

Congress of the United States
Washington, DC 20515

March 30, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

We are writing in strong support of U.S. Customs & Border Protection (CBP) modification and revocation of flawed letter rulings concerning the application of the Jones Act to offshore operations. This action was initiated after many years of study and review, and affirms the Congressional intent of the Jones Act.

As you know, the Jones Act requires U.S. built and owned ships, crewed by U.S. citizens, to be used for domestic point-to-point transportation of merchandise. As such, it has always been a quintessential "Buy American, Hire American" statute grounded in the national defense policy of ensuring domestic shipbuilding and seafaring capacity through a strong commercial U.S. maritime industry.

For decades, CBP issued flawed interpretations of the Jones Act concerning subsea operations on the U.S. outer-continental shelf (OCS). These flawed letter rulings allowed the use of foreign vessels, crewed by cheaper foreign mariners to work on the U.S. OCS. As a result, the domestic maritime and shipyard industries experienced significant lost employment.

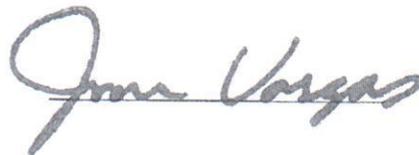
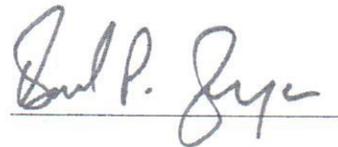
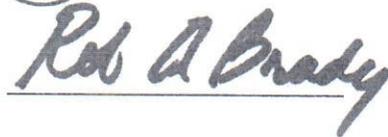
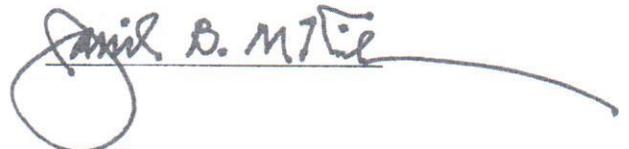
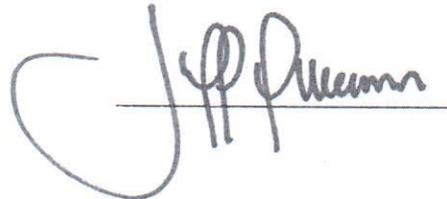
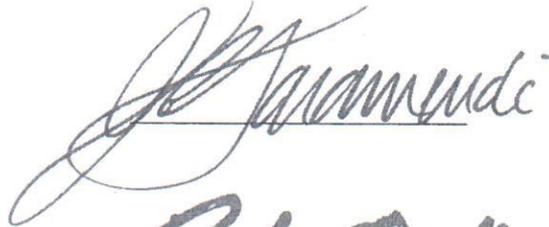
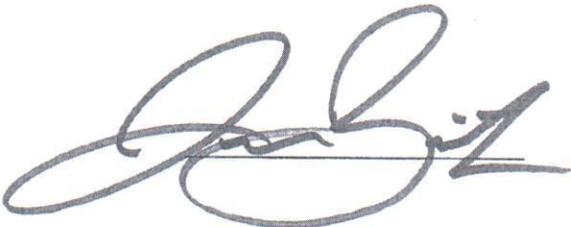
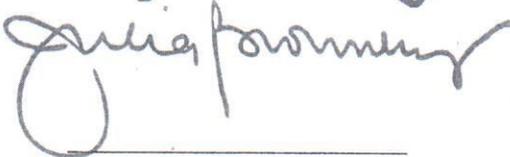
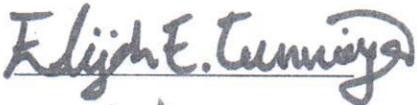
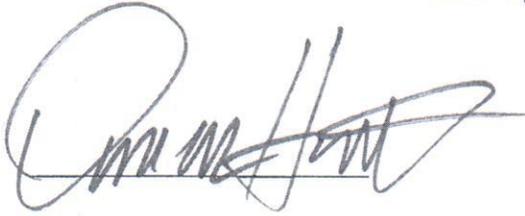
In 2009, CBP proposed to modify and revoke those flawed interpretations of the Jones Act, and the Jones Act industry answered the call for investment in Jones Act-qualified subsea construction vessels made necessary by CBP's legal acknowledgement that rulings allowing foreign operators to dominate the subsea trade were flawed and would be addressed through a new CBP notice. CBP withdrew the proposal that same year, but since its consideration, over \$2 billion has been invested by Jones Act-qualified U.S. companies for new vessel construction or retrofitting in U.S. shipyards. As a result, approximately 30 vessels stand ready to provide the full spectrum of subsea services identified by CBP.

On January 18, 2017, CBP issued its new notice, again taking action to properly interpret and enforce the Jones Act. That CBP notice correctly applies the Jones Act for offshore transportation activities to the statutorily-intended benefit of American workers, U.S. citizen-owned vessel companies, and U.S. shipbuilders. As demonstrated, the 2017 notice was issued

after thoughtful consideration by CBP, and additional delays and reconsiderations by this agency are not required.

Accordingly, we urge your support for CBP to quickly bring to a close the implementation of the revocation and modification of the flawed letter rulings as described in its 2017 notice. The CBP action restores the integrity and intent of the Jones Act in the offshore maritime industry, and will create American jobs and opportunities to the benefit of our national and economic security.

Sincerely,



Paula Sun

Mike

Clay Higgins

CAI C. Ho

Alan Lowenthal

MIKE ~~John~~

Kimberly

LA-05

Brian K. Fitzpatrick

Bob

Mary Koptur

De Young

Tom Geaves

Bill

John H. Fitzpatrick

H

J

Steve Galis

John Wilson

April 13, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

Re: Customs and Border Protection Notice of January 18, 2017 on the Jones Act

It has been brought to my attention that U.S. Customs and Border Protection ("CBP") has issued a Notice through what is known as its *Customs Bulletin* ruling revocation process which if implemented would overturn 40 years of precedent with respect to the application of the Jones Act to vessels and offshore facilities working in the Gulf of Mexico ("GOM"). This ruling, rushed into print two days before President Trump was inaugurated, will have a substantial detrimental effect on jobs and workers in my community. For this reason, I am requesting that you withdraw this ruling because of the huge negative economic impacts on my family, my community and the State of Texas.

There are a number of companies in Houston that rely on highly specialized work to support the oil and gas industry in the GOM. These are American companies employing American workers and paying U.S. federal and state taxes. If the CBP ruling were allowed to go into effect, these companies would have to move out of my district/port/state and go where they can find jobs. This would not only have a negative economic effect on my city but it would also have a negative economic effect on the U.S. and the President's goals for energy independence.

The companies in my community own, operate and invest their own resources in very large vessels that conduct highly specialized activities to support offshore oil and gas projects, including pipe-laying, cable-laying, diving support and heavy-lift crane construction and installation work. While the vessels may be built in foreign shipyards, the workers on these vessels are hard-working Americans who only want to live and contribute to the economy in my community.

In conclusion, I urge DHS and CBP to withdraw the CBP Notice immediately, and should you desire to pursue this issue, that you start over with a the proper process under Notice and Comment rulemaking published in the Federal Register so that all affected companies and communities are able to provide their considered input and require CBP to conduct a full economic impact analysis of the effects of their proposal.

Sincerely,



Lisa R. Tobias

Cc: The Honorable John Cornyn, U.S. Senator
The Honorable Ted Cruz, U.S. Senator
The Honorable Ted Poe, Member of Congress

April 13, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

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Sincerely,



Johnathan T. Tobias

Cc: The Honorable John Cornyn, U.S. Senator
The Honorable Ted Cruz, U.S. Senator
The Honorable Ted Poe, Member of Congress



Heerema Marine Contractors U.S. INC.

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Houston, Texas 77032, USA

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Fax: 281-893-8395
www.heerema.com

April 17, 2017

Director, Border Security & Trade Compliance Division
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection
90 K St. NE, 10th Floor
Washington, DC 20229-1177

Re: Comments of Heerema Marine Contractors U.S. to U.S. Customs and Border Protection's January 18, 2017 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 "Notice")

Dear Mr. Vereb:

I am sincerely concerned with what seems to be a US Government agency that is being either politically motivated by a hand full of Louisiana vessel owners and shipyards, or one which turns a blind eye to simple straightforward facts. I am a proud American who has had the great privilege of working in the offshore construction industry for a Dutch company for 32 years. Heerema Marine Contractors (HMC) are members of the International Marine Contractors Association (IMCA) and I have been actively engaged in the efforts to educate U.S. Senators and Congressmen on the consequences of this proposed revocation. Quite frankly I am appalled by what I have heard as feedback from very recent visits to CBP and DHS concerning this proposal.

These revocations will have such a significant and detrimental impact to our offshore industry, there are no standards that exist which allows your agency to disregard the gaps in capability / capacity and the severe economic impact on an industry that is already on life support. The future of the offshore oil and gas industry in the US cannot be held hostage by the self-interest of a few individuals in the state of Louisiana from the trade association OMSA.

Perhaps your agency should consider a few simple truths of where this industry has come from in the last 20 years, where we are today, and what the future holds if these revocations are allowed to go through;



**MARINE
CONTRACTORS**

1. There would not be one single deep water surface facility or subsea production system producing in the US Gulf without the capabilities, capacity, and engineering expertise of companies that own and operate foreign flag construction vessels. Over this 20 year period these companies have invested billions of dollars in research and development of new technology, state of the art construction and pipe lay vessels, drilling rigs, and employed thousands of Americans to ensure we kept up with the ever increasing demands of deep water developments.
2. Today the entire global industry is suffering from one of the deepest downturns ever seen and just as OMSA members are experiencing, a market that is oversupplied with little to no demand for our collective services. As an industry we are struggling to find cost effective means to make deep water projects move forward in a \$50 oil price environment, a challenge which no single contractor in this business can run a sustainable business on for much longer. How is reserving a segment of our business with no outside competition solely for the benefit of a powerful trade association going to contribute to moving projects forward?
3. During the 30 day response review period perhaps your agency should invite the OMSA members who are behind this revocation proposal to present their plans for executing any type of offshore construction project when they are in the driver's seat. I can save you the effort, they have no intentions whatsoever to build up the engineering, project management, or operational expertise required to execute deep water projects. That would imply they are prepared to take on the contractual and associated performance risk of contracting direct with an oil company. Nothing can be further from the truth. They are counting on the very foreign flag vessel contractors that they want to run out of the Gulf market to fill that void. There are contractors and then there are vessel owners who simply want to follow the model of a car rental company, which group do you believe can ensure there is a future for our industry?
4. Last but certainly not least, OMSA is promoting a solution in the form of a waiver process that will all but guarantee a significant slowdown and perhaps a shutdown to all offshore activity, albeit not the sector your agency intends to reserve specifically for them. How many boards of directors in oil companies do you believe will sanction new projects betting on a favourable outcome of an onerous waiver process to guarantee access to the required construction equipment to execute their work?

I am very proud of the fact that HMC have installed approximately 80% of all existing deep water facilities in the US Gulf. We earned that position through commitments and long term relationships with our customers. While we own and operate very unique equipment, it is our people that plan, engineer, and execute the daunting task of a deep water project that have made HMC a leader in this field.

Any company that has the financial means to invest or attracts funding can build new vessels, but without the professional organization to back up that investment and a willingness to take contractual risk, is a recipe for failure. That is exactly where this industry will find itself in a very short time span if your agency allows these revocations to go through as proposed.



**MARINE
CONTRACTORS**

In closing I respectfully ask as a minimum for you to take a helicopter view of the facts in the letter response provided under separate cover by IMCA. Do not allow your agency to be influenced by the Louisiana delegation or a trade association who are acting in an irresponsible, irrational, and financially desperate manner. We have co-existed in this industry for decades and with a bit of a common sense approach from both sides, we can collectively support a much needed increase in offshore activity for the future.

Sincerely,

Bruce Gresham
Heerema Marine Contractors U.S., Inc
Vice President North America



Jeff Landry
Attorney General

April 17, 2017

State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
70804-9005

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

Dear Director Vereb:

As Attorney General for the State of Louisiana, and a former United States Congressman, the rule of law and proper enforcement of it is of paramount importance. This is never truer than when proper enforcement of the law impacts citizens and businesses of the State of Louisiana. Therefore, I write to express my profound support for the Notice of 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 (the "2017 Notice"), published on January 18, 2017. I urge that the 2017 Notice be put into effect as soon as possible.

The Jones Act is simple and clear in its mandate: foreign vessels may not "provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply." 46 U.S.C. § 55102. Thus, the transportation of "merchandise" between coastwise points must be completed on U.S. built and U.S. crewed vessels. Additionally, it is worth noting, the Jones Act does not contain any provision that allows Customs and Border Protection ("CBP") to modify its provisions through executive action.

I am aware, and have been aware for several years, that the letter rulings covered by the 2017 Notice have allowed foreign vessels to carry merchandise between two points in the United States, directly contrary to the Jones Act. This costs citizens of Louisiana, and many other states, jobs, hurts U.S. vessel operators financially, and causes the United States to lose tax revenue. Therefore, these letters need to be revoked pursuant to the 2017 Notice.

It is equally important that the revocation of the letters take place without undue delay. This will require the continued use of the 19 U.S.C. § 1625(c) process. The U.S. Court of Appeals for the Federal Circuit has confirmed that 19 U.S.C. § 1625 is the proper procedure for revoking prior letter rulings. Specifically, the court state in a case (*California Indus. Prods. v. United States*, 436 F. 3d 1341, 1356 (Fed. Cir. 2006)) containing a similar context:

The government argues that the interpretation of “substantially identical transactions” in section 1625(c) adopted by the Court of International Trade conflicts with the Secretary’s power to promulgate binding regulations. Under such an interpretation, the government states, the Secretary will be forced to follow “treatments” established by what it terms “aberrant decisions” of Customs officers. We do not agree... [c]ontrary to the government’s argument, the interpretation of “substantially identical transactions” that we think is correct does not limit the Secretary’s authority to change a prior “treatment.” It simply requires that the Secretary utilize notice and comment procedures under 19 U.S.C. § 1625(c) before doing so.

CBP’s 2017 Notice ensures that the law is followed as written, will promote the employment of U.S. mariners as intended by the Jones Act, was completed after thoughtful consideration, and was conducted under the legally prescribed process. As such, I strongly support the 2017 Notice and urge CBP to implement this notice without further delay.

I thank you for your thoughtful consideration of this request and stand ready to answer any questions you may have.

Sincerely,



Jeff Landry
Attorney General



Norges
Rederiforbund
Norwegian
Shipowners'
Association

U.S. Customs and Border Protection

Via email: cbppublicationresponse@cbp.dhs.gov

Oslo, 18 April 2017

Re: 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 (18 January 2017)

The Norwegian Shipowners' Association represents the interests of the Norwegian foreign-going fleet, which is the world's 6th largest, measured in fleet value. The Norwegian foreign-going fleet consists of approximately 1800 vessels and rigs operating all over the world. Norway has one of the largest and most advanced offshore fleets, with companies operating in the entire maritime offshore value chain.

The U.S. market is of great importance to the Norwegian shipping industry. Many Norwegian offshore companies have a long and proud history of operating on the US continental shelf, with valuable contribution to the U.S. oil and gas industry and to U.S. job creation.

The proposal published on 18 January 2017 will have a profound impact on not only the offshore service industry, but also on the development of the U.S. oil and gas sector. We refer to recent reports by the International Marine Contractors Association ("Marine Construction Vessel Impacts of Proposed Modifications and Revocations of Jones Act Letters Related to Offshore Oil and Natural Gas Activities", dated 30 March 2017) and the American Petroleum Institute ("Economic Impacts of Proposed Modification and Revocation of Jones Act Ruling Letters Related to Offshore Oil and Natural Gas Activities", dated 4 April 2017) which explains in detail how the above proposal will negatively impact U.S. jobs, decrease U.S. oil and gas production and consequently government revenue.

We also note President Trump's Executive Order on promoting energy independence and economic growth (dated 28 March 2017), which clearly states that it is in the U.S. national interest to avoid regulatory burdens that unnecessarily encumber energy production, constrain economic growth and prevent job creation. Following this Executive Order, it is our strong belief that the Customs and Border Protection should withdraw the 18 January 2017 proposal, as the proposal, if implemented, will create new and unnecessary regulatory burdens on domestic energy resources.

We believe it is the interest of both the U.S. oil and gas industry and for U.S. trading partners to withdraw the 18 January 2017 proposal.

With regards,

Sturla Henriksen
CEO



Move with confidence

April 18, 2017

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

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 Director Vereb,

Canal Barge Company, Inc. (CBC) is a family-owned private company that has been in business for over 80 years. We operate a fleet of 43 towboats and more than 800 barges, including tank, hopper, and deck barges. Our company includes Illinois Marine Towing (IMT), a regional towing and fleeting operator that provides services throughout the greater Chicago area.

We strongly support Customs and Border Protection's (CBP) Notice of 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 ("2017 Notice"), published on January 18, 2017. The flawed letter rulings that the 2017 Notice revoke and modify are inconsistent with statutory requirements of U.S. law, and have constrained economic opportunity for U.S. companies and U.S. workers for too long.

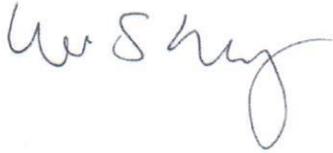
The Jones Act is clear in its mandate: it explicitly prohibits the transportation of "merchandise" between coastwise points except on U.S.-built and U.S.-crewed vessels. In addition, the statute does not contain any provision that allows CBP to modify its provisions through executive action. Congress has recognized the broad coverage of the Jones Act by enacting explicit statutory exceptions for certain merchandise, as well as a substantively and procedurally restrictive waiver provision.

The letter rulings being modified by the 2017 Notice allowed foreign vessels to transport merchandise between two U.S. points. Additionally, the merchandise mentioned in these letter rulings does not fall within one of the statutory exceptions to the Jones Act. Therefore, these letter rulings are directly contrary to existing law and should be revoked.

Revoking these letter rulings not only honors the unambiguous language of the Jones Act, it also honors the investment our company has made in Jones Act-qualified vessels. These vessels were built in U.S. shipyards by U.S. citizens because we believed that our government would enforce the Jones Act as it has written.

In conclusion, we strongly support the 2017 Notice. Thank you for the opportunity to comment, and please do not hesitate to reach out to us if we can provide any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "W S Murphy".

William S. Murphy
General Counsel
Vice President - Risk Management
Canal Barge Company, Inc.



AMERICAN
MARITIME
PARTNERSHIP

American Jobs. American Security.

BEFORE
UNITED STATES CUSTOMS AND BORDER PROTECTION

Date: April 18, 2017

51 Customs Bulletin & Decisions No. 3, p. 1 (January 18, 2017)
51 Customs Bulletin & Decisions No. 6, p. 22 (February 6, 2017)

**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**

COMMENTS OF THE
AMERICAN MARITIME PARTNERSHIP

cbppublicationresponse@cbp.dhs.gov

American Maritime Partnership
1601 K Street, NW
Washington, D.C. 20006-1600
(202) 661-3740
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INTRODUCTION

The American Maritime Partnership (“AMP”) is pleased to offer comments on the U.S. Customs and Border Protection (“CBP” or “Customs”) January 18, 2017 notice described above (the “Notice”). AMP strongly supports CBP’s proposal, which will help ensure that our coastwise laws are properly applied with respect to the transportation of certain merchandise between U.S. points.

AMP is the voice of the U.S. domestic maritime industry, a pillar of our nation’s economic, national, and homeland security. More than 40,000 American vessels built in American shipyards, crewed by American mariners, and owned by American companies, operate in our waters 24/7, and this commerce sustains nearly 500,000 American jobs, and generates \$29 billion in labor compensation, \$11 billion in taxes, and more than \$100 billion in annual economic output.

As the agency is well aware, U.S. coastwise laws help support and maintain sectors of our domestic economy that are vital to U.S. national security interests, such as ship building, ship repair, seafaring, and related sectors. These sectors of our economy also sustain hundreds of thousands of U.S. jobs in communities throughout the country. CBP’s proposed action would not only interpret and apply the coastwise laws as Congress intended, as described below, but would also help to ensure that these crucial sectors of the U.S. maritime industry are able to operate without being unfairly disadvantaged through the use of foreign-built, foreign-crewed, and foreign-flagged vessels that are not required to abide by many U.S. laws, including tax, labor, and environmental laws.

DISCUSSION

1. Treatment of Ruling Letters

As a threshold matter, AMP supports CBP’s use of the process set forth at 19 U.S.C. § 1625(c) to deal with ruling letters that are inconsistent with the coastwise laws. In section 1625(c), Congress provided CBP with a fair but efficient process to review its ruling letters when necessary to insure consistency in the application of the law. As CBP has noted, reliance on the agency’s ruling letters is a “qualified right” and the delayed effective date and notice and comment procedures provided by section 1625(c) “reflect the full extent to which Congress believes these principles [of fairness, equity, reliance, and estoppel] should apply to Customs rulings.” 67 Fed. Reg. 53483, 53486 (Aug. 16, 2002).

Pursuant to section 1625(c), CBP now properly proposes in this Notice (1) to modify a 1976 ruling and its progeny addressing operation of a non-coastwise qualified pipe-laying vessel and certain related activities to make it more consistent with federal statutes that were amended after the original ruling was issued, and (2) to revise rulings which have incorrectly determined that certain articles transported between coastwise points are vessel equipment, rather than merchandise, pursuant to the long-standing definition of equipment as promulgated in an interpretation of that term as used in the Tariff Act of 1930, and because those letter rulings are inconsistent with the Jones Act.

As a part of this process it is important to recognize, as CBP does in the Notice, that CBP's practice of issuing rulings under 19 C.F.R. § 177.1(a)(1) "... is in the interest of the sound administration of the Customs and related laws such that persons engaging in any transaction affected by those laws fully understand the consequences of the transaction prior to its consummation" and the ruling process provides that opportunity. But equally important is the fact that each ruling is limited to the facts of the particular transaction and the regulations make clear that "no other person should rely on the ruling letter[s] or assume that the principles of [those] ruling[s] will be applied in connection with any transactions other than the one[s] described in [those] letter[s]." 19 C.F.R. § 177.9(c).

Courts have upheld use of the section 1625(c) process even where it adversely affects a party who relied on CBP's initial ruling letter to its detriment. *See Heartland By-Products, Inc. v. United States*, 264 F.3d 1126, 1136 (Fed. Cir. 2001) (upholding CBP's revocation of a ruling letter through the section 1625(c) process where the effect was to cause the interested party to pay higher duties), *cert. denied*, 537 U.S. 812 (2002). Indeed, it is CBP's statutory mandate to enforce the coastwise laws, and the potential economic consequences of its enforcement actions are not part of the section 1625(c) process.¹ If anything, lack of proper enforcement of the coastwise laws can have significant negative economic impacts to the U.S.-flag coastwise qualified fleet.

This statutory and regulatory framework together with the judicial precedent are essential factors as CBP evaluates comments it may receive in response to the Notice from those who claim economic harm in reliance on the rulings to be revoked or modified. Nor can commenters claim lack of notice as all of the rulings to be revoked are more than a decade old and reflect specific transactions that were long ago completed. Moreover, the industry has long been aware that the rationale underlying these rulings was under review by CBP.²

¹ Nonetheless, in an effort to have CBP consider the economic consequences of the Notice, the American Petroleum Institute ("API") commissioned a study of the economic impacts of the proposed ruling modifications and revocations that was released on April 4, 2017 (the "Calash Report"). <http://www.api.org/news-policy-and-issues/news/2017/04/04/new-report-forecasts-damage-to-american>. Notwithstanding CBP's methodical identification of the 24 affected rulings, the Calash Report assumes a far greater scope of affected vessels which in turn demonstrably overstates the purported economic impact on the industry. The Report includes pipelaying and heavy lift vessels, for which there are numerous rulings well known to CBP and the industry, and which were expressly excluded from the CBP Notice. The Report goes on to expand the scope even further by stating, without support, that "depending on the interpretation of the proposed modifications and revocations, a wide variety of vessels including mobile offshore drilling rigs, shallow and deepwater crane and lay vessels and well stimulation vessels may also be affected." The Calash authors include this expanded base of affected vessels in projecting the adverse impacts, while simultaneously admitting that their own calculation of the impacts "could be imprecise... for a variety of reasons" and "will be highly dependent on CBP's interpretation and enforcement." In addition, as noted by other commenters, even the methodology used in developing the calculated impacts overstates the projected economic consequences.

² *See* 43 Cust. B. & Dec. No.28, p. 54 (July 17, 2009) in which CBP initiated a similar process of revocation and modification involving the identical rulings and although that Notice was temporarily withdrawn for further consideration CBP made clear at the time that no final determination had been reached. *See* 43 Cust. B. & Dec. No. 40, pp. 1-3 (October 1, 2009) ("A new notice which will set forth CBP's proposed action relating to its interpretation of T.D. 78-387 and T.D. 49815(4) will be published in the *Customs Bulletin* in the near future.").

2. Transportation of Merchandise Under the Coastwise Laws

Under the coastwise laws, only a vessel that is built in the United States, owned by U.S. citizens, documented under U.S. registry, and crewed by U.S. seafarers may “provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply.” 46 U.S.C. § 55102. The United States has reserved the domestic trades for U.S. vessels since the Navigation Act of 1817,³ and has had other laws in place to promote a U.S.-flag fleet since 1789.⁴ These laws are a cornerstone of our maritime heritage and policy and have fostered the historical importance of our maritime industries. Many other nations, including U.S. trading partners, have similar laws.

Congress has broadly defined the term “merchandise” for purposes of the coastwise laws. Merchandise includes “goods, wares, and chattels of every description,” 19 U.S.C. § 1401(c), and includes government-owned cargoes, valueless materials, dredge spoils, and hazardous wastes, among other types of cargoes. See 46 U.S.C. §§ 55102, 55105, 55110. In accordance with the express intent of Congress that the coastwise laws broadly apply, CBP has taken an expansive view of what constitutes merchandise under the coastwise laws that must be transported on U.S. coastwise qualified vessels.

In its proposed action regarding certain ruling letters, CBP reinforces that view. The proposal focuses largely on correcting a 1976 ruling in which CBP evaluated a range of activities undertaken by a pipeline repair vessel on the outer continental shelf (“OCS”).⁵ T.D. 78-387 (Oct. 7, 1976) (referred to herein as the “1976 Ruling”). An essential premise of the decision was that the basic vessel operation at issue, i.e., pipelaying, was not a coastwise activity because it did not involve the landing of the pipe at a coastwise point, but rather only the “paying out” of the pipe as it was laid along a continuous path. From that starting point, Customs reasoned that a vessel that repaired the pipeline was no different than one that laid the pipeline and hence it too was not engaged in a coastwise activity, provided certain factors were present. Specifically, CBP determined that equipment or supplies carried or used by the pipelaying vessel or the pipeline repair vessel, incidental to the pipelaying or similar activity, do not constitute merchandise where: a) their use is unforeseen; b) they are of *de minimis* value; c) they are usually carried aboard the vessel as supplies; and d) their installation is performed on or from the vessel.

Part of the analysis in this ruling is no longer applicable because of amendments to the coastwise laws (46 U.S.C. § 55102), the Outer Continental Shelf Lands Act (43 U.S.C. § 1333), and Customs regulations (19 C.F.R. § 4.80b(a)), which highlighted the clear inconsistency with 46 U.S.C. § 55102. CBP has proposed to modify the 1976 Ruling in several key respects as clearly spelled out in the draft ruling accompanying the Notice as Attachment B. Moreover, eight specific rulings are revoked to the extent they are contrary to the guidance set forth in the Notice and the Attachment and to the extent that the transactions are past and concluded. This is almost certain to be the case since the most recent of the eight rulings was issued nearly fifteen years ago and two were issued thirty years ago. AMP strongly supports CBP’s proposed

³ 3 Stat. 351 (Mar. 1, 1817).

⁴ See Act of Sept. 1, 1789, ch. xi, § 1, 1 Stat. 55.

⁵ The coastwise laws apply to the territorial sea and internal waters, and also to certain points beyond the territorial sea under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, and other laws.

treatment of these rulings that erroneously permitted merchandise to be transported between coastwise points aboard non-coastwise qualified vessels.

3. Vessel Equipment

CBP has long recognized that certain limited categories of materials and supplies carried aboard a vessel constitute "vessel equipment" and not merchandise subject to the coastwise laws. In reliance on Section 309 of the Tariff Act of 1930, CBP determined in T.D. 49815(4) (Feb. 16, 1939) that vessel equipment constitutes only those articles "necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of persons onboard" citing as examples of such vessel equipment "rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts."

In discussing vessel equipment in the 1976 Ruling CBP broadly referred to such equipment as materials and tools that "are necessary for the accomplishment of the mission of the vessel" which are transported "incidental to the vessel's operations." In subsequent rulings, however, the "mission of the vessel" language was applied outside the context of non-coastwise pipelaying operations, thereby effectively adopting a new definition of the term "vessel equipment" completely divorced from that previously applied. *See, e.g.*, HQ 110402 (Aug. 18, 1989) (vessel equipment is that "in furtherance of the primary mission of the vessel"). The effect was to create a rule under which the scope of "vessel equipment" turned entirely upon the stated mission of the vessel, such that the coastwise laws could be avoided simply by describing the function of a vessel to include use of the merchandise it carried. *See, e.g.*, HQ 115938 (Apr. 1, 2003) (finding that non-coastwise qualified liftboats could transport compressors, generators, pumps, and pre-fabricated structural components from a U.S. port to a coastwise point on the OCS without violating the coastwise laws since such equipment was "fundamental to the mission of the vessel" to support oil and gas well drilling, construction, and repair). As a careful reading of the 1976 Ruling and T.D. 49815(4) makes clear, CBP never intended the definition of vessel equipment to depend solely on the mission of the vessel or to change dramatically from one vessel to the next.

AMP supports CBP's proposal to reinforce the original standard expressed in T.D. 49815(4) to determine what constitutes vessel equipment under the coastwise laws. As CBP proposes, vessel equipment should be limited to articles necessary and appropriate for the navigation, operation, and maintenance of, or comfort and safety of persons onboard, the vessel itself, and not what might be necessary and appropriate for an activity in which the vessel is engaged. CBP proposes to revoke eleven specific rulings on the same grounds noted earlier, i.e., to the extent they are contrary to the guidance set forth in the Notice and to the extent that the transactions are past and concluded. And here again, these rulings are likely to involve past transactions as the most recent was issued over a decade ago, and the others as long as thirty-five years ago. Permitting non-coastwise qualified vessels to carry equipment, supplies, or other articles that are not needed to navigate, operate, or maintain the vessel undermines the coastwise laws because it permits transportation long reserved for U.S. coastwise qualified vessels.

CONCLUSION

AMP appreciates this opportunity to comment on the Notice and commends CBP for reviewing its prior rulings in light of changes in the law, the need to reconcile inconsistencies, and to treat rulings in a manner that is consistent with the intent behind our nation's coastwise laws. Proper application of U.S. coastwise laws is vitally important to our nation's economic, national, and homeland security and AMP urges the agency to move forward with the implementation of the Notice.

Respectfully submitted,

Susan Allan

Vice President, General Counsel &
Corporate Secretary
Overseas Shipholding Group, Inc.
Tampa, FL

Thomas Allegretti

President & CEO
The American Waterways Operators
Arlington, VA

Mark Barker

President
Interlake Steamship Company
Middleburg Heights, OH

Albert Bergeron

CEO
U.S. Shipping Corp
Edison, NJ

Capt. Greg Bush

President
Associated Federal Pilots and Docking
Masters of Louisiana LLC
Metairie, LA

Chris Coakley

Vice President of Government Relations
Saltchuk
Washington, DC

David Conover

Vice President of Corporate
Communications and Public Affairs
Kinder Morgan
Houston, TX

Mark Eitzen

Senior Vice President & General Manager
Gunderson Marine
Portland, OR

James Henry

Chairman and President
Transportation Institute
Camp Springs, MD

Barry Holliday

Executive Director
Dredging Contractors of America
Washington, DC

Brenda Otterson

Consultant
American Maritime Officers Service
Alexandria, VA

Kuuhaku Park

Vice President of Government &
Community Relations
Matson Navigation Company
Honolulu, HI

Matthew Paxton

President
Shipbuilders Council of America
Washington, DC

Michael Roberts

Senior Vice President & General Counsel
Crowley Maritime Corporation
Jacksonville, FL

Caitlin Sause

Vice President of Government & Public
Affairs

Sause Bros.
Coos Bay, OR

Aaron Smith

President & CEO
Offshore Marine Service Association
New Orleans, LA

Dan Thorogood

Vice President
SEACOR Holdings Inc.
New York, NY

Jack Todd

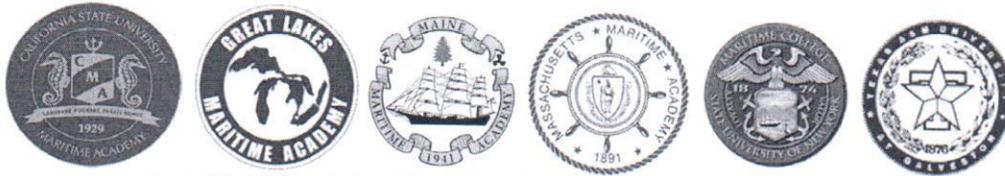
Vice President of Public Affairs
Trinity Industries Inc.
Dallas, TX

Jim Weakley

President
Lake Carriers' Association
Rocky River, OH

Matt Woodruff

Director of Public & Government Affairs
Kirby Corporation
Houston, TX



CONSORTIUM OF STATE MARITIME ACADEMIES
California • Maine • Massachusetts • Michigan • New York • Texas

April 18, 2017

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

Via email: cbppublicationresponse@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

Dear Director Vereb:

On behalf of the Consortium of State Maritime Academies, we are writing to express our strong support for Customs and Border Protection's ("CBP") proposed modification and revocation of Jones Act letter rulings published in 51 Customs Bulletin and Decisions No. 3 (January 18, 2017) (the "2017 Notice").

The consortium supports CBP's proposal because proper enforcement of the Jones Act preserves our domestic maritime trade, including the energy exploration sector, for US-citizen shipowners and correspondingly creates job opportunities for our cadets. One of the primary purposes of the Jones Act is to insure that our nation has a strong base of highly skilled and well trained mariners to support our nation's economic, national, and homeland security. We are encouraged by industry projections that this measure will create 1000's of jobs for US citizens and contribute significantly to the economy of the Gulf region, a major shipping and offshore energy region.

The six State Maritime Academies – located in California, Maine, Massachusetts, Michigan, New York, and Texas – are regional, four-year, fully accredited colleges. These six schools collectively graduate 70% of our nation's new Coast Guard licensed officers each year. In addition to operating world-class merchant mariner license officer programs, these academies provide education in a number of maritime-related fields, such as logistics, marine business and commerce, naval architecture and marine safety.

We support the Jones Act and a sound merchant marine which Congress has determined is "... necessary for the national defense and the development of the domestic and foreign commerce of the United States" and are proud of our role in ensuring that our nation's mariners are well trained and properly certificated.

We applaud CBP's initiative in proposing this review of its rulings assure that they are consistent with these national policy objectives, are updated to reflect subsequent changes in the law and resolve inconsistencies that have developed over the years. This will help to ensure that the Jones Act continues to be interpreted as Congress originally intended.

Proper enforcement of the Jones Act will increase the market for our graduates. Together our state maritime academies are expected to graduate 972 mariners in 2017. Increasing these good-paying jobs not only improves the national security of our nation, but it also improves our nation's economic security.

In understanding the broader benefits of the 2017 Notice it is important to recognize that it also improves the safety of offshore operations due to the increased training required of U.S. mariners. The mariner credential standards as set by the U.S. Coast Guard ("USCG") with which our cadets comply exceed those imposed by the International Maritime Organization ("IMO").

For example, the USCG has determined that a formal training course is the only way to demonstrate compliance with the international Standards of Training, Certification and Watchkeeping Convention ("STCW") requirement for competency in shipboard search and rescue ("SAR") training whereas IMO requires only a limited onboard, and often inadequate, assessment by the vessel Master.

Similarly, USCG standards exceed the STCW practice for engine room watchstanders. To qualify as a watchstander in an engine room STCW assessment tables specify that a mariner must demonstrate competency in what is vaguely described as "duties associated with taking over and accepting a watch" which is so broadly stated as to result in inconsistent, and ineffective, application across the foreign fleet. In contrast, to show mastery of the same competency, the USCG created a higher and more consistent standard for inspection of machinery spaces before taking over the engine room watch followed by very specific required procedures. Please see 46 C.F.R. 11.309(a)(4)(xi) for the requirements associated with competency in shiphandling and Navigation and Vessel Inspection Circular (NVIC) 17-14 for the USCG requirements for inspection of machinery spaces. These are only two examples of the higher standards with which U.S. mariners must comply and the corresponding improvement in the safety of offshore operations that will be enhanced by the 2017 Notice.

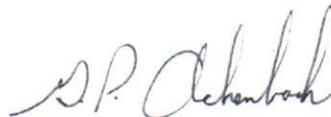
For these reasons, we urge CBP to expedite revocation of the letter rulings listed in the 2017 Notice. Taking such action, will ensure the Jones Act is enforced as written and improve safety for the industry as a whole.

We appreciate your thoughtful consideration of these comments and stand ready to answer any questions you may have or to provide additional information.

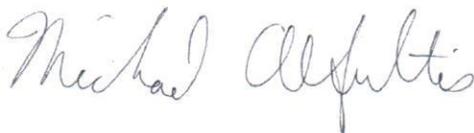
Sincerely,



RADM William J. Brennan, Ph.D.
President
Maine Maritime Academy
Castine, ME



RADM Gerard P. Achenbach,
Superintendent
Great Lakes Maritime Academy
Traverse City, MI



RADM Michael A. Alfultis, USMS, Ph.D.
President
State University of New York Maritime College
Bronx, NY



RADM Thomas A. Cropper
President
California State University Maritime Academy
Vallejo, CA



RADM Francis X. McDonald, LPD
President
Massachusetts Maritime Academy
Buzzards Bay, MA



Michael Rodriguez
Superintendent
Texas A&M Maritime Academy
Galveston, TX



Lake Carriers' Association

The Greatest Ships on the Great Lakes

JAMES H. I. WEAKLEY, PRESIDENT

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April 18, 2017

Mr. Glen E. Vereb
U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
Cargo Security and Restricted Merchandise Branch
Washington, D.C. 20229

Via E-Mail: CBPPublicationResponse@cbp.dhs.gov

Re: 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 Cust. B. & Dec. No. 3, p.1 (January 18, 2017)

Dear Mr. Vereb:

The Lake Carriers' Association ("LCA") represents U.S.-flag vessel operators on the Great Lakes and appreciates this opportunity to comment in support of the above proposal by U.S. Customs and Border Protection ("CBP") to modify or revoke certain CBP ruling letters regarding the application of the Jones Act.

The Association's 13 member companies operate 49 U.S.-flag self-propelled vessels and tug/barge units ("lakers") ranging in length from 494 to 1,013.5 feet. These vessels can carry more than 100 million tons of cargo in a year. Iron ore, limestone and coal are the primary commodities carried by LCA members. Other cargos include cement, salt, sand and grain. The vast majority of cargos carried by U.S.-flag lakers move between U.S. ports, in what is commonly referred to as the Jones Act trades.

America can take pride in the U.S.-flag Great Lakes fleet. No other maritime nation has assembled such a modern, productive fleet of self-unloading vessels. So technologically advanced are these vessels that they can discharge 70,000 tons of iron ore or coal in 12 hours or less without any assistance from shoreside personnel or equipment. The industry's carbon footprint is the smallest of any of the major transportation modes.

LCA strongly supports CBP's diligence in reviewing its rulings to be sure that the coastwise laws continue to be interpreted as Congress originally intended. The United States has reserved the domestic trades for U.S. flag vessels since the earliest days of the Republic and has continued to do so not only because of the economic

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The Association Representing Operators of U.S.-Flag Vessels on the Great Lakes Since 1880

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PERE MARQUETTE SHIPPING • PORT CITY MARINE SERVICES • SOO MARINE SUPPLY, INC. • VANENKEVORT TUG & BARGE INC.

benefit to America and the mariner jobs on board, but also because of the critical role they play in ensuring our homeland security.

The process that CBP is using is set forth at 19 U.S.C. Sec. 1625(c) and is a critical tool in helping to further those goals by systematically reviewing rulings to address inconsistencies in interpretation that may have developed over the years. Not only does this help to provide guidance for all participants in the trade, but it helps insure that the U.S. maritime industry can operate without being unfairly disadvantaged by foreign competition that is not subject to the same requirements as our fleet.

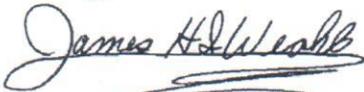
The current Notice reinforces these policy goals by proposing to correct the incremental misapplication of a particular ruling involving pipelaying activities in which CBP found certain activities undertaken by a pipeline repair vessel on the outer continental shelf ("OCS") to be permissible. Subsequent changes in the law have made it necessary for CBP to review the initial analysis, including amendments to the Outer Continental Shelf Lands Act and CBP regulations which required reconciliation with the underlying Jones Act.

Another issue identified in the Notice involves CBP's long-time recognition that certain limited categories of materials and supplies carried aboard a vessel are "vessel equipment" and not merchandise subject to the coastwise laws. In reliance on Section 309 of the Tariff Act of 1930, CBP determined that vessel equipment constitutes only those articles "necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of persons onboard." T.D. 49815(4) (Feb. 16, 1939). That definition had been effectively expanded in various rulings over time to include items transported in furtherance of the vessel's mission. CBP now proposes to underscore that vessel equipment should be limited to articles necessary and appropriate for the navigation, operation, and maintenance of the particular vessel, and not what might be necessary and appropriate for an activity in which the vessel is engaged.

Although our members are not involved in the kinds of pipelaying operations addressed in the Notice, nor in activities in direct support of OCS oil exploration and production, we strongly support CBP's defense of the Jones Act with the proposed treatment of rulings that erroneously permitted merchandise to be transported between coastwise points aboard non-coastwise qualified vessels and CBP's reinforcement of the original standard as to what constitutes vessel equipment under the coastwise laws.

We greatly appreciate this opportunity to submit these comments and commend CBP's diligence in enforcing the nation's coastwise laws. Proper application of U.S. coastwise laws is vitally important not only to our members and the investments we have made over the years, but also to the country's overall economic, national, and homeland security. For these reasons LCA urges CBP to implement this Notice and to continue its important role in support of our nation's coastwise laws.

Sincerely,



James H.I. Weakley,
President
Lake Carrier's Association



EDISON CHOUVEST OFFSHORE

April 18, 2017

Sent 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: Letter of Support for CBP's 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:

On behalf of the Edison Chouest Offshore family of affiliated companies ("ECO" for convenience), I write to express my support for Customs and Border Protection's ("CBP") above-referenced proposed modification and revocation of certain Jones Act letter rulings.

ECO is a 57-year-old organization headquartered in Cut Off, Louisiana. We conduct marine transportation and related service operations globally. ECO's domestic businesses span a variety of states, including Louisiana, Texas, Mississippi, Florida, Alaska, and Washington, and we support over 9,000 employees in the United States alone.

The Jones Act was intended and continues to serve as an essential piece of our national security structure. As one of the largest providers of purpose-built vessels on charter to the U.S. government, ECO inherently understands and appreciates that function. In addition to its national security underpinnings, the Jones Act further supports a vibrant U.S. maritime industry, as well as the American economy, in general.

Following a "Build-Own-Operate" ideal, ECO is one of the largest suppliers of vessels and marine-related services to the U.S. offshore energy market. Our portfolio includes platform supply vessels, anchor handling towing supply vessels, fast supply vessels, subsea construction and inspection, maintenance and repair vessel, well stimulation vessels, and escort tugs. ECO has also invested in a variety of associated sectors, including shipyards, port facilities, remotely-operated and autonomous vehicles, subsea offerings, various related technologies, associated supply and support companies, and training centers. ECO coastwise-qualified vessels are built and repaired at our affiliated domestic shipyards, operated by skillful, trained U.S. mariners, and supported by a network of US-based shore side support.

The flawed letter rulings that CBP seeks to modify/revoke are inconsistent with clear statutory requirements. Aligning CBP's policy guidance with the law is the right thing to do. The continued application of erroneous interpretations is contrary to Congressional intent and further strangles economic opportunities for U.S. companies and U.S. workers. Conversely, CBP's corrected interpretations, and their application, will improve the national security apparatus of the United States by ensuring American

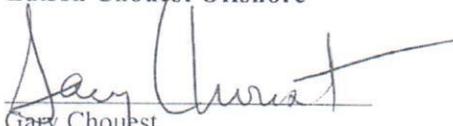
sealift capabilities, and it will unleash growth within the U.S. maritime industry that has heretofore been thwarted.

We have seen proper enforcement of the Jones Act spur domestic investment and good-paying jobs. Specifically, when CBP issued a similar notice in 2009, it signaled a change in the market place, and ECO responded by building and modifying vessels here in the United States for the very purposes at issue. Of course, the 2009 revocation effort lost traction, which unnerved continued investment.

We applaud CBP for taking/resuming this corrective action, and we encourage CBP to conclude its modification and revocation efforts without additional delay or deviation.

Sincerely,

Edison Chouest Offshore


Gary Chouest
President



April 18, 2017

Jack E. Jowers
Vice President / General Counsel
SeaTran Marine, LLC
jjowers@seatranmarine.com

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 Director Vereb:

I am writing to express my strong support for Customs and Border Protection's (CBP) Notice of 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 ("2017 Notice"), published on January 18, 2017. The flawed letter rulings revoked and modified by the 2017 Notice are inconsistent with statutory requirements of U.S. law, have constrained economic opportunity for U.S. companies and U.S. workers for too long. Additionally, the process by which CBP has issued the 2017 Notice is the legally correct method for this endeavor.

SeaTran Marine, LLC is based in New Iberia, LA we own and operate 18 Crew / Fast Supply Vessels and employs 81 people. Specifically, our company is engaged in Marine Transportation, meaning the transportation of crews and cargo throughout the domestic Gulf of Mexico.

The Jones Act is clear in its mandate: it explicitly prohibits the transportation of "merchandise" between coastwise points except on U.S. built and U.S. crewed vessels. For general purposes under the Customs laws, Congress defined the term "merchandise" using plain, sweeping language: "goods, wares and chattels of every description, including merchandise the importation of which is prohibited," (19 U.S.C. § 1401(c)). Specific to the Jones Act, the definition of merchandise goes even further, having been amended to include "government property" and "valueless material" (46 U.S.C. § 55102(a)).

In addition to being sweeping in its scope, the Jones Act also calls for rigidity in its enforcement. The statute does not contain any provision that allows CBP to modify its provisions through executive action. As such, the letter rulings issued by CBP that allowed foreign vessels to carry merchandise between two points in the United States. Indeed, Congress has recognized the broad coverage of the Jones Act by enacting explicit statutory exceptions for certain merchandise, as well as a substantively and procedurally restrictive waiver provision. Such exceptions to

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office: (985) 631-9004 - fax: (888) 386-3129 - jjowers@seatranmarine.com
www.seatranmarine.com

the Jones Act are a result of circumstance-specific statutory provisions and are found enumerated in the U.S. Code at (for example) 46 U.S.C. § 55105(b), 55107, and 55113.

The letter rulings being modify by the 2017 Notice allowed foreign vessels to transport merchandise between two U.S. points. Additionally, the merchandise mentioned in these letter rulings does not fall within one of the statutory exceptions to the Jones Act. As such the only possible conclusion is that these letter rulings contain conclusions which are directly contrary to existing law and therefore must be revoked.

Revoking these letter rulings not only honors the unambiguous language of the Jones Act, it also honors the investment our company has made in Jones Act-qualified vessels. These vessels were built in U.S. shipyards by U.S. citizens because we believed that our government would enforce the Jones Act as it has written. As a result, we assisted in the preservation of the domestic shipyard base is fully capable of building, repairing, maintaining, and modernizing the U.S. Navy ships and crafts. This is the Jones Act working as intended, proving that when the Jones Act is properly enforced the law can improve the economic and national security of our nation.

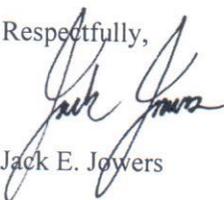
While our company is proud to be part of this investment. We are also proud of the other benefits we bring to our nation. One of the chief benefits we provide is an improvement to the safety of our transportation industry. As a member of the Offshore Marine Service Association (“OMSA”), I am pleased to report that the Total Recordable Incident Rate (“TRIR”) for OMSA members is 0.237. This is compared to the TRIR rate of 4.0 for the transportation and warehousing sector and the TRIR rate of 2.0 for the waterborne transportation subsector.

A large part of this exceptional safety record is due to the professionalism of the mariners we employ. Our company has invested heavily in our maritime workforce. As a result, we have created a highly skilled force that is paid a living wage. In fact, a report from Louisiana’s Community and Technical Colleges and the Louisiana Association of Business and Industry, entitled “An Invisible Giant: the Maritime Industry in Louisiana” found ship captains in Louisiana make an average of \$82,610 per year. This is above the national average for captains (\$75,580 per year) and far above the Louisiana median household income of \$45,727, as reported in the 2015 Census American Community Survey. Again, this is the Jones Act working as intended; typifying the preamble of the Jones Act which states the Act’s purpose is, “It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine . . . composed of the best-equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel,” (46 U.S.C. § 50101).

For all of these reasons, we urge that CBP expedite revocation of the letter rulings listed in the 2017 Notice. Taking such action, will ensure the Jones Act is enforced as written, thereby producing opportunities for our company, our employees, and our suppliers. We thank you for the thoughtful consideration of these comments and stand ready to answer any questions you may have.

Sincerely,

Respectfully,



Jack E. Jowers

CC: Rep. Blake Miguez, CEO
Aaron Smith, Executive Director OMSA

MCNICKLE, SASHA W

From: Andrew Dale <andy.l.dale@gmail.com>
Sent: Tuesday, April 18, 2017 11:58 AM
To: CBP-PUBLICATION RESPONSE
Subject: Oppose any changes to Jones Act

Dear US Customs And Border Protection: Hello, I am writing you to voice my concerns about changes to the Jones Act. This protection act should not be expanded any further. The potential changes will cause problems in the short term as many vessels currently working in the United States energy industry would not be able to work without an exception. Long term, these limitations would increase the cost of developing and producing oil and gas in the United States. The offshore industry is facing significant challenges in costs and prices, and this change would make future development significantly less competitive. Please reject any additional changes. Sincerely, Andrew Dale 5215 Constance St New Orleans, LA 70115-1827

MCNICKLE, SASHA W

From: Jim Fish <jfishcz@gvtc.com>
Sent: Tuesday, April 18, 2017 12:29 PM
To: CBP-PUBLICATION RESPONSE
Subject: Comment in Support of Jones Act
Attachments: Captain Jim Fish.vcf

Dear Aaron,

Jill Freeman forwarded me an email yesterday in regards to the "Support of the Jones Act" concerning foreign flagged vessels working in the US Gulf of Mexico.

I am happy and proud to submit this letter in support of the Jones Act.

As a veteran, u.s.c.g. Licensed, #9 issue Master, -AGT -, I am 100 % against foreign flagged vessels working in the US Gulf taking jobs away from American Merchant Marine seaman.

There would be one exception to this, if there was not a specific type of vessel available that was needed for a particular short-term offshore project then and only then would a foreign flagged vessel be allowed to engage in that contract. I would hope that as a minimum there would need to be a percentage of American seaman on board in various capacities serving on board. I had an experience with this type of situation several years ago and it did not particularly work out very well, but the coast guard did try and enforce the issue, more than several of us merchant mariners were hired on a temporary basis on board a big 350 ft. foreign flagged dive support vessel here in the GOM.

We did not actually take the place of the foreign seaman that were on board but we were simply extra crew on board for two weeks.

We as American seaman for example cannot work in the North Sea, that has not been allowed for over 30 +years, ever since American offshore tug, AHTS and supply boat companies worked in those north sea waters in the 1970's and early 1980's and basically started and did all of the difficult work in the offshore sector in the North Sea. This also included at that time many other American offshore service companies, like "J. Ray McDermott", with their big offshore derrick, pipe-laying and general construction barges.

So, if American Merchant mariners cannot work in the north sea sector, and other territorial local areas like Australia, why should those foreign seaman be able to work in our local waters, and take american sailors jobs, this makes no sense at all.

The USA always feels they need to give everything away, at the citizens expense, like another situation in the 1970's on the east coast of the usa, this was the fishing grounds off the Grand Banks and other nearby areas where foreign flagged fishing vessels were allowed over time to basically over fish this area which put many long time local fisherman permanently out of business.

I hope I have helped in some way in your survey and that the usa does not change its Jones Act laws, and that whenever the Gulf of Mexico comes out of this latest long time slump that there will in fact be jobs for mainly american seaman.

Best Regards,

Capt. Jim Fish



EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

The Head of Delegation

Washington, 18 April, 2017
del-usa.002.dir(2017)2268391

The Honourable Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Subject: US Customs and Border Protection's "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." Customs Bulletin (Vol. 51, No. 3, at p. 1)

Dear Acting Commissioner McAleenan,

I am writing to you on behalf of the European Union and its Member States on the subject of the US Customs and Border Protection (CBP) proposal issued on 18 January, 2017. We would like to express concern about aspects of the measure which could have a considerable negative impact on the EU offshore service fleet. The proposal appears to take a more restrictive interpretation of US coastwise operations than currently in effect and would lead to a more restrictive application of measures that have been in place for over 40 years. This could result in EU vessels being forced to leave the market and consequentially burden US offshore operators.

Under the new interpretation that is under consideration, certain articles of equipment and supplies currently considered to be "vessel equipment" would now be considered "merchandise" and could not be transported by an EU vessel. Moreover, any necessary occasional movement in furtherance of offshore construction would be considered transportation of merchandise and could no longer be conducted by EU vessels, causing unnecessary delays and increasing the costs of offshore operations.

We see a potentially significant negative impact on the activity of EU offshore marine operators in the oil and gas sectors, as well as the burgeoning renewables sector. This would affect foreign built or reconstructed vessels operated by EU offshore service operators that perform construction, lifting, pipe installation and other non-transportation tasks. EU vessels currently are limited to certain offshore activities because of US legislative barriers that prohibit foreign built vessels from conducting most coastwise operations.

2175 K Street NW, Washington, DC 20037-1831 Telephone: (202) 862.9500. Telefax: (202) 429.1766.
E-Mail Address: delegation-washington@eeas.europa.eu

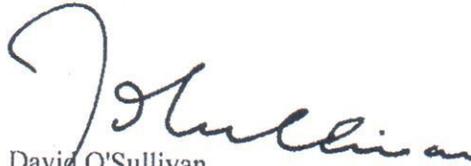
<http://www.EUintheUS.org>

While we are aware of the importance that the current administration attaches to protecting US companies and US workers, we do not believe that further restricting the access of EU vessels would have beneficial effects on the US industry, or the wider US economy. The EU sees merit in reciprocally open market access and does not impose restrictions on US built vessels seeking to operate in the EU. Our companies have a longstanding commitment to the US market and they bring technology and expertise which benefit their US operations and American clients.

In the particular case of offshore activities, an additional argument in favour of open markets comes from the fact that there appear to be only a limited number of deepwater vessels that are US coastwise qualified as required by the CBP proposal. These vessels are highly specialized and more expensive to build and operate. The EU offshore fleet has this specialized deepwater technical expertise and has a long history of supporting US offshore operations. We believe that this has led to a mutually beneficial situation which would be unravelled by the current proposal.

We appreciate the opportunity to bring these concerns to your attention and encourage you to consider the importance of maintaining open markets and the longstanding role that EU vessels have played in US offshore operations, along with the lack of US specialized deepwater vessels to meet offshore needs.

Yours Sincerely,



David O'Sullivan
Ambassador

April 12, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

Re: Customs and Border Protection Notice of January 18, 2017 on the Jones Act

It has been brought to my attention that U.S. Customs and Border Protection ("CBP") has issued a Notice through what is known as its *Customs Bulletin* ruling revocation process which if implemented would overturn 40 years of precedent with respect to the application of the Jones Act to vessels and offshore facilities working in the Gulf of Mexico ("GOM"). This ruling, rushed into print two days before President Trump was inaugurated, will have a substantial detrimental effect on jobs and workers in my community. For this reason, I am requesting that you withdraw this ruling because of the huge negative economic impacts on my family, my community and the State of Texas.

There are a number of companies in Houston that rely on highly specialized work to support the oil and gas industry in the GOM. These are American companies employing American workers and paying U.S. federal and state taxes. If the CBP ruling were allowed to go into effect, these companies would have to move out of my district/port/state and go where they can find jobs. This would not only have a negative economic effect on my city but it would also have a negative economic effect on the U.S. and the President's goals for energy independence.

The companies in my community own, operate and invest their own resources in very large vessels that conduct highly specialized activities to support offshore oil and gas projects, including pipe-laying, cable-laying, diving support and heavy-lift crane construction and installation work. While the vessels may be built in foreign shipyards, the workers on these vessels are hard-working Americans who only want to live and contribute to the economy in my community.

In conclusion, I urge DHS and CBP to withdraw the CBP Notice immediately, and should you desire to pursue this issue, that you start over with a the proper process under Notice and Comment rulemaking published in the Federal Register so that all affected companies and communities are able to provide their considered input and require CBP to conduct a full economic impact analysis of the effects of their proposal.

Sincerely,

Jeremiah Hebert

Jeremiah Hebert



RAILROAD COMMISSION OF TEXAS

P.O. Box 12967
Austin, Texas 78711-2967
(512) 463-7131
FAX (512) 463-7161

WAYNE CHRISTIAN
COMMISSIONER

April 17, 2017

The Honorable John Kelly
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

RE: 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

Dear Secretary Kelly,

As a Commissioner of the Railroad Commission of Texas and an appointed representative of the Interstate Oil and Gas Compact Commission, I am concerned by the planned adjustment in the U.S. Customs and Border Protection's (CBP) interpretation and application of the Jones Act. As I understand it, the CBP's adjusted interpretation and application of the Jones Act occurred hurriedly during the final days of the Obama Administration, is being finalized without a notice-and-comment rulemaking, and will likely cause an interruption of oil and gas activities and investment in the Gulf of Mexico.

To engage in such a significant policy change outside of the normal rulemaking process during the final days of a presidential administration deprives interested parties of their voice. This is why I am respectfully asking for the CBP to halt its current plans to adjust its interpretation and application of the Jones Act and replace them with a rulemaking process so that all interested parties have a voice to ensure that all potential impacts of this policy change can be thoughtfully examined and fully understood.

CBP's adjusted interpretation and application will, in my opinion, revoke established precedent to safely and efficiently develop oil and gas resources in the Gulf of Mexico that the Texas oil and gas industry has relied on for more than 40 years and does so without seemingly considering the immediate and potentially harmful impacts it may have on existing and future offshore oil and gas development projects. If CBP's actions are finalized, it will cost Texas jobs, businesses, investments, and reduce our domestic energy supply. As regulator of the oil and gas industry in the state of Texas and a member of the Interstate Oil and Gas Compact Commission, I strongly urge you to halt the CBP's plan to alter its interpretation and application of the Jones Act and replace the CBP's action with a notice-and-comment rulemaking that allows all interested parties an opportunity to share their perspectives to ensure the best public policy outcome is achieved.

Best,

A handwritten signature in black ink, appearing to read "Wayne Christian", written over a white background.

Wayne Christian
Commissioner
Railroad Commission of Texas

CC:

U.S. Department of Energy Secretary Rick Perry
Governor Greg Abbott (R – Texas)
Senator John Cornyn (R - Texas)
Senator Ted Cruz (R - Texas)
Congressman Louis Gohmert (R - Tyler)
Congressman Ted Poe (R - Humble)
Congressman Sam Johnson (R - Plano)
Congressman John Ratcliffe (R - Heath)
Congressman Jeb Hensarling (R - Dallas)
Congressman Joe Barton (R - Arlington)
Congressman John Culberson
Congressman Kevin Brady (R - The Woodlands)
Congressman Al Green (D - Houston)
Congressman Michael McCaul (R - Austin)
Congressman Mike Conaway (R - Midland)
Congressman Mac Thornberry (R - Amarillo)
Congressman Randy Weber (R - Galveston)
Congressman Vicente González (D - McAllen)
Congressman Beto O'Rourke (D - El Paso)
Congressman Bill Flores (R - Bryan)
Congressman Sheila Jackson (D - Houston)
Congressman Jodey Arrington (R - Lubbock)
Congressman Joaquin Castro (D - San Antonio)
Congressman Lamar Smith (R - San Antonio)
Congressman Pete Olson (R - Sugar Land)
Congressman Will Hurd (R - Helotes)
Congressman Kenny Marchant (R - Dallas/Fort Worth)
Congressman Roger Williams (R - Austin)
Congressman Michael Burgess (R - Denton)
Congressman Blake Farenthold (R - Corpus Christi)
Congressman Henry Cuellar (D - Laredo)
Congressman Gene Green (D - Houston)
Congressman John Carter (R - Round Rock)
Congressman Pete Sessions (R - Dallas)
Congressman Kay Granger (R – Ft. Worth)
Congressman Marc Veasey (D - Fort Worth)
Congressman Filemon Vela Jr. (D - Brownsville)
Congressman Lloyd Doggett (D - Austin)
Congressman Brian Babin (R - Woodville)

April 12, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

Re: Customs and Border Protection Notice of January 18, 2017 on the Jones Act

It has been brought to my attention that U.S. Customs and Border Protection (“CBP”) has issued a Notice through what is known as its *Customs Bulletin* ruling revocation process which if implemented would overturn 40 years of precedent with respect to the application of the Jones Act to vessels and offshore facilities working in the Gulf of Mexico (“GOM”). This ruling, rushed into print two days before President Trump was inaugurated, will have a substantial detrimental effect on jobs and workers in my community. For this reason, I am requesting that you withdraw this ruling because of the huge negative economic impacts on my family, my community and the State of Texas.

There are a number of companies in Houston that rely on highly specialized work to support the oil and gas industry in the GOM. These are American companies employing American workers and paying U.S. federal and state taxes. If the CBP ruling were allowed to go into effect, these companies would have to move out of my district/port/state and go where they can find jobs. This would not only have a negative economic effect on my city but it would also have a negative economic effect on the U.S. and the President’s goals for energy independence.

The companies in my community own, operate and invest their own resources in very large vessels that conduct highly specialized activities to support offshore oil and gas projects, including pipe-laying, cable-laying, diving support and heavy-lift crane construction and installation work. While the vessels may be built in foreign shipyards, the workers on these vessels are hard-working Americans who only want to live and contribute to the economy in my community.

In conclusion, I urge DHS and CBP to withdraw the CBP Notice immediately, and should you desire to pursue this issue, that you start over with a the proper process under Notice and Comment rulemaking published in the Federal Register so that all affected companies and communities are able to provide their considered input and require CBP to conduct a full economic impact analysis of the effects of their proposal.

Sincerely,

James Jones

Cc: The Honorable Ted Cruz, U.S. Senator
The Honorable John Cornyn, U.S. Senator
The Honorable Michael McCaul, Member of Congress

April 18, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

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Sincerely,



Timothy T. Krasin, P.E.

Cc: The Honorable Ted Cruz, U.S. Senator
The Honorable John Cornyn, U.S. Senator
The Honorable Ted Poe, Member of Congress

April 18, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

Re: Customs and Border Protection Notice of January 18, 2017 on the Jones Act

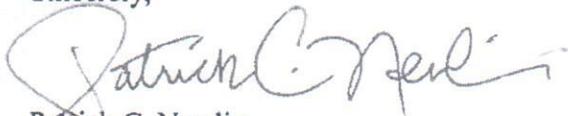
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In conclusion, I urge DHS and CBP to withdraw the CBP Notice immediately, and should you desire to pursue this issue, that you start over with a the proper process under Notice and Comment rulemaking published in the Federal Register so that all affected companies and communities are able to provide their considered input and require CBP to conduct a full economic impact analysis of the effects of their proposal.

Sincerely,



Patrick C. Newlin

Cc: The Honorable John Cornyn, U.S. Senator
The Honorable Ted Cruz, U.S. Senator
The Honorable Ted Poe, Member of Congress



Director, Border Security & Trade Compliance Division
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection
90 K St. NE., 10th Floor
Washington, DC 20229-1177

Date: April 18, 2017

Re: Comments of Canyon Offshore, Inc. ("Canyon") to U.S. Customs and Border Protection's January 18, 2017 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 "Notice")

Dear Mr. Vereb:

Canyon Offshore is a Texas corporation and a world-wide leader in subsea robotics, trenching and related services. Canyon's equipment and crews support a wide array of subsea activities, primarily in the energy sector, and we employ approximately 200 US citizens. We also train US citizens in the operation of subsea robotics systems.

I write on behalf of Canyon Offshore and submit these comments to U.S. Customs and Border Protection ("CBP") regarding the above-captioned Notice.

I respectfully request that CBP withdraw its proposed modification and revocations.

Canyon has, and will continue to be, a supporter of the Jones Act, but these modifications are not a correct interpretation of the Act (remembering that the Act was created decades before offshore oil and gas production had even been thought about).

It is clear there are two very different sides with regards to this issue and I believe that the only fair and appropriate outcome is for CBP to withdraw its proposal in order to fairly and objectively conduct a detailed legal review and impact analysis through the rule-making process under the Administrative Procedures Act. Indeed in 2009 when similar proposal/modifications were proposed by CBP, DHS itself stated that the rule making process was the correct procedure to follow. The fundamentals have not changed since 2009; there is still a huge potential impact which means that the APA is clearly the correct process to follow.

Forcing through such a major modification to 40 years' of precedence, with such short notice to the very industry it will impact the most, is unjust and unreasonable and does not reflect the due process and procedure that such a sweeping change should follow.

The Administrative Procedures Act details the required analysis that must be complete before any such "law-making" changes are made. Particularly in this instance, these changes would have a considerable impact on the U.S. oil and gas industry and will result in major job losses in the domestic offshore oil and gas exploration and production business – for both on and offshore employees. These numbers will far outweigh those quoted as being created in shipbuilding.

An independent study has shown job losses of circa 125,000 and a loss to GDP in the range of \$90B - \$100B. These numbers alone show that it is imperative that a proper review and analysis of this issue is conducted. I can appreciate that different statisticians & economists may come up with different numbers, however even if another analysis showed for example 25% of these numbers, the cost is still huge. It is simply unthinkable that Government could even entertain such losses without proper analysis.

Please find attached more detailed reports on the legal analysis, economic impacts, fleet capacity, etc. as clarification and justification for my request for you to withdraw your proposal.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Ian Edmonstone".

Ian Edmonstone
President
Canyon Offshore Inc.

April 12, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

Re: Customs and Border Protection Notice of January 18, 2017 on the Jones Act

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Sincerely,

Geoffrey Dale



April 18, 2017

Kevin K. McAleenan
Commissioner (Acting)
U.S. Customs and Border Protection
1300 Pennsylvania Ave., NW
Washington, DC 20229

Dear Acting Commissioner McAleenan:

As an employer who supports thousands of hard working employees in the Gulf area, I am writing to express concerns over the U.S. Customs and Border Protection's (CBP's) "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," *Customs Bulletin* from January 18, 2017. These changes will have severe consequences on U.S. manufacturing and construction industry jobs in the Gulf area.

Kiewit Offshore Services, Ltd. (KOS), a subsidiary of the Kiewit Corporation, is a world-class, 550-acre fabrication facility located in Ingleside, Texas. KOS employs thousands of skilled craftsman, engineers and other construction professionals who over the past three decades have successfully competed against foreign fabricators to domestically build some of the offshore industry's largest and most complex projects. The CBP's proposed revocation of previous rulings will create regulatory uncertainty which could delay or cancel planned offshore projects and potentially force future project fabrication to foreign countries.

Responsible development of our offshore oil and natural gas resources is vitally important to the United States. Having a strong offshore oil and gas industry is essential to producing energy security, maintaining a strong U.S. economy, and providing many jobs across the nation. This proposal threatens tens of thousands of manufacturing and construction industry jobs. For the Gulf and national economies and our energy future, I respectfully urge the CBP to terminate this proposed action or at least follow the formal notice-and-comment rulemaking process, including a thorough study of the economic impact these changes would have on the U.S. offshore oil and natural gas industry and the U.S. economy.

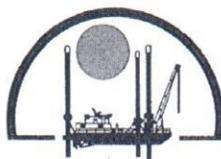
Thank you for the opportunity to comment.

Sincerely,

Fuat Sezer, President
Kiewit Offshore Services, Ltd.

OFFSHORE LIFTBOATS, LLC

P.O. Box 398
Cut Off, LA 70345
www.offshoreliftboats.com



Phone: (985) 632-3414
Fax: (985) 632-5771
sales@offshoreliftboats.com

USCG Certified Vessels

4/18/2017

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) 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.

The Jones Act is, and always has been, a quintessentially "Buy American, Hire American" statute, grounded in a national defense policy of ensuring domestic shipbuilding and seafaring capacity and in a national commercial policy of ensuring a strong domestic maritime industry. This Act has allowed Offshore Liftboats, LLC based in Cut Off, Louisiana to operate for 16 years. Current, our company operates five vessels and employs over 50 staff and crew members. Specifically, our company is engaged in the liftboat sector of the offshore market.

A liftboats is a self-propelled self-elevating vessel that provide a stable work platform for operations in shallow water. These vessels are typically equipped with an expanse of open deck area, a large crane, and accommodations for a significant number of offshore workers. These vessels are used for well-workover operations, platform repair and maintenance, and construction and decommissioning activities.

As a vessel operator that works in the Gulf of Mexico and other locations on the U.S. Outer Continental Shelf (OCS), we recognize our nation has always had a strong maritime tradition, dating back to the first cabotage law passed by Congress and signed into law in 1789. The modern iteration of this law, the Jones Act, clearly articulates the purpose of this law and the policy of our country:

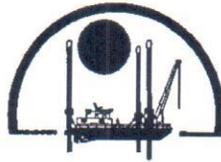
It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine . . . sufficient



Please Recycle!

OFFSHORE LIFTBOATS, LLC

P.O. Box 398
Cut Off, LA 70345
www.offshoreliftboats.com



Phone: (985) 632-3414
Fax: (985) 632-5771
sales@offshoreliftboats.com

USCG Certified Vessels

to carry the waterborne domestic commerce and a substantial part of the waterborne export . . . capable of serving as a naval and military auxiliary in time of war or national emergency . . . [and] capable of serving as a naval and military auxiliary in time of war or national emergency.¹

Revoking these letter rulings not only honors the unambiguous language of the Jones Act, it also honors the investment our company has made in Jones Act-qualified vessels. These vessels were built in U.S. shipyards by U.S. citizens because we believed that our government would enforce the Jones Act as it has written. As a result, we assisted in the preservation of the domestic shipyard base is fully capable of building, repairing, maintaining, and modernizing the U.S. Navy ships and crafts.

Even more important than the fact that the Notice is utilizing a process which allows for thoughtful and informed consideration, is the fact that the process being utilized for the Notice is the legally designated process for revocation of letter rulings. Congress has mandated by statute a unique process for CPB's revocation of a letter ruling. Under 19 U.S.C. § 1625(c), CBP must give notice in the Customs Bulletin of its intent to revoke and provide at least 30 days opportunity for comment by the public. Subsequently, CBP must publish its final decision within 30 days of the close of the comment period. This final ruling or decision "shall" become effective 60 days after the date of its publication.

The U.S. Court of Appeals for the Federal Circuit has confirmed that 19 U.S.C. § 1625 is the proper procedure for revoking prior letter rulings. Specifically, the court stated in a case containing a similar context:

The government argues that the interpretation of "substantially identical transactions" in section 1625(c) adopted by the Court of International Trade conflicts with the Secretary's power to promulgate binding regulations. Under such an interpretation, the government states, the Secretary will be forced to follow "treatments" established by what it terms "aberrant decisions" of Customs officers. We do not agree... [c]ontrary to the government's argument, the interpretation of "substantially identical transactions" that we think is correct does not limit the Secretary's authority to change a prior "treatment." It simply requires that the Secretary utilize notice and comment procedures under 19 U.S.C. § 1625(c) before doing so.²

Considering the above information, CBP's Notice ensures that the law is followed as written, will promote the employment of U.S. mariners as intended by the Jones Act, was completed after thoughtful consideration and provides ample amount for comments from all impacted parties, and was conducted under the legally prescribed process. As such, Offshore Liftboats strongly supports the 2017 Notice and urges CBP to implement this notice in an expedited manner.

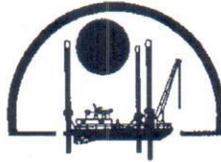
¹ 46 U.S.C. § 50101

² *California Indus. Prods. v. United States*, 436 F. 3d 1341, 1356 (Fed. Cir. 2006)



OFFSHORE LIFTBOATS, LLC

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USCG Certified Vessels

While Offshore Liftboats supports the above-described action, we believe there are additional areas where CBP has issued ruling letters that must be revoked because they are inconsistent with the plain language of the Jones Act, specifically letter rulings addressing the following issues must be revoked.

First, CBP has taken the position that the “pristine seabed” is not a U.S. point. This position is inconsistent with U.S. law. Specifically, The Outer Continental Shelf Lands Act (OCSLA),³ extended the Constitution and laws of the United States, including the coastwise laws, to:

the subsoil **and seabed** of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State. [Emphasis added]⁴

As the United States’ jurisdiction was extended to the “seabed” by OCSLA without any qualification, in the first clause of the above-cited sentence and was only extended to structures erected on the seabed in the second clause, there is no way to read the extension of jurisdiction provided by OCSLA as applying only to the structures on the seabed. Moreover, the assertion of jurisdiction, over the “subsoil and seabed” is fundamental since this is what supports the United States claim to exclusive ownership of the resources in the subsoil. Clearly, a plain language reading of the above indicates Congress did not intend for U.S. ownership to exist only after a “fixed structure” was erected on the seabed. In fact, the “fixed structures . . . erected thereon” were coastwise points only because they were on a surface that was itself a coastwise point.

The clear text of OCSLA supports the view that the pristine seabed is a point in the U.S. As such, CBP should revoke any letter ruling based on the erroneous conclusion that transportation of merchandise between a point in the U.S. and the pristine seabed is not subject to the Jones Act.

Relatedly, CBP should also ensure that the Jones Act is applied to decommissioning activities and revoke any letter rulings which are contrary to this position. As background, once an offshore oil and gas facility no longer economically produces hydrocarbons, the field operator is required under the terms of the lease it holds with the U.S., as well as by specific regulations, to restore the sea-floor and the water surface by plugging and abandoning the well and removing the installation or facility. Lessees and operators of leases on the OCS are required to meet decommissioning obligations for “facilities” on the lease “as the obligations accrue and until each obligation is met.”⁵ “Facilities” is defined by applicable regulations to mean “any installation other than a pipeline used for oil, gas or Sulphur activities that is permanently or temporarily attached to the seabed on the OCS and include production and pipeline risers, templates,

³ 43 U.S.C. §1331 et. seq.

⁴ 43 U.S.C. §1333(a)(1)

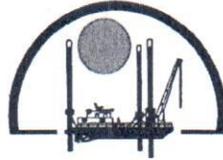
⁵ See, 30 C.F.R. 250.1700 et. seq



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pilings and other facility or equipment that constitutes an obstruction such as jumper assemblies, termination skids, umbilicals, anchor and mooring lines.”⁶ All of these items were unquestionably “merchandise” when transported and installed on the OCS. Decommissioning can occur before, after, or simultaneous to the associated wells’ plug and abandonment.

The Jones Act provides that only a vessel with a coastwise endorsement may transport merchandise between two points embraced by the coastwise laws of the United States. The “facilities” transported during decommissioning were coastwise points while being used “for the purpose of exploring for, developing ... or producing resources.” Once decommissioned, they remain merchandise, just as they were merchandise when first transported to the OCS point. The claim that these facilities are no longer useful in their originally intended purpose does not affect their status as merchandise, because the Congress specifically included “valueless material” within the statutory definition of merchandise for purposes of the Jones Act.⁷ The removal of a facility from the OCS point, its loading onto the deck of a vessel through the use of its crane and its transportation to a subsequent U.S. point, whether ashore or at another offshore point, is coastwise transportation of merchandise that may only be accomplished on a coastwise qualified vessel.

Given the immediacy of decommissioning obligations of OCS facilities, and in order to ensure that U.S. workers, companies and tax payers are not harmed further, Offshore Liftboats requests that CBP issue a letter ruling quickly confirming (or modify or revoke any letter rulings that state otherwise) that the transportation of decommissioned facilities from their existing U.S. point to another U.S. point is coastwise transportation of merchandise and revoking any prior letter rulings to the contrary.

For all of these reasons, we urge that CBP expedite revocation of the letter rulings listed in the Notice. Taking such action, will ensure the Jones Act is enforced as written, thereby producing opportunities for our company, our employees, and our suppliers. We thank you for the thoughtful consideration of these comments and stand ready to answer any questions you may have.

Sincerely,

Lauren Melancon
Chief Financial Officer & Member
Offshore Liftboats, LLC



⁶ *Id.*

⁷ 46 U.S.C. 55102(a).

April 17, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Kelly:

Re: Customs and Border Protection Notice of January 18, 2017 on the Jones Act

It has been brought to my attention that U.S. Customs and Border Protection (“CBP”) has issued a Notice through what is known as its *Customs Bulletin* ruling revocation process which if implemented would overturn 40 years of precedent with respect to the application of the Jones Act to vessels and offshore facilities working in the Gulf of Mexico (“GOM”). This ruling, rushed into print two days before President Trump was inaugurated, will have a substantial detrimental effect on jobs and workers in my community. For this reason, I am requesting that you withdraw this ruling because of the huge negative economic impacts on my family, my community and the State of Texas.

There are a number of companies in Houston that rely on highly specialized work to support the oil and gas industry in the GOM. These are American companies employing American workers and paying U.S. federal and state taxes. If the CBP ruling were allowed to go into effect, these companies would have to move out of my district/port/state and go where they can find jobs. This would not only have a negative economic effect on my city but it would also have a negative economic effect on the U.S. and the President’s goals for energy independence.

The companies in my community own, operate and invest their own resources in very large vessels that conduct highly specialized activities to support offshore oil and gas projects, including pipe-laying, cable-laying, diving support and heavy-lift crane construction and installation work. While the vessels may be built in foreign shipyards, the workers on these vessels are hard-working Americans who only want to live and contribute to the economy in my community.

In conclusion, I urge DHS and CBP to withdraw the CBP Notice immediately, and should you desire to pursue this issue, that you start over with a the proper process under Notice and Comment rulemaking published in the Federal Register so that all affected companies and communities are able to provide their considered input and require CBP to conduct a full economic impact analysis of the effects of their proposal.

Sincerely,

C.D. Stroud

Douglas Stroud
Sr. Vice-President, Global Commercial
Canyon Offshore, Inc.

Cc: The Honorable Ted Cruz, U.S. Senator
The Honorable John Cornyn, U.S. Senator
The Honorable Pete Olsen, Member of Congress



CANDIES SHIPBUILDERS L.L.C.

1100 OAK STREET • HOUMA, LA 70363 • 985/879-3346 • FAX 985/879-7008

April 13, 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: 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

To Whom It May Concern:

Candies Shipbuilders, LLC is a Houma, Louisiana based shipbuilding company currently employs more than 120 full time and contract employees. The purpose of this letter is to express our support for CBP's proposed modification and revocation of Jones Act letter rulings that are contrary to the statute.

The U.S. shipbuilding industry is vital to our country's national security interests, as well as the provision of meaningful employment to a highly skilled workforce, and the proper interpretation and enforcement of the Jones Act has a direct impact on our shipyard. Since inception in 2005, our shipyard has constructed 14 Jones Act qualified vessels and CBP's proposal encourages further investment in Jones Act compliant vessels, contrary to the chilling effect that CBP interpretations have had over the past many decades. The current CBP action, and correction of prior erroneous interpretations, is a welcomed development.

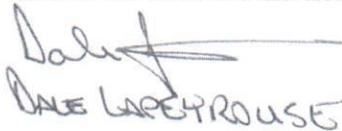
From its inception, the Jones Act has been a "Pro-American" statute, grounded firmly in a national defense policy of ensuring domestic shipbuilding and seafaring capacity, and in a national commercial policy of ensuring a strong domestic maritime industry. Our U.S. Congress explained it best in the Jones Act preamble, specifically: "[i]t is the policy of the United States to encourage and aid

the development and maintenance of a merchant marine...sufficient to carry the waterborne domestic commerce. . .of the United States." U.S. Department of Defense ("DOD"), Navy, and U.S. Coast Guard officials are among the strongest supporters of the Jones Act for the contribution it makes to military sealift, all recognizing the critical importance of the statute.

In addition to national security, the prior erroneous interpretations of the Jones Act worked to send American jobs to foreign shipbuilding interests, eliminating tens of thousands of American jobs and billions of dollars of American investment in the process, and the CBP's recent actions serve to correct that path.

CBPs expeditious implementation of the current proposed actions with mean higher American wages, additional American tax revenue, more American economic activity and heightened national security at a time when it is most needed.

Very Truly Yours,
CANDIES SHIPBUILDERS, LLC



A handwritten signature in black ink, appearing to read 'Dale Lapeyrouse', with a horizontal line extending to the right from the end of the signature.

Dale Lapeyrouse
General Manager



DOF Subsea USA, Inc.
5365 W. Sam Houston Pkwy N
Suite 400
Houston, Texas 77041
Tel. 713-896-2500

Delivered via Email

April 18, 2017

Mr. Glen E. Vereb
Director, Border Security & Trade Compliance Division
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection
90 K St. NE., 10th Floor
Washington, DC 20229-1177

Reference: Comments of DOF Subsea to U.S. Customs 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.

Dear Mr. Vereb:

DOF ASA, DOF Subsea AS, DOF Management and DOF Subsea USA, Inc. (collectively "DOF") appreciate the opportunity to provide comments on 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* published on January 18, 2017 (the "General Notice"). U.S. Customs and Border Protection ("CBP") has been provided with comments submitted by the American Petroleum Institute ("API") and the International Maritime Contractors Association ("IMCA"). DOF supports both the IMCA and API comments to the Notice and the analysis contained therein. This letter is to further highlight certain issues of particular importance for DOF and provide additional supporting information.

DOF shares a commonly held concern within the U.S. Oil and Gas Industry. Specifically, CBP's rush to overturn hastily more than 40 years of precedent. The industry has not only been entitled to rely on this precedent, which has also formed the basis for years of planning and tens of billions of dollars of investment by numerous operators to deliver the technology necessary to support offshore oil and gas operations, but its reversal would seriously and negatively affect ongoing and future U.S. oil and gas exploration and production activities.

Additionally, the concepts of shared responsibility and informed compliance are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. For over 40 years, CBP has made determinations in the form of coastwise rulings on whether activities constitute violations of the coastwise laws; these rulings have grown to become a sophisticated body of

precedent that – to date – has remain intact. To be very clear, DOF is not opposed to the original legislative intent of Title 46, United States Code, section 55102 (the “Jones Act”) and fundamentally respects and understands the purpose for which it exists. However, DOF firmly believes that the intended (and possibly unintended) consequences of this proposal will have far reaching consequences and could further damage the already weakened offshore industry in the U.S.. This would include disproportionately damaging operators of international tonnage with Jones Act compliant tonnage vessels within their fleet, and who today are able to employ numerous U.S. workers in high-paying skilled positions. Indeed, DOF is one such company who will be disproportionately affected by this proposal. DOF obtained a Ruling Letter (HQ H004242) from CBP prior to commencing its offshore operations in 2006, and the company has planned its investments and operations in substantial reliance on that Ruling – which would be meaningless under the current proposal. Therefore, DOF opposes the modification and revocation proposed by CBP on the grounds that such action is inequitable, unwarranted, not supported by law, and will have serious and long-term consequences for the U.S. offshore oil and gas industry. DOF urges CBP to consider our comments and concerns before issuing any final decision regarding the proposal.

DOF SUBSEA

The DOF Group is a leading provider of essential subsea services to the oil and gas industry in all the major oil and gas production regions around the world. The DOF Group operates a world class fleet of offshore vessels, ROVs (Remotely Operated Vehicles), diving and survey systems combining expertise and technology to deliver integrated subsea solutions to the offshore oil and gas industry. The design and construction of our fleet are the result of more than 30 years’ experience of building and operating a genre of vessels specifically designed to meet the evolving and dynamic needs of the offshore oil and gas industry and the technical input from the various oil and gas operators that we serve around the globe, including operators on the U.S. Outer Continental Shelf (“OCS”).

DOF Subsea USA, the U.S. entity of the DOF Group is incorporated in the State of Texas and headquartered in Houston, Texas (“DOF USA”). DOF USA operates a fabrication facility in Fourchon, Louisiana, and provides subsea support for the U.S. offshore oil and gas industry, including onshore fabrication, subsea installation, IRM (inspection, repair and maintenance) of offshore production and pipeline infrastructure on the OCS. DOF USA has invested substantially in the development of its subsea support business in the U.S. and has continued to invest and expand its business in reliance on both the Ruling Letter (HQ H004242) issued to DOF and the substantial body of rulings published by CBP on the public CROSS system. We have consistently worked to be good corporate citizens in the U.S., and we are always ready and willing to help our community, including responding with our assets to natural and manmade disasters (e.g., the Macondo Well Blowout, where DOF’s DSV *Skandi Neptune* provided immediately available deep-sea inspection and mapping capabilities for the U.S.). Today, DOF employs 112 personnel in the U.S. in both onshore and offshore roles, and DOF USA regularly procures materials, equipment and services in support of its operations all along the Gulf Coast; prior to the downturn in the industry, DOF USA employed 193 employees, and we would expect to meet or exceed that number as the market improves.

SUMMARY OF SPECIFIC COMMENTS

CBP should withdraw its proposal and retain the precedent that the U.S. offshore oil and gas industry has relied upon and strictly followed for more than 40 years. During this time, CBP has appropriately adapted its rulings to reflect advancement and development of new technologies and types of vessel for the benefit of the U.S. offshore oil and gas industry.

CBP should take a more practical and reasoned approach to transportation of "vessel equipment" that is incidental to a vessel's intended operation. Enforcement of the Jones Act should remain focused on the restriction of the movement of merchandise between coastwise points in the U.S. and not impede or limit the operations of vessels engaged in activities supporting the development and production of oil and gas in deepwater on the OCS.

CBP should critically evaluate the current types and locations of operations and activities that are being and need to be undertaken on the OCS and the availability of coastwise vessels to perform these operations and activities, including any emergency response time and capability in the event of another deepwater crisis. We further urge CBP to evaluate the effect of its proposal as set forth in the General Notice in terms of its operational, environmental and safety impact. We urge CBP to consider the **Fleet Analysis** (An Analysis of Vessels Supporting the Offshore Oil and Gas Exploration and Production Industry) and the **Case Study** (Ultra-deepwater project in Gulf of Mexico) submitted by both IMCA and API.

CBP should undertake sufficient and appropriate analysis of the economic impact of its proposal given the significant and damaging impacts that the restrictions on a vessel's ability to move around the OCS with critical and necessary equipment onboard will have on the U.S. industry, the economy, and the job market. We urge CBP to further take into consideration the **Economic Impact Study** (Economic Impacts of proposed Modification and Revocation of Jones Act Ruling Letters related to Offshore and Natural Gas Activities prepared for API by Calash) submitted by both API and IMCA that underlines the severely damaging effects on both GDP and jobs.

The industry has been given a mere 90-day period in which to comment on the proposed changed treatment of the definition of 'vessel equipment.' Given the scope and breadth of activities which would be impacted by this proposal and the serious and valid concerns raised in both these comments provided by DOF and in the comments provided by other potentially impacted parties, including API and IMCA, we respectfully request that CBP: (1) extend the comment period to allow sufficient time for a thorough and balanced analysis, (2) issue a document containing the revised proposal as a result of the comments received during the initial 90-day comment period on the proposed changes in treatment of "vessel equipment", and (3) ultimately issue a final decision consistent with the following comments.

1. BACKGROUND

United States Code Title 46, section 55102, the merchandise coastwise law (the "Jones Act" or the "Act"), provides that no merchandise shall be transported between points in the U.S. embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation in any vessel other than one which is coastwise qualified. The Act states that transportation of merchandise takes place when merchandise is loaded (laden) at a point embraced within the

coastwise laws (a "coastwise point") and unloaded (unladen) at another coastwise point, regardless of the origin or ultimate destination. Simply stated, the Jones Act mandates that any goods shipped by water between two coastwise points in the U.S. must be transported on a U.S.-built, U.S.-flagged, and at least 75 percent U.S.-crewed vessel (a "coastwise vessel").

The General Notice focuses on the determination and differentiation of "vessel equipment" and "merchandise;" this was also the subject of the substantially similar proposal made by CBP in 2009. On July 17, 2009, CBP issued a very similar notice proposing the modification and revocation of 20 rulings issued over a period of more than 30 years, in which CBP had made determinations as to whether certain items would be treated as "merchandise" or "vessel equipment." At that time, as it also does in the recent General Notice, CBP claimed that it had made errors in issuing the interpretive rulings. On September 15, 2009, CBP withdrew its July 17, 2009, proposed revocation and modification proposal amid criticism from interested parties and industry groups regarding, amongst other matters, the method in which CBP was proposing to modify or revoke existing rulings (i.e., a notice published in the Customs Bulletin with a 30-day comment period with the final decision becoming effective 60 days after its issuance), which was completely inappropriate given that this affected over 30 years of precedent that was heavily relied upon by the offshore industry as a whole. As suggested by many industry sectors, CBP initiated a rulemaking proposal utilizing the Notice and Comment procedures under the Administrative Procedure Act by submitting the proposal to the Office of Management and Budget for review in March 2010. However, the rulemaking was withdrawn by CBP and the Department of Homeland Security on November 15, 2010, amid concerns from various federal agencies that, among other things, the proposal could have serious negative effects for the U.S.

A further seven years have passed since then, in which time nothing has materially changed that would give rise to a different result for essentially the same proposition. The General Notice does not lessen the potential impact on the offshore oil and gas industry today. Indeed, this time the scope of the rulings cited for modification and/or revocation is even greater than the 2009 iteration. The industry, as it stands today, is already experiencing significant turmoil based on oil prices and global oversupply. The CBP proposal will only exacerbate a poor market situation, in which tens of thousands of workers have already lost their jobs, by increasing cost and adding regulatory complexity, thereby inhibiting both growth and investment in the offshore deepwater market.

It is our assertion that CBP has correctly defined "vessel equipment" over the past 78 years to take into account technological innovation in oil and gas exploration and production. It is an inescapable fact that deepwater development has been able to move out from the shallows to staggering modern day depths of more than 10,000 feet of water only by means of international innovation in the equipment necessary to support such development. To attempt to limit such technology now to a narrow interpretation of a 1939 Treasury Decision is inherently flawed, and the attempt to do so in such a short timetable gives no time for the careful consultation, comment, and consideration amongst all potentially impacted parties that such a substantial change warrants.

2. TECHNOLOGICAL ADVANCEMENT AND THE APPLICATION OF THE JONES ACT

2.1 Global Development Of Offshore Construction Vessels Has Benefited U.S. Offshore Development And Maintenance Of Infrastructure

The tools and processes necessary for modern day development and extraction of oil and gas in deepwater from the U.S. OCS have become increasingly complex as the industry has advanced into deeper and deeper water. As offshore field developments have progressed into the remote deepwaters on the shelf and consequently harsher environmental conditions, the developers of these fields have sought out technological innovations to overcome site-specific subsea conditions, which are not uniform across the entire OCS.

The technological and environmental challenges of developing oil and natural gas wells in ultra-deepwater are substantial. As water depths have increased, international vessel owners have made significant financial investment into innovative vessel design and their systems to ensure that operations conducted in support of the development and maintenance of deepwater infrastructure can be carried out in extreme weather and environmental conditions with safety to personnel and the environment an optimum design principle. Consequently, a global fleet of sophisticated and highly specialized vessels has evolved for the specific purpose of meeting the needs of subsea installation support, IRM functions, pipelaying and heavy lift. Through the global oil and gas trading patterns, these vessels and their operators are able to share new innovation and best practices from projects across the globe.

2.2 The Application Of The Jones Act To The Activities Of Non-Coastwise Vessels

The rate of these technological tooling and process advancements has progressed exponentially, and it has become standard practice over the years for entities wishing to employ or utilize such technology on the OCS to seek specific rulings from CBP to ensure that contemplated activities will not contravene any existing legislation. CBP has issued rulings on many different areas and scopes of activity within the offshore industry. Importantly, what has resulted from these requests is a significant body of precedent that the industry has subsequently relied upon in terms of permitted and prohibited activities given the systematic treatment by CBP of substantially similar issues. Over the course of the last four decades, CBP, building upon a chain of its own solid reasoning and published body of interpretations, has correctly adapted rulings to reflect new developments in technology and changes in process and procedure, particularly with respect to what constitutes vessel equipment.

The Jones Act is very clear in the exclusive right of transportation of merchandise between U.S. coastwise points for coastwise qualified vessels, "merchandise" by definition includes goods, wares and chattels of every description, merchandise owned by the U.S. Government, State or Subdivisions of a state; and valueless material. This rule was extended to the OCS by virtue of the Outer Continental Shelf Lands Act of 1953, which extended federal law only with respect to regulation of a specific class of activities (this is addressed in our subsequent comments regarding the OCSLA extension). The Jones Act has never prohibited the transportation of articles deemed as "vessel equipment." In T.D. 49815(4) (Mar. 13, 1939), CBP created a clearer distinction between items constituting "merchandise" and those constituting "vessel equipment." In T.D. 78-387 (Oct 7, 1976), CBP took the consistent step of refining the distinction that equipment necessary for the operation of the vessel, namely the equipment necessary for the vessel to be able to perform its intended operations (or "mission"), could lawfully be transported by a non-coastwise vessel.

Over the subsequent 41 years, CBP has issued rulings consistent with interpretation of T.D. 78-387 while carefully taking into account technological changes and advancements. These rulings have – over the course of time – carved out deemed violations from lawful activities which may be undertaken by non-coastwise vessels. For as many rulings that state that an activity is allowed, there are rulings that equally cite violations. The industry has both respected and adhered to the framework laid down by CBP. Over these 41 years non-coastwise vessel operators have lawfully carried equipment necessary to perform their intended operations based on holdings by CBP that this activity was not prohibited because “such transportation is incidental to the vessels operations”.

Up until the complaint from the Offshore Marine Service Association (OMSA) in 2009 regarding the installation of a “Christmas Tree,” there had been no real challenge as to the integrity of the basis for these decisions. The “Christmas Tree Ruling” was clearly the appropriate action in light of the circumstances set out in T.D. 78-387 regarding the transportation of a wellhead assembly to a coastwise point on the seafloor. However, this revocation was not grounds for the twenty rulings cited in the 2009 Notice for revocation or modification which followed and this point was argued at the time during the comment period for the Notice.

2.3 Impact Of Proposed Change In Interpretation Of Vessel Equipment On Offshore Operations

Once again, as in 2009, the rulings that CBP is seeking to modify or revoke in the General Notice apply to the carriage by a vessel of equipment that is necessary for the mission of the vessel in each case. More specifically, it appears that CBP is proposing to modify significantly the interpretation of the definition of equipment by modifying a 1976 ruling relating to an offshore construction vessels operations, which in turn affect a number of rulings which relied on the 1976 decision. This change in interpretation of “vessel equipment” would appear to pare back significantly the “vessel equipment” exception to the Jones Act; given that almost 30 other long-standing interpretations may change, this could have a substantial effect on offshore vessel operations.

If the CBP General Notice proposal is adopted as written, it would have a severe detrimental impact on DOF's current offshore operations, given that DOF owns and operates non-coastwise vessel tonnage that has been engaged on oil and gas development projects in reliance of CBP rulings on identical operations. The modern-day vessels owned and operated by DOF are modular, multi-purpose and multi-task platforms for deep-water offshore operations. They have been purposely designed and built to undertake an array of IRM functions and light construction tasks. It is impossible in terms of both available space onboard and the safety and stability of a vessel to equip, as a permanent outfit, all of the items that a multi-purpose Offshore Construction Support Vessel conceivably may need in the course of completing the scopes of work that may be assigned to it. Each scope of work is unique in its technical and environmental requirements and therefore requires highly specialized engineering tools and equipment which need to be varied depending on scope.

If what CBP is apparently proposing is that a non-coastwise vessel may transport nothing more than “*rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts,*” then this will constrain those items, which have historically been regarded as vessel equipment and will preclude the use of many of the items that a multi-purpose and highly responsive vessel on the OCS needs to carry. In prohibiting a non-coastwise vessel from carrying equipment that it needs to operate, CBP's proposal essentially excludes the use of specialist tools, equipment and materials necessary for the

construction, commissioning, repair and maintenance of offshore infrastructure rendering the use of a non-coastwise vessel useless.

Essentially, under CBP's proposed narrow interpretation, every single piece of equipment or consumable needed by a vessel to undertake its planned operations on the OCS would need to be bought to the non-coastwise vessel by a coastwise vessel and transferred to the non-coastwise vessel for use. Because the Jones Act prohibits "the movement or any part therein" of merchandise, this creates a very unique and conceivably insurmountable risk that virtually any movement by the non-coastwise vessel may be considered a coastwise problem, and therefore, it might constitute a financially penalized activity. In the course of an offshore operation, a vessel may need to move between different items of existing subsea infrastructure in a smaller area and in other cases it will need to move between entire blocks. Best and safe practice offshore dictates that heavy items to be installed by a vessel subsea (regardless of whether coastwise or not) are over-boarded in a safe zone to avoid the possibility of such heavy items free-falling onto existing infrastructure; once the heavy items are over-boarded, the vessel moves the item into its install location. CBP's proposal essentially bars such best practices (i.e., safe practices) by non-coastwise vessels.

While some of the rulings cited by CBP for revocation and modification clearly carve out a very specific set of offshore operations, specifically IRM related activities and well intervention and servicing, others create uncertainties. Indeed, the General Notice creates more questions that it provides answers. For example, several of the rulings cited by CBP in the General Notice address the installation of risers, flowlines and umbilicals, creating significant uncertainty regarding the treatment of pipelaying and installation of equipment integral to laying operations. CBP has historically treated installation related operations as being akin to pipelaying, but now it appears to target flowlines, umbilical, and cable as being carve-outs from the treatment of pipe. Given the lack of availability of coastwise vessels available to conduct these carve-outs, CBP's General Notice endangers the complete performance of pipeline scopes of work.

Another area of confusion is the treatment of remotely-operated vehicles (ROVs). The vessels owned and operated by DOF have been conceived, designed, and built as platforms for ROV operations given that in deep-water there is no alternative to use anything else to perform subsea operations. ROV hangers from which to launch the systems are part of the original build of the vessels and cannot be segregated. Furthermore, the ROVs are permanently attached to the vessel, as well as being controlled and directed from the vessel; they are never left or installed on the seafloor of the OCS, but instead, they always return to the mother Offshore Construction Support Vessel to which they are attached. Historically, CBP has always treated ROVs as "vessel equipment", however CBP in its General Notice makes the implication that ROVs might be considered as "merchandise." As there is no foreseeable alternative to an ROV, such a radical shift in treatment would render the use of ROVs from non-coastwise vessels impossible and would render purpose built ROV vessels useless; it is inconceivable how CBP can come to any conclusion other than that an ROV is necessary and appropriate for the operation of a vessel designed and built around the critical need of deployment of these systems on every single offshore project.

Subsea positioning has become extremely high-tech given the accuracies that are required for subsea construction. Modern day Offshore Construction Support vessels are therefore completely reliant on acoustic and inertial subsea positioning systems not only for the safe navigation of ROVs and autonomous underwater vehicles (AUVs) but also to ensure that subsea infrastructure such as pipelines are installed within tight tolerances. These positioning systems are deployed from the

vessel on the seafloor where they are used for the purpose of measurement and navigation. If the treatment of these critical items of vessel equipment were changed to the point that a vessel would no longer be able to transit with them onboard or freely deploy and recover them, then a vessel would essentially become blind and not be able to operate.

For more than 40 years, Offshore Construction Support vessels have been able to carry with them supplies that are "incidental to operations" provided that they are consumed in that service. In the General Notice, CBP pursues a "laden and unladen" logic to try and restrict the previously held scope of "incidental to service" and force more items into the "merchandise" basket. There is very obviously a significant difference between "nuts and bolts" type of consumables and, for example, a structure like a manifold. In trying to create an argument that consumables are "merchandise" bolstered by the weak rationale that consumables meet the test for "valueless material," CBP clearly overreaches.

CBP's General Notice proposal creates significant operational issues for the offshore industry. The sheer impracticalities, impact on cost and schedule to perform activities, and the safety implications of transferring equipment back and forth between two vessels essentially renders the use of a non-coastwise vessel completely impracticable. With the lack of coastwise deepwater qualified vessels available, such sweeping changes could cause long-term damage to the state of the industry, forcing many companies to turn away from their operations in the U.S. because they are either too expensive or completely impracticable. For U.S. companies, the use of non-coastwise vessels in many cases is currently still essential to maintain operations.

It is very important to understand that this is not a simple matter of the non-coastwise vessels leaving and all the specialized on-board industry-specific equipment staying behind for use by coastwise-eligible vessels. The core equipment used by these vessels is integrated into the vessels themselves, and these vessels are constructed for a specific purpose; the modern day offshore industry is no longer a vessel of opportunity type of business. If some of this equipment were to leave the OCS, then this could cause irreparable harm to oil and gas development and production, as well as unnecessarily increase environmental risks.

The CBP General Notice fails to foster informed compliance, given the many uncertainties that it creates. The General Notice does very little to provide a clear and consistent approach to the Jones Act and offshore oil and gas operations, and it fails to answer the very important and central questions, such as where is the explanation of this new definition for "operation", how will it be applied and by whom? It is of grave concern to the industry that the CBP General Notice never once addresses these core issues. These are surely the issues for comment and debate amongst interested parties. It is very difficult at this stage to provide meaningful comment on the issues presented by the General Notice without also receiving answers to these questions.

3. CBP 2017 GENERAL NOTICE RELIES ON T.D. 49815(4) BUT HAS NOT PROVIDED ANY SUBSTANTIVE JUSTIFICATION AS TO WHY T.D 78-387 SHOULD NO LONGER APPLY

In the General Notice, CBP asserts that the Treasury Decision in T.D. 49815(4) (Mar. 13, 1939) definition of vessel equipment was "expanded, and thus used out of context" by the addition of the following language: "*in furtherance of the mission*". CBP, however, fails to acknowledge the actual

source of this language, i.e., T.D. 78-387 (Oct 7, 1976), which has for the past 41 years formed the basis for all subsequent rulings related to the operation of vessels on deepwater construction projects.

In CBP's unsuccessful 2009 Rulemaking (the 'Notice'), CBP asserted its intention to limit the definition of what constitutes vessel equipment by strictly interpreting T.D. 78-387. In 2009, the scope of the definition of "vessel equipment" provided in T.D. 49815(4) was not heavily scrutinized. For 33 years, CBP had consistently and methodically applied the conclusion reached in T.D. 78-387 before it challenged this application in its 2009 notice. CBP then proceeded to withdraw the notice with no explanation or further comment and all dialogue on the issued ceased. Now, eight years after the 2009 Notice, CBP is shifting gears in its current claim that it is the 1939 Treasury Decision that has been misapplied. However, this should in no way detract from the importance of the decision reached in T.D. 78-387.

T.D. 78-387 proposed the use of a foreign built vessel "in the construction, maintenance, repair and inspection of offshore petroleum related facilities," the activities listed included (i) pipelaying, (ii) repairing pipe, (iii) repairing underwater portions of a drilling platform, (iv) the installation and transportation of anodes, (v) transportation of pipeline burial tools and repair materials, (vi) installation and transportation of pipeline connectors, (vii) installation and transportation of wellhead equipment, valves and guards, and (viii) transportation of machinery and production equipment. In T.D. 78-387, CBP held that the:

"transportation by the vessel of such materials and tools as are necessary for the accomplishment of the mission of the vessel ... is not, generally speaking, an activity prohibited by the coastwise law since such transportation is incidental to the vessels operations".

Clearly in T.D. 78-387 CBP reaches the conclusion that "the mission of the vessel" and "the vessels operations" are one and the same thing. While T.D. 78-387 does not define the term "operation", and nor does T.D. 49815(4) for that matter, the normal definition that a reasonable person would expect to apply includes the performance of a function or the carrying out of an action or mission.

T.D. 78-387 provides precedent. It is our assertion that the rationale and conclusions set forth in T.D. 78-387 were correct and remain correct to this day. In the General Notice, CBP provides no guidance or explanation as to why T.D. 49815(4) is being applied incorrectly, nor does it provide any reasoning for an inconsistent application of the term "operation." Perhaps most disconcerting of all is CBP's position in the General Notice that the term "operation" has been misinterpreted for the past 78 years, yet the term has never had an express definition provided that would make it clear to a reasonable person that the original intended meaning of "operation" in T.D. 49815(4) was something different from the ordinary definition. What CBP must be forced to acknowledge is that the equipment needed to operate a vessel in 1939 is an entirely different animal from the equipment that is required to operate a modern day Offshore Construction Support Vessel. It would be unreasonable to try and compare as if they are like for like.

The law is very clear that an agency cannot alter policy or practice without reasoned justification for doing so. In ***Timken Co. v. U.S.*, 79 F.Supp.3d 1350 (2015)**, the United States Court of International Trade determined that the US Department of Commerce's departure from a consistent practice of applying differential pricing analysis was unreasonable and an abuse of its discretion. Established case law clearly provides a precedent that an agency must provide "a more substantial explanation

or reason for a policy change than for any other action" when "its new policy rests on factual findings that contradict those of its prior policy."

In the General Notice, not only is CBP now suddenly asserting that a 1976 Treasury Decision, which has provided the basis for a very significant and sophisticated body of precedent for Coastwise Rulings and consequently offshore oil and gas operations over the subsequent 41 years, applies the operation of a term contained in a 1939 decision incorrectly, but that there is now suddenly a definitive alternate meaning of "operation" available for the first time in 78 years! This is clearly arbitrary and capricious.

CBP has a legal obligation to explain to the vessel operating community as a whole why it has suddenly, after eight years of silence on the issue, decided that it is the older ruling that is at issue. A change in the interpretation of the term "operation" and a complete reversal in application of T.D 78-387 must be supported by substantial evidence supporting the new rationale that this application has not been made in accordance with the letter of the law. CBP clearly misses the mark in the General Notice by offering no rationale or justification for the basis of the reversal of 26 substantive and inter-related rulings. To simply state that "the more narrow meaning" is not being applied not only completely fails the legal obligation for CBP to provide substantial explanation as to its policy reversal, but it also undermines the concept of shared responsibility and informed compliance. If "operation" was a term defined in an applicable statute, then the matter of interpretation would be a very simple one; operation, however, has been given its normal definition for the last 78 years, and CBP offers no justification as to why this treatment must suddenly cease. Quite clearly this is a legislative matter for debate amongst law makers and not for an agency bulletin.

4. EQUIPMENT NECESSARY FOR "OPERATION" OF THE VESSEL IS DIFFERENT FROM THAT REQUIRED FOR NAVIGATION AND MAINTENANCE

As per the General Notice, CBP intends to limit the definition of what constitutes vessel equipment by narrowly interpreting the meaning of "vessel equipment" contemplated in T.D. 49815(4) (Mar. 13, 1939). This definition has been based in part on 19 U.S.C § 1309 which defines equipment as:

"articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons onboard. 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".

Vessel equipment has advanced significantly since the 1939 Treasury Decision, which carved out the distinction between vessel equipment and merchandise. Today's modern Offshore Construction Support Vessels are unlike anything seen in 1939; in 1939, the offshore industry had barely begun developing offshore oil fields. By 1946, U.S. oil companies were working in approximately 20 feet of water 1 mile from the coast. Today, offshore field developments are averaging water depths of 6,000 - 7,000 ft. with newer developments in more than 10,000 ft. of water at distances of greater than 100 miles from the coast. The types of equipment required to operate vessels in such challenging environmental conditions are very different from those available onboard a vessel in 1939. In asserting its intention to limit the definition of equipment as per the 1939 Treasury Decision,

CBP is essentially comparing apples to oranges and ignoring the practicalities and current best practices of the offshore oil and gas industry.

Looking at the 1939 definition, there are three requirements that must be satisfied, i.e. that the equipment must be necessary for "navigation" (defined as "the process of reading and controlling movement of a craft or vehicle from one place to another), "maintenance" (the process of keeping a vessel in good condition by regularly checking it and repairing it when necessary) and "operation" of the vessel. There is a very important distinction that must be made between equipment necessary to operate a vessel and that which is required to navigate and maintain a vessel. "Operation" is defined as:

1. the activity of operating something; and
2. a process or series of acts especially of a practical or mechanical nature involved in a particular form of work.

From this definition, it can reasonably be inferred that equipment necessary for the operation of the vessel would be that equipment necessary for the vessel to perform the types of operations for which the vessel has been built. The various components, controls and supplies carried by a modern day Offshore Construction Support Vessel operating on the OCS are utilized and deployed in furtherance of the particular types of work that these vessels have been constructed to perform, i.e., subsea construction for new subsea infrastructure and IRM (Inspection, Repair and Maintenance) of existing subsea infrastructure.

In the General Notice, CBP asserts that the definition of equipment as per the 1939 Treasury Decision had been expanded by the phrase "in furtherance of the mission." However, there is not a distinction to be made between the "operation" of a vessel and the "mission" of a vessel, indeed these two terms may be used interchangeably as they describe the same function, i.e., an operation is a complex series of movements/actions to accomplish a mission.

There is, however, very clearly a distinction to be made between large subsea structures of significant value, such as Christmas trees and manifolds, versus the smaller consumables that are required to connect and make such structures operational, which are of insignificant value in comparison. For example, while a Christmas tree is not necessary to the operation of the vessel that is designed to commission subsea developments, items such as subsea connectors arguably are. Continuing the example, if subsea connections cannot be made, then a field cannot be brought on-line, and therefore, an Offshore Construction Support Vessel would have failed to complete its operation.

Up until the General Notice, CBP has correctly taken a position in previous Rulings that has allowed for technological advancement and the changes in terms of types of equipment required to operate a vessel for the purpose for which it was built. CBP has also acknowledged and approved the general types of "vessel equipment" that a typical Offshore Construction Support Vessel must carry and consume based upon the type of operation. After over 40 years of taking this same consistent approach, CBP fails to offer any substantive support to its argument that the term "operation" has been misused or misinterpreted.

5. CONGRESSIONAL INTENT AND APPLICATION OF OCSLA

The Jones Act prohibits transportation of merchandise "between points in the United States to which coastwise laws apply" by anything other than a coastwise qualified vessel. Given the consequence of the determination of the coastwise points in a given scenario and their bearing upon whether these lead to a conclusion that a scenario will give rise to a violation, it is of significance that the definition of a coastwise point in law has never been established. Indeed, the definition of a coastwise point has been based upon CBP's own interpretation of the application of the Outer Continental Shelf Lands Act of (1953) (OCSLA) in over 40 years of rulings, rather than a conspicuous legal test. CBP has interpreted Section 4(a)(1) to apply to "points" on the US OCS used for the exploration, development, and production of seabed mineral resources.

If CBP now intends to assert that there has been some fundamental flaw in CBP's application of OCSLA over almost half a century, or, as is more clearly stated in the General Notice, that amendments to OCSLA have resulted in "less consistency" with 46 USC §55102, then it is of vital importance in terms of shared responsibility and informed compliance that the legislative intent of OCSLA be consistently applied to activities undertaken upon the OCS.

It is undisputed that the cabotage laws were extended along with all other U.S. federal laws to oil and gas activities on the OCS in 1978. However, it is important to recognize that the 1978 amendment to OCSLA explicitly extended federal jurisdiction of any agency and of certain enumerated laws to the Outer Continental Shelf only with respect to regulation of a specific class of activities:

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—

(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom or producing or supporting production of energy from sources other than oil and gas, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources or transmitting such energy, to the same extent as if the outer continental shelf were an area of exclusive Federal jurisdiction located within a state.

CBP's intended change to its previously consistent application of OCSLA is beyond the scope and original intent of the extension of jurisdiction to the subsoil and seabed of the outer continental shelf. While the 1978 legislative amendments to section 4(a)(1) of the original OCS Act of 1953 substituted "installations and devices permanently or temporarily attached to the seabed" for the prior term "fixed structures" for purposes of OCSLA jurisdiction, the conference committee report made it very clear that:

"The intent of the managers in amending section 4(a) of the 1953 OCS Act is technical and perfecting and is meant to restate and clarify and not change existing law".

Furthermore, the legislative history of this amendment actually includes a statement of the reporting House's committee's intent:

"It is clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development or production purposes."

Additional clarity on this intent is provided in House Conference Report No. 95-1474 (Aug 10, 1978), which states that for the purposes of the coastwise laws, the term "installations and other devices" in the OCSLA may be limited to something to which merchandise or passengers can be transported and on which they can be unladen. Thus, Congress had in mind attachments to the seabed that are similar to fixed structures (e.g., platforms, spars, manifolds, wells etc.) when it enacted the 1978 amendment. This principle is also supported in case law. In ***Offshore Logistics, Inc. v. Tallentire***, 477 U.S. 207 (1986), part of the rationale for the outcome was that:

"The intent behind OCSLA was to treat the artificial structures covered by the Act as upland islands or as federal enclaves within a landlocked State, and not as vessels, for purposes of defining the applicable law, because maritime law was deemed inapposite to these fixed structures."

OCSLA is a statute authored for the narrow purpose of managing ocean oil and gas rights and regulating construction for mineral resource cultivation. The mere statement that Federal Law, including the Jones Act, is extended to the OCS obscures the fact that the term "subsoil and seabed" of the OCS does not exist in "splendid isolation." Rather, Federal Law, for the purpose of the Jones Act, extends only to those locations on the subsoil and seabed where structures or other devices are permanently or temporarily attached to the seabed of the OCS and their presence on the OCS is also to explore for, develop, or produce resources from the OCS. The Congressional intent as to the limited scope of the phrase "subsoil and seabed" is not only clear from the plain language of the statute but is reinforced by the Legislative history as well.

Having addressed the very important matter of the intent of the 1978 amendment, we must next ask the essential question that other than the 1978 amendment, what are the other amendments to which CBP alludes in its General Notice that would give justification for the reversal or modification of the cited rulings and any substantially similar transactions? We are not aware that any such amendments have been made. Indeed, in terms of the development of OCSLA, there is a much stronger argument to be made that OCSLA has not developed as technology and operations offshore have advanced, and accordingly, it provides a weak and often confusing legislative foundation for the offshore oil and gas industry that raises more questions than it answers. In H.R. Rep No. 304, the Committee on Natural Resources confirms in their analysis that there is no doubt that under the OCSLA, the laws of the United States apply to offshore oil and gas platforms and mobile drilling units. The Committee, however, goes on to state:

"The Committee on Natural Resources has determined legislation is needed to further clarify the application of OCSLA to all offshore energy development to eliminate uncertainty and to further clarify that the existing laws governing energy development on the OCS must be applied fully and fairly."

CBP has an obligation to provide substantive evidence of the amendments to which it alludes in its notice, and explain the impact of such changes in law before meaningful comment can be provided

by industry. There is no cohesive argument set forth in the General Notice by CBP that would appear to support CBP's assertion that amendments to OCSLA give cause to the need for revocation or modification for existing rulings.

The legislative intent of the 1978 amendment to OCSLA is very clear, and CBP's interpretation of OCSLA over the last four decades has until recently remained consistent in its approach and interpretation of OCSLA. CBP has appropriately adapted rulings to reflect new developments in a rapidly and continuously developing technological field, and it must continue with this practice in order to secure the technological future of oil and gas development on the OCS. In its attempt to change this long-held rationale, CBP now oversteps the original legislative intention of the extension of OCSLA. By law and regulation, CBP is responsible for enforcing U.S. cabotage laws and providing consistent guidelines to industry. CBP has no jurisdiction to change law or change how the law is applied. If CBP is indeed asserting that there are enforcement issues caused by or arising from how OCSLA is currently written today, then this must surely be a legislative issue which must be deferred to the legislative branch of the government, a process that very clearly requires more than a short comment period premised on a General Notice lacking significant information.

6. THE ADMINISTRATIVE PROCEDURES ACT PRECLUDES ANY ATTEMPT TO CIRCUMVENT THE RULEMAKING REQUIREMENTS OF THAT STATUTE

CBP's publication of the General Notice in the Customs Bulletin and subsequent 90 days to comment is both arbitrary and capricious, and it is in contravention of the rulemaking notification and comment requirements of the Administrative Procedures Act ("APA"), 5 U.S.C. § 553. The identical situation occurred in 2009, where CBP acknowledged that substantial implications indeed existed. It is therefore inconceivable that CBP should believe that this 2017 General Notice would not raise the same substantive procedural issues. CBP seems once again to be proceeding without regard to its obligations under the APA.

The APA describes a particular rulemaking process with which agencies are required to comply whereby the agency must give a notice of a proposed modification by publication in the Federal Register. The publication of a General Notice by CBP in the Customs Bulletin to modify and/or revoke rulings that would essentially overturn more than 40 years of policy and precedent in the Customs Bulletin clearly fails to meet the requirements of the Informal Rulemaking procedures (commonly referred to as "Notice and Comment" rulemaking), with which CBP is required to comply. In *United States Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983), a case involving the National Highway Traffic Safety Administration rescinding the requirement to install seatbelts or airbags in vehicles, the US Supreme Court held that when agencies issue sweeping new interpretations, they must "examine the relevant data and articulate a satisfactory explanation for its action." Indeed, in that case, the court found the actions of the National Highways Traffic Safety Administration to be both arbitrary and capricious.

Here, it appears that once again, as in 2009, CBP has issued this proposed modification without first gathering the fundamental information and balanced input from interested parties necessary to analyze objectively the position of the U.S. oil and gas industry today and produce an initial report. CBP has clearly published this notice without regard to the actual consequences and without

acknowledging the industry's significant expenditure and asset development based upon more than four decades of CBP policy.

Simply stated, CBP is required by law to comply with the APA rulemaking requirements and should therefore: (i) undertake a detailed review of the current U.S. offshore oil and gas industry, (ii) adequately analyze the potential consequences of the proposal made under the General Notice, especially given the far-reaching negative impact it poses to the industry today, and (iii) republish its proposed modification with greater clarity as to intent and scope in the Federal Register.

Through its failure to follow legislative process and its attempt to accomplish changes by circumventing the rulemaking process, CBP has abused its obligations under the both the APA and supporting case law to provide an informed, objective, and clear process for rulemaking. CBP is signaling its predisposition to a politically-pursued result that is not in the best interests of the offshore oil and gas industry or the American public as a whole. CBP's actions in seeking to abandon years of precedent and policy not only threaten the integrity of its ruling functions, but more fundamentally, they run afoul of the APA to the detriment of the American public.

7. THE JANUARY 20, 2017 REGULATORY FREEZE PENDING REVIEW MEMORANDUM APPLIES TO THE 2017 CBP GENERAL NOTICE

On 20 January 2017, the White House issued a memorandum for the Heads of Executive Departments and Agencies at the direction of the President entitled "Regulatory Freeze Pending Review." The memorandum instructs agencies to hold off sending new regulations to the Office of Management and Budget (OMB) and to postpone, for at least 60 days, all regulations that have been published, but not yet taken effect. The memorandum, amongst other actions, requires that "regulations that raise substantial questions of law or policy" should be notified to OMB to take appropriate action.

Without question, the General Notice raises substantial questions of both law and policy and involves interpretation of existing statutes and regulations. CBP should therefore withdraw the General Notice pending review by the new administration.

8. ECONOMIC CONSIDERATIONS AND IMPACT

While CBP has indicated that it will only consider legal arguments against the General Notice, it is impossible to ignore the economic impact that this shift in CBP policy will bring to bear on the U.S. economy. We refer to the Calash study referenced in the IMCA comments submission and prepared on behalf of API, which details the economic impacts that could result if CBP enforces the General Notice.

In terms of the impact on offshore oil and gas operations, sweeping and rapid changes to industry practice could cause potential long-term damage, forcing many companies to turn away from their operations in the U.S. Indeed, if it is CBP's intention to enforce the ruling modifications within 60 days of the closure of the comment period, with no transition period, then the consequences for oil and gas production in the U.S. are potentially catastrophic.

While it can be argued that there has been an increase in the number of coastwise vessels available for use on offshore related projects, it is very clear from the API Fleet Analysis Study (provided as part of the IMCA comments) that these new vessels are not equivalent in terms of technology and capability to the non-coastwise qualified vessels operating on the OCS today. The coastwise fleet remains limited in terms of the types of operations and working water depths that they are to undertake, and in general, they remain at a notably lower specification than their non-coastwise counterparts. If the ultra-deepwater non-coastwise vessels are no longer able to operate, then deepwater development may have to be suspended or cease altogether due to the unavailability of coastwise tonnage qualified and capable of performing the scopes.

Jobs are of course another potential casualty of this proposed change. It has been suggested by OMSA that the enforcement of the General Notice will create over 3,200 new jobs. This estimate is radically different from the comprehensive net data analysis in the Calash report (provided by API), which estimates that nearly 30,000 industry supported jobs would be lost in the first year alone -- as a consequence of non-coastwise vessel operating company's pulling their operations from the U.S. because they are unable to operate within the narrow parameter that CBP intends to define. We must not forget that many of the potentially impacted companies currently provide tens of thousands of jobs for American workers, both onshore and offshore. The reality is that this action will not add new jobs; it will, at best, simply replace one for one, i.e., one American for another American, not one foreign worker for one American worker. Indeed, when you look at the even wider picture and the size of the companies who may be forced to close their operations and the scale of those operations and take into account all of the jobs supported in the subcontracting process, the U.S. will actually lose many, many jobs. The report goes on to acknowledge that as many as 125,000 jobs could be lost by 2030 as a result of this action.

Add to this the hundreds of thousands of jobs lost since the oil price collapsed two years ago and the picture becomes even worse. These jobs not lost because of foreign competition, but lost because of disruption in the market. In Texas alone, 99,000 direct and indirect jobs have been lost. The report issued by Grave & Co in May of last year put the number of U.S. losses at 152,015 (43.2% of the global total). This report issued in February of this year shows that out of the 440,000 layoffs, approx. 40% are in the U.S. (that's 178,466 jobs). Sweeping and rapid changes to industry practice for the offshore oil and gas industry in a downturn could result in further long term damage to the state of the industry, including job losses and loss of industry expertise that will take decades to replace.

9. US TREATY OBLIGATIONS/TRADE AGREEMENT CONFLICTS

CBP's proposed modification would most likely violate U.S. commitments under the World Trade Organization ("WTO") Agreement and Free Trade Agreements ("FTA's"), which the United States has executed with 15 other countries.

The U.S. Senate ratified the WTO's Uruguay Round of the General Agreement on Tariffs and Trade of 1994 ("GATT 1994") on December 1, 1994; the Jones Act is directly contrary to GATT 1994. One very important element of GATT 1994 is National Treatment (NT), as articulated in GATT Article III. The NT requirement ensures that WTO members will not afford foreign companies less favorable treatment than it accords its own domestic companies. While the U.S. does have an exemption in

paragraph 3 of GATT 1994 for U.S. maritime legislation that preceded the WTO and GATT (i.e. the Jones Act), the exemption is not absolute. Under the Jones Act exemption, the U.S. may not introduce legislation or regulations that decrease its conformity with GATT 1994. Thus, the Jones Act exemption effectively freezes U.S. protectionist measures levels at 1994 levels. It is very clear that CBP's proposed change in its treatment of "vessel equipment" under the General Notice would significantly alter the interpretation of the Jones Act that has been consistently applied to the operations of non-coastwise vessels for more than 40 years. The General Notice clearly seeks to increase protectionism, and as a consequence, it decreases conformity with GATT 1994, putting the U.S. in jeopardy of breaching its WTO commitments. Indeed, the General Notice could give rise to retaliation abroad in the Exclusive Economic Zones of other WTO members, particularly in oil and gas producing countries where U.S. companies are active. As recently as 1999, a large number of member delegations at the WTO General Council took issue with the U.S. position on the Jones Act, calling for substantive justification of the Jones Act restrictions on economic or national security grounds: Further attempts to increase the level of protectionism could certainly prompt a fresh round of complaints from WTO members.

Currently, many impacted Oil and Gas related businesses are locked into contracts to utilize non-coastwise qualified vessels in offshore developments; the CBP General Notice proposal, if pushed through, will render performance of these contracts impossible. These contracts have been formed in reliance on CBP rulings, not only those rulings that have been requested and issued specifically to a company but also the vast library of rulings which are public record under the CROSS system. What is CBP suggesting should the fate of these contracts that were entered into based upon reliance upon CBP's consistent and published treatment of 'vessel equipment' over more than 40 years. Clearly, this short comment period is not sufficient time within which to impose a reversal on policy, and CBP does not in its proposal provide a clear path forward for industry if CBP is to enforce its proposed modification and revocations. CBP and industry must be given sufficient time in which to understand all of the implications and fairly address all of the ramifications before any changes are made.

CONCLUSION

In the final analysis, CBP's General Notice provides no substantive justification for the reversal of more than 40 years of the treatment of "vessel equipment" under the Jones Act, a treatment that has been founded, up until now, upon logical principles. CBP rulings provide the offshore industry with a transparent means of ensuring compliance with the Jones Act and the industry has been diligent and consistent in using the process to revoke decades of precedent that the industry has acted in reliance upon for decades is both hasty and reckless, and particularly ill-timed given the current market down-turn.

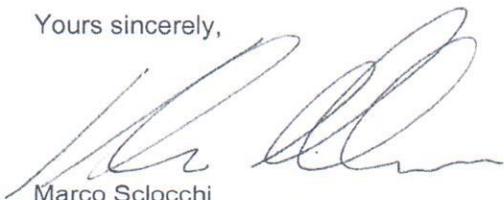
In its application of the Jones Act to the activities of non-coastwise vessels, CBP must ensure that restrictions imposed are solely for the purpose of barring the transport of merchandise and that they not be used to try to pare out a politically-pursued definition of operations and activities of vessels engaged in oil and gas development and production.

Based upon the analysis provided in our comments and the analysis provided in others' comments, we respectfully ask CBP to reconsider its position as set forth in the General Notice, and we ask CBP to take the following action in respect to any final decision rendered:

- Immediately retract the proposal under the General Notice and uphold the 1976 Treasury Decision and the treatment of "vessel equipment" therein.
- If CBP does not agree to a retraction of the proposed modification, then DOF respectfully requests that the initial comment period be extended to a period of 12 months to allow both CBP and industry reasonable time in which to undertake a thorough and balanced evaluation of the impact of the proposed change to the treatment of "vessel equipment" upon both day-to-day operations and the economy.
- Given that CBP has failed to provide any explanation or clarifications as to what the new criteria for "vessel equipment" is going to look like, CBP must provide a further General Notice explaining the intended new definition and its scope, and how items will be determined to meet or not meet the new test and allow a comment period by all interested parties on this proposal.

We appreciate the opportunity to provide these comments. If you have any questions or require further clarification in regard to the comments contained herein, then please do not hesitate to contact me or my colleague, Sarah Dwerryhouse, at the contact information listed above.

Yours sincerely,



Marco Sclocchi
EVP North America - DOF Subsea USA, Inc.



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

**COMMENTS OF
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Quintillion Subsea Operations, LLC, together with its affiliates (“Quintillion”) hereby files these comments to request that the U.S. Customs and Border Protection (“CBP”) clarify its proposed modification and revocation of ruling letters relating to the application of the Jones Act, 46 U.S.C. § 55102 (the “Jones Act”), to the transportation of certain merchandise and equipment between coastwise points (the “CBP Proposal”) in order to ensure that CBP’s proposed actions will not disturb well-established CBP precedents finding that submarine cable installation and maintenance activities do not involve both lading and unloading of merchandise at U.S. coastwise points.

Quintillion has nearly completed the first phase of the multi-phase construction of the Quintillion Subsea Cable System. Phase 1 of Quintillion’s Subsea Cable System includes the construction of a nearly 1,800-kilometer trunk line between Nome and Prudhoe Bay, Alaska. This trunk line has multiple branches, connecting six Alaskan Arctic communities to fiber optic cable for the first time in history. Quintillion plans to connect fiber to additional communities in Alaska during Phase 2 construction. Subsequent planned phases of Quintillion’s Subsea Cable System will be similarly ground-breaking: Phase 3 is planned to connect from Prudhoe Bay, Alaska through the Lower Northwest Passage, with branches into Northern Canada, to Europe. This will be the first fiber optic cable ever laid through the Lower Northwest Passage.

As a company based in the U.S., Quintillion has a significant interest in the continued vitality of the U.S. submarine cable system. In order to protect and grow this system, it is important that companies like Quintillion have a stable regulatory environment in which to operate. To this end, the CBP Proposal creates uncertainty around decades of rulings by the CBP finding that submarine cable installation and repair activities are not coastwise transport of merchandise subject to the Jones Act. This uncertainty not only threatens the future construction and maintenance of submarine cables in U.S. waters, which is integral to U.S. national and economic security, but also will drive manufacturing, marine maintenance, cable depot and other related jobs out of the U.S.

Given the serious risks generated by the CBP Proposal, Quintillion requests that the CBP follow the recommendations set forth in the comments submitted by the North American Submarine Cable Association (“NASCA”). Quintillion supports NASCA’s comments and its recommendation that in any final rule the CBP clarify that it does not intend to revoke or revise its long-standing line of rulings holding that submarine cable laying and repair operations do not constitute coastwise trade under the Jones Act.



Respectfully submitted this 18th day of April, 2017,

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