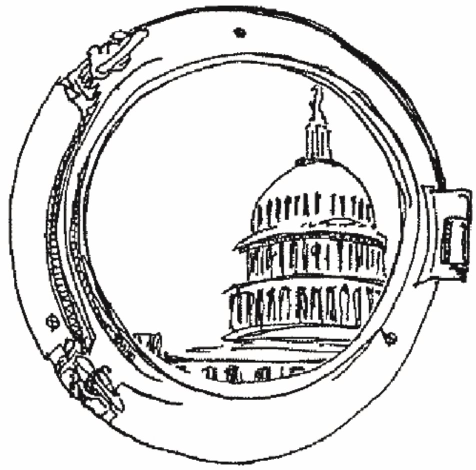
WINDOW ON WASHINGTON



SHIPS Shape

By Bryant E. Gardner*

The one thing folks in DC seem to agree on these days is the need to stay ahead of peer competition with China and the danger an ascendant China poses for US economic and national security. Since China entered into the World Trade Organization, its economy and its military capability have grown in leaps and bounds. While US shipbuilding capacity has largely atrophied to the point of producing only Jones Act and US military vessels required by law to be built in the US, it has become increasingly difficult to find economically competitive shipyards anywhere outside of China. Even the Department of Defense has sought permission to buy foreign-built vessels for sealift. By some accounts, China has a merchant fleet of up to 5,500 vessels, while the US has only approximately 90 US-flag ships in the international trades, supported by stipends available through the Maritime Security Program, Tanker Security Program, Cable Security Program, and by government-impelled cargo preference.

In 2024, Senator Mark Kelly (D-AZ), who is a proud graduate of the US Merchant Marine Academy, and Representative Mike Waltz (R-FL), former Chairman of the Readiness Subcommittee of the House Armed Services Committee, who has since left Congress to become President Trump's National Security Advisor, began circulating early drafts of the Shipbuilding and Harbor Infrastructure for Prosperity and Security (SHIPS) for America Act.[1] The lawmakers worked closely with affected stakeholders in the US maritime and shipbuilding industries to produce the draft legislation. Ultimately, on December 19, 2024, Senators Kelly and Todd Young (R-IN), together with Representatives John Garamendi (D-CA) and Trent Kelly (R-MS), introduced the Act, following Rep. Waltz's agreement to serve as incoming President Trump's National Security Advisor. While Rep. Waltz can be expected to help shepherd the measure from his perch in the White House, the bill's sponsors are also in key positions to advance the measure. Senator Kelly sits on the Senate Armed Services Readiness Subcommittee, Senator Young is the Ranking Member on the Senate Commerce Committee

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1 Awaiting bill number at the close of the 118th Congress.

Maritime Subcommittee, Representative Kelly is the Chairman of the House Armed Services Seapower Subcommittee, and Representative Garamendi serves as both the Ranking Member of the House Armed Services Readiness Subcommittee and a member of the House Transportation Committee Maritime Subcommittee.

The SHIPS Act aims to broadly restore and revitalize American shipbuilding and the deep water, international trading US-flag fleet. Introducing the bill, Senator Kelly stated, "We've always been a maritime nation, but the truth is we've lost ground to China, who now dominates international shipping and can build merchant and military ships much more quickly than we can."[2] Senator Young pronounced:

> America has been a maritime nation since our founding, and seapower was a significant contributor to our rise to being the most powerful nation on earth. Unfortunately, the bottom line now is America needs more ships. Shipbuilding is a national security priority and a stopgap against foreign threats and coercion. Our bill will revitalize the U.S. maritime industry, grow our shipbuilding capacity, rebuild America's shipyard industrial base, and support nationwide workforce development in this industry. This legislation is critical to our warfighting capabilities and keeping pace with China.[3]

Longtime champion of the US Merchant Marine Rep. Garamendi announced:

> For far too long, the United States neglected our maritime industries and the critical role they play in our national and economic security – this ends with the *SHIPS for America Act*. I have spent over ten years working to revitalize the U.S. maritime industry in order to strengthen our national economy, create good-paying American jobs, and support our national security during peacetime or war. This bill represents the most substantial and comprehensive approach to have America compete and lead globally, and I'm proud to lead it alongside Senator Kelly, Senator Young, and Representative Kelly. Today, less than 200 oceangoing ships fly the American flag, the *SHIPS for America Act* will empower our shipyards and marine merchants to uphold our country's status as a leader in the maritime industry. [4]

"Strengthening America's shipbuilding capacity and revitalizing our commercial maritime industry is critical to both our national security and economic resilience. I look forward to continuing to work alongside Senator Mark Kelly, Senator Todd Young, and Congressman John Garamendi to secure our nation's maritime future," said Rep. Kelly.[5] The bill is supported by a broad coalition of American labor, US-flag ocean carriers, ports, shipbuilders, and maritime schools.[6]

The bill weighs in at a substantial 343 pages of legislative text and is multifaceted, aiming to prioritize maritime affairs within the administration, stand up a strategic

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2 Press Release, Office of Sen. Kelly, Sen. Kelly, Sen. Young, Rep. Garamendi, Rep. Kelly Introduce SHIPS for America Act to Revitalize US Shipbuilding and Commercial Maritime Industries (Dec. 19, 2024).

3 *Id*.

4 *Id*.

5 *Id*.

6 *Id.* The following organizations have endorsed the SHIPS for America Act: Shipbuilders Council of America, American Shipbuilding Suppliers Association, American Association of Port Authorities, National Defense Transportation Association, American Maritime Partnership, USA Maritime, American Maritime Congress, American Waterway Operators, National Association of Waterfront Employers, Marine Machinery Association, American Iron and Steel Institute, American Compass, Maritime Accelerator of Resilience, Maritime Institute for Research and Industrial Development, New American Industrial Alliance, Consortium of State Maritime Academies, Philly Shipyard, General Dynamics NASSCO, Govini, U.S. Marine Management LLC, Pasha Hawaii, Ocean Shipholdings, American President Lines, Tote Inc., Saltchuk Marine, TMA Blue Tech Inc., Blue Water Autonomy, Seafarers International, American Maritime Officers, United Steelworkers, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the AFL-CIO Metal Trades Department, the AFL-CIO Maritime Trades Department, International Federation of Professional and Technical Engineers, California State University Maritime Academy, Maine Maritime Academy, Small Shipyard Grant Coalition, Alliance for American Manufacturing, Offshore Marine Services Association, Chamber of Shipping of America, AFL-CIO, International Propeller Club, Ports America, Transportation Institute, Navy League of the United States, Oceantic Network, American Steamship Owners Mutual Protection & Indemnity Association, Inc., USMMA Alumni Association, OPA 90 Forum, Blue Sky Maritime Coalition, Crowley, American Roll-On Roll-Off Carrier, Maersk Line Limited, Farrell Lines, Matson, Overseas Shipholding Group, Inc., Waterman Logistics, Fairwater, U.S. Ocean Inc., LS GreenLink USA, Inc., International Organization of Masters, Mates & Pilots, Sailors' Union of the Pacific, International Association of Machinists and Aerospace Workers, the AFL-CIO Transportation Trades Department, RBC Logistics, Marine Engineers' Beneficial Association, American Maritime Officers Service, Great Lakes Maritime Academy, Texas A&M Maritime Academy, San Jacinto College, Senesco Marine, Patriot Maritime, Tri-Tec Manufacturing, LLC, Hapag-Lloyd USA, LLC, Liberty Maritime, Northeast Maritime Institute, and Massachusetts Maritime Academy.

commercial fleet, reduce regulatory red-tape hampering the commercial competitiveness of US-flag vessels, tax-incentivize shipbuilding in US yards, strengthen US-flag cargo preference, and bolster American mariner recruiting and retention.

Title 1 of the Act would establish the position of Maritime Security Advisor within the White House, to coordinate maritime affairs and policy and produce a national maritime strategy. Congress has regularly called upon successive administrations to produce a coherent national maritime strategy with limited success. The Maritime Security Advisor would lead the Maritime Security Board, also within the Executive Office of the President, responsible for establishing the size of the US-flag fleet, setting national priorities for next-generation maritime technological innovations, coordinating US-flag cargo preference for government-impelled cargo, coordinating interagency efforts to privilege US-flag vessels, and providing oversight of the Maritime Security Trust Fund to fund the bolstered US-flag fleet as discussed further below. Title 1 would also eliminate the existing Maritime Transportation System National Advisory Committee, and requires the Federal Maritime Commission (FMC) to submit annual reports to the Board and congressional maritime committees evaluating the competitiveness of the US-flag fleet in foreign commerce.

Title 2 would establish a Maritime Security Trust Fund, modeled after the Highway Trust Fund and Aviation Trust Fund, to create a dedicated funding mechanism independent of the annual congressional appropriations process.[7] The fund would support numerous existing maritime programs and institutions, including the US Merchant Marine Academy, the state maritime academy training vessels, Title XI loan guarantees, the Small Shipyard Grant Program, the Port Infrastructure Development Program, US-flag vessel cargo preference cost reimbursements, and various mariner recruitment and retention programs. The Trust Fund would also fund the new Shipbuilding Financial Incentives and Strategic Commercial Fleet Programs. The Trust Fund would be funded by an elimination of the cap on the regular tonnage tax on vessels arriving from ports other than North America or the Caribbean[8] and by eliminating the suspension of tonnage taxes and light money for Russian, Chinese, Iranian, and North Korean vessels, effectively imposing a duty on cargo transported by such vessels.[9] The Trust Fund would also be funded by tariffs on Chinese articles pursuant Section 301 of the Trade Act of 1974 and penalties from shipping-related customs, load line, vessel measurement, coastwise trade, log book, mariner misconduct, false statements, Shipping Act, port security, and other maritime violations.

Title 3 would establish the various national maritime strategy, capabilities assessments, and reports regarding sealift and economic maritime capabilities, prioritizing commercial vessels, and the privileging of US-flag vessels. This section of the bill also directs the US Maritime Administration (MARAD) to build, acquire, and operate a sufficient fleet of US-flag vessels in coordination with the Secretary of Defense through the existing Maritime Security, Tanker Security, and Cable Security Fleet Programs, and a new Strategy Commercial Fleet Program. Title 3 also strengthens the FMC's ability to take action against foreign carriers.

Title 4 would establish the Strategic Commercial Fleet of US-built, US-flagged vessels in international commerce, with the goal of a 250-ship fleet. Carriers, or shipyard-carrier teams, submit proposals to MARAD, which evaluates the proposals on a best-value basis, thereafter providing operating payments to subsidize and make commercially competitive US-flag vessels for operation in foreign commerce. Unlike the current Maritime Security and Tanker Security Programs, the operating payments are not hard-coded in statute. Industry stakeholders have expressed some concerns about disparate agreements under the program, and the broad discretion MARAD would have in awarding such agreements.

Vessels would be included in the Strategic Commercial Fleet for seven years, with two eligible renewals for a total of 21 years. If an agreement is not renewed, the carrier receives a payment based upon the remaining life of the vessel. Initially, foreign-built vessels may be enrolled in the Fleet on an interim basis, with no foreign-built vessels eligible to enter the fleet after fiscal year 2029. MARAD must begin with not less than 10 vessels in the fleet by the date two years after enactment and not less than 20 vessels by the date five years after enactment. Industry observers have expressed concerns that US yards will be unable to meet the demands of the program, and also that the US-build requirement could make the vessels uncompetitive with open registry

7 Other provisions pertaining to the Maritime Security Trust Fund are found in Title 7 of the SHIPS Act.

8 46 U.S.C. § 60301; *see also* Sen. Mark Kelly, SHPS for America Act Section-by-Section Analysis (Dec. 19, 2024), https://www.kelly.senate.gov/wp-content/uploads/2024/12/SHIPS-for-America-Act_Section-by-Section_12.19.24.pdf.

9 46 U.S.C. § 60304.

vessels. However, the US shipyards are an important constituency needed to carry the bill toward successful adoption. Accordingly, some have suggested that the federal government take on the build obligation, allowing economies of scale by building an entire class of vessels, thereafter leasing the vessels to US-flag operators.

Not less than a quarter of the Fleet contracts must go to "Section 2" US citizens qualified under 46 U.S.C. § 50501, and there is a preference for tank vessels to satisfy the Defense Department's articulated need for that capacity. As with the current Maritime Security and Tanker Security Programs, vessels may be owned by a U.S. citizen trust and demise chartered to a documentation citizen, or by a defense contractor that operates or manages other US-flag vessels for the Defense Department. The question of whether to prefer Section 2 citizens, and to what degree, will likely fracture the internationally trading US-flag operators, as it has in the past.

The legislation authorizes $150 million for the Strategic Commercial Fleet Program beginning in fiscal year 2025, increasing to $2.1 billion in fiscal year 2034. For reference, the current Maritime Security Program stipend is scheduled to be $6.5 million in fiscal year 2025, which, at that rate, would permit 25 Strategic Commercial Fleet vessels at that rate. However, Strategic Commercial Fleet vessels generally are ineligible for government preference cargoes unless no other ships are available to carry such cargoes and are subject to a US-build requirement, such that a significantly higher stipend would likely be required for Strategic Commercial Fleet vessels to maintain commercial viability.

US-flag vessels are currently subject to a 50% duty on repairs carried out abroad absent a trade agreement. Title 4 of the Act would raise the duty to 200% for any repairs carried out in "countries of concern," most notably China, unless MARAD waives the duty following the operator's good-faith effort to conduct repairs at a US yard.

Cargo preference enforcement has long plagued MARAD, with shipper agencies shirking the rules, especially the U.S. Agency for International Development, which routinely fails to meet even the existing 50% requirement, and not counting as shipped foreign those cargoes that it places in foreign bottoms pursuant to self-granted waivers. Ttile 4 of the legislation would reduce gamesmanship by consolidating compliance across all-of-government at the White House, conforming the existing 50% requirement for civilian agency cargoes to the 100% requirement applicable to military and Export-Import Bank cargoes, and restoring the US-flag premium reimbursement mechanism for certain agricultural food aid cargoes. Additionally, Title 4 would establish a new commercial cargo preference, requiring that within 15 years no less than 10% of cargo from China arrive on US-flag vessels, phasing in the requirement by 1% per year beginning five years after the date of enactment. The requirement would be enforced by MARAD, which will gain the authority to impose a fine equal to the amount greater than the cost of using a US-built, US-flagged vessel. Some in the industry have questioned whether MARAD can actually enforce this requirement, given its difficulty enforcing even government-impelled cargo preferences. US-flag vessels would also receive berthing priority at US ports.

Documenting a vessel in the US is costly under current procedures, but vessels enrolled in the Maritime Security Program can utilize an expedited reflagging process, adopted by the Coast Guard, that only requires meeting class requirements. Title 4 of the legislation would expand this option to all US-flag vessels. Furthermore, the legislation would amend the 1851 Limitation of Liability Act to allow recovery of up to 10 times the value of the vessel and freight then pending for foreign-flag vessels, likely a nod to ongoing limitation proceedings arising out of the Baltimore bridge collapse.

Title 5 of the legislation would establish shipbuilding financial incentives for US yards. First, it authorizes $250 million annually for MARAD to provide financial assistance to aid in the construction of oceangoing vessels other than those enrolled in the Strategic Commercial Fleet or make investments in shipyards or their component manufacturers. The Title also provides $100 million per year as assistance for small shipyards, transforms the Title XI Federal Ship Financing Program [10]into a revolving loan fund with proceeds generated by loans reinvested into the program seeded by $100 million from the Maritime Security Trust Fund. Title XI funding would also be expanded to cover reflagging costs and expenses to make vessels more militarily useful. The bill also makes changes to the Capital

[10] The Title XI program provides long-term government loans at below-market interest rates to build and recondition vessels at US yards. *See* MARAD, Federal Ship Financing Program (Title XI), https://www.maritime.dot.gov/grants/title-xi/federal-ship-financing-program-title-xi.

Construction Fund (CCF),[11] allowing funds to be held longer, expanding the profits eligible for deposit, allowing companies without existing US-flag vessels to create CCF accounts, and expanding the program to allow marine terminal operators to create CCF accounts for the replacement of equipment at marine terminals unless such equipment is of Chinese manufacture. Additionally, marine transportation systems, including US-flag vessels, shipyards, and marine terminals would be added to assets eligibility for Department of Energy loan guarantees.[12]

The US mariner pool has been greatly stressed in recent years, as retirements and an aging workforce have contributed to a lasting mariner shortage. The SHIPS Act takes direct aim at this problem. Pursuant to Title 6 of the Act, workers employed on a US-flag vessel or at a US shipyard for 10 years (and 150 days at sea for a mariner) would be eligible for public service loan forgiveness. Mariners would also become eligible for educational assistance under the GI Bill and become eligible to attend the Naval Postgraduate School. Mariner relicensing costs would also be reimbursed, and mariners serving at least seven years at sea would be eligible for noncompetitive federal employment, similar to veterans. The bill also sets up a mariner retention program with two tracks to keep them in reserve for strategic sealift needs: (1) reserve members may work shoreside jobs and receive short-term vessel deployments to maintain credentials, and (2) after completing US-flag service obligations, maritime academy graduates may serve on foreign-flag vessels to maintain their credentials. Moreover, the legislation strengthens the Military to Mariner Program, places the US Merchant Marine Academy on equal footing with other service academies, including crediting attendance with credit toward federal retirement benefits. Moreover, the legislation mandates stricter enforcement of sea time service obligations for King's Point graduates, funds fuel for the state maritime school training vessels, and modernizes the merchant mariner credentialing process.

Lastly, Title 7 of the Act includes a handful of tax provisions aimed at making the US maritime industry more competitive. The Act establishes a 33% investment tax credit for investments in the construction, repowering, or reconstruction of vessels in US yards, provided such vessels are documented under the US flag for 10 years, subject to a claw back. An additional credit of 5% would be available for vessels entered in a US-headquartered P&I Club, and another 2.5% credit for classification of the vessel with a US society. The bill would also exclude from taxable income payments under the Maritime, Tanker, and Cable Security Programs, the Shipbuilding Financial Incentives Program, the Strategic Commercial Fleet Program, the Small Shipyards Grant Program, and the Port Infrastructure Development Program. Investments in US yards would also qualify for a 25% credit.

It remains to be seen whether any, some, or all of the SHIPS Act will make its way into law. However, as noted above, the lead sponsorship roster for the bill is promising. The effort represents the first serious attempt to reform the US maritime industry in a generation. As the US feels increased pressure to keep up with China's burgeoning maritime industry and reenters serious peer nation military competition, a measure like the SHIPS Act will be necessary to maintain America's place among maritime nations.

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11 The Capital Construction Fund is a program administered by MARAD allowing deferral of taxes on vessel earnings to be used for the construction of US-flag vessels. *See* MARAD, Capital Construction Fund, https://www.maritime.dot.gov/grants/capital-construction-fund.

12 The guarantees currently exist for innovative technologies reducing greenhouse gases pursuant to the Energy Policy Act of 2005. 42 U.S.C. § 16513.

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