Offshore Marine Service Association

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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 Marine Service Association ("OMSA") submits these comments in response to the Notice of Proposed Modification and Revocation of Ruling Letters Related to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points ("2017 Notice"), published on January 18, 2017, and the subsequent Extension of Comment Period For Jones Act Proposed Revocations and Modifications, published on February 27, 2017.[1] While OMSA does not agree with every aspect of the 2017 Notice, in general, OMSA strongly supports Customs and Border Protection's ("CBP") efforts to modify and revoke letter rulings that are inconsistent with the statutory requirements of the Jones Act. Moreover, OMSA urges that the proposed modifications revocations be put into effect as soon as possible, given the ongoing harm suffered by U.S. mariners, U.S. shipyards, and U.S. vessel companies as a result of the errant letter rulings.

CBP has specific statutory authority to issue prospective interpretive rulings for individual transactions.[2] The erroneous letter rulings to be revoked or modified are interpretations given by CBP of the Jones Act,[3] which is among the trade laws administered by CBP and covered by 19 U.S.C. § 1625, which governs how CBP must revoke letter rulings. The Jones Act requires that any part of "coastwise transportation," or transportation of merchandise between two U.S. points,

[1] *See* Customs Bulletin and Decisions, Vol. 51, No. 3 Jan. 18, 2017, pp. 1-11.
[2] The Supreme Court has held that CBP letter rulings are like interpretations contained in policy statements, agency manuals, and enforcement guidelines; thus, issuing them and revoking them are not subject to the requirements of the Administrative Procedures Act. *United States v. Mead*, 533 U.S. 218, 234 (2001).
[3] 46 U.S.C. § 55102.

be carried out by U.S. built and owned ships, crewed by U.S. citizens. 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.[4] However, CBP has issued letter rulings that are inconsistent with the Jones Act, thus eroding it by allowing foreign labor, crewing foreign-built ships, to displace U.S. owned vessels that would be crewed by American workers, and paying U.S. taxes, in this work.

These letter rulings are *ultra vires* – legally invalid. Their erroneous interpretations have frustrated U.S. policy articulated in the Jones Act itself as well as CBP's policy of informed compliance with the trade laws. Further, they have impaired CBP's ability to enforce the Jones Act as written.

The letter rulings were originally issued by CBP without any consideration of the economic harm they would cause to the domestic maritime community. They have resulted in decades of delayed or forgone shipbuilding in U.S. shipyards and lost employment of U.S. workers. CBP's Notice is the first step necessary to reverse this harm to the U.S. economy and ensure that U.S. workers, and the U.S. taxpaying companies that employ them, perform domestic maritime operations as envisioned by the Jones Act.

CBP's Notice recognizes these errors and revokes many offending letter rulings. Notably, CBP's 2017 Notice does not make any change to CBP's view that pipelaying is not covered by the Jones Act. Nor does it address any CBP letter rulings regarding what are typically referred to as "heavy lift" operations.[5] OMSA commends CBP for making this important course correction and closing illegal loopholes that, for decades, have allowed circumvention of the Jones Act and have harmed U.S. mariners, U.S. vessel companies, and U.S. shipbuilders. Ultimately, this will lead to increased employment and economic growth in the Gulf of Mexico region and throughout the nation as well as improved shipbuilding capability which provides national security benefits to our military sealift requirements and the mariners to operate these vessels.[6] OMSA's member companies have invested billions of dollars to provide vessels of sufficient capacity, capability, and expertise to handle the work covered by the letters CBP seeks to revoke.

I. BACKGROUND ON OMSA

OMSA is the national trade association representing owners and operators of U.S.-flag vessels engaged in servicing oil and gas infrastructure on the Outer Continental Shelf ("OCS"). OMSA membership also includes many shipbuilders, who are part of the industrial base that builds, repairs, maintains, and modernizes the U.S. private and government shipping fleet. OMSA members are an important part of the nation's energy infrastructure and the Gulf region's economy. Their boats account for a significant portion of the local tax base in coastal areas, and they pump

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[4] *See* 46 U.S.C. § 50101.

[5] *E.g.*, CBP letter ruling HQ H235242.

[6] OMSA strongly supports the Administration's efforts to increase energy production within the U.S., and supports the President's executive order issued ("E.O.") March 28, 2017, entitled "Promoting Energy Independence and Economic Growth." OMSA also notes that the CBP 2017 Notice is not subject to the review procedures of the E.O., as the E.O. does not cover agency actions "mandated by law" or "necessary for the public interest." *See* E.O., Section 2.

dollars into the region's economy through investments in vessel construction, repairs and supplies. Offshore vessel operators employ roughly 12,000 crew members, who live and contribute in their local communities and pay taxes. Specifically, OMSA represents approximately 200 companies and 12,000 employees engaged in these businesses.

In addition to submitting this comment, OMSA suggested to its membership that the employees of OMSA members contact their U.S. Representatives and U.S. Senators individually to express support for the 2017 Notice. To date, more than 600 U.S. citizens have expressed support of the 2017 Notice to their U.S. Senators and U.S. Representative. The names and places of residence for these individuals is listed in Enclosure 1.

II. CBP'S 2017 NOTICE

In the 2017 Notice, CBP explains that, pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)) ("§ 1625"), CBP is proposing to modify HQ 101925, "to make it more consistent with federal statutes that were amended after HQ 101925 was issued" regarding what constitutes the coastwise transportation of merchandise.[7] Specifically, portions of letter rulings, dating back to 1976, are contrary to the Jones Act, subsequent statutory changes to the Outer Continental Shelf Lands Act ("OCSLA"),[8] and subsequent clarifications to the definition of "merchandise" for purposes of the Jones Act, namely, to include valueless materials (1988) and government property (1992). Moreover, CBP intends through the 2017 Notice to revoke or modify any treatment previously accorded by CBP to substantially identical transactions and advises parties to seek new letter rulings from CBP for any prospective transaction to determine whether it is covered by the Jones Act. The specific letter rulings at issue will be examined in more detail later in this comment.

III. STATUTORY BACKGROUND

1. The Jones Act

As noted, 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. The cabotage laws that preceded the Act were signed into law by the first United States Congress in 1789. Through the Jones Act and its predecessor statutes, Congress expressed its intent to ensure that the United States has available vessels to meet sealift needs, expert and experienced seafarers to operate U.S. government ships in times of national emergency, and a modern shipyard industrial base that is critical to the Nation's military and economic security.

Congress clearly articulated this purpose and policy in the text of the Jones Act. The preamble to the Jones Act provides:

[7] Notice at 2.
[8] 43 U.S.C. §1331 et. seq.

(a) Objective.—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--

(1) sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times;

(2) capable of serving as a naval and military auxiliary in time of war or national emergency;

(3) owned and operated as vessels of the United States by citizens of the United States;

(4) 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; and

(5) supplemented by efficient facilities for building and repairing vessels.

(b) Policy.—It is the policy of the United States to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in subsection (a).[9]

The Jones Act is clear in its mandate: it explicitly prohibits "any part of the transportation of merchandise"[10] between coastwise points except on U.S. flag, 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;"[11] moreover, it refined that term *specifically for the Jones Act* to include even "valueless material" and "government property."[12] Further, the Jones Act does not contain any provision that allows CBP to modify its provisions through administrative action, such as discretion to take into account economic impact or issue non-national security-based waivers. 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 amendments, *e.g.*, for the transportation of hazardous waste, empty cargo containers, or oil spill response vessels – and in the latter case, only when there are not sufficient U.S. vessels available, and the foreign country extends reciprocal privileges to the United States.[13] It goes without saying that these limitations can only be necessary if the term

[9] 46 U.S.C. § 50101.
[10] 46 U.S.C. § 55102(b).
[11] 19 U.S.C. § 1401(c).
[12] 46 U.S.C. § 55102(a).
[13] 46 U.S.C. §§ 55105(b), 55107, and 55113.

"merchandise" has a *broad* scope.[14] By necessary implication, the scope of these textual exceptions command that in their absence, such articles would be covered as merchandise under the Jones Act.[15]

With respect to executive branch waivers from the Jones Act, a waiver can be granted only if, (1) the Secretary of Defense considers it necessary in the interest of national defense and requests it, or (2) following a determination by the Maritime Administrator of the non-availability of qualified United States flag capacity to meet national defense requirements, and the Secretary of Homeland Security finds it is "necessary in the interest of national defense."[16] Other than these, there are no other Jones Act waivers available, unless given by Congress. CBP, in effect, through the issuance of errant letter rulings, circumvented this narrow gateway for waivers and created its own expansive system of exceptions.

2. The Statute Requires Revocation

i. The Jones Act is unambiguous.

The lodestar for any interpretation of the Jones Act is the text of the statute itself. First, the interpreter must ask "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, *as well as the agency*, must give effect to the unambiguously expressed intent of Congress."[17] As shown above, rarely is a statute's purpose, and Congress's intent, more clear than with the Jones Act. The errant letter rulings—because they are directly at odds with the plain language and fundamental purpose of the Jones Act—are, and have always been, *ultra vires*, or legally void. Where statutory language mandates certain agency action – *i.e.*, where the "intent of Congress is clear," CBP has an obligation to enforce the statute as it is written. Here, the Jones Act *mandates* the corrective action taken by CBP in the Notice.

ii. Supreme Court Precedents on Statutory Interpretation

Supreme Court precedent regarding agency enforcement of other statutes reinforces this conclusion. In *Massachusetts v. EPA*,[18] the Court held that the Clean Air Act and its sweeping definition of "air pollutant" mandated the EPA to make a decision regarding whether to regulate or not regulate greenhouse gases. The Court's reasoning was closely tied to the language of the statute itself. The EPA had argued that green house gases are not within Congress' definition of

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[14] "Resolution of the pros and cons of whether a statute should sweep broadly or narrowly is for Congress." *United States* v. *Rodgers*, 466 U. S. 475, 484 (1984). It is noteworthy that CBP is given no leeway regarding the policy of the Jones Act; Congress states it clearly in the preamble of the statute.

[15] These explicit statutory exceptions serve as examples of what constitutes "merchandise," along with Congress' clarification that it includes "valueless materials" and "government property." *See United States* v. *Rodgers*, 466 U. S. 475, 480 (1984) (rejecting a "narrow, technical definition" of a statutory term when it "clashes strongly" with "sweeping" language in the same sentence). Likewise, *see United States* v. *Philadelphia Nat. Bank*, 374 U. S. 321, 343 (1963) ("[C]reat[ing] a large loophole in a statute designed to close a loophole" is "illogical and disrespectful of . . . congressional purpose").

[16] 46 U.S.C. § 501.

[17] *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (emphasis added) ("Chevron"). The Supreme Court created the two-step Chevron framework to resolve questions of statutory interpretation as between the judiciary and executive agencies.

[18] 549 U.S. 497 (2007).

"air pollutant."[19] The Court stated: "[t]he statutory text forecloses EPA's reading. The CAA's sweeping definition of 'air pollutant' includes '*any* air pollution agent or combination of such agents, including *any* physical, chemical … substance or matter which is emitted into or otherwise enters the ambient air…[t]he statute is unambiguous."[20] The statute thus left no room for EPA's interpretation.

Similarly, in *Utility Air Regulatory Corp. v. EPA*,[21] the Supreme Court held that: "[e]ven under *Chevron*'s deferential framework, agencies must operate 'within the bounds of reasonable interpretation.'"[22] That, the Court explained:

> must account for both "the specific context in which the language is used" and "the broader context of the statute as a whole." A statutory "provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme … because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." Thus, an agency interpretation that is inconsistent with the design and structure of the statute as a whole does not merit deference.[23]

EPA had attempted to rewrite numerical limits set forth in the statute to accommodate greenhouse gas regulation, and the Court concluded this was improper. "We conclude that EPA's rewriting of the statutory thresholds was impermissible and therefore could not validate the Agency's interpretation of the triggering provisions."[24] Agencies have no power to "'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms" but may "exercise discretion only in the interstices created by statutory silence or ambiguity; they must always 'give effect to the unambiguously expressed intent of Congress.'"[25] Thus, the Court concluded, "[w]e reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate."[26]

As with *Massachusetts v. EPA* and *Utility Air*, the statutory language of the Jones Act, and Congress' intent, is clear. Just as the meaning of "air pollutant" was clearly set forth in the Clean Air Act, the Jones Act clearly defines "merchandise"—*broadly*.[27] As in *Utility Air*, CBP may not—and never had the power to—effectively rewrite unambiguous statutory terms to suit its thinking of how the statute should operate.

iii. The Letter Rulings proposed for revocation would not survive judicial scrutiny.

If CBP does not revoke the letter rulings identified in the 2017 Notice, they will be overturned in federal court. The Supreme Court has explained that courts can avoid agencies misapplications of power "by taking seriously, and applying rigorously, in all cases, statutory

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[19] *Id.* at 513.
[20] *Id.* at 528-29 (emphasis in original).
[21] 134 S. Ct. 2427 (2014).
[22] *Id.* at 2442 (internal citations omitted).
[23] *Id.* (internal citations omitted).
[24] *Id.* at 2445.
[25] *Id.*
[26] *Id.* at 2446.
[27] 46 U.S.C. § 55102(a).

limits on agencies' authority. Where Congress has established a clear line, the agency cannot go beyond it; and where Congress has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow."[28] Because the letter rulings clearly contradict the plain terms of the Jones Act, any court would find them beyond CBP's authority to issue. And, courts have not hesitated to overturn CBP letter rulings generally, including with respect to the Jones Act. For example, in *Horizon Lines, LLC v. United States*[29] ("*Horizon Lines*"), the Court overturned a CBP Jones Act letter ruling for permitting a foreign vessel to move merchandise when the statute prohibited such a movement.

3. CBP is required to utilize § 1625 to revoke the errant letter rulings

Although CBP has issued letter rulings upon a simple request of one party, without any further consideration of the consequences or public comments, Congress has mandated by statute a unique process for CPB's revocation of a letter ruling. Under § 1625(c), CBP must give notice in the *Customs Bulletin* of its intent to revoke and provide at least 30 days opportunity for comment. Subsequently, CBP must publish its final decision within 30 days of the close of the comment period, which shall take effect 60 days later. § 1625(c) provides, in full:

> (c) Modification and revocation
>
> A proposed interpretive ruling or decision which would -
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> (1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or
>
> (2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions; shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

CBP regulations are in accord.[30]

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[28] *City of Arlington, TX v FCC*, 133 S. Ct. 1863, 1868 (2013).

[29] 414 F. Supp. 2d. 46

[30] 19 C.F.R. 177.12. Moreover, § 1625 unquestionably applies to CBP carrier branch rulings regarding the Jones Act. § 1625(a) states: "Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection." Thus, Section 1625 applies to any interpretive ruling or protest review decision *issued* under the provisions of/procedural mechanisms set forth in Chapter 4 (which is the Tariff Act of 1930) that touch on any customs transaction under customs substantive laws generally. Any other interpretation would effectively read "with respect to any customs transaction" out of the statute (which would violate judicial canons of statutory interpretation). This is because CBP regulations, 19 C.F.R. § 177.1(d)(3); 19 C.F.R. § 177.1(d)(5) state: "[t]he term 'Customs and related laws,' as generally used in this part, includes any provision of the Tariff Act of 1930, as amended (including the Harmonized Tariff Schedule of the United States), or the Customs Regulations, or *any*

The U.S. Court of Appeals for the Federal Circuit has confirmed that § 1625 is the required procedure for revoking prior letter rulings. In a similar context, the court explained:

> 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.[31]

The Administrative Procedure Act[32] ("APA") does not impose any additional requirements (beyond § 1625) on CBP to engage in notice-and-comment rulemaking before revoking a prior letter ruling. The APA does not apply to "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice."[33] The Supreme Court has *specifically* considered CBP letter rulings, and held that they "are best treated like interpretations contained in policy statements, agency manuals, and enforcement guidelines."[34] The Court made it clear that CBP letter rulings not "agency statements of general applicability and future effect" having the "force and effect of law."[35]

Simple revocation of *ultra vires* letter rulings is not a rulemaking. These letter rulings did not go through a rulemaking process when issued. Although the requester of the ruling letter was given due process, there was no due process or opportunity for input from the affected domestic parties prior to issuance. Imposing rulemaking requirements to revoke them—particularly when Congress has specified, by statute, a contrary process—would be arbitrary and capricious, imposing another injury on the domestic community. In practice, it would create a process that "locks in" erroneous letter rulings—making them easy to issue, but exceedingly difficult and expensive to revoke.

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provision contained in other legislation (*including the navigation laws*), regulations, treaties, orders, proclamations, or other agreements *administered by the Customs Service*."). Emphasis added.

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

[32] 5 U.S.C. § 500 *et seq.*

[33] 5 U.S.C. § 553(b).

[34] *United States v. Mead*, 533 U.S. 218, 234 (2001).

[35] *Id*. The Court stated further:

> Customs does not generally engage in notice-and-comment practice when issuing them, and their treatment by the agency makes it clear that a letter's binding character as a ruling stops short of third parties…Nor do the amendments to the statute [§1625] made effective after this case arose disturb our conclusion. The new law requires Customs to provide notice-and-comment procedures only when modifying or revoking a prior classification ruling or modifying the treatment accorded to substantially identical transactions, 19 U. S. C. §1625(c)…

Id., internal citations omitted.

In *Perez v. Mortgage Bankers Association*,[36] the Supreme Court clarified that under the APA, "unless another statute states otherwise, the notice-and-comment requirement 'does not apply' to 'interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'"[37] *Perez* overturned decisions by the D.C. Circuit that had imposed a "right to notice and an opportunity to comment when an agency *changes* its interpretation of one of the regulations it enforces." The Court rejected that reasoning as "contrary to the clear text of the APA's rulemaking provisions" and held that the court had "improperly impose[d] on agencies an obligation beyond the 'maximum procedural requirements' specified in the APA." The Court explained that "because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule."[38] *Perez* applies here and exempts CBP's revocation of its letter rulings from the APA's notice and comment requirements.

CBP has thus properly utilized the provisions Congress has specified: § 1625's notice and comment process.

4. Any Reliance Interests Cannot Outweigh Contradiction of the Statute and Are Addressed by § 1625

Appeals to reliance interests fall short given the weak standing of CBP letter rulings generally, and the fact that these particular letter rulings are clearly inconsistent with the Jones Act. The Supreme Court has held that even where a changed interpretation affects "serious reliance interests," an agency must merely provide "a detailed justification"- more detailed "than what would suffice for a new policy created on a blank slate."[39] Here, CBP's 2017 Notice sets forth the reasons for its course correction in ample detail; namely, the errant letter rulings are plainly inconsistent with the statute.

Moreover, all of the letter rulings marked for modification or revocation are *non-precedential*. CBP regulations warn against reliance on letter rulings by parties other than the original requester, as the ruling may be "subject to modification or revocation by CBP without notice to any person."[40] Furthermore, "no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter."[41] This framework is necessary, given the nature of the letter ruling process: these letter rulings were issued following a request by a single party, without notice and comment or an *inter-partes* contested proceeding.[42] They were responsive to private correspondence received by CBP, which the Jones Act community was never allowed to see. This opaque practice, devoid of any due process (except to the requester), cannot justify any meaningful reliance interests. In fact, other parties are unable to see the requests prior to CBP's responses, or know if such requests correctly state the particulars of the operation referenced in the request, or

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[36] *Perez*, 135 S. Ct. at 1204.
[37] *Id*. at 1204 (quoting 5 U.S.C. § 553(b)(A)).
[38] *Id*. at 1207 (emphasis added).
[39] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (internal citation omitted); *see also Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015).
[40] 19 C.F.R. § 177.9(c).
[41] *Id*.; *see also Mead*, 533 U.S. at 223 (describing this nature of letter rulings).
[42] *Id*. at 224.

the manner in which this operation is to be carried out. Even today, in response to a FOIA request by OMSA, *CBP cannot even locate the original request letters for some of the letter rulings that CBP proposes to revoke*.

To the extent any notice is required, it is purely as a procedural matter pursuant to § 1625. Thus, any purported reliance interests would be mitigated by the non-precedential nature of the letter rulings at issue, the process afforded through § 1625, and the explanation by CBP in the Notice that the letter rulings are inconsistent with the clear text of the statute. As a result, CBP's course correction is more than justified.

IV. MODIFICATION OF HQ 101925

This section provides a brief summary of the 2017 Notice's proposal to revoke and modify provisions of letter ruling HQ 101925.[43] OMSA agrees with CBP that this letter must be modified, and the reasoning justifying such modifications. The 2017 Notice notes that Headquarters ruling letter ("HQ") 101925 was issued based on facts provided by the requestor regarding their proposed use of a foreign-built barge, and that CBP proposes to modify HQ 101925 with proposed ruling HQ HO822215. The Notice states:[44]

> Many of the holdings in HQ 101925 are no longer applicable due to amendments made to 46 U.S.C. § 55102 (formerly 46 U.S.C. App. 883), the Outer Continental Shelf Lands Act, 1 and 19 C.F.R. § 4.80b(a), resulting in less consistency with 46 U.S.C. § 55102 . . . CBP also intends to revoke other rulings that,[45] based on the facts provided, cite HQ 101925 (T.D. 78–387) as authority and are less consistent with proposed ruling HQ H082215.

CBP also intends by the 2017 Notice to revoke or modify any treatment previously accorded by CBP to substantially identical transactions.

What is key to understand about each issue described below where CBP is proposing to close a loophole around the Jones Act is that the they were all creations of CBP that were not supported or permitted by the text or policy of the Jones Act.

1. Installation and Repair

CBP first reaffirms that installation and repair, separate from transportation, is not covered by the Jones Act.[46]

2. Transportation of pipe and repair materials

[43] Published in the Treasury Decisions at 78-387.
[44] Notice at 4.
[45] These letter rulings are: HQ 108223 (Mar. 13, 1986); HQ 108442 (Aug. 13, 1986); HQ 113838 (Feb. 25, 1997); HQ 115185 (Nov. 20, 2000); HQ 115218 (Nov. 30, 2000); HQ 115311 (May 10, 2001); HQ 115522 (Dec. 3, 2001); HQ 115771 (Aug. 19, 2002) (footnote not in original quote).
[46] Notice, Attachment A, at (2).

Second, CBP notes that while pipeline repair is not covered by the Jones Act, the transportation of pipe and repair materials is, and they revoke the letter rulings that said otherwise. The 2017 Notice is quite clear:

> [T]he holding [regarding pipe and repair materials] is contrary to the plain meaning of 46 U.S.C. § 55102, as amended…[t]he statute does not state 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 46 U.S.C. § 55102.

3. Unforeseeable operations loophole

Third, CBP closes the loopholes for "*unforeseeable*" operations. The 2017 Notice states, while describing an earlier letter ruling:

> CBP held in part that the transportation of anodes from a U.S. point to an operational location in U.S. waters had to be accomplished by a coastwise-qualified vessel. CBP reasoned that the anodes were a "preventative substance" and the installation of the anodes was an "intrinsically foreseeable" operation. Although the holding is correct,[[47]] the rationale is contrary to 46 U.S.C. § 55102…[t]he statute does not condition the transportation of merchandise upon whether the merchandise is a "preventative substance" or whether the merchandise being installed is an "intrinsically foreseeable" operation.

Thus, the 2017 Notice revokes the language that incorrectly suggested that there are exceptions in the Jones Act for unforeseeable operations and non-preventative substances.

4. Pipeline Connectors

Fourth, the 2017 Notice revokes the invalid exception for pipeline connectors when they are incidental to a pipelaying operation; CBP properly recognizes that there is no exception in the Jones Act for the transportation of merchandise that is incidental to another operation. Specifically: "the holding in HQ 101925 creates an exception to 46 U.S.C. § 55102 that is inconsistent with the statute." This also closes the even-broader loophole that had been created for pipeline connectors generally, even when not incidental.

5. Transportation of repair materials

Fifth, the 2017 Notice revokes the language allowing the transportation by the vessel of repair materials which are expended during the course of the underwater inspection. CBP states:

> With regard to the repair materials, the language of 46 U.S.C. § 55102 prohibits the transportation of merchandise between points embraced by the coastwise laws, regardless of whether the merchandise is "necessary for the accomplishment of the mission of the

[47] The Notice states that the installation of anodes is not transportation, and therefore not prohibited by the coastwise laws.

vessel," "incidental to the vessel's operations," or "expended" during the course of the repair.[48]

6. Transportation of tools

Sixth, the 2017 Notice continues to treat tools being used to make repairs and install repair material, which are not laden and unladen, as vessel equipment, and thus not covered by the Jones Act.

7. Drilling platforms are coastwise points

Seventh, regarding a drilling platform, the 2017 Notice revokes the language that distinguishes between merchandise laden on the underwater portion versus the topside of the drilling platform. The 2017 Notice states plainly: "[t]he OCSLA does not distinguish between different parts of an installation. A coastwise point embodies the entire structure, not just parts of it."[49] Thus, all parts of the drilling platform are considered coastwise points.

8. *De minimus* loophole revoked

Eighth, CBP proposes to revoke the language that purported to create a loophole for "de minimus" amounts of merchandise in the Jones Act. Specifically, the Notice states: "[t]he foregoing holding is inconsistent with the plain language of 46 U.S.C. § 55102 which includes "valueless material" in its definition of merchandise."[50]

9. Damaged pipe retrieval

Ninth, CBP revokes the language from a letter ruling stating that damaged pipe retrieved "incidental to a pipeline repair operation" could be accomplished by a non-coastwise qualified vessel, because "such language is inconsistent with 46 U.S.C. § 55102."[51]

10. Wellhead equipment, valves, and valve guards

Finally, CBP revokes the holding that the transportation of wellhead equipment, valves and valve guards from a U.S. point to a wellhead assembly that is a coastwise point pursuant to the OCSLA would not be prohibited by the coastwise laws if such wellhead equipment, valves, and valve guards are of *de minimis* value or necessary to accomplish unforeseen repairs or adjustments and are usually carried aboard the work barge as supplies. The 2017 Notice recognizes the "value of the merchandise is irrelevant to a determination that a coastwise transportation of merchandise has taken place and is contrary to the plain language of the statutory definition of merchandise which includes valueless material."[52]

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[48] CBP 2017 Notice at 16.
[49] Notice at p. 17.
[50] *Id*.
[51] Notice at p. 18.
[52] *Id*.

V. VESSEL EQUIPMENT

1. The vessel equipment letter rulings proposed for revocation are inconsistent with the statute.

With respect to CBP's determination on vessel equipment, OMSA agrees with CBP's proposal to revoke a number of letter rulings. CBP's definition of vessel equipment for coastwise trade has been based on T.D. 49815(4) (Mar. 13, 1939), which states: "[t]he term 'equipment'… includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." CBP acknowledges that letter rulings proposed for revocation deviated from this definition of "vessel equipment" by including items used in a number of other capacities related to the mission of the vessel.[53] It defies common sense to suggest that articles, such as oilfield equipment, which is loaded at one point in the U.S. and installed and left by a vessel on the seabed or structures of the OCS, are equipment of the vessel, rather than just merchandise. In its reasoning, the 2017 Notice states, *inter alia*: "CBP recognizes that the implications of these rulings do not comport with our proposed interpretation of the effect of 46 U.S.C. § 55102."[54]

OMSA strongly agrees that these letter rulings on vessel equipment are so clearly and absurdly unmoored from the Jones Act's text and purpose (by mislabeling obvious articles of merchandise that are installed on the OCS as vessel equipment) that they are inconsistent with *any* interpretation of the statute, under *any* degree of deference. These letter rulings were not, as the Supreme Court requires: "within the bounds of reasonable interpretation" which must account for both "the specific context in which the language is used" and "the broader context of the statute as a whole." A statutory "provision … is often clarified by the remainder of the statutory scheme … because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."[55] These letter rulings' interpretations of what is vessel equipment, and therefore what is not merchandise, are clearly not permissible meanings, given (1) the broad scope of the Jones Act definition of merchandise, (2) the common sense notion that vessel equipment does not include articles transported to and unloaded on the seabed or structures of the OCS, and (3) creation of such an obvious, massive loophole that Congress never intended.

2. Certain Letter Rulings proposed to be modified should also be revoked.

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[53] *See* Notice, p. 5 ("in furtherance of the primary mission of the vessel" see HQ 105644 (June 7, 1982), HQ 110402 (Aug. 18, 1989), HQ 114305 (Mar. 31, 1998), and HQ 115333 (Apr. 27, 2001); "in furtherance of the operation of the vessel," *see* HQ 111892 (Sept. 16, 1991); "essential to the mission of the vessel," *see* HQ 113841 (Feb. 28, 1997); "necessary for the accomplishment of the mission of the vessel," *see* HQ 114435 (Aug. 6, 1998) and HQ H004242 (Dec. 22, 2006); "in furtherance of the mission of the vessel," *see* HQ 115381 (June 15, 2001); 'necessary to the accomplishment of the mission of the vessel," *see* HQ 115487 (Nov. 20, 2001); "fundamental to the vessel's operation," *see* HQ 115938 (Apr. 1, 2003); "used by a vessel in the course of it's business," *see* HQ 116078 (Feb. 11, 2004); and "necessary to carry out a vessel's functions," *see* HQ H029417 (June 5, 2008) and H032757 (July 28, 2008)). Further: "Headquarters rulings HQ 111889 (Feb. 11, 1992) and HQ 115938 (Apr. 1, 2003) imply that certain articles to be installed, *e.g.*, multi-well templates, marine risers, oilfield equipment, and structural com-ponents, are vessel equipment under T.D. 49815(4). Headquarters rulings 112218 (July 22, 1992) and 113137 (June 27, 1994) imply that cement, chemicals and other materials, are vessel equipment within the meaning of T.D. 49815(4).

[54] Id.

[55] *Utility Air Regulatory Corp. v. EPA*, 134 S. Ct. 2427 (2014).

OMSA respectfully disagrees with CBP's decision to not revoke, but merely change the reasoning for, certain other ruling letters identified in the Notice; specifically, HQ 115381 (remote operated vehicle), HQ H032757 and HQ H029417 (barges carrying articles for floating exhibit hall), and HQ 116078 (transportation of oil spill response materials). These letter rulings at issue must be revoked because they too are inconsistent with the Jones Act.

Having acknowledged that "vessel equipment" only includes portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel and for the comfort and safety of the persons on board, CBP still only decided to modify, but not revoke, certain other ruling letters.[56] OMSA disagrees with this determination and requests that CBP also revoke certain portions of these letter rulings. For example, HQ H032757 and HQ H029417 involve barges that were outfitted with a floating exhibit hall that will be moved from port to port in the U.S. as a floating exhibit hall. While intermittent use of the exhibit halls in ports of call may not be the transportation of merchandise, the ladening and unladening of the exhibit hall between two ultimate coastwise points is. Similarly, with respect to HQ 116078, the materials transported to and used in response to an oil spill are not vessel equipment. The only reason for those articles to be aboard the vessel is so they can be transported to the site of the spill.

VI. OUTSTANDING LETTER RULING ISSUES NOT ADDRESSED BY CBP'S PROPOSAL

While OMSA appreciates CBP's actions to correct its prior improper interpretation of the Jones Act with respect to merchandise and vessel equipment, OMSA believes 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. Now that CBP is taking steps to revoke erroneous letter rulings, OMSA believes this 2017 Notice should also include the revocation of letter rulings addressing the issues outlined below.

1. Pristine seabed

CBP has taken the position that the "pristine seabed" is not itself a point in the US, which is plainly inconsistent with US law. The Outer Continental Shelf Lands Act ("OCSLA"),[57] extended the Constitution and laws of the United States, including the coastwise laws, to:

> the subsoil **and seabed** of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.[58]

Since the jurisdiction of the United States was extended to the "seabed" without any qualification in the first clause, and was only extended to structures erected on the seabed in the

[56] HQ111892; HQ115381; HQ116078; HQH029417; HQH032757.
[57] 43 U.S.C. §1331 et. seq.
[58] 43 U.S.C. §1333(a)(1)

second clause, there is no way to read the extension of jurisdiction 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 Section 4(a)(1) shows that the Congress did not intend for this ownership to vest 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.

President Harry Truman issued Proclamation 2667 ("the Truman Proclamation") in September 1945 to establish the policy of the United States concerning the natural resources of the subsoil and seabed of the OCS. Specifically, the President proclaimed, in part, the following:

> Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and ***sea bed***[59]of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.[60]

In 1978, §1333(a)(1) of OCSLA was amended to read (bracketed language was replaced by the italicized language):

> The Constitution **and laws** and civil and political jurisdiction of the United States are extended to the subsoil **and seabed** of the outer Continental Shelf and to all artificial islands, *and all installations and other devices permanently or temporarily attached to the seabed,* [and fixed structures] which may be erected thereon for the purpose of exploring for, developing, [removing, and transporting resources therefrom] *or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources,* to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

As can be seen, the 1978 amendment made no changes that might affect the jurisdiction of the United States over the seabed. The language extending U.S. jurisdiction to "the subsoil and seabed of the outer Continental Shelf" was not modified. Nor was there any intent to modify existing law by the changes that were made. Rather the purpose was to overrule, as incorrect, CBP rulings that had interpreted "fixed structures" to require a certain degree of permanence. The principal clarification, as implemented by the language substituting "installations and other devices" for "fixed structures" and adding "permanently or temporarily," was that devices that were attached to the OCS were covered no matter the duration of that attachment.[61]

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[59] Added emphasis herein for terms "sea bed" or "seabed".

[60] Proclamation 2667 of September 28, 1945 (10 *Fed. Reg*. 12,303).

[61] Subsequent to the 1978 amendment, and despite the clear intent and plain reading of Section 4(a)(1), CBP has issued several rulings concerning the movement of merchandise to the seabed where it has uniformly stated that there be a "device" or "installation" on the seabed for there to be a coastwise point. OMSA does not concur in this view. Examples of rulings where CBP held there was no coastwise movement because of the lack of a "device" or "installation" on the seabed include: HQ H012082 (Aug. 27, 2007) (suction piles to guide the laying of a pipeline); HQ 116558 (Oct. 25, 2005) (remnants of mobile oil rigs); HQ H014893 (Aug. 2, 2007) (debris on the seabed); HQ115850 (Nov. 12, 2002) (severed legs of a rig); HQ 116633 (March 28, 2006) (remnants of toppled platform); HQ

It is incontrovertible that the position of the United States Government is that the "subsoil **and seabed**" of the OCS are in the "United States." Not only does the text of Section 4(a)(1) so provide, OCSLA, in line with the Truman Proclamation, defines the OCS as "all submerged lands . . . of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction." 43 U.S.C. §1331(a). The Congressional declaration of policy that precedes the substantive provisions of OCSLA states that "the subsoil and seabed of the [OCS] appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in [OCSLA]." Regulations promulgated by the Bureau of Safety and Environmental Enforcement ("BSEE"), the Department of Interior agency that administers the development of OCS resources, provide that the "subsoil and seabed [of the OCS that] appertain to the United States . . . are subject to its jurisdiction and control." 30 C.F.R. § 250.105 (definition of OCS applicable throughout the BSEE regulations).

CBP has recognized that the extension of "[t]he Constitution and laws and civil and political jurisdiction of the United States" to the areas set forth in Section 4(a)(1) had the effect of making them part of the "United States."[62] Any area to which the overall jurisdiction of the United States is extended by OCSLA Section 4(a)(1) is necessarily a coastwise point subject to the provisions of the Jones Act.

The clear text of OCSLA and its history, grounded in the Truman Proclamation, unmistakably support the view that the pristine seabed is a point in the US. CBP should revoke Letter Ruling HQ H205655 and any other letter rulings that are 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.

2. Decommissioning

Once an offshore oil and gas facility no longer economically produces hydrocarbons, the operator of the field is required under the terms of the lease it holds with the United States, 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." *See*, 30 C.F.R. 250.1700 *et. seq*. "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."[63] 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

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116394 (Feb. 8, 2005) (wreckage around a permanently abandoned well); HQ 110959 (Aug. 8, 1990) (marker buoys); C.S.D. 84-96 (unrelated wells in vicinity).

[62] Letter dated December 11, 1956, published at T.D. 54281(1) (January 9, 1967).

[63] *Id.*

"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.[64] 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, OMSA requests that CBP issue a letter ruling quickly confirming (or modify or revoke any letter rulings that state otherwise) that the transportation of decommissioned facilities from their existing U.S. point to another U.S. point is coastwise transportation of merchandise and revoking any prior letter rulings to the contrary.

3. Letter Rulings based on hypothetical scenarios

19 C.F.R. § 177.7(a) says that CBP will not issue ruling letters with regard to "transactions or questions which are essentially hypothetical in nature." However, CBP's practice has been to issue ruling letters on the basis of factual scenarios that are clearly hypothetical. The following are examples of letter rulings illustrative of CBP's historic approach that were issued in response to hypothetical situations that continue to serve as CBP policy, yet contradict the Jones Act. OMSA requests that CBP revoke these letter rulings:

i. HQ 115134 ("You are currently engaged in discussions with various oil exploration and production companies to enhance the logistics support system for deepwater drilling . . . on the [OCS] . . . To that end it is proposed that a foreign built, foreign flagged vessel . . . could be located approximately 100 miles or more beyond the 12 mile territorial sea of the United States to serve as a FOSF for nearby deepwater drilling and production activities.")

ii. HQ HO36016 (describing a proposal to rebuild a vessel and utilize it for two generally described "scenarios" involving drilling and other general operations.)

iii. HQ 113137[65] (generally describing the use of a foreign vessel to engage in well stimulation activities without any description of a specific contract, well, port or vessel identity.)

iv. HQ 113247 (generalized opinion that deployment of pre-welded spooled pipe is permissible. No description of a particular contract or project, no particular mention of locations involved.)

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[64] 46 U.S.C. 55102(a).

[65] This ruling letter is referenced in the 2017 CBP notice as an example of letters that "do not comport with our proposed interpretation of the effect of 46 U.S.C. § 55102." However, where CBP listed the letters it proposed to revoke based on that conclusion, it did not list this letter number. Of course, CBP also advised that it proposes by the Notice to revoke or modify any treatment previously accorded by CBP to substantially identical transactions. In the final Notice, CBP should explicitly and clearly revoke this letter ruling.

v. HQ H205655 (interpretation given to facilitate replacement of a coastwise qualified vessel with a foreign vessel to be used to support seismic operations utilizing a subsea node technique as opposed to traditional techniques; no vessel mentioned, no contract or locations mentioned other than generalized description of node-based seismic operations.)

vi. HQ 114487 ("The company would seek to become involved in providing pipelines connecting offshore drilling units with one another as well as connections involving oil loading facilities and domestic land-based facilities.")

VII. THE MARKET

The letter rulings that CBP proposes to modify or revoke deal primarily with development activities and field inspection, repair, and maintenance activities on the U.S. OCS.

Having completed a detailed analysis of the 2017 Notice against industry data regarding the vessels that perform the activities covered this Notice (See Enclosure 1), OMSA is confident there is sufficient capacity from Jones Act qualified specialized vessels to support the activities implicated by CBP's proposed revocations. This does not include the hundreds of known and available Jones Act qualified supply vessels and liftboats that support offshore oil and gas activities. The specific types of specialized vessels operating on the U.S. OCS are divided into categories discussed in greater detail below.

Furthermore, should the need for these vessels exceed the capacity of the Jones Act fleet. OMSA members have no interest in disrupting any OCS oil and gas exploration and development activities, and have in the past worked closely with government and business interests to ensure that legislative waivers are properly and quickly enacted and granted in those situations where Jones Act-qualified vessels are simply not available to perform the required energy production tasks.[66]

Finally, also attached to this comment (see Enclosure 2) is a response to a recent study by the economic consulting firm Calesh that purports to analyze the economic effects of the 2017 Notice. However, as detailed in the attachment, the Calesh analysis suffers from some significant errors, most particularly by its misunderstanding of the 2017 Notice. Calesh's study assumes that CBP changes its view that pipelaying is not covered by the Jones Act; CBP does no such thing in the 2017 Notice. In addition, Calesh asserts that heavy lift operations are affected by the 2017 Notice; in fact, no letter rulings addressing heavy lift operations are included.

***Subsea Construction/IMR Vessels*.** In practice, the majority of the operations covered by the letter rulings proposed for revocation by the 2017 Notice are conducted by Subsea construction/IMR (inspection, maintenance, and repair) vessels. These vessels are usually between 250 feet and 400 feet in length are typically equipped with a crane inspected and rated for a subsea capacity of between 50 and 250 tons. These cranes are equipped with "active heave compensation" technology thereby allowing the crane to handle loads precisely despite weather conditions or active sea states. The vessels utilize dynamic positioning (DP) systems to hold precise position, are equipped with one or more remotely operated vehicles (ROV), usually have

[66] *See*, *e.g.*, 46 U.S.C. § 55108 regarding platform jackets.

a helideck and are utilized to install and then over the life of a field, inspect, maintain, and repair and the vast array of subsea infrastructure that is set on the seabed as part of a deep water installation.

There are 19 subsea-construction/IMR Jones Act qualified vessels in the Gulf of Mexico ("GoM") that have a crane of 50 tons or greater, ROVs, and are equipped with DP. In addition, five Jones Act qualified vessels that are presently operating in foreign locations could be relocated to operate in the GoM if needed. Additional Jones Act qualified vessels are under construction in U.S. shipyards and scheduled to be delivered on various dates between summer of 2017 and summer of 2018. By midyear 2018, there will be a total of thirty-one U.S. flag, U.S. built, Jones Act qualified Subsea Construction/IMR vessels available for operations in the GoM.

Foreign flag subsea construction/IMR vessels have departed the GoM over the last twelve months as their owners have come under severe financial strain due to high debt loads. Given the growth of the Jones Act fleet of subsea construction/IMR vessels, the need for foreign tonnage has all but disappeared. There should be no impact on operations in the GoM from the policy changes advocated above by OMSA as the Jones Act qualified subsea construction/IMR fleet has effectively replaced the prior foreign fleet.

In addition, demand for diving vessels has changed as work in the GoM has moved into deeper water. Today, the vast majority of operations are in water depths not accessible to divers. For that reason, diving-specific vessels are not widely utilized. Instead, the subsea construction/IMR vessels discussed above are equipped with remote operating vehicles (ROVs) that perform the subsea repair and maintenance work traditionally performed by divers. Where necessary, Jones Act qualified subsea construction/IMR vessels also can be outfitted with a saturation diving system, which allows them to be used for the both the diving operation itself and to transport materials and equipment used during operations without restriction.

Well intervention operations. A smaller segment of the operations covered by the letter rulings mentioned in the 20017 Notice involve well intervention operations. These operations typically are conducted later in the life cycle of a well and involve the pumping of chemicals and other substances into a well. These operations are conducted from a variety of marine platforms. In more shallow waters, liftboats or jack-up drilling rigs are frequently used. In deeper waters, a drilling rig or other mobile offshore drilling unit ("MODU") is more typical. Recently, it has become common to install well intervention equipment onto a supply vessel and have this vessel connect to the well while the vessel is alongside the production installation. These operations are indistinguishable from the supply operations conducted by Jones Act supply vessels every day.

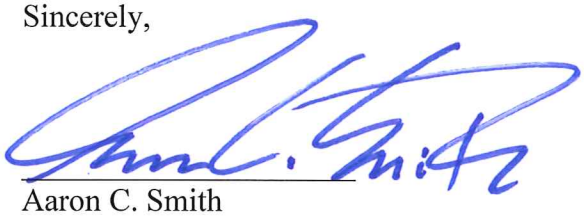
Well stimulation activities are similar to intervention operations in that they involve interfacing with a producing well and injecting a substance that will stimulate or affect the manner in which the hydrocarbons flow within the formation and well. Well stimulation activities have been performed by Jones Act qualified vessels not only in the GoM, but globally as well. A well stimulation vessel is typically a supply vessel that has been outfitted with a well stimulation equipment in either a permanent or temporary configuration. As noted above, there are amply Jones Act qualified supply boats operating in the GoM that could be outfitted for well intervention or stimulation operations.

VIII. CONCLUSION

The Jones Act and its predecessor statutes have reflected consistently Congress' commitment to ensure that the United States has available vessels to meet sealift needs, expert and experienced seafarers to operate U.S. government ships in times of national emergency, and a modern shipyard industrial base that is critical to the Nation's military and economic security. This function of the Jones Act is vitally important as well in the context of offshore oil and gas development on the OCS, given its importance to our Nation's energy and economic security.

OMSA applauds CBP for undertaking this process to ensure the guidance it issued through the affected letter rulings adheres to the requirements of the statute. OMSA encourages CBP to continue this process by reviewing and revoking additional letter rulings that have similarly diverged from the plain language of the statute.

Sincerely,



Aaron C. Smith
President and CEO
Offshore Marine Service Association

cc: The Honorable Dennis Kelly, Secretary of Homeland Security
Mr. Kevin McAleenan, Acting Commissioner of CBP
The Honorable Mick Mulvaney, Director of OMB
The Honorable Reince Priebus, Assistant to the President and Chief of Staff
The Honorable Steve Bannon, Assistant to the President
The Honorable Gary Cohn, Director, National Economic Council
The Honorable Stephen Miller, Senior Advisor to the President
The Honorable Peter Navarro, Assistant to the President
Mr. Dominic Mancini, Acting OIRA Administrator

Enclosures:
1. List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice.
2. Analysis of Vessel Availability and Impacts of Recent CBP Notice
3. Warren Payne Memorandum

List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice

Number	Last Name	First Name	City	State
1	Nuss	Phil	Covington	LA
2	Brewster	Robert	Houma	LA
3	Webb, Jr	Robert	Reserve	LA
4	Ellis	Kip	Covington	LA
5	Signor	Dina	Panama City	FL
6	Moreash	Cody	Tempe	AZ
7	Florence	Tekia	Orlando	FL
8	RAYMOND	JARROD	JACKSONVILLE	FL
9	DeScioli	Thomas	Houston	TX
10	Fleming	Charles	Morrow	OH
11	Bourg	Larry	Abita Springs	LA
12	Annessa	Carl	Covington	LA
13	Swisher	Glenn	Pennsauken	NJ
14	ULRICH	E. ALLEN	RIVER RIDGE	LA
15	Lynch	Sam	Jacksonville	FL
16	Wiggins	Curtis	Morgan City	LA
17	Naquin	Peyton	new orleans	LA
18	Mayo	Robert	South Port	FL
19	Bennett	Ralph	Moncks Corner	SC
20	Gonzales	Martin	Chula Vista	CA
21	Roberts	Wyatt	Belfast	ME
22	Sauls	Marvin	Lynn haven	FL
23	Rogers	Linda	Covington	LA
24	Conrad	Daniel	Morgan City	LA
25	Davis	Elliot	Madison	MS
26	Weeks	Richard	Basking ridge	NJ
27	velazquez	othon	hollywood	FL
28	Read	Bob	Jacksonville	FL
29	Clawitter	Yvonne	Folsom	LA
30	Ryder	Dan	Jacksonville	FL
31	Richter	Roy	The Woodlands	TX
32	Snider	Mary	San Francisco	CA
33	Reisman	David	Metairie	LA
34	Reynolds	Jimmy	Ramona	CA
35	Loupe	Nicholas	Lockport	LA
36	Sambola	Darlene	Metairie	LA
37	Broussard	Marlene	Mandeville	LA
38	Eymard	Raimy	Cut Off	LA
39	Duhon	Jeffery	Biloxi	MS
40	Gooding	Steven	Jupiter	FL
41	Hinckley	Martin	Youngstown	FL
42	Barnes-Tapscott	Lisa	Panama City	FL
43	WILLIAMS	ABRAHAM	N.J	NJ
44	Schmidt	Paul	Phenix City	AL
45	Pelusi	Henry	Panama City Beach	FL

List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice

Number	Last Name	First Name	City	State
46	Beerbohm	David	Terrytown	LA
47	Fincher	Jeremy	Samson	AL
48	Espitia	Arthur	Poulsbo	WA
49	Hodgins	Jordan	New Orleans	LA
50	Brien	Kelsie	Kenner	LA
51	tapscott	steve	panama city	FL
52	Kirby, Jr.	Mark W.	Mandeville	LA
53	Lord	Daniel	Grapevine	TX
54	Balensiefen	Joe	El campo	TX
55	Oncale	Aline	Lockport	LA
56	Witt	James	Seaford	NY
57	Estopinal	Chip	Lafayette	LA
58	Cotton	Elaine	Dickinson	TX
59	KWIATKOSKI	TAMMY	FOUNTAIN	FL
60	GORDON	CARLOS	PEMBROKE PINES	FL
61	Harvel	Lindsey	Austin	TX
62	Chiasson	Karen	Larose	LA
63	Cortello	Kyle	New Orleans	LA
64	Daupert	Jaci	Jacksonville	FL
65	Jones	Zachary	Natchez	MS
66	McCarthy	Tim	Covington	LA
67	Guzman	David	Philadelphia	PA
68	Duet	Billy	Cut Off	LA
69	Newman	Patrick	Poulsbo	WA
70	Sevey	Michael	Franklin	AL
71	Landreneau	William	Covington	LA
72	Huff	Jerry	Panama City	FL
73	Dorcey	Leslie	Madisonville	LA
74	Tyrrell	Elizabeth	Ponchatoula	LA
75	Judd	Thomas	Bingen	WA
76	Page	Michael	St. Marys	GA
77	Madeira	Nicholas	Southwest Harbor	ME
78	Guillot	Alex	Madisonville	LA
79	Tenney	Terry	Houma	LA
80	Martinez	Samuel	Doral	FL
81	Cheramie	Jamie	Lockport	LA
82	Schlichte	Ryan	Gloucester	MA
83	Harrison	Taylor	York	ME
84	Childers	Gene	Mobile	AL
85	O'Sullivan	Kimberly	Jacksonville	FL
86	Daza	George	Pensacola	FL
87	Gardner	Linda	Chula Vista	CA
88	pierre jr	john	houma	LA
89	Wellington	Steve	Mobile	AL
90	POWERS	MICHAEL	RURAL HALL	NC

List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice

Number	Last Name	First Name	City	State
91	D'Isernia	Matthew	Lynn Haven	FL
92	Cheredaryk	Steven	Mandeville	LA
93	Taylor	Stevie	Lucedale	MS
94	Gaspard	Aaron	Lockport	LA
95	Stant	Pat	Metairie	LA
96	Luke	Brandy	Gray	LA
97	Parsons	Chris	Metairie	LA
98	Stall	Will	Metairie	LA
99	VanAlstine	Lynette	Saint Augustine	FL
100	Duplantis	Yancey	Houma	LA
101	Sherlock	John	Mandeville	LA
102	Miller	Daisy	Harahan	LA
103	Richmond	Gene	Southport	FL
104	Johnson	Tammy	Waxhaw	NC
105	Sweeney	Mike	Jacksonville	FL
106	Poitevint	John	Panama City	FL
107	Franks	Mackey	Cypress	TX
108	Moore	Ashley	Larose	LA
109	DONAHUE	MAURA	COVINGTON	LA
110	Barbe	Chad	Panama City	FL
111	Wasson	Robert	Key West	FL
112	Petrelis	George	Covington	LA
113	Thompson	Timmy	Myrtle Beach	SC
114	Frick	Karen	Mandeville	LA
115	Guidry	Jace	Mandeville	LA
116	Hume	Michael	Jacksonville	FL
117	Higginbotham	Thomas	PHENIX CITY	AL
118	Slayton	Claude	Columbus	TX
119	Bolton	Antonio	New Augusta	MS
120	Lewis	Robert	Gray	LA
121	Moneymaker	Natalie	Panama City	FL
122	Sylvester	John	Brunswick	ME
123	Silk	Mary	Milton	FL
124	Melancon	Christina	Lafayette	LA
125	Tabone	Joseph	Okemos	MI
126	Douglass	Kevin	Metairie	LA
127	Hanselll	Jeff returns	Covington	LA
128	Andrews	William	Houston	TX
129	Butcher	Joe	Seabrook	TX
130	Chaisson	Nicole	Houma	LA
131	Long	Brian	Rockport	TX
132	Krahenbuhl	Kyle	Houston	TX
133	Mayo	Victor	Alford	FL
134	Egert	Ed	Panama City	FL
135	Hubert	Steven	Covington	LA

List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice

Number	Last Name	First Name	City	State
136	Thompson	Erwin	Houma	LA
137	Gamertsfelder	Deborah	Jacksonville	FL
138	Canfield	Timothy	Jefferson	LA
139	Roy	Taylor	Greenville	ME
140	Baker	Eric	Orangevale	CA
141	Folger	Robin	Washington	ME
142	Blanchard	David	Soldotna	AK
143	Kerr	Jonathan	Pensacola	FL
144	Shows	Alexander	Mandeville	LA
145	Grimm	Donald	Panama City	FL
146	Duffy	Bill	Allentown	PA
147	Benefield	Matthew	Robertsdale	AL
148	HEIT	RICHARD	PANAMA CITY BEACH	FL
149	Winters	Lisa	Jacksonville	FL
150	Rojas	Isaac	LONG BEACH	CA
151	Walkowski	Dayla	Slidell	LA
152	Tabor	Brett	Morgan City	LA
153	Charles	Jonathan	Saint Rose	LA
154	rivera	jose	LINDEN	NJ
155	Nylund	Kayla	Pasadena	TX
156	Johnson	Russell	Milton	FL
157	Rodriguez	Antonio J	Metairie	LA
158	Jorde	Cynthia	Panama City	FL
159	Rouse	Virginia	Panama City	FL
160	Short	Albert	Covington	LA
161	Armstrong	Scott	Houston	TX
162	Rogers	Willie	Cape Coral	FL
163	McNemar	Adam	Youngstown	FL
164	Terry	William	Manvel	TX
165	Eidson	Matthew	Panama City	FL
166	Schloegel	Karen	Folsom	LA
167	Wallace	Chad	Silverhill	AL
168	Messer	Rayda	Cut Off	LA
169	Hyland	Charles	Panama City	FL
170	Swiber	Stephen	Thibodaux	LA
171	Helfer	Bryon	Slidell	LA
172	BILLIOT	BILLIE	HAMMOND	LA
173	Chambliss	Eugene	Sumrall	MS
174	Jiannine	Phil	Virginia Beach	VA
175	DAVIDSON	MARILYN	COVINGTON	LA
176	hatfield	kathlene	austin	AR
177	Byrd	Frank	Lynn Haven	FL
178	Toon	Billy	Cantonment	FL
179	Nicaud	Michael	Covington	LA
180	Crawford	Todd	Gulfport	MS

List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice

Number	Last Name	First Name	City	State
181	Currier	Paul	Plymouth	MI
182	McDaniel	Brandon	Altha	FL
183	Lozier	Dan	Panama City	FL
184	Goff	Samuel	Ocean Springs	MS
185	Adkinson	Michael	Pensacola	FL
186	Bergum	Dave	Saratoga Springs	UT
187	Burtt	William	Orange	TX
188	Hofer	Aaron	Coden	AL
189	Henderson	Robert	Gulf Breeze	FL
190	Reid	Joshua	Summit	MS
191	Woodward	Matthew	Seattle	WA
192	Likens	Greg	Pineville	LA
193	McLeod	Evans	New Orleans	LA
194	skelton	michael	port st joe	FL
195	Cucullu	Matthew	New Orleans	LA
196	Brown	Crystal	Houma	LA
197	brown	kathryn	lady lake	FL
198	Lasseigne	Johnny	Houma	LA
199	Bankster	Debra	Covington	LA
200	Mount	David	Madisonville	LA
201	Van Jones	Robert	Houma	LA
202	Aune	Bjorn	Snohomish	WA
203	Stewart	Shane	Houma	LA
204	Bliss	Wendy	Paducah	KY
205	Morgan	Paul	Slidell	LA
206	Thomas	Zie	Lafayette	LA
207	Bolton	Donald	Ozark	AL
208	Prim	Rickey	Loxley	AL
209	Dennis	Jason	Mandeville	LA
210	Rabito	Jordan	Ponchatoula	LA
211	Kirby	Mark	Covington	LA
212	Priest	Vincent	Pace	FL
213	Hall	Carmen	Covington	LA
214	Nettles	Lori	Lehi	UT
215	Diamond	Mark	Houston	TX
216	Oser	Brenda	Mandeville	LA
217	Kinney	Heath	Eddington	ME
218	Peck	Richard	Pensacola	FL
219	Browder	Brian	Pace	FL
220	Hill	Debby	Panama City	FL
221	Hammond	Joseph	Brookfield	MO
222	Pierce	Craig	Cut Off	LA
223	D'Isernia	Brian	Lynn Haven	FL
224	Dufrene	Caleb	Lockport	LA
225	Phillips	James	Gulf Breeze	FL

List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice

Number	Last Name	First Name	City	State
226	Nichols	Joel	Pelham	AL
227	CATO	JEONG	PANAMA CITY	FL
228	Cunningham	Joe	Covington	LA
229	Bascle	Monique	Bourg	LA
230	Bramblette	Benny	Chipley	FL
231	Penney	Dylan	Hermon	ME
232	Dabbs	Chris	Lynn Haven	FL
233	Foley	Justin	Saraland	AL
234	Martin	Bryan	Glendale	AZ
235	Green	Richard	Metairie	LA
236	Cabiro	Craig	Covington	LA
237	Danos	Vicki	LAROSE	LA
238	Davis	Durhl	Anacoco	LA
239	Ajubita	Justin	Mandeville	LA
240	ACOSTA	CARLA	MANDEVILLEA	LA
241	fletcher	chris	ocean springs	MS
242	Franks	Sheena	Sulphur	LA
243	Detillier	Dain	Lockport	LA
244	Heathman	Danelle	Mandeville	LA
245	Besse	Timothy	Morgan City	LA
246	Knight	Jeffrey	Crestview	FL
247	Sanford	Shawn	Irvington	AL
248	Graham	James	Panama city	FL
249	Ledano	Mary	Sulphur	LA
250	Pharis	John	New Orleans	LA
251	Gibbs	O.D.	Warsaw	MO
252	Allain	Drew	Meraux	LA
253	Daigle	Bryan	Houma	LA
254	Guercio	Linda	Kenner	LA
255	Hinkle	Charles	Alpharetta	GA
256	Myrtue	Mark	Covington	LA
257	Balentine	Robert	Mobile	AL
258	Malabet	Fernando	Panama Cuty Beach	FL
259	Page	Chad	Lafitte	LA
260	Hahn	Dylan	Brooks	ME
261	Wilson	Chris	Des Moines	WA
262	Kwiatkoski	Timothy	Fountain	FL
263	Brian	William	Mandeville	LA
264	Forbus	Christopher	Semmes	AL
265	Clausen	Thomas	Dothan	AL
266	Adkins	Rene	Clarksville	TN
267	Duffy	William	Portsmouth	VA
268	Ajubita	Amanda	Mandeville	LA
269	Smith	Michael	Spring	TX
270	peck	stewart	new orleans	LA

List of U.S. citizens that have contacted Members of Congress in support of the 2017 Notice

Number	Last Name	First Name	City	State
271	Thompson	Scott	Pensacola	FL
272	DeCamillis	Paul	Virginia Beach	VA
273	Metzger	Mike	Edmonds	WA
274	Melancon	Lauren	Cut Off	LA
275	Stewart	Bernie	Austin	TX
276	Miranda	Philip	Spring	TX
277	Haynes	John	Jacksonville Beach	FL
278	Struck	Alberto	New Orleans	LA
279	FORBES	KIM	CHESAPEAKE	VA
280	Hegg	Kimberly	Jacksonville	FL
281	Rabalais	Darrall	Gramercy	LA
282	Hardacre	Jane	Panama City	FL
283	Scheps	Cameron	Houston	TX
284	Self	Robert	Lacombe	LA
285	Ittner	Steve	Frankenmuth	MI
286	Bonnett	Susan	Covington	LA
287	Reidl	Ricky	Sunbury	NC
288	Poole	Christopher	Tomball	TX
289	Bisso	William	Houston	TX
290	Yriondo	Michael	Panama City Beach	FL
291	Tredinich	Randy	Madisonville	LA
292	Coulson	John	Aberdeen	MS
293	Thomas	Tregnel	Pascagoula	MS
294	Kerns	Ashley	Westlake	LA
295	Aney	Richard	Fairhope	AL
296	Young	Antoinette	Brewster	MA
297	Crumley	Caroline	New York	NY
298	Hebert	Guy	Madisonville	LA
299	Hadley	Tami	River Ridge	LA
300	de Roode	David	Houston	TX
301	Gonzales	Nancy	Chula Vista	CA
302	Tobar	Cheryl	Panama City	FL
303	Morrison	Thomas	Port St. Lucie	FL
304	Herman	Carl	Jacksonville	FL
305	Gilley	Jeff	Jacksonville	FL
306	Sullivan	Timothy	Metairie	LA
307	Foote	George	Avalon	CA
308	Mason	Steve	Kingwood	TX
309	Lock	Jason	Norfolk	VA
310	Loomis	Fred	Winthrop	MA
311	Talbert	Sammy	Ocala	FL
312	Davis	Grover	Panama City	FL
313	VERRET	TONY	GRAY	LA
314	Jones	Dwayne	Jacksonville	FL
315	McDermott	Elizabeth	New Orleans	LA

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Number	Last Name	First Name	City	State
316	Ross	Robert	Southport	FL
317	Rodrigue	Alissa	Galliano	LA
318	Sacco	Nicholas	Charleston	SC
319	Sparrow	Donald	Poertsmouth	VA
320	Bolinder	Marcus	The Woodlands	TX
321	Adams	Potter	Mandeville	LA
322	Young	Clinton	Harwich	MA
323	ELLIOTT	LYDIA	COVINGTON	LA
324	Jones	Toni	Jacksonville	FL
325	McMillion	Deanna	Mandeville	LA
326	Burke	Jo	Westwego	LA
327	Wood	Brenda	Mobile	AL
328	Rogan	Patti	Metairie	LA
329	Madere	Dody	Jefferson	LA
330	Bouchillon	Billy	Ocean Springs	MS
331	Whitfield	Kimberly	Panama City	FL
332	Ruge	Mark	Bayside	WI
333	Powe	Nichole	Moss Point	MS
334	Vogel	Jared	Covington	LA
335	Azeez	Haamid	Spanish Fort	AL
336	Bernard	Derronne	Broussard	LA
337	Kirby	Jessica	Mandeville	LA
338	O'Sullivan	Maureen	Jacksonville	FL
339	Aslanian	Josh	Lowell	MA
340	Bennett	Brandon	Westlake	LA
341	Vides	Gustavo	New Orleans	LA
342	Maaghul	Aysha	Panama City Beach	FL
343	Stevens	Jacob A.	Lynn Haven	FL
344	Morales	Elvin	Jacksonville	FL
345	Altentaler	Donna	Franklinton	LA
346	Fuller	Keith	Milton	FL
347	Fitts	David	Lafayette	LA
348	Jemmison	Frank	Portsmouth	VA
349	Schloegel	Alfred	Folsom	LA
350	Colsson	Mark	Panama City Beach	FL
351	Boothe	Christopher	Eight Mile	AL
352	DeJarnette III	Edmund	Houston	TX
353	Garner	Debbie	Jacksonville	FL
354	Magee	Samual	Angie	LA
355	Rockwell	John	Friendswood	TX
356	Gibilterra	Thomas	Spring	TX
357	Weber	Ricky	Morgan City	LA
358	Tighe	Jonah	Bristol	FL
359	Toon	Jason	Saint Augustine	FL
360	Howard	Andy	Panama City	FL

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Number	Last Name	First Name	City	State
361	Sones	Robert	Houston	TX
362	Coniglio	Stuart	Stamford	VT
363	Lesher	Jon	Gulf Breeze	FL
364	Harvey	Michael	Madison	MS
365	Rhodes Jr.	Edward	Kiln	MS
366	Joyner	Karl	Palm Beach Gardens	FL
367	Parson	Charles	Mobile	AL
368	Cessna	Dennis	Panama City	FL
369	sasser	john	Pensacola	FL
370	Schroeder	Georg	Seattle	WA
371	Bludworth	Monty	Santa Fe	TX
372	Culp	Patrick	Gulfport	MS
373	Crawley	Matthew	Robert	LA
374	Smalley	Joseph	Lafayette	LA
375	Manuel	Tyler	Morgan City	LA
376	Manzella	Summer	Metairie	LA
377	Hartsaw	Steven	Neptune Beach	FL
378	Snow	Andrew	saint petersburg	FL
379	Turner	Harry	Squires	MO
380	Woodham	Krista	Panama City	FL
381	Vides	Valerie	New Orleans	LA
382	Dykes	Greg	Carthage	MS
383	Dupeire	Deborah	Jefferson	LA
384	ballard	scott	Covington	LA
385	Cheramie	Walton	Larose la	LA
386	Luhta	Gunar	Madison	OH
387	Noles	Rebecca	Panama City	FL
388	Fuehrer	Allyson	Freeport	ME
389	Sims	Cody	Houston	TX
390	Desiderio	Renee	Fort Lauderdale	FL
391	Kilbourne	Robert	Pawleys island	SC
392	Bordelon	Lisa	Houston	TX
393	Keel	Jared	Panama City	FL
394	Jones	Erin	St Johns	FL
395	Ekenes	Rolf	Pensacola	FL
396	Naquin	Robbie	Racela d	LA
397	Savoy	Andre	Church Point	LA
398	Massicot	Michael	Metairie	LA
399	Leblanc	Constance	Houston	TX
400	Wells	Richard	Slidell	LA
401	Gomolka	Matthew	Boulder	CO
402	Daane	Jeff	Larose	LA
403	Serpas	Thomas	Kenner	LA
404	Ramesar	Barry	Covington	LA
405	Darda	Brad	Lafitte	LA

Number	Last Name	First Name	City	State
406	Florence	Derrick	Texas City	TX
407	Aro	Bradley	Roy	WA
408	Poe	David	Houston	TX
409	Barnett	Benjamin	Zionsville	IN
410	Bultman	Douglas	Madisonville	LA
411	Melancon	Zack	Broussard	LA
412	O'Kane	James	Bay Minette	AL
413	Horchover	Scott	Redmond	WA
414	Lubrano	Paul	Mandeville	LA
415	Catoe	Ryan	Jacksonville	FL
416	harris	paul	Lynn Haven	FL
417	Munoz	Nestor	Metairie	LA
418	Touchet	James	New Iberia	LA
419	Ingram	Gina	Jacksonville	FL
420	Burke	Jared	Swanville	ME
421	Barrett	Mike	Houma	LA
422	Arceneaux	Cid	Mandeville	LA
423	Richardson	Paul	Covington	LA
424	Hedrick	Jason	Metairie	LA
425	Englehart	Jeffrey	Pensacol	FL
426	sistrunk	michael	new orleans	LA
427	Williams	Akimba	Mansfield	TX
428	Culver	Garrett	Tomball	TX
429	Krewsky	William	Slidell	LA
430	Carter	Doyle	Destin	FL
431	Royce	Doris	New Orleans	LA
432	Duplessis	Olivia	Covington	LA
433	thibodaux	joe	larose	LA
434	Hartzheim	Nicole	Katy	TX
435	Falcone	Robert	Friendswood	TX
436	Johnson	Joseph	Boring	OR
437	Zurn	Darcy	Panama City	FL
438	Peeples	Chris	Holly Ridge	NC
439	Kiger	Joseph	NEW ORLEANS	LA
440	OConnor	Amanda	Key Largo	FL
441	Deen	James	seattle	WA
442	Duncan	William	Covington	LA
443	Orgeron	Joseph	GALLIANO	LA
444	Garland	Stacey	Jacksonville	FL
445	Luke	Eugene	Houma	LA
446	Bergeron	Cathleen	Houma	LA
447	Robinson	Chistopher	semmes	AL
448	Harrison	Kathleen	New Orleans	LA
449	Block	Katherine	Thibodaux	LA
450	Lindsey	Charles	Wewahitchka	FL

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Number	Last Name	First Name	City	State
451	Vertrees	John	Clearwater	FL
452	Lesher	John	Gulf Breeze	FL
453	Elliott	Bryan	Deer Park	TX
454	Jones	Justin	Covington	LA
455	Begley	Bryan	Biloxi	MS
456	ROBERT	ROBIN	MADISONVILLE	LA
457	Dixon	JEnnifer	Seabrook	TX
458	Dussouy	David	Covington	LA
459	Alden	Marcus	Oroville	WA
460	Boudreaux	Greg	Panama City	FL
461	Brown	Tony	Panama City	FL
462	Holt	Danielle	Portland	ME
463	Disotell	Mark	New Iberia	LA
464	Llorca	Jesus	Larchmont	NY
465	Lumley	Christy	Panama City	FL
466	Schwartz	William	New Orleans	LA
467	Pressey	Kenneth	Austell	GA
468	Adam	Matthew	Pocasset	MA
469	Llamas	Luis	New Orleans	LA
470	Ebinger	Frederick	Panama City	FL
471	Cognevich	Kenneth	River Ridge	LA
472	Lirette	David	Gray	LA
473	Kelly	William	Greenwood Village	CO
474	Ondrey	Ryan	Pearland	TX
475	Gibson	Kurt	Morrisville	NC
476	Gass	Cindy	Mobile	AL
477	ortega	jose	miami	FL
478	Babb	Robert	Lynn Haven	FL
479	Rosa	Alex	Lynn Haven	FL
480	Roth	Augusta	Dickinson	TX
481	Harris, Jr.	Eugene	Panama City	FL
482	Johnson	Tobi	Alvin	TX
483	Steeves	Justin	Wilmington	MA
484	Raymond	Karen	Jacksonville	FL
485	Lamey	Richard	Biloxi	MS
486	Hornbeck	Troy	Mandeville	LA
487	Szubinski	Ryan	New Orleans	LA
488	Calnan	John	Estero	FL
489	seeber	john	levant	ME
490	Wyatt	Shane	Chipley	FL
491	Jones	Gary	Houma	LA
492	Dupre	Terri	Bourg	LA
493	Conroy	Timothy	Panama CIty	FL
494	Beck	George	Covington	LA
495	Henderson	James	Chula Vista	CA

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Number	Last Name	First Name	City	State
496	Olsen	Joshua	Mapleton	ME
497	Giberga	Samuel	Covington	LA
498	Dickens	Vance	Metairie	LA
499	Krablin	Steven	Spring	TX
500	Badeaux Jr.	Travis	LA	LA
501	klotz	calvin	kenner	LA
502	CHISM	CHERI	HOUMA	LA
503	Authement	Rory	Houma	LA
504	James	Jonathan	Covington	LA
505	Guadalupe	Raymond	Port St Lucie	FL
506	Pons	Samuel	Covington	LA
507	Bowen	Angela	Panama City	FL
508	Lee	Carl	Mobile	AL
509	Jones	Steven	Jay	FL
510	Richard	Donna	Panama City	FL
511	Cancienne	Eva	Mandeville	LA
512	Reed	Robert	Wilmer	AL
513	Engeron	Brian	Houma	LA
514	Guirola	Louis	Vancleave	MS
515	Parent	Derek	Jersey City	NJ
516	Helfer	Tiffany	Slidell	LA
517	Nalls	Melissa	Slidell	LA
518	Rodriguez	Rosa	Kenner	LA
519	Kilpatrick	Timothy	Panama City	FL
520	Quintero	David	Metairie	LA
521	Evans	Joelle	New Orleans	LA
522	Bourgeois	Ashley	Bellaire	TX
523	Seale	Jack	Lynn Haven	FL
524	Bozeman	Tami	Youngstown,	FL
525	Hernandez	George &	Panama City	FL
526	Strickland	Charles	Panama City Beach	FL
527	Ross	Sean	Covington	LA
528	Hellmers	Leslie	Metairie	LA
529	Copus	Kevin	New Orleans	LA
530	Lennon	John	Bourne	MA
531	Yarbrough	James	Mobile	AL
532	Shepherd	Samuel	Fountain	FL
533	Woodard	Tim	Katy	TX
534	Parker	R Clyde	Conroe	TX
535	Mullins	Robert	Ocean Springs	MS
536	Manzella	Kirstie	Mt. Hermon	LA
537	Broussard	Anthony	Rayne	LA
538	Lemons	Sean	Panama City	FL
539	Kronenburg	David	Virginia Beach	VA
540	Rundle	Philip	Houston	TX

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Number	Last Name	First Name	City	State
541	Rodgers	Adam	Covington	LA
542	Stark	Joseph	Panama City	FL
543	Oliverie	Nicolas	Humble	TX
544	Bennett	Tommy	Covington	LA
545	Cornelison	Forrest	Palmer	AK
546	Cooper	Mike	Covington	LA
547	Nestel	Todd	Fernandina Beach	FL
548	Brod	Joseph	Jacksonville	FL
549	Love	James	Pensacola	FL
550	Munroe	Kenneth	Panama City	FL
551	McIntyre	Sean	Seattle	WA
552	Clements	David	Morgan City	LA
553	Autin	Corby	Galliano	LA
554	Dorman	John	Panama City	FL
555	Reeves	Jared	New Bern	NC
556	Smith	Brian	LaMarque	TX
557	Falgout	Gina	Larose	LA
558	Parker	Christopher	Jacksonville Beach	FL
559	Lambert	Dalton	Abita Springs	LA
560	Bihm	Matthew	Prairieville	LA
561	Nimick	Peter	Jacksonville	FL
562	Bernard	Craig	Luling	LA
563	Cook	Brian	Mandeville	LA
564	Mickle	Michael	Jacksonville	FL
565	Guerra	Kassi	Jefferson	LA
566	Naumann	Tiffany	Covington	LA
567	DiBenedetto	John	Austin	TX
568	Hebert	Doug	Richmond	TX
569	Armstrong	James	Port Angeles	WA
570	Culp	Brandon	Clanton	AL
571	Guccione	Steve	Belle Chasse	LA
572	Bean	Brandon	Monroe	LA
573	Calamia	Anthony	Springfield	LA
574	Hallisey	Matthew	San Diego	CA
575	Blessing	Erin	Metairie	LA
576	Kitchen	Boyd	Covington	LA
577	Daigle	Trish	Covington	LA
578	Miller	Wendell	Woodstock	GA
579	Fortier	Michael	Hampstead	NC
580	Badeaux	Scot	Port Fourchon	LA
581	Alba	Guillermo	Chula Vista	CA
582	Burchfield	Luin	Covington	LA
583	Marcel	George	Lynn Haven	FL
584	Weatherall	Sami	Bourg	LA
585	Steffan	Robert	Fort Myers	FL

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Number	Last Name	First Name	City	State
586	Leners	Mike	Oakland	CA
587	Ferrer	Jeanne	Violet	LA
588	Terral	Lizette	New Orleans	LA
589	Bradford	Charlotte	Grandfalls	TX
590	Roessler	Jennifer	Fort Myers	FL
591	Burkart	Lynne	Metairie	LA
592	McMillan	Matthew	Rhome	TX
593	Powers	Lynn	Lewisville	NC
594	Lefort	Amy	Larose	LA
595	Baker	Wels	McMurray	PA
596	Dossett	Mimi	Covington	LA
597	Rodgers	Greg	New York	NY
598	Straatmann	Larry	Houma	LA
599	Bradford	Edward	Grandfalls	TX
600	Dominique	Fallon	Lockport	LA
601	Lunsford	David	Palm Coast	FL
602	Fuller	Allen	Houston	TX
603	Brown	Whitney	Panama City	FL
604	Todd	Ben	Mandeville	LA
605	Manuel	Jared	Larose	LA
606	Durham	Christopher	Danbury	CT
607	Page	Christopher	Belmont	NH
608	Garcia	Daniel	Deer Park	TX
609	Danos	Sean	Metairie	LA
610	Kane	Kevin	Hammond	LA
611	Allen	Gerren	GlenAllan	MS
612	Broussard	Anthony	Sunset	LA
613	Johnson	Stephen	Luling	LA
614	D'Anna	Gasper	Corpus Christi	TX
615	Ajubita	Courtney	Mandeville	LA
616	Evans	Daniel	Glenolden	PA
617	Malone	Eric	New Orleans	LA
618	Alawaj	Tarafa	Jacksonville	FL
619	Milford	Robert	Tyler	TX
620	James	Jason	Luling	LA
621	Stork	Brent	Lucedale	MS
622	owens	eldridge	MOBILE	AL
623	Culp	Alton	Jemisoon	AL
624	Brumble	JJ	Vancleave	MS
625	Eymard, Jr.	Hilton	Baton Rouge	LA
626	Hemphill	Julian	Santa Rosa	CA
627	Florence	Sherman	Orlando	FL
628	West	Donna	San Diego	CA
629	Thomas	Ginger	Lacombe	LA
630	Guidry	Susan	Marrero	LA

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Number	Last Name	First Name	City	State
631	Howell	Sidney	Marrero	LA
632	Green	John	Metairie	LA
633	Magnani	Wendy	Covington	LA
634	Ross	Rick	Johnston	SC
635	Posey	Kyle	Goose Creek	SC
636	Gagnet	Patrick	Covington	LA
637	Norte	Tiffany	ALVA	FL
638	Paige	Stephen	Panama City	FL
639	Hebert	Cynthia	Basile	LA
640	Hornaday	Mary	Mandeville	LA
641	Giberga	Sophie	Chicago	IL
642	Puett	Gary	League City	TX
643	Andrews	Scott	New Orleans	LA
644	Cronin	Thomas	Metairie	LA
645	Hogaboone	Jill	Jefferson	LA
646	Callais	Harris	Cut off	LA
647	Eserman	Elliot	madisonville	LA
648	McFarling	Tierney	Broken Arrow	OK
649	Walker	Allen	Columbus	OH
650	Giammolva	Michele	Slidell	LA
651	Look	michael	Patterson	LA
652	Ernst	John	Youngsville	LA
653	Ellert	John	Boca Raton	FL
654	Pitre	Ryan	Walker	LA
655	Howell	Louis	Tampa	FL
656	kerlin	chad	jefferson	LA

Offshore Marine Service Association
America's Lifeline to Offshore Energy

Analysis of Vessel Availability and Impacts of Recent CBP Notice

EXECUTIVE SUMMARY

In 2009, Customs and Border Protection ("CBP"), which is the agency in the United States charged with administering the Jones Act, recognized that for decades it had issued flawed interpretations of the Jones Act as it applies to subsea operations that occur on the United States outer-continental shelf ("OCS"), which U.S. law considers to be a U.S. "point" covered by the Jones Act. Because these flawed letter rulings allowed foreign companies to do work on the United States OCS using cheaper foreign labor and often paying little or no taxes in the U.S. or in their home jurisdictions, U.S. maritime investment and employment of U.S. citizen mariners was stifled. The result of this decades-long error was significant lost jobs to the U.S. Jones Act industry, which includes U.S. citizen mariners, shipyards, vessel owners and shipyard workers. On July 17, 2009 CBP began an effort to revoke several of these so called "Carrier Branch Rulings" through an announcement in the Customs Bulletin. Later that year, at the urging of many foreign owners and charterers of foreign vessels that CBP should study the issue further, CBP unfortunately withdrew the notice. CBP stated at that time a "**new notice which will set forth CBP's proposed action relating to the interpretation of T.D. 78-387 and T.D. 49815(4) will be published in the Customs Bulletin in the near future**." On January 18, 2017, CBP issued its long-awaited "new notice" ("Notice") and once again has proposed to close these illegal loopholes and properly enforce the Jones Act, to the benefit of American workers, U.S. citizen owned vessel companies and U.S. shipbuilders and ultimately to the national security of the United States.

CBP's announced action, which is required by the Jones Act, revokes errant letter rulings that are inconsistent with the statute, thus correctly realigning CBP's administrative interpretations of the Jones Act with the text and policy of the statute itself. Having now twice publically acknowledged its legal error, there is no debate over the legal soundness of CBP's proposal. CBP must take this action. While the Jones Act does not require the domestic industry to demonstrate sufficient capacity as a prerequisite to CBP finalizing its proposal, the purpose of this paper is to lay to rest any concern that there is a lack of U.S. flag, Jones Act qualified vessels to perform the offshore activities addressed by CBP in its proposed notice.

As will be shown, CBP's Notice most intensely affects the operations of deep water subsea construction/IRM vessels, dive support vessels, shallow water lift boats, and construction barges. Following the CBP's 2009 announcement that it would address its flawed Jones Act interpretations "in the near future", the Jones Act industry answered the call for investment in Jones Act qualified deep

water subsea construction/IRM vessels. Over $2 billion has been invested by U.S. companies in U.S. shipyards to build or retrofit thirty-one modern, high-spec vessels that provide the full spectrum of subsea services identified by CBP. These vessels have effectively displaced the foreign flag fleet of subsea construction/IRM vessels. Thirty-one vessels are more than enough to perform the necessary work on the OCS previously improperly taken by a foreign fleet. According to the IHS Petrodata Construction Vessel database, there were, on average, 19.8 foreign subsea construction/IRM vessels working in the GoM per year over the last five years. Additionally, there are hundreds of Jones Act qualified U.S. flag lift boats and a sufficient number of U.S. flag barges and dive support vessels to perform all shallow water activities.

While the Notice makes important changes to interpretations affecting the work of subsea construction/IRM vessels, the Notice does not change CBP existing interpretations concerning the "paid out, not unladen" theory that currently allows foreign vessels to perform pipe and umbilical laying activities, even though the Jones Act community disagrees with this theory. Additionally, none of the rulings sought to be revoked or modified deal with activities involving the transportation or installation of platform jackets, hulls or top-side facilities by a heavy lift or other vessel.[*] Consequently, concerns raised that the Notice changes CBP's approach to pipelaying or heavy lift operations are unfounded.

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. As Congress explained in the Jones Act preamble: "[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." CBP's Notice correctly realigns prior agency interpretations with the text and policy of the statute. By allowing several years for the domestic industry to respond to CBP's 2009 announcement, there is now more than sufficient domestic capacity to perform required OCS operations. CBP should move expeditiously to implement the Notice to give effect to Congress' mandate set forth in the Jones Act.

[*] Under separate rulings, and consistent with the views taken by CBP in its Notice, CBP has stated that while a heavy lift vessel may install a platform jacket, it may not engage in any part, however minimal, of the transportation of the jacket.

THE JONES ACT AND CBP'S REVOCATION AND MODIFICATION NOTICES

The Jones Act requires U.S. built and owned ships, crewed by U.S. citizens, be used for the transportation of merchandise from one U.S. point to another U.S. point (i.e., a coastwise transportation). In 2009, Customs and Border Protection ("CBP"), which is the federal agency charged with administering the Jones Act, recognized that for decades it had issued flawed interpretations of the Jones Act as it applies to cabotage trade relevant to subsea operations that occur on the United States OCS. These subsea locations under the law are a U.S. "point," covered by the Jones Act. These interpretations are known as "Carrier Branch Rulings." On July 17, 2009, CBP began an effort to revoke several Carrier Branch Rulings through an announcement in the Customs Bulletin, which was centered on CBP's use of two "Treasury Decisions" known as T.D. 78-387 and T.D. 49815(4). In T.D. 78-387, and later rulings that built upon its flawed logic, CBP improperly concluded that foreign vessels could transport a variety of OCS subsea articles because the vessel was simultaneously engaged in construction or repair and maintenance activities. Subsequent rulings were also contrary to the prohibitions in the Jones Act by holding that such subsea articles were "equipment" of the construction vessel (in spite of their being unladen at OCS points), and therefore not "merchandise" under the Jones Act. This view was inconsistent with T.D. 49815(4), a long standing CBP ruling defining vessel equipment to be only that which is necessary for the navigation, operation or maintenance of a vessel. In the 2009 Notice, CBP candidly acknowledged its significant and decades-long error:

> CBP recognizes that allowing foreign-flagged vessels to transport merchandise from one U.S. point and install that merchandise at another point on the OCS on the condition that it merely be accomplished ''on or from that vessel'' would be contrary to the legislative intent of [the Jones Act]… CBP recognizes that allowing a foreign-flagged vessel to transport articles that are not needed to navigate, operate, or maintain that vessel or for the safety and comfort of the persons on board that vessel, but rather to accomplish a [sic] activity for which that vessel would be engaged, would be contrary to the legislative intent of [the Jones Act].

Later that year, at the urging of many foreign owners and charterers of foreign vessels for further study of the issue, CBP withdrew the notice. CBP stated a "**new notice which will set forth CBP's proposed action relating to the interpretation of T.D. 78-387 and T.D. 49815(4) will be published in the Customs Bulletin in the near future**." Despite CBP's suspension of the revocation process, the Jones Act industry answered the call for investment in U.S. flag, Jones Act qualified subsea construction vessels made necessary by CBP's acknowledgement that its rulings were flawed and that it would address T.D. 78-387 and T.D. 49815(4) based rulings "in the near future". In all, U.S. vessel owners have invested over $2 billion in the construction or retrofitting of Jones Act qualified vessels required for subsea OCS operations. The following thirty-one vessels have been newly constructed or retrofitted that provide the full spectrum of subsea services foreshadowed by CBP in the 2009 Notice:

Jones Act Qualified Subsea Construction/IRM Vessels

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
HOS Warland	Hornbeck Offshore	Yes	DP2	250	2016
HOS Woodland	Hornbeck Offshore	Yes	DP2	250	2016
Ocean Evolution	Oceaneering	Yes	DP2	250	TBD-2017
Paul Candies	Otto Candies	Yes	DP2	250	TBD-2017
Harvey Sub-Sea	Harvey Gulf	Yes	DP2	250	TBD-2017

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Harvey Blue-Sea	Harvey Gulf	Yes	DP2	250	TBD-2017
HOS Warhorse	Hornbeck Offshore	Yes	DP2	250	TBD-2018
HOS Wild Horse	Hornbeck Offshore	Yes	DP2	250	TBD-2018
Harvey Deep-Sea	Harvey Gulf	Yes	DP2	165	2013
Harvey Intervention	Harvey Gulf	Yes	DP2	165	2016
Kirt Chouest	Edison Chouest	Yes	DP2	165	2008
Dove	C-Lift Holdings	Yes	DP2	150	2015
HOS Bayou	Hornbeck	Yes	DP2	150	2014
Ocean Alliance	Otto Candies	Yes	DP2	150	2011
C-Installer	Edison Chouest	Yes	DP2	150	2014
Holiday	Edison Chouest	Yes	DP2	150	2010
Kelly Ann Candies	Otto Candies	Yes	DP2	100	2012
Wyatt Candies	Otto Candies	Yes	DP2	100	2012
Chloe Candies	Otto Candies	Yes	DP2	100	2006
Grant Candies	Otto Candies	Yes	DP2	100	2008
HOS Mystique	Hornbeck Offshore	Yes	DP2	100	2008
Ross Candies	Otto Candies	Yes	DP2	100	2009
SURF Challenger	Otto Marine	Yes	DP2	100	2007
Ocean Intervention II	Oceaneering	Yes	DP2	73	1999
HOS Ridgewind	Hornbeck Offshore	Yes	DP2	70	2015
Harvey Discovery	Harvey Gulf	Yes	DP2	64	2006
AMC Ambassador	Emas Offshore	Yes	DP2	60	1998
Brandon Bordelon	Bordelon Marine	Yes	DP2	60	2015
Ocean Intervention	Oceaneering	Yes	DP2	54	1998
Shelia Bordelon	Bordelon Marine	Yes	DP2	50	2015
Bordelon 104	Bordelon Marine	Yes	DP2	TBD	TBD-2018

Source: IHS Petrodata and Industry Sources - 2/1/17

THE 2017 CBP NOTICE

On January 18, 2017, nearly eight years after its original 2009 acknowledgement of error, CBP issued its long-awaited "new notice". Once again, CBP has taken action to close the loopholes it created through admitted flawed analysis and restore the Jones Act to its original intent. As it promised it would do, CBP returned to its analysis of activities in light of T.D. 78-387 and T.D. 49815(4).

The 2017 Notice has three basic conclusions. First, it re-affirms the view that the Jones Act does not prevent a foreign ship from serving as a stationary platform from which installation or repair operations are conducted, separate and apart from transportation activities. Second, as in 2009, the Notice rejects letter rulings that have allowed transportation of merchandise to occur based on the idea that because a vessel is engaged in an activity that is allowed, such as installation or repair, the vessel can also engage in transportation of merchandise to and from the site where installation or repair activities occurs. Finally, the Notice realigns CBP's application of the definition of "vessel equipment", which is not Jones Act merchandise, with the long-standing, and common sense definition CBP promulgated in T.D. 49815(4). CBP reaffirms that "merchandise" does not include a foreign vessel itself and the portable equipment of the vessel that is "necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." However, CBP rejects its previous interpretations that unreasonably stretched the determinations of vessel equipment to items far beyond that which is necessary and appropriate for the vessel's navigation, operation and maintenance or safety and comfort of persons on board. CBP proposes to abandon reasoning that broadly included oilfield equipment and materials that the vessel will actually install as part of the vessel's equipment simply because they are "used by the vessel in the course of its business."

Importantly, the 2017 Notice does not address the so-called "paid out, not unladen" analysis that CBP has used to allow the transportation and subsea installation of pipelines, umbilical lines, and cables. Under this analysis, it is CBP's view that because a pipeline, umbilical or cable is "paid-out" by the vessel, the vessel's activities do not constitute the transportation of merchandise between coastwise points. While the Jones Act community has questioned this analysis on the basis that transportation of the paid out materials has in fact occurred, CBP did not address the issue in the 2017 notice. Therefore, at least for now, activities permitted under the "paid-out, not unladen" theory appear to be unaffected by the CBP Notice. However, the CBP Notice does clarify that several letter rulings that allowed transportation of pipelines, umbilicals and cables under an "equipment of the vessel" analysis are flawed and proposes their revocation on that basis.

LIFECYCLE OF OFFSHORE ENERGY DEVELOPMENT PROJECT

In order to understand how CBP's proposed modification and revocation of letter rulings might impact offshore energy operations, the letter rulings need to be placed into the context of offshore energy activities. The life of an offshore energy project, which can last decades, is commonly understood to be divided into the following five (5) phases:

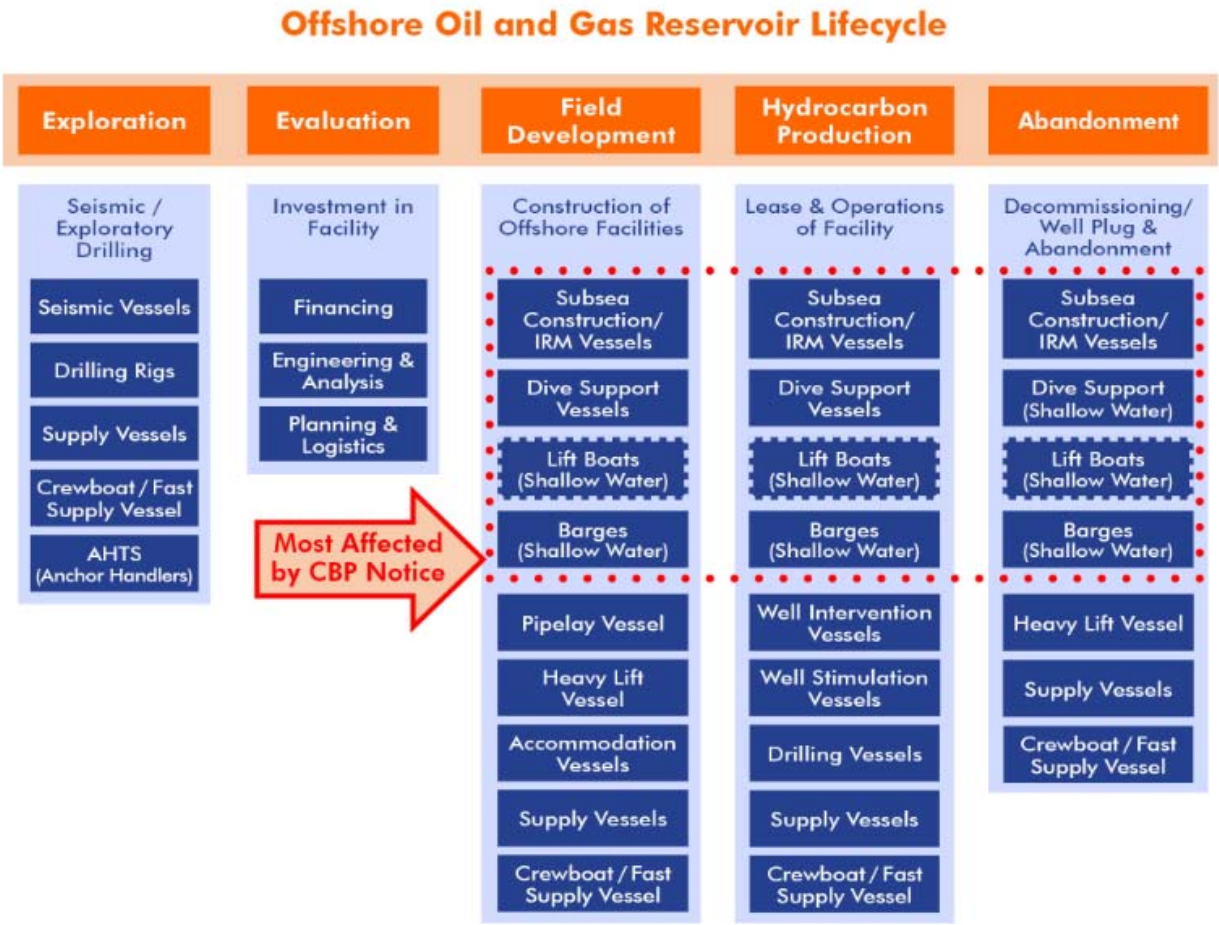
- Exploration
- Evaluation
- Field Development
- Production and Maintenance
- Decommissioning and Abandonment

As a project progresses through these phases of its lifecycle, the requirements of the project, and therefore the vessels it uses, changes. It is important to note here the significant difference between "conventional", or shallow water, and deep water projects. Conventional projects are understood as those which occur in water depths of less than 300 meters. The vessels that work on these projects can be very different from those used in deep water. First and foremost, because the facilities in shallow water are smaller and sea states are more benign, the vessels are smaller and generally less sophisticated as well. Additionally, in many shallow water locations it is possible for a vessel to be in contact with the sea-floor, with either anchors or legs. It is also possible to moor a vessel to another offshore structure. In deep water, the physical size of the facilities and the extreme water and well depths require vessels that are much larger and more technologically advanced than their shallow water cousins. In addition, water depths make contact with the sea bottom, sometimes thousands of feet beneath the water surface, impossible. To remain in place, deep water vessels use technology known as "dynamic positioning". Dynamic positioning or "DP", uses a variety of reference sensors and GPS positioning that are fed through an on-board computer which then directs smaller engines on the vessel known as "thrusters" where to position and maintain the ship's position. While there are still many conventional projects in the GoM, particularly in the production and maintenance phase of the lifecycle, the largest share of investment has been in deep water during the last twenty years.

A shallow water lift boat

DP vessels at deep water facility

The remainder of this section briefly summarizes each of the phases of an offshore project and the vessels that are required during each phase. It also explains which of the letter rulings affected by CBP's proposed action are implicated in each phase, if at all.



EXPLORATION

The exploratory phase of a project has two main facets: seismic data collection and analysis, and exploratory drilling. The first step of any project is to acquire and study seismic data of the geological and geophysical formations below the sea-floor. This information is collected through the use of seismic vessels, or supply vessels that have been modified, which use a variety of technologies in order to scan for and collect the data required. None of the letter rulings proposed to be revoked or modified deal with seismic vessel activities.

Once an oil company has studied seismic data and has acquired lease rights to an area, it will drill one or more exploratory wells in order to ascertain whether or not there is a geologic formation containing hydrocarbons. If it finds hydrocarbons, it may drill additional "appraisal" wells in order to learn more about the formation and the hydrocarbons it contains, necessary to making the economic decision on whether or not to develop the prospect for commercial exploitation.

During the exploratory phase, the principal vessels used are a drilling rig, which in shallow water will be a "jack-up" rig and in deep water, either a semi-submersible drilling vessel or a ship-shaped "drillship". The drilling vessel is supported by offshore supply vessels, tugs, AHTS and crewboats, which transport the various materials and personnel required by the drilling rig in order to drill the well. The drilling rig, connected to the sea-floor, is a coastwise point, and therefore the transportation of equipment, drilling materials and people to and from the drilling rig is "coastwise transportation", requiring U.S. flag, Jones Act qualified supply and crewing vessels with U.S. citizen mariners. For appraisal activities, parties may perform a "well-test" or well "flow-back", which involves the flowing of crude oil from the well formation into a vessel's cargo tanks. The rate of flow and characteristics of the oil are tested and studied as part of the well appraisal. The flow back vessel is usually a tank vessel and is also required to be Jones Act qualified as the crude oil will be transported ashore. The well test vessel may be a barge, towed by a tug, or a small tank ship.

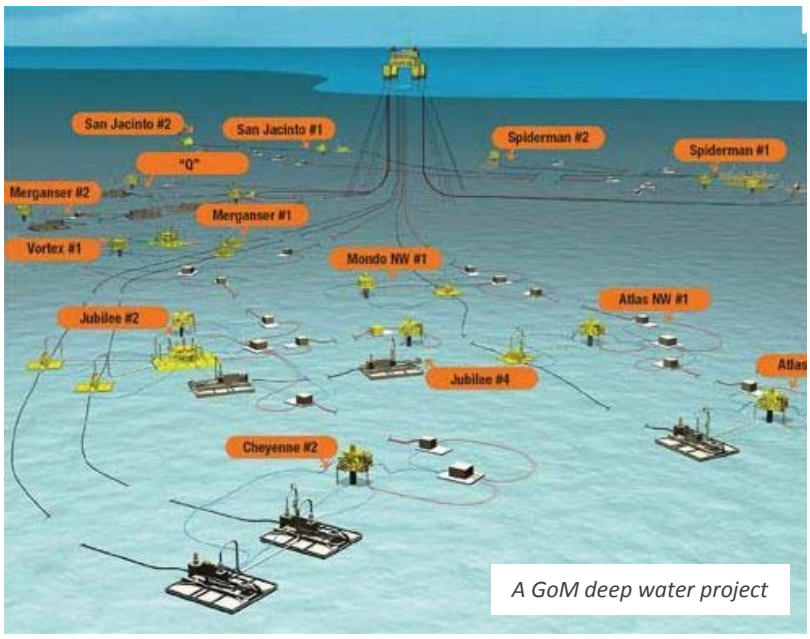
Except to say that a drilling vessel cannot move materials from one drilling location to another, which is easily accomplished by Jones Act supply vessels, the proposed CBP action does not cover the activities traditionally understood to be part of the exploratory drilling effort. ***The supply vessels, crewing vessels, drilling vessels and flow-back vessels utilized as part of this phase are unaffected by the Notice.***

EVALUATION

The economic and commercial determination of whether to invest further in a project once hydrocarbons are found is the heart of the evaluation phase. While some additional seismic or even an additional appraisal well might be drilled as part of this phase, the work is principally analytic and comprised by engineering, planning and analysis. During this phase, the only vessel activities that occur are supplemental to activities that have already transpired. ***Evaluation activities are unaffected by the CBP Notice.***

FIELD DEVELOPMENT

If the evaluation of a prospect results in the sanctioning of its development, the oil company has made the decision to invest the millions, if not billions, of dollars necessary to produce the hydrocarbons it has found and evaluated to be economically visible. While each development project is unique, all projects have the same goal, which is to separate the hydrocarbons from their geologic formation, bring them to the water's surface for initial processing and then transport them, usually by pipeline, to a shore-side location for distribution. To achieve this goal, infrastructure is required on the sea-floor to interface with the well. A vertical pipe known as a "riser", is needed to move the hydrocarbons vertically from the well to the water's surface. A production facility is required on the surface of the water to initially process the hydrocarbons. And, a pipeline is required for their transportation to the shore-side distribution point.



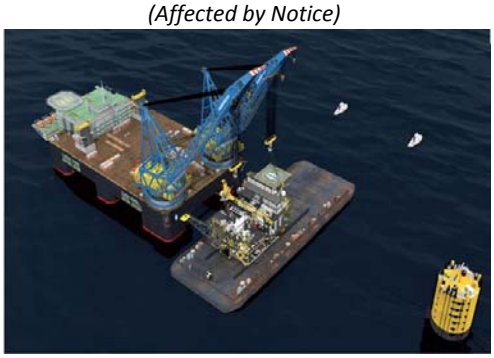
A GoM deep water project

Various vessels are used to install this vast array of equipment. In shallow water, where the sea-floor can be reached by divers, dive support vessels (which are either ships or barges as well as lift boats) are used in place of subsea construction vessels. Some subsea construction vessels can "double-duty" as a dive vessel, as can some offshore support vessels. A pipelay vessel is used to install the pipelines. In shallow regions, the pipelay vessel may be a barge. For deep water subsea construction/IRM vessels (which are ships equipped with cranes), remotely operated vehicles and sometimes additional equipment are used to construct much of the infrastructure on the sea-floor. In deep water, either a subsea construction vessel or a pipelay vessel will be used to lay cables – known as umbilicals -- that bundle electric power cables, hydraulic fluids lines and communication cables, all of which are used to operate subsea equipment (umbilicals are less common in shallow water). The subsea construction vessel, dive support vessel (in shallow water) or the pipelay vessel can be used to install and connect the risers with the production facility.

Subsea Construction/IRM Vessel
(Affected by Notice)

Shallow Water Dive Spread
(Affected by Notice)

Pipelay Vessel
(Not Affected by Notice)



Heavy Lift Vessel and Barge at Hull
(Not Affected by Notice)

Finally, the production facility located on the surface of the water is transported to the location, typically in two sections, one which sits mostly below the water-line and holds the production facility itself, and then the "top-side" production facility. In shallow water, the section below the waterline has legs and a base, all of which is referred to as a "platform jacket". In deep water, the facility rests on a floating structure known as a "hull", which is anchored to the sea-floor. These sections are transported to their location on vessels known as a launch barge. The top-side is installed on the platform jacket or hull by another vessel equipped with extremely large cranes, known as a heavy lift vessel, or in shallow water, a derrick barge or lift boat.

CBP's Notice most intensely affects the operations of the subsea construction vessels and dive support vessels as well as shallow water lift boats and construction barges. As noted earlier, the notice does not address the "paid out, not unladen" theory that improperly allows foreign vessels to perform pipe and umbilical laying activities but does say that pipe and umbilicals are not vessel equipment. Additionally, none of the rulings sought to be revoked or modified address activities involving the transportation or installation of platform jackets, hulls or top-side facilities by a heavy lift or other vessel.

HYDROCARBON PRODUCTION AND FIELD MAINTENANCE

Once the field is developed, the hydrocarbons are produced and distributed. The infrastructure on the sea-floor and on the water's surface, the well bore, the pipelines, the risers and the geologic formation itself all require constant monitoring and inspection, repair, maintenance and sometimes replacement over the course of the field's productive life, which may last for decades. New wells in the field, or even miles away, may be drilled and "tied back" to the existing infrastructure; and existing wells may be entered, or "intervened" for the purpose of performing maintenance or repair inside the well bore

or taking steps to enhance the productivity of the well. The well may also be "stimulated" through the use of a variety of chemicals and other materials that are injected into the well bore to improve its producing characteristics.

The principal vessels utilized during the operating phase of the field are supply vessels, crewing vessels, all subsea construction/IRM vessels, dive support vessels, lift boats, accommodation vessels, barges, well intervention vessels and well stimulation vessels.

The CBP Notice affects the repair and maintenance activities of subsea construction/IRM and dive support vessels. The action affects well intervention and well stimulation activities to the extent that it clarifies that materials injected into the well bore by these vessels are not "vessel equipment." Because intervention activities are similar to drilling activities, the materials to be injected into a well can be supplied to the intervention by a supply vessel, just as in a drilling context. While the same is true of stimulation materials injected by a stimulation vessel, most stimulation vessels in the GoM are Jones Act qualified supply vessels that have been outfitted with a stimulation package. In shallow water, most stimulation activities are conducted from lift boats which are also Jones Act qualified, so these vessels are practically unaffected by the CBP Notice.

ABANDONMENT AND DECOMMISSIONING

Once a field has been "played-out" and no longer economically produces hydrocarbons, the operator of the field is required under the terms of the lease it holds with the United States, 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. For these activities, subsea construction/IRM and diving support vessels, offshore support vessels, crewing vessels, lift boats, barges, and at times a heavy lift vessel, are utilized to perform the work.

It is unclear whether the CBP Notice impacts abandonment and decommissioning activities. While the proposed action makes clear that the removal of subsea infrastructure, such as a segment of pipe, is merchandise and must be transported to another U.S. point on a coastwise vessel, and there are clear parallels between movement of such merchandise with the movement of decommissioned components between coastwise points, ***CBP does not address decommissioning activities directly in the Notice. The Jones Act community believes that these activities are covered.***

ANALYSIS OF PROPOSED CBP MODIFICATIONS AND REVOCATIONS

CBP proposes to modify T.D. 78-387 (identified in the notice principally by its letter ruling identification of HQ 101925) and to replace it with a new ruling HQ 082215. It then proposes to revoke eight rulings that relied upon T.D. 78-387 to permit the transportation of items between coastwise points utilizing rationale derived from T.D. 78-387's generalized notion that such transportation was permissible because it was related to otherwise permissible vessel activities such as installation and repair. Next, it revokes eleven rulings that unreasonably applied the "equipment of the vessel" definition well beyond the traditional definition contained in T.D. 49815(4). Finally, it revokes five more letter rulings, but only because they relied on the "equipment of the vessel" analysis that CBP proposes to reject. It notes that the holdings in these five rulings are otherwise correct. Each letter ruling that CBP proposes to modify or revoke, except for the five revoked but "correct" rulings, is briefly described in the table below:

Ruling Letter	Category of CBP Analysis	Action	Activity in Question	Vessel Type
T.D. 78-387 (a/k/a HQ 101925)	Transportation permissible because related to permissible activity	Modify	Pipeline repair material, anodes, pipeline connectors, wellhead equipment, valves and valve guards, damaged pipeline and platform repair material	Work barge
HQ 108223	Transportation permissible because related to permissible activity	Revoked	OCS oil well stimulation materials and acids	Well stimulation vessel
HQ 108442	Transportation permissible because related to permissible activity	Revoked	Repair materials, clamps, structural materials, pipeline connectors, pipe and pipe repair materials	Lift boat
HQ 113838	Transportation permissible because related to permissible activity	Revoked	Pipeline claims, pipe sections, concrete mats, equipment and materials, anodes, risers, debris and trash on ocean floor, platform and wellhead removal, cementing and well head servicing	DP Diving Vessel, non-DP diving vessel, derrick barge
HQ 115185	Transportation permissible because related to permissible activity	Revoked	Installation of jumper pipe on a subsea well, installation of hull mounted risers (HMR) and steel catenary riser spool pieces (SCRSP) on a deep draft caisson vessel, and transportation of damaged pipe from the OCS back to a port in U.S.	Subsea Construction Vessel/IRM Vessel
HQ 115218	Transportation permissible because related to permissible activity	Revoked	Transportation and subsea installation of a pipeline tie-in spool.	Subsea Construction/IRM Vessel
HQ 115311	Transportation permissible because related to permissible activity	Revoked	Transportation and installation of risers to TLP.	Pipelay/Umbilical Lay Vessel
HQ 115522	Transportation permissible because related to permissible activity	Revoked	Transportation and installation of riser pipe and umbilical “tie-ins”.	Pipelay/Umbilical Lay Vessel or Subsea Construction/IRM Vessel
HQ 115771	Transportation permissible because related to permissible activity	Revoked	Underwater repairs to water pipeline.	Unknown
HQ 105644	Transportation permissible because items are vessel equipment	Revoked	Transportation and laying of telecom cable.	Cablelay Vessel
HQ 110402	Transportation permissible because items are vessel equipment	Revoked	Transportation of telecom cable.	Cablelay Vessel

Ruling Letter	Category of CBP Analysis	Action	Activity in Question	Vessel Type
HQ 111889	Transportation permissible because items are vessel equipment	Revoked	Transportation of multi-well template and marine riser.	Semi-submersible Drilling Vessel
HQ 112218	Transportation permissible because items are vessel equipment	Revoked	Cement and chemicals to be injected in wells – broken tools in wells	Barges
HQ 113841	Transportation permissible because items are vessel equipment	Revoked	Installation of umbilicals	Unknown – likely a Subsea Construction Vessel with umbilical carousel or Pipelay/ Umbilical Lay Vessel
HQ 114305	Transportation permissible because items are vessel equipment	Revoked	Loading and unloading of cable laying equipment and telecom cable; laying of cable.	Cablelay Vessel
HQ 114435	Transportation permissible because items are vessel equipment	Revoked	Laying of umbilicals and flowlines.	Unknown – likely a Subsea Construction Vessel with umbilical carousel or Pipelay/ Umbilical Lay Vessel
HQ 115333	Transportation permissible because items are vessel equipment	Revoked	Laying of telecom cable.	Cablelay Vessel
HQ 115487	Transportation permissible because items are vessel equipment	Revoked	Transportation and laying of methanol line and an umbilical line and transportation of "materials" related or connected to the umbilical and methanol lines. Transportation of anodes.	Pipelay/Umbilical Lay Vessel
HQ 115938	Transportation permissible because items are vessel equipment	Revoked	Transportation and installation of compressors, generators, pumps, structural components, helidecks, handrails, decks, well jackets, stairways and grating. Injection of cement, nitrogen, welding materials.	Lift boats
HQ H004242	Transportation permissible because items are vessel equipment	Revoked	Transportation and installation of pipeline, transportation of pipeline repair equipment and materials, transportation of wellhead equipment.	Subsea Construction/ IRM Vessel
HQ 113137	Transportation permissible because items are vessel equipment	None - ref. in text, no action shown.	Formation fracking/acidizing of wells using chemical blends	Supply Vessel

ANALYSIS OF VESSEL AVAILABILITY IN GOM

Utilizing the IHS Petrodata Construction Vessel Database, as well as proprietary information, a listing of all specialized vessels that support the activities implicated by the proposed revocation was developed as of February 1, 2017 (the "Reference Date"). The inquiry did not include offshore supply vessels and shallow water barges and lift boats, of which there are hundreds of known and available Jones Act qualified vessels to support offshore oil and gas activities. Also not included were drilling vessels, because the Notice does not impact exploratory, appraisal or field development drilling activities, except in an extremely narrow context.

As of the Reference Date there were approximately 103 specialty vessels in the U.S. Gulf of Mexico ("GoM") supporting the field development and production activities. However, far fewer are the focus of the CBP Notice. Specialized vessels are considered to be "Subsea Construction/IRM Vessels", "Dive Support Vessels", "Well Intervention Vessels", "Well Stimulation Vessels", "Heavy Lift Vessels", "Pipelay Vessels" and "Accommodation Support Vessels". While most are listed as "in service" several were listed as "out of service". However, to be more conservative, we assumed all vessels are "in service" or at least capable of being brought into service. Also included are 7 Subsea Construction/IRM Vessels currently under construction and to be delivered on dates between 2017 and 2018. Vessels were then subdivided further into whether they had dynamic positioning capability ("DP"). Non-DP capable vessels are operationally ineligible for almost all deep water projects (greater than 500 meters). Finally, we analyzed below how, if at all, the operations of each of the eight categories of vessels may be affected by the proposed CBP action. In addition to specialized vessels, we estimate that there are 194 High-Spec DP-2 supply vessels, more than 300 crew vessels and 216 lift boats that are U.S. flag, Jones Act qualified vessels.

As shown in the table below, there is no shortage of U.S. flag, Jones Act qualified vessels for activities most impacted by the CBP Notice. A discussion of the availability of each category of specialized vessel follows.

Vessels Used In Field Development, Hydrocarbon Production and Decommissioning Activities

Vessel Type	# of Jones Act Qualified	# of Non-Jones Act Qualified in the GoM	Affected by CBP Notice
Subsea Construction/IRM Vessels	31*	8√	Most Affected
Dive Support Vessels	3	3	Most Affected
Well Intervention Vessels	4	5	Slight to No Affect
Well Stimulation Vessels	9	0	Slight to No Affect
Heavy Lift Vessels	9	10	Not Affected
Pipelay Vessels	7	10	Not Affected
Accommodation Vessels	2	6	Not Affected
Drilling Rigs	<10°	50+	Slight to No Affect

Vessel Type	# of Jones Act Qualified	# of Non-Jones Act Qualified in the GoM	Affected by CBP Notice
Supply Vessels (High-Spec)[1]	194	0	Not Affected
Crew Vessels	300+	0	Not Affected
Lift Boats	216	0	Most Affected

[1]High-spec is defined as DP-2 OSVs with over 2,400 LT in deadweight and over 230' LOA.

*includes 7 under construction to be delivered 2017-2018 √includes 2 Dive Support Vessels °represents jack-up rigs, mostly stacked

SUBSEA CONSTRUCTION/IRM VESSELS

Subsea Construction/IRM Vessels are the vessels most affected by the CBP proposed revocation. These vessels are typically equipped with a subsea rated "active heave compensating" crane of between 50 and 250 tons. The vessels are DP, usually DP-2 (meaning they have a higher level of station keeping redundancy), are equipped with one or more remotely operated vehicles (ROV), have a helideck and accommodations for between 30 and 80 persons. These vessels are utilized to install and then over the life of a field, inspect, repair and maintain, the vast array of subsea infrastructure that is set on the sea-floor as part of a deep water installation.

A Jones Act Qualified Subsea Construction/IRM Vessel

As of the Reference Date there were twenty-seven Subsea Construction/IRM Vessels in the GoM that have a crane of 50 tons or greater, ROVs and are DP. Nineteen are Jones Act qualified, most of which have been constructed or retrofitted since the 2009 CBP revocation notice. In addition, five Jones Act qualified vessels are presently operating in foreign locations, but could operate in the GoM given their Jones Act compliance. An additional seven Jones Act qualified vessels are under construction in U.S. shipyards and scheduled to be delivered on various dates between summer of 2017 and summer of 2018. So, by mid-year 2018, there will be a total of thirty-one U.S. flag, U.S. built, Jones Act qualified Subsea Construction/IRM Vessels available for operations in the GoM.

Excluding two Dive Support Vessels ("DSVs"), discussed in the following section, there are presently only eight foreign flag Subsea Construction/IRM Vessels in the GoM. One is scheduled to depart for a long-

term assignment outside of the GoM and two are cold-stacked and unlikely to resume operations soon due to the financial condition of their owners. According to the IHS Petrodata Construction Vessel database, between January 1, 2012 and February 22, 2017, a total of 37 foreign Subsea Construction/IRM Vessels had worked in the U.S. GoM. On average, 19.8 vessels were present and working in each of the five years comprising 2012-2016. Foreign flag Subsea Construction/IRM Vessels have departed the GoM over the last twelve months as their owners have come under severe financial strain due to high debt loads. Several foreign owners of Subsea Construction/IRM Vessels that have operated in the GoM over the last twenty-four months have announced receivership, bankruptcy or restructurings. However, many continue to employ mariners from low-wage nations and pay low or little tax in the United States or their home jurisdictions. Given the growth of the Jones Act fleet of Subsea Construction/IRM Vessels, the need for foreign tonnage has all but disappeared. ***There should be no impact on GoM operations required to be performed by Subsea Construction/IRM Vessels as the Jones Act qualified fleet has effectively replaced the prior foreign fleet.*** A list of all Subsea Construction/IRM Vessels is set forth below:

Subsea Construction/IRM Vessels in the Gulf of Mexico: Jones Act qualified [19 vessels]

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
HOS Warland	Hornbeck Offshore	Yes	DP2	250	2016
HOS Woodland	Hornbeck Offshore	Yes	DP2	250	2016
Harvey Deep-Sea	Harvey Gulf	Yes	DP2	165	2013
Harvey Intervention	Harvey Gulf	Yes	DP2	165	2016
Kirt Chouest	Edison Chouest	Yes	DP2	165	2008
Dove	C-Lift Holdings	Yes	DP2	150	2015
HOS Bayou	Hornbeck	Yes	DP2	150	2014
Ocean Alliance	Otto Candies	Yes	DP2	150	2011
C-Installer	Edison Chouest	Yes	DP2	150	2014
Chloe Candies	Otto Candies	Yes	DP2	100	2006
Grant Candies	Otto Candies	Yes	DP2	100	2008
HOS Mystique	Hornbeck Offshore	Yes	DP2	100	2008
Ross Candies	Otto Candies	Yes	DP2	100	2009
SURF Challenger	Otto Marine	Yes	DP2	100	2007
Ocean Intervention II	Oceaneering	Yes	DP2	73	1999
Harvey Discovery	Harvey Gulf	Yes	DP2	64	2006
AMC Ambassador	Emas Offshore	Yes	DP2	60	1998
Brandon Bordelon	Bordelon Marine	Yes	DP2	60	2015
Ocean Intervention	Oceaneering	Yes	DP2	54	1998

Source: IHS Petrodata and Industry Sources - 2/1/17

Subsea Construction/IRM Vessels in the Gulf of Mexico: Jones Act, Under Construction [7 vessels]

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Expected Delivery
Ocean Evolution	Oceaneering	Yes	DP2	250	2017
Paul Candies	Otto Candies	Yes	DP2	250	2017
Harvey Sub-Sea	Harvey Gulf	Yes	DP2	250	2017
Harvey Blue-Sea	Harvey Gulf	Yes	DP2	250	2017
HOS Warhorse	Hornbeck Offshore	Yes	DP2	250	2018
HOS Wild Horse	Hornbeck Offshore	Yes	DP2	250	2018
Bordelon 104	Bordelon Marine	Yes	DP2	TBD	2018

Source: IHS Petrodata and Industry Source - 2/1/17

Subsea Construction/IRM Vessels: Jones Act Located Outside GoM [5 vessels]

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Holiday	Edison Chouest	Yes	DP2	150	2010
Kelly Ann Candies	Otto Candies	Yes	DP2	100	2012
Wyatt Candies	Otto Candies	Yes	DP2	100	2012
HOS Ridgewind	Hornbeck Offshore	Yes	DP2	70	2015
Shelia Bordelon	Bordelon Marine	Yes	DP2	50	2015

Source: IHS Petrodata and Industry Sources - 2/1/17

Subsea Construction/IRM Vessels in the Gulf of Mexico: Foreign Flagged [8 vessels]

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Grand Canyon II	Volstad Maritime	No	DP2	250	2015
Island Performer+	Island Ventures II	No	DP3	250	2014
Siem Stingray	Siem Offshore	No	DP2	250	2014
Toisa Perseus°	Toisa	No	DP3	250	1998
Bibby Sapphire*	Bibby Offshore	No	DP2	150	2005
Global Orion	Ranger Offshore	No	DP2	150	2002
Skandi Achiever*	DOF Subsea	No	DP2	140	2007
Topaz Captain°	Topaz Marine	No	DP2	100	2001

+Planned to depart GoM *Dive Support Vessel °Cold-stacked *Source: IHS Petrodata and Industry Sources - 2/1/17*

DIVING OPERATIONS

T.D. 78-387 was a CBP Carrier Branch Ruling issued in the 1970's to a company that was performing pipeline maintenance and repairs using divers deployed from a foreign flag vessel. The offshore oilfield has evolved significantly since the 1970's, and the vast majority of the operations are in water depths not accessible to divers. For that reason, and technological advancements with the vessels, the Subsea Construction/IRM Vessels discussed above, which are equipped with ROV's, perform the subsea repair and maintenance work that was previously performed by divers in shallow waters. Nevertheless, there are still diving operations that occur, and a variety of vessels that are equipped with diving equipment are utilized for this purpose.

Ocean Patriot – Jones Act Dive Support Vessel

There are four special purpose vessels that are utilized for "manned" open water diving operations in the GoM and two additional Jones Act qualified vessels on temporary international assignments. All are DP and can support a saturated diving system. The vessels are listed below:

Vessel Name	Owner	Jones Act Qualified	DP Notation	Saturation System	Year Built
Bibby Sapphire	Bibby Offshore	No	DP2	Yes	2005
Kelly Ann Candies	Otto Candies	Yes	DP2	Yes	2012
Ocean Patriot	Oceaneering	Yes	DP2	Yes	2011
Wyatt Candies	Otto Candies	Yes	DP2	Yes	2012
Skandi Achiever	DOF Subsea	No	DP2	Yes	2007
Texas Tobala	Arendal	No	DP2	Yes	1983

Source: IHS Petrodata 2/1/2017

While the CBP proposed action does not affect the diving operations themselves, as CBP's position is that they are permissible repair and installation activities, diving activities are affected to the extent that a foreign vessel is used to transport to the site of installation or repair, materials or equipment to be utilized as part of the installation or repair work. However, any such equipment or materials can easily be transported to the diving location by a Jones Act qualified vessel. Alternatively, a Jones Act qualified Subsea Construction/IRM Vessel could be outfitted with a saturation diving system and utilized for the diving operation itself and transport materials and equipment without restriction. In this regard, it is noted that two of the foreign flag vessels identified above, the Bibby Sapphire and the Skandi Achiever, are employed in such a dual purpose. Thus, while foreign vessels will not be permitted to transport equipment and materials to be used as part of an installation or repair operation, the entirety of those operations are still viable through the employment of Jones Act qualified dive vessels, one of many Jones Act qualified supply vessels to transport equipment or materials or the outfitting of additional Jones Act qualified vessel for the diving operation itself.

Well Intervention/Stimulation Activities

Well intervention work is made up of a wide variety of operations involving entering a live well for the purpose of performing some aspect of maintenance or enhancement to the well itself. Usually this work is performed utilizing a specialized tool and materials that are suitable for the kind of well intervention operation that is going to occur. Well intervention operations take place from a variety of marine platforms. In more shallow waters, lift boats, jack-up drilling rigs and supply vessels are frequently used. In deeper waters, a drilling rig or other mobile offshore drilling unit (MODU) is more typical. Recently, it has become common to install well intervention equipment onto a vessel. Below is a list of vessels with well intervention capability:

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Crossmar 14	Crossmar	Yes	No DP	209	1994
Dove	C-Lift Holdings	Yes	DP2	136	2015
Helix 534	Helix	No	DP2	47	2013
Island Performer	Island Ventures II	No	DP3	227	2014
Ocean Intervention II	Oceaneering	Yes	DP2	73	1999
Q4000	Helix	No	DP3	360	2002
Q5000	Helix	No	DP3	399	2015
SURF Challenger	Surf Subsea	Yes	DP2	100	2007
Uncle John	Momentum Engineering	No	DP2	100	1977

Source: IHS Petrodata 2/1/2017

Helix Q 4000 Semi-Submersible Well Intervention Vessel

Island Performer "Ship-shaped" Intervention Vessel

Jones Act Supply Vessel Along-Side the Helix Q-4000

The proposed revocation indicates that the transportation of materials and tools utilized to intervene in a well are "merchandise" and therefore such intervention activities must either be conducted from a Jones Act qualified vessel or the merchandise must be transported to the vessel that is conducting the well intervention or stimulation activity by a Jones Act qualified vessel. These operations are indistinguishable from the supply operations conducted by Jones Act supply vessels every day, as is shown in the photograph above. Thus, the CBP Notice will not prevent activities from proceeding so long as supplies are transported in compliance with the Jones Act.

In addition to well intervention activities, the CBP Notice covers well stimulation activities. Well stimulation activities are similar to intervention operations in that they involve interfacing with a producing well. Usually, well stimulation involves the injection into the well of a compound or substance that will stimulate or affect the manner in which the hydrocarbons flow within the formation and well. The substances are often liquids, gels or gasses. Well stimulation activities have been performed by Jones Act qualified vessels not only in the GoM, but globally as well. A well stimulation vessel is typically a supply

vessel that has been outfitted with well stimulation equipment in either a permanent or temporary configuration. Below is a list of Jones Act qualified well stimulation vessels:

Vessel Name	Contractor	Jones Act Qualified	DP Notation	Year Built/ Converted
Blue Dolphin	Baker Hughes	Yes	DP2	2009
Blue Tarpon	Baker Hughes	Yes	DP2	2010
Blue Orca	Baker Hughes	Yes	DP2	2013
Stim Star III	Halliburton	Yes	DP2	2002
Stim Star IV	Halliburton	Yes	DP2	2015
DeepSTIM	Schlumberger	Yes	DP2	1997
DeepSTIM II	Schlumberger	Yes	DP2	1997
DeepSTIM Brasil I	Schlumberger	Yes	DP2	2011
DeepSTIM Brasil II	Schlumberger	Yes	DP2	2012

**Modular Stimulation Vessel Template (fast deployment)* *Source: ABS Record and Offshore Magazine June 2016*

A Jones Act Qualified Well Stimulation Vessel at Port Fourchon

Well Stimulation Vessel - Stim Star III

StimFORCE I (Baker Hughes modular stimulation system deployed on the Connor Bordelon (Jones Act qualified OSV)

Well Stimulation Vessel - Blue Orca

LIFT BOATS

Lift boats are limited to water depths by the length of their legs and provide a stable work platform for platforms in shallow water. These vessels are typically equipped with a large crane, accommodate a significant number of offshore workers and provide well workover, during intervention, stimulation, platform repair and maintenance, construction and decommissioning activities. The Notice indicates CBP's position that the various installation and repair activities conducted from lift boats are not prevented so long as supplies are transported on Jones Act qualified vessels. Nevertheless, nearly all lift boats operating in the U.S. are Jones Act qualified so there is no practical impact by proposed CBP ruling. Shallow water work-over, coil tubing, snubbing and other operations are typically performed from lift

boats. There are a total of 216 Jones Act qualified lift boats in the GoM, of which 79 can work in water depths greater than 100'.

PIPELAY VESSELS

The CBP Notice does not affect pipelaying operations or umbilical laying operations because the Notice does not disturb CBP's position that pipe or umbilicals that are "paid-out, but not unladen" may be transported because of the nature of the paid-out operation. The Notice does clarify that the pipe or umbilicals are not vessel equipment and their transportation cannot be justified under a vessel equipment analysis. The proposed action makes clear that other operations that may be related to a pipeline, such as the installation of pipeline connectors, require transportation by a Jones Act qualified vessel. As noted above, there are now sufficient Jones Act qualified Subsea Construction/IRM Vessels available to perform all such work.

The Lewek Express Pipelay Vessel in the GoM

There are six deep water capable DP pipelay vessels currently in the GoM. All are foreign flag. "Paid-out" pipelay operations of foreign flag pipelay vessels will not be prevented by the CBP Notice for the reasons explained above. The vessels are listed below:

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Chickasaw	Coral Marine Services	No	DP1	150	1970
Discovery	Diamond Services	No	DP1	100	1974
Lewek Express	Coastal Trade	No	DP2	400	2004
Ocean Constructor	Stabbert Maritime Holdings	No	DP2	300	2001
Seven Oceans	Subsea 7	No	DP2	350	2007
Seven Pacific	Subsea 7	No	DP2	250	2010

Source: IHS Petrodata 2/1/2017

In addition, there are eleven, non-DP pipelay vessels in the GoM, of which seven are U.S. flag, Jones Act qualified and the remainder are foreign. These vessels are usually barges that have a pipelay system installed on their decks. The ability of these foreign vessels to lay pipe under the "paid-out, not unladen" theory is unaffected by CBP's Notice. The eleven non-DP vessels are listed below:

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Canyon Horizon	Cal Dive	No	No DP	80	1967
Big Chief	Bisso Marine	Yes	No DP	100	1974
Brave	Cal Dive	Yes	No DP	91	1974
Brazos	Cal Dive	No	No DP	82	1984
Diamond 85	Diamond Services	Yes	No DP	272	1983
Diamond Jim	Diamond Services	Yes	No DP	101	1994
DLB Bisso Iroquois	Bisso Marine	No	No DP	227	1973
LB Super Chief	Bisso Marine	No	No DP	159	2007
Mighty Chief	Bisso Marine	Yes	No DP	81	1998
Pecos	Cal Dive	Yes	No DP	103	1982
Rider	Everest Vessel Holdings	Yes	No DP	136	1995

Source: IHS Petrodata 2/1/2017

Pipelay Barge Spread

HEAVY LIFT VESSELS

Heavy lift vessels are typically utilized to set platform jackets and top-sides at an offshore installation site. A Jones Act qualified launch barge, or a foreign flag barge under Jones Act launch barge waiver, is used to transport the jacket or top-side to the installation location, and the heavy lift vessel then utilizes its large crane to lift the jacket or top-side off of the barge and set it onto the offshore structure. In shallow water, the offshore structure has legs in contact with the sea-floor. In deep water, the offshore structure is a floating facility, such as a SPAR, or TLP, that is anchored to the sea-floor. ***The CBP Notice does not address heavy lift operations because, consistent with the views taken by CBP in the Notice, CBP has consistently stated in letter rulings that while the heavy lift vessel is allowed to install, it may not engage in any part, however minimal, of the transportation of the jacket.***

At present there are two heavy lift vessels in the GoM that have DP capability, the Derick Barge 50 and the NOR Goliath. The Heerema Balder is expected to be in the GoM in the near future and is shown in the table below because it has operated in and out of the GoM and has been used in several GoM deep water projects. While the VB 10,000 is Jones Act qualified and DP, it does not have a slewing crane and is therefore not used for deep water platform jacket installation operations. The NOR Goliath is inactive.

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Derrick Barge 50	McDermott	No	DP2	3,992	1986
NOR Goliath	Goliath Offshore Holdings	No	DP3	1,599	2009
Balder	Heerema	No	DP3	6,300	2002

Source: IHS Petrodata 2/1/2017

There are fifteen non-DP heavy lift vessels in the GoM, of which nine are U.S. flagged, Jones Act qualified. These vessels are not utilized in deep water operations.

Vessel Name	Owner	Jones Act Qualified	DP Notation	Crane Capacity (tonne)	Year Built/ Converted
Tetra Arapaho	Tetra Technologies	Yes	No DP	726	1980
Bisso 800	Bisso Marine	No	No DP	726	2007
Cappy Bisso	Bisso Marine	Yes	No DP	577	1976
Conquest MB 1	Conquest Offshore	No	No DP	1,400	2009
E.P. Paup	Manson Gulf LLC	Yes	No DP	1,000	2009
Illuminator	Laredo Construction	Yes	No DP	465	1998
Mr. 2 Hooks	Laredo Construction	Yes	No DP	726	1967
Pacific	Shore Construction LLC	Yes	No DP	727	1974
Superior Performance	Superior Energy Services	No	No DP	798	2006
Swing Thompson	Offshore Specialty	No	No DP	1,200	1977
Tetra Hedron	Tetra Technologies	No	No DP	1,600	2011
TOPS DB 1	Turnkey Offshore Project Services	No	No DP	558	1970
Weeks 531	Weeks Marine	Yes	No DP	454	1982
William Kallop	Offshore Specialty	No	No DP	1,600	1998
Wotan	Manson Construction Company	Yes	No DP	454	1982
VB 10000	Versa Marine	Yes	DP3	6,804	2010

Source: IHS Petrodata 2/1/2017

Heerema Balder Heavy Lift Vessel Frequently Used in GoM

E.P. Paup Heavy Lift Derrick Barge

ACCOMMODATION SUPPORT VESSELS

Accommodation support vessels provide housing for offshore workers as well as a crane and workshop for working at and on an offshore installation. ***The CBP Notice does not affect the operations of these vessels as they are not used to transport merchandise.*** There are eight accommodation support vessels in the GoM. All but two are foreign flag.

Vessel Name	Owner	Jones Act Qualified	DP Notation	Accom. Capacity (People)	Crane Capacity (tonne)	Year Built/ Converted
Crossmar 7	Crossmar	No	No DP	300	299	2006
HOS Achiever	Hornbeck Offshore	No	DP3	267	160	2013
HOS Riverbend	Hornbeck Offshore	Yes	DP2	194	32	2014
HOS Briarwood	Hornbeck Offshore	Yes	DP2	130	N/A	2016
Jasminia	Prosafe	No	No DP	612	25	1982
Safe Britannia	Prosafe	No	DP2	812	50	1980
Safe Hibernia	Prosafe	No	No DP	635	40	1977
Safe Lancia	Prosafe	No	DP2	605	60	1984

Source: IHS Petrodata 2/1/2017

HOS Riverbend Flotel Vessel With Accommodations for 197 People

Crossmar 7 Foreign Flotel Barge w/ Accommodations for 300 People

CONCLUSION

CBP's Notice appropriately revokes errant letter rulings, thus realigning administrative interpretations of the Jones Act with the text of the statute. In large measure, the activities addressed by CBP in its Notice are directed towards field development activities that are performed, principally, by subsea construction/IRM vessels in deep water and dive support, lift boats and barges in shallow water. There are a sufficient number of U.S. flag, U.S. built, Jones Act qualified vessels to perform this work. CBP does not propose to change its current interpretation concerning heavy lift operations or its "paid-out, not unladen" analysis that permits transportation of pipe in connection of a pipe lay operation. Thus, these activities are unaffected by the Notice. While demonstrating domestic capacity is not a requirement for CBP to take its proposed action (nor is it even permitted), it is clear that domestic capacity is sufficient and finalization of CBP's proposal is warranted without further delay, especially given the significant investment made by the domestic Jones Act industry to meet the needs of the industry and the jobs that are at stake for U.S. citizen mariners.

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MEMORANDUM

April 17, 2017

TO: Offshore Marine Services Association

FROM: Warren Payne
Mayer Brown LLP

A study conducted by the consultancy Calash alleges that recent proposals by Customs and Border Protection (CBP) to correctly apply US statutory requirements for coastwise transportation of merchandise would have significant negative impacts on the US energy sector and the broader US economy. However, the analysis by Calash is fundamentally flawed, raising significant questions as to the validity of its sweeping conclusions. It is clear that Calash fails to understand the CBP proposals, which lie at the heart of its analysis. It then compounds its error with a lack of transparency of how economic multipliers are applied to extrapolate its remarkable economic impacts.

While CBP proposes to revoke or modify a number of previously issued letter rulings that permitted the coastwise transportation of merchandise by non-Jones Act qualified vessels, the CBP proposal does not affect pipe-laying and so-called "heavy-lift" operations, as the Calash analysis assumes. CBP has historically permitted non-Jones Act vessels to transport and install pipelines because the pipe is "not landed but only paid out."[1] CBP does not propose to revoke or modify this view on such operations, which would also include reeled pipe, cables and umbilicals. Similarly, CBP has published several letter rulings that address heavy-lift operations (the most recent letter rulings issued in 2012[2]), however, not a single heavy lift ruling letter is mentioned in the CBP proposal. Yet, the Calash analysis plainly states that "[t]he largest impact of the proposed changes is likely due to the inability to use foreign flagged subsea construction, reel lay [pipe-laying] and heavy lift vessels". This fundamental misreading of the CBP proposal is then used as the basis to extrapolate significant economic impacts that cannot be justified because pipe-laying and heavy lift operations are not impacted by the CBP revocation notice. Although the Calash report fails to provide the necessary detail to determine exactly how much of the alleged economic impact is attributable to the erroneous inclusion of pipe-laying and heavy lift operations, it appears that their inclusion accounts for most of it.

After significantly overstating the extent of the CBP proposal and its impacts, Calash then magnifies its error by incorrectly extending the impact onto a broader swath of the US economy that is assumed to support the non-affected pipe-laying and heavy lift activities. It should go without saying that if CBP's proposal does not affect, and therefore there is no direct impact on,

[1] HQ 101925, also published in the Treasury Decisions at 78-387. While CBP proposes to modify this letter ruling in a number of areas, it specifically does not propose to modify its view that pipelaying is not subject to the requirements of the Jones Act.
[2] *E.g.*, CBP letter ruling HQ H235242.

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the treatment of pipe-laying activities and heavy lift operations, then there cannot be any indirect impact on the rest of the economy. Nevertheless, Calash makes sweeping assertions as to the breadth of the US economy that would be impacted based on these incorrect assumptions.

The Calash report also fails to provide any detail on how, or even if, the BEA RIM multipliers it uses to calculate the indirect impacts were weighted to account for the fact that pipe-laying and heavy lift vessel operations account for minute fractions of overall economic activity in economic sectors Calash says are impacted. For example, the multiplier for the oil and gas sector covers oil and gas extraction for the entire sector (on-shore, off-shore, fracking, and all related activity for both oil and natural gas) for the entire United States. The Calash analysis provides no information as to whether or how this multiplier has been appropriately weighted to reflect the minute share of total activity in this sector that pipe-laying and heavy lift operations in the Gulf of Mexico account for. Nor does the analysis provide sufficient detail to clarify whether the analysis double counts multipliers by attributing the same economic impact to multiple states. This flawed approach to the analysis is even more acute for such sectors as construction which incorporates the economic impact of all construction activity in the United States. Thus, even if the CBP proposal sought to modify pipe-laying or heavy lift interpretations, which the proposal does not do, these sectors have such minimal impacts on the other sectors included in the Calash analysis that the total indirect economic impacts would be vastly overstated.

Lastly, the Calash analysis ignores the positive economic impact on the sectors that are in fact directly impacted by the correction of decades of erroneous CBP decisions. Specifically, the positive impact on American crewed and built vessels that have been displaced by the activity of foreign owned and crewed ships that has been contrary to the statute. The multipliers for these sectors are not listed as among those that Calash included in its analysis. Therefore, it is apparently the case that these sectors were excluded from the analysis. It is absurd that the Calash analysis would include theoretical impacts on such sectors as architectural services but exclude the impact on the American vessels and shipbuilders that have suffered as a result of CBP's incorrect interpretation of U.S. statutory law.

Calash's analysis of CBP's proposed revocations is fundamentally flawed. Whatever the economic impacts of CBP's proposed action might be, they cannot be said to include activities that are not covered, and they must include the positive impacts that unquestionably will result to U.S. maritime activity reflected in U.S. mariner and shipyard employment.

<u>About the Author</u>:

Warren Payne serves as a Senior Tax and Trade Policy Advisor at Mayer Brown. Prior to this position, Mr. Payne served as Chief Economist and Policy Director for the House Ways & Means Committee. In that role Mr. Payne prepared and oversaw economic analysis and economic modeling activities and research related to a broad range of issues, including tax, trade, and transportation policy. Mr. Payne is one of the most experienced economists in Washington on such topics as dynamic scoring and the use of economic analysis in the development of legislative proposals.