

COMMITTEE NEWS



Admiralty and Maritime Law

The Outlook for Regulated Industry Post-Chevron

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*¹ overturned "Chevron deference", which required courts to defer to "permissible" executive agency interpretations of ambiguous statutes.² But judicial review of agency action remains subject to the deferential review standards of the Administrative Procedures Act ("APA"). What remains, post-*Chevron*, is the APA's mandate that courts must exercise their independent judgment and decision-making function in construing ambiguous statutes administered by executive agencies.³ That is, courts must "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."⁴

With the courts' duty to "decide whether the law means what the agency says"⁵ reinstated under the APA, the death of *Chevron* deference may remove an analytical hurdle without much practical difference to regulated industries. In practical terms, the gap between outcomes based on *Chevron* and those based on APA standards of statutory interpretation should be rather narrow. As the Supreme Court found, "[i]t therefore makes no sense to speak of a 'permissible' interpretation that is not

[Read more on page 16](#)



Jessica Link Martyn

Link Martyn PLLC

Jessica Link Martyn is Managing Attorney at Link Martyn PLLC, on demand maritime counsel for corporate clients, marine insurers and law firms. She can be reached at jmartyn@linkmartyn.com.

A prior version of this article appeared in the Summer 2024 edition of The Beacon, a publication of the Maritime Exchange for the Delaware River and Bay.



In This Issue

- The Outlook for Regulated Industry Post-Chevron 1
- Chair Message 4
- Editors Message 6
- When the Forum Sinks: The Fifth Circuit... 7
- Protecting the Arctic Marine Environment... 8
- The Benefits of a Global Carbon Tax in... 9
- Reintroduced SHIPS Act Sets a New Course for... 10
- Trade Talk: Stephanie Penninger 11
- Review of Admiralty Disruption 2025 14



Leadership Roster

Chair

Sean Pribyl

Holland & Knight LLP
800 17th Street NW, Ste 1100
Washington, DC 20006
(202) 308-7622
sean.pribyl@hklaw.com

Chair-Elect

Kirby Aarsheim

Farrell Smith O'Connell Aarsheim
Aprans LLP
27 Congress St, Ste 508
Salem, MA 01970-7313
(617) 508-9891
kaarsheim@fsofirm.com

Immediate Past Chair

Jeanne Amy

US Department of Justice
PO Box 14271
Washington, DC 20044-4271
1 (202) 5987636
Jeanne.L.Amy@usdoj.gov

Council Representative

Christopher Nolan

Holland & Knight LLP
787 7th Ave, Fl 31
New York, NY 10019-6018
(212) 513-3307
chris.nolan@hklaw.com

Diversity Vice-Chair

Jeanne Noonan

McGuireWoods LLP
101 W Main St, Ste 9000
Norfolk, VA 23510-1698
(757) 640-3827
jeanne Noonan@gmail.com

Membership Vice-Chair

Jody Schisel-Meslin

K&L Gates
609 Main, Ste 4150
Houston, TX 77002
(713) 815-7326
jody.schisel-meslin@klgates.com

Scope Liaison

Zachary Rubinich

Rawle & Henderson LLP
1500 Market St, Fl 19W
Philadelphia, PA 19102-2126
(215) 575-4340
zrubinich@rawle.com

Plaintiff Vice-Chair

David McNeal

Sorrels Law
5300 Memorial Dr, Suite 270
Houston, TX 77007
(832) 819-3281
david@sorrelslaw.com

Social Media Vice-Chair, Technology Vice-Chair

Nicole Andrescavage

Lewis Brisbois Bisgaard
& Smith LLP
1 Citizens Plz, Ste 1120
Providence, RI 02903-1330
(401) 406-3326
nicole.andrescavage@lewisbrisois.com

Law Student Vice-Chairs

Emily Wood

240 Martine Ave, Apt 4g
White Plains, NY 10601-3413
(917) 733-4574
emily.wood@law.nyls.edu

Cameron Pyne

Tulane University Law School
111 Audubon St, Apt 303
New Orleans, LA 70118-4890
cpyne@tulane.edu

Vice-Chairs

Yaakov Adler

Freehill Hogan & Mahar Lp,
80 Pine Street 25 Fl
New York, NY 10005-1759
(212) 381-3026
adler@freehill.com

Michael Amy

Federal Maritime Commission
800 N Capitol St NW, Ste 1000
Washington, DC 20573-0002
mamy@fmc.gov

Peter Black

Mills Black LLP
1215 19th St NW
Washington, DC 20036-2401
(646) 902-1773
pblack@millsblack.com

Michael Daly

Pierce Atwood LLP
1 Citizens Plz # 10
Providence, RI 02903-1344
(401) 524-6332
Mdaly@pierceatwood.com

David Deehl

Deehl PLLC
2655 S Le Jeune Rd, Ste 700
Miami, FL 33134-5846
(305) 448-9111
david@deehl.com

Neil Ellis

Law Office of Neil Ellis PLLC
5335 Wisconsin Ave NW, Ste 440
Washington, DC 20015-2079
(202) 258-5421
neil@neilellislaw.com

Miguel Escobar

Holland & Knight LLP
811 Main St, Ste 2500
Houston, TX 77002-6129
miguel.escobar@hklaw.com

Robert Gardana

Robert L Gardana PA
12350 SW 132nd Ct, Ste 204
Miami, FL 33186-6458
(305) 358-0000
robert@gardanalaw.com

Sarah Gayer

Link Martyn PLLC
14 Hillcrest Dr
Cape Elizabeth, ME 04107
(207) 653-9565
sgayer@linkmartyn.com

Svetlana Gitman

American Arbitration Association
150 N Michigan Ave, Ste 3050
Chicago, IL 60601-7553
gitmans@adr.org

Daniel Gourash

Seeley Savidge Ebert & Gourash
Co LPA
26600 Detroit Rd, Ste 300
Westlake, OH 44145-2397
(216) 566-8200
dfgourash@sseg-law.com

Aaron Greenbaum

Pusateri Johnston Guillot &
Greenbaum
1100 Poydras St, Ste 2250
New Orleans, LA 70163-2300
(504) 620-2500
aaron.greenbaum@pjgglaw.com

Christopher Hamilton

Sharfi Holdings, Inc.
3690 W Gandy Blvd, Ste 422
Tampa, FL 33611-2608
(813) 416-2352
chamilton@sharfiholdings.com

Grady Hurley

Jones Walker LLP
201 Saint Charles Ave, 48th Fl
New Orleans, LA 70170-1000
(504) 582-8224
ghurley@joneswalker.com

Jessica Ibert

Lewis Kullman Sterbcow &
Abramson
601 Poydras St, Ste 2615
New Orleans, LA 70130-6062
(504) 262-8345
jibert@klsalaw.com

Chase Jansson

Campbell Johnston Clark LLP
2600 Douglas Rd, Ste 508
Miami, FL 33134
(786) 473-0810
Chase@CJCLaw.com

James Koelzer

Clyde & Co LLP
355 S Grand Ave, Ste 1400
Los Angeles, CA 90071
(213) 358-7620
James.Koelzer@clydeco.us

Sara Kuebel

Jones Walker LLP
201 Saint Charles Ave, Ste 5100
New Orleans, LA 70170-5101
(504) 582-8483
skuebel@joneswalker.com

Mariah Leffingwell

Clark Hill PLC
1001 Pennsylvania Ave, NW
Ste 1300 South
Washington, DC 20004
(202) 552-2350
mleffingwell@clarkhill.com



Leadership Roster | continued

Erika Lindberg

1244 Columbia St
Houston, TX 77008-7012
(832) 325-0967
erikajlindberg@gmail.com

Elizabeth Lowe

Venable LLP
600 Massachusetts Ave NW
Washington, DC 20001-5358
(202) 344-4312
eklowe@venable.com

Jamie Madriaga

60 N Beretania St, Apt 1709
Honolulu, HI 96817-4758
(808) 726-5508
jamie.madriaga@honolulu.gov

Max Malvin

Malvin Law, LLC
201 Saint Charles Ave, Ste 2500
New Orleans, LA 70170-2500
(504) 383-0940
maxmalvin@gmail.com

Jessica Martyn

Link Martyn PLLC
23 Stoneymeade Way
Acton, MA 01720-5676
(757) 6154753
jmartyn@linkmartyn.com

Juliette McCullough

Peacock Piper Tong + Voss LLP
100 West Broadway, Ste 610
Long Beach, CA 90802
(415) 906-4655
jmccullough@peacockpiper.com

Carra Miller

*Schouest, Bamdas, Soshea,
Benmaier & Eastham, PLLC*
7418 Lake Travis Dr
Corp Christi, TX 78413-5812
(361) 561-8029
e.carrasmith@gmail.com

Matthew Moeller

Moeller Firm LLC
650 Poydras St, Ste 2516
New Orleans, LA 70130-6172
(504) 702-6794
matthew@moellerfirm.com

Leigh Nazzario

425 Rock Raymond Rd
Downingtown, PA 19335-1464
leighnazzario@gmail.com

Cynthia Olowu

The American Club
2100 West Loop S, Ste 1525
Houston, TX 77027-3508
(504) 505-4282
cynthiatolowu@gmail.com

Pamela Palmer

Clark Hill PLC
555 S Flower, St # 24
Los Angeles, CA 90071-2300
(213) 4175168
ppalmer@clarkhill.com

Jonas Patzwall

Liskow & Lewis
1001 Fannin St, Ste 1800
Houston, TX 77002
jspatzwall@liskow.com

Stephanie Penninger

Wayfair
4 Copley Pl
Boston, MA 02116-6504
(317) 607-5334
Spenninger@wayfair.com

Stephanie Propsom

826 N Duluth Pl
Sturgeon Bay, WI 54235-2959
(920) 743-5020
stephanie.propsom@hotmail.com

Tracy Reynolds

United States Navy
1298 Kempsville Rd
Norfolk, VA 23502-2669
(757) 615-8798
tracyreynolds@gmail.com

Ann-Marie Roach

Gard (North America) Inc.
40 Fulton St, 16th Fl
New York, NY 10038
(646) 8125644
ann.marie.roach@gard.no

Jessie Shifalo

Liskow & Lewis
701 Poydras St, Ste 5000
New Orleans, LA 70139-5000
(504) 581-7979
jshifalo@liskow.com

Allison Skopec

Holland & Knight LLP
31 W 52nd St
New York, NY 10019-6118
(281) 851-1339
allison.skopec@hklaw.com

Katriel Statman

1301 McKinney St, Ste 3700
Houston, TX 77010
(713) 210-7443
kstatman@bakerdonelson.com

Sarah Sweet

Borden Ladner Gervais LLP
Bay Adelaide Centre
East Tower, 22 Adelaide St W
Toronto, ON M5H4E3
(416) 367-6590
ssweet@blg.com

Christopher Tribolet

105 Locust Ave
Larkspur, CA 94939-1310
(415) 706-7460
chris.tribolet@gmail.com

Douglas Truxillo

Onebane Law Firm
PO Box 3507
Lafayette, LA 70502
(337) 2372660
truxillod@onebane.com

Raymond Waid

701 Poydras St, Ste 5000
New Orleans, LA 70139-5000
(504) 581-7979
rwaid@liskow.com

Christine Walker

Fowler White Burnett PA
1395 Brickell Ave, Fl 14
Miami, FL 33131
(305) 789-9217
cwalker@fowler-white.com

*Former Chairs of TIPS AMLC



Chair Message

Dear Members of the ABA TIPS Admiralty and Maritime Law Committee,

We are nearly halfway through 2025, and what a year it's been so far.

I am pleased to report the remarkable success of the Admiralty Disruption conference recently held in New Orleans. The event attracted numerous professionals and experts from the maritime sector, facilitating insightful discussions and the development of innovative solutions. The exchange of ideas was stimulating, and the feedback from attendees has been overwhelmingly positive. This conference has set a high standard for future events, with 231 attendees and sponsorship totaling \$115,500—a truly impressive achievement.

Successful events do not occur by accident; rather, they are a testament to the dedication and capability of the AMLC membership. I extend my heartfelt gratitude to the conference organizers, presenters and sponsors for their invaluable contributions in expertise, scholarship, and financial support, which have made this industry-leading event possible. This includes our Section Sponsor, Gold Sponsors, Silver Sponsors, Bronze Sponsors, Break Sponsors, and Marine Insurance Sponsors. A notable feature of this year's Admiralty Disruption was the acknowledgment of our past AMLC chairs, who have significantly contributed to the current committee's success.

Following the Admiralty Disruption, I extend my highest compliments to **Chris Nolan** for successfully leading the TIPS Spring conference in Washington, DC. This event met its expectations as a significant milestone for our committee, highlighted by attendees of the conference gala having the privilege of hearing from Justice Sonia Sotomayor during a candid fireside chat, which included references to maritime law cases. The conference featured an extensive agenda encompassing keynote speeches, panel discussions, and networking opportunities.

The AMLC had a solid showing of support as members made the trip to DC and contributed valuable insights and perspectives during our informal meeting on topics including the SHIPS Act, shipbuilding, key takeaways from notable cases, the US Trade Representative's Section 301 fees, and future committee planning.

As we reflect on the first 100 days of the Trump Administration, it is crucial to consider its implications for the maritime sector. The Administration has introduced several policies that impact our industry, ranging from regulatory changes to trade agreements. These policies have sparked significant discussions and debates, highlighting the need for us to stay informed and adaptive to the evolving landscape.



Sean Pribyl

Holland & Knight LLP

Sean Pribyl is a partner in the Washington, D.C. office of Holland & Knight LLP.

Sean.Pribyl@hklaw.com



Our committee remains committed to analyzing these developments and providing guidance to our members.

Furthermore, I am thrilled to report on the remarkable growth of our law student outreach initiatives. The engagement by **Cami Pyne** with law schools has been truly inspiring, and we have seen a surge in participation and interest in maritime law. This growth is a testament to our collective efforts to mentor and support the next generation of legal professionals in our field. We will continue to expand these initiatives, ensuring that we nurture and cultivate young talent within our community.

Thank you for your continued dedication and support. Together, we are making significant strides in advancing the field of admiralty and maritime law. ➤

Warm regards,

Sean Pribyl
Chair, ABA TIPS Admiralty and Maritime Law Committee

Connect with Admiralty & Maritime Law website



Stay Connected with TIPS



We encourage you to stay up-to-date on important Section news, TIPS meetings and events and important topics in your area of practice by following TIPS on **X** @ ABATIPS, joining our groups on **LinkedIn**, following us on **Instagram**, and visiting our **YouTube** page! In addition, you can easily connect with TIPS substantive committees on these various social media outlets by clicking on any of the links.

Hypertext citation linking was created with **Drafting Assistant** from Thomson Reuters, a product that provides all the tools needed to draft and review – right within your word processor. Thomson Reuters Legal is a Premier Section Sponsor of the ABA Tort Trial & Insurance Practice Section, and this software usage is implemented in connection with the Section's sponsorship and marketing agreements with Thomson Reuters. Neither the ABA nor ABA Sections endorse non-ABA products or services. Check if you have access to **Drafting Assistant** by contacting your Thomson Reuters representative.

©2025 American Bar Association, Tort Trial & Insurance Practice Section, 321 North Clark Street, Chicago, Illinois 60654; (312) 988-5607. All rights reserved.

The opinions herein are the authors' and do not necessarily represent the views or policies of the ABA, TIPS or the Admiralty and Maritime Law Committee. Articles should not be reproduced without written permission from the Copyrights & Contracts office copyright@americanbar.org.

Editorial Policy: This Newsletter publishes information of interest to members of the Admiralty and Maritime Law Committee of the Tort Trial & Insurance Practice Section of the American Bar Association — including reports, personal opinions, practice news, developing law and practice tips by the membership, as well as contributions of interest by nonmembers. Neither the ABA, the Section, the Committee, nor the Editors endorse the content or accuracy of any specific legal, personal, or other opinion, proposal or authority.

Copies may be requested by contacting the ABA at the address and telephone number listed above.



Editors Message

We are excited to present the TIPS AMLC Spring 2025 Newsletter. This newsletter features articles from leading maritime practitioners on a broad range of sophisticated and timely – if not downright urgent – topics, including: the outlook for regulation of the maritime industry post-*Chevron*, the role of international maritime law in protecting the arctic marine environment, the impact on arbitration agreements when the forum collapses, the impact of a global carbon tax and autonomous vessels in reducing greenhouse emissions, and a recent legislative development (the reintroduction of the SHIPS Act).

This issue also includes an insightful Trade Talk interview with Stephanie Penninger, a prominent maritime law practitioner, longtime leader of the AMLC, and currently the associate general counsel at Wayfair. Also included is an overview of the biannual Admiralty Disruption 2025, which took place in New Orleans on March 13-15, 2025. As promised, this superbly-organized event provided an outstanding opportunity to gain insights on cutting-edge legal developments and to mingle with friends and colleagues in the maritime law field.

If you would like to be featured in the next issue of this newsletter, we encourage committee members and non-members alike to submit article proposals directly to us at neil@neilellislaw.com. Thank you to the authors who have contributed to this newsletter, to the Committee members for their ongoing efforts in supporting this publication, and to the maritime law practitioners who continue to propel the industry forward. ➤



Neil R. Ellis

Managing Editor

*Neil Ellis is the founding member of the Law Office of Neil Ellis PLLC.
neil@neilellislaw.com*



Hailey Dennis

Assistant Editor

*Hailey Dennis is a graduate of Tulane University Law School, and is currently an associate in the Miami office of Jones Walker LLP.
hdennis@joneswalker.com*



When the Forum Sinks: The Fifth Circuit Wades in on Defunct Arbitration Forums

Introduction

Maritime attorneys are no strangers to arbitration clauses that reference an institution's rules but leave the forum itself unnamed. With the proliferation of arbitration clauses within commercial maritime contracts and the regular use of form agreements that were developed many decades ago, the collapse or restructuring of arbitral institutions raises an increasingly important question: does selecting a forum's rules implicitly select the forum itself?

The Fifth Circuit recently weighed in on this issue in *Baker Hughes Saudi Arabia Co. v. Dynamic Industries, Inc.*¹ While *Baker Hughes* arose out of an oil-and-gas subcontract, its reasoning carries significant implications for maritime contracts that rely on arbitration clauses often drafted decades ago. The Fifth Circuit's decision adds to a growing circuit split that practitioners can no longer afford to ignore.

This article first examines the Fifth Circuit's reasoning in *Baker Hughes*, focusing on its approach to arbitration agreements that reference a forum's rules but not the forum itself. It then contrasts the Fifth Circuit's decision with rulings from the Second, Fourth, and Eleventh Circuits. Finally, it discusses the practical implications of the circuit split for maritime practitioners to avoid future uncertainty.

The Fifth Circuit's Decision in *Baker Hughes v. Dynamic Industries*

Do parties implicitly select an arbitral forum when they agree to apply that forum's rules? The short answer is the classic lawyer's response: it depends—on the appellate circuit, as demonstrated in the Fifth Circuit's recent decision in *Baker Hughes*.

Baker Hughes involved a 2017 service subcontract agreement between two oil and gas technology and oilfield service companies.² Relevant to this discussion, the agreement provided that should a dispute arise under the contract, the dispute would proceed to arbitration using DIFC-LCIA Arbitration Rules.³ However, in 2021, the DIFC Arbitration Institute, which administered the selected rules, was, via a Decree issued by the Dubai government, abolished and replaced with the Dubai International Arbitration Centre ("DIAC").⁴

When the parties' relationship soured, Baker Hughes filed a Motion to Compel Arbitration at the district court level, seeking to arbitrate under with the DIFC-

[Read more on page 23](#)



Kat Statman

Baker Donelson

Kat Statman is a litigation Shareholder with Baker Donelson in its Houston office. He has a litigation practice that is focused primarily on representing midstream energy companies in a broad range of disputes and handling commercial blue and brown water maritime disputes.



Emma Perez McKellar

Baker Donelson

Emma Perez McKellar is a Houston-based litigation Associate with Baker Donelson. Emma's practice focuses on all things water—ranging from maritime disputes, water treatment, products liability, to mass tort actions. Emma is also a member of the firm's Water Treatment and Legionella Group.



Protecting the Arctic Marine Environment: The Role of International Maritime Law

The Arctic is undergoing rapid transformations due to climate change, shifting its landscape from ice-covered regions to water-based areas. This transition, driven by atmospheric and oceanic warming, is compounded by growing economic activity in the region, such as shipping routes and the exploitation of natural resources like oil and natural gas.¹ The increasing use of Arctic passages like the NorthWest Passage (NWP) and the NorthEast Passage (NEP) has made the region more accessible, offering shorter shipping routes compared to traditional passages from the Atlantic to the Pacific regions.² However, the rise in shipping and resource extraction poses a severe threat to the delicate Arctic environment, particularly through vessel-source pollution, such as black carbon and underwater noise.³

Why Should We Care About the Arctic?

The Arctic is warming at a rate more than twice the global average, with temperatures expected to rise by 3-4°C in the next 50 years, according to the 2007 IPCC report.⁴ This rapid warming, compounded by a 50% reduction in Arctic sea ice since 2000, has wide-reaching impacts.⁵ Although melting sea ice sheets do not dramatically contribute to rising sea levels, melting glaciers do and accelerates ocean warming by replacing reflective ice with darker ocean surfaces that absorb heat rather than reflecting it.⁶ This disturbance of atmospheric and oceanic patterns contributes to stronger weather events, such as hurricanes.⁷

Furthermore, the Arctic environment is uniquely vulnerable to pollution due to the ice-albedo feedback effect.⁸ Black carbon and other airborne pollutants, when deposited on sea ice, prevent it from reflecting sunlight, further accelerating the melting process.⁹ As economic activities like Arctic shipping increase, the concentration of pollutants in the region has grown, and it is essential to regulate and mitigate these threats to preserve the Arctic.¹⁰

The Growth of Arctic Shipping and Pollution

Shipping traffic in the Arctic has significantly increased, with a rise of 37% in the number of ships and a doubling of the total distance sailed in Arctic waters.¹¹ The growing activity is largely attributed to large-scale resource projects, such as the Mary River Mine in Nunavut and the Yamal Gas Project, which have introduced

[Read more on page 27](#)



Camille Zuber
Kennedys Law LLP

Camille is an associate at the Los Angeles office of Kennedys Law LLP, where she focuses on maritime and civil defense litigation, often handling complex cross-border and international disputes. She holds an LL.M. in Maritime Law from the University of Oslo and also did LL.M. studies at UC Berkeley School of Law.



The Benefits of a Global Carbon Tax in Reducing Green House Gas Emissions

I. Introduction

International maritime shipping accounts for an astonishing 90% of world trade and 3% of world greenhouse gas (GHG) emissions.¹ An alarming International Maritime Organization (IMO) study estimates that GHG “emissions from international shipping . . . could grow by between 50% and 250% by 2050.”² Given the rapid rise of GHG emissions, the recently approved net-zero regulations for global shipping has never been more critical. The IMO was created, under the Kyoto Protocol, to reduce emissions and to release States from the responsibility of tracking GHG emissions.³ “The IMO, which has the power to impose a tax,” instead promulgated a sulfur reduction regulation, which should have reduced the use of fuels so toxic that they are prohibited from being used on land.⁴ However, the IMO included an exception for exhaust gas cleaning systems (scrubbers), which take clean ocean water, scrub the toxins from the exhaust of the burning fuels, and then release them into the ocean in the form of washwater.⁵ This exception has permitted the continued release of toxic materials into the ocean, as noted below.

Implementing a carbon tax will raise revenue for new technologies, which is part of the IMO’s strategic plan.⁶ Meanwhile, these technologies, such as automated ships, remain underutilized for improving outcomes for shipping companies, consumers, the environment, and maritime workers alike.⁷

II. The IMO’s Sulfur Reduction Regulation

The IMO’s sulfur reduction regulation incentivizes shipping companies to install scrubbers, which cost between two and eight million dollars per ship.⁸ The washwater dumped into the ocean is “up to 100,000 times more acidic than seawater,” is rich with heavy metals and sulfur, and as a result is very toxic to marine life.⁹ Some ports internationally have moved toward banning scrubbers,¹⁰ which allow ships to burn the cheapest and most toxic fuels, reducing the costs incurred by ship owners. However, the current patchwork of scrubber bans¹¹ results in inequities for shipping companies and consumers.¹² The cost of switching fuels in and out of these jurisdictions can be up to \$30,000 a trip per vessel.¹³ Because some areas have little to no regulations and others are subject to a patchwork, the result is significant variations in costs incurred to ship similar distances. The new regulation will be more equitable if it banned both toxic fuels and scrubbers consistently across the maritime shipping industry.¹⁴

[Read more on page 31](#)



Jennifer Bass

Jenny was recently a Brooks Fellow after receiving her JD from Vermont Law School. She is a published presenter and has interned and worked at Yale Law, Environment & Animals Program, International Fund for Animal Welfare, and Materra Consulting.



Reintroduced SHIPS Act Sets a New Course for the Maritime Sector

Introduction

The Shipbuilding and Harbor Infrastructure for Prosperity and Security (SHIPS) for America Act was reintroduced on April 30, 2025, with bipartisan support in the legislature.¹ The U.S. Senate will introduce the Act in two parts—the SHIPS for America Act and the Building SHIPS in America Act—which will then be sent to committees for markup and approval. The Act is considered once-in-a-generation legislation that aims to increase the U.S.-flag international fleet by 250 ships over 10 years, improve U.S. competitiveness, and invest in the maritime workforce. It seeks to boost the U.S. Merchant Marine by establishing national oversight and consistent funding for U.S. maritime policy, including making U.S.-flagged vessels commercially competitive in international trade, rebuilding the U.S. shipyard industrial base, and enhancing recruitment, training, and retention of mariners and shipyard workers. Additionally, the Act focuses on strengthening America's national security and economic resilience by revitalizing the shipbuilding industry, creating high-paying jobs, and enabling the U.S. to compete with other nations' maritime capabilities.²

Sending the Distress Signal

The SHIPS for America Act has emerged as a significant legislative effort aimed at revitalizing the U.S. shipbuilding and maritime industries. Spearheaded by Sens. Mark Kelly (D-Ariz.) and Todd Young (R-Ind.), along with Reps. John Garamendi (D-Calif.) and Trent Kelly (R-Miss), this Act seeks to address critical issues within the American maritime sector. Aligning with [Executive Order 14269](#) issued by President Donald Trump, the Act focuses on restoring America's maritime dominance by enhancing competitiveness in shipbuilding and related sectors, ultimately addressing national security concerns.

At the heart of the Act is the recognition of the enormous and widening gap in tonnage between U.S.-flagged vessels and their international counterparts. This disparity has raised concerns about the United States' ability to maintain a competitive edge in global maritime trade and security. To bridge this gap, the Act proposes comprehensive oversight and funding mechanisms designed to boost the U.S. Merchant Marine, make U.S.-flagged vessels commercially viable, rebuild shipyard bases, and strengthen workforce development initiatives.

[Read more on page 35](#)



Sean Pribyl

Holland & Knight LLP

Sean Pribyl is a partner in the Washington, D.C. office of Holland & Knight LLP.

Sean.Pribyl@hklaw.com



Allison Luzwick

Holland & Knight LLP

Allison Luzwick is an associate in the Richmond, VA, and Chicago, IL, offices of Holland & Knight LLP.

A prior version of this article was published at <https://www.hklaw.com/en/insights/publications/2025/05/bipartisan-bill-reintroduced-to-enhance-us-shipbuilding-maritime>.



TRADE TALK

*This issue of Trade Talk features **Stephanie Penninger**,
Associate General Counsel at Wayfair*

Q: Good afternoon, Stephanie. How did you first become interested in maritime law?

R. I was working out of a law firm's Indianapolis office – some would say, not an established center for maritime law! But the firm was routinely ranked as one of the best (if not the best) transportation law firms in the country, and we represented a large number of logistics companies and blue chip shippers. I was getting to the point where I wanted to develop a niche and a specialty, and maritime law was an area that presented an opportunity to grow a different vertical for the firm within a niche practice group, that allowed me to draw on my experience within the transportation sector and to deepen my relationships with existing clients. I began by working with transportation intermediaries and major shipper clients, focusing on regulatory compliance, negotiating and creating ocean service contracts and litigating shipping business disputes and cargo claims. When I had the opportunity to work on the *MSC Flaminia* matter, I was able to meet many of our AMLC members, and that really jump-started my maritime career.



Q: Can you describe your experience working at Wayfair? How do eCommerce and international trade interact with maritime law?

R. One of the reasons that I came to Wayfair was because of my maritime experience, and because I wanted to help the company build an even larger supply chain and transportation vertical than it currently has. One of the ways that Wayfair differs from our competitors and encourages return customers is how quickly we are able to deliver shipments to our customers. One of the biggest pieces of this operation is maritime transportation. Not only are we a shipper, but we are also an intermediary. The ocean transportation piece of the operation is critical.

Q: What falls under your umbrella of responsibilities at Wayfair? What legal issues are coming across your desk with some frequency these days?

R. I am the lead lawyer supporting CastleGate Forwarding, Wayfair's NVOCC, as well as supply chain operations, including all our fulfillment centers in North America and Europe. In addition, I support our transportation delivery



and reverse logistics functions, which involve motor carriage. I also team up with Wayfair's litigation attorneys, particularly when there is a maritime or transportation aspect of a claim, and I help support our risk management and insurance and international trade teams. In terms of recent legal issues, aside from supporting the routine business contracts and other corporate transactional matters, I have helped my stakeholders navigate disruption in our industry and geopolitical changes. From the Red Sea to the ILA (International Longshoremen's Association) strike, and of course, in recent months managing the new tariffs.

Q: *What are your views on hiring outside counsel?*

R. Just like my personal finances, I like to diversify. I prefer to have projects with small, medium, and large firms, and thanks to the ABA and other similar situated industry organizations, I know many maritime lawyers from a diverse range of firms. I generally like to size the project to the firm, and I like to work with attorneys whom I know and with whom enjoy working. When possible, I also prefer to engage attorneys with in-house experience; they know my world and they know my day-to-day, plus, it's easy to put them in contact with my business colleagues and trust that they will know how to operate in a corporate setting and serve as an extension of me.

Q: *Which industry organization(s) do you find the most helpful for your work?*

R. Of course, ABA TIPS (particularly the Admiralty & Maritime Law Committee) is useful not just for hiring outside counsel, but also for learning more about the industry, current hot topics, and what my peers and competitors are experiencing and what adjustments they're making to our ever evolving global markets. Not only was it nice to attend Admiralty Disruption last month and hear from experienced in-house and external counsel, but I also attended the Trans-Pacific Maritime (TPM) Conference this year, which allowed me to hear what the industry experts are saying, particularly about tariffs and the U.S. Trade Representative (USTR) proposals in connection with its investigation under Section 301 of the Trade Act of 1974 into China's targeting for dominance of the maritime, logistics, and shipbuilding sectors. I have also recently gotten involved in RILA (Retail Industry Leaders Association)'s Supply Chain Committee, which has helped me understand what other companies are doing to weather industry disruption, and has allowed me to meet other in-house attorneys from the retail sector who might not be attending maritime conferences.



Q: In addition to the AMLC Newsletter, of course, which industry publications do you find the most useful?

R. Besides the AMLC Newsletter, I also enjoy the RILA Nightcap, which provides a daily summary of all the happenings in Washington that may impact retailers. It's a great source of industry tailored news. I'm also always on LinkedIn, and I routinely am inspired by and try to read my followers' postings to see what they're reading, working on, attending and involved with. In addition, law firms' newsletters are useful, especially as they pertain to international trade, shipping or the transportation and logistics industry.

Q: What's one piece of advice you would give to a new maritime attorney just breaking into the industry? On the flip side, what's one tip seasoned attorneys should keep in mind?

R. For both categories, it's important to always be open to listening and learning. The industry is constantly innovating and changing, so keeping up with the recent developments and embracing technology is critical. Personally, I attribute much of my success to networking. There is always something to be gained in meeting someone new. You never know what you might learn or when you might need to call upon someone for something unexpected and there is no better way to return a favor or pay a compliment than to help your contacts do business with one another. ➤

Benefits of AMLC Membership

Opportunities To Become Involved

- Publication in the AMLC Newsletter or TIPS Law Journal
- Networking Opportunities
- CLE and Webinar Opportunities
- Leadership Positions
- Mentoring Relationships
- Young Lawyers and Law Student Writing Competition

Additional Information

For more information regarding the benefits that membership in the AMLC can provide to you, check out our webpage at <http://ambar.org/tipsadmiralty> and join our group on LinkedIn. The Committee is open to all, including non-lawyer maritime professionals, law students and lawyers in every practice area who want to keep abreast of developments in the field.



Review of Admiralty Disruption 2025

Admiralty Disruption 2025, hosted in New Orleans by the ABA TIPS Admiralty and Maritime Law Committee on March 14-15, 2025, was a resounding success. Attended by a record-breaking 230+ maritime practitioners from around the world, AD2025 featured presentations, remarks, and panels on a wide range of timely and diverse topics, including the impact of new tariffs on carriers and shippers, unrest in the Red Sea, the rise of nuclear verdicts, and nuances in marine casualty investigation and vessel arrests.

As to be expected in New Orleans, AD2025 offered an opportunity for members of the maritime bar to come together, reunite with old friends and professional colleagues, and socialize with new connections over both scheduled and spontaneous networking opportunities. In a fun and high-energy interlude, students from Tulane Law School, led by AMLC Law Student Vice Chair **Cami Pyne**, presented “30 Cases in 30 Minutes,” which featured 30 students, each of whom had 60 seconds to present a recent and significant maritime case; the presentation was moderated by **Jessie Shifalo**, who blasted an airhorn every time a presenter exceeded their 60-second allotment. In another highlight, beloved Professor and Director of the Tulane Maritime Law Center **Martin Davies** received the prestigious Robert B. McKay Law Professor Award, a true testament not only to his legal knowledge and skill, but to his passion for academia and dedication to his maritime students. Also noteworthy, our new AMLC Chair-Elect has been selected: **Chris Hamilton**, who will take the helm for the 2026-2027 term, after the completion of the 2025-2026 term by incoming Chair, **Kirby Aarsheim**!

The most heartfelt moment came when **Ray Waid**, **Jana Byron**, and **Lauren Wilgus** expressed the love and admiration that all of us feel for our friend **Jeremy Herschaft** as he battles brain cancer. **Ray Waid** and **Cami Pyne** manned a donation table to help Jeremy and his family climb closer to his \$50,000 goal needed for critical care. You can still support Jeremy here: <https://www.gofundme.com/f/join-jeremys-fight-against-brain-cancer>.

Kudos to the Conference Co-Chairs **Kristi Thompson** and **Gina Venezia** for leading our efforts, and the hard work and support of the AD2025 Advisory Board members **Sarah Yantakosol Gayer**, **Aaron Greenbaum**, **Jessica Link Martyn**, **Juliette McCullough**, and **Ray Waid**, along with AMLC Chair **Sean Pribyl**, Chair-Elect **Kirby Aarsheim** and Chair-Elect Designee **Christopher Hamilton**.



Most of all, thank you to our fearless Captain, TIPS Chair **Christopher Nolan**, who worked tirelessly to ensure the entire weekend went off without a hitch.

We will be back in NOLA in 2027 for what is sure to be another wonderful, fun-filled, educational Admiralty Disruption, and hope to see you there! ➤

Support TIPS by scheduling your

Virtual Depositions with Magna Legal Services

Reliable • Monitoring & Instant Tech Support • Display & Annotate Exhibits
Free Platform Training • Free Custom Virtual Backgrounds • 24-HR Scheduling

USE REF CODE "TIPS" FOR A DISCOUNT!

Each deposition scheduled brings a contribution back to TIPS!

To schedule your virtual or in-person deposition visit:

www.MagnaLS.com/TIPS/

Or reach out to our national contacts directly for virtual training and to schedule your next deposition:

Lee Diamondstein | 267.535.1227 | LDiamondstein@MagnaLS.com

Joan Jackson | 312.771.5221 | JJackson@MagnaLS.com

MAGNA 
LEGAL SERVICES

*Discount is not limited to only TIPS members!

*Discount does not apply to mandated depositions

866.624.6221

www.MagnaLS.com



The Outlook... Continued from page 1

the one the court, after applying all relevant interpretive tools, concludes is best.”⁶ But, between the *Chevron* framework and the enduring constraints of the APA, at the end of the day, there shouldn’t be much light between what is “permissible” and what is “best.”

Post-*Chevron*, when reviewing agency action under the APA, courts “must exercise independent judgment in determining the meaning of statutory provisions.”⁷ But courts may not suddenly disregard agency interpretations.⁸ Courts have a “limited role” in reviewing an administrative record and final agency actions. Reviewing courts must “hold unlawful and set aside agency action, findings, and conclusions found to be”—

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.⁹

In the absence of any binding authority on the issues before them, courts may and still should use every tool at their disposal, including the “informed judgment of the Executive Branch,”¹⁰ as information and guidance from subject matter experts for interpreting the meanings of statutes and their applications to issues before the courts.¹¹ In *Skidmore v. Swift & Co.*, the Court observed that “[t]he weight of such a judgment in a particular case” would “depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”¹²

As judicial precedent develops post-*Chevron*, predictability of outcomes should increase because judicial deference and stare decisis should yield more stable and consistent outcomes than federal agency interpretations, which are fundamentally political.¹³ But outcomes should only *change* where an agency’s “permissible” interpretation of an ambiguous statute under *Chevron* is something different from



its “best” meaning – the reading the court would have reached had it exercised its independent judgment under the APA.

The Supreme Court recognized in *Loper Bright* that *Chevron* analysis had become so complex that courts misapplied it or simply bypassed it altogether and “often declined to engage with it, saying it makes no difference.”¹⁴ But whether courts engaged in *Chevron* analysis or not, they could not wholly abdicate their duty of statutory interpretation. *Chevron* itself required the courts to analyze the statute in question and implementing regulations before deciding whether to defer to the administering agency’s interpretation. To ensure that deference was warranted in the first place and that the result was reasonable, courts had to decide a myriad of complex issues - whether Congress had delegated authority to the agency, whether the agency had promulgated a rule in the exercise of that authority, whether the regulation was procedurally defective, whether *Chevron* deference even applied to the substance of the rule at issue, whether the statute was silent or ambiguous on the precise question before the court, and whether the agency had directly addressed the question at issue. Only then could a court finally reach the issue of whether the agency’s interpretation of the statute was reasonable. *Chevron* deference was only due to executive agencies’ decisions if the courts concluded that they were.

Illustrating this analytical framework are the two lower court decisions that *Loper Bright* overturned – *Loper Bright Enters. v. Raimondo*,¹⁵ and *Relentless, Inc. v. United States DOC*.¹⁶ In both cases, fishermen challenged a National Marine Fisheries Service (“NMFS”) rule interpreting the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) that required them to pay for federally mandated observers onboard their vessels.¹⁷ Congress had delegated authority to the Department of Commerce to implement the MSA. The Secretary of Commerce, in turn, delegated this responsibility to the NMFS, a federal agency within the Department of Commerce’s National Oceanic and Atmospheric Administration (“NOAA”).¹⁸

In these cases, the D.C. Circuit and the First Circuit each analyzed the MSA directly, and the First Circuit relied almost exclusively on its own statutory analysis to affirm the district court’s decision.¹⁹ Courts review agency decisions under the MSA pursuant to Section 706(2) of the APA. Under [Section 706\(2\)](#), courts may set aside agency action only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.²⁰ The D.C. District Court analyzed the administrative record and concluded that the Department of Commerce (including NOAA and the NMFS) acted within its statutory authority. The District Court stated “even if Plaintiffs’ arguments were enough to raise an ambiguity in the statutory text” (which, apparently they did not), the Court “would conclude that Defendants’ interpretation is a reasonable reading of the



MSA.”²¹ The D.C. Circuit affirmed, finding the rule not “wholly unambiguous” under *Chevron* step one and the NMFS interpretation “reasonable” and, therefore, entitled to deference under *Chevron* step two.²² Similarly, in *Relentless, Inc.*, the Rhode Island District Court concluded that “Congress has not spoken unambiguously” and the Department of Commerce’s interpretation “satisfies *Chevron*’s deferential review.”²³ On appeal from the Rhode Island District Court, the First Circuit conducted its own statutory analysis and found that Congress had expressly authorized NMFS to require vessels to carry monitors and “at the very least, it is certainly reasonable for the Agency to conclude that its exercise of that authority is not contingent on its payment of the costs of compliance.”²⁴

Now, on remand, it would be surprising for the district courts to arrive at different outcomes, having already performed the analysis to find that NMFS’ interpretation of the statute was reasonable (and, therefore, permissible) in the first instance. Post-*Chevron*, courts will still look to relevant agencies for information and guidance in deciding what the law is. Any practical difference post-*Chevron* must necessarily be based on the courts’ re-interpretation of the same statute, informed by the same agency’s guidance, to find that “permissible” agency interpretations under *Chevron* are not the “best” interpretations – that is, the courts’ own – under the APA’s mandate.

Though some commentators expect the demise of *Chevron* to lead to chaos, with courts interpreting statutes they don’t understand, the more realistic and less remarkable outcome is likely to be that courts will continue to base their decisions on the same responsibility of informed analysis that they have historically used, even under *Chevron*. As the Supreme Court said in *Loper Bright*, judges continue to be experts at deciding.²⁵

Moving forward, the more interesting development will be whether certain agency interpretations will become more politicized and, consequently, subject to greater judicial scrutiny under an APA analysis. Noting that *Loper Bright* predates the current tensions between the executive and judicial branches, the concern underlying separation of powers has existed since this nation’s founding. *Loper Bright* reinstates and reinforces judicial independence from the political branches. As the law develops post-*Chevron*, one dynamic that may emerge is the judiciary’s more cautious weighing of executive agencies’ interpretations of statutes they administer. What may appear on its face to be the courts’ increasing disregard of executive agency interpretations, may correspond to an increasing politicization of the agencies. Hand in hand with the end of *Chevron* deference, which on its own would have been less remarkable, judicial skepticism of agency interpretations could lead to courts affording those interpretations less weight in proportion to the political goals at play.



Of particular interest to the maritime industry is whether the Federal Maritime Commission may become a proving ground for this dynamic between the federal courts and executive agencies. The Commission has become more active in recent years, beginning with the FMC's Fact Finding 29,²⁶ which led to regulations promulgated pursuant to the Oceans Shipping Reform Act of 2022 ("OSRA 2022"),²⁷ and most recently with the *Order of Investigation Into Transit Constraints at International Maritime Chokepoints*.²⁸ The Commission's interpretations of the Shipping Act, as amended by OSRA 2022, and its primary jurisdiction over Shipping Act violations may face stricter scrutiny in the federal courts if it becomes more politicized.

Flexing its duty to decide, on July 5, 2024, one week after the Supreme Court handed down *Loper Bright*, the D.C. Circuit Court of Appeals in *Evergreen Shipping Agency (Am.) Corp. v. FMC* vacated the Commission's Order that Evergreen's assessment of detention charges was "unjust and unreasonable."²⁹ With no reference to *Loper Bright*, the D.C. Circuit reviewed the FMC's decision under the APA's deferential "arbitrary and capricious" standard, and required the Commission "to articulate 'a satisfactory explanation for its action including a rational connection between the facts found and the choice made,'" which the Court found the Commission had utterly failed to do.³⁰

A related issue is whether *Loper Bright* will affect primary jurisdiction analysis and federal courts' deference to the Commission to decide whether certain allegations implicate the Shipping Act or simply amount to contract claims. The Shipping Act provides, "[u]nless the parties agree otherwise, the exclusive remedy for a breach of a service contract is an action in an appropriate court."³¹ But the Commission claims broad exclusive jurisdiction, pursuant to [46 U.S.C. § 41301\(a\)](#), over complaints "alleging that a respondent committed an act prohibited by the Shipping Act."³² According to the Commission, its obligation to hear Shipping Act claims "extends even to cases where the relevant facts may give rise to other claims between the parties, and even where the parties have already obtained relief for those claims in another forum."³³

Though not based on *Chevron*, federal courts have found that the primary jurisdiction doctrine similarly applies when "enforcement of the claim[s] require[] the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body."³⁴ The doctrine has a "relatively narrow scope" and applies only "when the issue involves technical questions of fact uniquely within the expertise and experience of an agency."³⁵ The doctrine does not apply when claims involve matters within the "traditional realm of judicial competence."³⁶ "The doctrine of primary jurisdiction seeks to simplify proceedings by (1) having 'desirable uniformity' in decisions concerning an area in which an agency has expertise and



(2) allowing an agency with subject-matter expertise to assess the complicated facts of a case.”³⁷

When deciding whether to defer to an administrative agency’s primary jurisdiction, federal courts have considered the following factors:

1. whether the question at issue is within the conventional experience of judges or whether it involves technical or policy consideration within the agency’s particular field of expertise;
2. whether the question at issue is particularly within the agency’s discretion;
3. whether there exists a substantial danger of inconsistent rulings; and
4. whether a prior application to the agency has been made.³⁸

There has been scant judicial review of the Commission’s claims of primary jurisdiction and whether the allegations pled in complaints constituted a Shipping Act violation or a contract dispute. Despite a statutory limitation on the Commission’s authority to decide breach of service contract claims, the Commission has recently declared its authority to determine contract claims alleged as Shipping Act violations. In one example, *Containership Co. (TCC) A/S*, the U.S. Bankruptcy Court for the Southern District of New York considered the FMC’s decision in *Cargo One*, stating: “The FMC has noted that ‘allegations essentially comprising contract law claims should be dismissed unless the party alleging the violation successfully rebuts the presumption that the claim is no more than a simple contract breach claim. In contrast, where the alleged violation raises issues beyond contractual obligations, the [FMC] will likely presume, unless the facts as proven do not support such a claim, that the matter is appropriately before the agency.’”³⁹ The *Containership Co.* court quoted the FMC’s conclusion in *Cargo One* that allegations premised on contractual commitments are not properly before the FMC absent evidence “that some extraordinary aspect of the allegation[s] distinguish it substantially from a breach [of contract] claim.”⁴⁰ The court further found that “interpretation of leases or contracts does not fall within the realm of the agency’s expertise.”⁴¹

There is potential that, in the wake of *Loper Bright* combined with the current political climate, federal district courts may become more critical of agencies’ interpretations granting themselves authority and receptive to arguments that agencies have overstepped. ➤



Endnotes

- 1 *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).
- 2 See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).
- 3 5 U.S.C. § 551 *et seq.*
- 4 5 U.S.C. § 706 (“To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.”)
- 5 *Loper Bright Enters.*, 603 U.S. at 392.
- 6 *Id.*, 603 U.S. at 373.
- 7 *Id.*, 603 U.S. at 394.
- 8 See *id.*, 603 U.S. at 370.
- 9 5 U.S.C. § 706.
- 10 *Loper Bright Enters.*, 603 U.S. at 370.
- 11 See, e.g., *United States Dep’t of State v. Picur*, No. 1:18-cv-00041 (JMC), 2024 U.S. Dist. LEXIS 187625, at *23 (D.D.C. Oct. 16, 2024) (“In so doing, courts may ‘seek aid from the interpretations of those responsible for implementing particular statutes’ based on those agencies’ ‘body of experience and informed judgment’”) (quoting *Loper Bright Enters.* 603 U.S. at 370).
- 12 *Loper Bright Enters.*, 603 U.S. at 370 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *id.* at 402 (“Courts, after all, do not decide such questions blindly. The parties and amici in such cases are steeped in the subject matter, and reviewing courts have the benefit of their perspectives. In an agency case in particular, the court will go about its task with the agency’s ‘body of experience and informed judgment,’ among other information, at its disposal. And although an agency’s interpretation of a statute ‘cannot bind a court,’ it may be especially informative ‘to the extent it rests on factual premises within [the agency’s] expertise.’ Such expertise has always been one of the factors which may give an Executive Branch interpretation particular ‘power to persuade, if lacking power to control.’”) (internal citations omitted).
- 13 *Loper Bright Enters.*, 603 U.S. at 412 (“Judges have always been expected to apply their ‘judgment’ independent of the political branches when interpreting the laws those branches enact. The Federalist No. 78, at 523. And one of those laws, the APA, bars judges from disregarding that responsibility just because an Executive Branch agency views a statute differently.”)
- 14 *Loper Bright Enters.*, 603 U.S. at 375.
- 15 45 F.4th 359 (D.C. Cir. 2022).
- 16 62 F.4th 621 (1st Cir. 2023).
- 17 16 U.S.C. § 1801 *et seq.*
- 18 *Loper Bright Enters. v. Raimondo*, 544 F. Supp. 3d 82, *94 (D.D.C. 2021), *aff’d*, 458 U.S. App. D.C. 600 (2022), *vacated*, 603 U.S. 369 (2024); *Relentless Inc. v. United States DOC*, 561 F. Supp. 3d 226 (D.R.I. 2021), *aff’d*, 62 F.4th 621 (1st Cir. 2023), *overruled by Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).
- 19 16 U.S.C. § 1855(f)(1)(B); see *Loper Bright Enters. v. Raimondo* 544 F. Supp. 3d 82, *98 (internal citations omitted); *Relentless Inc. v. United States DOC*, 561 F. Supp. 226, 233.
- 20 5 U.S.C. § 706(2)(A).
- 21 *Loper Bright Enters. v. Raimondo*, 544 F. Supp. 3d at *107.
- 22 *Loper Bright Enters. v. Raimondo*, 45 F.4th at 369.
- 23 *Relentless Inc. v. United States DOC*, 561 F. Supp.3d. at 234.
- 24 *Relentless Inc. v. United States DOC*, 62 F.4th at 634.
- 25 *Loper Bright Enters.*, 603 U.S. at 412 (“The dissent ends by quoting Chevron: “Judges are not experts in the field.” That depends, of course, on what the ‘field’ is. If it is legal interpretation, that has been, ‘emphatically,’ ‘the province and duty of the judicial department’ for at least 221 years.”) (internal citations omitted).
- 26 Federal Maritime Comm’n, Fact Finding 29 Final Report, <https://www.fmc.gov/wp-content/uploads/2022/06/FactFinding29FinalReport.pdf>
- 27 Ocean Shipping Reform Act of 2022, <https://www.congress.gov/bill/117th-congress/senate-bill/3580/text>
- 28 90 Fed. Reg. 12158-61 (March 14, 2025).
- 29 *Evergreen Shipping Agency (Am.) Corp. v. FMC*, 106 F.4th 1113 (D.C. Cir. 2024).
- 30 *Id.*, 106 F.4th at 1118 (“It was arbitrary and capricious for the FMC to commit to making a circumstantial fact-bound inquiry in the interpretive rule and then, when it came time to apply the rule, to jettison all but its favorite factor.”)
- 31 46 U.S.C. § 40502(f).
- 32 20230930-DK-BUTTERFLY-1, *INC. F/K/A Bed Bath & Beyond Inc. v. Evergreen*, Proceeding No. 24-12, Doc. No. 20 at 6 (June 26, 2024) (internal citations omitted) (citing *Cargo One, Inc. v. COSCO Container Lines Co.*, Docket No. 99-24, 28 S.R.R. 1635, 1645, 2000 WL 1648961, at *15 (FMC Oct. 31, 2000)).
- 33 *Id.* (citing *MCS Industries, Inc. v. Mediterranean Shipping Company S.A.*, Docket No. 21-05, 2024 WL 95383, at *7 (FMC Jan. 3, 2024); *Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, Docket No. 02-04, 30 S.R.R. 991, 2006 WL 2007808, at *10-11 (FMC May 10, 2006) (“The Commission must address allegations of violations of the Shipping Act, which are within its exclusive jurisdiction; no common law remedy exists for such violations.”)).
- 34 *McNulty v. Polar Corp.*, 2020 U.S. Dist. LEXIS 174831, at *17-20 (S.D.N.Y. Sep. 23, 2020) (quoting *Ellis v. Tribune Television Co.*, 443 F.3d 71, 81 (2d Cir. 2006) (internal citations and quotations omitted)).
- 35 *Id.* at *17-18 (internal citations omitted); see also *In re Containership Co. (TCC) A/S*, 466 B.R. 219, 228 (Bankr. S.D.N.Y. 2012) (citing *Ellis*, 443 F.3d at 91).
- 36 *McNulty*, 2020 U.S. Dist. LEXIS 174831, at *17-18.



37 *Sealink Int'l, Inc. v. Triple L Glob., LLC*, 2025 U.S. Dist. LEXIS 810, at *2 (N.D. Tex. Jan. 3, 2025) (internal citation omitted).

38 See *Ellis*, 443 F.3d at 82-83.

39 *In re Containership*, 466 B.R. at 227 n.3, 228 (quoting *Cargo One*, FMC No. 99-24, at 12).

40 *Id.*, 466 B.R. at 227 n.3.

41 *Id.*, 466 B.R. at 228 (internal citation omitted).

ABA[®]
AMERICAN **BAR** ASSOCIATION
Tort Trial and Insurance
Practice Section

FIND YOUR COMMUNITY • ambar.org/tipscommunities



When the Forum... Continued from page 7

LCIA. The district court denied the Motion, holding the DIFC-LCIA and its rules no longer existed and thus the arbitration clause could not be enforced. The Fifth Circuit disagreed.⁵

The Fifth Circuit held the arbitration clause in question referred to a set of arbitration rules—not necessarily a forum, seat, or institution.⁶ The Fifth Circuit reasoned that the clause’s language merely references arbitration “under the Arbitration Rules of the DIFC-LCIA” and did not inherently indicate a requirement that the DIFC-LCIA serve as the forum.⁷

This distinction mattered. Although the court concluded that the “parties’ dominant purpose was to arbitrate generally” rather than to arbitrate before the now-defunct DIFC-LCIA, the Fifth Circuit refused to adopt “a blanket rule that any designation of arbitral rules necessarily means selection of a forum.”⁸ In other words, the Fifth Circuit refused to find that the parties implicitly selected a arbitral forum when they selected which rules would apply at arbitration. This led the Fifth Circuit to instruct the district court on remand to determine whether another available forum (*i.e.*, the LCIA, DIAC, or other forum) could apply the DIFC-LCIA Rules consistent with the parties’ objective intent. If so, the district court was directed to compel arbitration in that forum.⁹

Circuit Split on Defunct Arbitration Forums

As discussed in the Fifth Circuit’s opinion, federal appellate courts disagree as to whether parties implicitly agree to an arbitral forum by agreeing to arbitrate using a forum’s rules. On one side, the Second, Fourth, and Eleventh Circuits determined that parties impliedly select an arbitral forum when agreeing to a forum’s rules.¹⁰ The Ninth and now Fifth Circuits disagree with this conclusion.¹¹

For example, the Eleventh Circuit held parties impliedly selected to arbitrate before the National Arbitration Forum (“NAF”) by agreeing to pursue arbitration using the NAF’s Code of Procedure.¹² The Court reasoned that because the contract did not specify a forum but specified which forum’s rules would apply, the parties should proceed to arbitrate before that forum.¹³

The Fourth Circuit reached a similar holding. In *Critical Health*, the Fourth Circuit stated that because the arbitration agreement named a particular forum, the parties intended to exclude other arbitral forums.¹⁴ Likewise, the Second Circuit held parties that agree to an arbitral forum’s rules also agree to arbitrate before the same forum.¹⁵

Comparatively, the Ninth Circuit determined the parties had *not* selected the forum by merely choosing the rules to apply at arbitration.¹⁶ In *Reddam*, the arbitration



agreement selected the rules of the forum, but not the forum itself. The Court reasoned parties could have “easily” picked their forum had they intended to.¹⁷

Practical Implications for Maritime Arbitration Agreements

Maritime contracts commonly include arbitration clauses and commercial maritime disputes are increasingly being heard in front of arbitral forums, but *Baker Hughes* shows that small drafting choices can now have major consequences. For example, numerous maritime contracts contain arbitration clauses that often reference a set of rules—such as those of the Society of Maritime Arbitrators (SMA), the London Maritime Arbitrators Association (LMAA), or the Houston Maritime Arbitration Association (HMAA) by way of example only—but in some instances may not expressly designate a specific arbitral forum or administrator. This omission, which historically may not have been seen as critical, can create major procedural vulnerabilities if the named institution ceases to exist, merges with another, or undergoes significant rule changes.

This procedural vulnerability, as the *Baker Hughes* dispute shows, could include potentially losing the ability to arbitrate the dispute as the parties originally intended when selecting or negotiating the agreement at issue. *Baker Hughes* highlights the reality that, depending on which courts are tasked with determining a motion to compel arbitration, arbitration may be compelled in the agreed forum or not. At the moment, this circuit split generates potential uncertainty, but hopefully it will not be used by arguing parties to forum shop. The uncertainty may also leave many companies that rely on the maritime industry (even insofar as it relates to the transnational movement of goods) exposed to unnecessary litigation over threshold issues like where, how, and even whether arbitration will occur.


The Fifth Circuit’s approach—declining to automatically treat a selection of rules as a selection of forum—offers maritime parties some flexibility if an arbitral institution disappears or restructures. But that flexibility is not guaranteed elsewhere. As the Second, Fourth, and Eleventh Circuits have demonstrated, some courts read a reference to an institution’s rules as a de facto agreement to arbitrate only before that institution. Given the international nature of maritime commerce, parties are increasingly vulnerable to finding themselves litigating forum questions across multiple jurisdictions, potentially under inconsistent standards.

For maritime attorneys, the key takeaway is clear: arbitration clauses should be drafted with precision. Practitioners should ensure that agreements not only identify the applicable procedural rules but also expressly state the intended arbitral forum, and crucially, address what happens if that forum becomes unavailable. Existing contracts should be reviewed in light of *Baker Hughes* and the widening circuit



split, and revised where necessary to incorporate fallback language or severability provisions. Without this careful attention, clients could find themselves stranded in procedural limbo—forced to litigate and expend significant sums litigating the validity of an arbitration clause before they can even reach the merits of their claims.

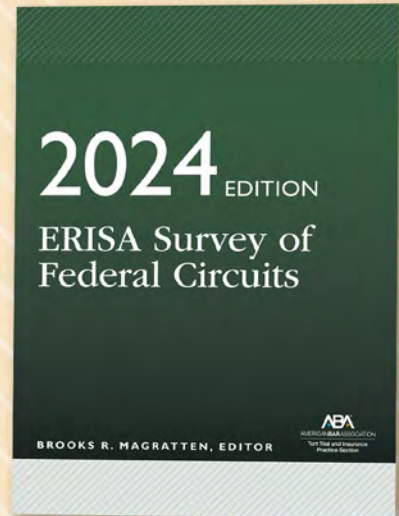
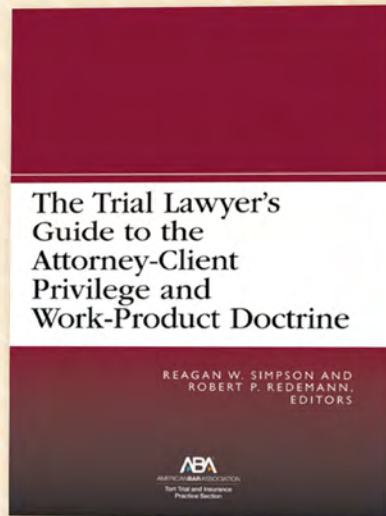
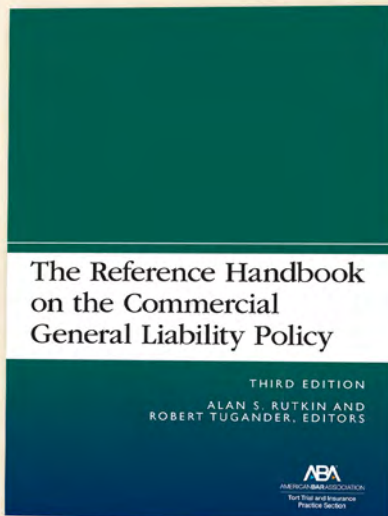
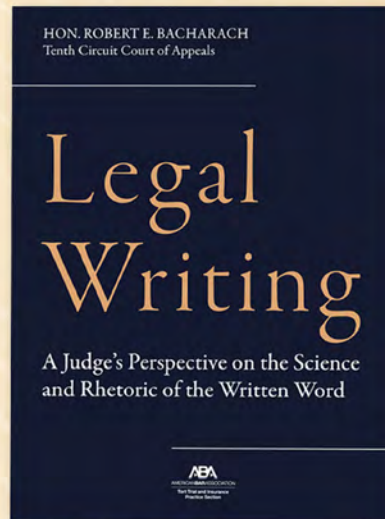
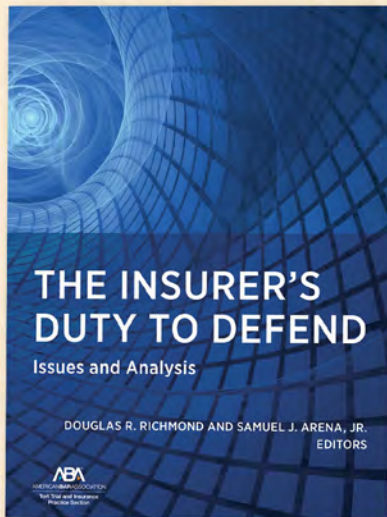
Conclusion

Ultimately, *Baker Hughes* offers helpful guidance for preserving arbitration agreements when an institution ceases to exist, but the decision also highlights the growing uncertainty practitioners face. With federal circuits now split on whether referencing an institution's rules implies a choice of forum, maritime attorneys cannot assume that courts will uniformly enforce arbitration clauses without challenge. As arbitral institutions continue to evolve, maritime practitioners should work with their clients now to shore up arbitration clauses—ensuring that the choice of forum, fallback options, and governing rules are unmistakably clear. Doing so will not only potentially limit litigation risks but also safeguard the swift and certain dispute resolution that maritime commerce demands. 

Endnotes

- 1 *Baker Hughes Saudi Arabia Co. v. Dynamic Industries, Inc.*, 126 F.4th 1073 (5th Cir. 2025).
- 2 *Id.* at 1076.
- 3 *Id.* at 1077.
- 4 *Id.* at 1078.
- 5 *Id.* at 1079.
- 6 *Id.* at 1084–85.
- 7 *Id.*
- 8 *Id.* at 1085.
- 9 *Id.* at 1091.
- 10 See *Brown v. ITT Consumer Financial Corp.*, 211 F.3d 1217, 1220 (11th Cir. 2000); *PaineWebber, Inc. v. Rutherford*, 903 F.2d 106, 108 (2d Cir. 1990); *Smith Barney, Inc. v. Critical Health Sys. of N.C., Inc.*, 212 F.3d 858, 860–61 (4th Cir. 2000).
- 11 See *Reddam v. KPMG LLP*, 457 F.3d 1054, 1059 (9th Cir. 2006).
- 12 See *Brown*, 211 F.3d at 1220.
- 13 *Id.* at 1222.
- 14 See *Critical Health*, 212 F.3d at 860–61.
- 15 See *Rutherford*, 903 F.2d at 108.
- 16 See *Reddam*, 457 F.3d at 1059.
- 17 *Id.*

Add these books to your legal library



2 EASY WAYS TO ORDER



ShopABA.org

OR



(800) 285-2221



Protecting... Continued from page 8

more bulk carriers and gas tankers to the region. This uptick in maritime traffic has led to higher emissions of pollutants, including greenhouse gases, sulfur dioxide (SO_x), nitrogen oxides (NO_x), and black carbon, all of which contribute to global warming and harm Arctic ecosystems.¹²

Black carbon, a particulate pollutant generated by ship emissions, is a significant contributor to Arctic warming. When emitted, it settles on the sea ice, reducing the ice's reflective capabilities and accelerating the warming process.¹³ While the International Maritime Organization (IMO) has taken steps to address black carbon and other pollutants, the regulatory measures remain insufficient and non-binding.

The IMO's Regulatory Response

The IMO has developed international regulations to address the growing environmental threats posed by Arctic shipping. A key convention, MARPOL (Marine Pollution), plays a central role in addressing pollution from ships. Annex VI of MARPOL specifically deals with air pollution from ships, limiting emissions of nitrogen oxides (NO_x), sulfur oxides (SO_x), and particulate matter.¹⁴ However, black carbon is notably absent from the Annex's specific provisions, despite its growing significance.

The Marine Environment Protection Committee (MEPC) of the IMO has recently taken steps toward regulating black carbon emissions from ships. In October 2023, the MEPC adopted two non-binding resolutions—one that outlines best practices for reducing black carbon emissions in the Arctic and another that provides guidelines on monitoring, measuring, and reporting black carbon.¹⁵ Though these measures are a step in the right direction, they remain voluntary and lack enforcement power.¹⁶ The IMO has also urged Member States and ship operators to voluntarily adopt cleaner fuels and propulsion technologies that could reduce black carbon emissions in Arctic waters.

Additionally, the IMO's 2023 revised Initial Strategy on GHG (Greenhouse Gas) emissions aims to reduce international shipping emissions by 40% by 2030 compared to 2008 levels. This strategy, which includes actions to reduce black carbon, is a crucial part of the IMO's approach to mitigating climate change impacts in the Arctic.

Another important development is the Heavy Fuel Oil (HFO) Amendment to MARPOL Annex I, which came into effect on July 1, 2024.¹⁷ This amendment bans the use of HFO in Arctic waters, although exemptions exist.¹⁸ For example, vessels with compliant fuel tank designs under the Polar Code and ships with waivers from Arctic coastal nations can still use HFO until 2029. This is part of the broader goal



to phase out harmful fuels from Arctic shipping, in line with environmental and climate objectives.

One of the most important tools in the IMO's regulatory toolkit is the establishment of Emission Control Areas (ECAs).¹⁹ These are designated zones where stricter measures are applied to limit pollutants like SOx, NOx, and particulate matter. In March 2024, the IMO officially recognized ECAs in the Canadian and Norwegian Arctic waters, which will help reduce black carbon emissions by up to 25%.²⁰ The goal is to expand these ECAs to the broader Arctic region, further curbing pollution in vulnerable areas.

The Ongoing Issue of Underwater Noise Pollution

Despite significant progress in addressing airborne pollutants, underwater noise pollution remains largely unregulated. The Arctic Ocean presents a unique acoustic environment due to its ice-covered waters, where sound travels differently than in temperate oceans.²¹ Anthropogenic noise from ships, particularly in the Arctic, can travel long distances and disrupt marine life. Studies show that noise levels in the Arctic increased significantly between 2013 and 2019, doubling or tripling in some areas.²²

Marine mammals, such as whales and seals, rely on sound for communication, navigation, and hunting. Increased noise from ships interferes with these vital functions, causing stress and even physical harm. For instance, in the Canadian Arctic, studies have shown that narwhals exposed to shipping noise experience stress levels 200% higher than normal.²³ Moreover, ships pose a direct danger to marine mammals through vessel strikes and entanglement in fishing gear, both of which contribute to the declining health of Arctic species.²⁴

Despite these threats, international legal frameworks have failed to adequately address underwater noise pollution. The International Convention for the Safety of Life at Sea (SOLAS) and other IMO guidelines only focus on noise pollution aboard vessels, and the IMO's 2014 guidelines for reducing underwater noise are non-binding. The IMO has also issued recommendations for creating Particularly Sensitive Sea Areas (PSSAs) where shipping activities could be restricted to protect vulnerable marine ecosystems, but the Arctic has not yet been designated as a PSSA.²⁵

The IMO's Sub-Committee on Ship Design and Construction did make some progress in January 2024 by agreeing to take action to reduce underwater noise pollution from shipping, but the recommendations remain voluntary.²⁶ The IMO continues to seek data from the shipping industry on how to best mitigate noise pollution in Arctic waters.



The Path Forward: Tackling Black Carbon and Underwater Noise

To protect the Arctic, it is essential to adopt a comprehensive approach that addresses both black carbon and underwater noise. Key actions include:

- **Slowing down vessels** in sensitive Arctic areas, a practice known as “slow steaming,” which reduces both emissions and noise pollution. This approach has proven successful in other regions, such as the Port of San Diego, where a Vessel Speed Reduction (VSR) program reduced NOx and CO2 emissions by over 60%.²⁷
- **Adopting alternative fuels** such as biofuels, LNG, and potentially green hydrogen,²⁸ which can significantly reduce emissions of greenhouse gases and black carbon.
- **Implementing noise management plans** for Arctic shipping and encouraging the development of quieter ships. New technologies, such as AI-driven systems that detect whale presence in shipping lanes, could be used to minimize the impact of noise on marine mammals.
- **Monitoring and reporting** to provide the necessary data for regulatory improvements. For example, the IMO has called on member states to report on the actions taken to reduce black carbon emissions in the Arctic.

Furthermore, it is essential to expand ECAs and establish PSSAs in Arctic waters to protect the marine environment and the species that depend on it.

Conclusion

The Arctic is one of the most fragile and important ecosystems on Earth, and its protection requires robust international action. While the IMO has made significant progress in addressing black carbon and other pollutants, much more needs to be done, especially in terms of regulating underwater noise. The shipping industry, supported by international law and regulation, must act swiftly and responsibly to minimize its impact on the Arctic environment. With the right legal frameworks in place, the Arctic can be safeguarded for future generations, ensuring the health of its ecosystems and the sustainability of its economic activities. The path forward is clear, but continued efforts and collaboration are essential to ensure that the shipping industry can meet the growing regulatory demands and help protect the Arctic marine environment. 



Endnotes

- 1 USGS (2008) World Petroleum Assessment – the Arctic may be home to 13% of the world’s undiscovered oil and to 30% of its undiscovered natural gas, available at <https://energy.gov/OilGas/AssessmentsData/WorldPetroleumAssessment.aspx>.
- 2 Willy Østreg, et al., *Shipping in Arctic Waters: A comparison of the Northeast, Northwest, and Trans Polar Passages* (1st ed., 2013), at 50.
- 3 The Polar Code omits the regulations of airborne and underwater noise pollution from vessels in the Arctic. International Code for Ships Operating in Polar Waters (Polar Code), Res. MSC.385(94), 21 November 2014, [hereinafter Code], available at <http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf>. The Arctic Ocean has been excluded from a binding international framework as the region’s constant geographic mutations are difficult to regulate. Laura Boone, *Development of an Environmental Chapter in the Polar Code: Introducing a New Player – Black Carbon* (2012), the Yearbook of Polar Law Online, Vol.4, No.1, at 544.
- 4 United Nations, *The Physical Science Basis, Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007), available at https://www.ipcc.ch/site/assets/uploads/2018/03/ar4_wg2_full_report.pdf, at 33.
- 5 NOAA Ocean Today, Happening Now Arctic Sea Ice Hits Record Low at <https://oceantoday.noaa.gov/happennowarcticseaiice/welcome.html>.
- 6 <https://sealevel.nasa.gov/news/261/melting-ocean-ice-affects-sea-level-unlike-ice-cubes-in-a-glass/>
- 7 NOAA Ocean Today, Global Impacts of Sea Level Rise at https://oceantoday.noaa.gov/roleoffice_pt3/#:~:text=In%20addition%2C%20as%20ocean%20water,t%2C%20they%20will%20go%20extinct.
- 8 Robert W. Christopherson, *Geosystems: An Introduction to Physical Geography* (8th ed. Prentice Hall, 2011), at 83 (discussing the greenhouse effect).
- 9 Martin Jakobsson, Ólafur Ingólfsson, Antony J. Long, Robert F. Spielhagen, *The dynamic Arctic* (2014), *Quaternary Science Reviews*, Volume 92, at 1-8.
- 10 6000 vessels operate during the shipping season. Arctic Council, edited by B. Ellis and L. Brigham, *Arctic Marine Shipping Assessment Report* (2nd printing, 2009), at 140-142, available at <http://hdl.handle.net/11374/54>.
- 11 Arctic Council Working Group on the Protection of the Arctic Marine Environment (PAME), *Arctic Shipping Update: 37% Increase in Ships in the Arctic Over 10 Years* (2024) at <https://arctic-council.org/news/increase-in-arctic-shipping/>.
- 12 Mark Z. Jacobson, *Short-term Effects of Controlling Fossil-fuel Soot, Biofuel Soot and Gases, and Methane on Climate, Arctic Ice, and Air Pollution Health*, *Journal of Geophysical Research*, (2010) Vol. 115 (D14).
- 13 IMO, MPEC Resolution 77/16/Ad.1 at Annex 3, available at <https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/Air%20pollution/MEPC.342%2877%29.pdf>.
- 14 IMO, Climate action and clean air in shipping, available at <https://www.imo.org/en/OurWork/Environment/Pages/Decarbonization%20and%20clean%20air%20in%20shipping.aspx>.
- 15 IMO, MPEC Resolution 77/16/Ad.1 at Annex 3, available at <https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/Air%20pollution/MEPC.342%2877%29.pdf>.
- 16 IMO, Climate action and clean air in shipping, available at <https://www.imo.org/en/OurWork/Environment/Pages/Decarbonization%20and%20clean%20air%20in%20shipping.aspx>.
- 17 HFO in this context implies fuel oil having a density at 15°C higher than 900 kg/m³ or a kinematic viscosity at 50°C higher than 180 mm²/s. It has been discussed whether to also include the pour point as an additional qualifier in the future, but this has not yet been concluded. Heavy fuel oil or HFO is defined in MARPOL Annex I Regulation 43.1.
- 18 <https://www.dnv.com/news/mediterranean-sox-eca-and-heavy-fuel-oil-ban-in-the-arctic-249948/>.
- 19 <https://cleanarctic.org/2024/03/18/mepc81-imo-urged-to-create-new-arctic-areas-free-from-shipping-pollution/>.
- 20 <https://cleanarctic.org/2024/03/18/mepc81-imo-urged-to-create-new-arctic-areas-free-from-shipping-pollution/>.
- 21 PAME produced research and modeled underwater noise pollution from shipping in the arctic from 2013-2019. The findings were that the noise levels doubled or tripled in some areas. This is because sound travels differently in the Arctic Ocean - traveling very long distances at shallow depths compared to temperate oceans. As a result, even a small increase in shipping can have a disproportionate effect on underwater noise levels.
- 22 <https://pame.is/ourwork/arctic-shipping/current-shipping-projects/underwater-noise-in-the-arctic/>.
- 23 <https://polarjournal.ch/en/2020/12/14/narwhals-suffer-from-stress/>.
- 24 <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales#:~:text=Vessel%20strikes%20and%20entanglement%20in,human%20threats%20to%20large%20whales.>
- 25 <https://www.imo.org/en/ourwork/environment/pages/pssas.aspx#:~:text=These%20guidelines%20include%20criteria%20to%20allow%20areas,degradation%20by%20natural%20events%20or%20human%20activities.>
- 26 <https://cleanarctic.org/2024/01/26/sdc-10-imo-agrees-to-reduce-underwater-noise-from-shipping-but-stops-short-of-prioritising-mandatory-measures/>.
- 27 <https://pantheonstorage.blob.core.windows.net/environment/Vessel-Speed-Reduction-Fact-Sheet.pdf>.
- 28 Green hydrogen (GH₂) is hydrogen produced by the electrolysis of water, using renewable electricity. See <https://www.ghcoalition.org/green-hydrogen> for a further explanation on how green hydrogen works.



The Benefits... Continued from page 9

Instead of encouraging the waste of resources on technology that continues to pollute the ocean and may be rendered obsolete through technological advances, the IMO could seize the opportunity to encourage ships to install autonomous systems.¹⁵ The IMO will levy a tax through the Kyoto Protocol, and will restrict the most toxic fuels, but still allows for the use of scrubbers.¹⁶ The revenue gained by the tax will be used to reward low emission ships, support innovation, help mitigate harms to vulnerable states, and help install new technology.¹⁷ Indeed, this technology could result in savings to the industry. For example, if the income from the tax were used to implement the conversion of vessels to autonomous ships, the reduced speeds and increased use of ships without bridges would result in better fuel efficiency.¹⁸

III. Autonomous Ships Would Create Better Environmental and Economic Outcomes

Maritime Autonomous Surface Ships (MASS) is a new technology that could slash emissions, which in turn would improve outcomes for marine ecosystems.¹⁹ The IMO defines autonomous shipping as “refer[ing] to a ship that can perform a set of defined operations with no crew on the bridge.”²⁰ Few container ships currently utilize this technology.²¹ Despite initial hesitation, the IMO is working to reduce safety concerns arising from the use of unmanned vessels, through testing and the development of regulations.²² These ships are more cost effective, reduce emissions, and are more accurate navigators than human officers, as evidenced by “[s]tudies [which] show that between 75%-96% of marine accidents are a result of human error, often a result of exhaustion.”²³ A reduction in human error would mean fewer accidents and in consequence a reduced loss of life.²⁴ MASS also enhance supply chain efficiency because they are lighter, and by reducing congestion at ports, by reducing GHG emissions.²⁵ “For example, it was recently reported that idling ships at various U.S. west coast ports release over 100 tons of smog each day.”²⁶ The industry has faced a series of supply chain challenges in recent years, which has resulted in congestion at ports. These challenges have included worker shortages, COVID-19, and worker strikes, which led to a backlog of up to a hundred idling ships at some ports, which in turn caused substantial GHG emissions.²⁷ MASS can reduce their speeds as they travel, so that they schedule their arrival at ports at a time when berths are available, reducing the backlog at port.

Beyond emissions reduction, the development of MASS provides benefits shipping companies, consumers, wildlife, and the individuals employed on ships.²⁸ MASS can run at lower speeds than vessels operated by humans, which would reduce whale strikes by up to 80%.²⁹ Additionally, the lower speeds at which MASS can operate also reduce noise pollution, which could create a quieter environment for cetaceans, possibly reducing beaching events.³⁰ The technology could also curtail the transport




of invasive species by decreasing ballast dumping.³¹ A ship with no crew eliminates the need for a bridge.³² “The bridge does not only add unneeded weight to the ship, but also this weight is concentrated at the stern of the ship and requires heavy ballasts in order to keep the ship level.”³³ A ship without a bridge requires less ballast water to level it and in consequence less ballast water is transported and dumped.³⁴

The maritime industry faces an increasing crew shortage, with the International Chambers of Shipping (ICS) reporting that there is a current need for over 90,000 certified officers.³⁵ Implementing MASS would mitigate crew shortages and help improve maritime labor issues.³⁶ Autonomous ships could either contain minimal crew or be remotely operated.³⁷ Given the shortage of available crews, ships are often understaffed causing dangerous working conditions. Accordingly, if ships required smaller crews, it could reduce or eliminate those dangerous conditions.³⁸ Further worker improvements could result from reducing the strain from repetitive or high focus tasks, while land-based operations reduce exposure to hazardous conditions, can provide a more predictable work schedule, and can diversify the pool of applicants historically under-represented in the industry such as women and people with diverse abilities.³⁹

In addition, long periods of crew isolation on vessels at sea may produce an unbalanced power dynamic, resulting in obstacles to reporting and responding to problems such as harassment, sexual misconduct, forced labor and other labor law violations.⁴⁰ Without the need for a bridge, more maritime welfare facilities could be implemented for crews. It has been noted that “changing from a working role to a leisure time role enhances the individual’s competence in dealing with occupational stress.”⁴¹ Autonomous ships provide an opportunity to enhance conditions for workers and compliance with the Maritime Labour Convention – the maritime workers’ equivalent to a Bill of Rights.⁴²

IV. Conclusion

To transition to a sustainable future for maritime shipping, the IMO should reconsider allowing for scrubbers in its carbon fuel tax. The tax proceeds can be utilized to advance maritime shipping technology, including the implementation of autonomous ships. These ships would reduce GHG emissions, improve port efficiencies, reduce the frequency of whale strikes, reduce noise pollution, and improve maritime working conditions. Instead of steering the maritime industry to implement technology that pollutes the ocean, the IMO should encourage technology that enhances our seas. 



Endnotes

- 1 Timothy Nash, *The Response of the International Shipping Industry to Global Climate Change*, 44 J. Mar. L. & Com. 29 (2013).
- 2 *Id.*
- 3 Kyoto Protocol to the United Nations Framework Convention on Climate Change, *Article II, Section II*, 2303 U.N.T.S. 162. (Dec. 10, 1997).
- 4 IMO, *IMO2020 Fuel Oil Sulphur Limit - Cleaner Air, Healthier Plane*, <https://www.imo.org/en/MediaCentre/PressBriefings/Pages/02-IMO-2020.aspx> (last visited Apr. 18, 2024) (hereinafter "IMO2020"); Bryan Comer, *Scrubbers On Ships: Time To Close The Open Loop(Hole)*, THE INTERNATIONAL COUNCIL ON CLEAN TRANSPORTATION (June 18, 2020) <https://theicct.org/scrubbers-on-ships-time-to-close-the-open-loop-hole/>; Hugo Dixon, *Shipping Tax Could Yield \$100 Billion Climate Windfall*, REUTERS (June 12, 2023), <https://www.reuters.com/breakingviews/shipping-tax-could-yield-100-blm-climate-windfall-2023-06-12>.
- 5 *Id.*
- 6 Gilbert E. Metcalf & David Weisbach, *The Design Of A Carbon Tax*, 33 Harv. Envtl. L. Rev. 499, 501 (2009). Revised Strategic Plan for the Organization for the six-year period 2024 to 2029, Resolution A.1173(33), IMO (Dec. 6, 2023).
- 7 Danielle Gabay, Roe Furman, & Dov Greenbaum, *Autonomous Ships: Engines of Environmental Protection*, 47 Tul. Mar. L. J. 403, 415 (2023) (hereinafter "Gabay et al.>").
- 8 IMO2020, *supra* note 4; Anna Lunde Hermansson, et al., *Strong economic incentives of ship scrubbers promoting pollution*, 7 NATURE SUSTAINABILITY 812 (May 7, 2024), <https://www.nature.com/articles/s41893-024-01347-1> (hereinafter "Hermansson et al.>").
- 9 Richas Syal, *Shipping's Dirty Secret: How 'Scrubbers' Clean the Air – While Contaminating the Sea*, GUARDIAN (Jul. 12, 2022 05:45 EDT), <https://www.theguardian.com/environment/2022/jul/12/shippings-dirty-secret-how-scrubbers-clean-the-air-while-contaminating-the-sea>.
- 10 Hermansson et al., *supra* note 8.
- 11 Global update on scrubber bans and restrictions, INT'L COUNCIL ON CLEAN TRANSP. (June 2023), https://theicct.org/wp-content/uploads/2023/06/Scrubbers_policy_update_final.pdf.
- 12 Thalys Zis, Kevin Cullinane & Stefano Ricci, *Economic and environmental impacts of scrubbers investments in shipping: a multisectoral analysis*, 49 Maritime Policy and Management 1097, 1106 (June 26, 2021), <https://www.tandfonline.com/doi/full/10.1080/03088839.2021.1937742>.
- 13 *Pac. Merch. Shipping Ass'n v. Goldstene*, 639 F.3d 1154, 1158 (9th Cir. 2011), cert. denied, 567 U.S. 934 (2012).
- 14 *Id.*
- 15 Camilla Carraro, *Global Update on Scrubber Bans and Restrictions*, THE INTERNATIONAL COUNSEL ON CLEAN TRANSPORTATION (June 23 2023), <https://theicct.org/publication/marine-scrubber-bans-and-restrictions-jun23/>.
- 16 John Irish, *Shipping emissions tax plan backed by some 20 countries at Paris summit*, REUTERS (June 23, 2023 11:24 EDT) <https://www.reuters.com/sustainability/shipping-emissions-tax-plan-backed-by-some-20-countries-paris-summit-2023-06-23/> (hereinafter "Irish").
- 17 IMO approves net-zero regulations for global shipping, IMO (April 11th 2025), <https://www.imo.org/en/MediaCentre/PressBriefings/pages/IMO-approves-netzero-regulations.aspx>.
- 18 Irish, *supra* note 16.
- 19 Gabay et al., *supra* note 7, at 405.
- 20 *Id.* at 415.
- 21 Development of a Goal-Based Instrument for Maritime Autonomous Surface Ships (MASS) Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) on its second session, IMO (May 2, 2023).
- 22 *Id.*
- 23 Gabay et al., *supra* note 7, at 406.
- 24 Wenjun Zhang, Yingjun Zhang & Chuang Zhang, *Research on risk assessment of maritime autonomous surface ships based on catastrophe theory*, 244 RELIABILITY ENGINEERING & SYSTEM SAFETY 109946 (Apr. 2024) (hereinafter, "Zhang et al.>").
- 25 Gabay et al., *supra* note 7, at 410 (2023).
- 26 *Id.* at 444.
- 27 Dominick Reuter, *There's Already a Queue Of Cargo Ships Backing Up at US Ports*, BUSINESS INSIDER (Oct. 3rd, 2024), <https://www.businessinsider.com/queue-of-cargo-ships-backing-up-at-us-ports-2024-10>.
- 28 Gabay et al., *supra* note 7, at 430.
- 29 *Id.* at 446.
- 30 *Id.*
- 31 *Id.* at 437.
- 32 *Id.* at 444.
- 33 *Id.*
- 34 *Id.*





- 35 ICS network launches global campaign to drive seafarer recruitment, ICS (June 26, 2023), <https://www.ics-shipping.org/press-release/ics-network-launches-global-campaign-to-drive-seafarer-recruitment/>. The ICS is “a global trade association representing shipowners and operators across the world, advocating for the shipping industry on international regulatory issues and promoting best practices within the maritime sector.” ICS, <https://www.ics-shipping.org/>.
- 36 *Coast Guard: Autonomous Ships and Efforts to Regulate Them*, U.S. Government Accountability Office (Aug 8, 2024), <https://www.gao.gov/assets/gao-24-107059.pdf>.
- 37 IMO, Development of a Goal-Based Instrument for Maritime Autonomous Surface Ships (MASS), Report of the MSC-LEG-FAL Joint Working Group on Maritime Autonomous Surface Ships (MASS) (second session) (May 2, 2023).
- 38 Zhang et al., *supra* note 24.
- 39 European Maritime Safety Agency (2023): CMOROC Identification of Competences for MASS Operators in Remote Operation Centres, EMSA, Lisbon (2023); Xue Li & Kum Fai Yuen, *A Human-Centred Review on Maritime Autonomous Surface Ships: Impacts, Responses, and Future Directions*, 44 *TRANSPORT REVIEWS* 791-810 (July 3, 2024).
- 40 Maritime Labour Convention, 2006, as amended, Geneva, 94th ILC (Aug. 20, 2013). Kate Whiting, *Stuck at sea: How to save the world's seafarers and the supply systems they support*, *WORLD ECONOMIC FORUM* (June 19, 2020), <https://www.weforum.org/stories/2020/06/shipping-seafarers-covid-19-mental-health-supply-systems/>; Current Developments on Maritime Matters, International Labor Organization (Dec. 19, 2024).
- 41 Marcus Oldenburg & Hans-Joachim Jensen, *Maritime Welfare Facilities - Utilization and Relevance for the Compensation of Shipboard Stress*, 14 *J. OCCUP. MED. TOXICOL.* 11 (Apr. 11th 2019), <https://pubmed.ncbi.nlm.nih.gov/articles/PMC6460816/>.
- 42 Maritime Labour Convention, 2006, as amended, Geneva, 94th ILC (Aug. 20, 2013).

ABA
AMERICAN BAR ASSOCIATION
Tort Trial and Insurance
Practice Section

TIPS Lunch & Learn Series

TIPS Lunch & Learns are non-CLE, 60-minute, live, virtual programs discussing less structured, more casual topics such as Maintaining a Water Cooler Culture in a Virtual World, and Returning to the Office in a Post Pandemic Work Environment. Chat with other TIPS members, make new connections, and listen to a variety of perspectives from other attorneys sharing diverse views on real world challenges and experiences from new solo practitioners to corporate counsel. Join us for the next live virtual lunch & learn or tune in to the TIPS YouTube Channel to watch recordings.





Reintroduced... Continued from page 10

Adding Ballast to Right the Ship

One of the pivotal elements of the Act is the establishment of an Office of the Maritime Security Advisor within the White House. This office will play a central role in advising the administration on maritime issues, ensuring that policies are aligned with the overarching goals of national security and economic growth. The creation of this advisory office underscores the importance of maritime security in the broader context of American defense and trade strategies.

Workforce development is another key focus of the Act. Recognizing the need for a skilled and robust maritime workforce, the legislation proposes the establishment of centers for workforce training. These centers will offer educational assistance, including loan forgiveness programs for mariners and financial support for students attending maritime academies. Such measures are intended to attract and retain talent within the maritime industry, ensuring a steady pipeline of skilled professionals to meet future demands.

To support domestic shipbuilding, the SHIPS for America Act introduces a Shipbuilding Financial Incentives Program. This program aims to provide financial assistance and tax incentives to encourage investment in U.S. shipyards. By fostering technological advancements through the National Shipbuilding Research Program, the Act seeks to ensure that American shipbuilders have access to cutting-edge technologies and processes, thereby enhancing the overall quality and competitiveness of U.S.-built vessels.

Maritime security measures introduced by the Act include the creation of a Tanker Security Program and a Maritime Security Trust Fund. These initiatives are designed to bolster the security of U.S.-flagged tankers and other maritime assets, thereby safeguarding vital supply chains and strategic interests. Collaboration across various sectors is emphasized through the formation of new advisory roles and committees, fostering a coordinated approach to maritime security and development.

Environmental reforms are also a critical component of the Act. By streamlining shipyard reviews and aligning regulations with international standards, the legislation aims to facilitate the sustainable growth of the maritime industry. These environmental measures reflect a commitment to responsible and eco-friendly practices within the shipbuilding sector.

Financial incentives proposed by the SHIPS for America Act include tax credits for domestic shipbuilders and penalties for foreign-built vessels, particularly those affiliated with China. Such measures are intended to disincentivize reliance on foreign shipbuilding and promote the use of American-built vessels. Additionally,



strategic sealift programs aim to expand the U.S.-flagged fleet's capacity for military operations, ensuring that the nation's defense logistics are adequately supported.

On the Horizon

The overarching goal of the SHIPS for America Act is to restore American maritime prowess by leveraging the capabilities of government agencies, industry partners, and educational institutions. Through a collaborative and multifaceted approach, the legislation seeks to meet both national security objectives and economic goals. By addressing the challenges facing the U.S. maritime sector, the Act provides a comprehensive framework for revitalizing shipbuilding and harbor infrastructure, ultimately ensuring the long-term prosperity and security of the United States.

In conclusion, the SHIPS for America Act represents a robust and strategic initiative to enhance the competitiveness and security of the U.S. maritime industry. By addressing critical gaps, fostering technological advancements, and supporting workforce development, the legislation aims to position the United States as a leader in global maritime trade and security. As the Act progresses through the legislative process, its potential impact on national defense, economic growth, and environmental sustainability remains a focal point of discussion among policymakers and industry stakeholders. The success of the SHIPS for America Act could mark a significant milestone in reinvigorating America's maritime industry, charting a course for a stronger, more resilient maritime industry for decades to come. ➤

Endnotes

1 S. 1541; *Shipbuilding and Harbor Infrastructure for Prosperity and Security (SHIPS) for America Act of 2025*, available at https://www.kelly.senate.gov/wp-content/uploads/2025/04/BOM25374_4.30.25.pdf.

2 Press Release, *Sen. Kelly, Sen. Young, Rep. Garamendi, Rep. Kelly Introduce SHIPS for America Act to Boost American Shipbuilding, Strengthen US Economy and National Security* (Apr. 30, 2025), available at <https://www.kelly.senate.gov/newsroom/press-releases/sen-kelly-sen-young-rep-garamendi-rep-kelly-introduce-ships-for-america-act-to-boost-american-shipbuilding-strengthen-us-economy-and-national-security/>.



Calendar

August 6-12, 2025	ABA Annual Meeting Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	Sheraton Hotel Toronto, CA
September 16, 2025	ADR Summit Contact: Janet Hummons – 312/988-5656 Sara Lossett – 312/988-6372	DePaul University Law School Chicago, IL
October 8-10, 2025	FSLC Fall Conference Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	InterContinental Chicago Chicago, IL
October 16-19, 2025	TIPS Fall Meeting Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	Hilton San Diego Bayfront San Diego, CA
October 23-24, 2025	Aviation Litigation Conference Contact: Janet Hummons – 312/988-5656 Sara Lossett – 312/988-6372	Royal Sonesta Washington, DC
January 21-23, 2026	FSLC Midwinter Conference Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	JW Marriott Washington, DC



Stay Connected with TIPS

Stay informed on Section news, TIPS meetings, events, and key topics in your practice area by following TIPS on [X](#), [LinkedIn](#), [Instagram](#), and [YouTube](#)! Engage with TIPS on social media by clicking the provided links.