



April 18, 2017

U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
1300 Pennsylvania Ave., NW
Washington, DC 20229

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," Customs Bulletin Vol. 51, Jan 18, 2017, No. 3

Submitted to: cbppublicationresponse@cbp.dhs.gov

The American Wind Energy Association ("AWEA")¹ appreciates the opportunity to comment on the U.S. Customs and Border Protection's ("CBP") proposed modification and revocation of ruling letters related to the application of the Jones Act. AWEA has significant concerns with the recent proposal by CBP to change interpretations of the Jones Act, 46 U.S.C. 55102. The proposed changes could have catastrophic impacts on the nascent offshore wind energy industry, curtailing new development in the industry and, in turn, putting new large-scale wind energy and related infrastructure projects and associated jobs at risk.

On January 18, 2017, CBP proposed to reverse 40 years of precedent that allowed offshore energy companies to utilize foreign-flagged vessels for certain specialized equipment. The offshore wind energy industry is dependent on such equipment and vessels for construction

¹ AWEA is the national trade association representing the U.S. onshore and offshore wind industries, comprising hundreds of organizations including wind power project developers, manufacturers, utilities and researchers.



and development activities, as are many other industries, and the associated costs are factored into the project timeline and development pipeline. Prohibiting the use of specialty vessels that are foreign-flagged may alter the economics of these projects, causing costly delays or termination.

The U.S. offshore wind industry is poised to create thousands of jobs, enhance the nation's energy security and provide energy in close proximity to demand. However, it must be given an opportunity to mature. CBP's existing precedent to allow such uses did just that and helped facilitate the recent investment in the U.S. offshore wind energy industry. On the other hand, the imposition of a more restrictive policy in regards to the use of specialized equipment will put this investment at risk at a critical juncture in the industry's development.

The precedent set forth by CBP has contributed to attracting developers to pursue projects along the East Coast, West Coast, Gulf of Mexico, and Great Lakes. At present, there is still only one operating offshore wind project – a 35 MW project off the coast of Rhode Island. However, spurred by state energy policy, attractive economics, and the ability to serve major U.S. load centers without overland transmission, the offshore wind industry is poised for rapid growth. For example, the State of Maryland will conclude regulatory proceedings next month on authorization of a wind farm of up to 250 MW. In addition, the states of New York and Massachusetts have committed to 2.4 GW and 1.6 GW of offshore wind power, respectively, with the first competitive solicitations to be held in a matter of months.

Recent auctions conducted by the U.S. Bureau of Ocean Energy Management for wind energy areas on the Outer Continental Shelf have also fetched record bids, indicative of the significant interest of global energy companies in the potential of the U.S. offshore wind market. This is not surprising as the U.S. Department of Energy recently found that offshore wind



capacity could provide 22 gigawatts of energy to the U.S. by 2030 – 20 percent of the nation's electricity.

The investment of billions of dollars in a domestic wind industry will have ripple effects throughout the U.S. economy, generating hundreds of thousands of highly-skilled jobs in construction, manufacturing and operations. Moreover, the states' commitment to a long-term, sustainable market for offshore wind is spurring the redevelopment of major coastal infrastructure. For instance, in New Bedford, Massachusetts, offshore wind development has spurred investment in port infrastructure.

As it stands, there are no Jones Act compliant vessels that would be able to install the extremely long and heavy export transmission cable required for offshore wind farms.² Perhaps most relevant to the issue before the CBP, this market demand for offshore wind has reached the critical mass necessary to start supporting the investment in U.S.-flagged specialty vessels necessary to carry out offshore construction at scale. Ironically, this investment will likely wither if the CBP's proposed interpretation is adopted, as the growth of the U.S. wind industry would be impeded without the use of foreign-flagged vessels in the near term.³ In short, given the current dearth of U.S.-flagged vessels fit for the use in the development of offshore wind,

² The length of an offshore wind farm's submarine export cable could range from ten to twenty miles in length with no breaks. Such a cable would require a cable carousel that would have to be able to handle submarine transmission cable weights as high as 7,000 tons. The exorbitant cost of construction of a ship capable of handling this job (which could cost as much as \$200 million dollars) would make it economically infeasible for a wind developer or other offshore energy producer to finance such ships themselves. Ship construction companies would also be unlikely to voluntarily undertake the construction of such a ship without financial assurance from a vast number of companies as to future use, which may not be possible this far out from the potential construction of such a ship. Modifying existing barges for use on this specific task could cost as much as \$100 million dollars and thus would have similar hurdles when trying to get even one ship that could be utilized by the offshore energy industry.

³ We also note that the fact that a specific vessel is not a US flagship does not mean that the vessel does not hire and train US workers. It is the continued expectation of offshore wind developers to utilize US workers as members of the crew of any vessel utilized during the construction of an offshore wind facility.



fundamentally altering the interpretation of the Jones Act would put in jeopardy the development of such vessels that could ultimately replace foreign-flagged vessels.

AWEA also thinks it is important to point out that this proposed modification to the interpretation of the Jones Act is in direct conflict with the President's March 28, 2017, Executive Order entitled "Promoting Energy Independence and Economic Growth" ("Energy Independence Order"). The Energy Independence Order states that "[i]t is in the national interest to . . . avoid regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." The Energy Independence Order further states that the policy of the United States includes suspension, revision, or rescission of regulatory actions "that unduly burden the development of domestic energy resources." As such, the proposed action by CBP is in direct conflict with this Presidential directive. CBP's proposed action would cause delay and increase the cost related to the development of domestic offshore wind industry, delaying domestic energy production, constraining domestic economic growth, and preventing domestic jobs from being created; this is the exact impact that the Energy Independence Order directs agencies to avoid.

In summary, AWEA encourages CBP to withdraw its proposal due to the significant negative impacts it would have on the nascent offshore wind energy industry, as well as other offshore energy development, putting at risk new jobs, new economic growth and new energy development. AWEA appreciates your consideration of these comments.

Sincerely,

Nancy Sopko
Director, Offshore Wind & Fed.
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Thomas A. Allegretti
President & CEO

April 18, 2017

U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

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 Sir or Madam:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO members transport approximately 80 percent of the barge tonnage cargo and operate two-thirds of the towing vessel horsepower in this critical industry segment, moving goods essential to the American economy on the inland rivers, the Atlantic, Pacific and Gulf coasts, and the Great Lakes. Tugboats also provide essential services, including shipdocking, tanker escort and bunkering, in ports and harbors around the country. AWO companies are American-owned, and operate American-built and crewed vessels along coastwise routes.

On behalf of our member companies, thank you for the opportunity to comment on the U.S. Customs and Border Protection's (CBP) proposed modification and revocation of certain ruling letters relating to the application of the Jones Act to the transportation of certain merchandise and equipment between coastwise points. AWO fully supports CBP's proposal to modify and revoke these ruling letters, which are contrary to the spirit and letter of the Jones Act. CBP's action would ensure consistent, accurate interpretation and enforcement of U.S. coastwise laws, as well as ensure that American-built, crewed and owned vessels are not unfairly disadvantaged through the use of foreign-flag vessels that are not required to meet U.S. labor, environmental and other standards.

The Definition of Vessel Equipment

CBP's proposed action properly focuses on modifying 1976 ruling letter HQ 101925, published in Treasury Decisions (T.D.) 78-387 (Oct. 7, 1976). Since its publication, the 1976 ruling letter has been the basis for confusion and misinterpretation of the clear principles established by Congress regarding transportation of merchandise on coastwise routes. The proposed action remedies the problematic aspects of the 1976 ruling by clarifying the ruling's reasoning and holdings to ensure consistency with the Congressional intent of coastwise laws. The proposed action also correctly revokes subsequent rulings to the extent that their reasoning relies on the 1976 ruling letter.

The 1976 ruling letter attempted to clarify the application of coastwise laws in the context of the activities of a pipeline repair vessel operating on the outer continental shelf (OCS). The letter concluded, among other things, that certain pipelaying materials carried or used by a pipelaying or pipeline repair vessel did not constitute merchandise, therefore the transportation of such materials by a foreign-flag vessel was not prohibited by coastwise laws.

Under the Jones Act, "a vessel may not provide any part of the transportation of merchandise by water between points in the United States" unless it is American-built and crewed and owned by U.S. citizens.¹ The definition of merchandise is necessarily broad,² and was later expanded to include government-owned cargo and valueless materials.³ However, vessel equipment has long been considered an exception to the expansive understanding of merchandise.

Vessel equipment is well defined in a 1939 ruling letter, published in T.D. 49815(4) (Feb. 16, 1939), as "portable articles necessary and appropriate for navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board ... [for example] rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts." The 1976 ruling letter added a new dimension to this straightforward explanation by introducing the concept of vessel equipment as materials and tools "necessary for the accomplishment of the mission of the vessel" which are transported "incidental to the vessel's operations."

It is important to note that the 1976 ruling letter made clear that if the vessel's operation was not pipelaying, but rather transportation of pipe to a coastwise point, the pipelaying materials would be classified not as vessel equipment but as merchandise, and coastwise laws would require carriage on a U.S.-flag vessel. Regrettably, subsequent ruling letters applied the concept of "vessel equipment" as equipment carried in furtherance of the "mission of the vessel" outside of the limited context of the pipelaying operation involved in the 1976 ruling letter. The effective outcome was that U.S. coastwise laws could be avoided by describing the mission of a foreign-flag vessel to include the utilization or installation of the merchandise it carried from a U.S. port to a coastwise point on the OCS. For instance, HQ H046137 (Feb. 20, 2009) classified "Christmas trees" (integrated assemblies of valves, spools and gauges) for oil and gas wellheads as vessel equipment that could lawfully be carried on a foreign-flag vessel, because they were fundamental to the vessel's mission to transport and install wellhead

¹ 46 U.S.C. § 55102.

² Merchandise is defined as "goods, wares, and chattels of every description." 19 U.S.C. § 1401(c).

³ See, Outer Continental Shelf Lands Act, codified at 43 U.S.C. § 1331.

equipment. This interpretation is outside of a reasonable understanding of coastwise laws, and plainly conflicts with the Jones Act's intent to broadly reserve transportation of merchandise between coastwise points for coastwise-qualified U.S.-flag vessels.

AWO strongly supports CBP's action to correct the misinterpretation of vessel equipment that began with the 1976 ruling, and revoke those subsequent ruling letters decided under the same flawed reasoning. CBP's action accurately underscores that the 1939 ruling letter's definition of vessel equipment should control.

Public Notice and Comment

AWO supports CBP's use of the well-established statutory process to provide public notice of, and opportunity to, comment on the proposed action to modify and revoke its interpretive rulings. As specified in the general notice, existing statute and regulation⁴ lay out public notice and comment procedures for modification and revocation of interpretive rulings and decisions. Those procedures require publication in the Customs Bulletin, and at least a thirty-day comment period for interested parties.

In this case, CBP has both satisfied its obligation to notify the public and interested parties, and provide those parties an opportunity to comment. CBP published notice of the proposed modification and revocation action on January 18, 2017, in *Customs Bulletin and Decisions*, Vol. 51, No. 3, with a 30-day comment period, ending on February 17, 2017. CBP later extended the comment period to April 18, 2017, a full 90 days after the initial notice. Additionally, industry stakeholders have been aware that CBP was considering changes to its ruling letters and underlying interpretation of coastwise laws since at least 2009, when CBP proposed a similar action.⁵ The 2009 proposed action was withdrawn, but CBP stated that new notice related to T.D. 78-387 and T.D. 49815(4) would be forthcoming.

Economic Impacts

Lack of proper enforcement of the U.S. coastwise laws can have significant adverse economic impacts on the U.S.-flag coastwise-qualified fleet. In this instance, decades of flawed interpretative rulings have allowed foreign-flag vessels, which do not have to abide by many U.S. regulatory requirements, to almost completely occupy the subsea construction and dive support vessel market. If implemented, CBP's proposed revocation action will buoy the American offshore marine service industry by requiring, consistent with existing law, the use of Jones Act-qualified vessels in the coastwise carriage of equipment, supplies or other articles that are not needed to navigate, operate or maintain the vessel. In the Gulf of Mexico, the proposed action has the potential to deliver thousands of family-wage American jobs and generate substantial regional economic growth. The U.S.-flag offshore vessel fleet is well prepared to meet the demands of the OCS industry. AWO understands that since 2009, American owners have invested over \$2 billion in the construction and retrofitting of Jones Act-qualified vessels that can perform subsea OCS operations.

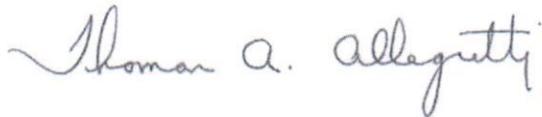
⁴ See, Tariff Act of 1930, codified at 19 U.S.C. 1625(c); 19 C.F.R. §177.12(c).

⁵ See, 43 Cust. B. & Dec. No. 28, p. 54 (July 17, 2009).

Conclusion

Thank you for the opportunity to comment on the proposed modification and revocation of these ruling letters. AWO commends CBP for clarifying its interpretation of the Jones Act and revoking prior rulings inconsistent with the law. Accurate and consistent application of coastwise laws is crucial in furthering American economic, national and homeland security. AWO encourages CBP to expeditiously implement the action proposed in the notice.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Allegretti". The signature is written in black ink and is positioned above the typed name.

Thomas A. Allegretti
President & CEO



OTTO CANDIES L.L.C.

MARINE TRANSPORTATION AND TOWING

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April 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 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.

Otto Candies, LLC is based in Des Allemands, LA. We own and operate 21 US flagged, Jones Act qualified vessels and employ over 280 mariners and land based personnel. The undersigned also serves as a Director of the Offshore Marine Service Association (OMSA).

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 were flawed. 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 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.



OTTO CANDIES
L.L.C.

MARINE TRANSPORTATION AND TOWING

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. 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 and other companies have 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 which 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,

Otto Candies III
Vice Chairman
OTTO CANDIES, LLC



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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 Marine Contractors, Inc. based in Cut Off, Louisiana to operate for 20 years. Currently, our company operates 9 vessels and employs over 60 personnel. Specifically, our company is engaged in the liftboat sector of the offshore market.

A liftboat is a self-propelled self-elevating vessel that provides 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 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

¹ 46 U.S.C. § 50101

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 Marine Contractors, Inc. strongly supports the 2017 Notice and urges CBP to implement this notice in an expedited manner.

While Offshore Marine Contractors, Inc. 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

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

³ 43 U.S.C. §1331 et. seq.

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, 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 Marine Contractors, Inc. requests that CBP issue a letter ruling quickly confirming (or modify or revoke any letter rulings that state

⁴ 43 U.S.C. §1333(a)(1)

⁵ See, 30 C.F.R. 250.1700 *et. seq*

⁶ *Id.*

⁷ 46 U.S.C. 55102(a).

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,

A handwritten signature in black ink, appearing to read "Mitch Orgeron", with a long horizontal flourish extending to the right.

Mitch A. Orgeron
Director, Human Resources, Health, Safety, & Environment



Harvey Gulf International Marine

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April 17, 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 Director Vereb:

Harvey Gulf International Marine, LLC ("HGIM") is a vessel operator that was founded in 1955 and is based in New Orleans Louisiana. HGIM operates a fleet of 58 U.S. Flagged, Coastwise and Registry endorsed vessels and has two additional vessels under construction. HGIM predominantly supports deep-water operations in the U.S. Gulf of Mexico and operates crew boats, large Offshore Supply Vessels and Multi-Purpose, Light Construction Support Vessels (MPSV's).

Three of Harvey Gulf's vessels are MPSV's including the M/V HARVEY SUBSEA, which is equipped with a 250-ton heave-compensated crane. HGIM is also expecting delivery of the HARVEY BLUE-SEA this coming July (2017), which will be identical to the HARVEY SUBSEA.

Harvey Gulf is one of the many companies that has been seriously hurt for many years from non-enforcement of the Jones Act for certain activities due to letter rulings that Customs and Border Protection (CBP) has recognized on multiple occasions are erroneous. Therefore, 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.

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 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 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. 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 which 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.

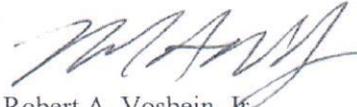
While our company is proud to be part of this investment. We are also proud of the other benefits we bring to our nation. One of the chief benefits we provide is an improvement to the safety of our transportation industry. As a member of the Offshore Marine Service Association (“OMSA”), I am pleased 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.

Very Truly Yours,

Harvey Gulf International Marine, LLC

A handwritten signature in black ink, appearing to read 'R. Vosbein, Jr.', written in a cursive style.

Robert A. Vosbein, Jr.
Exec. V.P. & General Counsel

D.C. CAPITAL ADVISORS, LIMITED

800 THIRD AVENUE
40TH FLOOR
NEW YORK, NEW YORK 10022

(212) 446-9330 FAX (212) 750-9264

April 18, 2017

Via Electronic Mail: cbppublicationresponse@cbp.dhs.gov
Mr. Glen E. Vereb
Director, Border Security and Trade Compliance Division
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection
90 K Street, NE
Washington, DC 20229

Dear Director Vereb:

D.C. Capital Advisors submits these comments in response to the Proposed Modification and Revocation of Ruling Letters Relating to the Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points (Proposed Modification), published on January 18, 2017.¹ We commend Customs and Border Protection (CBP) for taking this needed and important step to modify HQ 101925 (October 7, 1976) (formerly referred to as Treasury Decision (T.D.) 78-387) and to restore the definition of what constitutes vessel "equipment" as it relates to the transportation of merchandise under 46 U.S.C. §55102 (commonly referred to as the Jones Act).

As a U.S. institutional investor, we rely first and foremost on the rule of law to protect our investments. The Jones Act reserves to U.S. citizens the privilege of engaging in the United States coastwise trade. A long-time investor in companies that own and operate Jones Act vessels, we have taken pride in ensuring that our fund qualifies as a U.S. citizen so that it can invest in these kinds of companies. By creating exceptions to the Jones Act that were not authorized by Congress, CBP undermines the rule of law, and harms our investments and the attractiveness of investing in America.

We agree fully with CBP that the Jones Act does not contain an exception saying that "if the activity the vessel is engaged in does not constitute coastwise trade then the transportation of the merchandise in order for the vessel to engage in such activity does not violate [the Jones Act]."² Similarly, we believe that CBP has concluded correctly in the Proposed Modification that items

¹ Customs Bulletin and Decisions, Vol. 51, No. 3, January 18, 2017, pages 1-19.

² Proposed Modification at p. 15.

such as those listed below, which are installed on the sea floor or on an offshore facility, are merchandise and not "vessel equipment". We know the common sense difference between a ship's equipment and its cargo. Clearly the items listed below are merchandise carried by ships as cargo and are not part of a ship's equipment.

Items Held to be Vessel Equipment

Telecommunications Cable installed on seafloor HQ 105644, HQ 110402, HQ 114305 HQ 115333	Multi-well Template at Production Facility HQ 111889	Marine Riser at Production Facility HQ 111889	Cement, chemicals and other materials placed into well HQ 112218	Repair Pipe, HQ 004242
Wellheads, HQ 004242	Subsea Umbilical, HQ 113841, HQ 114435, HQ 115487	Subsea Pipeline HQ 114435, HQ 004242	Subsea Methanol line 115487	Wellhead Repair Materials, HQ 004242
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Platform stairways, HQ 115938	Platform grating, HQ 115938	Platform handrails, HQ 115938	Platform boat landings, HQ 115938	

CBP has initiated this process, which follows 19 USC § 1625(c), the mechanism Congress requires CBP to follow when it revokes or modifies its responses to private letters. We recognize that the foreign interests that oppose this action say that CBP must follow an APA "rule making" process to revoke its self-created statutory exceptions. By so doing they hope to delay action further and preserve for themselves illegal Jones Act exceptions. However, CBP is

correct in following the 19 USC § 1625(c) process that Congress has mandated, and none other. Rule-making procedures were not followed by CBP when it responded to private correspondence creating these exceptions and it is contrary to law and common sense to require such a process now in order to remove unauthorized exceptions that continue to hurt companies that we have invested in. This action by CBP is the first step it must take to ensure that the Jones Act is followed and enforced as written. We urge CBP to promptly adopt its Proposed Modification and to ensure that future letter rulings and enforcement actions are in accord with the views expressed in the Proposed Modification.

Very truly yours,

A handwritten signature in cursive script that reads "Douglas L. Dethy". The signature is written in dark ink and is positioned above the printed name and title.

Douglas L. Dethy
President



April 18, 2017

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

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,” *Customs Bulletin and Decisions*, Vol. 51. No. 3, January 18 2017**

Submitted Via email: cbppublicationresponse@cbp.dhs.gov

To whom it may concern:

On January 18, 2017, U.S. Customs and Border Protection (CBP) issued a 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 and Decisions*, Vol. 51. No. 3, January 18 2017 (the “2017 Notice”).

Anadarko Petroleum Corporation (APC) appreciates the opportunity to provide comments to the 2017 Notice. APC is one of the largest oil and natural gas producers in the U.S. Gulf of Mexico, holding interests in hundreds of deepwater leases and operating ten active platforms in the U.S. Gulf of Mexico. As such, we are very concerned with this proposed action and the damaging consequences to the U.S. Gulf of Mexico oil and gas industry.

APC hereby adopts and incorporates the joint comments submitted by the American Petroleum Institute (API), the Association of Diving Contractors International (ADCI), the Independent Petroleum Association of America (IPAA), the International Association of Geophysical Contractors (IAGC), the International Marine Contractors Association (IMCA), the Louisiana Mid-Continent Oil and Gas Association (LMOGA), the Offshore Operators Committee (OOC), the Petroleum Equipment & Services Association (PESA), International Association of Drilling Contractors (IADC), and the U.S. Oil and Gas Association and all attachments, including IMCA’s vessel analysis and API’s economic impact analysis (collectively “Joint Trade Comments”).

The statutory purpose of the Jones Act is to promote a vibrant U.S. merchant marine, however the 2017 Notice will lead to the opposite result. The 2017 Notice is projected to substantially increase the cost of operations in the U.S. Gulf of Mexico and make many deep water operations impractical due, in large part, to the restriction on the use of qualified foreign-flag vessels in numerous situations where no U.S. coastwise-qualified vessel would be technically capable to do the work. The lack of availability of U.S. coastwise-qualified vessels (as detailed in the Joint Trade Comments) would result in a severely negative economic impact to the U.S. Gulf of Mexico oil and gas industry, with a particularly harsh impact on oil and gas industry related employment in the Gulf Coast states. The end result will be a strong disincentive to invest in U.S. Gulf of Mexico projects, which will result in fewer opportunities for U.S. coastwise-qualified vessels and harm to the U.S. merchant marine.

In 2009, CBP proposed substantially similar arbitrary and drastic changes to long standing interpretations of the Jones Act, before withdrawing this proposed action by correctly recognizing the procedural deficiencies in the action. The 2017 Notice is equally defective both procedurally and legally, in part because CBP mistakenly applied Section 625 of the Tariff Act of 1930 (19 U.S.C. § 1625) to effect these

proposed changes. Section 625's process is designed to address individual rulings rather than the type of massive regulatory and policy change proposed by the 2017 Notice. In 2009, CBP correctly determined that Section 625 was not the appropriate process for reversing decades of well-established administrative precedent on which the offshore oil and natural gas industry had based its major investment decisions. APC strongly encourages CBP to apply this same determination, withdraw the 2017 Notice and allow for the appropriate process to consider its compliance with the law and fully evaluate its impacts.

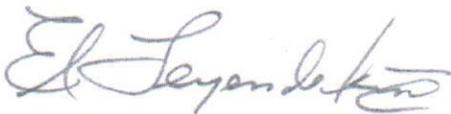
Withdrawal of this proposal is also warranted with the new administration's clearly stated need to evaluate ongoing regulatory actions issued at the end of the previous administration, especially actions like this one that could have significant effects. APC believes that the Presidential Memorandum on "Regulatory Freeze Pending Review", issued January 20, 2017; the Executive Order 13771 on "Reducing Regulation and Controlling Regulatory Costs" signed January 30, 2017; and the Executive Order 13783 on "Promoting Energy Independence and Economic Growth" signed March 28, 2017, require reconsideration of the 2017 Notice as an "agency statement of general applicability and future effect," which would require further input from the Office of Management and Budget (OMB), at a minimum, and potentially require CBP to eliminate two comparable regulations to proceed with the 2017 Notice and offset new costs associated with the 2017 Notice with cost reductions. The new leadership of the agency has had no opportunity to evaluate it and decide whether, or how, to proceed with such substantial changes. Given these considerations, CBP should withdraw the 2017 Notice and give new agency leadership an opportunity to weigh in on such a significant action.

Together with the aforementioned significant and negative impacts, the 2017 Notice creates a high degree of uncertainty for the offshore industry. In addition to the 25 specified rulings, the 2017 Notice would revoke any other rulings "raising the subject issues," which would dismantle a body of regulatory guidance that is relied upon by companies throughout the industry for subsea construction and other activities. The 2017 Notice leaves the impact unclear how the specified rulings and certain other unspecified rulings will be affected. This acute regulatory uncertainty would have a serious and unfavorable impact on industry's investment in U.S. Gulf of Mexico operations.

For the foregoing reasons, APC believes that CBP should withdraw the 2017 Notice. If CBP continues to believe that changes are required, CBP should comply with well-established legal and administrative precedent and commence the appropriate regulatory process to ensure that all stakeholders have a meaningful opportunity to provide input on any proposed action such that the complete impact of any proposed action can be understood.

Thank you for your consideration of APC's comments on the 2017 Notice and we remain open and available to the opportunity to work in a collaborative solution that will benefit the U.S. Gulf of Mexico oil and gas industry as a whole.

Sincerely,



Ernest A. Leyendecker
Executive Vice President
International & Deepwater Exploration



Darrell E. Hollek
Executive Vice President
Operations

Rosewood Court
2101 Cedar Springs Rd., Suite 600
Dallas, Texas 75201



TEL. 214-880-8400
Fax. 214-880-7101
www.petrohunt.com

April 18, 2017

Via Electronic Mail: cbppublicationresponse@cbp.dhs.gov

Mr. Glen E. Vereb
Director, Border Security and Trade Compliance Division
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection
90 K Street, NE
Washington, DC 20229

Dear Director Vereb:

Petro-Hunt, LLC submits these comments in response to the Proposed Modification and Revocation of Ruling Letters Relating to the Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points (Proposed Modification), published on January 18, 2017.¹ We commend Customs and Border Protection (CBP) for taking this needed and important step to modify HQ 101925 (October 7, 1976) (formerly referred to as Treasury Decision (T.D.) 78-387) and to restore the definition of what constitutes vessel "equipment" as it relates to the transportation of merchandise under 46 U.S.C. §55102 (commonly referred to as the Jones Act).

As you know, the Jones Act reserves to U.S. citizens the privilege of engaging in the United States coastwise trade. As a U.S. citizen investor in Jones Act qualified ship owners, we count on the rule of law, first and foremost, to protect our investments. We take care and pride in ensuring that our fund qualifies as a U.S. citizen so that it can invest in Jones Act qualified companies. By creating exceptions to the Jones Act that were not authorized by Congress, CBP undermines the rule of law and harms our investments.

We agree fully with CBP that the Jones Act does not contain an exception saying that "if the activity the vessel is engaged in does not constitute coastwise trade then the transportation of the merchandise in order for the vessel to engage in such activity does not violate [the Jones Act]."² Similarly, we believe that CBP has correctly concluded in the Proposed Modification that items such as those listed below, which are installed on the sea floor or on an offshore facility are merchandise and not "vessel equipment". As investors in ship owners we know the common sense difference between a ship's equipment and its cargo. Clearly these items listed below are merchandise carried by ships as cargo and are not part of a ship's equipment.

¹ Customs Bulletin and Decisions, Vol. 51, No. 3, January 18, 2017, pages 1-19.

² Proposed Modification at p. 15.

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CBP has initiated this process, which follows 19 USC § 1625(c), the mechanism Congress requires CBP to follow when it revokes or modifies its responses to private letters. We recognize that the foreign interests that oppose this action say that CBP must follow an APA "rule making" process to revoke its self-created statutory exceptions. By so doing they hope to delay action further and preserve for themselves illegal Jones Act exceptions. However, CBP is correct in following the 19 USC § 1625(c) process that Congress has mandated, and none other. Rule-making procedures were not followed by CBP when it responded to private correspondence creating these exceptions and it is contrary to law and common sense to require

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Mr. Glen E. Vereb
Director, Border Security and Trade Compliance Division
Page 3

such a process now in order to remove unauthorized exceptions that continue to hurt companies that we have invested in. This action by CBP is the first step it must take to ensure that the Jones Act is followed and enforced as written. We appreciate the opportunity to comment on the proposed rules and we urge CBP to promptly adopt its Proposed Modification and to ensure that future letter rulings and enforcement actions are in accord with the views expressed in the Proposed Modification.

Best regards,

A handwritten signature in cursive script, appearing to read "B. W. Hunt".

Bruce W. Hunt
President

A small, simple handwritten mark or checkmark located in the bottom right corner of the page.

MCNICKLE, SASHA W

From: Kelly Kastens <kkastens@helixesg.com>
Sent: Tuesday, April 18, 2017 4:36 PM
To: CBP-PUBLICATION RESPONSE
Subject: CBP Proposal - Jones Act

Dear Senator Cruz,

I write today on behalf of all of the hard working Texans likely to be negatively impacted by the recent CBP Proposal to revoke numerous rulings related to the Jones Act. This revocation, if enacted, will severely impact my companies' ability to work in the US Oil and Gas market. The Louisiana congressional delegation, in coordination with the Offshore Marine Service Assn (OMSA), is pushing to eradicate all Foreign Flagged vessels from the Gulf of Mexico. This is not to the benefit of any but a few Louisiana boat owners hoping to capitalize on this protectionist law.

As my US Senator, I hope that you can stand up for this, and many other, Texas companies and citizens, to put a stop to this abuse of power."

Regards,

Kelly Kastens
Helix Canyon Offshore
Business Development
Cell: 281-773-2163

Sent from my iPhone

This e-mail may contain confidential and privileged material for the sole use of the intended recipient. Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply e-mail and delete all copies of this message.



April 18, 2017

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

Re: 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

Dear Secretary Kelly:

Safety is the top priority of Texas' oil and natural gas producers. Everything we do depends on the safety of our operations, our workforce and the communities around our operations. So when it becomes apparent that a proposed modification and revocation of ruling letters relating to the U.S. Customs and Border Protection's (CBP) application of the Jones Act may compromise the safety of our offshore operations in the Gulf of Mexico, we believe CBP's action necessitates an immediate time-out. We are therefore respectfully asking that the CBP withdraw this notice and replace it with a rulemaking process so that all potential impacts can be thoroughly examined and understood.

At a minimum, due consideration to safety and environmental protections should be paramount to CBP. Instead of considering these troubling consequences through a proper notice-and-comment rulemaking, CBP is irresponsibly fast tracking its proposal. This action occurred hurriedly in the final two days of the Obama Administration. The new Trump administration sought to pause such last-minute regulatory actions with a memorandum informing all department and agency heads to halt any new or pending regulations so that the new leadership in the administration can review them and understand their impacts. The Trump administration followed its instruction with an Executive order imposing further controls on the issuance of new regulations. CBP appears to be disregarding both of these directives.

CBP's action seeks to revoke rulings that the Texas oil and natural gas industry has relied on for more than 40 years as established precedent to safely and efficiently develop oil and natural gas resources from the Gulf of Mexico. CBP's re-interpretation does not appear to consider the immediate and potentially harmful impacts its proposal may have on existing and future offshore oil and natural gas development projects.

The following is a summary of the potential impacts beyond even the safety and environmental concerns:

- Push Texas oil and natural gas producers to pursue more efficient alternatives allowed by law, such as moving vessel equipment from locations outside the United States and fabricating components and platforms in Mexico and other foreign countries, resulting in lost jobs and business in the United States.
- Artificially constrain the supply of vessels that are available to provide repair, well-intervention, and other offshore support services needed to ensure safety and environmental protection. Some

April 18, 2017

Secretary John Kelly

Page 2

Re: U.S. Customs and Border Protection's January 18, 2017 Proposed Modification and Revocation

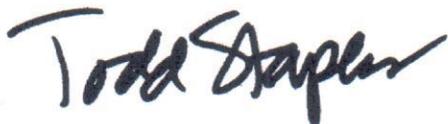
activities can only be undertaken using highly specialized, purpose-built vessels. There are no coastwise qualified vessels capable of replacing foreign flag vessels performing these more challenging tasks in the OCS.

- May force Texas oil and natural gas producers to shut down operations and terminate existing contracts or face civil penalties and seizure of equipment as a result of CBP enforcement actions -- resulting in the loss of jobs and hundreds of million dollars in royalty revenues.
- Give rise to years of regulatory uncertainty, as the parameters of what operations are prohibited are left vague, which would chill innovation and investment.

Texas is home to a strong oil and natural gas industry which is a significant contributor to our State's economy. Industry's success is based on putting safety first. From the boardroom to the rig floor, industry's commitment to safety reaches every corner of Texas oil and natural gas production and is central to everything we do. The Obama Administration's spontaneously-proposed revocation of these rulings present a number of technical and policy challenges that could compromise offshore safety and environmental protections. These are areas that urgently need to be discussed and weighed within a rulemaking process, which will fairly allow all stakeholders to engage and provide robust information to CBP before it embarks on a policy shift of this magnitude. The stakes are simply too high.

To that end, we urge CBP to withdraw this notice and replace it with a rulemaking process.

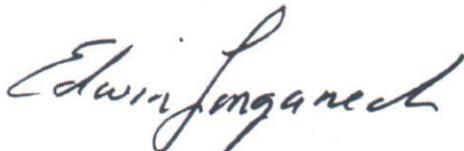
Sincerely,



Todd Staples
President
Texas Oil & Gas Association



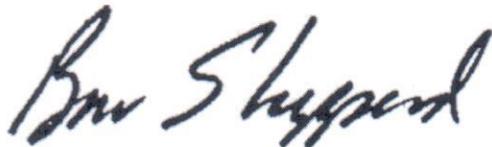
Thure Cannon
President
Texas Pipeline Association



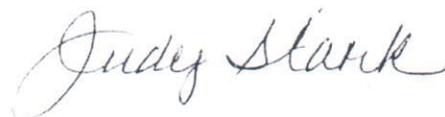
Ed Longanecker
President
Texas Independent Producers &
Royalty Owners Association



John Tintera
Executive Vice President
Texas Alliance of Energy Producers



Ben Shepperd
President
Permian Basin Petroleum Association



Judy Stark
Executive Vice President
Panhandle Producers & Royalty Owners
Association



April 18, 2017

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

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 Point," 51 *Customs Bulletin* 3 at 1 (Jan. 18, 2017)

Submitted by E-Mail to cbppublicationresponse@cbp.dhs.gov

Ladies and Gentlemen:

Statoil USA E & P Inc. ("Statoil"), on behalf of all Statoil entities who are leaseholders in the Outer Continental Shelf (OCS) respectfully submits the following comments on the proposed modification and revocation of established ruling letters relating to the Custom and Border Protection's (CBP) application of the Jones Act to the transportation of certain items on the Outer Continental Shelf.

Statoil is a global company with an annual production of nearly 2 million barrels of oil equivalent per day. We create value through safe and efficient operations, innovative solutions and technology. Our competitiveness is founded on our values-based performance culture, with a strong commitment to transparency, cooperation and continuous operational improvement.

The United States ("U.S.") is a core area in Statoil's portfolio and it represents our greatest capital commitment and production growth outside of the Norwegian Continental Shelf. We began building our upstream petroleum assets in the U.S. market in 2004, investing over \$30 billion in the last fifteen years creating robust positions in the Gulf of Mexico and onshore. We are partners in six producing fields in the Gulf of Mexico—Julia, Tahiti, Caesar Tonga, Jack, St. Malo and Heidelberg—which contribute more than 60,000 boe/day to the company's overall production. We are also a partner in some of the most exciting fields under development, including Stampede, Vito and Big Foot; Statoil is expected to nearly double its Gulf of Mexico production by 2020. Onshore, Statoil has significant positions in the Eagle Ford, Marcellus and Bakken plays with activities spanning six states and contributing more than 200,000 boe/day.

Overall we support about one thousand direct jobs in the U.S. and thousands more through a supply chain comprising more than 900 U.S. companies and an annual spend of more than \$1 billion last year.

U.S. Customs and Border Protection (CBP) has been down this path before in 2009¹ when it proposed substantially similar drastic and disruptive changes to Jones Act interpretations. The present Notice will result in no less harm and dislocation, is just as procedurally defective and suffers from old (such as misinterpreting the Jones Act) and new (presenting a facially inapposite reason for making a change) substantive legal deficiencies making it an arbitrary and capricious agency action. As in 2009, CBP should withdraw the 2017 Notice and reconsider its merits, effects and compliance with law.

The Jones Act has a statutory purpose – to promote a vibrant U.S. merchant marine – which CBP is obligated by law to follow. See 46 U.S.C. § 50101. The 2017 Notice does the opposite. The 2017 Notice is projected to increase costs to operations in the U.S. Gulf of Mexico substantially and make many deep water operations impractical because, among other things, it would restrict the use of qualified foreign-flag vessels in numerous situations where no U.S.-flag coastwise-qualified vessel would be able as a matter of physical characteristics to do the work. The end result will be a strong disincentive to invest in offshore projects which is likely to result in fewer opportunities for Jones Act vessels and harm the U.S. merchant marine.

According to a Calash economic report, the predicted impacts of this notice could include:

- Loss of nearly 30,000 industry supported jobs in 2017 with as many as 125,000 jobs lost by 2030. The Gulf of Mexico states will be the most impacted by these job losses;
- Decrease in U.S. oil and natural gas production by 23% from 2017-2030;
- Decrease in government revenue by \$1.9 billion per year from 2017-2030;
- Decrease of \$5.4 billion per year on Gulf of Mexico offshore oil and natural gas spending and;
- Cumulative lost GDP of \$91.5 billion from 2017-2030.

Therefore, given the significant potential impact and conflict between CBP's prior commitment to a rulemaking and the present Notice, CBP should, at a minimum, reset the process by withdrawing the Notice and resume its proposal through notice-and-comment rulemaking pursuant to the Administrative Procedure Act, the directives of Executive Order 12866, and the most recent regulatory reform orders.

Additionally, Statoil supports the joint Trade Association comments led by the American Petroleum Institute. A copy of these comments is attached.

¹ "Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points," 43 *Customs Bulletin* 28 at 54 (July 17, 2009) (the "2009 Notice").

Statoil appreciates the opportunity to provide these comments. If you have any questions or need clarification, please do not hesitate to contact Foster Wade at FWAD@Statoil.com or 713-485-2732.

Yours very truly,

A handwritten signature in cursive script that reads "Carri Lockhart" followed by a stylized monogram "FLW".

Carri Lockhart
Senior Vice President
Statoil - DPUSA

Attachment



April 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 Director 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 (the "Notice"). 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 and the method in which CBP is seeking revocation is the legally correct method for this endeavor.

Marine Interior Systems is based in *Covington, LA* with facilities in *Louisiana and Mississippi* and employs over *150* and we serve as a *service provider* to U.S. maritime companies working in the offshore energy market. Specifically, our company is engaged in outfitting accommodation quarters on ships.

The Jones Act was intended to support a vibrant U.S. maritime industry. By all accounts, the law works as intended. The Jones has created a robust domestic maritime industry and supply chain one that creates 500,000 jobs, \$100 billion in annual economic output, and \$29 billion annual in wages. In addition, the maritime industry provides \$10 billion in tax revenue to the federal government. Correctly applying and enforcing the Jones Act, will only amplify these benefits, resulting in more opportunities for companies like mine who depend on a strong U.S. maritime industry.

Additionally, we note that CBP is correct to revoke the letter rulings covered by the Notice via the process found at 19 U.S.C. 1625(c) ("Section 1625"). This process provides for a fair process while allowing revocation take place in an expedited fashion. The letter rulings were originally issued by CBP without any consideration of the economic harm they would cause to the domestic maritime community or businesses like ours. As a result, our industry has experienced decades of delayed shipbuilding in U.S. shipyards and lost employment of U.S. mariners.

As such, the consideration and comment that opponents of revocation have received under the current process, far exceeds absolute lack of due process provided when these letter rulings were issues. Thus,



we believe the current process to be more than fair. It is also worth noting that the notice, comment, consideration, final notice process being utilized for the Notice is being conducted after CBP has considered this issue for eight years.

Not only is the Section 1625 process fair, it is also 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 Section 1625. Specifically, under this statute, 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 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.

Considering the above information, CBP's Notice ensures that the law is followed as written, will promote the U.S. industrial base 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, our company strongly supports the Notice and urges CBP to implement this notice in an expedited manner.

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

Thank you for taking this corrective action.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Rodgers', written in a cursive style.

Adam Rodgers
Director of Business Development
Marine Interior Systems, LLC
127 Park Place, Covington, LA 70433

subsea 7

Subsea 7
17220 Katy Freeway
Houston, TX 77094
Tel: +1 713 430 1100

www.subsea7.com

April 18, 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 Subsea 7 (US) LLC ("Subsea 7") 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:

Subsea 7 is a Delaware company and one of the world's leading subsea engineering and construction companies servicing the oil and gas industry. Subsea 7's office is located in Houston, Texas, and employs nearly 200 U.S. citizens. Subsea 7 also operates a pipeline fabrication spoolbase in Port Isabel, Texas. The investment in the spoolbase, in excess of \$30 million, allows the company to not only service its customers in the Gulf of Mexico market, but to contribute to the Port Isabel community by way of civic involvement, charitable contributions and extensive use of local vendors and suppliers. This spoolbase employs more than 100 U.S. citizens with Port Isabel and Brownsville local residents as its workforce.

Subsea 7 is extremely concerned with the comments made by OMSA which imply they have successfully steered a government agency into representing only their interests. These few outspoken U.S. Gulf Coast vessel owners, several of whom are in financial distress with a need for such an intervention, have misrepresented the vessel capabilities of their own fleet, while conveniently forgetting that several of these OMSA members own foreign-flagged vessels themselves. Further upsetting is the knowledge that these U.S. Gulf Coast vessel owners have no intention of contracting with oil companies, taking on the considerable risk of these contracts, and executing this work. Rather, they simply want to have the non-coastwise vessel contractors charter their coastwise vessels and perform the work— the very non-coastwise vessel contractors that they want to run out of the Gulf of Mexico market!

These U.S. Gulf Coast vessel owners have no intention of building 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. **Simply put, these U.S. Gulf Coast vessel owners simply want to follow the model of a car rental company – not exactly the future of U.S. energy independence.** As an industry we are struggling to find cost effective means to make projects move forward in a \$50 oil price environment. 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?

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

seabed-to-surface

Subsea 7 (US) LLC
A Delaware Corporation with its
registered office at 1209 Orange
Street, Wilmington, DE 19081, USA

subsea 7

Subsea 7 has been, and will continue to be, a supporter of the Jones Act, but forcing through 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. 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. **In 2009, DHS reached the same conclusion after a similar modification was proposed by CBP, namely that the rule-making process needed to be followed to allow for a proper analysis of the impacts of such modifications.**

Please find attached more detailed reports on the legal analysis, economic impacts, and a fleet capacity analysis as clarification and justification for this request to CBP to withdraw its Notice.

Yours sincerely,



Craig Broussard
Vice President



Monday, 04/17/2017

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 Director 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 (the "Notice"). 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 and the method in which CBP is seeking revocation is the legally correct method for this endeavor.

SafeZone Safety Systems, LLC is based in Gray, Louisiana with facilities in Houma, LA and Broussard, LA. We employ over 60 and we serve as a personnel, training & specialty product company to U.S. maritime companies working in the offshore energy market.

The Jones Act was intended to support a vibrant U.S. maritime industry. By all accounts, the law works as intended. The Jones has created a robust domestic maritime industry and supply chain one that creates 500,000 jobs, \$100 billion in annual economic output, and \$29 billion annual in wages. In addition, the maritime industry provides \$10 billion in tax revenue to the federal government. Correctly applying and enforcing the Jones Act, will only amplify these benefits, resulting in more opportunities for companies like mine who depend on a strong U.S. maritime industry.

Additionally, we note that CBP is correct to revoke the letter rulings covered by the Notice via the process found at 19 U.S.C. 1625(c) ("Section 1625"). This process provides for a fair process while allowing revocation take place in an expedited fashion. The letter rulings were originally issued by CBP without any consideration of the economic harm they would cause to the domestic maritime community or businesses like ours. As a result, our industry has experienced decades of delayed shipbuilding in U.S. shipyards and lost employment of U.S. mariners.

Safety and Training Consultants, LLC
219 Venture Blvd • Houma, LA 70360
985.868.5513
www.safe-zone.com

As such, the consideration and comment that opponents of revocation have received under the current process, far exceeds absolute lack of due process provided when these letter rulings were issued. Thus, we believe the current process to be more than fair. It is also worth noting that the notice, comment, consideration, final notice process being utilized for the Notice is being conducted after CBP has considered this issue for eight years.

Not only is the Section 1625 process fair, it is also 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 Section 1625. Specifically, under this statute, 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 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.

Considering the above information, CBP's Notice ensures that the law is followed as written, will promote the U.S. industrial base 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, our company strongly supports the Notice and urges CBP to implement this notice in an expedited manner.

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

Thank you for taking this corrective action.

Sincerely,



Mark Diebold
President

219 Venture Blvd. • Houma, LA 70360
Office: (985) 868-5513 • (985) 868-2955 • 1-888-868-5513

3117 Melancon Road (Hwy 90)
Broussard, LA 70518
Office: (337) 608-0252 • Fax: (337) 608-0259 • 1-866-501-1113

MCNICKLE, SASHA W

From: Mike Morton <mmorton@helixesg.com>
Sent: Tuesday, April 18, 2017 5:40 PM
To: CBP-PUBLICATION RESPONSE
Subject: Customs and Border Protection Notice of January 18, 2017 on the Jones Act

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.

Best Regards,

Mike Morton
Sr. Project Manager
Canyon Offshore Inc.

Corporate Headquarters
3505 W Sam Houston
Parkway North Suite 400
Houston, Texas 77043

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**GULF ISLAND
SHIPYARDS, LLC**

April 18, 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:

Gulf Island Shipyards, LLC was formed in 2007 and has been operating out of our shipyard in Houma, La employing hundreds of skilled craftsman building vessels that support the U.S. maritime industry. In January, 2016, GIS acquired Leevac Shipyards bringing the total number of shipyards GIS operates to three and increasing our employment to over six hundred (600). 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. Including the shipyards recently acquired from Leevac Shipyards, GIS has constructed over two hundred (200+) 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



**GULF ISLAND
SHIPYARDS, LLC**

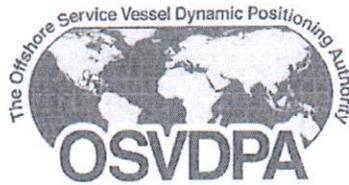
Act for the contribution it makes to military sealift, all recognizing the critical importance of the statute.

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.

CBP's 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,

Edward "Jay" Hebert, Jr.
Vice President of Operations
Gulf Island Shipyards, LLC



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

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:

The Offshore Service Vessel Dynamic Positioning Authority (OSVDPA) offers the below comments in response to Custom and Border Protection's (CBP) "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" as listed in the January 18, 2017 edition of the *Customs Bulletin* (the Notice).

The OSVDPA was founded to establish standards for the training and certification of dynamic positioning operators (DPOs) and the operation of DP-equipped vessels. The OSVDPA is supported by entity-level members who are vessel operators, manufacturers of dynamic positioning (DP) equipment, and DP training providers; as well as individual members who are DPOs, DP instructors, or others involved in the DP industry. The comments contained herein are submitted by the OSVDPA without prejudice to any comments that may be submitted by members of the OSVDPA.

The OSVDPA notes a few comments submitted in response to the Notice indicate or imply that safety of offshore operation would be lessened by the Notice due to its requirement that operations relating to offshore energy development or production projects be conducted in accordance with the Merchant Marine Act of 1920 (the Jones Act) and thus would be conducted utilizing U.S. mariners. As a body founded to improve the safety of offshore operations via the promulgation of standards exceeding existing requirements, the OSVDPA adamantly disagrees with these comments. The OSVDPA offers up our DPO certification scheme and its requirements as evidence of the U.S. fleet's commitment to safe offshore operations.

DP technology enables a vessel to automatically maintain its position and heading via a computer system that integrates the vessel's propellers and thrusters, position sensors, environmental sensors, and power system. DP is utilized to improve the safety of marine operations and allow operations in locations where water depth, subsea assets, environmental conditions, or other factors prevent the use of anchors or mooring lines. DP is used extensively in the offshore energy and offshore supply industries.

Mariners that operate DP systems are referred to as DPOs. DPOs are usually members of the vessel's bridge team, most often an officer. As such, prospective DPOs have been approved to control a vessel or be at the controls of a vessel prior to their enrollment in a DPO certification system.

Traditionally, all certification of DPOs was performed by the Nautical Institute (NI), a British not-for-profit that has conducted DPO certification since the 1980s. However, as DP has proliferated some U.S. vessel operators sought to see improvements in DPO training systems. Specifically, these operators wanted to see a greater reliance on competency assurance and training that was more tailored to the operations performed by the DPOs.

As such, these vessel operators, in conjunction with international DP system manufacturers, formed the OSVDPA. The OSVDPA's DPO certification scheme improves upon the industry standard in three (3) significant ways, all of which improve the experience and competency of the DPO and therefore improves the safety of offshore operations.

First, the OSVDPA's scheme is competency-based. Specifically, the OSVDPA has published OSVDPA CT-1-001 the OSVDPA Competency Standard (Version 001). This is a list of approximately 220 abilities and points of knowledge the OSVDPA feels are incumbent in every DPO. This document forms the basis for all OSVDPA classes, sea time requirements, taskbooks, and assessments.

Additionally, the OSVDPA requires that all those seeking to be certified as DPOs have documented time at the DP controls of a vessel. The OSVDPA calls this requirement "Practical Experience" and defines Practical Experience as:

An hour-based measurement of DP experience accrued when a DPO or Prospective DPO is at the DP controls for at least one (1) hour during a 24-hour period while the vessel is conducting auto positioning operations, auto heading operations (including DP or independent joystick-based autopilot), independent joystick operations, or other operations where the DP system is engaged. Up to six (6) hours of Practical Experience can be logged during a 24-hour period. All Practical Experience recorded by Prospective DPOs must be supervised and signed off by a certified DPO or the Master of the Vessel. (See Section 4.32 of OSVDPA MPP-1-003, the OSVDPA Manual of Policies and Procedures (Version 003)).

To become a DPO, the OSVDPA requires a mariner to accrue 270 hours of Practical Experience and to revalidate a DPO certificate the OSVDPA requires a DPO to show evidence of accruing 450 hours of Practical Experience in the five (5) years previous to revalidation. This Practical

Experience requirement is in addition to the OSVDPA's Sea Time requirement. Sea Time is defined by the OSVDPA as:

A day-based measurement of DP experience accrued when a DPO or Prospective DPO is on watch while the vessel is conducting auto positioning operations, auto heading operations (including DP or independent joystick-based autopilot), independent joystick operations, or other operations where the DP system is engaged for at least one (1) hour during a 24-hour period. All Sea Time recorded by a Prospective DPO must be supervised and signed off by a certified DPO or the Master of the Vessel. (See Section 4.38 of OSVDPA MPP-1-003, the OSVDPA Manual of Policies and Procedures (Version 003)).

The Practical Experience requirement exceeds the industry standards which only document sea time. As such, under the industry standard, a DPO can gain certification by watching someone else control the vessel, not by controlling the vessel oneself.

Finally, the OSVDPA's DPO certification scheme exceeds industry standards by requiring DPOs to pass a competency assessment before the OSVDPA issues or revalidates a DPO certificate. OSVDPA assessments can be conducted either on a simulator, at an OSVDPA-accredited Training Provider, or on a DP-equipped vessel.

When the assessment is conducted on a simulator, it is conducted by a Certified Instructor. Those certified as instructors by the OSVDPA must meet the following requirements:

- They must have served as a DPO, or must have made significant contributions to the DP industry,
- Passed a course meeting the requirements of International Maritime Organization (IMO) Model Course 6.09, "Training Course for Instructors," (Train the Trainer); or IMO Model Course 6.10, "Train the Simulator Trainer and Assessor",
- Passed the OSVDPA Phase 1 (theoretical) Assessment,
- Passed the OSVDPA Phase 3 Assessment,
- Passed an assessment on the OSVDPA and other DPO certification scheme requirements, and
- Had their ability to conduct OSVDPA assessments approved by an independent auditor contracted by the OSVDPA.

If the assessment is being conducted on a vessel, the vessel operator must be "Enrolled" in the OSVDPA. To enroll, a vessel operator must certify their employees and mariners responsible for conducting the OSVDPA assessments, making decisions about how DP is utilized onboard the vessel operator's vessels, and transmitting information to the OSVDPA know and understand the OSVDPA assessment process and have agreed to abide by this process. Additionally, vessel operators must provide documents to the OSVDPA demonstrating how DP is utilized on their vessels and provide signatures of those that will be sending information to the OSVDPA.

When the assessments are conducted in this manner, the assessments must be conducted by a mariner that has been approved by the OSVDPA as a "Qualified on Board Assessor" (QOBA). To be approved as a QOBA, a mariner must meet the following requirements:

- Must have a valid and current DPO certificate from an industry-recognized DPO certification scheme,
- Must have recorded 150 days of Sea Time and 450 hours of Practical Experience in the last five (5) years, and
- Must have passed a flag-state-approved onboard assessing course.

In addition to being practical, e.g. can be completed on a simulator or on a vessel, the OSVDPA believes assessments must be relevant to the industrial mission participated in by the DPO. As such, the OSVDPA assessments are primarily administered using OSVDPA-created “Scenarios.” Each scenario is designed to mimic a DP operation—often created by actual DPOs—and contained within this operation are the Assessment Items, or points of measurement, that the Certified Instructor or QOBA should score.

By picking the scenario that most closely matches the operations conducted by the assessee, the Certified Instructor or QOBA ensures that the scenario is relevant to what the assessee does on a daily basis.

Each scenario is contained in a printable package. The first page of the scenario provides the assessee with general information that they need to know about what they will be doing during the assessment. The rest of the package provides the points of assessment, instructions for how the assessment should be conducted, and a place to score the results.

Each of these Assessment Scenarios contains 45 points of assessment, or “Assessment Items.” 15 of these Assessment Items are known as Tier 1 Items. These items, if done incorrectly, would cause the vessel to lose heading or position. To pass the assessment, every Tier 1 item must be completed correctly.

The other 30 Assessment Items in the scenario are Tier 2 Items. These are system monitoring, system set up, and other related aspects of DP operation. 80 percent of these items must be completed correctly for the assessment to be passed. Each of these Assessment Items is ordered how they would happen during a real DP operation and the scenario provides the assessor (either the Certified Instructor or the QOBA) with instructions for how each assessment item should flow together and what information should be provided to the DPO or prospective DPO taking the assessment.

While scenarios are customized, the Assessment Items are not. Each Assessment Item included in the scenarios is taken from OSVDPA AS-1-001, the OSVDPA Assessment Guide and Item Bank (Version 001). This standard has more than 200 Assessment Items, all of which are designed by the OSVDPA TAC to measure one or multiple competencies in ways that mimic real-life DP operations.

Again, this assessment system is unique to the OSVDPA’s certification scheme and is not found as a requirement in other DPO certification programs. Interestingly, many existing DPOs have taken the OSVDPA’s assessment and failed, thereby proving that the OSVDPA’s competency assessment is a “higher bar” of competency and safety and should be reviewed to see if other DPOs should be required to pass this assessment or similar such assessments.

The OSVDPA is proud of the DPO certification system it has created and the improvements to operation safety that this system is contributing to the offshore industry. These improvements are proof positive of U.S. vessel operator commitment to operational safety and the improved competency of all mariners.

The OSVDPA requests that CBP consider the proof that is embodied in the OSVDPA when CBP is implementing the Notice and not be dissuaded from doing so by those that do not have a full appreciation of U.S. vessel operator commitment to improving the safety of offshore operations. Thank you for consideration of this evidence and allowing the OSVDPA to offer this perspective. If you have additional questions, please do not hesitate to contact our organization.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben Berson', with a stylized, cursive script.

Ben Berson
OSVDPA Administrator