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By E-Mail (lucinda.lessley@dot.gov)

Ms. Lucinda Lessley
Acting Maritime Administrator
U.S. Maritime Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: July 30 "Passenger vessel charter" Document

Dear Acting Administrator Lessley:

On July 30, the U.S. Maritime Administration posted on its web site a document entitled "Passenger vessel charter." This claims to have been created pursuant to section 3502(b) of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). For the reasons set forth below, the document is deficient, contrary to section 3502(b), and should be revised to enhance transparency and compliance with the law.

When we became aware that a large foreign cruise line was seeking to enter the Jones Act market through a charter agreement, we became concerned over the structure of the agreement. Historically, foreign cruise lines have been unwilling to cede the level of control that would be necessary to make the charter compliant with U.S. law.

We sought, and we understand various Members of Congress sought, information from MARAD about any approval of a "time charter" to a non-citizen. MARAD has resisted, and continues to resist, providing information. This raises additional concerns regarding the bona fide nature of the "time charter" that is the key to the foreign cruise line's entry into the U.S. market.

For example, we sought through counsel a copy of the MARAD approval of the "time charter." MARAD provided a highly redacted version which deleted information that would not be considered exempt under the Freedom of Information Act. We know the redactions were unsustainable because MARAD relented – only in response to a FOIA appeal – and provided the full approval letter.

Moreover, MARAD has refused to provide *a single word* of the time charter in response to a FOIA request. If a bona fide commercial time charter was submitted, most of the charter would not be commercially confidential except for the charter rates and personally identifying information such as bank account information. The entire time charter cannot as a matter of law

be exempt from disclosure. MARAD has an obligation to the American public, consistent with later enacted section 3502(b), to redact as little as possible to promote government transparency and trust.

MARAD's refusal to release the time charter terms accentuates our concern that the time charter reviewed by MARAD is a bespoke charter. The failure to release any terms implies that the charter has many deviations from an industry standard time charter. Those changes could provide the non-citizen non-commercial, unnatural control akin to a bareboat charterer.

Perhaps even more importantly, MARAD has failed to date to give the public MARAD's understanding of the standard for distinguishing time charters from demise/bareboat charters. At one point, MARAD alluded to its regulations relating to large fishing vessels which have no applicability to passenger vessels by their own terms. The lack of an appropriate standard undermines industry confidence in MARAD's ability to issue consistent and predictable decisions on which industry investments depend.

The U.S. Congress took an extraordinary step on January 1 in response to MARAD's reluctance to provide relevant information. It enacted a law requiring a public process for the issuance of time charter approvals *retroactively*. MARAD should embrace and welcome the opportunity to provide the public with sufficient information to be assured that MARAD conducted an informed review and applied an appropriate standard.

Unfortunately, the July 30 document does not fix the problems the law sought to address. The July 30 document fails to provide key disclosures that would make it possible to assess whether the charter was a bona fide "time charter."

For example, MARAD has in the past focused on indemnities. A standard commercial time charter for a cruise vessel would apportion liabilities between the parties according to industry custom. If the charterer has indemnified the vessel owner for more than is customary, that would indicate – as MARAD has opined in the past – that the non-citizen indemnitor is in control because it is willing to assume some risk not ordinarily assumed by a charterer. The July 30 document does not disclose anything on indemnities.

Similarly, time charters in the commercial world provide for off-hire. We do not know if the "time charter" submitted to MARAD provides for hire to be paid regardless of vessel availability or not. "Hell or high water" charter hire is common in bareboat/demise charters, but not in time charters.

Further, the document indicates that the charterer "would make an advance charter hire payment." Taken at face value, this means that the vessel will be operated for the period associated with the advance payment in the future without the payment of additional charter hire. The disclosure should confirm that this is the case. Otherwise, "advance charter hire" is just a disguised equity contribution.

In sum, the July 30 document did not provide the standard for distinguishing a time charter from a demise/bareboat charter. And the lack of relevant factual disclosure and of the standard

MARAD is applying to assess the charter defeats the meaning and purpose of section 3502(b) to permit meaningful public comment. We hereby request that MARAD immediately amend the document to provide for complete disclosure of the terms and evidence requested herein so as to permit meaningful public comment, together with MARAD's understanding of the relevant standard. MARAD should then extend the comment deadline to be 30 days after that amendment is posted.

Sincerely,



Charles B. Robertson
President & CEO

cc: Wilda Dear (wilda.dear@dot.gov)
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