

MARINE ENGINEERS' BENEFICIAL ASSOCIATION (AFL-CIO)

444 NORTH CAPITOL STREET, NW, SUITE 800 WASHINGTON DC 20001 PH: (202) 638-5355 FAX: (202) 638-5369



RON DAVIS
PRESIDENT

BILL VAN LOO
SECRETARY-TREASURER

December 21, 2007

The Honorable W. Ralph Basham, Commissioner
c/o Border Security Regulations Branch
Office of International Trade
Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

**RE: Docket No. USCBP-2007-0098
Hawaiian Coastwise Cruises**

Dear Commissioner Basham:

The Marine Engineers' Beneficial Association ("MEBA") is pleased to submit the following comments in support of Customs' proposed interpretation regarding the Passenger Vessel Services Act and the 2003 Hawaiian Cruise Ship Initiative, 72 Federal Register 65487 (November 21, 2007).

MEBA is the nation's oldest maritime labor union; representing United States Coast Guard licensed marine officers serving on vessels of the merchant marine in both the domestic and international trades. MEBA crews the three vessels currently operating in the Hawaiian Islands by Norwegian Cruise Line, America, as well as hundreds of other vessels operating in the commercial deep-sea industry, domestic Jones Act fleet, ferry systems across the country, Great Lakes and inland waterways and also on government owned vessels of the Military Sealift Command, National Oceanographic and Atmospheric Administration, Army Corps of Engineers and the Maritime Administration's Ready Reserve Force fleet.

MEBA strongly supports Customs' proposed interpretation, as it will protect thousands of seafaring jobs, many of which belong to MEBA members and because it promotes National Security. In addition, it also addresses blatant abuses of the Passenger Vessel Services Act ("PVSA") by some corporations who already take advantage of flags of convenience and foreign tax regimes to skirt their tax, labor and environmental obligations to the United States.

MEBA is deeply concerned that if the foreign-flag cruise lines' behavior remains unchecked, it will result in the failure of the Hawaiian Cruise Ship initiative, which in turn, would irreparably harm the American merchant marine.

Customs Proposed Interpretation Will Protect U.S. Seafaring Jobs

The PVSA was designed, like the Jones Act, to create a protected domestic trade for American companies employing American seafarers, documenting their vessels under the laws of the United States and flying the American flag, and building their vessels in American shipyards. The law, which has been on the books for over a century, is one of the fundamental laws that support the United States Merchant Marine.

Unfortunately, while industry has fought long and hard to protect the Jones Act, the PVSA has been allowed to be construed in such a liberal fashion that some foreign flag cruise lines have been able to take advantage of the domestic American market while doing everything in their power to minimize their compliance with American tax, environmental, labor and maritime safety regulations. They were so successful at doing so that by 2002, there was not a single U.S.-Flag passenger vessel operating in the cruise industry.

In 2003, with the help of MEBA and the rest of maritime labor, Congress passed the Hawaiian Cruise Initiative, which allowed Norwegian Cruise Line America (“NCLA”) to flag in three foreign built cruise ships that would be restricted to Hawaiian service, but would be operated in all other respects in full compliance with the PVSA. NCLA contracted with MEBA to provide both deck and engineering officers for this new service. These cruise ships are a major source of jobs for MEBA, with each cruise ship employing a complement of shipboard officers equivalent to that of 8-10 oceangoing container cargo vessels.

Over 4,000 mariners, both licensed and unlicensed, stand to lose their jobs if the foreign cruise lines continue their blatant violations of the PVSA. Customs proposed interpretation will protect those jobs and will force the foreign flag cruise lines to obey both the letter and the spirit of the law, both of which they have been more than willing to break.

NCLA is a responsible corporate citizen that complies with all U.S. laws, pays good wages and benefits for American families, and pays all applicable U.S. taxes. The foreign flag cruise ships have increased capacity in the West Coast to Hawaii trade route by 430% since NCLA began operations in 2003. MEBA is not about to allow the foreign flag cruise industry to drive Norwegian Cruise Line America out of business by unfair and illegal means such as utilizing sham foreign port calls, paying substandard third-world wages to their workers, and not paying U.S. taxes.

The Flag of Convenience Cruise Lines’ Violations of the PVSA Damage American National Security

NCLA’s deck and engineering officer positions are critical to the national security of the United States. As has been proven in every major conflict in our nation’s history, a strong and vital United States Merchant Marine is a requirement for the successful defense of the United States and the effective projection of military power overseas. The same officers who crew NCLA’s vessels in peacetime crew commercial vessels carrying needed supplies and equipment to our armed forces overseas in wartime. One of the

additional goals of cabotage laws like the Jones Act and the PVSA is to ensure a ready pool of trained U.S. citizen mariners capable of being redeployed as necessary during times of war and national emergency.

NCLA recently announced their plans to redeploy the PRIDE OF HAWAII, the newest of their three U.S-Flag cruise ships, into the foreign trade as a result of the illegal competition from the foreign cruise lines. It is critical that Customs act swiftly to ensure that more American ships and American jobs are not lost in this trade. Each billet lost represents one less working mariner – and one less skilled seafarer who could crew a militarily useful cargo vessel in wartime. While the foreign flag cruise lines point to the impact their cruises have on the American economy, they fail to recognize the damage they are doing to our national security, and they do not seem to recognize that there is a significant difference between a skilled American marine officer job and an unskilled retail job generated by their cruises. Please keep in mind that the seafarers sailing aboard the foreign flag cruises ships are not American citizens and therefore are not required and have no interest in serving the United States in a time of war.

Our industry and our country has learned the hard way that the only way to ensure adequate numbers of reliable mariners are available to support our armed forces is to support cabotage laws like the Jones Act and the PVSA that provide jobs to Americans in peacetime so they are ready and able to serve when they are needed. The illegal violations of the PVSA have already damaged American national security by driving one NCLA U.S.-Flag cruise ship out of the trade. It is critical that Customs promptly implement its proposed interpretation before more damage is done.

The possible economic damage that the foreign flag cruise lines have argued may result from this interpretive rule is miniscule compared to the actual damage that has already been inflicted on our national security. We cannot afford to let rhetoric get in the way of our national security.

The Foreign Flag Cruise Industry’s Criticisms of Customs Proposed Interpretation Are Without Merit

The foreign flag cruise industry has argued strenuously that they the proposed interpretation is a “major change in U.S. policy”, and that it was proposed in a hasty fashion without sufficient “due process,” notice or opportunity for public comment. We disagree.

The PVSA has been the law of the United States since 1886. It strains credulity to argue that they were not aware that their actions were a violation of the law. The law itself is plain: “No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port...” Further, the interpretive rule itself refers to 19 CFR 4.80a, the CBP ruling that currently addresses the enactment of the PVSA, where it clearly spells out that when passengers embark a non-coastwise qualified vessel at one U.S. port, and disembark at a different U.S. port, unless they proceed with the vessel to a distant foreign port, they are in violation of the PVSA. The regulations define distant foreign ports as any ports not located in North America, Central America,

Bermuda, or the West Indies. A sham port call in Mexico cannot be said to comply with the PVSA as it has been construed by the CBP for a number of years.

Attached to this letter is a grid (“Foreign Flag Hawaiian Itineraries”) demonstrating the different foreign flag operating companies and their voyages to Hawaii, including what they consider to be a “foreign port call” that complies with the PVSA. The majority of the “foreign content” of these cruises, which have been marketed as domestic Hawaiian cruises, are one to three hour “service calls” where passengers are not permitted to disembark. The foreign flag cruise lines knew or should have known, given the age of the PVSA and its implementing regulations, that sham port calls in a foreign port for a few hours at night would not be sufficient to satisfy the plain meaning of the PVSA. The fact that they have availed themselves of delayed enforcement of the PVSA does not justify their knowing violations of it. Indeed, the foreign cruisers were warned in August of 2007, by the CBP about the sham port calls but they have chose to ignore the Agency and continue to blatantly violate U.S. law and policy.

In their submission to this docket, they claim that they have “detrimentally relied” on previous Customs and CBP rulings, yet they fail to cite a single one. In reality, if they have detrimentally relied on anything, it has been reliance on getting away with breaking the law, which in itself, is illegal. That is not a compelling argument. For example, a person engages in income tax evasion every year by intentionally filing faulty tax returns. On the sixth year the Department of Revenue conducts an audit and catches the person evading taxes. The person then tries to make the argument that he detrimentally relied on his accession to wealth and not paying the appropriate taxes by the fact that the Department of Revenue never did anything about his tax returns in the past. The argument does not work. Likewise, the foreign flag cruise operators cannot claim to have detrimentally relied on the CBP’s lack of time getting around to addressing the “sham” port call issue to justify their continued violations of the law. Indeed, the foreign cruisers have now been audited by the enforcing agency, the CBP.

MEBA argues that this change does not represent a significant change in U.S. maritime policy, but simply indicates a statement on the part of CBP and the U.S. government that blatant and knowing violations of America’s cabotage laws will no longer be tolerated.

Customs’ Proposed Interpretation Furthers the Important Policy Goals of the Hawaiian Cruise Initiative and Has the Support of Congress

MEBA supports Customs’ proposed interpretation because it furthers the important public policy goals of the Hawaii Cruise Ship Initiative of 2003. The Hawaii Cruise Ship Initiative was enacted by Congress to “jump start” the revitalization of the U.S. flag oceangoing passenger cruise industry and to promote American national security and economic interests. As noted above, MEBA provides both deck and engineering officers for the U.S. flag vessels operating under the authority of the Hawaiian Cruise Initiative. These cruise ships are a major source of jobs for MEBA, with each cruise ship employing a complement of shipboard officers equivalent to 8-10 oceangoing container cargo vessels. Customs’ proposed interpretation will protect U.S. flag operations and American jobs in the Hawaii coastwise trades from unlawful foreign competition.

MEBA is also pleased to note that the interpretive rule has received bipartisan support from a number of senior members of Congress. Please find attached a bipartisan Congressional letter signed by 10 Members of Congress. The letter in support of the CBP interpretive rule includes Jim Oberstar (D-MN), Elijah Cummings (D-MD), Frank LoBiondo (R-NJ), Gene Taylor (D-MS), Jim Saxton (R-NJ), George Miller (D-CA), Peter DeFazio (D-OR), Bennie Thompson (D-MS), Ike Skelton (D-MO), and Peter King (R-NY). These Members represent the following Congressional Committees:

- The Chairmen of the Transportation & Infrastructure Committee and its Coast Guard Subcommittee;
- The Chairman and Ranking Member of the Homeland Security Committee;
- The Chairmen of the House Armed Services Committee and its Seapower Subcommittee, as well as the ranking Member of the Air and Land Forces subcommittee; and
- The Chairman of the Education and Labor Committee.

This kind of broad support demonstrates that Congress recognizes the critical need for a strong merchant marine, and that the behavior of the foreign-flag cruise industry in Hawaii is a serious threat to our economic and national security.

Conclusion

MEBA commends both Customs and the Maritime Administration for their leadership on this issue. It is critical that Customs move swiftly and not allow the foreign flag cruise lines to delay implementation. We have already lost one vessel because of their violations of the laws of the United States. We cannot afford to wait any longer.

The MEBA fully supports the proposed interpretation and urges its immediate adoption.

Respectfully Submitted,

Ron Davis
President, MEBA

William P. Doyle
MEBA Deputy General Counsel

See attachments: (1) Foreign Flag Hawaiian Itineraries grid showing “sham” foreign port calls

(2) Strong Congressional Support letter for CBP’s proposed interpretation