one or two more shipyards (and the loss of thousands of critical-skilled jobs) and erode the second and third tier shipbuilding industrial base which supports both military and commercial shipbuilding to the point where there may be no domestic sources of major components and equipment. It should also be noted that the curtailment of the construction differential subsidies, provisioned under Title VII of the MMA of 1936, resulted in an outsourcing of construction of US flagged ships involved in the international trade. By the 1990s, construction of these U.S. flag ships employed in international trade had shifted completely to overseas shipyards. This coincided with the late Cold War Maritime Strategy to build and maintain a 600-ship Navy while requiring that US shipyards commit themselves to Navy contracts. The end of the Cold War reduced this requirement, just as commercial ship construction had shifted to Europe and Asia.

> Today, the U.S.-flagged merchant marine is a fraction of what it was during the Cold War, the last period of Great Power competition. There are now about 180 ocean-going ships under U.S.-flag compared to 636 in 1990 and 1579 in 1970.

The reason that this decline is of concern relates to the National Security Directive on Sealift, NSD 28, which states, "Sealift is essential both to executing this country's defense strategy and to maintaining a wartime economy. ... The United States' national sealift objective is to ensure that sufficient military and civil maritime resources will be available to meet defense deployments and essential economic requirements in support of our national security strategy. ... The U.S.-owned commercial ocean carrier industry, to the extent it is capable, will be relied upon to provide sealift in peace, crisis and war. This capability will be augmented during crisis and war by reserve fleets comprised of ships with national defense features that are not available in sufficient numbers or types in the active U.S.-owned commercial industry."

There are now serious challenges to meeting these objectives. The nation is no longer able to deploy and sustain forces during protracted wartime operations of greater than 6 months because the current inventory of 180 large oceangoing U.S.-flag ships operating in foreign and domestic trades are about 50 ships (~1,800 mariners) short of accommodating the pool of skilled U.S.-citizen merchant mariners needed to crew each commercial and government-owned reserve sealift vessel. Additionally, the readiness of the Navy's 15-ship surge sealift fleet and the Maritime Administration's 41-ship Ready Reserve Force (RRF) have declined dramatically. In a recent largescale activation exercise, of the organic Surge Fleet (RRF plus Military Sealift Command (MSC)) just 39 of 61 ships were ready for tasking, while the previously approved fleet recapitalization program has yet to replace its first vessel.

Under the current policy environment, the situation is not expected to improve. The domestic component of the U.S.-flag fleet is governed by the Jones Act, which requires vessels in domestic waterborne trade be owned by U.S. citizens, built in the United States, U.S.-flagged and crewed by U.S. mariners. This fleet stabilized at about 100 ships in recent years due to recapitalization of ships in the Hawaii and Puerto Rico trades, and new tankers to transport shale oil. This is the majority (96 of 180 as of March 15, 2021) of oceangoing ships under the U.S. flag. However, without some new programmatic initiatives, such as a coastwise marine highway program, the domestic ocean-going fleet is not expected to grow in the future. Additionally, the mechanism to utilize the tankers in the Jones Act fleet, the Voluntary Sealift Agreement, has not been exercised in decades, precluding rapid fuel logistics to support major combat operations in a contested environment as these 45 tankers provide all but 7 of the military useful tankers under U.S-flag. Even if they were readily available, they are woefully inadequate in number to support the new

Distributed Maritime Operations, Littoral Operations in a Contested Environment, and Expeditionary Advance Base Operations maritime warfighting concepts as well as providing support to Joint ground and air forces. The vulnerability that our lack of capable tankers produces cannot be overstated. Without adequate refueling capacity, our warfighting forces will grind to a halt in the early stages of any prolonged conflict and assistance from foreign flagged oilers will be highly unlikely as great power competitors can flex their military and economic muscle to dissuade neighboring countries from providing assistance to U.S. forces.

The number of non-Jones Act U.S. vessels in international trade has now stabilized at about 84 ships in recent years after a gradual decline in government-impelled cargo due to reduced military operations in Iraq and Afghanistan, reduction in the U.S. global military presence, legislation that reduced cargo preference requirements for food aid, and challenges related to uniform implementation of cargo preference across federal activities. The Maritime Security Program (MSP) fleet of 60 follow-on surge and sealift sustainment vessels makes up over 70% of the total U.S.-flag commercial fleet in foreign trade. This fleet is given cost-offsetting stipends to operate under the U.S.-flag, and the program is authorized through 2035. The remaining roughly 24 other ships are supported only by preference cargoes or by long term MSC charter arrangements. Unless a new program is funded, such as the Tanker Security Program, the U.S.-flag international fleet is likely to shrink even further.

Additionally, most RRF vessels now average more than 45 years old. Without substantial increases to future shipbuilding budgets, the Navy will not have enough funds to recapitalize these ships during the next decade when they reach the end of their expected service lives. While some of these ships can have their lives extended 5 or 10 years, and some can be replaced by used vessels, the Navy has not allocated sufficient funds to acquire the mix of foreign-built used vessels and new U.S.-built vessels to do so in accordance with current law.

Therefore, action is needed to develop a new national maritime transportation strategy for cost effective modernization of sealift capabilities for both national and economic security. This action should focus primarily on U.S.-flag commercial ships in domestic and foreign trade fleets (per NSD 28), and secondarily on government-owned, U.S.-built assets in reserve fleets while meeting national security needs at moderate risk.

OPTIONS FOR ADDRESSING THE PROBLEM

The Navy League in its "2021-2022 Maritime Policy" suggested the following options be considered as potential legislative opportunities for bolstering the U.S. flag fleet and Merchant Marine:

1. Expand the domestic "Jones Act" fleet with coastwise services of Dual Use Vessels (privately-owned commercial ships with military utility-installed national defense features). These Dual Use Vessels (DUVs) would alleviate congestion, road wear and pollution along the I-5/I-95/I-10 corridors in peacetime by carrying domestic 53-foot tractor trailers/boxes along these American Marine Highways (AMHs). A business case analysis done in 2013 estimated the externality benefits associated with DUVs amounting to $16-25M/ship annually compared to truck or rail equivalents. If these externality benefits could be monetized and if the Title XI Federal Ship Financing Program and the Capital Construction Fund are used to reduce the effective capital costs, the DUVs would likely be competitive without further government support. Additionally, these DUVs would be quickly available (less than five days) to support a major deployment of military equipment through participation in the Voluntary Intermodal Sealift Agreement program. This program, in which all MSP vessels and at least 50% of the Jones Act fleet participate, fulfills the intent of the national sealift policy that commercial ships have priority in meeting wartime sealift requirements.

Over the next several years the offshore wind industry will generate a demand for many new

> Therefore, action is needed to develop a new national maritime transportation strategy for cost effective modernization of sealift capabilities for both national and economic security.

Jones Act support ships. While it is not yet certain whether this growth will surpass the losses in offshore oil industry vessels, in time it may generate even more work for the first and second tier shipbuilding industrial base and jobs for ocean-going qualified mariners.

2. Expand the Maritime Security Program to meet less time sensitive sealift needs and fund an expanded "Tanker Security Program" to address the massive tanker shortfall required to support Naval and Air Force operations in a major Indo-Pacific War.

3. Create and implement new cargo preference programs such as the Energizing American Shipbuilding Act which would generate additional U.S.-flag and U.S.-built ships, help maintain the shipbuilding industrial base and provide crews for reserve fleet ships. This particular law would require a percentage of liquefied natural gas and crude oil exports be transported on U.S.-built, U.S.-flag ships. This would help stem the decline of U.S. shipping in foreign trade, boost mariner employment and provide additional work for U.S. shipyards. Similarly, a program for automobile exports should be supported to increase the number of militarily useful ships under U.S. flag.

4. Construction of new sealift ships to meet only those sealift requirements that are so specialized they cannot be met by commercially available U.S.-flag ships

5. Acquisition of foreign hulls to recapitalize RRF Roll-on/ Roll-off ships only if it can be proven that actively sailing commercial ships cannot satisfy requirements without major risk to deployment execution at substantially lower cost than dual-use AMH vessels.

Beyond the availability of sealift shipping, the training of U.S. mariners is a critical issue. Though the number of ships has decreased, current mariner demographics and the demands of the offshore oil, offshore wind, and inland waterway industries mean there is robust demand for new mariners. While the U.S. Merchant Marine Academy, six state maritime academies, and industry training schools continue to produce graduates, fewer afloat training billets and aging training ships make it increasingly difficult to meet licensing and training requirements. Junior mariners need the sailing time to meet the International Maritime Organization's Standards for Training, Certification and Watchkeeping that went into effect on Jan. 1, 2017. The academies need five new training vessels through the National Security Multi-Mission Vessel (NSMV) program, the first delivered by 2022, to prepare graduates for the licensed maritime community. Four of the ships have already been authorized, and one more has been included in the FY 2022 budget to fully meet training requirements.

The U.S. Navy League "2021-2022 Maritime Policy" also included the following recommendations:

- Promptly releasing a National Maritime Transportation Strategy.

- Maintaining and defending the Jones Act. Diminishing this bedrock law would weaken national and economic security by diminishing the seafaring and shipbuilding industrial bases.

- Robust support of the Maritime Security Program. Congress should continue appropriating at least the funds authorized (starting at $314M million in FY2021) through 2035 to keep a minimum of 60 ships under the U.S. flag.

- Full funding of at least a 10-ship Tanker Security Program and two-ship Cable Security Program.

- Full funding for RRF and MSC's reduced operating service fleets life extensions (approximately $50 million per year for the RRF). We must ensure these fleets match current combatant commander readiness and capacity requirements until requirements are changed by the updated Mobility and Capability Requirements Study (MCRS).

- Strong U.S. cargo-preference laws. We support

restoring the requirement for 75% of Food for Peace/ McGovern Dole Food Aid cargoes be carried on U.S.-flag ships to increase the overall number of U.S.-flag ships and the mariners needed to operate them. We also support the Energizing American Shipbuilding Act for the carriage of domestic sources of LNG and crude oil.

- Building dual-use vessels. The Navy and MARAD should work rapidly on recapitalizing the RRF by operationalizing the dual-use vessel concept on AMH or propose another viable alternative. Legislative and policy changes should be enacted by FY22.

- Full authorized funding of the U.S. Merchant Marine Academy and the six state maritime academies to meet the operational, maintenance and capital improvement requirements, including for the Student Incentive Program.

- Funding the authorized Maritime Centers of Excellence, including graduate studies, to ensure the next generation of mariners are properly trained and educated.

- Full funding of the NSMV. Recapitalizing training ships for the state maritime academies.

- Passing the Energizing American Shipbuilding Act.

- Promptly completing and releasing the congressionally mandated Sealift Recapitalization Study based on an updated MCRS.

- Adjusting budgetary and legislative measures that preclude capital and operations-related changes in the application of U.S. tax laws. This is to counter Internal Revenue Service advice that land components of intermodal transport activities do not qualify as "qualified shipping activities" under the tonnage tax law and that MSP payments are subject to regular corporate rates of taxation, which could seriously impact the cost to operate vessels under the U.S. flag, jeopardizing their economic viability.

- Repealing current Internal Revenue Code language related to Capitol Construction Funds. This is so Capital Construction Fund deposits and earnings are treated the same way for purposes of the corporate alternative minimum tax as they are under the regular corporate income tax, helping to expand U.S. shipping by making the financing of U.S. ship construction less expensive.

> The lack of near-term demand for domestic ship replacements has diminished orders for large commercial ships. This could result in the closure of one or two more shipyards and the loss of thousands of critical-skilled jobs.

- Ensuring a strong strategic sealift officer component in the U.S. Navy Reserve. This ensures critical skills and experience are retained to support Navy and sealift transportation and to provide a backup pool of licensed mariners.

- Implementation of a robust military-to-mariner program. This facilitates the transition of former Army, Navy and Coast Guard Soldiers/Sailors/Mariners to certificated/licensed merchant mariner positions to help address projected shortfalls.

- Use of National Defense Features. Navy funding of such features on both U.S.- and foreign-built vessels is needed to enhance their military utility in support of military contingency operations.

- Consolidation of MARAD program authorizations in the National Defense Authorization Act and appropriations in the Defense Appropriation Bill. This would ensure MARAD's national security related programs are properly funded including Title XI, MSP, research and development, AMH, etc. The current arrangement results in a fragmented program execution and insufficient resources. Such a consolidation should also consider the cost savings and readiness benefits of transferring the MSC Surge Sealift ships to MARAD.

> "The nation is no longer able to deploy and sustain forces during protracted wartime operations of greater than 6 months."

NEED FOR NEW APPROACHES TO ADDRESS THE PROBLEM

While the options and recommendations listed above would partially address the problem of an inadequate merchant marine and shipbuilding industrial base, they will be insufficient to meet the full scope and scale of the threats that we currently face from near-peer and great power competitors. These competitors have overtaken the U.S. presence in maritime markets, disrupting the status quo and creating new challenges to national defense and economic security. China has built the world's largest merchant marine and shipbuilding industry while increasing its ownership in seaport and multimodal supply chain assets worldwide. In any potential future protracted dispute with China, U.S. ability to access non-U.S. merchant shipping, to logistically support military operations or maintain economic trade with our allies and trading partners, would likely be impeded.

> We support restoring the requirement for 75% of Food for Peace/ McGovern Dole Food Aid cargoes be carried on U.S.-flag ships to increase the overall number of U.S.-flag ships and the mariners needed to operate them.

This is not the first time that the U.S. has been in this position. The Merchant Marine Act of 1920 was the result of lessons learned from WWI during which the U.S. had difficulty supporting domestic/foreign commerce while meeting the needs of military operations. Its 39 sections provided specific policy provisions and programmatic approaches, outlining essentially a maritime strategy for meeting its objectives. Since many of the programmatic approaches failed, it was replaced by the Merchant Marine Act of 1936, a new maritime strategy with 11 new titles and new programs that were successful in building up the merchant marine and shipbuilding industrial base to support World War II. The U.S. maintained higher levels of shipbuilding and mariner capacity until becoming the sole post-Cold War global superpower. Since that time, policy support has waned in relation to a sizable shipbuilding industrial base and merchant marine to carry U.S. commercial trade, and the backup reserve sealift fleets have contracted, aged, and deteriorated. This is primarily because many of the Merchant Marine Act of 1936's programmatic approaches have been unsuccessful due to lack of funding.

This situation calls for a New Maritime Transportation Strategy that generates a future sealift capability to support the new National Defense Strategy focused on peer competition with China and Russia. A New National Maritime Transportation Strategy is also needed to recommend legislation, as well as regulatory and policy changes with associated funding priorities to reverse the decline in the U.S. Merchant Marine. The U.S.-flag fleet operating in international trade, and the wider U.S. maritime industry, from shipbuilding to port infrastructure, also needs support. The current sealift requirement is based on post-Cold War scenarios, such as major ground force movements to Iraq in an uncontested environment. Now, sealift will have to support distributed maritime operations in the Indo-Pacific and reinforcement of Europe with ground forces in an environment contested from ports of embarkation (POE) to ports of debarkation — that likely will mean attrition of ships.

The forthcoming Mobility Capabilities and Requirements Study (MCRS) will specify what future sealift capabilities are needed with respect to type (Roll-on/Roll-off, tanker, container, etc.), capacity (square feet/barrels/20-foot equivalent units), readiness (days before ready to load on berth at POE) and unique features (consolidated cargo capability of tankers with oilers, self-sustaining container handling, etc.). It should be used as one of the major drivers for the New Maritime Transportation Strategy, with the future fleet primarily depending on active commercial U.S.-flag ships

with national defense features being the foundational principle. Specialized reserve fleet ships with no commercial viability should be used only when necessary. Dependence on a large fleet of obsolescent and unready government owned ships has shown itself to be an unsustainable policy. It certainly does not address the economic security of the United States when confronted with a competitor that could obstruct access to shipping.

RECOMMENDED NEXT STEP

The current legislative approach to develop a new maritime strategy has been unsuccessful because none of the agencies involved have, or are resourced, to implement a strategy that will actually create the transformative results needed to meet the challenge. This explains why little of value has been produced since the 2014 Coble Act was passed. The Office of Management and Budget tends to see investments in the U.S. merchant marine and shipbuilding industrial base as justified only as national security programs, and therefore believes the bill should go to the Department of Defense. The Department of Defense argues that these are whole-of-government issues that should involve other agencies. This catch 22 is likely to continue until Congress or the White House make these industries a priority and directs strong investment in them.

A more effective approach for creating a New Maritime Transportation Strategy would be for Congress to task and fund an independent third party, under the auspices of the National Academies or similar independent organization, to develop an executable New Maritime Transportation Strategy. Such a Strategy would include appropriate implementing legislative language that, if properly resourced, would result in a U.S.-flag/owned shipping and U.S. shipbuilding industrial base sufficient for national and economic security as called for in the current Merchant Marine Act's policy objective section. This third party would propose, based on sound economic analysis, the optimal mix of fiscally realistic programmatic and organizational options to achieve those policy objectives.

A Strategy would include appropriate implementing legislative language that, if properly resourced, would result in a U.S.-flag/owned shipping and U.S. shipbuilding industrial base sufficient for national and economic security.

In developing the New Maritime Transportation Strategy, this independent third party should examine the requirements for the U.S. merchant marine during peacetime and amid increasing hostilities; an analysis of the causes for the decline in vessels registered ("flagged") in the U.S.; how the U.S. is addressing issues associated with maintaining a sufficient merchant marine workforce; and how the infrastructure needed to support the U.S. merchant marine (e.g., shipyards) is being envisaged. It should consider whether existing U.S.-flag shipping capacity is sufficient to fulfill this role, accounting for the capacity that would be needed by the military for strategic sealift and for Naval Auxiliary ships.

The independent party would review the objectives of the Merchant Marine Act of 1936 and the extent to which subsequent legislation, programs, policies, and regulations have aligned with these objectives. It should recommend funding sources and agency responsibilities for such actions and balance both economic and national security objectives. It should offer an unbiased, sustainable approach that is economically efficient, based on sound economic analysis, and consider the value of environmental benefits of shipping as well as international agreements and other potential barriers. For example, it should update the Navy's Business Case Analysis for Dual Use Vessels on U.S. coastwise trades for RRF recapitalization, including the new option for acquiring foreign hulls for lay-up, as well as incentives for commercial cargo preferences for U.S.-flag ships in international trade.

Congress must then utilize this information to pass appropriate implementing legislation, possibly as the Merchant Marine Act of 2023.

The Navy League of the United States is a nonprofit organization dedicated to educating our citizens about the importance of sea power to U.S. national security and to supporting the men and women of the U.S. Navy, Marine Corps, Coast Guard, and U.S.-flag Merchant Marine and their families.

Navy League of the United States
2300 Wilson Blvd., Suite 200
Arlington, VA 22201
703-528-1775 | www.navyleague.org