

Should MARAD scrutinize ocean charters to enhance national security? A Congressional Committee report suggests so.

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It's not surprising that the U.S. Maritime Administration (MARAD), charged with "promoting the development and maintenance of an adequate, well-balanced United States merchant marine . . .," has found its mission a bit more challenging in light of post-9/11 security issues. Port safety measures have been the subject of tremendous industry and legislative attention, forcing any government agency attending to the ocean shipping business to undertake a balancing act between security and efficiency. MARAD's policies regarding time and voyage charters of U.S.-flagged vessels to foreign citizens recently caught Congress' attention in the context of the pending National Defense Authorization Act for Fiscal Year 2003 (the Act).

The Shipping Act of 1916 mandates that MARAD bless all time and voyage charters of U.S.-flagged vessels to non-citizens of the United States. During some three quarters of a century of poring over numerous charter applications, MARAD saw few if any security, cabotage, economic or other problems with U.S. vessel owners hiring out their ships to foreigners. Nonetheless, MARAD complied with its statutory mandate by going through a painstaking review of each application.

Then came the budget cuts of the late 1980s and early 1990s, along with enactment of new federal ship mortgage legislation. In 1992, MARAD heeded industry cries and implemented a policy of general "blanket" approval of all time and voyage (but not bareboat) charters of U.S.-flagged vessels. For a decade, no one saw any problem with this approach.

But times have changed drastically since 1992. The House Committee Report recently issued for the Act questions whether MARAD's general approval is appropriate in the current environment, and asks the agency to take another look at its policy "in light of recent concerns over security in our nation's ports." The Committee doesn't provide specifics about its concerns, but asks MARAD for a responsive report by November 1, 2002. Presumably, Congress is concerned that vessels chartered to foreigners could return to the U.S. laden with terrorists or their wares.

MARAD hasn't yet digested the issue and probably won't comment until it hears from the Senate. Vessel owner groups also are still ruminating, but clearly are troubled by Congress' interest in changing the vessel charter landscape. Owners see the potential tightening of MARAD's approval policy as well-intended, but a bit overkill in response to the minimal threat posed by foreign charters of Uncle Sam's vessels.

Unlike their bareboat cousins, time and voyage-chartered vessels are still operated by American crews and typically visit only designated ports subject to delineated

circumstances. They still fly the Stars and Stripes, carry U.S. documentation, and are subject to U.S. regs enforceable against their owners. Most importantly, they're still subject to the same security measures when arriving stateside as any other vessel.

Voyage and time charters largely are alternative business arrangements selected by shippers and intermediaries who have significant cargo volumes. Charter hire for a particular voyage or a stated period of time can be substantially lower than a carrier's contract or tariff rate for transport of the same cargo. Thus, charters often make economic sense. Many vessel owners (and foreign charterers) wonder how much more security threat they pose than U.S. vessels not under charter.

Still, the exact routing, scheduling, equipment usage and other particulars of a vessel chartered by foreign concerns are not as easily monitored as one wholly under its owner's control. If a terrorist organization might accomplish just one phase of one evil scheme more easily by chartering an American-owned boat and arranging its course pursuant to a charter arrangement, then revision of our current policies would be justified by the thwarting of one tragedy.

Americans must expect post-9/11 security issues to complicate procedures which have expedited and simplified ocean shipping for years or longer. A balance must be struck between the priority of our war on terrorism, the actual threat certain circumstances really entail, and the commercial impacts measures will impose. As shown by this circumstance, striking that balance will force government and ocean shipping's private sector to reevaluate numerous mechanisms – some less obvious than others – designed to simplify our complex industry.

Ref: National Defense Authorization Act for Fiscal Year 2003, available on <http://thomas.loc.gov>; and Section 9 of the Shipping Act of 1916, 46 App. USC 808.