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NAWE News

July 12, 2024

The Latest with NAWE

NAWE Applauds Favorable Decision of D.C. Circuit Court in TCW v. Evergreen – The U.S. Court of Appeals for the District of Columbia last week issued a ruling that vacated the Federal Maritime Commission's (FMC's) order in the TCW v. Evergreen case on the application of demurrage and detention fees and remanded the case back to the FMC, handing NAWE a significant legal victory. In its opinion, the Court deemed the Commission's argument that the imposition of equipment detention charges on a holiday weekend was at odds with the "Incentive Principle" and, therefore, unreasonable under the Shipping Act, arbitrary and illogical. As a result of the ruling, pending further action by the FMC, the charging of weekend and holiday demurrage is once again reasonable under the Shipping Act.

This decision not only reinforces the importance of thorough, fact-sensitive analysis in regulatory decisions affecting the maritime industry but is a resounding affirmation of the argument presented by Evergreen and supported by NAWE's amicus brief filed in June of 2023. The Court's decision underscores the need for the FMC to adopt a more nuanced and fact-based approach when evaluating the reasonableness of detention and demurrage charges under the Shipping Act. The ruling also highlighted the joint amicus brief from NAWE and the World Shipping Council, demonstrating the Court's recognition of the industry's expertise and insights. [You can find the jointly filed Amicus Brief here.](#)

NAWE will be following the FMC's further review of the remanded case. This decision marks a pivotal moment for the waterfront industry, ensuring that regulatory practices align with the realities and complexities of maritime operations. [You can access the Court's full opinion here.](#)

Recent SCOTUS Decisions Will Restrain Federal Regulatory Agencies such as FMC – The Supreme Court of the United States (SCOTUS) released two recent decisions that will restrict the ability of federal regulatory agencies, such as the Federal Maritime Commission (FMC), to impose civil penalties and interpret its own statutes. Together, the 6-3 majority opinions of SCOTUS in *SEC v. Jarkesy* and *Loper Bright v. Raimondo*, appears to strike a significant blow to the FMC's ability to enforce the Shipping Act, including the recently implemented demurrage and detention regulations, to the benefit of NAWE's members.

On June 27, SCOTUS ruled in *SEC v. Jarkesy* that when the Securities and Exchange Commission (SEC) seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial. The FMC relies on the authority granted by the Shipping Act to impose civil penalties against ocean carriers and MTOs, and enforces such civil penalties through its in-house Administrative Law Judges—a process that does not involve a jury trial. *SEC v. Jarkesy* may force the FMC to bring any claimed violation of the Shipping Act yielding penalties to federal court before a jury—something the FMC is ill-equipped to do.

SCOTUS's June 28 ruling in *Loper Bright v. Raimondo* similarly restrains federal agencies by overturning the court's 1984 ruling in *Chevron U.S.A. Inc. v. Natural Resources Defense Council* that required courts to defer to "permissible" agency interpretations of the statutes those agencies administer, even if the court had a differing interpretation of the statute. Under *Chevron*, federal agencies, such as the FMC, possessed significant authority to interpret its own statutes, such as the Shipping Act, making it difficult for regulated parties to challenge agency decisions. Under *Loper Bright*, the FMC will no longer receive automatic judicial deference when interpreting ambiguous aspects of the Shipping Act.

Upon initial review, it appears these SCOTUS decisions will make it far more challenging for the FMC to exercise its enforcement authority under the Shipping Act. NAWE will continue to review the court's opinions and provide further updates in future editions of NAWE News.

NAWE Files Comments on USTR's Proposed STS Crane Tariffs – Last week, NAWE [submitted comments to the Office of the United States Trade Representative \(USTR\)](#) strongly opposing the Administration's proposed 25 percent tariff on imported ship-to-shore gantry cranes. NAWE's comments, which assert that the tariff would significantly harm U.S. economic and national security interests while failing to address potential cybersecurity risks associated with Chinese imported cranes, highlight five key areas of concern. Those concerns include the proposed tariff's impact on the U.S. economy, national security, operational efficiency at U.S. ports, workplace safety, and investments in maintaining and enhancing port infrastructure. Several of NAWE's member companies submitted additional comments on the proposed tariff, which can be found at the [USTR's comment portal here](#). Currently, the USTR has remained firm on the August 1, 2024, effective date for the ship-to-shore crane tariff proposal. To learn more about NAWE's final comments on the proposed tariff, [read NAWE's news release here](#).

NAWE Files Comments on Cyber Incident Reporting for Critical Infrastructure Notice of Proposed Rulemaking – On July 3, NAWE submitted comments in response to the Cybersecurity and Infrastructure Security Agency's ("CISA") Notice of Proposed Rulemaking ("NPRM") implementing the Cyber Incident Reporting for Critical Infrastructure Act ("CIRCI"). As evidenced by the comments NAWE filed last month to the U.S. Coast Guard's (USCG) NPRM on Cybersecurity in the Marine Transportation System, NAWE is extremely concerned about the potential for multiple and potentially inconsistent reporting requirements to both USCG under MTSA and CISA under CIRCI in the wake of cyber incident. As such, the comments NAWE submitted to CISA focus on the significant overlap between the reporting requirements under CIRCI and the Maritime Transportation Security Act (MTSA), and seeks an exemption under CISA's "substantially similar reporting exception" under the proposed rule. You can view [NAWE's comments on CISA's CIRCI rulemaking here](#).

Legislative Updates

House T&I Committee Holds Maritime Roundtable – The House T&I Committee's Coast Guard and Maritime Transportation Subcommittee on Tuesday hosted a roundtable briefing on "Reinvigorating the U.S.-Flag Fleet and Shipbuilding Industry". The roundtable included several U.S. maritime industry stakeholder groups including shipbuilding, vessel and waterway operators, and merchant mariner labor representatives.

The roundtable was set up in response to congressional concerns about China's ascending influence in the maritime domain and a recognition of the need for substantive action to counter this growing imbalance and revitalize the U.S. maritime industry and shipbuilding industrial base. Recently, Senators Mark Kelly (D-AZ) and Marco Rubio (R-FL-06) and Representatives Garamendi (D-CA-08) and Mike Waltz released a national maritime strategy document and draft legislation calling for greater investments across the U.S. maritime industry. Although NAWE was not among the groups invited to participate in the roundtable, NAWE provided a statement to the leaders of the House T&I Committee urging that the perspectives and priorities of the U.S. marine terminal operator (MTO) and stevedore industry also be made a part of any efforts to revitalize the U.S. maritime industry. [You can view a livestreamed recording of the roundtable here](#).

NAWE Member Testifies Before House Subcommittee on Water, Wildlife and Fisheries on Legislation to Delay NOAA's Proposed Vessel Speed Restrictions – On June 27, the House Committee on Natural Resources Subcommittee on Water, Wildlife and Fisheries held a hearing on several bills, including [H.R. 8704](#), legislation that would both delay the National Oceanic and Atmospheric Administration's (NOAA's) proposed North Atlantic right whale vessel strike reduction rule until 2031, and establish a grant program for the National Fish and Wildlife Foundation (NFWF) to work with stakeholders to research, test, and deploy marine technologies that reduce vessel strike risk. [Mr. James McCurry](#), Chief Administrative Officer at Georgia Ports Authority, testified in favor of the legislation, sponsored by Rep. Buddy Carter (R-GA-01), contending that vessel speed restrictions would lead to extensive delays for pilotage services, which would impact port

operations and supply chains, and compromise the ability of vessels and their crews to navigate safely. Mr. McCurry touted H.R. 8704 as a balanced approach that both supports the protection of the North Atlantic right whale and safeguards the U.S. economy and operational safety. To view a livestreamed recording of the hearing, [click here](#).

House T&I Committee Holds Oversight Hearing on the Department of Transportation's Policies and Programs & FY 2025 Budget Request

– On June 27, U.S. Department of Transportation Secretary Pete Buttigieg testified before the House Transportation & Infrastructure (T&I) Committee during a hearing on oversight of the Department of Transportation's (DOT's) policies and programs and FY 2025 budget request. Throughout the six-hour hearing, Secretary Buttigieg emphasized the historic nature of the Infrastructure Investment and Jobs Act (IIJA), but in response to member questioning, acknowledged complications in distributing the unprecedented amount of funds to grant awardees and discussed multiple steps the DOT is undertaking to ease the burdens on project sponsors. Secretary Buttigieg also touted the Administration's response to the collapse of the Frances Scott Key Bridge, noting that the Administration's quick release of emergency funding to put toward rebuilding the bridge and its work with state and local government officials and partners to help mitigate the impact to supply chains. To view Secretary Buttigieg's written testimony, [click here](#). A livestreamed recording of the hearing can be viewed on the [T&I Committee's website here](#).

U.S. House on Pace to Pass FY 2025 Appropriations Bills by Months End, Senate Begins Marking Up Annual Spending Bills

– The House of Representatives this week passed the remaining six bills out of the full Appropriations Committee, including the Transportation-Housing & Urban Development (T-HUD) and Energy & Water Development bills, largely putting the lower chamber on track to wrap up passage of its FY 2025 appropriations bills by months end. The Senate is also moving forward with the fiscal 2025 appropriations process, marking up its first several annual spending bills this week and setting overall funding allocations for each of the 12 appropriations bills.

Prior to last week's July 4 district work period, the House passed several FY 2025 appropriations bills on the floor, including the Defense, Homeland Security, and State-Foreign Operations bills. The measures passed mostly along party lines, with Democrats opposed to controversial GOP policy riders related to abortion, diversity, equity, and inclusion (DEI), and others. House appropriators also marked up the five remaining FY 2025 bills at the subcommittee level, including Commerce-Justice-Science, Labor-Health and Human Services-Education, Interior-Environment, Transportation and Housing and Urban Development (T-HUD), and Energy & Water Development.

Of significant interest to NAWE members, the House T-HUD bill, which funds numerous grant programs under the Department of Transportation (DOT) and Maritime Administration (MARAD) that can be used for port infrastructure development, provides \$25.131 billion to the DOT—\$1.85 billion below the FY24 enacted level—and \$849 million for MARAD—\$92 million below the FY24 enacted level.

Specifically, the House T-HUD bill does not provide additional appropriations for DOT's RAISE or Mega grant programs, with Republican appropriators pointing to the collective \$2.5 billion in advanced appropriations the programs received for FY25 through the Bipartisan Infrastructure Law (BIL). Additionally, MARAD's Port Infrastructure Development Program (PIDP) will receive \$72 million under the legislation, including \$22 million in Community Project Funding for 12 port infrastructure projects requested by 11 members of Congress through earmarks. The House T-HUD bill also provides \$5 million to launch a nationwide dashboard for shippers and carriers to track real-time supply chain movements and better respond to bottlenecks.

Also of interest to NAWE members, the FY25 Energy & Water Development and Related Agencies appropriations bill, which funds the U.S. Army Corps of Engineers and the Corp's Harbor Maintenance Trust Fund, provides a total discretionary allocation of \$59.19 billion, which is \$999 million (1.7%) above the FY 2024 enacted level and \$139 million below the President's Budget Request. Specifically, the bill provides the Army Corps of Engineers \$9.96 billion (\$180.2 billion below the FY 2024 enacted level) and prioritizes the advancement and completion of high-priority, ongoing work. The bill also provides \$3.147 billion for the Harbor Maintenance Trust Fund.

The full House Appropriations Committee this week approved both the T-HUD and Energy & Water Development bills along party lines, with the T-HUD bill reported out of Committee by a 31 to 26 vote and the Energy & Water Development measure approved by a vote of 30 to 26. Additionally, the full Appropriations Committee marked up the remaining bills at the Committee level.

However, in an unexpected turn, the House FY 2025 Legislative Branch appropriations bill failed to pass on the House floor by a vote of 205-213. The measure, which was scheduled to be considered on Monday, failed to pass due to four Republicans crossing over to vote with Democrats and unexpected GOP absences driving down the vote count.

The Senate also moved forward with its annual spending bills this week, marking up the first three of its FY 2025 measures in Committee on Thursday, and setting overall funding allocations for each of the 12 appropriations bills. Bypassing subcommittee markups, the full Senate Appropriations Committee advanced the Legislative Branch, Military Construction-VA, and Agriculture-FDA spending measures with unanimous bipartisan support.

Like last year, Senate Democrats and Republicans have not reached an agreement on overall funding levels for 12 appropriations bills, and the numbers will likely pass the committee along party lines. The spending bills derived from those totals, however, are expected to pass the committee with bipartisan support.

The NAWE team will continue to monitor progress on the House and Senate FY2025 appropriations process and report on any significant developments in this area.

House T&I Committee Marks Up Water Resources Development Act of 2024 (WRDA 2024) – On June 26, the House Committee on Transportation & Infrastructure (T&I) marked up its version of the [Water Resources Development Act of 2024](#) (“WRDA 2024”)—H.R. 8812. The bill was favorably reported by the Committee and is now able to be brought to the House floor in the near future. Because this bill passed the committee with a near-unanimous bipartisan vote of 61-2, it will very likely be considered as a suspension bill on the House floor—an expedited process in the House used for non-controversial legislation. The Senate Committee on Environment & Public Works marked up its version of WRDA 2024—[S. 4367](#)—on May 22.

This biennial reauthorization legislation is important to a number of NAWE members, as it is the legislative vehicle that authorizes all U.S. Army Corps of Engineers civil works activities, including authority for all maintenance dredging and navigation projects, as well as various reports and studies for new construction projects that are under consideration. WRDA is a significant bill for ports and maritime infrastructure in the United States. Specifically, H.R. 8812 authorizes nearly \$10 billion for 12 Army Corps of Engineers projects in states such as Louisiana and Texas and directs the Corps to conduct 159 feasibility studies on various project requests including navigation projects.

Once the House passes its version of WRDA 2024, it is expected that the House and Senate will begin formal negotiations on a consensus bill.

Executive Branch Updates

Biden Administration Announces \$1.8 Billion for Infrastructure Projects through RAISE Grant Program – On June 26, [U.S. Transportation Secretary Pete Buttigieg announced](#) \$1.8 billion in awards from the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary grant program for 148 projects across the country. The funding is split equally between urban and rural areas, and a large percentage of grants support regions that have been historically overlooked. Port projects received several of the awarded RAISE grants, including commercial port development and bank armoring on the Yukon River in the City of Nulato, Alaska; masterplan development for the Port of Pago Pago in American Samoa that will provide guidance on port infrastructure capacity, port growth and expansion, renewable energy implementation, and other activities; and masterplan and complete preliminary design development at the Port of Nevada for an expansion of the Western Nevada Transload. Fact sheets on individual project awards can be [viewed here](#).

FMC Designates Korea-Based Container Company a Controlled Carrier – On July 1, the Federal Maritime Commission classified Hyundai Merchant Marine (HMM) as a controlled carrier of the Government of the Republic of Korea and added it to the agency's [Controlled Carrier List](#). Controlled Carriers are subject to enhanced regulatory oversight by the Commission unless a treaty exists between the United States and the Controlled Carrier's host nation. A [Treaty of](#)

[Friendship, Commerce and Navigation](#), signed in 1957 between the United States and the Republic of Korea, entitles HMM to the exception at 46 U.S.C. 40706(1), which exempts it from the requirements of [Title 46, Chapter 407](#). However, HMM remains subject to the provisions of 46 U.S.C. 40502(f) and 46 U.S.C. 46106(b)(7). FMC regulations related to Controlled Carriers are found at [46 C.F.R. 565](#). For more information, [click here](#).

Commissioner Vekich Speaks to Agricultural Exporters Group About Global Transportation Issues

– On July 11, FMC Commissioner Max Vekich participated on a panel entitled “A Global Look at Transportation Issues” that was being held as part of the United States Agricultural Export Development Council (USAEDC) 2024 Attaché Seminar. For more information, [visit the USAEDC website here](#).

Commissioner Sola Honored by Miami-Dade County

– On June 28, the FMC announced that Commissioner Louis E. Sola was honored by Miami-Dade County Board of Commissioners in recognition of his lifelong commitment to public service, his strong leadership in promoting policies benefitting a vibrant maritime economy, and his commitment to working closely with stakeholders in the Florida maritime industry. Miami-Dade County Mayor Daniella Levine Cava awarded Commissioner Sola the Key to the County in a ceremony and proclaimed Tuesday, June 18, 2024 Commissioner Louis E. Sola Day. In his tenure on the FMC, Commissioner Sola has focused on initiatives that ensure the continued vitality of the maritime industry, including Fact Finding 30, which identified commercial measures passenger cruise lines could adopt in response to COVID-19 that would allow them to resume commercial operations. For more information about Commissioner Sola's career and accomplishments during his tenure at the FMC, [click here](#).

FMC Commissioners Renominated for Positions

– On July 11, President Biden announced that he will renominate Federal Maritime Commissioners Louis E. Sola and Carl W. Bentzel to serve in his Administration as FMC Commissioners. Now that the official announcement has been made, the Senate will host reconfirmation hearings in the coming months. NAWE will monitor these hearings and report on any developments. You can read the White House's official release at [the link here](#).

FMC Posts May 2024 Activity Report

– On June 17, the FMC posted its May 2024 Activity Report on its website. Among the statements and releases included in the report are: 1) May 2024 Commission Meeting [Video Available for Replay](#); 2) [Compromise Agreements Yield over \\$2.3 Million in Penalties & Changes to Business Practices](#); 3) [FMC Launches Investigation of the impact of Canadian Regulations on U.S.-Flag Carriers](#); 4) [Final Rule on Demurrage and Detention Cleared to Take Full Effect on May 28](#); 5) [American Queen Voyages—Update on Refund Process](#); 6) [Letter of Commissioner Sola to Secretary Granholm](#); 7) [Letter of Commissioner Sola to Secretary Blinken](#); and 8) [April 2024 Activity Report](#). For more information on these topics and to read the full report, visit the [FMC's website](#).

Grants Corner

Welcome to Grants Corner! This section of our newsletter will



feature available grant funding opportunities that are of interest to NAWE members. Please do not hesitate to reach out to any of the NAWE staff if you have questions about the specific grant programs included below.

Please remain on the lookout for upcoming grant webinars and training sessions hosted by NAWE.

Biden Administration Posts Open and Upcoming Infrastructure Funding Opportunities – As previously reported, on May 10, the Biden Administration posted an updated list of open and upcoming infrastructure funding opportunities under the Bipartisan Infrastructure Law (BIL). The document highlights funding opportunities that communities can apply for today, as well as a calendar of key upcoming funding opportunities for 2024. To view the full list of programs, their descriptions, and deadlines, please click [here](#).

FY 2024 Open Grant Opportunities – There are currently no open grant opportunities.

Upcoming FY 2024 DOT Infrastructure Grant Opportunities – According to the White House's "Upcoming Infrastructure Funding Opportunities" webpage, remaining NOFOs that may be released for the remainder of 2024 are:

1. DOT's Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation (PROTECT) Grant – Summer 2024
2. DOT's Reducing Truck Emissions at Ports Program – Fall 2024

DOT Posts List of Grant Application Resources – On May 15, DOT posted an updated list of its popular "Grants Navigator Application Resources". Below are links to the DOT's resources:

1. [Understanding Non-Federal Match Requirements](#)
2. [Grant Application Checklist for a Strong Transportation Workforce and Labor Plan](#)
3. [What Is a Benefit-Cost Analysis \(BCA\)?](#)
4. [Checklist for a Strong Climate Change Mitigation, Adaptation and Resilience Grant Application](#)
5. [Federal Tools to Determine Disadvantaged Community Status](#)
6. [Use of DOT Funds for Public Involvement](#)

The NAWE team continues to monitor and will report any updates on the 2024 round of NOFOs for federal grant program opportunities of interest to NAWE members.

Upcoming Events

UPCOMING WEBINAR:
PORTS TO FREEDOM

Presented by:
Businesses Ending Slavery and Trafficking (BEST)

 **July 24, 2024**
2:00 - 3:00 p.m. ET

Featuring: **Brianna Cho**
*Corporate Relations
Coordinator at BEST*

Ports to Freedom Training - We are excited to invite you to a virtual training session organized by Businesses Ending Slavery and Trafficking (BEST) on July 24, 2024. The training titled Ports to Freedom will be led by Brianna Cho, Corporate Communications Officer Coordinator for BEST, and aims to raise awareness among maritime workers about the critical issue of human trafficking at sea and how we can work together to prevent it.

Webinar Details

Date: July 24, 2024

Time: 2:00 PM - 3:00 PM ET

RSVP Link: <https://forms.gle/UeqSHvP6EwPba4TTA>

NAWE Annual 2024 – We look forward to hosting our 2024 Annual Meeting will be held in Old San Juan, Puerto Rico this November 13-15! The meeting will take place at [Hotel Rumbao, a Tribute Portfolio Hotel](#). Guest rooms are available for \$199 + tax per night. We hope to see you in Puerto Rico in November!

[Reserve a room for NAWE Annual](#)

July Committee Meetings:

- July 18, 2024 - NAWE Environment, Energy, and Equipment Committee Meeting
- July 24, 2024 – NAWE Security Committee Meeting (Ports to Freedom Training) -- open to all NAWE members

Articles of Interest



A tug escorts a HMM containership at the Port of Los Angeles, California. Photo: Robert V Schwemmer / Shutterstock.com

gCaptain

[Global Demand for Ocean Container Shipping Hits All-Time High](#)

February 16, 2024

Global demand for ocean freight container shipping hit an all-time record in May amid soaring spot rates and severe port congestion, according to data released by Xeneta and Container Trades Statistics.



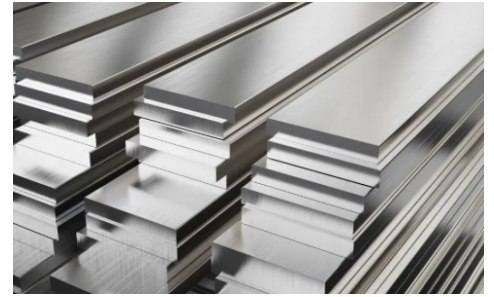
Roll-on/roll-off vessel Porgy in drydock at JMC Shipyard in China. Photo credit: Wellenius Wilhelmsen.

Journal of Commerce

[Ro/ro market still sizzling despite added tonnage, tariff threats](#)

July 10, 2024

Car carrier and roll-on/roll-off (ro/ro) vessel operators see no signs of a cooling ro/ro market despite repositioned tonnage, a growing order book and threats of a tariff standoff between Europe and China, industry executives told the Journal of Commerce.



American Journal of Transportation

[Steel prices soften, bucking inflation](#)

July 8, 2024

Prices for the metal should continue their long-term decline over the coming months, falling some 24% below current levels to reach \$710 per ton by the end of 2024. "If current trends continue, prices will be down for the third year in a row, which is historic," said Josh Spoores, Head of Steel Americas Analysis at CRU, a market analysis and forecast outfit.



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