



To the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings

17. April 2017

To whom it may concern,

I write to you in my capacity as Chairman of the Consultative Shipping Group (CSG) in regard to General Notice 19 CFR Part 177, "Proposed Modification and Revocation of Ruling Letters Relating to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points". I also refer to my letter dated 31 January 2017 requesting an extension of the comment period for this notice.

The CSG is a group consisting of the maritime administrations of the governments of Belgium, Canada, Denmark, Finland, France, Germany, Greece, Italy, Japan, Republic of Korea, the Netherlands, Norway, Poland, Portugal, Singapore, Spain, Sweden, and the United Kingdom. Together the 18 CSG nations represent more than half of the world's operated gross tonnage.

The Group serves the global maritime interests of its member administrations through a shared commitment to the principles of free and fair competition and non-discrimination.

The CSG has enjoyed a long-standing and close cooperation with the US Administration. Over the years, we have had a constructive and continuous dialogue on various shipping related issues and the CSG looks forward to continuing our good cooperation. The CSG therefore highly appreciates the possibility to comment on the notice.

The CSG respects the intentions and concerns behind the Jones Act. We are, however, concerned about the ramifications for the maritime and offshore industries. The proposal includes an expansion of the current interpretation of the Jones Act. This interpretation can have significant consequences for the industry, including both US and foreign companies operating in the offshore sector. This would mean that a number of qualified companies would not be able to continue their current business or continue the operations that they have carried out for many years. This

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CSG

CONSULTATIVE SHIPPING GROUP

will have a negative impact on the availability of safe and efficient services to the US offshore industries.

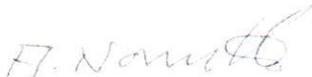
With more than 40 years of precedent, possible adjustments of the Jones Act interpretation should be considered and assessed very carefully. Possible changes to many years of precedent should not be implemented by a notice but rather by rulemaking. Moreover, it is stated in the notice that the possible amendments also cover similar rulings that, however, have not been identified. This uncertainty also makes it essential to ensure sufficient evaluation of possible consequences.

Finally, the proposal could give rise to questions about compatibility with the obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994").

We therefore urge the CBP to consider our response and revoke the proposal.

I thank you in advance and remain at your disposal for any further information or clarification you may require. I look forward to a continued dialogue.

Yours sincerely,



Andreas Nordseth
Chairman, Consultative Shipping Group

CSG:

Belgium, Canada, Denmark, Finland, France, Germany, Greece, Italy, Japan, Republic of Korea, the Netherlands, Norway, Poland, Portugal, Singapore, Spain, Sweden, United Kingdom

CHESAPEAKE SHIPBUILDING CORP.
SHIPBUILDERS AND NAVAL ARCHITECTS

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April 11, 2017

Mr. Glen Vereb
Director
Border Security and Trade Compliance Division
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection
Via email: Response@cbp.dhs.gov

Re: Proposed Modification and Revocation of Ruling Letters Related to Customs Application Of the Jones Act to the Transportation of certain Merchandise and Equipment between Coastwise Points; request for expeditious implementation of the proposal

Dear Mr. Vereb,

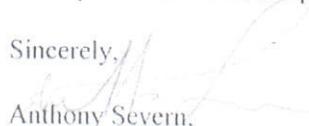
Chesapeake Shipbuilding Corp is a small shipyard employing approximately 200 people located in the economically depressed lower Eastern Shore of Maryland. Our shipyard builds commercial vessels (tugboats, workboats, passenger excursion and coastal cruise vessels) for operation by various companies under the Jones Act. Without the Jones Act, our shipyard would not exist.

On behalf of our employees and the hundreds of crew members who operate the vessels built in our shipyard, I want to express our strong support for CBP's proposed modification and revocation of several letter rulings that are contrary to the intent of the "Jones Act".

Without the "Jones Act", America's maritime and shipbuilding industries would be devastated. Our shipyard, and many other non-governmental shipyards, would not exist. Many coastwise freight and passenger vessel business would be put out of business by foreign built and crewed vessels. Thousands of seamen and skilled shipyard workers would be forced into other fields of work, or unemployment. They would not be available or trained in the event of a national defense emergency, nor would the vessels or shipyards needed to build and repair the vessels.

CBP's implementation of the proposed actions will provide more employment for U.S. Seamen, more work for U.S. Shipyards, more purchases of materials and equipment from U.S. suppliers and more tax revenue for the U. S. Government. The economic and national defense benefits make an overwhelming argument for implementation of the proposed actions by CBP.

Sincerely,


Anthony Severn,
President, Chesapeake Shipbuilding Corp

MCNICKLE, SASHA W

From: Aaron Makemson <amakemson@gmail.com>
Sent: Monday, April 17, 2017 9:13 AM
To: CBP-PUBLICATION RESPONSE
Subject: Oppose any changes to Jones Act

Dear US Customs And Border Protection: I am an oilfield worker and this directly effects the welfare of my family and local economy in Louisiana. I am writing today to strongly urge you to REJECT the Customs and Border Protection (CBP) Agency\'s proposed modifications and revocations related to the use of Jones Act vessels in offshore oil and natural gas activities on January 18, 2017. ___The proposed modifications and revocations will have a wide range of repercussions on American oil and gas production in the Gulf of Mexico, but also supported employment, gross domestic product, as well as government revenue. ___If the proposed changes are accepted, cumulative spending on offshore oil and natural gas development in the Gulf of Mexico OCS will decrease in the range of \$5.4 billion (15 percent) per year. With the decreased spending come the loss of 30 thousand jobs in 2017 and an average decreased employment of over 80 thousand jobs from 2017 to 2030. ___Altering the Jones Act in this way would also mean an average loss of \$1.9 billion of government revenue per year from 2017 to 2030, placing additional strain on already overly burdened government budgets to maintain public projects and works. ___It would be a terrible mistake to allow the proposed changes to be adopted. Once again, I urge you to reject the CBP\'s proposed modifications and revocations related to the use of Jones Act. ___ Sincerely, Aaron Makemson 157 Suncan Rd Sunset, LA 70584-5700

MCNICKLE, SASHA W

From: Eric Galerne <autoroadracer@gmail.com>
Sent: Monday, April 17, 2017 9:31 AM
To: CBP-PUBLICATION RESPONSE
Subject: Jones Act Modifications

Dear US Customs and Border Protection:

I am writing today to strongly urge you to ACCEPT the Customs and Border Protection (CBP) Agency's proposed modifications and revocations related to the use of Jones Act vessels in offshore oil and natural gas activities on January 18, 2017.

The proposed modifications and revocations will have a supporting effect for US investment in vessels and equipment manufactured in the US for use in the USA.

The US investment in specialized US vessels has grown to more than 20 units since 2009, employing thousand of valuable US Shipyard jobs, when the first question was raised about the legality of the current foreign vessel operations were brought to light.

America FIRST!

Once again, I urge you to ACCEPT the CBP's proposed modifications and revocations related to the use of Jones Act.

--

Eric Galerne
281 899 9167

MCNICKLE, SASHA W

From: David Sims <chrissimshi@gmail.com>
Sent: Monday, April 17, 2017 9:38 AM
To: CBP-PUBLICATION RESPONSE
Subject: Oppose any changes to Jones Act

Dear US Customs And Border Protection: I am writing today to strongly urge you to REJECT the Customs and Border Protection (CBP) Agency's proposed modifications and revocations related to the use of Jones Act vessels in offshore oil and natural gas activities on January 18, 2017. ___ In fact, as a retired U.S. Navy officer, I'd say the Jones Act has outlived its usefulness, and that it actually does very little to protect U.S. mariners and the shipbuilding industry as it was originally designed to do. If not completely repealed, it should at least be significantly changed to better serve today's economy. ___ The proposed modifications and revocations will have a wide range of repercussions on American oil and gas production in the Gulf of Mexico, but also supported employment, gross domestic product, as well as government revenue. ___ If the proposed changes are accepted, cumulative spending on offshore oil and natural gas development in the Gulf of Mexico OCS will decrease in the range of \$5.4 billion (15 percent) per year. With the decreased spending come the loss of 30 thousand jobs in 2017 and an average decreased employment of over 80 thousand jobs from 2017 to 2030. ___ Altering the Jones Act in this way would also mean an average loss of \$1.9 billion of government revenue per year from 2017 to 2030, placing additional strain on already overly burdened government budgets to maintain public projects and works. ___ Why add this kind of burden to government budgets? Repeal the Jones Act completely - it's been a long time since 1920's and a lot has changed in the maritime industry. ___ It would be a terrible mistake to allow the proposed changes to be adopted. Once again, I urge you to reject the CBP's proposed modifications and revocations related to the use of Jones Act. ___ Sincerely, David Sims 2203 Watts St Houston, TX 77030-1122

MCNICKLE, SASHA W

From: Kevin Renfro <kevin.renfro@anadarko.com>
Sent: Monday, April 17, 2017 9:42 AM
To: CBP-PUBLICATION RESPONSE
Subject: Oppose any changes to Jones Act

Dear US Customs And Border Protection: I am writing today to strongly urge you to REJECT the Customs and Border Protection (CBP) Agency\'s proposed modifications and revocations related to the use of Jones Act vessels in offshore oil and natural gas activities on January 18, 2017. ___ Although on surface it may look like it protects US owned boat companies, in fact it severely hurts the US offshore oil and gas industry, as it inadvertently prevents US operators from using internationally flagged vessels to assist in their operations for activities in which THERE ARE NO US Flagged vessels to service the market! ___ The proposed modifications and revocations will have a wide range of repercussions on American oil and gas production in the Gulf of Mexico, but also supported employment, gross domestic product, as well as government revenue. ___ If the proposed changes are accepted, cumulative spending on offshore oil and natural gas development in the Gulf of Mexico OCS will decrease in the range of \$5.4 billion (15 percent) per year. With the decreased spending come the loss of 30 thousand jobs in 2017 and an average decreased employment of over 80 thousand jobs from 2017 to 2030. ___ Altering the Jones Act in this way would also mean an average loss of \$1.9 billion of government revenue per year from 2017 to 2030, placing additional strain on already overly burdened government budgets to maintain public projects and works. ___ It would be a terrible mistake to allow the proposed changes to be adopted. Once again, I urge you to reject the CBP\'s proposed modifications and revocations related to the use of Jones Act. ___ Sincerely, Kevin Renfro 8926 W Valley Palms Dr Spring, TX 77379-3896



4/13/17

Via email: cbppublicationresponse@cbp.dhs.gov

Mr. Glen Vereb
Director
Border Security and Trade Compliance Division
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection

Re: Request for expeditious implementation of the Proposed Modification and Revocation of Ruling Letters Related to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points

Dear Mr. Vereb:

I am writing to express my strong support for Customs and Border Protection's (CBP)'s above-listed proposed modification and revocation of Jones Act letter rulings. These flawed letter rulings are inconsistent with statutory requirements and have constrained economic opportunity for U.S. companies and U.S. workers for too long. Aligning CBP's policy guidance with the law is the right thing to do.

Doerle Food Service LLC is based in Broussard, La. with facilities in Broussard and Port Fourchon, La. and employs over 350 people and we serve as a supplier to U.S. maritime companies working in the offshore energy market. Specifically, our company is engaged in grocery distribution to the Energy & Marine Industry

The Jones Act was intended to support a vibrant U.S. maritime industry. By correctly applying and enforcing the Jones Act, CBP will promote the entire supply chain of goods and services that are required to build, maintain, and operate U.S. ships. While we don't build or operate ships ourselves, our company depends on the success U.S. maritime companies. CBP's initiative will result in more opportunities for companies like mine who depend on a strong U.S. maritime industry.

We know the above statement to be true because we have seen proper enforcement of the Jones Act create spur domestic investment and good-paying jobs. Specifically, when CBP issued a similar notice in 2009, it signaled a change in the market place. Due to that notice, U.S. vessel operators invested in the creation of vessels required to complete the work covered by the notice. Our company participated in this effort and assisted in the creation of dozens of vessels that were constructed or retrofitted here in the United States for these purposes. As a result, our company is proof that proper enforcement of the Jones Act creates investments in the U.S. economy.

Thank you for taking this corrective action.

Sincerely,

Doerle Food Service LLC

A handwritten signature in cursive script that reads 'Robert Woodburn'.

Robert Woodburn
Sr. VP Energy & Marine

April 17, 2017

Via email: Response@cbp.dhs.gov

Mr. Glen Vereb
Director
Border Security and Trade Compliance Division
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection

Re: **Request for expeditious implementation of the Proposed Modification and Revocation of Ruling Letters Related to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points**

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Airgroup is based in Grapevine, Texas with facilities in 20 States. With our 400 employees we serve as a service provider to U.S. maritime companies working in the offshore energy market. Specifically, our company is engaged as a Freight Forwarder.

The Jones Act was intended to support a vibrant U.S. maritime industry. By correctly applying and enforcing the Jones Act, CBP will promote the entire supply chain of goods and services that are required to build, maintain, and operate U.S. ships. While we don't build or operate ships ourselves, our company depends on the success U.S. maritime companies. CBP's initiative will result in more opportunities for companies like mine who depend on a strong U.S. maritime industry.

We know the above statement to be true because we have seen proper enforcement of the Jones Act create spur domestic investment and good-paying jobs. Specifically, when CBP issued a similar notice in 2009, it signaled a change in the market place. Due to that notice, U.S. vessel operators invested in the creation of vessels required to complete the work covered by the notice. Our company participated in this effort and assisted in the creation of dozens of vessels that were constructed or retrofitted here in the United States for these purposes. As a result, our company is proof that proper enforcement of the Jones Act creates investments in the U.S. economy.

Thank you for taking this corrective action.

Sincerely,

Mike Staten
Owner and C.F.O
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801-B Port America Place
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817-481-9604 Tel
817-251-8494 Fax
Mike.Staten@Airgroup.com

MCNICKLE, SASHA W

From: Brandon Miller <brandon.miller@cri-criterion.com>
Sent: Monday, April 17, 2017 10:52 AM
To: CBP-PUBLICATION RESPONSE
Subject: Oppose any changes to Jones Act

Dear US Customs And Border Protection: I am writing today to strongly urge you to APPROVE the Customs and Border Protection (CBP) Agency's proposed modifications and revocations related to the use of Jones Act vessels in offshore oil and natural gas activities on January 18, 2017. ___ I work for Shell, and they have issued a call to action for employees to reject this matter. Despite this, I believe that the measure, although it may have some initial detrimental effect to drilling in the Gulf of Mexico, is the right thing to do to help protect our jobs and economic system here in the U.S. ___ Despite what Shell says, or influences it's employees to say, if there is oil in the Gulf of Mexico, it will be drilled, and we will take a profit on it. And even if we didn't, eventually this sort of change would result in U.S. based companies taking advantage and getting those jobs that Shell left on the table. _____ Sincerely, Brandon Miller 29th Floor One Shell Plaza Houston, TX 77081

Before
U.S. CUSTOMS AND BORDER PROTECTION
U.S. DEPARTMENT OF HOMELAND SECURITY
Washington, D.C.

In the Matter of

Proposed Modification and
Revocation of Ruling Letters
Relating to Customs Application of
the Jones Act to the Transportation
of Certain Merchandise and
Equipment Between Coastwise
Points

**GLOBAL MARINE SYSTEMS LIMITED'S COMMENTS ON
PROPOSED MODIFICATION AND REVOCATION OF
RULING LETTERS RELATING TO THE CUSTOMS POSITION ON
THE APPLICATION OF THE JONES ACT TO THE TRANSPORTATION OF
CERTAIN MERCHANDISE AND EQUIPMENT BETWEEN COASTWISE POINTS**

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Counsel for Global Marine Systems Limited

17 April 2017

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EXECUTIVE SUMMARY

Global Marine Systems Limited (“GMSL”) has two major multiyear contracts valued in the hundreds of millions of dollars that are placed at risk by the changes suggested by the January 10, 2017 Notice of Customs and Border Protection (“CBP”). These contracts were entered into based on good faith reliance of the long line of CBP letter rulings that have held that the laying and repair of submarine cables in United States (“US”) waters, including the continental shelf, do not require a coastwise qualified Jones Act cable ship. These rulings are well founded in the case of cable ships, because the laying and repair of submarine cables involves cable that constitutes vessel equipment and when paid out on the seabed break the continuity of the cable ship’s voyage. The harm caused by a drastic change in the long standing interpretation of the Jones Act with respect to cable ships has dramatic impacts on the ability to maintain the international submarine cable infrastructure upon which the United States depends for over 98% of its international voice, data, and internet communications. Since no coastwise qualified cable ship is available anywhere in the world, any changes in the interpretation of the Jones Act as to these unique cable vessels must be carefully considered. The record for the current Notice provides no justification for changing years of consistent CBP rulings that have excluded cable ships from the Jones Act’s requirements.

Thus, we ask that CBP preserve the status quo for cable ships, which are clearly not the focus of this Notice, and consider in a separate action whether cable ships are within the intended scope of the Jones Act. We believe that CBP will conclude after focused deliberation with input from the cable community that cable ships are appropriately excluded from the reach of the Jones Act. However, if CBP ultimately decides to implement a change for cable ships, it should preserve existing cable repair and maintenance contracts entered in reliance on prior CBP rulings. By imposing the change only on new contracts, CBP will avoid disrupting the reasonable reliance interests of the contracting parties and avoid interrupting the essential repair and maintenance of telecommunications transmission cables under those contracts. Agency actions that fail to consider such consequences are vulnerable to challenge under the Administrative Procedure Act.

**GLOBAL MARINE SYSTEMS LIMITED'S COMMENTS
ON PROPOSED MODIFICATION AND REVOCATION OF
RULING LETTERS RELATING TO THE CUSTOMS POSITION ON
THE APPLICATION OF THE JONES ACT TO THE TRANSPORTATION OF
CERTAIN MERCHANDISE AND EQUIPMENT BETWEEN COASTWISE POINTS**

1. INTRODUCTION

Global Marine Systems Limited (“GMSL”)¹ respectfully submits these comments in response to the Proposed Modification and Revocation of Ruling Letters Relating to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points promulgated by the United States Customs and Border Protection (“CBP”) on January 10, 2017 (hereinafter the “Notice”).

GMSL

GMSL provides this information to assist CBP with a full appreciation of the dramatic harm GMSL and its customers will suffer from the change in interpretation of the Jones Act described in the Notice. GMSL and the companies with which it is under contract as described in these comments rely on the long standing CBP ruling letters regarding the laying and repair of submarine cables. Based on this reliance, they have acted through existing long-term agreements to maintain and repair the fiber optic submarine cable systems upon which they and, essentially, the United States (“US”) depend on for in excess of 98% of their international transoceanic communications.

GMSL is registered under the laws of the United Kingdom. It maintains its principal office in Chelmsford, United Kingdom. It is owned at 95% by HC2 Holdings, Inc. and at 5% by Zencor Holdings LLC, both of which are US companies. HC2 Holdings, Inc. is listed on the New York Stock Exchange under reference HCHC.

GMSL has a legacy of 165 years of laying and repairing submarine cables. In order to carry out this mission, it owns and operates a fleet of specialized submarine cable ships whose essential purpose is to lay and repair submarine cables in the world’s oceans. The fleet includes three installation vessels and four maintenance vessels.

¹ <http://www.globalmarinesystems.com/>

Of particular relevance to the regulatory issues before CBP are the two largest maintenance contracts for submarine cable systems landing in the United States, including Puerto Rico and Guam. These agreements are the Atlantic Cable Maintenance Agreement (“ACMA”) and the North American Zone Agreement (“NAZ”). The geographic area covered by these agreements and the base ports where GMSL cable ships under contract to these agreements are located are shown in Exhibit 1. These agreements, wholly independent from each other, are described below.

ACMA

ACMA is a non-profit cooperative cable maintenance agreement which acts in the interests of its members. ACMA, in various contract versions, has been in existence for more than 50 years. Its contractual goal is provide a fleet of dedicated cable ships to maintain and repair the submarine cables owned or maintained by its members. The geographic coverage of ACMA is shown in Exhibit 1.

ACMA contracted vessels are staffed 24/7, year around, obligated to sail within 24 hours of activation for a fault on any member’s cable system protected by ACMA. ACMA members enter into long-term contracts with cable ship owners selected through an open, rigorous and competitive selection process based on confidential RFPs.

ACMA membership is posted on its website,² but it counts about 65 companies including AT&T, Verizon and Sprint. Moreover, many of the other members are co-owned or lease major capacity to other well-known companies such as Google, Facebook, Microsoft and Amazon.

Since 2012, there have been a total of 98 cable repairs carried out on the approximately 50 submarine cable systems landing in the United States that are enrolled in ACMA. About 50 of the 98 repairs were carried out by GMSL’s cable ships.

In the most recent bidding process, ACMA selected two companies to provide three cable ships for ACMA in its geographic zone. In GMSL’s case, its UK flag vessels *CS Pacific Guardian*, or substitute, based in Curaçao, and *CS Wave Sentinel*, or substitute, based in Portland

² <http://acma2017.com/>

Dorset, United Kingdom, are under contract to ACMA.³ Data sheets on these two British flag cable ships are shown in Exhibit 2.

The agreement for these two vessels entered into force on January 1, 2017, *before* the Notice was published, and will remain in effect until the end of the contract term on December 21, 2021, or possibly 2022 or 2023, depending upon whether the parties exercise the one year or two year contract extension options included in the agreement. In the case of ACMA, GMSL estimates that the value of the contract to the company is approximately US\$20M per year.

NAZ

For over 25 years, NAZ is an agreement that provides its members with cable ships for repair and maintenance to member submarine cable systems in the Northeast Pacific Ocean, including those landing in Alaska, Hawaii, and the US west coast.⁴ The geographic coverage of NAZ is shown in Exhibit 1. NAZ currently has about 18 members, six of which are US companies including AT&T and Verizon. The other members include those that are co-owned or provide capacity to major internet companies such as Google, Amazon, Microsoft, and Facebook.

Since 2012, there have been approximately 11 repairs on cable systems protected under NAZ landing in the United States. All of these repairs were carried out by a GMSL cable ship.

Based on an open and competitive bidding process, NAZ selects a cable ship owner to cover the repair and maintenance of member cables in its geographic range. On December 15, 2016, *before* the Notice was published, NAZ selected GMSL to provide the only cable ship under contract to NAZ. The term of the current NAZ contract with GMSL runs until December 31, 2024. Under the contract, GMSL is required to keep the UK flag *CS Cable Innovator*, or substitute, operating out of its base port of Victoria, Canada, ready to sail for a repair on 24 hours' notice. A data sheet on the vessel is contained in Exhibit 3. GMSL estimates the value of the NAZ contract at approximately US\$13M-US\$14M per year.

³ The third vessel, the French flag cable ship *Pierre De Fermat* based in Brest, France has no affiliation with GMSL. It is operated under a separate ACMA contract and is normally employed for repairs in European waters.

⁴ <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiZr9zR2OXSAhURw2MKHYWsAJ0QFggfMAA&url=http%3A%2F%2Fnorthamericazoneagreement.com%2FNAZ%2520Website%2520Welcome.doc&usg=AFQjCNGBK9z2-LgKSorafX0JIH2GtVpVOg>

OTHER CONTRACTS

In addition to the ACMA and NAZ contracts, GMSL has in the past performed cable laying for international cable systems landing in the United States. These include the Trans Pacific Express (TPE) system linking the United States to South Korea, China, and Taiwan, and TAT-14 linking the United States with the United Kingdom France, and Germany.

2. PROPOSED MODIFICATION

In the Notice, CBP considers such a dramatic expansion of the Jones Act's scope that cable ships could suddenly become subject to its extensive requirements that no current existing cable ship could meet. GMSL joins the International Cable Protection Committee ("ICPC"), of which it is a longstanding member, in opposing the drastic and unexpected regulatory change. GMSL fully endorses the comments filed by the ICPC. GMSL submits this supplemental set of comments to highlight some important aspects of the Notice and their particular impacts to its own activities.

2.1 CBP proposes to re-define two terms that determine the applicability of the Jones Act, but it offers no convincing justification for the change.

The first term that CBP proposes to re-define is "merchandise," the transportation of which requires the use of a vessel that is "wholly owned by citizens of the United States" and that "has been issued a certificate of documentation with a coastwise endorsement with coastwise endorsement" by virtue of 46 U.S. Code § 55102. Vessels satisfying these requirements are commonly referred to as Jones Act's vessels.

CBP explains as follows the change: "[i]n 1988, the Act was amended to include valueless material in the term 'merchandise' and in 1992, the Act was further amended to include merchandise owned by the United States government, a State [...] or a subdivision of a State." However, these minor amendments do not justify the major expansion of the definition of merchandise proposed today, nearly two decades after their adoption.

Attached to the Notice is HQ 101925 (Oct. 7, 1976), which CBP proposes to overrule. CBP had held in this ruling that "a vessel engaging in the inspection and repair of offshore or subsea structures may carry with it repair materials of *de minimis* value or materials necessary to accomplish unforeseen repairs, provided that such materials are usually carried aboard the vessel

as supplies.” CBP would overrule at the same time the numerous rulings that have followed this precedent, including HQ 108223 (Mar. 13, 1986), HQ 108442 (Aug. 13, 1986), HQ 113838 (Feb. 25, 1997), HQ 115185 (Nov. 20, 2000), HQ 115218 (Nov. 30, 2000), HQ 115311 (May 10, 2001), HQ 115522 (Dec. 3, 2001), and HQ 115771 (Aug. 19, 2002).

Instead, CBP proposes to adopt the new ruling HQ H082215, which would reach the contrary conclusion that “the transportation of repair materials, regardless of their value or whether their use is unforeseen, by the subject vessel from a U.S. point that is unladen on any part of the drilling platform that is a coastwise point pursuant to the OCSLA, would violate 46 U.S. Code § 55102.” A copy of HQ H082215 is also attached to the Notice.

This complete reversal puts the Jones Act’s status of cable repair spares in question. On the one hand, neither HQ 101925 (Oct. 7, 1976) nor HQ H082215 mentions submarine cables or cable ships. In fact, the Notice is completely silent in this regard. Both the reasoning and the examples focus on offshore servicing vessels tied to oil and gas, which are different from cable ships in many respects, as explained in the comments of the ICPC. On the other hand, the Notice refers to “the transportation of repair materials” without expressly excluding cable repair spares. This suggests that cable repair materials could be assimilated and considered merchandise under the new interpretation, thus requiring the use of Jones Act’s cable ships.

The second term that CBP proposes to redefine is “equipment.” Unlike “merchandise,” the term does not appear in the Jones Act’s coastwise provisions, but CBP has long distinguished both concepts in its rulings. It is well established that equipment is different from merchandise, so that the transportation of equipment does not trigger Jones Act’s requirements.

CBP does not question this principle. However, CBP proposes to restrict the definition of “equipment” to such an extent that the exception would become close to meaningless or impractical for cable ships. It is emphasized in the Notice that “the definition of vessel equipment that CBP has used in its coastwise trade rulings, has been based, in part, on T.D. 49815(4) (Mar. 13, 1939) which interprets § 309 of the Tariff Act of 1930, codified at 19 U.S.C. § 1309” but that CBP’s application has become “less consistent with the more narrow meaning of ‘vessel equipment’ contemplated by T.D. 49815(4).” In other words, CBP proposes to

overrule several decades of opinion letter case-law to return to the following definition from 1939:

The term 'equipment', as used in section 309, as amended, includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.⁵

This definition is clearly outdated. By any objective standard, cable, whether for laying or repairs, is necessary and appropriate for the "operation" of the cable ship and is consumable. So even if the definition from 1939 were to prevail literally as written almost 78 years ago, cables and cable repair spares would remain covered, because such articles are "necessary and appropriate for the navigation" and "operation" of the vessel, in accordance with the language of T.D. 49815(4).

And even if cables and cable repair materials were to be considered merchandise rather than equipment, their operation would not trigger Jones Act's requirements for lack of coastwise transportation. Indeed, CBP has consistently held that cable laying and repair "break the continuity of the transportation between coastwise points" since the cable is left on the seabed after laying or repair and is not transported (HQ 103217 (October 16, 1978)). This logical and common sense recognition of the facts of cable laying and repair is unaffected by the proposed modification of the terms "merchandise" and "equipment."

However, several of the rulings that CBP identifies as affected by the proposed modification involve cable operations: HQ 105644 (June 7, 1982), HQ 110402 (Aug. 18, 1989), HQ 111889 (Feb. 11, 1992), HQ 112218 (July 22, 1992), HQ 113841 (Feb. 28, 1997), HQ 114305 (Mar. 31, 1998), HQ 114435 (Aug. 6, 1998), HQ 115333 (Apr. 27, 2001), HQ 115487 (Nov. 20, 2001), HQ 115938 (Apr. 1, 2003) and HQ H004242 (Dec. 22, 2006), HQ 111892 (Sept. 16, 1991), HQ 115381 (June 15, 2001), HQ 116078 (Feb. 11, 2004), HQ H029417 (June 5, 2008), HQ H032757 (July 28, 2008). These rulings have exempted cable operations on the ground that cables and cable spares constitute equipment and not merchandise.

⁵ Treasury Decision 49815(4).

To avoid confusion arising from a ruling like the proposed HQ HO82215 that could be murkily applied to submarine cables, CBP needs to squarely address the fact that the laying and repair of international submarine cables in US waters remain exempted, due to their long recognized status as vessel equipment and due to the breaking the continuity of a cable ship's voyage as it lays and repairs cable on the seabed.

2.2 CBP does not only fail to justify the proposed modification for cable ships, but it also fails to define its scope with any precision.

The Notice simply states that “CBP proposes to modify or revoke any treatment previously accorded by CBP to substantially identical transactions” and that “any person involved in substantially identical transactions should advise CBP during this comment period.” In other words, any ruling on cable operations that is not mentioned in the Notice could also be revoked, and should be brought to the attention of CBP. Despite having “undertaken reasonable efforts to search existing databases for rulings in addition to those identified,” CBP failed to identify all rulings cited in footnote 24 to the comments of the ICPC.

One of these rulings is particularly important to GMSL: HQ 113927 (May 9, 1997). Indeed, this ruling was requested by GMSL itself under a former historical name Cable & Maritime Wireless, Inc. This ruling provides an extensive description of a typical cable laying operation, including the different phases and the various tools and equipment used in the process. The multi-page description is essential because all cable ships operate this way, and are thus potentially covered by CBP's reasoning. Most importantly, this ruling concludes that “Customs long-standing position that neither cable-laying nor cable repair is considered to be coastwise trade” also applies to “operations incidental to a cable-laying operation.” GMSL and the ACMA and NAZ parties have long relied on this and similar CBP guidance as they maintain the US's critical international submarine cable infrastructure.

The Jones Act's exemption of cable operations is thus not only long-standing, but also well-thought out and perfectly tailored to the niche maritime specialty of cable laying and repair. Such an exemption cannot be abandoned by a sudden, arbitrary and undifferentiated Notice that does not even mention submarine cables or cable ships. The uncertainty resulting from the Notice is devastating to GMSL which engages daily in the installation and maintenance of

critical international cable infrastructure worldwide, including in particular US waters in the Atlantic and Pacific Oceans.

3. POTENTIAL CONSEQUENCES

If the modifications proposed in the Notice were adopted, GMSL would be prevented from honoring its contractual obligation to maintain the ACMA and NAZ cables. More broadly, GMSL would be prevented from laying or repairing any cable with a landing point in the US. GMSL's difficulties could have grave repercussions on the entire US telecommunication sector. The simple fact is that there are *no* commercial Jones Act qualified cable ships in existence to replace GMSL in the ACMA and NAZ contracts that are vital to maintain the critical international infrastructure of the United States.

3.1 GMSL would be so limited in the use of its cable ships that it could not honor the ACMA and NAZ contracts, and hardly enter new contracts.

If Jones Act's vessels were required to repair cables, as suggested by the Notice, then GMSL could not meet its contractual obligation to maintain the ACMA and NAZ cables. Indeed, neither the *CS Pacific Guardian* and the *CS Wave Sentinel*, which are contracted to ACMA, nor the *CS Cable Innovator*, which is contracted to NAZ, qualify as Jones Act's vessels. Admittedly, the three vessels are already based in non-US ports, respectively Curacao, Portland Dorset and Victoria. GMSL stores there for emergencies the consumable spares needed to fix cables, including spare cables of different sizes and armor types, repeaters, branching units, equalizers and jointing kits. These items are either designed and manufactured by GMSL itself or purchased from a limited number of specialized suppliers.

The proposed modification thus directly interferes with the ACMA and NAZ contracts which preexist the Notice. This is particularly problematic because GMSL has recently renewed these contracts for extended periods of time, as explained in Section 1 of these comments. With regard to the ACMA contract, the amount at stake is approximately US\$20 million dollars per year until the end of 2021, or 2023 in case of renewal, hence US\$90 to US\$130 million dollars are at risk by the proposed regulatory change. With regard to the NAZ contract, the amount at stake is approximately US\$13-US\$14 million dollars per year until the end of 2024, hence up to US\$112 million dollars is at risk from the Notice. The potential loss caused by the change in the

proposed Notice is thus catastrophic to the company, even without counting the penalties that GMSL would likely incur for breach.

It should be noted that GMSL could not absorb these losses by entering new cable laying contracts. Indeed, none of its seven cable ships qualifies as Jones Act's vessels-nor are any such commercial cable ships available anywhere in the world. GMSL would thus be unable to lay or repair any cable landing in the United States inside the undefined legal limit of the US legal continental shelf without violating the expanded Jones Act.

The United States has not yet officially proclaimed its legal continental shelf.⁶ This situation is of no consequence under the existing CBP rulings, because the Jones Act does not limit the ability of cable ships to lay and repair cables. But if the proposed change under Notice were to take effect, cable ship mariners would face the dilemma of trying to make an educated guess as to where the legal limit of the US continental shelf exists before attempting an emergency repair of an international cable. Such delays and confusion are inconsistent with the current well-honed contracts that place a premium on swift emergency repairs of critical international submarine cable infrastructure.

3.2 GMSL's difficulties would have grave repercussions on US telecommunications.

By threatening GMSL's activities, the proposed modification also threatens the business of all its customers, starting with the members of ACMA and NAZ. These companies rely on GMSL's vessels to maintain their cables for the entire term of the contract, i.e., four to six years for ACMA, and eight years for NAZ. They have selected GMSL at the end of an open, fair, and selective bidding process, based on the performance records of its cable ships in an active market. The telecommunication network operated by these companies would be at great risk if GMSL's cable ships were prevented from operating on the US continental shelf.

As emphasized in the comments of the ICPC, there are only about 59 oceangoing cable ships in the world, none of which satisfies the Jones Act's requirements. With a fleet of state of the art cable ships, GMSL is at the forefront of the submarine cable industry. None of its

⁶ The inability or indecision of the United States in declaring its legal continental shelf limit stems, at least in part, from its inability to ratify the United Nations Convention on the Law of the Sea which defines the accepted norms for doing so such as submitting claims to the Continental Shelf Boundary Commission set up by that treaty.

competitors would be able to fill the gap if GMSL went out of business, because they also possess no cable ships qualified for US coastwise operations.

Since non-specialized vessels cannot efficiently perform cable operations, no new cable could be installed and no existing cable could be fixed in US waters. This means that any break could lead to an interruption of international telecommunications. Like the importance of submarine cables, the importance of cable ships is often underestimated. These cable ships are analogous on land to a fire engine, loaded with firefighting gear, crewed by specially trained firemen, on standby waiting to respond to a fire alarm and not to a fungible freight truck used for transport general cargo or merchandise. Companies like GMSL with its specialized single purpose cable ships manned by specialist crews are the guardians of the submarine infrastructure that connects the world.

4. RECOMMENDATIONS

To avoid such harm, CBP should confirm the validity of the long line of rulings that have exempted cable laying and repair operations from Jones Act's requirements. As an alternative, CBP should preserve GMSL's existing cable ship contracts entered in reasonable reliance on well-established case-law. CBP may avoid disrupting existing contracts by expressly delaying final action as it pertains to cable ships or by implementing the change only as it pertains to new cable ship contracts. As a further alternative, GMSL requests a national defense waiver based on the strategic importance of the ACMA and NAZ cables for the US.

4.1 CBP should confirm the long line of cable rulings that have exempted cable ships.

The best way to ensure the continuity of US telecommunications is to confirm the correct common sense treatment of cable laying and repair operations under the Jones Act. CBP could still change its interpretation of the terms "merchandise" and "equipment," but while making clear that this change does not affect the status of cable ships engaged in the laying and repair of cables on the seabed. As explained in Section 1 of these comments, the confirmation of the exemption of cable ships would not be inconsistent with the proposed modifications. Indeed, the unique characteristics of cable ships fully justify the differentiated approach that CBP has adopted so far.

Moreover, the rules applicable to cable ships are already well-delineated. Whereas the exemption of vessel equipment may have been invoked expansively, the exemption of cables and cable repair materials has remained confined within strict limits. The only operations that do not require the use of a Jones Act's vessel are those that consist solely of laying or repairing the cable. The comments of the ICPC rightly emphasize that the Jones Act's requirements are triggered as soon as the installation cable ship unloads more than 5% of extra safety margin cable not consumed from a successful cable lay between US points. Like the rest of the industry, GMSL is fully aware of this limitation. Its cable ships observe it carefully whenever they operate on the US continental shelf.

GMSL is well positioned to know that any operation other than installation or maintenance requires the use of a Jones Act's vessel. GMSL itself – once again under its former name Cable & Maritime Wireless, Inc. – requested a ruling on whether a foreign-flag vessel may recover an out-of-service cable in US waters and discharge it as a US port. In HQ 114692 (May 12, 1999), CBP replied negatively on the ground that for an out-of-service submarine cable recovered from the seabed “[t]he transportation of submarine cable from a point in US waters to a US port by a foreign vessel is prohibited by 46 USC App. 883.” As a result of this holding, the removal or salvage of cables is not among the services offered by GMSL on the US continental shelf. Its vessels are completely dedicated to the installation and maintenance of cables within the limits defined by CBP.

CBP should confirm that cable ships are exempt from the Jones Act because any abrupt, unexpected departure that applies the coastwise trade restrictions to cable ships would violate the constitutional guarantee of Due Process and constitute arbitrary and capricious agency action barred by the Administrative Procedure Act. Moreover, even if CBP could take such a step, it would require adequate consideration of the relevant reliance interests it would disrupt and an explanation for rejecting alternatives that would protect these reliance interests.

The interpretation and application of the coastwise trade restrictions has until now not violated the Due Process guarantee because it has remained consistent with a foreseeable policy dating back to the founding of the United States to foster and protect the American merchant marine. Thus, the Supreme Court rejected a Due Process challenge to the Jones Act in *Central Vermont Co. v. Durning*, 294 U.S. 33 (1935), because it was consistent with “a long established

national policy to restrict . . . foreign control of coastwise shipping” established in “a series of statutes, beginning with the first year of the government, which have imposed restrictions of steadily increasing rigor on the transportation of freight in coastwise traffic by vessels not owned by citizens of the United States.” 294 U.S. at 38, 41. Under these circumstances, there could be no reasonable pre-Jones Act reliance on the continued ability of any foreign ship to transport freight in coastwise traffic.

In sharp contrast here, reasonable reliance interests would be unconstitutionally disrupted by a sudden declaration that cable ships are covered by the restriction even though they do not engage in the transportation of freight in coastwise traffic in any traditional sense. That reasonable reliance was even bolstered and engendered by the repeated and consistent rulings that cable ships are not covered by the Jones Act. Accordingly, any sudden change that dramatically expands its scope beyond its traditional applications and the limits recognized in numerous rulings would run afoul of Due Process guarantees.

CBP is also subject to the substantive protections imposed by the Administrative Procedure Act that are greater than the constitutional guarantee of Due Process. The Supreme Court in *State Farm* held that the arbitrary-and-capricious standard imposed on agencies by the Administrative Procedure Act requires “more than the minimum rationality a statute must bear in order to withstand analysis under the Due Process Clause.” *Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Insurance Co.*, 463 U.S. 29, 43 n.9 (1983). Therefore, any agency action that even approaches a violation of the Due Process Clause would be arbitrary and capricious and therefore not permitted under the Administrative Procedure Act. Any action taken by CBP would be arbitrary and capricious if it disrupts the ample reasonable reliance interests of the cable ship industry that have been engendered by numerous exemption rulings, the underlying purpose of the coastwise trade restriction, and the narrow and specific scope of the traditional limits the United States has placed on coastwise trade.

CBP’s action would also be arbitrary and capricious if it fails to provide a specific, reasoned justification for the disruption of reliance interests in the cable ship industry. The Supreme Court has held that the Administrative Procedure Act requires that an agency delineating the scope of a statutory provision must “give adequate reasons” and “examine the relevant data and articulate a satisfactory explanation for its action including a rational

connection between the facts found and the choice made.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. ___ (2016) (quotation omitted). Absent this “minimum level of analysis” an agency’s action “is arbitrary and capricious and so cannot carry the force of law.” *Id.*

In addition, when an agency adopts a new interpretation of the scope of a statutory provision it must “display awareness that it is changing position” and “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Moreover, “an agency must . . . be cognizant that longstanding policies may have engendered serious reliance interests that must be taken in to account.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. ___ (2016) (quotation omitted). And an agency must provide a “more detailed justification” for the change when the prior position “engendered serious reliance interests.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). An agency action that fails to meet these obligations is arbitrary and capricious such that it “is itself unlawful and receives no *Chevron* deference.” *Id.*

As already emphasized in Section 1 of these comments, the Notice provides no explanation for withdrawing its longstanding rulings that recognize that cable ships performing maintenance and repair operations are not covered by the coastwise trade restrictions. The Notice focuses on the oil and gas context without offering any analysis of the statute in this entirely distinctive context. Accordingly, “[i]n light of the serious reliance interests at stake” for the cable ship community, *Encino Motorcars, LLC v. Navarro*, 579 U.S. ___ (2016), CBP cannot lawfully finalize the ruling withdrawals or change its policy on this issue *sub silentio* without directly confronting the issue, admitting the significant departure that this would represent, and explaining why it would serve the purpose of the Jones Act “to provide for the promotion and maintenance of an American merchant marine.” 294 U.S. at 38.

In addition, CBP’s action will be arbitrary and capricious if the costs far outstrip the relevant benefits because it is irrational to impose substantial “economic costs in return for a few dollars in . . . benefits.” *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015). CBP cannot apply the coastwise trade restrictions to cable ships without even considering whether the benefit of doing so for the “promotion and maintenance of an American merchant marine,” 294 U.S. at 38, is less than the significant costs imposed on the cable laying and repair industry and the disruption of hundreds of millions of dollars and communication resiliency in reliance interests.

Here, the relevant benefits can hardly be worth the costs given that no Jones Act's cable ship is presently available. The sudden change proposed by CBP would thus not benefit any US ship owner, because none can replace GMSL's cable ships. Likewise, the sudden change would not benefit any US shipyard, because none has the immediate capacity to engage in a five-year cable ship construction project, and neither GMSL nor any of its customers is ready to make such a multi-million dollar investment anyway. In this context, it would be arbitrary and capricious for CBP to suddenly vitiate hundreds of millions of dollars in reliance interests when doing so will not meaningfully serve the interests of US ship owners and US shipyards. And it is all the more arbitrary and capricious when this change will in fact disrupt the national defense by threatening the critical communications infrastructure used by the Department of Defense, the Department of Homeland Security, and the State Department in a time when American armed forces are deployed in combat overseas.

CBP must also fully consider all of the "relevant factors" and each "important aspect of the problem." *Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Insurance Co.*, 463 U.S. 43 (1983). This includes each of the "disadvantages" of its action. *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015). Here, CBP contemplates an action that "undermines serious reliance interests" and "disrupts settled expectations, thereby imposing a significant cost on regulated parties and contravening basic notices of due process and fundamental fairness." *Mingo Logan Coal Co. v. EPA*, No. 14-5305 (D.C. Cir. July 19, 2016) (Kavanaugh, J., dissenting) (addressing issues not considered or rejected by the majority opinion). This is unquestionably an "important aspect of the problem" that CBP must fully consider and address. The silence of the Notice on the applicability of the proposed modification to cable ships would thus justify a challenge under the Administrative Procedure Act.

The reliance issues at stake for the cable ship industry are such that CBP cannot reasonably disregard them. CBP is not addressing a question of critical importance for GMSL and the cable industry. In a long line of rulings, CBP has repeatedly held that coastwise trade restrictions do not apply to cable repair and maintenance vessels. Accordingly, CBP's proposed withdrawal of those prior rules represents an abrupt departure from well-established practice and its long standing interpretation of the Jones Act. GMSL and its customers have relied heavily on that practice and interpretation of the Act. The entire structure of the ACMA and NAZ contracts

and of the submarine cable and telecommunication industries has been erected based on the premise that the coastwise trade restrictions do not apply. Over several decades, CBP has repeatedly confirmed that the coastwise trade provisions of the Jones Act do not apply to cable ships. Hundreds of millions of dollars in investments and contracts have been made by GMSL and others in reasonable reliance on the longstanding exemption of cable operations. To change course under these circumstances would be the height of arbitrariness and caprice.

In deciding how to proceed, CBP must also consider the available alternatives that would protect the serious reliance interests that the contemplated action would disrupt, and CBP must provide a reasoned explanation for rejecting them. Well-settled administrative law requires “consideration of alternatives” and “an adequate explanation when . . . alternatives are rejected.” *Int’l Ladies’ Garment Workers’ Union v. Donovan*, 722 F.2d 795, 817 (D.C. Cir. 1983); *see also id.* (“It is absolutely clear . . . that . . . an ‘artificial narrowing of options,’ . . . is antithetical to reasoned decision making and cannot be upheld.” (quoting *Pillai v. Civil Aeronautics Bd.*, 485 F.2d 1018, 1027 (D.C. Cir. 1973))).

First, CBP must consider the alternative of keeping the reasonable interpretation of the Jones Act that it does not apply to cable maintenance and repair vessels. CBP does not and could not claim in the Notice that Congress unambiguously required it to apply the coastwise trade restriction to cable ships. Accordingly, CBP can reasonably confirm its longstanding interpretation of the statute that it does not apply. To do so, CBP can interpret the term “transportation” to exclude cable laying and repair operations. Not only does the fact that cables are paid out on the deep seabed break the continuity of any voyage, as already recognized by CBP, but the uniqueness of the operation also sets cable ships aside from the US transportation industry protected by the Jones Act. Foreign-flagged cable ships do not diminish the market for transportation services under ordinary shipping contracts by American merchant marine ships.

The requirements for cable repair dictate that cable ships must always be ready, available, and adequately supplied to sail to faults in the cables within 24 hours. This requires detailed and specialized contracts and highly specialized ships and crews that ensure that the necessary spares are loaded as soon as possible on a ship that is available for dispatch 24/7. No Jones Act’s vessel could meet these requirements. Neither can any of the cable ships contracted to ACMA and NAZ engage in the traditional transportation activities that are subject to Jones Act’s

requirements. Accordingly, CBP must consider reasonably interpreting “transportation” not to apply to actions taken by cable ships that in no way compete with American merchant marine ships.

Second, CBP must consider a similar reasonable interpretation that a vessel does not transport “merchandise,” valueless or otherwise, when it carries consumable spares to perform a mission that necessarily dictates that it carry its own spares. Whether such spares are considered as vessel equipment or not, they are different from merchandise in that they are not loaded at a coastwise point and stored until delivery at another coastwise point. On the contrary, a cable ship’s spares are constantly used during the voyage, and paid out on the seabed rather than delivered at destination. While Congress has amended the Jones Act to clarify that it reaches transportation of valueless merchandise because that can be performed by American merchant marine ships operating under ordinary shipping contracts, the Jones Act still only applies to the transportation of “merchandise” which cable spares are not.

Regardless of the definition of “equipment,” CBP can reasonably interpret that the spares that a vessel’s mission requires to be stored on board in order to be ready for deployment at a moment’s notice are not “merchandise.” They do not fall within the plain meaning of that term, and interpreting “merchandise” to include such materials does not serve the statutory purpose. Importantly, interpreting “merchandise” not to include such materials would not exempt the transportation of materials for use in offshore oil and gas operations when the materials are not regularly maintained on board at all times and actively used during offshore subsurface ocean operations.

Third, CBP must consider a *de minimis* exemption for cable ships performing cable maintenance and repair operations. The “venerable” doctrine of *de minimis non curat lex* “is part of the established background of legal principles against which all enactments are adopted, and which all enactments . . . are deemed to accept.” *Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). CBP’s “ability . . . to exempt *de minimis* situations” from the Jones Act is an available and appropriate “tool” for “implementing . . . legislative design.” *Alabama Power Co. v. Costle*, 636 F.2d 323, 360–361 (D.C. Cir. 1979). CBP can use this tool in situations where “the literal terms of a statute . . . mandate pointless expenditures of effort” and “the burdens of regulation yield a gain of trivial or no value.” *Id.* The purpose of the

Jones Act is “to provide for the promotion and maintenance of an American merchant marine.” 294 U.S. at 38.

Cable ships such as those owned by GMSL are not general cargo ships that can carry other cargos like a normal merchant ship. The tanks on a cable ship are circular drums that allow the cable to be loaded from the factory and then transported to the point in the ocean where they are paid out onto the seabed. They have a single function, laying and repairing submarine cables and cannot do other general marine tasks. In the case of GMSL’s cable ships, their single use is also directed by the terms of the long-term contract with ACMA and NAZ.

Since applying the Jones Act to cable ships would only “yield a gain of trivial or no value” with respect to its purpose, CBP can rule that it does not apply irrespective of whether the literal terms of the statute could be read to say otherwise. And using its *de minimis* exemption authority would allow CBP to flexibly distinguish between the work barges used in offshore oil and gas operations that the Notice explains should be covered by the coastwise trading restrictions. CBP can reasonably conclude that the statutory purposes would be served by applying the Jones Act in that context since the services at issue could be performed by Jones Act’s vessels operating under ordinary shipping contracts and because even the specialized ships that transport the materials have general cargo capacity that makes them suitable for other uses.

4.2 Otherwise, GMSL respectfully requests that its cable ships be granted either a grandfather exception or a national defense waiver.

In the event that CBP persisted in subjecting cable ships to Jones Act’s requirements, GMSL would require a grandfather exception for the *CS Pacific Guardian* and the *CS Wave Sentinel*, which are contracted to ACMA, and for the *CS Cable Innovator*, which is contracted to NAZ. Such special treatment would be completely warranted because the three vessels were acquired and contracted in reliance of the long-standing exemption of cable operations. It should also apply to any other cable ship that GMSL may use as a substitute to perform its obligations under the ACMA and NAZ contract if any of these vessels needed to be replaced, either temporarily or permanently.

It should be noted that the three vessels were custom built – or rebuilt in the case of the *CS Wave Sentinel* – for the special purpose of laying and/or repairing submarine cables on the

deep seabed. Each of them has three main cable tanks with a capacity of 1700 to 2600 tons of coiled cable per tank. Each of them is also equipped with powerful remotely operated vehicles that are designed to detect, cut and lay cables with ultimate precision at great water depths. The recent conclusion of long-term contracts with ACMA and NAZ demonstrates that these vessels meet the high standard of the US telecommunication industry. Any substitute vessel would need to meet this standard to be compliant with the ACMA and NAZ contracts.

It should also be noted that GMSL signed the contracts with ACMA and NAZ shortly before the publication of the Notice. At that time, GMSL could not predict that CBP was about to revoke several decades of rulings on cable operations. Whereas CBP's proposal is contrary to its own precedents, GMSL's contracts with ACMA and NAZ are consistent with the long practice of the submarine cable industry. The cost of maintaining a cable ship on standby is so high that most companies enter into zone maintenance agreements to share the cost of hiring a cable ship for an extended period of time. This system has proven to be the most cost-efficient way to ensure the physical security of submarine cables and the reliability of international communications of the United States.

The strategic importance of GMSL's contracts with ACMA and NAZ would also justify a Jones Act's national defense waiver. CBP has the authority to waive the application of coastwise laws under the conditions defined in 46 USCS § 501(b)(1):

When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual, following a determination by the Maritime Administrator, acting in the Administrator's capacity as Director, National Shipping Authority, of the non-availability of qualified United States flag capacity to meet national defense requirements, may waive compliance with those laws to the extent, in the manner, and on the terms the individual, in consultation with the Administrator, acting in that capacity, prescribes.

These conditions would be satisfied if CBP suddenly revoked the Jones Act's exemption of cable ships, as threatened in the Notice. Such revocation would lead to the "non-availability of qualified United States flag capacity to meet national defense requirements." Indeed, the absence of Jones Act's cable ships would make it impossible to repair breaks on the US continental shelf. This would create an immediate risk of interruption of telecommunications between the US and the world. The ICPC rightly estimates in its comments that satellites have

the capacity to carry only 7% of the data that is today carried by the 40 to 50 international submarine cables landing in the US.

At stake is not only the survival of GMSL and its customers, including the major telecommunication companies that are members of ACMA and NAZ, but also the national security of the US. The latter depends on the physical security of submarine cables, which itself depends on the ability of companies like GMSL with its special cable ships to repair damages under well designed and executed contracts.

A very limited waiver would be sufficient to eliminate this great danger and protect US telecommunications. Since the *CS Pacific Guardian* and the *CS Wave Sentinel* are already contracted to ACMA, which covers the US east coast, and the *CS Cable Innovator* is already contracted to NAZ, which covers the US west coast, a waiver limited to these three ships and their substitutes would ensure the security of the cables of all ACMA and NAZ customers on both US coasts. CBP should grant a waiver for the length of GMSL's present contracts, i.e., until 2023 in the case of ACMA, and until 2024 in the case of NAZ.

5. CONCLUSION

GMSL respectfully requests that CBP confirms that the installation and maintenance of submarine cables on the US continental shelf does not require the use of a Jones Act's vessel, regardless of the modification of the interpretation of the terms "merchandise" and "equipment" proposed in the Notice.

GMSL further respectfully requests that, if the treatment of cable ships was affected by the Notice, CBP would exempt the *CS Pacific Guardian*, the *CS Wave Sentinel* and the *CS Cable Innovator* from Jones Act's requirements for the length of GMSL's contracts with ACMA and NAZ, i.e., until 2023 for the *CS Pacific Guardian* and the *CS Wave Sentinel*, and until 2024 for the *CS Cable Innovator*. The exemption should also apply to any substitute cable ship that GMSL may use to perform its obligations under the ACMA and NAZ contracts.

Exhibit 1

Diagram showing ACMA and NAZ geographic coverage areas and cable ship base ports.



Exhibit 2

Data sheets for *CS Pacific Guardian* and *CS Wave Sentinel*



Pacific Guardian

Data Sheet

Overview

Pacific Guardian is a purpose built cable maintenance ship, equipped with a remotely operated vehicle (ROV). Stationed in Curacao, the vessel provides repair and maintenance services for cable owners in the Atlantic Cable Maintenance Agreement (ACMA).

Vessel

Builders	Swan Hunter Shipbuilders, Newcastle
Date built	1984
Flag	UK
Class	ABS, A1, AMS ACCU
Length overall	115.60m
Breadth moulded	18.00m
Designed draft	6.31m
Gross tonnage	6133t
Maximum speed	14kts
Main engines	6
Bow thrusters	1
Stern thrusters	1
DP system	Converteam A-SERIES SIMPLEX DPS
Berths	80
Bollard pull	47t

Communications

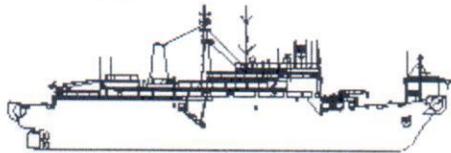
1 x SEATEL 4006. MTN Service Contract on KU Band.
2 x Inmarsat – B
1 x Inmarsat – C

Cable Tanks

Main cable tanks	3
Outer diameter	2 x 13.00m 1x 9.00m
Cone external diameter	3.00m
Maximum load per tank	1700t

Fuel

Fuel capacity	630t MGO
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M004 v. 2

Wave Sentinel

Data Sheet

Global Marine



Overview

Wave Sentinel was converted in 1999 as a cable lay and multi-purpose offshore support vessel. The conversion design and construction was completed to a very high standard and has the ability to perform a variety of offshore and subsea operations. The following systems provide the vessel with the ability to perform multiple roles which include cable installation & maintenance, ROV support, flexible installation work, offshore construction, survey and recovery projects.

Vessel

Builders	Royal Schelde Shipbuilding, Netherlands
Date built	1995
Flag	UK
Class	ABS-A1, AMS, ACCU, DPS-1.
Length overall	138.10m
Breadth moulded	21.00m
Designed draft	6.28m
Gross tonnage	12330t
Maximum speed	16kts
Main engines	7
Bow thrusters	3
Stern thrusters	2
DP system	Alstom series 900 Duplex DPS
Berths	60
Bollard pull	62t

Communications

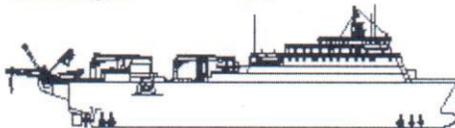
1 x VSAT SEATEL 4006. MTN Service
Contract on KU Band.
2 x Nera SAT B

Cable Tanks

Main cable tanks	3
Outer diameter	15.00m
Cone external diameter	2.90m
Maximum load per tank	2600t
Spare tanks	1
Internal diameter	9.00m
Cone outer diameter	2.90m
Maximum load per tank	875t

Fuel

Fuel capacity 731t MGO



www.globalmarinesystems.com

M006 v. 2

Exhibit 3

Data sheet for *CS Cable Innovator*



Overview

Cable Innovator is a DPS-2 Class cable lay and multi-purpose offshore support vessel. The vessel has been designed and constructed to a very high standard and has the ability to perform a variety of subsea operations to multiple sectors; including oil & gas and telecommunications.

Vessel

Builders	Kvaerner Masa Shipyard, Finland
Date built	1995
Flag	UK
Class	ABS. Cable Layer, A1, AMS, ACCU, DPS-2
Length overall	145.50m
Breadth moulded	24.00m
Designed draft	8.30m
Gross tonnage	14277t
Maximum speed	16.9kts
Main engines	5
Bow thruster	2
Stern thruster	2
DP system	DPS-2
Berths	80
Bollard pull	58t

Communications

1 x VSAT SEATEL 4006 with MTN Service Contract on KU Band

Cable Tanks

Main cable tanks	3
Outer diameter	16.70m
Cone external diameter	3.10m
Maximum load per tank	2333t
Spare tanks	1
Internal diameter	8.80m
Cone outer diameter	2.00m
Maximum load per tank	500t

Fuel

Fuel capacity 1662t MGO



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M001 v3

MCNICKLE, SASHA W

From: Wenhua Yang <wenhuayang@sbcglobal.net>
Sent: Monday, April 17, 2017 11:17 AM
To: CBP-PUBLICATION RESPONSE
Subject: Oppose any changes to Jones Act

Dear US Customs And Border Protection: I am writing today to strongly urge you to REJECT the Customs and Border Protection (CBP) Agency\'s proposed modifications and revocations related to the use of Jones Act vessels in offshore oil and natural gas activities on January 18, 2017. ___ The proposed modifications and revocations will have a wide range of repercussions on American oil and gas production in the Gulf of Mexico, but also supported employment, gross domestic product, as well as government revenue. ___ If the proposed changes are accepted, cumulative spending on offshore oil and natural gas development in the Gulf of Mexico OCS will decrease in the range of \$5.4 billion (15 percent) per year. With the decreased spending come the loss of 30 thousand jobs in 2017 and an average decreased employment of over 80 thousand jobs from 2017 to 2030. ___ Altering the Jones Act in this way would also mean an average loss of \$1.9 billion of government revenue per year from 2017 to 2030, placing additional strain on already overly burdened government budgets to maintain public projects and works. ___ While oil industry is already hurt by the lasting low oil price, it will be hurt more by the proposed modification of the Act. Millions of ordinary people such as myself will be impacted. ___ It would be a terrible mistake to allow the proposed changes to be adopted. Once again, I urge you to reject the CBP\'s proposed modifications and revocations related to the use of Jones Act. ___ Sincerely, Wenhua Yang 1931 Sparrows Rdg Katy, TX 77450-6694



April 7, 2017

Via email: Response@cbp.dhs.gov

Mr. Glen Vereb
Director
Border Security and Trade Compliance Division
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection

Re: **Request for expeditious implementation of the Proposed Modification and Revocation of Ruling Letters Related to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points**

Dear Mr. Vereb:

I am writing to express my strong support for Customs and Border Protection's (CBP)'s above-listed proposed modification and revocation of Jones Act letter rulings. These flawed letter rulings are inconsistent with statutory requirements and have constrained economic opportunity for U.S. companies and U.S. workers for too long. Aligning CBP's policy guidance with the law is the right thing to do.

W&O Supply, Inc. is based in Jacksonville, Florida with facilities in every major port city in the US (Ft. Lauderdale, Tampa, New Orleans, Charleston, Norfolk, Philadelphia/Linden, Mobile, Houma, Houston, Long Beach, Seattle and San Diego and employs over 300 associates. We serve as a distributor and solutions provider to U.S. maritime companies working in the offshore energy market. Specifically, our company is engaged in distribution of pipe, valves, fittings, actuation and engineered solutions to the maritime and upstream oil and gas industry.

The Jones Act was intended to support a vibrant U.S. maritime industry. By correctly applying and enforcing the Jones Act, CBP will promote the entire supply chain of goods and services that are required to build, maintain, and operate U.S. ships. While we don't build or operate ships ourselves, our company depends on the success of U.S. maritime companies. CBP's initiative will result in more opportunities for companies like mine who depend on a strong U.S. maritime industry.

We know the above statement to be true because we have seen proper enforcement of the Jones Act create and encourage domestic investment and good-paying jobs. Even when the Jones Act has not been fully enforced, the Act supports more than 500,000 American workers and \$100 billion in economic activity in the United States. We are certain revocation of the letter rulings mentioned in CBP's notice will enhance this economic activity and increase job creation.

Thank you for taking this corrective action.

Sincerely,


Michael Hume
President and CEO

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Jacksonville, FL 32226
T. 904.354.3800
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● pon.com



Hess Corporation
1501 McKinney Street
Houston, TX 77010

April 18, 2017

U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
Department of Homeland Security
799 9th Street, N.W., Mint Annex
Washington, D.C. 20001

Submitted electronically to cbppublicationresponse@cbp.dhs.gov

Re: Comments on Proposed Modification and Revocation of Ruling Letters Relating to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points; 51 *Customs Bulletin* 3 at 1 (Jan. 18, 2017)

Dear Acting Commissioner McAleenan:

This letter provides the comments of Hess Corporation (“Hess”) in response to the Department of Homeland Security’s (“DHS”) Customs and Border Protection (“CBP”) Proposed Modification and Revocation of Ruling Letters Relating to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points (“the Proposal”) that was released on January 18, 2017.

Hess is a leading global independent energy company engaged in the exploration and production of crude oil and natural gas. Hess has made significant investments to develop domestic and international energy resources both offshore and onshore. The company has been active in the deepwater Gulf of Mexico for over 25 years, following our discovery of oil there in 1991. Our current Gulf of Mexico production is approximately 72,000 barrels of oil equivalent per day from 11 fields, the newest of which began production at the end of 2014. We have additional deepwater projects underway.

On January 18, 2017, CBP issued a proposed modification and revocation to long-standing interpretation of rules for vessels transporting specialized equipment used by the offshore oil and gas industry under the Jones Act. While Hess fully supports the intent of the Jones Act to preserve the domestic merchant marine capability for transporting cargo and passengers so that that capability is available in times of war or national emergency, we have some specific concerns with the Proposal. Hess respectfully requests that CBP decline to proceed with finalizing the Proposal until such time when CBP can formally evaluate both overarching and specific issues related to its interpretation of the Jones Act as it applies to vessels transporting

specialized equipment on the Outer Continental Shelf. In addition to its comments set forth herein, Hess fully supports and adopts the comments filed by the American Petroleum Institute.

Overarching Issues Related to the Proposal

The Jones Act prohibits non-coastwise qualified vessels from providing “any part of the transportation of merchandise by water, or by land and water, between points in the United States (U.S.) to which the coastwise laws apply.” To evaluate the Proposal, it was also necessary to evaluate several previous CBP interpretations under the Act that have been applied to offshore oil and gas operations, including CBP’s prohibitively prescriptive definitions of “transportation,” “merchandise” and “point in the United States.” Interpreting these terms in a way that applies the Jones Act to offshore construction activities on the Outer Continental Shelf (“OCS”) is counter-intuitive and, in certain circumstances, compromises safety.

Safety

CBP’s restrictive interpretation of the Jones Act has led it to take a position that safety is not a consideration when making its rulings. Hess places the utmost importance on safety, as do other operators in the Gulf of Mexico. Protecting the health and safety of our employees and the communities where we do business, as well as ensuring protection of the environment, is essential to Hess’ operations as a leading global independent oil and gas exploration and production company. CBP’s position that non-coastwise qualified vessels are prohibited from any movements ignores the practical realities faced by operators when performing deepwater installations. Subsea equipment is often installed in the vicinity of existing subsea infrastructure and active wells. To reduce the risk of environmental exposure, the common industry practice is to deploy subsea equipment at a safe-lift zone through the water column until the equipment is near seabed. Typically, the safe-lift zone is set up at a distance that is at least 10 percent of the water depth away from any existing subsea asset and production. During the deployment of the subsea equipment, the installation vessel requires the ability to conduct some incidental movement in order to safely install the equipment at the designated location on the seabed. Such incidental movement is part of nearly all subsea equipment installation operations and is required to conduct the activities in the safest manner. CBP has interpreted this incidental movement as being a violation of the Jones Act. CBP should make safety the highest priority in its deliberations and allow these incidental movements within a safe zone to be permissible under the Jones Act.

Transportation

Most, if not all, of the activities in question under the rulings that are proposed to be revoked or modified are not involved in transportation in the traditional sense of movement from one port to another. In most instances, equipment and materials are transported to a construction site on coastwise-qualified vessels to installation vessels located in the field. The construction vessels may or may not need to maneuver – depending on safety and other operational requirements - to conduct construction operations. For instance, an installation vessel may need to pick up a riser pre-laid on the seafloor to connect it to a topsides facility. It is impossible to do this without some movement. This is not “transportation,” but rather a “construction” related movement and

should not be subject to the Jones Act. A parallel onshore situation is a teamster who may be required by labor or union rules to deliver lumber to a worksite. However, once the lumber is on location, it is necessary and allowable for a carpenter to pick up and move the lumber to install it, even though the teamster was responsible for “transportation.” The carpenter could also use his own equipment (hammers, saws, and nails), instead of the teamsters providing the tools.

Merchandise

The Jones Act itself has no actual definition of merchandise and, in its absence, the CBP has incorrectly applied a definition from the Tariff Act – an act with a completely different purpose than the coastwise trade statute. CBP has also incorrectly limited its application of the Jones Act to only two categories – “merchandise” and “equipment of the vessel.” There is no clear basis for this limiting distinction under the Jones Act. CBP should either (i) maintain its long-standing view of equipment of the vessel as embracing items supporting the mission, purpose, business, function and operation of the vessel, or (ii) apply an addition category of “construction materials” installed by the end user and out of the flow of commerce, and therefore are not merchandise.

Point in the United States

While CBP has long held that the Jones Act applies to the OCS through the application of the Outer Continental Shelf Lands Act (“OCSLA”), OCSLA extends Federal law to “all installations and other devices permanently or temporarily attached to the seabed.” The plain reading of OCSLA does not make a “point” within the exclusive economic zone of the OCS also a “point” in the United States. In adopting the 1978 amendments to OCSLA, Congress shared its concerns on this issue by noting that the “Bureau of Customs has determined that artificial islands and structures, including rigs, are points within the United States and within the coastwise laws of the United States, even though located outside territorial waters. Under that determination, the transportation of passengers and merchandise between islands, structures and rigs, or between islands, structures and rigs and the United States while engaged in OCS activities is covered by the Jones Act...” The U.S. House of Representatives went on to note “This determination is under review and the committee, by this subsection, does not in any way negate or supersede existing law.” (H.R. Rep. No. 95-590, at 129.)

Hess recommends that CBP revisit why it has treated OCS locations as “points” in the United States and share its analysis with all applicable stakeholders. If CBP ultimately determines that its current interpretation of the statute is correct, it should reconsider its restrictive interpretation of “points in the United States” and limit it to “pinpoint” locations. There is a reasonable basis, especially in the OCS to recognize “safe zones” as implemented by the United State Coast Guard, construction sites and/or integrated facilities as the “point in the United States.” CBP has already expanded a coastwise point beyond a specific point to included locations in the vicinity of a well (See HQ 110959 and HQ 166350).

Specific Issues Related to the Proposal

In addition to Hess' general concerns about the interpretation of the Jones Act to oil and gas operations on the OCS and prescriptive definitions that have been previously applied, the Proposal also raises specific areas of concern. If the Proposal is finalized, Hess anticipates it will have significant impacts to existing and future oil and gas development projects in the Gulf of Mexico by limiting options for capable vessels needed by oil and gas operators.

Lack of Due Process Under the Administrative Procedure Act

In 2009, CBP correctly conceded that Section 625 of the Tariff Act of 1930 (19 USC. § 1625) was an inappropriate and inadequate process for reversing over 30 years of prudent and well-established administrative precedent heavily relied upon by the offshore oil and gas industry, which based major investment on these consistent precedents. That process is designed to deal with discrete, individual rulings, not with massive regulatory and policy changes in circumvention of the Administrative Procedure Act. For these reasons, CBP should withdraw the Proposal and allow DHS and CBP leadership an opportunity to assess and decide on the proposed substantial re-interpretation of the Jones Act. CBP should do this through notice-and-comment rulemaking pursuant to the Administrative Procedure Act, the directives of Executive Order 12866, and the most recent Executive Orders on regulatory reform and energy independence (mentioned below). Furthermore, a rulemaking proceeding of this magnitude and wide economic impact should avail itself of a thorough Regulatory Impact Analysis in accordance with the Office of Management and Budget's Circular A-4.

Lack of Clarity

The Proposal results in many unanswered questions for the regulated community. In its January 18, 2017, notice, CBP has proposed to revoke certain rulings and modify others "to the extent they are contrary to the guidance set forth in this notice and to the extent that the transactions are past and concluded." CBP has also stated that it intends by the Proposal to "revoke or modify any treatment previously accorded by CBP to substantially identical transactions." Furthermore, CBP proposes to modify certain rulings to the extent they are contrary to the guidance set forth in its notice and to the extent that the transactions are past and concluded, because although the holdings and rationale are correct, they cite to rulings that CBP is proposing to revoke. This series of statements by CBP raises multiple questions, such as whether the regulated community should assume that all of the holdings in these rulings were incorrect even if they did not apply to "merchandise." These multiple, confusing, and sometimes conflicting statements create an untenable situation for the regulated community. If CBP chooses to move forward, it should identify and specifically modify and reissue each of the prior rulings to provide clarity to the regulated community.

Lack of Coastwise Qualified Vessel Capability

To allow offshore development to continue, CBP should clarify that the Proposal does not impact the oil and gas industry's ability to use non-Jones Act vessels when no coastwise qualified vessels are available. Specifically, there is no coastwise qualified vessel capacity as follows: (1) Pipe and Umbilical Lay: There are no purpose built, United States coastwise-

qualified pipe lay or umbilical lay vessels with permanently installed lay towers, carousels or reel systems; (2) Heavy Lift: There are no coastwise qualified vessels capable of performing offshore topsides installation, which typically requires heavy lift vessels with crane capacity of 4,000 tons and above; and (3) Mobile Offshore Drilling Units (MODUs): There are no coastwise qualified MODUs capable of drilling in the deepwater of the OCS.

Without the ability to use lay and heavy lift vessels, industry will not be able to develop any deepwater assets. With respect to MODUs, often their movement between wells on a drilling template can be as little as 15-20 feet and can cost well in excess of \$1 million per day to operate. If under the new proposal, casing, drilling mud and cement are reclassified as merchandise instead of equipment of the vessel, it would cause many unnecessary lifts to be conducted to offload and reload each MODU. These unnecessary lifts will substantially increase safety risks. The unnecessary lifts also would likely take several days to accomplish at a cost of several million dollars per well. We also anticipate that the impact to U.S. jobs and the economy will be significantly higher than the results of a recent impacts analysis commissioned by API (and discussed below).

Impacts to Offshore Oil and Gas Activities

A report released on April 4, 2017, commissioned by the American Petroleum Institute entitled *“Economic Impacts of Proposed Modification and Revocation of Jones Act Ruling Letters Related to Offshore Oil and Natural Gas Activities”* evaluates the potential impacts of the modification and revocations on offshore oil and natural gas development and spending. The report demonstrates the following effects may result if the proposal is implemented:

- Delays in projects currently under development but not installed due to an inability to utilize foreign flagged vessels.
- Decreased development activity due to increased costs and risk profiles of offshore oil and natural gas projects.
- Decreased United States domestic content due to offshoring of certain parts of the supply chain such as reeling of pipe, manufacturing of umbilicals and some subsea equipment and fabrication of topsides and modules.
- Between 2017 and 2030, decreased Gulf of Mexico offshore oil and natural gas spending in the range of \$5.4 billion on average per year.
- An average reduction in oil and natural gas production in the range of 0.5 Million Barrels per day from 2017 to 2030.
- A loss of up to 30 thousand jobs in 2017 and average decreased employment of over 80 thousand jobs from 2017 to 2030.
- An average loss of more than \$4.3 billion of GDP from 2017 to 2030.
- An average loss of more than \$1.9 billion of government revenue per year from 2017 to 2030.

Hess encourages CBP to conduct its own analysis of impacts to offshore oil and gas activities that would be impacted if the Proposal were finalized in its current form.

Executive Orders

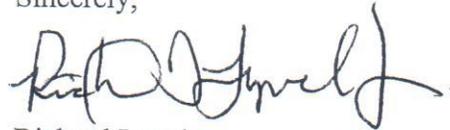
The decision to adopt any new regulation deserves a more critical evaluation as a result of the Executive Order (“EO”) issued on January 30, 2017, by President Donald Trump entitled “*Reducing Regulation and Controlling Regulatory Costs*” – the so-called “two for one rule.” Pursuant to this Order, each executive agency is required to issue two “deregulatory” actions for each new significant regulatory action that imposes costs. The savings from the two deregulatory actions must offset the costs of the new regulatory action. Additionally, the agency should identify all associated regulatory actions to be repealed, along with estimated cost savings, no later than the date of issuance of the new regulatory action. Thus, any new ruling that will impose substantial cost impacts on the oil and gas industry would be required by the Executive Order and subsequent Office of Management and Budget Guidance to offset the costs through other deregulatory actions. Hess does not believe it would be an efficient use of the Department of Homeland Security’s (“DHS”) resources to finalize this ruling at substantial additional cost that could be used for other high priority DHS programs.

Furthermore, on March 28, 2017, President Trump issued an EO entitled “*Promoting Energy Independence and Economic Growth*.” That EO states that “[i]t is in the national interest to . . . avoid regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation” and that regulatory actions that “unduly burden the development of domestic energy resources” be suspended, revised or rescinded.” With a large part of the world’s remaining reserves located offshore, these hard-to-access resources are a key component of United States energy independence. As evidenced by the aforementioned impacts study, if finalized, this Proposal will clearly have negative impacts on United States energy independence and economic growth.

Conclusion

It is for the aforementioned reasons that Hess respectfully requests that CBP withdraw the Proposal. We look forward to engaging with CBP in a process to address both overarching concerns related to the application of the Jones Act to offshore oil and gas development and issues specific to the most recent Proposal.

Sincerely,



Richard Lynch
Senior Vice President
Drilling, Completions & Developments