



FEDERAL MARITIME COMMISSION
Competition and Integrity
for America's Ocean Supply Chain

March 2, 2021

Mr. Ric Campo
Chairman
Port Commission of the Port of
Houston Authority
111 East Loop North
Houston, Texas USA 77029

Captain Reginald McKamie
Chairman
Pilot Board
Houston Pilots
203 Deerwood Glen Drive
Deer Park, TX 77536

Dear Mr. Campo and Captain McKamie:

In the past year, we each had the opportunity to tour and meet with the Port of Houston, the pilots, its stakeholders, and the Houston channel operations apparatus. We each, unfortunately, came away with a similar impression; that the passage of the Houston Ship Channel (HSC) Large Vessel Restriction (SB-2223) that restricts the temporary one-way transit of longer sized vessels over 1,100 feet in length (Neo-Panamax) could severely hamper the competitiveness of the Port of Houston and impact the long-term competitiveness of the entire Gulf of Mexico's ocean container trade.

As you know, the FMC functions to "establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States", and consistent with our statutory mandate, regulations, and decisions, can generally evaluate the reasonableness of shipping practices.

To begin, we are concerned that the new regulatory structure governing navigational safety in the HSC, counters the federally delegated authority of the U.S. Coast Guard. Traditionally, the U.S. Coast Guard works closely with U.S. pilots and industry stakeholders to facilitate access to U.S. ports in an impartial but navigationally safe manner. We are unaware of examples in the United States where a local Commission is empowered to unilaterally restrict interstate and foreign commerce. We would note that other states facing similar Neo-Panamax navigational safety issues have addressed such challenges by coordinated federal/state/local management plans, under the purview of the U.S. Coast Guard, that have included temporary one-way transit through navigational channels.

While the legislation was purported to remedy the safe navigational operation of Neo-Panamax vessels in the confines of the HSC, we understand there were no reports of any safety issues under the previous safety regime. It appears the restrictions had more to do with concerns about management of the waterway and potential restrictions on access. We are evaluating



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whether the current regulatory provisions restricting access of larger sized vessels into the HSC, are in fact being discriminatorily applied to the container shipping industry.

Prior to passage of SB 2223, we understand that Neo-Panamax container vessels were restricted to daylight operations and were required to employ an additional pilot and tug assistance when operating in the HSC. These additional navigational restrictions were imposed under the navigational safety authorities of the U.S. Coast Guard, and in concert and coordination with the Houston Pilots.

Secondly, if such discriminatory practices are being applied, what impact would this have on the Gulf regions container trade? We have seen that the Port of Houston is the hub of the Gulf region's container trade. Currently, 70-75% of all containerized imports in the Gulf Coast are carried into Houston, with an equal balance of imports and exports. The HSC serves upwards of eight states in the region and touches many more inland destination points throughout the United States.

We understand that newer generation Neo-Panamax vessels, because of economy of scale, carry cargo at substantially reduced costs between 15-25% less per container. Access to this reduction in cost will substantially decrease retailer import costs and assist in making U.S. exports more competitive.

Looking ahead, clearly, the HSC needs to be widened to accommodate the full range of maritime shipping and projected volume increases in what has become one of the busiest shipping channels in the world. The recent enactment of provisions included in the Water Resources Development Act authorized the HSC widening and affiliated enhancements that are projected to cost close to \$1 billion dollars in public/private investment in infrastructure funding for the project. This project is essential and must be completed in a timely manner and with appropriate environmental control. However, the reality is that a project of such magnitude, with environmental approval, engineering, and construction, will be multi-year endeavor and could endure unforeseen delays.

Simply put, the completion time frame for widening of the HSC does not appear to synch up with the current rapid container market growth and future demand the Gulf region is experiencing. Delaying the utilization of the HSC as a conduit to the Port of Houston's marine terminals for Neo-Panamax shipping could cause a permanent change in the pattern of delivery of containerized cargo to the entire Gulf Coast and impact the South Atlantic containerized port services. Currently, the Ports of Houston, New Orleans, Mobile and Tampa Bay are all in the process of investing over a combined two billion dollars in water deepening, and other affiliated



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shoreside improvements to handle the newer container vessel fleet sizes. Capacity enhancements at these ports are scheduled to be completed within the relatively near future. Alternate port services for Neo-Panamax shipping can be found in Freeport, Bahamas, Kingston, Jamaica, and East Coast Panama Canal marine terminals to facilitate Neo-Panamax utilization outside of the United States, and continuation of service into the U.S. Gulf Coast with smaller container feeder sized vessels. We feel that it can be safely said that a longer duration decision that would restrict access to Neo-Panamax vessel service to Houston, would adversely impact not only the Port of Houston container shipping but also the entire Gulf Coast.

Finally, the U.S. and the rest of the world now face a global pandemic wreaking havoc on our supply chain. The unintended consequences of the global pandemic have led first to record declines in container shipments into the U.S., and then to record volume surges at our nation's gateways. The cruise ship and energy transportation sectors have been severely harmed; however, container shipping has been critical to our nations efforts in this volatile time as we work to defeat COVID-19. From November 2019 to November 2020, nationally, the container volumes shot up by 23 percent, as Americans purchased greater volumes of PPE, e-commerce, and other essential supplies, demonstrating the vital importance of this sector of our economy. At a time when national, state, and local maritime industry leaders are struggling to increase maritime capacity throughout the country, the enactment of the HSC restrictions seems shockingly out of step and dangerously short sighted.

To help us in our evaluation of the current structure of HSC access to marine container terminals, we have the following questions:

1. To what extent was there evaluation of navigational safety of Neo-Panamax vessel transits on the HSC, before the implementation of SB 2223, and what were the results of this evaluation? Was the U.S. Coast Guard consulted?
2. Prior to the implementation of SB 2223, how many Neo-Panamax vessel transits were limited to one-way transit, what does this translate into actual time spent in HSC channel utilization in total, and roughly by percentage of potential total capacity utilization?
3. What actions have been taken to explore and/or adopt new rules to restore two-way traffic on the HSC, and is there any consideration of attempting to consider scheduling two-way transits to accommodate Neo-Panamax vessels by identify



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smaller or more narrow vessels to be transit in partnership with Neo-Panamax vessels?

4. What action has been taken, to date, to implement the waiver process established in SB 2223?

We look forward to receiving the requested information and continuing to work with the Gulf Coast region in addressing the HSC restriction and capacity challenges. Please feel free to reach out to us directly.

Sincerely,

Carl W. Bentzel
FMC Commissioner

Louis Sola
FMC Commissioner

cc:

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Coast Guard
Captain Jason Smith, Commander, Coast Guard Sector Houston-Galveston (Captain of the Port)

Alan Robb, President, ILA South Atlantic and Gulf Coast