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President Trump's Emerging Maritime Policy

By Craig H. Allen

President Donald Trump was elected on a pledge to make America great again. Although he did not enter office with a comprehensive national maritime policy, the elements of such a policy have begun to emerge. Since taking office on January 20, 2017, Trump and the Republican controlled 115th Congress have enacted broad tax reforms and significantly increased defense spending, the first step toward rebuilding the US Navy to 355 ships. The 115th Congress also invoked the Congressional Review Act of 1996 to overturn 14 rules issued by federal agencies during President Obama's term.

Key Trump executive branch appointments included retired Marine General John Kelly to head the Department of Homeland Security and Elaine Chao, a former Secretary of Labor with experience as both a Deputy Administrator of the Maritime Administration and Chair of the Federal Maritime Commission, as Secretary of Transportation. Retired Navy Admiral Mark Buzby, a 1979 graduate of the US Merchant Marine Academy and former commander of Military Sealift Command, was named to head the US Maritime Administration. When General Kelly was tapped to serve as the White House Chief of Staff, veteran DHS administrator Kirstjen Nielsen was named to succeed him as the DHS Secretary. In his second year in office, the president nominated Admiral Karl Schultz, a highly respected strategic leader who distinguished himself as the Atlantic Area commander during the devastating 2017 hurricane season, to serve as Commandant of the Coast Guard. President Trump personally attended the June 1, 2018, Coast Guard change of command ceremony, resurrecting President George W. Bush's practice.

Deregulation

In its first three months, the new administration signaled one of its priorities with three executive orders aimed at reducing the nation's regulatory burdens. Trump signed Executive Order (EO) 13771 on Reducing Regulation and Controlling Regulatory Costs on January 30, 2017. EO 13777 on Enforcing the Regulatory Reform Agenda followed on February 24, 2017, and EO 13783, which focused on Promoting Energy Independence and Economic Growth, on March 28, 2017. The Trump administration also launched a review of 11 marine monument and sanctuary designations, including the 140,000-square mile Papahānaumokuākea Marine National Monument off Hawaii. The Interior Department sent its review report to the president in October 2017.

Of particular interest to the maritime sector is the administration's May 17, 2018, Request for Information (RFI)

seeking public comments on how existing federal agency requirements affecting the maritime sector can be modified or repealed to increase efficiency, reduce or eliminate unnecessary or unjustified regulatory burdens, or simplify regulatory compliance, while continuing to meet statutory missions. The administration seeks public input on all matters related to maritime commerce, including but not limited to (1) designing, building, acquiring, repairing, or scrapping vessels; (2) operating, manning, or maintaining vessels, port facilities, or shipyards; (3) operating shipping lines, customs brokerage services, shipping and freight forwarding services, or maritime activities related to resource extraction, renewable energy, cable laying, or marine research. Additionally, the administration is interested in how US maritime regulations might be better coordinated with the regulations and requirements of other countries, especially Canada and Mexico, in shared bodies of water. Regulatory burdens on cargo and passenger vessels are of particular interest. Information submitted in response to the RFI will be used to inform the federal agencies' development of regulatory reform proposals.

Seemingly, the Jones Act, which restricts coastwise maritime trade to US flag vessels, is never entirely secure. Although every president from Reagan to Obama has supported the Jones Act on national security grounds, the act has many outspoken critics, including outgoing Senator John McCain. In the aftermath of Hurricane Maria's devastation of Puerto Rico, the Trump administration invoked its streamlined Jones Act 46 U.S.C. § 501(a) authority to

temporarily waive restrictions on shipments destined for the island, to facilitate resupply and rebuilding. Although Puerto Rico and other interests, including 22 members of the House of Representatives, urged the administration to make the Puerto Rico waiver permanent, the DHS – which came under scrutiny by Jones Act carriers who insisted they had ample capacity to service Puerto Rico – allowed it to expire.

Reorganizing the Executive Branch

On March 13, 2017, Trump's EO 13781 launched the administration's Comprehensive Plan for Reorganizing the Executive Branch. The order culminated in the 127-page White House Office of Management and Budget June 2018 report titled *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*. Several recommendations target agencies charged with regulating and providing services to the maritime sector. For example, the report calls for US Army Corps of Engineers missions to be transferred from the Defense Department to the Departments of Transportation and Interior. The US Coast



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Guard's bridge administration and aids to navigation missions would similarly be transferred to DOT. The National Marine Fisheries Service, presently in the Department of Commerce/NOAA, would be merged into the Department of Interior's US Fish and Wildlife Service. A DHS-specific reform proposal seeks to identify potential efficiencies and budgetary savings by eliminating unnecessary duplication between the Coast Guard and Customs and Border Protection air and maritime programs. Such measures may include facility consolidation, standardized data, enhanced domain awareness and coordination, and common future capability requirements.

The Trump Ocean Policy

The US national ocean policy has been subject to a number of course changes over the past five decades. National ocean policy formally began with the 1969 Stratton Commission's *Our Nation and the Sea*. The United Nations declared 1998 the International Year of the Ocean and President Bill Clinton launched a complementary initiative within his administration centered on a set of Year of the Ocean (YOTO) discussion papers.

The discussion led to Clinton's 1999 *Turning to the Sea: America's Ocean Future* report, which set out four pillars for a national ocean policy: sustaining the economic benefits of the oceans, strengthening global security, protecting marine resources, and discovering the ocean. Momentum from the YOTO was carried forward by two ocean policy commissions: the congressionally-chartered US Commission on Ocean Policy (USCOP) chaired by retired Navy Admiral James Watkins and the Pew Charitable Trusts Ocean Policy Commission, chaired by Leon Panetta. Each prepared a report with detailed recommendations for a comprehensive national ocean policy.

President George W. Bush implemented many of the USCOP recommendations in his 2004 US Ocean Action Plan. Notably, one of the areas of focus in the 2004 Action Plan was supporting maritime transportation, which among other things elevated membership on the Interagency Committee on the Maritime Transportation System to the

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cabinet level. In response to the 9/11 attacks, the Bush administration also promulgated a National Strategy for Maritime Security and eight supporting maritime security plans.

Shortly after coming into office, President Obama formed an Interagency Ocean Policy Task Force to study national ocean policy. Consistent with the task force's recommendations, he issued EO 13,547 on Stewardship of the Ocean, Our Coasts, and the Great Lakes in 2010. The order established a 26-member National Ocean Council, an 18-member Governance Coordinating Council, and nine Regional Advisory Committees. The order also announced a 10-point national ocean policy. Neither maritime transportation nor energy production were included in the 10 points.

Coastal and Marine Spatial Planning was to serve and the principal regional planning tool in the Obama policy. Such plans were to be developed by the nine regional planning bodies and submitted for approval by the National Ocean Council. Further details of the Obama policy were provided three years later in the National Ocean Policy Implementation Plan. Like the Bush Ocean Action Plan, the Obama National Ocean Policy failed to include a proposal for congressional legislation despite the warning by the US Commission on Ocean Policy that "substantial legislative action will be required to achieve a comprehensive, coordinated ocean policy."

On June 19, 2018, President Trump issued an executive order titled Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States, which superseded the 2010 Obama order. The Trump policy purpose statement opens with recognition that the ocean, coastal, and Great Lakes waters of the United States are foundational to the economy, security, global competitiveness, and well-being of the United States. It then goes on to cite the importance of

ocean industries, maritime commerce, fisheries, and the domestic energy sector. The Trump policy adopts a leaner approach to interagency coordination than the Obama policy. It establishes an Interagency Ocean Policy Committee, whose membership is broadly similar to the Obama National Ocean Council. Gone, however, are the Governing Council and nine Regional Planning Committees. Federal participation in "regional ocean partnerships" will continue to be supported, "to the extent appropriate and consistent with national security interests and statutory authorities." Gone, too, is any pledge to seek Senate consent to accede to the UN Convention on the Law of the Sea (which was the subject of committee hearings in the Senate in 2003, 2007, and 2012, yet never advanced to a floor vote), along with the elaborate Obama provisions for marine spatial planning that concerned fishing, shipping, and offshore energy interests. Because the Trump Ocean Policy, like those of his predecessors, has no firm legislative basis, it will likely prove to be just as ephemeral as those of his predecessors.

Trump Arctic Initiatives

The United States is one of eight members of the Arctic Council, which was established by the Ottawa Declaration in 1996. Chairmanship of the council rotates among the eight members every two years. The Trump administration presided over the final months of the 2015-17 US chairmanship of the council and hosted the May 2017 ministerial meeting in Fairbanks, Alaska. Retired Coast Guard Admiral Robert Papp, the US Special Representative for the Arctic, resigned at the end of 2016 to accept a job in the private sector. Much of the US coordination therefore fell to Ambassador David Balton, Deputy Assistant Secretary of State for Oceans and Fisheries, who served as chair of the Arctic Council's Senior Arctic Officials (Ambassador Balton later

retired from the State Department to accept an academic position).

Secretary of State Rex Tillerson addressed the Arctic Council as the Trump administration's ministerial representative, declaring that the Arctic Council "has proven to be an indispensable forum in which we can pursue cooperation." He also affirmed that the United States will continue to be an active member in the council. He then joined the other Arctic Council member states in signing the Fairbanks Declaration and the Agreement on Enhancing International Arctic Scientific Cooperation.

Despite Trump's announced intent to withdraw from the December 12, 2015, Paris Agreement to combat climate change (the Paris Agreement does not permit withdrawal before November 4, 2020), Secretary Tillerson joined the other Arctic Council member states in reaffirming the council's commitment to combat global warming, the effects of which are particularly pronounced in the Arctic region.

The US Arctic Policy (NSPD-66) was announced by President George W. Bush in 2009. President Obama then added his National Strategy for the Arctic Region (NSAR) in 2013 and an implementation plan for his strategy in 2015. Consistent with the 2009 Arctic Policy, the NSAR and Implementation Plan emphasized three lines of effort: advance United States security interests, pursue responsible Arctic region stewardship, and strengthen international cooperation.

President Trump has so far not taken action on the 2009 Bush Arctic policy statement or the 2013 Obama strategy. He has, however, reversed two decisions Obama made after Trump's November 2016 election. On March 28, 2017, Trump issued an executive order titled Promoting Energy Independence and Economic Growth. One month later, he issued a second order on Implementing an America-First Offshore Energy Strategy, which reversed the Obama decision in the waning days of his tenure to take the Chukchi Sea and the Beaufort Sea off the table in the draft five year plan for offshore energy leases. President Trump also revoked President Obama's last minute Bering Sea Climate Resilience executive order, thus relieving the Coast Guard of its Bering Sea Port Access Routing Study tasking under the December 2016 order; however, the Trump administration then joined Russia in submitting a joint proposal to the International Maritime Organization to establish vessel routing measures in the Bering Sea and Bering Strait. The IMO Maritime Safety Committee approved the proposal in May 2018.

Trump was more consistent with Obama regarding the nation's need for polar icebreaking capacity. In his 2017 commencement address at the US Coast Guard Academy, Trump took the opportunity to announce his commitment to recapitalize the Coast Guard's aging polar icebreaker fleet. The FY 2018 Defense Appropriations bill did in fact include \$150 million for icebreaker construction, and section 153 of the pending 2019 National Defense Authorization Act bill authorizes construction of up to six polar class icebreakers. On March 2, 2018, the Coast Guard and Naval Sea Systems Command released a request for proposal for advance procurement and design work for a polar class heavy icebreaker, with the goal of commissioning the ship by 2023.

Maritime Trade Storm Clouds Forming?

The Trump administration's trade and sanctions policies have become a source of serious concern to commercial shipping interests. Two-way trade between the United States and other countries totaled more than \$5 trillion last year. Most of that trade moved by sea, although largely on foreign flag vessels. Steel and aluminum are key shipbuilding components and both have been the subject of US import tariff conversations.

Three days after taking office President Trump, who has long preferred bilateral trade agreements to multilateral agreements, withdrew from negotiations on the Trans-Pacific Partnership trade agreement and announced his intention to renegotiate the 1994 North American Free Trade Agreement with Canada and Mexico. Tariffs are also to be imposed on imports of steel and aluminum and tariffs totaling up to \$450 billion may be imposed on selected Chinese imports. Those tariffs are certain to invite retaliatory measures, the combined effect of which is sure to impact the maritime transportation sector. Fitch Ratings predicts that the container and, to some extent, dry bulk sectors will be the shipping segments most affected by the tariffs. The US maritime trade industry is further constrained by US trade sanctions imposed on Russia, Cuba, and Iran (container giants A.P Moller-Maersk and MSC recently announced they were suspending service to Iran). Export controls require shippers and carriers alike to pay scrupulous attention to the restrictions to avoid penalties, which can range up to \$1 million per violation, and result in up to 20 years of imprisonment, statutory debarment, and denial of export privileges.

More Needed

The nation's maritime industries are in dire condition. A 2017 report by the American Society of Civil Engineers estimated that it would take a \$3.6 trillion investment over five years to address the nation's aging infrastructure needs. The report gave US ports a C+ grade and the nation's inland waterway locks and dams a D- grade. The American Association of Public Ports estimates that more than \$150 billion is needed over the next five years in dredging and facility upgrades. The 2017-2022 National Strategy for the Marine Transportation System developed by the US Committee on the Marine Transportation System (CMTS) recognizes the infrastructure deficiencies, yet it offers only an admonition that maritime infrastructure resources be used "efficiently and effectively."

In his 2018 State of the Union address, President Trump urged Congress to pass legislation establishing a \$1.5 trillion program for rebuilding the nation's infrastructure. Trump envisioned that funding would come from the federal government along with state and local governments and private investors. So far, however, no comprehensive infrastructure legislation has emerged.

The US merchant marine fleet has declined to 175 vessels (only 81 of which are engaged in international trade) averaging more than 30 years of age. Following suspension of the construction differential subsidy program in 1982, the American share of the global shipbuilding market declined to just one percent, with most of that limited to compulsory "buy

and build American" Navy and Coast Guard contracts and vessels slated for the Jones Act trade. Additionally, supersession of the 1970 Merchant Marine Act operating differential subsidy program by the 1996 Maritime Security Act maritime security program (currently capped at 60 vessels) and limited cargo preferences has led to a dramatic decline in the US merchant marine and the number of qualified mariners. Ironically, even though the US has emerged as a major LNG exporter, there is not a single US-flagged LNG carrier to transport that gas to market (HR 1240 pending in the 115th Congress would require that 30 percent of US LNG and crude oil exports be carried on US flag vessels by 2025). Surprisingly, the CMTS 2017-2022 National Strategy for the Marine Transportation System fails to address the declining state of the US merchant marine and shipbuilding capacity.

President Trump's July 21, 2017, executive order on Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States will address some of these issues. The order mandate was later incorporated in the December 2017 National Security Strategy, which commits to a vibrant domestic manufacturing sector, a solid defense industrial base, and resilient supply chains. The report required by the 2017 order, part of which was developed by a shipbuilding working group, was delivered to the president in May of 2018. Those familiar with the report suggest it will likely target the US commercial shipbuilding and merchant marine fleet for revival.

Conclusion

President Trump's make America great again pledge did not include a distinct maritime policy component; however, elements of such a policy are emerging from his actions on closely related issues. The recurrent themes of Trump's policy initiatives have been enhancement of the nation's security, global competitiveness, and energy independence, all facilitated by a federal government that is less bureaucratic and more responsive, and with transportation issues increasingly consolidated in the Department of Transportation.

Two coming Trump actions bear close watching. The actions he takes on the recently submitted report on the nation's industrial capacity will further clarify the administration's wider maritime policy, particularly with regard to the shipbuilding industry and the US merchant marine. Second, the interagency response to public comments received after the May 17, 2018, request for information on maritime regulation will focus on

a broad spectrum of maritime issues, including shipbuilding and shipyards, vessel operations and manning, and port facilities, along with operating shipping lines, customs brokerage and freight forwarding services, and maritime activities related to resource extraction, renewable energy, cable laying, and marine research. Major decisions on these initiatives will likely be delayed until after the November 2018 elections. **PMM**

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