The Past as Prologue: Alaska as a Crucible in North American Maritime History

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Introduction

This paper will outline and appraise key developments in Alaska's maritime history and place them in the larger context of North America's maritime history. While Alaska has been looked upon as a northern frontier with sometimes tenuous socio-economic links to the contiguous United States its maritime development has raised issues which have affected, or may soon affect, maritime activities far beyond its coastal waters.

The passage of the U.S. *Merchant Marine Act* of 1920 (i.e., the "Jones Act") altered Alaska's maritime trade and pushed Canadian shippers out of a viable market. But the nature of these

cabotage regulations would also benefit Canada in many other ways (especially as related to the cruise ship industry).

The Northwest Passage is being seriously re-appraised as a viable trade corridor from China to the U.S. east coast and Europe. This brings to the fore Canada's view of Arctic sovereignty. But any dispute with the U.S. (which views these waters as international) should be seen as a rekindling of an issue that began to flare once crude oil was discovered in Prudhoe Bay, Alaska in 1968. The issue lay dormant after construction of the Trans-Alaska Pipeline was announced in 1973.

The U.S. Supreme Court has recently agreed to hear the litigants in the case of the 1989 Exxon *Valdez* oil spill in Alaska's Prince William Sound. While handling this disaster was an exercise in corporate responsibility and environmental safety the high court's decision could drastically change the way liabilities are assessed under U.S. maritime law.

Far from being a frontier on the northern edge of the U.S., Alaska's maritime activities and the history of its maritime industries provide lessons applicable to today's shippers, carriers and policy makers in both the United States and Canada.

The U.S. *Merchant Marine Act* of 1920

The rationale behind the U.S. *Merchant Marine Act* of 1920 (or the "Jones Act"; named after Senator Wesley L. Jones of Washington) is to ensure that only U.S. vessels ply its coast lines and river ways and, in times of emergency, guarantee that U.S. vessels are available for military usage. Technically, as a protectorate, Guam's trade may be carried out with vessels registered in the U.S. as opposed to having been built in U.S. shipyards.

In 1895 the Seattle-based Alaska Steamship Company was formed and would be the only U.S.-flagged vessel operator to survive the Klondike Gold Rush. During its operation through to 1971 it would grow to serve the coast of Alaska from its southern Inside Passage to as far north as Nome; a range of operation unsurpassed, for its time, by any scheduled U.S. commercial maritime carrier. The

first vessel purchased was the 136-foot wooden steamer *Willapa* offering bi-weekly service to the Inside Passage. Five other vessels would follow; with the *Willapa* itself wrecked on Regatta Reef in 1897. By 1905, activity shifted from the Juneau/Skagway area to Valdez/Cordova taking advantage of the new roadway. Service was also expanded to Nome. In 1909 the company was purchased by an Alaska business syndicate which planned to use the vessels to assist in its copper mining interests in the Wrangell area. The syndicate also absorbed the Northwest Steamship Company (a rival offering Seattle to Nome service since 1900). At that point Alaska Steamship enjoyed a near monopoly in Alaska passenger and cargo shipping; its only competitor into the Great Depression being Pacific Steamship Lines. Apart from small seasonal operators there were only three other companies offering year-round service up to WWII: Northland Transportation Company; Alaska Transportation Company; and the Santa Ana Steamship Company. Of course, transporting copper ore to the U.S. West Coast eased the company's backhaul problem which still burdened the competition. By 1912 the fleet expanded to 18 vessels and acquisitions of ever-faster ones were made while the three other competitors had only 8 steamers among them (**Mohr 1979; p. 83**). In terms of speed, the company's passenger steamers *Alameda*, *Alaska* and *Mariposa* could travel from Seattle to Ketchikan within 40 to 42 hours (**Gibbs 1997; p. 118**). In fact the northward route began in Seattle and proceeded to: Skagway and Seward; then Kodiak, and Unalaska in the Aleutians; and finally to St. Michael and Nome in Norton Sound. From 1915 through 1944 Kennecott Copper Company was owner until the output from the mines waned. Its final owner was Seattle-based Skinner and Eddy Corporation.

Passage of the Jones Act in 1920 would limit competition to U.S. flagged vessels on domestic trade. Canadian vessel operators would, therefore, be forced to abandon the market for port-to-port Alaska service. Of course, their steamships could travel from the ports of British Columbia to any one Alaska port of call. In 1933, at the height of the Great Depression, Alaska Steamship's only major competitor was bought out. Alaska Steamship successfully bid for all of Pacific Steamship Lines' Alaska properties. Also in 1933 the *U.S.*

Intercoastal Shipping Act placed ocean vessel carriers under government regulation. This eliminated competition from tramp vessels which traveled without definite schedules.

By the early 1960s a different challenge would come to Alaska Steamship's south central market. Foss Maritime, the Tacoma-based tugboat and barge operator introduced barge service. While it offered summer service to the Port of Anchorage the company's niche would be transporting equipment directly to the oil-drilling platforms located in Cook Inlet. In 1962, Washington Tug & Barge Company and its partner, Canadian National (CN) Railway, also entered this market. They provided rail barge service (known as the "Aquatrain") from Prince Rupert, BC (CN's northwestern terminus) to Whittier. Railcars could be loaded directly onto the U.S.-flagged barge. This would save load/unload steps in much the same way as containerized ocean vessels would. The four day trip took place on a barge which accommodated up to 50 railcars over eight parallel tracks. This service has been provided by Foss Maritime since 1993; and the barge frequency is a delivery every 10 days all year round. Also since 1962 the Alaska Railroad has been offering service from Washington to Whittier with one barge per week all year round. Crowley Maritime provided the tugboats until Lynden Transport took over in 2001. In 1964, Alaska Steamship responded by purchasing a Japanese-built ship capable of carrying rail cars. Of course, because of the restrictions of the Jones Act, the ship, being non-U.S. flagged (Liberia in this case), operated from Vancouver (New Westminster) BC to Whittier. Puget Sound-Alaska Van Lines (PSAVL) also responded by converting its own service that year entirely to rail barges capable of transporting 37-70 rail cars (***Alaska Trade Study* 1967; p. III-5**). The routes from Seattle or Prince Rupert to Whittier by these companies terminate with the railcars being transferred to trucking companies or the Alaska Railroad for in state delivery.

All luxury liners plying Alaska's waters are foreign-flagged in order to avoid more costly and restrictive U.S. taxation and labor laws (since U.S. flagged vessels must only employ U.S. labor). As such, the *Passenger Vessel Services Act* of 1886 and the Jones Act of

1920 restrict these vessels from travel between two or more U.S. ports unless a foreign port is visited in-between. The result is that Vancouver, Canada is a favored point of embarkation for the luxury liners instead of, say Seattle or Los Angeles. If embarkation were from those U.S. ports then a layover in Vancouver (or some other Canadian port) would be required. While the Alaska Steamship Company dominated passenger travel in the first half of the 20th Century, Canada did have a presence in the passenger travel market from 1890-1981. The Canadian Pacific Navigation Company offered steamship service from Vancouver, through northern British Columbia, into Juneau or Wrangell, Alaska during the Klondike Gold Rush. The trip would take about 3 to 4 days. In 1901 the company was acquired by the Canadian Pacific Railway (CP Rail). Their Alaska runs would begin tapering off in the 1960s until the very last, the *SS Princess Patricia*, was retired in 1981. Ironically, CP Rail felt that the cruise market was softening and its relatively smaller, less ornate ships could not compete (**Gibbs 1997; p. 123**). Time has showed it to be right on the second part but definitely wrong on the first. The world's largest and most opulent luxury liners, weighing 70-100,000 tons (compared to CP Ships' 2-6,000 tons), now ply these well-traveled routes.

Since the majority of Alaska's inbound maritime trade comes from the "Lower 48" a year-round cost center is compliance with U.S. maritime law affecting interstate trade. Vessel officers and crews must be U.S. citizens or permanent residents; ship builds and flag registry must be U.S. in origin. While foreign labor and vessels are typically less expensive the Jones Act prohibits their usage in interstate trade. So, on the one hand, costs are higher but, on the other, the Jones Act lanes connecting the U.S. West Coast to Alaska, Hawaii and Guam are a protected market where extra profits may be gathered. In commercial maritime trade the Alaska market seems to have had room for only two large direct competitors.

Apart from natural constraints in routing, recall that the U.S. *Passenger Vessel Services Act* of 1886 requires all cruise lines using foreign-built and/or foreign-flagged vessels to visit at least one foreign port when traveling in-between two U.S. ports. Alaska cruises

embarking from the U.S. West Coast have the attractive option of laying over in Vancouver, BC for one day or less before heading to Alaska. Once in Alaskan waters two or more consecutive Alaskan ports may be visited only so long as a waiver to this Act and the Jones Act are secured from the U.S. Maritime Association. A waiver would be granted on the basis of there being no actual or likely interest of a U.S. carrier to enter the market. For now, therefore, some cruise lines visit the ports of Seward and Juneau as they make their way back to the Inside Passage. It is also the case that no passenger may permanently embark or disembark at one of these intermediate ports; only ports of origin or destination are allowed to take on or drop off passengers.

The large cruise ships plying Alaskan waters are foreign-built and it is not likely that domestic shipyards will be cost competitive anytime soon. The tax and labor cost savings of flying a foreign flag are also considerable. As such, the cruise ship industry will have to rely on a foreign port of call as part of the Alaska route. With a short layover in Vancouver, BC there is little disruption in a seven day Alaska tour. Of course, re-interpretations of pre-existing legislation can occur at any time. A recent example relates to the *Passenger Vessel Services Act*. In 2008 the U.S. Maritime Administration proposed a rule whereby the required layover at the foreign port be at least 48 hours. While the proposed rule change was prompted to benefit U.S.-flagged cruise ships on routes from the West Coast to the Hawaiian Islands it would impact the Alaska market as well.[1] Alaska cruises might be forced to spend a further day outside of Alaska during the seven day tour; or, worse, simply embark at Vancouver and avoid U.S. West Coast ports altogether.

The Northwest Passage

The first dedicated maritime expedition to Alaska took place in 1741. The intent was to obtain proof that North America and Asia were indeed separate continents.[2] If they were separate there would have to be a northwest passage linking the Atlantic and Pacific Oceans. Vitus Bering in the *St. Peter* and his lieutenant, Alexei

Chirikof, in the *St. Paul* were commissioned by Czar Peter the Great to explore the North Pacific. They landed on Kayak Island in the Gulf of Alaska though Bering first named it Saint Elias. While the exploration did not provide sufficient proof of a northwest passage Bering did demonstrate that Alaska and Russia were separated by his eponymous strait.

In 1776 Captain James Cook with his vessels, *Discovery* and *Resolution*, began his search for a northwest passage. The novelty of this attempt was that the trip would take place from the West Coast and proceed eastward. Proceeding from Nootka, BC he would by side-tracked by dead ends in the Alaska inlet bearing his name. After returning to the coastline the expedition reached Unalaska in the Aleutians in 1778 and continued northward in the Bering Sea to discover Norton Sound. Though his expedition reached into the Arctic Circle at about 70^{o}N latitude ice forced him to turn back. Cook failed to find a navigable passage. It would take until 1851 for Sir Robert M'Clure's expedition to successfully identify a passage. The discovery was stumbled into because M'Clure was, actually, searching for the remains of the failed 1845 expedition of John Franklin. The actual circumnavigation took place in 1903-06 by Norwegian explorer Roald Amundsen on the vessel, *Gjoa*. By then the economic significance of the route was near zero. In fact, the second expedition (also the first from west to east) took place in 1940-42 by the Royal Canadian Mounted Police (RCMP) schooner, *St. Roch*. The trip went from Vancouver, BC to Halifax, NS and then back again in an effort to assert Canadian sovereignty over the region.

When oil was discovered at Prudhoe Bay in 1968 the question at the time was how the oil would be transported to the Lower 48. While a pipeline was the final decision, some consideration at the time was given to transporting it by ocean vessel right out of the Arctic. The Humble Oil & Refining Company would take up the issue. The oil tanker *S.S. Manhattan*, at 115,000 tons and about 1,000 feet long was the largest U.S.-built merchant vessel. It would be used to see if oil transport was feasible through the Northwest Passage. Being retrofitted with an icebreaking bow also made the vessel the largest ice breaker in history. Steaming out of

Chester, PA on August 24, 1969 the vessel reached Point Barrow, the northernmost point of the U.S., on September 14 and returned to New York City by November 12 with a token barrel of Prudhoe Bay oil. Despite the vessel's ice breaking abilities the successful voyage would not be as economical as a pipeline. In fact, on September 10 the vessel did get locked in ice while traveling through M'Clure Strait on the northern edge of Banks Island and needed the assistance of two ice breakers (one being the U.S. Coast Guard's *Northwind* and the other the Canadian Coast Guard's *John A. MacDonald*). After being freed the vessel turned around and headed through the Prince of Wales Strait along the southern edge of Banks Island. In 1970 a second run took place without blockage but with enough damage to the vessel to indicate the trip was not economically viable. Had the Northwest Passage been the chosen method for transport there would be two other issues to deal with: (1) the implications for the route if Canada attempted to enforce sovereignty over these waters; and (2) the environmental responsibility and impact of an accident. The Canadian government gave permission for this run but others were by no means guaranteed.[3] Unfortunately, Alaskans would face point (2) near Valdez about 20 years later.

The U.S. Coast Guard presence in Alaska is made up of about 5,800 active duty and reserve members utilizing two air stations and 12 cutters. It patrols an area of about 3.9 million square miles. But, at the same time, several vessels are reaching the end of their service life. The Deepwater Program is a multi-year program designed to upgrade the vessels and aircraft. At the same time, the Seattle-based icebreaker *Healy* was stationed at Barrow in August 2007 for three months. The purpose was to map the extent of the continental shelf north of Alaska. The area is thought to extend 500 miles north of Barrow to the Chukchi Cap. This work could be part of making the case for a claim to the resources in this area. Naturally, the issue of the Northwest Passage will figure into any future claims the U.S. might make. Of course, other countries could be tempted by the route should it become reliably navigable. For example, the shipping distance between the ports of London and Tokyo is 15,000 miles via the Panama Canal; 13,000 via the Suez Canal; but only

8,500 via the Northwest Passage. But most experts agree that, whatever the effects global warming may have, it could be one or more decades before the commercial viability of the passage and, even then, the route would only be seasonal.

The Exxon *Valdez* and U.S. Maritime Law

March 27 (Good Friday), 1964 is infamous as the date of North America's strongest earthquake. But another Good Friday twenty-five years later (at 12:40 a.m. on March 24, 1989 to be exact) would mark the moment the 987 foot long, 166 foot wide Exxon *Valdez* supertanker, bound for San Francisco, ran aground on Bligh Reef about 35 miles west of the Port of Valdez. It was attempting to avoid the ice floes off of Columbia Glacier. It spilled about 11 million out of its 53 million gallons of crude oil into Prince William Sound.[4] Though not fully loaded the tanker still drew up 56 feet of water. Eight cargo tanks and three ballast tanks were ruptured creating the biggest oil spill in U.S. history. Shorelines up to 1,200 miles to the southwest were blackened and thousands of fish, birds and mammals would die of suffocation from the sticky oil. Thousands of people would be involved in the clean-up effort which would cost Exxon about $3 billion to complete. After remaining aground for several weeks the vessel would be towed to dry dock in San Diego (where the vessel had been built in 1986). It would be repaired and re-commissioned by Exxon under the name *Sea River Mediterranean*. Investigations would determine that the captain, while intoxicated, left the bridge in charge of his third mate who was not experienced to deal with these particular waters. In addition to prohibitions on being intoxicated on duty, Exxon's policy was that the bridge be manned at all times by at least two officers.

Lynden Inc. offered one if its barges for Exxon to use as a floating command post. It provided housing for 56 workers, a crane, and a helicopter-pad. Other barges would be used to haul generators, machinery, fuel and 400 cubic foot containers used to collect oil-soaked material and waste.

Both state and federal governments filed criminal charges against Exxon as well as civil claims related to the damage caused to public lands. In October 1991 the U.S. District Court in Anchorage approved the settlement reached by all three parties. Under the criminal case Exxon was fined $150 million with $125 million of this staid as a result of the company's own clean-up efforts. The remaining $25 million was split between the North American Wetlands Conservation Fund and the Victims of Crime Fund. Furthermore, a $100 million criminal restitution was ordered to be paid evenly to both state and federal governments. Under the civil case Exxon agreed to pay $900 million spread over a ten year period. And to cover unknown or unanticipated effects at the time of the settlement Exxon agreed to pay the governments a further $100 million as necessary. This clause, "Reopener for Unknown Injury", could only be made active on September 1, 2002 through the same date in 2006.

Of course, that was not the end of Exxon's legal troubles. A class action lawsuit (representing thousands of fisherman and others) was filed in 1994 with the U.S. District Court in Anchorage awarding $287 million in compensatory damages to about 33,000 Alaskans plus a further $5 billion in punitive damages. No monies have been paid out as yet because of the appeals process. In 2006 the 9th U.S. Circuit Court of Appeals in San Francisco upheld the punitive damages, although the amount was reduced to $2.5 billion.[5] Even at that size Exxon has noted that this award is larger than the total of all punitive damage awards upheld by all federal appeals courts since the country's founding.

As a result of the Exxon *Valdez* disaster the state legislated some of the toughest environmental legislation in the U.S.; namely the *Oil Pollution Act* of 1990. Some of the rules required oil companies to have clean-up equipment available to respond to any incident within 72 hours; and the equipment on hand must be able clean up 60% of the largest potential spill. Tankers in Prince William Sound must represent the "best available technology". As to tanker crews their employers must have a drug-abuse program in place.

Tankers are to be escorted through Prince William Sound by two vessels capable of emergency response.

The appeal of the class action suit against Exxon was accepted by the U.S. Supreme Court in 2007. Several friends-of-the-court briefs from the shipping industry were filed in support of the appeal related to punitive damages. In particular, in early 2008 a brief against Exxon was filed and signed by the State Legislature and former governors Hickel, Sheffield, Cowper (in office at the time of the spill), and Knowles. The issue is whether or not a shipping company, under maritime law, can be punished for the actions of its captains or crews especially when those actions contravene company policy. The court will also review the size of the punitive damage award. Whether the decision focuses narrowly on Exxon or to punitive damages over a wider spectrum, this will be an important ruling for the shipping industry and the final chapter in a scenario begun in Alaska in 1989.

Conclusions

This paper overviewed three issues in Alaska's maritime history: the *Merchant Marine Act* of 1920; the status of the Northwest Passage; and the 1989 Exxon *Valdez* oil spill. Each, though coming to the fore with decades or centuries separating them, had ramifications for Alaska's socio-economic development. Each still contains unresolved issues which will likely be revisited by government, businesses and concerned citizens in the years to come. These issues show Alaska to be a northern frontier which has been a significant laboratory for maritime development.

Endnotes

[1] Cruises from Los Angeles or San Diego comply with the Act by visiting Ensenada in Baja Mexico for an hour or so before heading to the Hawaiian Islands. Unlike the Alaska route the Hawaiian route actually has a U.S. carrier in competition. Miami-based NCL America, a subsidiary of Norwegian Cruise Line, purchased a U.S.-built and flagged vessel for its fleet in 2005: *Pride of America*. The 2,146 passenger vessel was built by Ingalls Shipbuilding of Pascagoula, Mississippi and finished in Germany. Enough value-added occurred in the U.S. for it to qualify as a Jones Act vessel (the first of its kind in almost 50 years). Its presence, and the NCL America lobby, has prompted this proposed change in the rule governing layovers.

[2] Expeditions headed by the Spanish and the Dutch did reach southern Alaska as early as 1611 and 1639, respectively (**Mohr 1979; pp. 19 and 24**). But it was Russia which took a serious interest in the area.

[3] The Canadian government claims sovereignty over the waters within the Arctic Archipelago which is a large part of the Northwest Passage. While the status of the islands is not in dispute neither the U.S. nor the European Union agrees with Canada's claim on the waterways of Parry Channel. Indeed, the Manhattan got stuck in those very waters. The United Nations Convention on the Law of the Sea (1982) offers guidance as to what constitutes the "high seas"; but the U.S. Senate has declined to ratify this convention. Therefore, both parties are not able to appeal to the same body of law when negotiating. Under the convention countries are granted sovereignty to waters and seabed extending 200 nautical miles from their shores. Claims and disputes may be referred to an arbitration body; but as a non-signatory the only recourse the U.S. has is either bilateral negotiation or force. Part III of the Law of the Sea states that straits used for passage between one part of the high seas to another, or between two countries' exclusive economic zones, are to remain open

to international navigation and cannot be impeded by toll or force by any littoral state. But, in this reasoning, these waters are within Canada's territorial sea so it has jurisdiction; but not *unilateral* control. Canada may, therefore, adopt measures of control which are subject to international approval. The problem is that Canada views these waters as internal subject to unilateral control and not as an international strait.

The status of this strait is still relevant today. In 1985, the U.S. Coast Guard ice breaker *Polar Sea* proceeded from Greenland to Alaska via the contested waters without first informing Canada---though it was informed about the route in progress and three Canadian observers were on board. When Canada declared its sovereignty over the waters in 1986 the U.S. declined to recognize it. However, the Arctic Cooperation Agreement of 1988 did give Canada a guarantee that U.S. ice breakers would seek Canadian permission to pass. However, the U.S. still considers these waters to be international. If the polar ice cap continues to thaw this passage may be even more tempting for shipping than it is now. Indeed, the International Ice Charting Working Group noted in 2007 that the summer ice was at its lowest recorded level. Perhaps the spirit of cooperation used to build and jointly manage the St. Lawrence Seaway may be noted if and when negotiations over the Northwest Passage take place. However, the Seaway is indeed *internal* waters for both Canada and the U.S. because it does not fit the definition of an international strait under Part III noted above.

[4] The exact volume spilled was a matter of controversy. Caleb Brett, a petroleum industry consultancy retained by Exxon, estimated 10.84 million gallons (or about 258,000 barrels) spilled. It was simply a matter of noting the difference between the number of gallons originally on board (53.04 mil.) and the number transferred from the crippled vessel (42.2 million). The State was conducting its own studies into the matter but stopped the process when its lawsuit against Exxon was settled in 1991. Independent experts have suspected that the churning effect of waters around the holes in the vessel created an emulsification effect meaning that not all of the 42.2

million gallons was pure oil. If that is considered the amount leaked into Prince William Sound could rise to around 30 million gallons (**see Ott 2005; p. 5**).

[5] The appeals court's decision appears at odds with the important and precedent-setting case of the neutral schooner, *Amiable Nancy* during the War of 1812. The U.S.-flagged *Scourge* detained the schooner, then robbed and assaulted its crew. By destroying the schooner's logs and other papers the captain could not explain his activities when captured by the British Navy a few days later. As a result of having his vessel seized and nearly sold off the captain of the *Amiable Nancy* sued the owner of the *Scourge* for damages both realized and punitive. However, an 1818 U.S. Supreme Court ruling stated that punitive damages could not be set against the *owner* for the actions of his crew. It is important to realize that punitive damages under the law are to be focused on the payer and not the payee. When juries focus on the latter, and recommend large pay-outs, it can be interpreted on appeal as violating the due process provisions of the U.S. Constitution.

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