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**Subcommittee on Homeland Security
Committee on Appropriations
United States Senate**

**ENFORCEMENT OF THE JONES ACT IN THE GULF OF MEXICO BY
UNITED STATES CUSTOMS AND BORDER PROTECTION (CBP)**

May 25, 2011

Madam Chairman and Members of the Subcommittee:

As the President and CEO of the Offshore Marine Service Association (OMSA), I am pleased to have the opportunity to describe the challenges facing our industry and the Department of Homeland Security (DHS) through its agency, U.S. Customs and Border Protection (CBP), in enforcing the Jones Act in the Gulf of Mexico. The Jones Act is very broad and very clear in its mandate – no merchandise or passengers shall be transported by water between points in the United States in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States.

OMSA represents more than 250 companies that own and operate vessels, perform towing activities and provide services in support of the production, exploration and development of offshore natural resources. These companies employ over 12,000 mariners operating approximately 1200 vessels in the Gulf of Mexico. Madam Chairman, in your visits to Port Fourchon and other port and offshore facilities in Southeast Louisiana, you have observed firsthand the OMSA member vessels and personnel that support vital offshore oil and gas exploration and development operations. While our association represents the world's largest offshore vessel companies, most OMSA members are to this day family owned and operated businesses. Our members not only perform a valuable economic function for the oil and gas industry, but we also have an important homeland security role to play. Because we regularly operate within and beyond the maritime borders of the United States, OMSA members serve as 'an early-warning system' for threats against the strategic assets in the Gulf of Mexico and our homeland.

Madam Chairman, at the outset, I would like to provide the Subcommittee with some important background on the Jones Act, a critically important law that is vital to the American maritime industry and our operations in the Gulf of Mexico. When the Jones Act was enacted by Congress in 1920, its preamble provided that:

It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war

or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this Act, the [United States] shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

While the Jones Act dates from 1920, cabotage laws from which it came were enacted by the first United States Congress in 1789. Through the Jones Act and its predecessor statutes, Congress intended to ensure that the United States has available vessels to meet sealift needs, trained and experienced seafarers to operate U.S. government ships in times of national emergency, and a modern shipyard industrial base that is critical to the Nation's military and economic security. In so doing, the Congress required that vessels operating in the domestic commerce of the United States must be owned by United States citizens, built in United States shipyards, crewed by United States citizens, and documented under the laws of the United States as United States flag vessels. CBP is vested with the authority to interpret and enforce these Jones Act requirements. Indeed, as the Preamble included by Congress at the time of the passage of the Jones Act makes clear, it is the duty of CBP to “keep always” the stated purpose of the statute as the “primary end” to be attained. This means, and Congress made clear, that when creating rules and regulations and when administering all shipping laws, of which the Jones Act is one, CBP must “do whatever necessary to develop and encourage the maintenance of such a merchant marine.”

Without a doubt, U.S. businesses have done their part in ensuring that our Nation has a vibrant merchant marine. The investment by American businesses, and members of OMSA, based on the Jones Act is substantial. According to America's Maritime Partnership (AMP), the entire Jones Act fleet is comprised of more than 40,000 vessels and represents an investment of nearly \$30 billion. Jones Act vessels annually move more than 100 million passengers and 1 billion tons of cargo with a market value of \$400 billion. There are 74,000 jobs that are directly related to Jones Act maritime activity, and total employment related to domestic waterborne commerce is 500,000. The annual economic impact of the industry is \$100 billion, with \$29 billion in annual wages paid and \$11 billion in taxes generated. In addition to support for domestic offshore oil and gas activities on the Outer Continental Shelf of the United States (OCS), Jones Act vessels carry grain, coal and other dry-bulk cargoes, crude and petroleum products on the inland river system; domestic crude oil from Alaska to West Coast refineries; iron ore, limestone and coal throughout the Great Lakes; refined petroleum products along the East and Gulf coasts; and merchandise and construction materials to and from Alaska, Hawaii, Puerto Rico and Guam.

The segment of the industry that serves the Nation's oil and gas exploration and development on the OCS is a vital and indispensable part of the Nation's Jones Act fleet and its ability to competitively explore and produce domestic sources of oil and gas. Prior to the moratorium imposed by the Administration on OCS drilling activities, the United States obtained almost a third of its oil and more than a quarter of its gas from offshore drilling and production.

In addition to the importance of the oil and gas sector, the OCS may also be a significant future source of wind-generated electricity. Our members' vessels serve exploration, development, and production rigs and facilities and support offshore and subsea construction, installation, maintenance, repair and decommissioning activities. In addition to transporting deck cargo, such as pipe or drummed material and equipment, our vessels also transport liquid mud, potable and drilling water, diesel fuel, dry bulk cement and personnel between shore bases and offshore rigs and production facilities.

The need for clarity, consistent with legislative intent, and vigorous enforcement of the Jones Act by CBP is extremely important in the context of offshore oil and gas activities on the OCS. This issue is of even greater importance in the Gulf of Mexico where day-to-day operations have been significantly curtailed by the Administration's continuing *de facto* moratorium on offshore oil and gas drilling activities. In contrast to the relative simplicity of the transportation of merchandise from one place to another in other segments of the Jones Act trade, oil and gas exploration and development activities on the OCS are very complex. On the OCS, rapidly developing technology supports the installation of subsea wells and the myriad types of connecting pipes and other equipment necessary for the production of oil and gas. In the deepwater oil and gas fields, a new generation of special purpose and multipurpose vessels and equipment has been developed to facilitate operations. Subsea systems in deepwater often employ multiple wells connected to each other and production facilities with a wide variety of devices and patterns with such colorful names as "daisy chain tiebacks", "cluster well manifolds", and "multi-well templates" that can be miles long. Production facilities, fixed or floating, are connected to seabed systems by devices such as "flexible compliant risers", "steel catenary risers", "tower risers", and "top tension risers". Production structures vary depending on the depth of the water, and may run the gamut from platforms fixed to the seabed to moored floating production, storage and offloading (FPSO) vessels. There are at least four marine pipeline installation methods, including towing, S-lay, J-lay, and reel lay.

This complexity in oil and gas activities on the OCS has taken CBP down a path of rulings based on specific and very complex fact patterns and situations that have unfortunately resulted in a lack of clarity and a misapplication of the law. Foreign vessel owners have exploited this ambiguity – and even promoted it – in order to create a market on the U.S. OCS for their vessels that should be reserved to Jones Act qualified vessels. Because of the complex, dynamic and rapidly changing environment on the OCS, the lack of clarity or failure to apply the Jones Act as intended by Congress has created uncertainty, undermined enforcement, and opened the door to foreign carriers to inappropriately engage in the coastwise trade of the United States. In fact, this lack of clarity in the past in CBP rulings has allowed numerous foreign-flag vessels with foreign crews to carry on activities and transport cargo in the Gulf of Mexico, thereby costing OMSA members both jobs and revenue.

In 2009, and with the full support of OMSA and its membership, CBP courageously initiated action to restore proper clarity to and enforcement of the Jones Act. Specifically, in its July 2009 proposed modification and revocation of certain previous Jones Act ruling letters, CBP sought to restore the definition of what constitutes vessel "equipment" as it relates to the transportation of merchandise under the Jones Act. CBP had revoked an earlier ruling that allowed a foreign-flag vessel to transport and install a wellhead assembly (commonly known as a

“Christmas tree”) from a U.S. port to the OCS, and the agency sought to impose clear and proper guidance to the trade community for compliance and to ensure that the legislative intent of Congress is followed in the application of the Jones Act. However, to the great disappointment of OMSA and others in the Jones Act community, CBP, at the direction of the Department of Homeland Security, soon withdrew the modification and revocation proposal, and subsequent rulemaking proceedings in this matter have been abandoned for now.

OMSA fully understands the difficulty of enforcing the Jones Act on the OCS, particularly given the size of the Gulf of Mexico and the complexity of OCS operations. Jones Act violations are often occurring far offshore or at remote private facilities. With this in mind, OMSA has taken steps to create a working partnership with CBP to assist in its enforcement of the Jones Act. And, I am pleased to report that our partnership is delivering positive results. I want to thank CBP for its commitment to this initiative and encourage CBP to continue its efforts to pursue swift enforcement when violations occur.

In 2008, OMSA took the initiative to create a Jones Act compliance program with the express purpose of assisting CBP and the U.S. Coast Guard in enforcement of the Jones Act and other key maritime laws of the United States. Our members are operating throughout the Gulf of Mexico on a daily basis and are often able to see first-hand violations of the Jones Act by foreign flag vessels. In essence, the U.S.-flagged Jones Act fleet, in its role as an essential partner with DHS in the maritime homeland security mission, serves as the Nation’s “eyes and ears” in the strategically vital OCS region.

Under our Jones Act compliance program, OMSA works closely with CBP Port Directors and provides them with information and assistance to ensure a common understanding of the offshore industry’s equipment, technology, operations and terminology. Next, we actively monitor the location and movement of every foreign vessel in the Gulf of Mexico through the use of Automated Identification System (AIS) technology. By continually documenting the location and activities of foreign vessels working in the Gulf of Mexico, OMSA is able to recognize vessel movements that warrant further scrutiny. We also have developed the capability to generate credible information about possible violations of the Jones Act from our experienced personnel working offshore. OMSA’s Jones Act Compliance Manager regularly provides detailed enforcement reports to CBP that enable the Federal government to pursue those companies and individuals that are actively violating the Jones Act.

As a result of this program and the information that OMSA has provided to CBP, there have been numerous enforcement actions successfully initiated. In fact, there have been eight enforcement cases in the past few years that are progressing towards a fine or have been otherwise resolved by CBP with full compliance by the foreign shipowner. In order for its enforcement efforts to be credible and deter future violations by foreign flag shipowners, we encourage CBP to act quickly and decisively to impose fines and other sanctions when a violation is found, and to widely publish such enforcement actions. We are confident that with the assessment of a few significant penalties, there will be a marked change in the inappropriate activities of certain foreign flag vessels in the Gulf of Mexico. As a result, more opportunities for United States flag vessels and American crews will be created.

Madam Chairman, the members of OMSA are proud to support the efforts to develop the oil and gas resources of this Nation. We have made a substantial investment in this enterprise and are prepared to increase that investment. Our investments in the past have been predicated on the continuing viability of the Jones Act and the expectation that the Federal government will aggressively enforce that law. Our investments in the future, investments that would continue to generate thousands of American jobs, also directly depend on the efforts of CBP to ensure that foreign vessels with foreign crews are prohibited from routinely violating the Jones Act in the Gulf of Mexico. We are pleased that CBP has worked with us in a constructive fashion to improve compliance with the Jones Act, and we look forward to even more vigorous enforcement in the years to come.

Madam Chairman, thank you for inviting me to appear before the Subcommittee today. I will be pleased to answer any questions that you or any members of the Subcommittee may have.