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August 13, 2009

Matthew DeWitt
Manager
DeWitt Marine Services
4771 Sweetwater Blvd, Suite 115
Sugar Land, TX 77479

United States Customs and Border Protection
Attention: Trade and Commercial Regulations Branch
Office of International Trade, Regulations and Rulings
799 9th Street NW
Mint Annex
Washington, DC 20229

Dear Ladies and Gentlemen:

DeWitt Marine Services is a small business that offers offshore marine services consulting. We opened in April 2008, based in Sugar Land, Texas, and now advise a select group of investors, vessel owners, and offshore service companies on topics related to the offshore marine business. Our specialty areas include ship brokering, marine insurance, crew and operations management, asset sale and purchase, contracts, and investment banking aspects of the offshore marine transportation industry. We draw from a worldwide contact list of industry veterans, including ship captains, engineers, managers, executives, investors, and marine law specialists.

We are providing brief comments on an important proposal pending before your agency. The U.S. Customs and Border Protection published a proposed policy in July that would have a significant impact on our employees and our growing consulting business. I am writing to ensure that you are aware of our strong support for the proposed application of the "Jones Act" to the movement of merchandise to offshore oil and gas points.

Simply stated, we believe that the federal government should ensure that cargo transported to offshore oil or gas facilities is carried in U.S.-flag vessels as a matter of sound economic policy. When the U.S. Congress enacted the Act and other coastwise laws, it was meant to preserve a strong merchant marine. It was meant to ensure that vessels that transport cargo and passengers between U.S. points or places be provided by Americans. It is more important than ever, particularly in this difficult economic environment, that the law be interpreted correctly so that hard-working Americans in the U.S. Gulf Region will have additional business opportunities that otherwise would go to foreign-flag companies and foreign workers. Thank you for providing us with this opportunity to share our views.

Very truly yours,

Matthew DeWitt
Manager
DeWitt Marine Services

US Customs and Border Protection
Office of International Trade, Regulations and
Rulings

Attention: Trade and Commercial Regulations
Branch
799 9th Street N.W.
Mint Annex
Washington D.C. 20229
UNITED STATES

Paris, the 12th of July

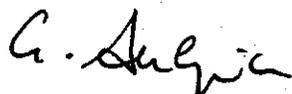
N/Réf. : Proposed modification and revocation of ruling letters relating to the application of the Jones Act to the transportation of certain merchandise and equipment between coastwise points

We have learned the project of modification, referred to above, contained in Customs Bulletin and Decisions, Volume 43, No 28, July 17 2009, and we share the concerns of the International Chamber of Shipping. We would like to associate ourselves with their comments (cf. Annex).

We are particularly worried with the negative signal that the proposal seems to send to the trading partners of the United States regarding the maintenance of free trade principles. In the current global economic downturn, we fear that the extension of the Jones Act would set an example.

Furthermore, we believe that the period given for comment is too short to allow our experts and members to study the far-reaching implications of the proposed modification. We then support the extension of the consultation period to three months.

Yours faithfully,



Guy Sulpice
Director
Armateurs de France

11 August 2009

URGENT

US Customs and Border Protection
Office of International Trade, Regulations and Rulings

Attention: Trade and Commercial Regulations Branch
799 9th Street N.W.
Mint Annex
Washington D.C. 20229
UNITED STATES

**PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS
RELATING TO THE APPLICATION OF THE JONES ACT TO THE
TRANSPORTATION OF CERTAIN MERCHANDISE AND EQUIPMENT
BETWEEN COASTWISE POINTS**

Comments by the International Chamber of Shipping

These comments are made on behalf of the International Chamber of Shipping (ICS), which is the principal international trade association for shipowners and operators comprising national shipowners' associations from 36 nations, representing about 75% of world shipping tonnage. We wish to comment on the proposed modification, referred to above, contained in Customs Bulletin and Decisions, Volume 43, No 28, July 17 2009.

We are very concerned by this proposal which will remove exemptions to the Jones Act that we understand have applied to certain offshore activities, involving foreign flag vessels, for several decades. We are especially concerned about the negative signal which this proposal conveys with regard to the approach taken by the United States towards the maintenance of free trade principles and relations with its trading partners.

We are particularly disturbed by the very short notice period for comment on changes that will have serious implications for international offshore operators that are members of some of those national shipowners' associations which we represent. Some of these foreign operators have invested many millions of dollars in specialist ships and equipment in order to provide services to the US offshore industry, which may have to be suspended in little more than 2 months' time. We feel that this extremely short notice period is outside the normal expectations of arrangements between the United States and its trading partners. This is particularly unfortunate given the current global economic downturn, and sets a negative example which could be emulated by other nations around the world.

We acknowledge (although we do not support) the US rationale underlying the Jones Act, and that the stated reason for the proposed change is one of legal interpretation prompted by US operators. In so far as it may be relevant, however, it is emphasised that foreign flag operators providing services to the US offshore industry must comply with international standards regarding safety, environmental protection, seafarer training and security, to which the US is a Party through IMO Conventions. Although perhaps not directly relevant to the legal technicalities for the proposed modification, ostensible concerns about safety and security are not a valid pretext for what will be perceived outside the US as protectionism that goes against the spirit (if not the letter) of the free trade principles to which the US is committed as a member of the World Trade Organization.

Because of the very short notice period during the holiday season, we regret it has not been possible to submit more detailed comments. However, we also wish to associate ourselves with comments being submitted by the International Maritime Contractors' Association (IMCA).

We respectfully request an extension of time in which further comments may be submitted, particularly by other parties whose interests may be severely affected by these changes. The issues raised by this proposed modification will have an enormous impact on many companies' operations, both American and foreign. We suggest a period of three months, with comments due by **16 October 2009**. This would allow those affected to make the considered comments which we believe are necessary in order for US Customs and Border Protection to make an informed determination.

Yours faithfully,

Simon Bennett
Secretary
International Chamber of Shipping

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August 17, 2009

Ms. Sandra L. Bell
U.S. Customs and Border Protection
Office of International Trade
Regulations and Rulings
Attention: Trade and Commercial Regulations Branch
799 9th Street, N.W., Mint Annex
Washington, D.C. 20229

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

Dear Ms. Bell:

Adams Offshore Services Ltd. ("Adams") hereby submits comments on the *Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points*, notice of which was published in the *Customs Bulletin* on July 17, 2009 (the "Proposal"). Adams is a leading provider of essential offshore and subsea services to the oil and gas industry, and builds, owns, operates and charters a highly modernized and evolved fleet of Multi-purpose Offshore Support Vessels ("MOSV"). The design and construction of these multi-purpose vessels are the result of more than 40 years experience of offshore operations in support of oil and gas development activities and input from the various oil and gas operators we serve around the globe; many of whom are operators on the U.S. Outer Continental Shelf ("OCS"). Our newly constructed MOSVs operating over the OCS in the U.S. Gulf focus on inspection, seismic survey, geophysics, diving support, debris removal and repair activities.

Adams is an active member of the International Maritime Contractors Association ("IMCA") and contributed to and herewith supports IMCA's and other MOSV entities' comments submitted to CBP on the Notice/Proposal.

While Adams is not opposed to the intent of Title 46, United States Code, section 55102 (the "Jones Act"), and understands and respects the purpose for which it exists, we are concerned that U.S. Customs and Border Protection's ("CBP") proposed ruling modification goes far beyond enforcement of this Act on the withdrawing of the "Christmas Tree" ruling in offering protectionism to a genre of vessel within the U.S. merchant fleet that does not currently exist. In doing so, CBP ignores its obligations under the Administrative Procedure Act ("APA"), the Regulatory Flexibility Act, and Executive Order 12866. After relying on 33 years of precedent, Adams and other such non-coastwise vessel operators have invested considerable resources into vessel development and build programs and entered into and are currently finalizing long-term agreements with clients for utilization of our assets. If it is CBP's intent to enforce the ruling modification as written, the pool of suitably specified vessels available to U.S. oil and gas operators would be severely restricted, and as a direct consequence would most certainly significantly impede the U.S. oil and gas industry's ability to explore, exploit and produce oil and gas resources on the U.S. OCS. Simultaneously, such a step could well invite retaliation against U.S.-flag vessels of this type by foreign governments.

SUMMARY OF ARGUMENT

- In Treasury Decision (T.D.) 78-387, Customs ruled that materials and tools necessary for the accomplishment of a vessel's mission did not constitute 'merchandise' under the Jones Act and therefore that their transportation to points over the OCS did not constitute coastwise trade. This ruling is correct and the offshore oil and gas industry has relied heavily upon this decision, investing billions of dollars in vessel construction and development for more than three decades. The proper revocation of HQ 046137, the Christmas Tree ruling, should not lead to the revocation or modification of more than 20 other Customs rulings that properly stemmed from T.D. 78-387, a correct and proper decision.
- The equipment necessary for the "operation" of a MOSV is fundamentally different from that required for "navigation" and "maintenance" of a vessel. The equipment found on a MOSV is specifically designed to enable the MOSV to carry out its mission. If Customs adopts the Proposal, foreign-flagged MOSV's would be prevented from carrying their missions and therefore be banned from operating over the OCS.
- The Proposal will have a crippling effect on MOSV operations over the OCS, U.S. oil and gas production and ultimately the U.S. economy. If the Proposal is adopted and foreign-flagged MOSV's are prevented from operating in the Gulf of Mexico ("GOM"), a large number of oil and gas operators in the Gulf will face significant losses of production. These operators will be dependent on a U.S. fleet that essentially does not exist, and one that is certainly equipped to support the operators' needs.
- The Proposal conflicts with U.S. Treaty obligations, including the United States' World Trade Organization ("WTO") commitments and its Free Trade Agreement ("FTA") commitments with Canada, Mexico and 15 other countries. The Proposal will likely lead to retaliatory action against U.S.-flagged vessels operating in other countries Exclusive Economic Zones ("EEZ").

- The Proposal fails to meet the due process requirements under the Administrative Procedures Act ("APA") and related case law. Under the APA and subsequent case law, Customs is required to examine the relevant data and articulate a satisfactory explanation for its action when making sweeping changes. Customs has not done so.

ACTION REQUESTED

The industry has been afforded a mere 30 day period in which to comment on the proposed modification. Frankly, given the nature of the Proposal and the radical negative ramifications resultant thereupon, we respectfully request that CBP: (1) extend the comment period to facilitate more meaningful comment on the Proposal and its impact, or (2) issue a document containing the revised provisions as a result of the extensive and challenging comments received during the initial 30 day comment period (if it is the intention of CBP to issue a revised notice) with a further comment period on the proposed revisions, (3) revoke the unique requirement for holders of prior CBP rulings to identify for CBP that they are or might be covered by the cited rulings to be revoked under the Proposal, and (4) ultimately issue a final decision consistent with the following comments and those filed by IMCA, the API and other MOSV entities.

BACKGROUND

The Jones Act provides that no 'merchandise' shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation in any vessel other than one which is coastguard qualified¹. The Act states that transportation of merchandise takes place when merchandise is loaded (laden) at a point embraced within the coastwise laws "coastwise point" and unloaded (unladen) at another ("coastwise point") regardless of the origin or ultimate destination. Coastwise laws generally apply to points in the territorial sea.² However, Section 4(a) of the Outer Continental Shelf Lands Act of 1953 ("OCSLA") extends the laws of the United States 200 nautical miles from its coasts, to all parts of the OCS³ within the EEZ of the United States. Accordingly, coastwise and navigation laws apply to production platforms, vessels/structures affixed to the seafloor (be that temporary or permanent) and wells.

'Merchandise' by definition includes goods, wares and chattels of every description⁴; merchandise owned by the U.S. Government, State or Subdivision of a State; and valueless material. In a 1939 Treasury Decision (T.D. 49815(4)), CBP carved out a distinction between

¹ A vessel that is built in, documented under the laws of, and owned by citizens of the United States, and which obtains a coastwise endorsement from the U.S. Coastguard (USCG) is referred to as "coastwise-qualified." Specifically, the term "coastwise-qualified vessel" means a U.S.-flag vessel having a certificate of documentation with a certificate of documentation with a coastwise endorsement under 46 U.S.C. § 12112.

² Territorial Sea defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in the internal waters, landward of the territorial sea baseline, in cases where the baseline and coastline differ.

³ Section 4 (a) OCSLA extends the laws of the U.S. to the subsoil and seabed of the OCS and to all artificial islands and all installations and other devices permanently or temporarily attached to the seabed which may be erected for the purposes of exploring for, developing, or producing resources.

⁴ 19 U.S.C. § 1401 (c)

items constituting merchandise and those constituting 'vessel equipment'. CBP has refined this distinction several times over the past 70 years to take account of technological innovation in oil and gas exploration and production. The ruling underlying CBP's last three decades of Jones Act interpretations, as applied to offshore energy projects, is T.D. 78-387. The ruling held that materials and tools necessary for the accomplishment of a vessel's mission did not constitute merchandise and their transportation by a foreign-flagged vessel was not a Jones Act violation.

Deepwater Oil and Gas Operators in the GOM have historically faced significant technological challenges in the development of lease blocks and the extraction of resources therefrom. As these development projects have continued to advance into even deeper waters on the shelf, the technological and engineering solutions required have become increasingly more complex and often require unique engineering solutions to overcome site-specific subsea conditions, which are not uniform across the shelf. Indeed the GOM is regarded worldwide within the industry as an area of innovation, research and rapid evolution in subsea development.

Such has been the rate of this technological evolution that it has become standard practice for Oil and Gas Operators, and the subcontract groups working for them, to seek rulings from CBP to ensure that contemplated operations on the OCS will not contravene any existing legislation. Over the years, CBP has issued a significant number of coastwise trade rulings which have formed the body of precedent that the industry has subsequently come to rely upon in the development of its activities. As equipment, vessels and the technology required for lease block development have advanced and evolved, CBP has accordingly adapted the rulings to reflect new developments in these areas and changes to operating procedures, particularly with respect to the definition of what constitutes vessel equipment.

**1976 RULING - T.D. 78-387 CORRECTLY RULED THAT
TRANSPORTATION INCIDENTAL TO VESSELS
OPERATIONS DOES NOT CONSTITUTE COASTWISE TRADE**

In the Notice, CBP states its intention to strictly limit the definition of defining what constitutes "vessel equipment" by strictly interpreting T.D. 78-387 (the "1976 Ruling"), a landmark Treasury decision that has formed the basis for all subsequent rulings related to offshore deepwater development projects. It is our contention however, that the intent of the 1976 Ruling has been strictly and most often correctly interpreted over the 33 years since the decision was made.

The 1976 Ruling proposed the use of a foreign built vessel in the engagement of the vessel "in the construction, maintenance, repair and inspection of offshore petroleum related facilities"⁵ In the 1976 Ruling, CBP held that the "transportation by the vessel of such materials and tools as are necessary for the accomplishment of the mission of the vessel ... is not, generally speaking, an activity prohibited by the coastwise laws since such transportation is incidental to

⁵ The activities listed included (i) pipelaying, (ii) repairing pipe, (iii) repairing underwater portions of a drilling platform, (iv) the installation and transportation of anodes, (v) transportation of pipeline burial tools and repair materials, (vi) installation and transportation of pipeline connectors and wellheads, (vii) installation and transportation of wellhead equipment, valves and guards, and (viii) transportation of machinery and production equipment.

the vessels operations". The ruling also permits pipelay by a non-coastwise qualified vessel by nature of the modus operandi when pipe is installed subsea, namely that the pipe is "not landed but only paid out". This principle of "equipment necessary for the mission of the vessel", namely that equipment which is necessary for the operation of the vessel and the accomplishment of the vessels functions, has been the fundamental basis permitting non-coastwise vessels to move articles "necessary to the accomplishment of the mission of the vessel" between coastwise points for the last 33 years. It is our assertion that the stipulations and assertions made in the 1976 Ruling were correct and remain correct to this day. Further to this, we concur that the revocation of a 2009 ruling regarding the transportation and installation of a Christmas Tree (HQ 046137) is the appropriate action in light of the conditions stipulated in the 1976 Ruling regarding transportation of wellhead assembly's to a coastwise point on the seafloor. However, we do not see how the revocation of this ruling provides the grounds for the proposed revocation or modification of more than twenty rulings listed in the Notice, none of which are not consistent with the factual pattern in HQ 046137. Rather, the rulings CBP proposes to revoke or modify apply to the vessels' carriage of equipment that is necessary to the mission of the vessel in each case.

**EQUIPMENT NECESSARY FOR "OPERATION" OF A MOSV VESSEL
IS FUNDAMENTALLY DIFFERENT FROM THAT REQUIRED FOR
"NAVIGATION" AND "MAINTENANCE" OF A VESSEL**

The definition of vessel equipment as used by CBP in coastwise rulings has been based in part on 19 U.S.C. § 1309 which defines equipment as, "articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons onboard."

Vessel equipment has advanced significantly since the 1939 Treasury Decision, which carved out the distinction between vessel equipment and merchandise. Modern MOSV's have changed dramatically since 1939, not only in terms of technological development and specification counterparts, but also in the type of mission they are required to execute. CBP has correctly taken a position in its previous rulings that allows for such technological development. In asserting its intention to strictly limit the definition of equipment as per the 1976 ruling, CBP is essentially comparing apples to oranges and is ignoring the practicalities and current best practices of the offshore industry. The components involved in the operation of a modern day MOSV are the result of years of development and lessons-learned.

There is an important distinction that must be made between equipment necessary to operate a vessel and that which is required to navigate⁶ and maintain a vessel. While equipment required to navigate and maintain a vessel are common components (i.e., gyros, GPS etc), which are found on a very diverse range of vessels types, the equipment required to operate a vessel is dictated specifically by the purpose for which the vessel was constructed. For example, the equipment required to operate an MOSV is significantly different from that required to operate a container ship. "Operation" is defined as: (i) the activity of operating something (ii) a process

⁶ Navigation is defined as "the process of reading, and controlling the movement of a craft or vehicle from one place to another".

or series of acts especially of a practical or mechanical nature involved in a particular form of work⁷. The various components, controls and supplies carried by a modern day MOSV operating on the OCS are utilized and deployed in furtherance of a particular type of work. The subsea components that we utilize and mobilize on the OCS are routinely found on MOSV's⁸ and without them the mission of the vessel, namely the completion and commission of offshore subsea developments, cannot be achieved. There is a distinction to be made between large subsea structures of significant value versus the smaller "nuts and bolts" items which mate such structures together, making them operational, and which are of insignificant value in comparison. For example, while a Christmas Tree is not necessary to the operation of a vessel whose mission is to commission a subsea development, items such as subsea connectors arguably are. If subsea connections cannot be made, a field cannot be brought on-line, and therefore a vessel tasked with commissioning a subsea development would have failed to complete its mission.

**THE CBP PROPOSAL HAS A CRIPPLING EFFECT
ON MOSV U.S. OCS OPERATIONS, U.S. OIL AND GAS PRODUCTION
AND ULTIMATELY THE U.S. ECONOMY**

If the CBP Proposal is adopted as written, it would likely have momentous impact on Adams' current offshore operations and our ability to continue to service oil and gas development projects on the OCS. Furthermore the Proposal leaves the future mode of operation for non-coastwise qualified vessels in the GOM unclear and in doubt.

Adams has long recognized that safety and environmental performance are a critical component to the future of deepwater development, and as such, has equipped its fleet with an array of hybridized equipment to ensure that these two criteria are met throughout the construction support activities undertaken by any of our vessels. As a direct result of this principle, our deep-water offshore vessels have evolved into modular, multi-purpose, multi-task platforms purposely designed for utilization in an array of inspection, seismic survey, geophysics, diving support and repair activities. It is impossible in terms of both the available space onboard and the safety and stability of a vessel to equip, as a permanent fit, all of the items that a multi-purpose MOSV conceivably may need in the course of completing the missions assigned to it. Each offshore development is unique with its own set of technological challenges, and as such, requires highly specialized and often unique engineering tools and solutions. Much of the equipment and resources are used to perform crucial tie-in activities, which bring oil and gas deposits on-line and ensure their delivery to shore based refineries. It is the standard practice within the modern-day industry for such equipment to come in modular style packages, which can be mobilized and demobilized from the vessel as the specific situation or set of circumstances dictates. Indeed, many offshore project scopes require that contingency equipment be carried by the support vessel should the original engineering plan not execute as planned. CBP's Proposal constrains those items which have historically been regarded as vessel equipment and will preclude the use of such a multi-purpose and highly responsive vessel on the OCS. Furthermore, CBP's Proposal would limit foreign-flagged vessels to activities with a

⁷ www.Wordnetweb.princeton.edu/perl/webwm

⁸ While such items are routinely found on MOSV's they are not permanently carried as part of the vessels complement, this is impractical and impossible due to such considerations as deck space and vessel stability.

single purpose, rendering the vessels' other capabilities useless. Finally, CBP's Proposal excludes the use of specialist tools and equipment necessary for both the commissioning and repair and maintenance of offshore oil and gas developments whilst also restricting the contingency options that the industry relies on to deal with all eventualities that may be faced in a given operation. Accordingly, we maintain and support the position that it should be the mission of the vessel that dictates which articles should be considered vessel equipment.

Oil and gas developments on the OCS have continued to advance into ultra-deep water, today on average offshore developments are being undertaken in upwards of 4,500 fsw (feet seawater). These ultra-deep waters present a complex set of technological challenges in terms of both above and below surface ocean conditions. Accordingly, vessels and equipment which are utilized in these operations must be able to withstand harsh ocean environments in waters which are both deep and remote; operate under extraordinary pressures and temperatures; and resist corrosive elements. Much of the equipment that is integrated into our vessels is specifically designed to enable us to undertake installation and IRM in adverse weather and operating conditions and at extended ranges from shore support. Modern Dynamic Positioned Class 3 ("DPIII") vessels are able to undertake complex installation activities with enhanced safety for both personnel and the marine environment even under harsh weather conditions. Ultra-deep prospects on the OCS are often remote and are at considerable sailing times and distances from the shore. As such, vessels working in these areas are required to carry multiple components integral to their mission to ensure unnecessary transit to and from the shore.

Diver operations are physically impossible in water depths exceeding 1,000 fsw, leading the deepwater industry to become almost completely reliant upon the ROV (Remotely Operated Vehicle) to support subsea installation and engineering tasks. Modern ROV's are a highly evolved combination of visualization, propulsion, manipulation, sonar and navigation systems and are regularly deployed from vessels to perform seabed mapping, seabed sampling and intricate engineering functions amongst other tasks. The vessels owned and operated by Adams have been conceived, designed and built as a platform for such ROV operations while providing safety and shelter for the crews operating and serving the ROV's. Furthermore, these ROV systems are permanently attached to the vessel, as well as controlled and directed from the vessel. Thus, they are a fundamental part of the equipment required for the operation of the vessel in the ultra-deep water construction and repair modes for which it has been designed. Indeed, ROV's are an intrinsic part of offshore construction support and are deployed in various configurations, in varying scenarios, for varying functions, and accordingly, in past rulings CBP has taken the position that ROV's are considered vessel equipment, as they by their very nature of operation are essential to the completion of the vessel's mission. Although CBP has indicated in its proposed modification to HQ 113841 that the use of an ROV onboard a cable laying vessel deployed to support this operation would remain permissible, it is unclear as to how ROV's may be treated in other scenarios particularly those where an ROV is required to undertake several very different functions in a single vessel deployment or is deployed from a non-cable laying vessel. As there is no foreseeable alternative to an ROV for subsea installation, repair, inspection and maintenance associated tasks (this being the full array of offshore construction support based activities), and if ROV's were to be re-classified as merchandise, Adams would no longer be able to operate its vessels for the purpose for which they have been designed and

built (*i.e.*, the support of construction and repair on the ocean floor). Furthermore, ROV's cannot perceivably be utilized in a single task operation, as they are multi-purpose by their very design and operation; attempting to limit their activities to a single operation would significantly hinder their ability to support an oil and gas offshore project efficiently and expediently.

Subsea operations in ultra-deep water are completely reliant on an array of subsea survey positioning equipment in order to ensure the safe navigation of ROVs, but also to ensure that hardware such as pipelines and subsea structures are installed upon the seafloor within tight installation tolerances and also within the right-of-way routes granted to the oil and gas operators by the MMS (Mines, Minerals and Safety Agency). Such survey equipment includes devices such as acoustic transponders (aids to navigation) and water level recording devices which are placed in arrays on the seafloor during pre-lay survey phases and recovered at as-built phase; they are never left as permanent fixtures upon the OCS seafloor. The monitoring and communication equipment for these subsea sensors is hard fit into an MOSV and as such an integral part of the vessel furthermore the placement of these items due to the high accuracy required is undertaken in conjunction with these surface systems. Without these mission specific tools a vessel an MOSV is unable to operate within its designated activities as essentially it becomes blind and has no other means available to determine if operations are being conducted upon the correct areas of the seafloor and within the critical engineering tolerances required.

THE PROPOSAL THREATENS U.S. OFFSHORE INDUSTRY OPERATIONS AND SAFETY

CBP's Proposal not only poses a significant threat to the U.S. oil and gas industry, and their ability to produce oil and gas from the U.S. OCS, but also jeopardizes the efficiency, expediency and safety of offshore operations on the OCS. Where previously the industry has been able to rapidly respond to the challenges of operating in such a dynamic environment offshore production and particularly development activities would as a consequence of the operational changes required as per the Notice be severely impeded and in some cases development potentially ceased altogether as suitable vessels, equipment, resources and techniques are sourced or built.

There is strong evidence to suggest that the GOM vessel market will be undersupplied during the next 5-6 years, in terms of both the anticipated strong level of activity within offshore exploration and development and the type of activity to be undertaken therein. The emergence of several key international oil and gas companies has the GOM region poised to experience noticeable growth in the ultra-deep water market over the next 10 years with a prolonged period of development activity set to commence around 2010. It is our understanding that IMCA, the American Petroleum Institute (API) and others will be providing comments which will provide CBP with a much greater insight into projections for the industry. The offshore architecture required for subsea development in ultra-deep water (trees, manifolds, PLETs etc) is set to increase significantly in terms of dimension, weight and complexity as a dynamic of the extreme pressures and temperatures that they will be subjected to subsea. Consequently, installation

vessels will be required with suitably rated lift and deployment equipment, of which the only currently qualified vessels are non-coastwise qualified. Indeed, the large proportion of vessels currently available within the U.S. fleet are at a markedly lower specification than the non-coastwise vessels operated by Adams and other companies of its genre.

Adoption of the ruling modification will lead to greater inefficiency and security in offshore operations. If adopted, the modification would limit non-coastwise qualified vessels to installation activities on the shelf, which would result in "double handling" of equipment. A coastwise vessel would first be required to transport the item(s) in question to the job site, where they would have to then be loaded onto the installation vessel, and then deployed from the installation vessel subsea. Current best practice has been to minimize such double handling due to the safety risks it inherently creates. Furthermore, transfer between vessels is dictated by weather conditions, and while non-coastwise qualified MOSV's have traditionally provided an extremely stable working platform (even in adverse weather) smaller supply vessels do not have the station keeping capability or heave compensating systems required to allow operations to continue, resulting in increased downtime, potential damage to or loss of the item transferred, the increased potential for vessel collision, and significant cost increase to development.

CBP PROPOSAL CONFLICTS WITH U.S. TREATY OBLIGATIONS

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

The U.S. Senate ratified the WTO's General Agreement on Tariffs and Trade Uruguay Round ("GATT 1994") on December 1, 1994. One of the agreement's bedrock principles is National Treatment ("NT"), as articulated in GATT Article III. The NT requirement ensures that WTO members will not accord foreign companies less favorable treatment than it accords to its own, domestic companies. Although the United States obtained an NT exemption for the Jones Act in GATT 1994, Paragraph 3(a), the exemption is not absolute. Under the Jones Act exemption, the United States may not introduce legislation or regulations that decrease its conformity with GATT 1994. Thus, the Jones Act exemption effectively freezes U.S. protectionist measures at 1994 levels. CBP's proposed modification would significantly alter the interpretation of the Jones Act, barring Adams and other foreign-flagged vessels from providing many of the services that foreign-flagged vessels have provided for more than three decades. The modification would increase protectionism, decrease conformity with GATT 1994, and most likely place the United States in breach of its WTO commitments. The breach could also prompt complaints and retaliatory action against U.S. flagged vessels operating in the EEZ's of other WTO members.

In addition, the United States has taken NT exemptions for the Jones Act in its FTAs with Canada and Mexico and with 15 other countries. Specifically, the United States excepts cabotage services under NAFTA Annex II, but leaves unprotected IRM, installation and surveying services over the OCS. Similarly, the United States excepts cabotage services under

Annex II of the Dominican Republic-Central America Free Trade Agreement ("CAFTA-DR") but does not take an exception for IRM, installation and surveying services. These same exceptions are seen in every other of the United States' FTAs. The provisions prevent the United States from enacting legislation, issuing interpretations, or taking other similar measures that would discriminate against vessels which are flagged in FTA partner countries and that provide IRM, installation and surveying services. CBP's proposed modification would bar all vessels flagged in FTA partner countries from providing such services and would constitute a significant breach of U.S. treaty obligations.

ECONOMIC CONSIDERATIONS AND ADVERSE IMPACTS OF CBP'S PROPOSAL HAVE BEEN IGNORED

While CBP clearly states that pipelay vessels and that other installation activities consequential to pipelay will not be affected by the ruling Proposal, the agency has not considered that such vessels cannot economically be operated in such a capacity. Pipelay vessels, which are significantly more expensive to operate than smaller MOSV's, are restricted in their ability to maneuver and as such many of the ancillary installation activities that are required during a subsea development project are either impossible for them to undertake or take considerably more time and expense to execute this being the main reason why they have traditionally been supported by MOSV's. If foreign-flagged MOSV's are no longer available to the pipelay industry (the majority of whose vessels are all also foreign-flagged), offshore installation projects will become unprofitable for the industry to undertake and there is considerable risk that pipelay assets, including vessels, will be transferred to other overseas markets. As subsea pipelines are the only method of transportation of oil and gas from wells to platforms and shore based production facilities, a reduction in the availability of assets that can be utilized for their installation would obviously have a significant and detrimental impact on U.S. oil and gas production and its economy.

If it is CBP's intention to enforce the ruling modifications within 60 days of the closure of the comment period, with no transition period, the consequences for oil and gas production in the United States are potentially catastrophic. Considering that on average, construction of a vessel to the class and specification required to safely undertake installation and IRM activities in ultra-deep water is upward of 4-5 years and requires considerable capital investment, it would take many years for the industry to return to the level of current operations. Many projects would have to be postponed for significant periods while replacement assets and equipment were sourced and built. There is also the compounding issue of manning; the offshore industry already faces a significant shortage of qualified and experienced personnel. In the current climate offshore vessel crews and technical support personnel are multi-national. If they were required to be comprised of U.S. nationals only, it is extremely doubtful that the quantity and quality of personnel required will be available, thus further limiting the number of vessels that can actually be operated in the GOM.

Oil and gas companies will undoubtedly seek to avoid CBP penalties enforced as a consequence of ruling violations. Many are currently locked into long-term agreements with foreign-flagged vessel owners and will most likely deploy these assets and the associated project

costs to other areas of the world where they face fewer operational restrictions. With insufficiently equipped vessels available to them, oil and gas companies operating in the GOM may see a significant impact on their ability to maintain and repair existing infrastructure, resulting in operational fields being shuttered and losing production. Furthermore, with little to no competition in the U.S. market and a shortage of capable vessels, these oil and gas companies will inevitably seek to cut high development costs, cancel sanctioned projects and look to alternate areas of the world for development, while taking valuable personnel, experience and technology with them. A withdraw from the GOM by some of these companies would have far reaching negative consequences; U.S. energy development would be stunted, dependence on foreign oil would increase, and the businesses and thousands of jobs the industry currently supports along the Gulf Coast would be eliminated.

Correspondingly, Executive Order ("EO") 12866 requires "significantly regulatory action", such as CBP's Proposal, to be preceded by a through cost-benefit analysis which is thus far totally absent. Also ignored by CBP is the initial regulatory flexibility analysis on the impact to small entities.

**THE PROPOSAL FAILS TO MEET THE DUE PROCESS REQUIREMENTS UNDER
THE ADMINISTRATIVE PROCEDURES ACT
AND RELATED CASE LAW**

CBP's publishing the Notice in the Customs Bulletin and providing industry a mere 30 days to comment is arbitrary and capricious and does not meet the rulemaking notification and comment requirements of the Administrative Procedures Act ("APA"), 5 U.S.C. § 553. The U.S. Supreme Court held that when agencies issue sweeping new interpretations, they must "examine the relevant data and articulate a satisfactory explanation for its action," *Motor Vehicle Mfrs. Assn of the United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983) (where the National Highway Traffic Safety Administration rescinding the requirement to install seatbelts or airbags in vehicles was found arbitrary and capricious). The Court clarified this holding in *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800 (2009), stating that the under the APA, "a reasoned explanation is needed [by the agency] for disregarding facts and circumstances that underlay or were engendered by the prior policy."

It appears that CBP issued the proposed modification, which would overturn more than 30 years of policy and prior rulings, without FIRST gathering fundamental information and input from interested parties necessary to objectively analyze the U.S. offshore oil and gas industry and produce an initial report. CBP has done so without regard to the sweeping negative impact the modification would have if adopted and without acknowledging the industry's significant expenditures, made in reliance on more than three decades of CBP policy. Moreover, CBP appears to have based its modification on the statements of a limited number of companies within a single trade association that seek greatly expanded market share. CBP is required to comply with the APA's rulemaking requirements and should therefore: (i) undertake a detailed review of the U.S. offshore oil and gas industry, (ii) analyze the modification's far-reaching negative consequences, and (iii) publish its proposed modification with greater clarity in the Federal Register. CBP's Proposal has put the proverbial cart before the horse, abusing its

obligation under the APA and case law to provide an informed, objective and clear process for rulemaking, and signaling its predisposition as to the result sought and politically pursued by the Offshore Marine Service Association ("OMSA") after some, but not all, of its members.

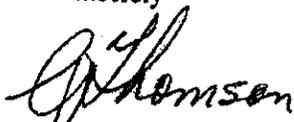
CONCLUSION

Based on the analysis above, we strongly recommend that CBP take the following action regarding the Proposal:

- Immediately retract the Proposal and uphold the 1976 Ruling as well as subsequent interpretations, all of which were proper and correct.
- If CBP does not agree to retract the Proposal, Adams kindly requests that this initial 30 day comment period be extended to 12 months, allowing both CBP and the industry to undertake a thorough and meaningful review of the impact the Proposal might have on U.S. oil and gas production and the larger U.S. economy.
- In the event that CBP incorporates any industry comments into its Proposal after reviewing them, Adams kindly requests that CBP issued a revised Proposal and provide a second period in which industry and others can offer comments.

We appreciate the opportunity to provide these comments. If you have any questions or require further clarification on the comments contained herein, please do not hesitate to contact me or our counsel, Stuart S. Dye, who can be reached at (202) 457-7074 or via email at stuart.dye@hklaw.com.

Yours Sincerely



Graham Thomson
Director & General Manager

cc: Stuart S. Dye, Esq., Holland & Knight LLP
Attorney for Adams Offshore Services Ltd.
Robert M. Ross, Esq.
ADAMS Group
Jonathan K. Waldron, Esq., Blank Rome LLP
Attorney for IMCA

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Shipbuilders Council of America

August 14, 2009

Mr. Jayson P. Ahern
Acting Commissioner
U.S. Customs and Border Protection
Office of International Trade, Regulations and Rulings
ATTENTION: Trade and Commercial Regulations Branch
799 9th Street, N.W., Mint Annex
Washington, D.C. 20229

Re: Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points, 43 Cust. B. & Dec. 28 (July 17, 2009).

Dear Acting Commissioner Ahern:

The Shipbuilders Council of America ("SCA") would like to provide comments on the U.S. Customs and Border Protection ("CBP") July 17, 2009 notice proposing to modify and revoke CBP ruling letters regarding the application of our nation's coastwise laws to the carriage of vessel equipment and certain merchandise used in connection with offshore oil production. The SCA strongly supports CBP's proposed modifications, which will properly enforce our coastwise laws to ensure that U.S.-built, U.S.-owned and U.S.-crewed vessels are servicing our Nation's critical offshore energy installations. In addition, the SCA is a board member of the Maritime Cabotage Task Force ("MCTF") and supports the thorough legal and policy arguments provided in those comments and strongly recommends the CBP follow the rationale and legal justifications provided by the MCTF for enforcing these modifications and revocations to properly enforce the coastwise laws.

The SCA is the largest and most broadly-based trade association representing the U.S. shipyard industry. Founded in 1921, the SCA has been the leading advocate for members who build, repair and service America's fleet of commercial vessels. Our membership constitutes the shipyard industrial base with 40 shipyard member companies that own and operate over 100 shipyards, with facilities on all three U.S. coasts, the Great Lakes, the inland waterways system, Alaska and Hawaii. In addition, the SCA represents 24 affiliate company members that provide industrial supplies and good and service for the shipyard industry. The CBP's notice is extremely important for SCA members because we are the shipyards and suppliers that build, repair and modernize the U.S.-

owned and U.S.-crewed vessels that install, transport, service and repair the oil and gas infrastructure located on the outer Continental Shelf.

A core value of the SCA is to promote and protect the Jones Act, which requires vessels that operate in the domestic (coastwise) trade be built in the U.S. and owned and crewed by U.S. citizens. The policy for this law is extremely clear – it is in the best interest of our nation to maintain a merchant marine that is sufficient to carry its domestic water-borne commerce and also capable of serving as a naval and military auxiliary in time of war or national emergency, which is owned and operated under the United States flag by citizens of the United States and supplemented by efficient facilities for shipbuilding and ship repair.¹

This statement of policy for the Jones Act is particularly relevant when considering the exploration and development of our Nation's energy resources on the outer Continental Shelf. It is imperative that the U.S. maintain the most capable and effective shipbuilding and ship repair industry to build and service the next generation of vessels to develop our oil and gas resources in the U.S. Exclusive Economic Zone. Promoting and maintaining a capable merchant marine that can be called on to explore and produce these resources in more remote and deep water will provide for our national security, energy independence, and provide meaningful, skilled employment that will benefit our economy. The SCA applauds the CBP for issuing a notice that will meet the clear purpose and policy of the Jones Act and enforce the maritime law as it was intended.

The Outer Continental Shelf Lands Act (OCSLA) extended the laws of the United States to all permanent and temporary installations and other devices which are erected for the purposes of exploring for, developing, or producing resources on the outer Continental Shelf.² The notice by the CBP to properly enforce the coastwise laws to all points on the outer Continental Shelf is the correct interpretation of the law. It was the intent of Congress with the passage of the OCSLA that the Jones Act would apply in order to further promote and maintain a strong U.S. maritime industry that can build, repair and operate a fleet of U.S.-owned vessels.

The CBP notice will also ensure significant American jobs are secured, but also the possibility of creating new employment in new shipbuilding and ship repair in U.S. shipyards around the nation to meet the demands of expanded oil and gas development in the U.S. Exclusive Economic Zone. The proper enforcement of the coastwise laws to all points on the outer Continental Shelf will help maintain the U.S. shipyard industrial base that builds and services the vessels moving merchandise and equipment offshore. In addition, applying the coastwise laws to installations and other points offshore will prevent the use of foreign-built, foreign-crewed and foreign-flagged vessels that pay no U.S. taxes and do not have to meet rigorous U.S. environmental and labor laws, from undercutting U.S.-owned and U.S.-crewed vessels.

¹ Merchant Marine Act, 1936 (46 App. U.S.C. 1101).

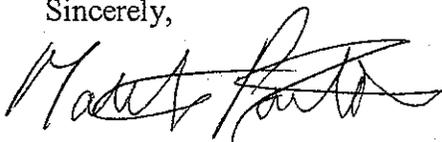
² Outer Continental Shelf Lands Act, 43 U.S.C. § 1331

It is imperative that CBP fully take into consideration when evaluating comments on this notice, that the U.S. shipyard industrial base has the capacity and capability to construct, rebuild and maintain the vessels needed to explore and develop our energy resources offshore. This is particularly important in regards to new oil and gas development that requires the installation of structures and devices farther offshore in much deeper water; the requirement for even larger more capable vessels will be needed and U.S. shipyards can meet this demand and are eager to do so.

The Maritime Administration ("MARAD") noted the important role U.S. shipyards provide for the Nation's maritime industry and by doing so highlighted that shipyards add billions of dollars to the U.S. economic output annually. Specifically, MARAD provides that in 2006 capital investments in the U.S. shipbuilding and ship repair industry totaled \$270 million and over the six year period from 2000 to 2005, a total of \$2.336 billion was invested in the industry.³ This investment along with recent capital improvement grants from the federal government totaling over \$127 million⁴ over the last two years, has and will make the U.S. commercial shipyard industry even more efficient, capable and productive. There is no question that the U.S. shipyard industry can build and repair the vessels needed for offshore oil and gas development. Indeed, the U.S. shipyard industry is ready to meet the demand and deliver the best built, environmentally sound and cost effective vessels needed for this important work.

The SCA appreciates the opportunity to comment on this notice and fully supports CBP's decision to reevaluate prior rulings and revising them in a manner that is consistent with the intent behind our nation's coastwise laws. Proper application of U.S. coastwise laws is important to the U.S. maritime industry and the SCA urges the agency to move forward with the implementation of its proposed ruling modifications.

Sincerely,



Matthew Paxton
President
Shipbuilders Council of America

³ See <http://www.marad.dot.gov/documents/Shipbuilding.pdf>.

⁴ The Small Shipyard Assistance program was authorized by Section 3508 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) – it authorizes \$25 million annually for the program. As part of the Consolidated Appropriations Act of 2008, Congress included \$10 million for the program. The Economic Recovery and Reinvestment Act of 2009 funded the program at \$100 million, and the 2009 Omnibus Appropriations Act provided \$17.5 million. There is currently in the FY2010 Senate Transportation Appropriations bill \$17.5 million for the program.



August 13, 2009

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Mr. Jayson P. Ahern
Acting Commissioner
U.S. Customs and Border Protection
Office of International Trade, Regulations and Rulings
Attention: Trade and Commercial Regulations Branch
799 9th Street, N.W., Mint Annex
Washington, DC 20229

Reference: Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points, 43 Cust. B. & Dec. 28 (July 17, 2009)

Dear Acting Commissioner Ahern:

Bay Shipbuilding Co., a modern 50-acre shipbuilding facility is located on the Great Lakes in Sturgeon Bay, Wisconsin. We would like to provide comments on the U.S. Customs and Border Protection ("CBP") July 17, 2009 notice proposing to modify and revoke CBP ruling letters regarding the application of our nation's coastwise laws to the carriage of vessel equipment and certain merchandise used in connection with offshore oil production. Bay Shipbuilding strongly supports CBP's proposed modifications, which will properly enforce our coastwise laws to ensure that U.S. built, U.S. owned and U.S. crewed vessels are servicing our nation's critical offshore energy installations.

The Outer Continental Shelf Lands Act (OCSLA) extended the laws of the United States to all permanent and temporary installations and other devices which are erected for the purposes of exploring for, developing, or producing resources on the outer Continental Shelf. The notice by the CBP to properly enforce the coastwise laws to all points on the outer Continental Shelf is the correct interpretation of the law. It was the intent of Congress with the passage of the OCSLA that the Jones Act would apply to further promote and maintain a strong U.S. maritime industry that can build, repair and operate a fleet of U.S. owned vessels.

The CBP notice will also ensure significant American jobs are secured, but also the possibility of creating new employment in new shipbuilding and ship repair in U.S. shipyards around the nation to meet the demands of expanded oil and gas development in the U.S. Exclusive Economic Zone. The proper enforcement of the coastwise laws to all points on the outer Continental Shelf will help maintain the U.S. shipyard industrial base that builds and services the vessels moving merchandise and equipment offshore. In addition, applying the

BAY SHIPBUILDING CO.
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August 13, 2009
Page 2

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coastwise laws to installations and other points offshore will prevent the use of foreign-built and foreign-flagged vessels that pay no U.S. taxes and do not have to meet rigorous U.S. environmental and labor laws, from undercutting U.S. owned and U.S. crewed vessels.

Bay Shipbuilding Co., is a full-service shipyard capable of building, repairing and/or converting vessels, including self-unloading ore carriers, Great Lakes freighters, saltwater ships, passenger vessels, barges, tugs and industrial products. Our 700 skilled employees are experienced, qualified, and quality conscious. Our graving dock is 1,158 ft long and 140 ft. Spanning this graving dock is a 200-ton gantry crane which travels on rails along the entire length of the dock. Also available is a floating dry dock, 604 ft. long x 70 ft. wide, and another small graving dock, along with 10,000 ft. of berthing frontage.

It is imperative that CBP fully take into consideration when evaluating comments on this notice, that the U.S. shipyard industrial base has the capacity and capability to construct, rebuild and maintain the vessels needed to explore and develop our energy resources offshore. This is particularly important in regards to new oil and gas development that requires the installation of structures and devices farther offshore in much deeper water; the requirement for even larger more capable vessels will be needed and U.S. shipyards can meet this demand and are eager to do so.

We appreciate the opportunity to comment on this notice. Bay Shipbuilding Co. supports CBP's decision to reevaluate prior rulings and revising them in a manner that is consistent with the intent behind our nation's coastwise laws. Proper application of U.S. coastwise laws is important to the U.S. maritime industry and Bay Shipbuilding Co. urges the agency to move forward with the implementation of its proposed ruling modifications.

Sincerely,

Patrick J. O'Hern
Vice President & General Manager

PJO:na



Vigor Industrial LLC
5555 N. Channel Ave.
Portland OR 97217
fax 503.247.1778
tel 503.247.1777

August 14, 2009

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Mr. Jayson P. Ahern
Acting Commissioner
U.S. Customs and Border Protection
Office of International Trade, Regulations and Rulings
ATTENTION: Trade and Commercial Regulations Branch
799 9th Street, N.W., Mint Annex
Washington, D.C. 20229

Re: Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points, 43 Cust. B. & Dec. 28 (July 17, 2009).

Dear Acting Commissioner Ahern:

Vigor Industrial conducts ship repair operations on the US west coast. Vigor's primary location is Portland, OR where a 70 acre industrial complex supports ship repair, barge building, steel fabrication and shop painting. These businesses are very reliant on the shipping industry which includes Jones Act vessels. Although gulf oil production is not directly within our current market, we are keenly aware and interested in the outcome of such rulings. It is anticipated that offshore development for wave and wind energy on the north west coast may encounter similar support vessel challenges.

We would like to provide comments on the U.S. Customs and Border Protection ("CBP") July 17, 2009 notice proposing to modify and revoke CBP ruling letters regarding the application of our nation's coastwise laws to the carriage of vessel equipment and certain merchandise used in connection with offshore oil production. [Company Name] strongly supports CBP's proposed modifications, which will properly enforce our coastwise laws to ensure that U.S.-built, U.S.-owned and U.S.-crewed vessels are servicing our nation's critical offshore energy installations.

The Outer Continental Shelf Lands Act (OCSLA) extended the laws of the United States to all permanent and temporary installations and other devices which are erected for the purposes of exploring for, developing, or producing resources on the outer Continental Shelf. The notice by the CBP to properly enforce the coastwise laws to all points on the outer Continental Shelf is the correct interpretation of the law. It was the intent of Congress with the passage of the OCSLA that the Jones Act

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5555 N. Channel Ave.

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would apply to further promote and maintain a strong U.S. maritime industry that can build, repair and operate a fleet of U.S.-owned vessels.

The CBP notice will also ensure significant American jobs are secured, but also the possibility of creating new employment in new shipbuilding and ship repair in U.S. shipyards around the nation to meet the demands of expanded oil and gas development in the U.S. Exclusive Economic Zone. The proper enforcement of the coastwise laws to all points on the outer Continental Shelf will help maintain the U.S. shipyard industrial base that builds and services the vessels moving merchandise and equipment offshore. In addition, applying the coastwise laws to installations and other points offshore will prevent the use of foreign-built and foreign-flagged vessels that pay no U.S. taxes and do not have to meet rigorous U.S. environmental and labor laws, from undercutting U.S.-owned and U.S.-crewed vessels.

Vigor Industrial's organization has the capability to build and repair all manner of ships and barges. Pier space and crane service is available for post panamax vessels and dry docks are available to service panamax vessels. Almost all vessels we build or support are US flag or Jones Act vessels.

It is imperative that CBP fully take into consideration when evaluating comments on this notice, that the U.S. shipyard industrial base has the capacity and capability to construct, rebuild and maintain the vessels needed to explore and develop our energy resources offshore. This is particularly important in regards to new oil and gas development that requires the installation of structures and devices farther offshore in much deeper water; the requirement for even larger more capable vessels will be needed and U.S. shipyards can meet this demand and are eager to do so.

We appreciate the opportunity to comment on this notice. [Company Name] supports CBP's decision to reevaluate prior rulings and revising them in a manner that is consistent with the intent behind our nation's coastwise laws. Proper application of U.S. coastwise laws is important to the U.S. maritime industry and [Company Name] urges the agency to move forward with the implementation of its proposed ruling modifications.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Whitcomb", written over a horizontal line.

Dave Whitcomb
Chief Operating Officer
Vigor Industrial, LLC

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TOTAL E&P USA, INC.

Thomas W. Ryan
Vice President Corporate Division
General Counsel and Secretary

Direct Line: (713) 647-3513
Direct Fax: (713) 647-3699

August 13, 2009

Secretary Napolitano
Department of Homeland Security
Washington, DC 20528

Re: Comment Period Extension Request

Dear Secretary Napolitano,

TOTAL E&P USA, INC. would like to request that you grant an extension of 60 days to the comment period as an interested party pursuant to the notice of July 17th, 2009, of the proposed modification of the Jones Act, by U.S. Customs and Border Protections ("CBP") published on the Customs Bulletin.

The motivation for this requested extension is based on the significant operational and financial negative impact for present and future Outer Continental Shelf ("OCS") oil and gas operations in which the Company is invested.

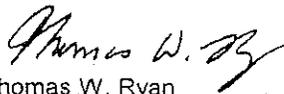
Following this new expanded interpretation of the term "transportation of merchandise" between coastwise points and the restrictive interpretation of "vessel equipment" under the Jones Act, CBP expressly intends to modify and revoke any ruling letter issued allowing the transportation of some material and equipment by foreign-flagged vessel in Gulf of Mexico ("GOM").

The CBP's proposed modification would reduce drastically the possibility of using the current and forecasted specialized foreign-flagged vessels, particularly impacting the use of those vessels for pipe-laying, cable-laying, pipe-line repairing, diving support work, heavy-lift crane construction and installation work, and all related support activities on the off-shore. Development of the deepwater OCS resources require the use of specialized technology provided only by a limited number of vessels available worldwide, most of which are foreign-flagged.

As this new CBP position would definitively jeopardize or significantly delay present and future oil and gas projects in the OCS and accordingly would negatively impact the domestic energy supply, the requested 60 day period extension is more than reasonable due to the considerable time required by the oil and gas industry to comment thoughtfully.

Please do not hesitate to contact us for any question or further information regarding this issue.

Sincerely,



Thomas W. Ryan
Vice President Corporate Division
General Counsel and Secretary



TOTAL

P. O. Box 4397, Houston, TX 77210-4397
Tel (713) 647-3000 Fax (713) 647-3699

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my

MICHAEL T. MCGAUL
10TH DISTRICT, TEXAS

COMMITTEE ON
HOMELAND SECURITY

RANKING MEMBER, SUBCOMMITTEE ON
INTELLIGENCE, INFORMATION SHARING,
AND TERRORISM RISK ASSESSMENT

COMMITTEE ON FOREIGN AFFAIRS

COMMITTEE ON SCIENCE AND TECHNOLOGY

REPUBLICAN POLICY COMMITTEE

ASSISTANT REPUBLICAN WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-4310

August 12, 2009

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KATY OFFICE
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TOMBALL OFFICE
TOMBALL ROSEWOOD PROFESSIONAL BUILDING
990 VILLAGE SQUARE, SUITE B
TOMBALL, TX 77375
(281) 255-8372

Secretary Janet Napolitano
U.S. Department of Homeland Security
Washington, DC 20528-0002

Dear Secretary Napolitano:

I am concerned that U.S. Customs and Border Protection (CBP) is rushing to adopt changes to interpretations of the Jones Act, 46 USC 55102, that would have a potentially devastating impact on the U.S. offshore oil and gas industry, including the loss of thousands of jobs, if enacted.

I refer to CBP's July 17th proposal to reverse precedent developed over 30 years relied upon by industry that allows foreign flagged vessels to carry certain specialized equipment used in deepwater offshore energy exploration and development. It would suddenly re-categorize "equipment" into "merchandise," which would have the practical effect of restricting the transport of such equipment to U.S. flagged vessels built in the United States.

U.S. Companies involved in deepwater oil and gas exploration rely on sophisticated, highly specialized vessels for subsea installation construction support, pipe umbilical laying, as well as maintenance of seafloor facilities. Unfortunately, in this deepwater market segment, U.S. flagged vessels represent less than 20 percent of such capability. As a result, the use of foreign flagged vessels is currently essential to maintain operations.

Moreover, the CBP proposal provides no transition period to develop a U.S. fleet capable of meeting the offshore demand. It would take full effect within 160 days. By contrast, at least 5 years are needed to develop a fleet of U.S. vessels sufficient to meet the demand caused by the proposal.

Meanwhile, the impacts would be devastating: severe disruptions in oil and gas production, loss of thousands of jobs in Gulf Coast states, and huge revenue losses (one offshore services company in Houston estimates potential annual revenue losses on the order of \$100 million.) Such disruptions would be immediate, as companies cease operations as a result of this upheaval of decades of precedent and the fear of having severe penalties assessed.

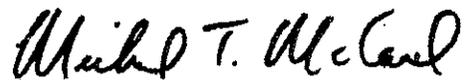
Finally, the proposed changes run counter to President Obama's free trade policy and could give rise to retaliation abroad, particularly in oil and gas-producing countries where the U.S. companies are active.

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For all the above reasons, I strongly and respectfully urge you to (1) undertake an immediate review of the proposal and its potentially severe economic consequences, and (2) extend the comment period from 30 to 90 days so that the many negative impacts of the proposal can be thoroughly reviewed and considered.

I appreciate your prompt attention to this matter and look forward to your response. Please do not hesitate to contact us if we can be of assistance on this request.

Sincerely,

A handwritten signature in black ink that reads "Michael T. McCaul". The signature is written in a cursive style with a large, prominent "M" and "C".

Michael T. McCaul
Member of Congress

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Congress of the United States
Washington, DC 20515

August 13, 2009

Honorable Janet A. Napolitano
Secretary
U.S. Department of Homeland Security
301 Seventh Street, SW
Washington, DC 20528-0001

Dear Madam Secretary:

We write today to request a 60-day comment period extension to allow adequate public input in response to a recent U.S. Customs and Border Protection (CBP) notice of intent to modify or revoke previous interpretations of the Jones Act. Any overreach in Jones Act interpretation could have negative impacts on offshore oil, natural gas, and alternative/renewable energy development.

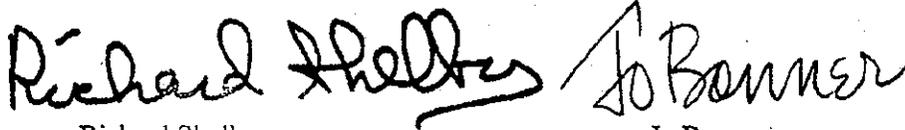
The Jones Act, 46 USC § 55102, prohibits foreign-flagged vessels from transporting "merchandise" between United States ports or points embraced within the coastwise laws (i.e., a "coastwise point"). Section 4(a) of the Outer Continental Shelf Lands Act of 1953 extends the Jones Act to installations on the Outer Continental Shelf (OCS), such as oil production platforms and wells. Until recently, CBP has interpreted that transportation related to certain essential activities related to offshore energy development does not violate the Jones Act—including the activities of pipe-laying, cable-laying, diving support work, and heavy-lift crane construction and installation work. In particular, for deepwater energy exploration, the limited number of vessels available worldwide to perform certain tasks make access to the proper equipment critical to continued exploration and production.

Deepwater offshore oil and natural gas production is an important component of domestic energy supply. In 2007, this area provided an estimated 317 million barrels of oil and nearly 1 trillion cubic feet of natural gas for US consumers. Seven of the top 20 oil fields in the U.S. are now located in deepwater areas. This region is projected to account for 25% of offshore oil production by the year 2015.

However, the development of deepwater OCS resources requires cutting-edge engineering and design, and the use of a limited number of specialized offshore vessels available worldwide. A July 17, 2009, notice published in the Customs Bulletin stated it intends to modify or revoke previous interpretations of Jones Act requirements. This revocation could jeopardize deepwater offshore energy production—including alternative and renewable energy development—by restricting access to the specialized vessels necessary to carry out certain activities offshore.

Given significant implications for domestic energy supply, we request further time for comments and discussion among all parties affected by this decision. Thank you for your attention to this matter. Please do not hesitate to contact us if we can provide additional information.

Sincerely,

Handwritten signatures of Richard Shelby and Jo Bonner. The signature of Richard Shelby is on the left, and the signature of Jo Bonner is on the right.

Richard Shelby
United States Senator

Jo Bonner
Member of Congress

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Congress of the United States

Washington, DC 20515

July 30, 2009

Mr. Jayson P. Ahern
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Acting Commissioner Ahern:

We write to express our views on the determination made by your agency with respect to the application of our Nation's coastwise laws to the carriage of merchandise by vessels to offshore oil facilities, as published on July 17, 2009. Those laws reserve maritime transportation of cargo and passengers between two points or places in the United States to vessels that are built in the United States, owned by U.S. citizens, and crewed by U.S. citizens.

We agree with your agency's determination that cargo transported by a vessel to an offshore oil or gas facility must be carried in compliance with our coastwise laws, whereas "vessel equipment" (namely, equipment that is necessary and appropriate for the navigation, operation or maintenance of the vessel or for the comfort and safety of the persons on board) is not subject to those laws. Your analysis is consistent with the Congressional purpose in enacting the coastwise laws and our continued goal of promoting a strong U.S. merchant marine.

We also wish to address two related matters. When Congress passed the Outer Continental Shelf Lands Act in 1953 (OCSLA), it provided that the laws of the United States are extended to "the subsoil and seabed of the outer Continental Shelf," as well as to installations attached to the seabed for the exploration, development, production and transportation for and of mineral resources. Notably, the laws of the United States specifically were made applicable to the subsoil and seabed. As the Conferees stated, U.S. laws were extended to the subsoil and seabed themselves "instead of merely to the natural resources of the subsoil and seabed." As offshore energy exploration and production technology advances, much of which will occur on or beneath the seabed, it is important that your agency recognize that Congress made the coastwise laws applicable to the subsoil and the seabed of the outer Continental Shelf, not just to the installations thereon specific to mineral resources.

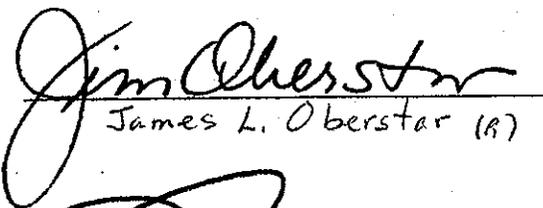
Acting Commissioner Ahern
July 30, 2009
Page 2

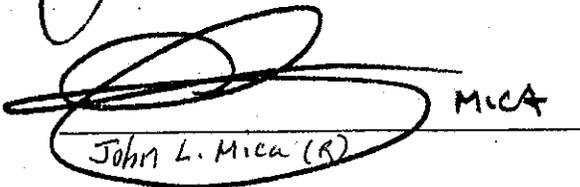
Similarly, renewable energy development, including on the OCS, will continue to advance as a means of meeting our Nation's energy needs. Thirty years after the enactment of OCSLA, in 1983, the President issued a proclamation that asserted U.S. sovereignty over the seabed and super adjacent waters of the Exclusive Economic Zone for the purpose of exploiting natural resources, including the production of energy from water currents and wind. Subsequently, in the Energy Policy Act of 2005, Congress amended OCSLA to recognize the authority of the United States to lease the seabed of the OCS for the purpose of development of renewable energy resources. As a result of these actions, U.S. laws such as our coastwise laws govern activities related to the development of both minerals and renewable energy on the outer Continental Shelf.

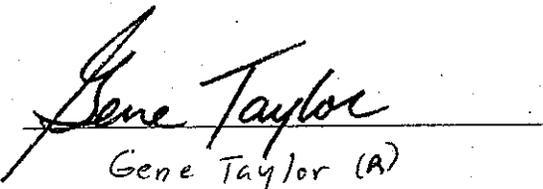
Section 55102(b) of Title 46, United States Code, provides that a vessel may not transport merchandise by water between points in the U.S. to which the coastwise trade laws apply. Section 55110 makes it clear that the transportation of merchandise to a point in the exclusive economic zone (EEZ) of the U.S. is coastwise trade. As with the disposal of dredged material, it does not matter whether or not the vessel is anchored to a point in the EEZ. The transport of alternative energy equipment from shore to a site in the EEZ where, for example, a wind farm is being built, is clearly a coastwise movement since it is a point subject to the coastwise laws under Section 55110.

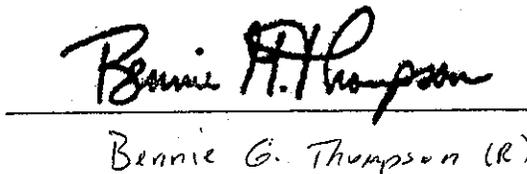
We appreciate the opportunity to share our views with respect to these important matters.

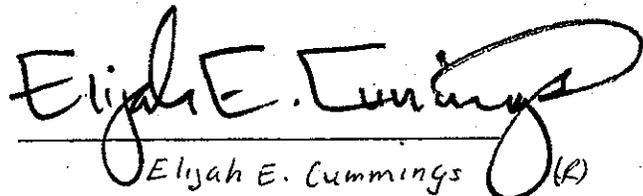
Sincerely,

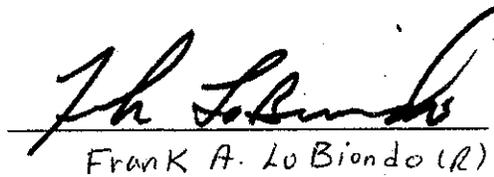

James L. Oberstar (R)

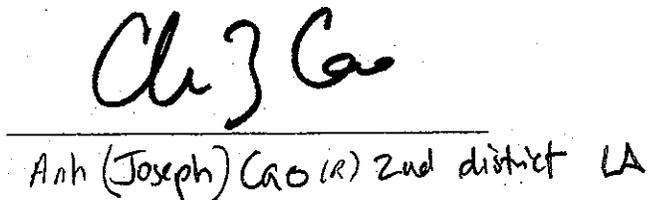

John L. Mica (R) MICA

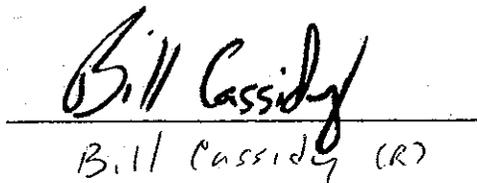

Gene Taylor (R)


Bennie G. Thompson (R)


Elijah E. Cummings (R)


Frank A. LoBiondo (R)


Anh (Joseph) Cao (R) 2nd district LA


Bill Cassidy (R)

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ELLSWORTH CORPORATION
INSURANCE ♦ BONDS

August 12, 2009

Office of International Trade, Regulations and Rulings
Attention: Trade and Commercial Regulations Branch
U.S. Customs and Border Protection
799 9th Street NW
Mint Annex
Washington, D.C. 20229

Dear Sir or Madam,

Please consider these comments submitted on behalf of the Ellsworth Corporation as you finalize the July 17 proposal governing application of the Jones Act to ensure that cargo carried to offshore facilities is carried by U.S.-flag vessels.

We strongly endorse this proposal.

My company is one of the top locally-owned, independent insurance brokerage firms in Louisiana. The highly specialized commercial marine and energy environments demand a thorough understanding of the nuances of both insurance and the industries we serve. Our Marine and Energy Departments understand these intricacies and offers coverages such as workers' compensation, USL&H and Jones Act, General Liability, Equipment, Hull and Machinery, Bonds, and other coverage needed for marine related businesses and specialty contractors. These include marine contractors, diving contractors, dredging operation, tug and barge operation, ship repairers and builders, terminals, and a variety of other marine related businesses.

In our opinion, it is critically important that the nation's laws be enforced in a manner that best advantages Americans in the Gulf Region. Dramatically increasing business opportunities for American maritime transport companies, for example, will provide a further economic stimulus for our company. Applying American coastwise laws to vessels carrying supplies to our offshore oil and gas facilities is long overdue and would be a welcome development to the industry as a whole.

We sincerely appreciate the opportunity to share comments with your agency.

Sincerely,

Marcus A. Dunn
Vice President

MAD/gb

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GIVENS & JOHNSTON, PLLC

Counselors at Law

Robert T. Givens
Scott L. Johnston
Sharon Steele Doyle
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Toll free (800) 285-8042
Fax (713) 932-1542
email: rgivens@givensjohnston.com
www.givensjohnston.com

August 16, 2009

Via Telefax #202-325-0310

U.S. Customs and Border Protection,
Office of International Trade, Regulations and Rulings,
Attention:

Trade and Commercial Regulations Branch,
799 9th Street, N.W., Mint Annex,
Washington, D.C. 20229

Attn: Charles Ressin

Re: Comments Regarding Customs Proposed Modification of Jones Act

Dear Mr. Ressin:

On July 17, 2009, U. S. Customs and Border Protection ("Customs") published in the Customs Bulletin a notice entitled "Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points." This proposed modification ("Proposed Modification") significantly narrows the range of activities in which non-coastwise certified vessels may participate on the Outer Continental Shelf ("OCS"), primarily related to oil and gas exploration, development, production and distribution. Customs has provided the public with only 30 days from publication to comment on the Proposed Modification. We submit for Customs' consideration the following comments on behalf of our client, Mariner Energy, Inc. ("Mariner").

Despite the fact that Customs' actions most likely constitute a significant regulatory action, Customs has failed to follow Executive Order 12866 regarding Regulatory Planning and Review. In particular, Customs has not provided the public with a sufficient period for notice, comment, and involvement in the rulemaking process.¹ Customs also has not provided an assessment of the impact of its Proposed Modification to the Office of Management and Budget for review.² As a consequence of the failure of Customs to comply with E.O. 12866, we believe that the Proposed Modification is premature. In its current form, the Proposed Modification will cause undo hardship to the immediately affected parties and adversely impact the U.S. economy and consumers as a whole. Therefore, we request that Customs extend its period for public comment and consideration indefinitely until a thorough review of the impact of the Proposed

¹ Exec. Order No. 12866 (October 4, 1993), section 6(a).

² Id at section 6(a)(3)(C)

Modification can be made. Although we have not had sufficient time to assess fully the impact of the Proposed Modification, we offer the following for your consideration:

**Operations in the Gulf of Mexico Will Be
Seriously Affected by the Proposed Modification**

Founded in 1983, Mariner is based in Houston, Texas, and conducts exploration, development and production activities in the Gulf of Mexico, both on the shelf and in deepwater, and in the Permian Basin. Currently, the company has interests in more than 300 blocks on the continental shelf and 90 blocks in deepwater. Mariner employs over 250 men and women.

Mariner conducts exploration, development and production operations in the Gulf of Mexico in water depths ranging from 1,300 feet up to 7,000 feet. Deepwater activity comprises a significant portion of Mariner's operations and is responsible for a significant portion of its revenues. Mariner and other Gulf of Mexico oil and gas industry participants utilize a large number of specialized vessels to handle the wide range of capabilities needed to conduct large scale offshore drilling, construction and repair operations to support their businesses. Mariner does not own any of these specialized vessels and instead relies upon contractors to provide a wide array of services. To the knowledge of Mariner, there are no U.S. flagged flowline or umbilical lay vessels that can operate in the undeveloped and under-explored deeper water depths in the Gulf of Mexico.

For decades, Customs has allowed for non-coastwise qualified vessels to engage in a number of activities that will be restricted under the Proposed Modification. Because the industry has relied on Customs' consistent application of the law with regards to what constitutes coastwise trade, a number of vessels that cannot be coastwise qualified began operating in U.S. waters; and the domestic industry, including Mariner, now relies heavily on their capabilities. To the knowledge of Mariner, these capabilities cannot be readily replaced. The construction of new vessels to become coastwise qualified would require years and cause unnecessary serious disruptions to the exploration for and production of oil and gas on the OCS by not only Mariner but all other operators in the Gulf of Mexico.

Under the Proposed Modification, non-coastwise trade qualified vessels will be prohibited from performing many of the critical and necessary operations required in Mariner's exploration, development and production activities, such as the installation of flowline jumpers, risers, tie-in spool pieces, flexible flowlines, and umbilicals onto any stationary point in the OCS, unless the activity is incidental to pipe laying operations. In addition, under the Proposed Modification, non-coastwise qualified lift boats will be prohibited from transporting compressors, generators, pumps or other oilfield equipment to any stationary point in the OCS or installing repair equipment unless the repair is unforeseen and the materials used are of minimal value and usually carried aboard the vessel as supplies.

Oil and gas exploration, development, production and distribution operations in the Gulf of Mexico will undoubtedly be severely curtailed or come to a halt under the Proposed Modification due to a lack of qualified vessels that would be permitted to operate under the Proposed Modification. Qualified vessels, if any, that may exist or be put into operation could

charge exorbitant rates due to the lack of a competitive market. Serious delays in conducting operations crucial to continuing to maintaining the flow of oil and natural gas from the Gulf of Mexico to the nation, and significant increases in the costs of such operations, would result from the Proposed Modification.

Proposed Modification Could Increase Safety and Environmental Risks

The Proposed Modification could increase safety risks to vessels and crew involved in offshore operations. These safety concerns stem from two main areas. First, virtually all of the most advanced, heavy lift vessels operating in U.S. waters are not coastwise qualified vessels. Therefore, in one scenario, Mariner and other Gulf of Mexico companies would be forced to rely on less advanced vessels to deliver to a site and install equipment onto its rigs during drilling and completion operations and to its construction sites during field development. In the alternative, Mariner and these other companies would be forced to rely on U.S. coastwise qualified vessels to transport equipment to a site, then have to transfer to the rig or its construction vessels at sea. In both scenarios the safety and environmental risk to vessels, equipment and crew could rise dramatically. Delays in making repairs, conducting maintenance and responding to accidents and hurricane damaged facilities as the result of a general unavailability of capable and qualified vessels could also cause increased safety and environmental risks.

Proposed Modification Would Result in Decreased Production and Potential Lease Forfeitures

Delays in conducting operations would result in the loss of oil and natural gas leases and leave unrecovered reserves in the ground. Leases to conduct operations in the Gulf of Mexico terminate after a period of time unless oil or natural gas is produced or operations are being conducted. Mariner and other Gulf of Mexico operators have expended millions of dollars to obtain leases permitting them to conduct oil and gas activities that would be at risk of loss as a result of the delays that would be experienced due to the lack of qualified vessels to conduct the operations. Mariner's current development plans are based upon a readily available supply of vessels to conduct the offshore installation and construction necessary to exploit the leases. These leases represent a major capital investment on Mariner's part and their loss must be avoided—not only for Mariner and its shareholders, but also to avoid the loss of the production of oil and gas from those leases. The loss of that production likely will result in higher commodity prices.

Proposed Modification is Contrary to Global Nature of Offshore Industry

The offshore oil and gas industry and the related service industries are truly some of the most globalized markets in existence. Vessels, crews, tools, and various other elements of production travel between countries around the world. A number of U.S. flagged vessels are now operating in the waters off other nations in a capacity that Customs is now considering outlawing for non-coastwise qualified vessels in the U.S. The Proposed Modification would take the U.S. out of the global stream of commerce and cause serious damage to the domestic industry as a whole.

Proposed Modification Constitutes a Significant Regulatory Action

By modifying the definition of what constitutes coastwise trade, Customs is making a significant regulatory action.³ The Proposed Modification implicates all four of the factors constituting a significant regulatory action. First, if the Proposed Modification is enacted, the prices of oil and natural gas will rise, increasing the costs of gasoline, electricity, fertilizer, plastics, and various other commodities linked to the prices of oil and natural gas. The Proposed Modification will also have an adverse effect on U.S. jobs in the offshore production, exploration, distribution and construction industries. The Proposed Modification will further negatively impact both the environment and public health and safety as a result of the offshore industry losing some of its most efficient and capable vessels necessary for construction at sea. Local and state governments will lose significant revenues derived from offshore activities as a result of the Proposed Modification. The costs of these adverse effects are likely in the billions of dollars for the industry as a whole.

Second, the Proposed Modification will create serious inconsistency and otherwise interfere with other actions taken by other agencies. The Proposed Modification will affect revenue generated for the federal, state and local governments as a result of decreased offshore oil and gas production.

Third, the Proposed Modification will materially alter the budgetary impact of user fees generated by offshore production of oil and gas for the federal government. The Proposed Modifications will also diminish the rights of grantees of federal offshore oil and gas leases. These grantees acquired leases based upon a regulatory environment that the Proposed Modification would significantly alter, such that the leases could become either uneconomical or impossible to fully realize their value. The Proposed Modification could also diminish the federal government's future ability to auction these leases in the future.

Fourth, the Proposed Modification raises a number of novel legal questions with regards to what will and will not qualify as coastwise trade. Furthermore, the manner in which Customs has engaged in its current rule making is contrary to a number of the principles set forth in E.O. 12866.

³ Id at section 3(f) ("Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health and safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another government agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Customs Must Prepare a Regulatory Impact Analysis for the Proposed Modification

Agencies must prepare a Regulatory Impact Analysis (RIA) for each economically significant regulation consistent with the requirements set fourth in E.O. 12866.⁴ To date, Customs has not yet produced or made public any regulatory analysis whatsoever. As result, Customs is unaware of the true impact and dislocation that its Proposed Modification will cause.

For the reasons detailed above, we request that Customs reconsider its proposed modifications, and consider less disruptive alternatives to achieve its goals.

Best regards,



Robert T. Givens
Attorney for Mariner Energy, Inc.

⁴ See also "Memorandum for the President's Management Council" (September 20, 2001)

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GIVENS & JOHNSTON, PLLC
Counselors at Law

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August 13, 2009

Via Telefax #202-325-0152
U.S. Customs and Border Protection,
Office of International Trade, Regulations and Rulings,
Attention:
Trade and Commercial Regulations Branch,
799 9th Street, N.W., Mint Annex,
Washington, D.C. 20229

Attn: Charles Ressin

Re: Request for Extension of Comment Period and Request for Regulatory Review by Office
of Management and Budget

Dear Mr. Ressin:

On July 17, 2009, U. S. Customs and Border Protection published in the Customs Bulletin a notice entitled "Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points." ("Proposed Modification") This proposed modification significantly narrows the range of activities in which non-coastwise certified vessels may participate on the OCS, primarily related to oil and gas production, exploration and distribution. Customs has provided the public with only 30 days to comment on the Proposed Modification from its publication. Our client, Mariner Energy, Inc. ("Mariner"), One Briar Lake Plaza, Suite 2000, 2000 West Sam Houston Parkway South, Houston, Texas 77042, requests that the period of comment and public participation be extended to enable it to properly gauge and analyze the impact of the Proposed Modification on its business operations.

Furthermore, despite the fact that Customs' actions most likely constitute a significant regulatory action, Customs' has failed to follow executive order 12866 regarding Regulatory Planning and Review. In particular, Customs has not provided the public with a sufficient period for notice, comment, and involvement in the rulemaking process.¹ Customs also has not provided an assessment of the impact of its Proposed Modification to the Office of Management and Budget for review.² As a consequence of the failure of Customs to comply with E.O. 12866, we believe that Customs' Proposed Modification is premature. In its current form, the Proposed Modification will cause undo hardship to the immediately affected parties and will adversely

¹ Exec. Order No. 12866 (October 4, 1993), section 6(a).

² Id at section 6(a)(3)(C)

Charles Ressin

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August 11, 2009

impact the economy and consumers as a whole. Therefore, we request that Customs extend its period for public comment and consideration indefinitely until a thorough review of the impact of the Proposed Modifications can be made.

OSFI's Business Operations are Directly Affected by the Proposed Modification

OSFI is a company based in Houma, Louisiana that specializes in offshore fabrication and installation projects, mostly servicing the offshore oil and gas industry in Gulf of Mexico. The company was founded in 1976 and employs 350 highly skilled people. Its area of operations spans the entire Gulf Coast and the Outer Continental Shelf - from Florida to Brownsville, Texas.

With its fleet of owned and chartered heavy lift derrick barges, material barges, and service boats tugs it provides platform installation & removal, single barge heavy lifts up to 1,765 tons, dual barge heavy lifts up to 2,500 tons, load outs and off loads, new platform fabrication and installation, and true turnkey services. OSFI provides essential post-storm removals and/or retrievals of existing platforms. The Fabrication Division of OSFI provides platform fabrication and installation services on a turnkey basis. It offers construction capabilities which includes deck, jacket and piling construction, in the company's Houma, Louisiana yard, together with comprehensive in-house project services, with a substantial inventory of surplus decks and waterfront fabrication facilities on the Louisiana Coast.

The industry that OSFI is engaged in utilizes a large number of differently specialized vessels in order to handle the wide range of capabilities needed to conduct large scale construction operations at sea. While some of these vessels are owned by OSFI, many of them are not, and OSFI relies upon a large number of chartered vessels for various projects. This arrangement is typical of the industry and reflects the need for operational flexibility in offshore installation and fabrication. The effect of Customs' proposal is to further restrict the activities of non-coastwise qualified vessels, which will strike at the heart of the OSFI's business, due to the limited number of these specialized vessels available.

For almost 50 years, Customs has allowed for non-coastwise qualified vessels to engage in a number of activities that will be restricted under the Proposed Modification. Because the industry has relied on Customs' consistent application of the law with regards to what constitutes coastwise trade, a number of vessels that cannot be coastwise qualified began operating in US waters, and the domestic industry now heavily relies on their capabilities. If these vessels are suddenly disqualified from engaging in their current activities, then quite simply, many of their capabilities either cannot be readily replaced or will require extremely inefficient work-arounds to satisfy the new regulatory requirements. While eventually, new vessels that are eligible to be coastwise qualified may be launched, this will take years, and in some cases, will probably never be done.

OSFI Needs More Time to Gauge and Analyze the Effects of the Proposed Modification

OSFI's current operations rely on a large number of vessels that may or may not be qualified for coastwise trade and most likely include a number of vessels that are not eligible to

be coastwise trade qualified. At this time, OSFI cannot accurately predict how many vessels it will lose the service of and how many it will not. Furthermore, OSFI cannot determine how increased prices and decreased availability of vessels that are coastwise qualified will affect its operations.

Effects of Proposed Modification on U.S. Offshore Oil and Gas Production

The net affect of the Proposed Modification is to reduce the U.S.'s ability to fully utilize its domestic oil and gas reserves. The delays caused by having a large percentage of our current vessel fleet either shelved or put into an elaborate, regulatory inspired dance with coastwise qualified vessels will be significant. These delays will translate into slower development of new energy resources, decreased life spans and productivity of existing facilities, and probably the abandonment of some projects.

Customs' Proposed Modification Constitutes a Significant Regulatory Action

By modifying the definition of what constitutes coastwise trade, Customs is making a significant regulatory action.³ The Proposed Modification implicates all four of the factors constituting a significant regulatory action. First, if the Proposed Modification is enacted immediately, will easily affect the U.S. economy by \$100 million dollars, which is the equivalent of 100 million U.S. drivers spending \$1.00 extra on gasoline per year. The Proposed Modification will also raise the price of natural gas, which will further affect the price of electricity, fertilizer, plastics, and various other commodities linked to the price of natural gas. These prices will be increased as a result of the increased costs and delays associated that will be the result of the Proposed Modification.

The Proposed Modification will have adverse effects US jobs related to the offshore production, exploration, distribution and construction industry. The Proposed Modification will further have negative impacts both the environment and public health and safety as a result of the offshore industry losing some of its most efficient and capable vessels necessary for construction at sea. The Proposed Modification will also have an adverse impact on revenues of local and state governments derived from offshore activities.

Second, the Proposed Modification will create serious inconsistency and otherwise interfere with other actions taken by other agencies. Primarily, the Proposed Modification will

³ Id at section 3(f) ("Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health and safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another government agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Charles Ressin

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August 11, 2009

affect revenue generated for the federal government resulting from decreased offshore oil and gas production. The Proposed Modification will also with the use of foreign built vessels in the US, which will constitute a non-tariff trade barrier, contrary to efforts of the USTR to promote fair trade. As a non-tariff barrier to trade in foreign built vessels, the Proposed Modification may also result in a dispute being filed with the World Trade Organization.

Third, the Proposed Modification will materially alter the budgetary impact of user fees generated by offshore production of oil and gas for the federal government.

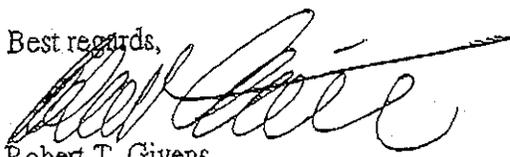
Fourth, the Proposed Modification raises a number of novel legal questions with regards to what will and will not qualify as coastwise trade. Furthermore, the manner in which Customs has engaged in its current rule making is contrary to a number of the principles set forth in E.O. 12866.

Customs Must Prepare a Regulatory Impact Analysis for the Proposed Modifications

Agencies must prepare a Regulatory Impact Analysis (RIA) for each economically significant regulation consistent with the requirements set fourth in E.O. 12866.⁴ To date, customs has not yet produced or made public any regulatory analysis whatsoever. As result, Customs is unaware of the true impact and dislocation that its Proposed Modification will cause.

For the reasons detailed above, we request an extension of the comment period.

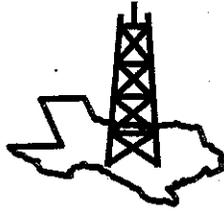
Best regards,



Robert T. Givens

Attorney for Offshore Specialty Fabricators, Inc.

⁴ See also "Memorandum for the President's Management Council" (September 20, 2001)



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TEXAS OIL & GAS ASSOCIATION

August 17, 2009

Joseph I. O'Neill, III, Midland
CHAIRMAN

Robert L. Looney, Austin
PRESIDENT

William L. Ennis, Austin
VICE-PRESIDENT FOR MEMBER
AND MEDIA RELATIONS

Debbie Mamula Hastings, Austin
VICE-PRESIDENT FOR
ENVIRONMENTAL AFFAIRS

Benjamin W. Sebree, Austin
VICE-PRESIDENT FOR
GOVERNMENTAL AFFAIRS

Jim Sierra, Austin
VICE-PRESIDENT FOR FINANCE

District Vice-Presidents

David W. Killam, Laredo
SOUTHWEST TEXAS

Harold D. Courson, Amarillo
THE PANHANDLE

Lance R. Byrd, Dallas
NORTH CENTRAL TEXAS

Dan Allen Hughes, Jr., Beeville
THE LOWER GULF COAST

A. V. Jones, Jr., Albany
WEST CENTRAL TEXAS

Curtis W. Mewbourne, Tyler
EAST TEXAS

James R. Montague, Houston
THE UPPER GULF COAST

Grant A. Billingsley, Midland
THE PERMIAN BASIN

W. M. Thacker, Jr., Wichita Falls
NORTH TEXAS

Ms. Sandra L. Bell
U.S. Customs and Border Protection
Office of International Trade
Regulations and Rulings
Attention: Trade and Commercial Regulations Branch
799 9th Street, N.W., Mint Annex
Washington, D.C. 20001

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

Dear Ms. Bell:

The Texas Oil and Gas Association (TxOGA) is the largest and oldest petroleum organization in Texas, representing over 4,000 members. The membership of TxOGA produces in excess of 90 percent of Texas' crude oil and natural gas, operates 100 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. According to the most recent data, the oil and gas industry employs 189,000 Texans, providing payroll and benefits of over \$24 billion in Texas alone. In addition, large associated capital investments by the oil and gas industry generates significant secondary economic benefits for Texas.

Our member companies are also heavily involved in the exploration, development and production of offshore oil and gas resources and include the majority of the 100 companies active in the Gulf of Mexico Outer Continental Shelf. Therefore, any rulings by the U.S. Customs and Border Protection (CBP) relating to offshore activities are of interest to our association.

Specifically, TxOGA is concerned about the proposed changes to interpretations of the Jones Act by the U.S. Customs and Border Protection (CBP) published July 17, 2009. As detailed in comments submitted by the American Petroleum Institute (API), if adopted the CBP proposal will have a devastating effect on future development of oil and gas in the Outer Continental Shelf and the multi-billion dollar industry.

On behalf of our member companies, TxOGA respectfully requests careful and thoughtful consideration of the API comments and recommendations relating to Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points. If you have any questions please contact me at 512/478-6631 or dhastings@txoga.org.

Sincerely,


Debbie Hastings

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DON YOUNG
CONGRESSMAN FOR ALL ALASKA
WASHINGTON OFFICE
2111 RAYBURN BUILDING
TELEPHONE 202-225-5785



COMMITTEE ON
RESOURCES
COMMITTEE ON
TRANSPORTATION
REPUBLICAN
POLICY COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

August 3, 2009

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Madame Secretary:

I am writing with respect to the July 17, 2009 proposal by U.S. Customs and Border Protection (CBP) entitled *Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Applications of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points*. This proposal would change long-standing interpretations of the Jones Act on which the offshore industry has relied.

My support for the Jones Act is unwavering. The Jones Act plays a critical role in creating U.S. jobs, growing the U.S. economy, and maintaining our national security. While I have always been and remain an ardent Jones Act supporter and understand the need to enforce the coastwise laws vigorously, this proposal raises matters of national energy security and should not be adopted without careful examination of the consequences of such a decision or a sensible plan to implement any modifications to long-standing Customs policy.

CBP published the proposal with a 30-day comment period and subsequently rejected all industry overtures for an extension of time. The 30-day period for comments is insufficient to evaluate the impacts of the proposed changes on currently planned activities, and to develop appropriate comments on the proposal. Further, the likely scenario is that Customs will make the proposal effective by November 15, 2009. This time period is not sufficient to determine what operations cannot proceed as planned, renegotiate existing contracts, and determine the availability and capability of coastwise-qualified vessels. Unless a transition to any final rule is carefully considered, operations are likely to experience significant delays or be performed in a manner that creates risks to people, property, and the environment. All affected parties should be given adequate time to provide comments and that those comments should be given serious consideration.

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The proposed rule raises complex technical and logistical issues. The full implications of the proposal are still being analyzed and this uncertainty may materially delay projects. The implications could be detrimental to U.S. energy supplies and ultimately the U.S. economy.

For these reasons, I urge you to take immediate action to extend the deadline for comments to at least October 15th to allow time to all stakeholders to thoroughly evaluate the impacts of this proposal and submit meaningful comments. After reviewing those comments, I urge you to adopt a sensible implementation plan if such a plan is necessary. We also urge you to provide Congress with a report on the consequences of this proposal on the offshore sector.

Our recovering economy and energy independence are paramount. So is enforcement of the Jones Act. Such enforcement can be effectively accomplished, even as we take all responsible measures to ensure that domestic energy sources remain available so that the economy is not disrupted unnecessarily, if the government takes an approach that ensures adequate time for all aspects of the proposed changes to be closely examined and understood.

Sincerely,

Don Young

DON YOUNG

Congressman for all Alaska