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Congress of the United States
House of Representatives
Washington, DC 20515–1803

October 16, 2012

The Honorable John Mica
Chairman
U.S. House Committee on
Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank LoBiondo
Chairman
Subcommittee on Coast Guard and
Maritime Transportation
507 Ford House Office Building
Washington, DC 20515

Dear Chairman Mica and Chairman LoBiondo:

As we approach the end of the 112th Congress, I thank you for the leadership you have shown over the past two years. In wrapping up the final weeks of the Congress, I respectfully request that you consider the following provisions in your negotiations with the U.S. Senate on the final version of the Coast Guard and Maritime Transportation Act.

Notice of Arrival:

I thank you for including Section 603 in the House-passed version of H.R. 2838, the Coast Guard and Maritime Transportation Act of 2011, I now ask that you ensure this provision is included in the final authorization bill. As indicated by the numerous times I have raised this issue in Committee and Subcommittee hearings, ensuring domestic offshore supply vessels (OSVs) do not have to comply with the Notice of Arrival (NOA) regulations passed as part of PL-109-347 is a significant issue for my district.

As you know, a plain-text reading of PL-109-347 indicates that Congress never intended for the Coast Guard to apply this regulation to domestic vessels. Despite that clarity, the Coast Guard continues to state that domestic OSVs will have to comply with NOA regulations, even though they have indicated it would be "unrealistic for us and unwieldy" to track the movements of these vessels.

While I understand the Coast Guard's desire for complete domain awareness, I continue to believe that all the information they need will be provided through the Automatic Identification System (AIS). With that in mind, the Coast Guard should focus its efforts towards implementing that system and away from applying NOA to domestic vessels; thus, I believe that Section 603 must be included in the final legislation.

New Vessel Determination:

Hornbeck Offshore Services, a Louisiana company, undertook a $220 million project to convert two U.S.-built sulfur carriers into multi-purpose supply vessels (MPSVs). This process involved a complete rebuild, including new decking, the addition of steel double-bottom hulls, bow modules,

and new electrical, mechanical, and piping systems. Additionally, the vessels underwent extensive steel replacement and refurbishment. An independent review of the vessels has determined that they are essentially new vessels. However, the vessels could not receive "new vessels" determinations from the Coast Guard because they were not completely dismantled before the retrofits and refurbishments were begun, a step that was not taken because the vessels' extremely thick steel made such a step cost-prohibitive and impractical.

Considering these circumstances, I respectfully request that the House yield to the Senate and include Section 704 of the Senate-passed version of H.R. 2838. This language ensures that these vessels are deemed to be new vessels, without changing any Coast Guard safety or inspection requirements. As a final note on this issue, I notice that this provision has now twice passed the Senate, as such; I believe it is time that this provision be signed into law.

Tonnage Restoration Measurement:

Current law requires that when a vessel is modified in a way that increases the vessel's weight, it must comply with the requirements that apply to the new weight. However, current law does not permit a vessel to be inspected under a lower weight class if the vessel undergoes subsequent modifications that return the vessel to its original weight. Such restrictions are forcing vessel owners to comply with regulations that are overly onerous and costly.

Considering these facts, a change is needed in 46 U.S.C. 14301(d) to ensure that vessels are measured at their proper weight. Specifically, I request that the following be added to the aforementioned subsection, "except that if the vessel is subsequently restored to its original tonnage, the vessel shall be regulated as an existing vessel." With this change the subsection would read:

> (d) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983, except that if the vessel is subsequently restored to its original tonnage, the vessel shall be regulated as an existing vessel.

Technical Correction to the Deepwater Port Act:

A technical correction to 33 U.S.C. 1502 is needed to ensure offshore deepwater ports are able to capitalize on international opportunities, just as onshore ports currently can.

When the Offshore Deepwater Port Act was drafted, it was never envisioned that these ports would be used to export cargo. As exports from these facilities are now being contemplated, the definition of a deepwater port ("used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation *to* any state." (33 U.S.C. 1502(9)(A)) must be broadened to include ports engaged in export activities.

I propose adding the words "or from," before the words "any state" in the aforementioned subparagraph. After this change, the paragraph would read:

> (9) "deepwater port"—

> (A) means any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any state, except as otherwise provided in section 1522 of this title, and for other uses not inconsistent with the purposes of this chapter, including transportation of oil or natural gas from the United States outer continental shelf.

As an additional conforming change, I propose adding "or that will supply liquefied natural gas to United States flag vessel" at the end of 33 U.S.C. 1503(i). After this change the subsection will read:

(i) To promote the security of the United States, the Secretary shall give top priority to the processing of a license under this chapter for liquefied natural gas facilities that will be supplied with liquefied natural gas by United States flag vessels or that will supply liquefied natural gas to United States flag vessels.

It is also worth noting that these changes were previously requested by MARAD in an April 16, 2012 letter, from Secretary of Transportation Ray LaHood to Speaker of the House John Boehner.

Maritime Administration Vessel Recycling Contract Award Practices:

While I appreciate that the Senate has included Section 608 in its version of H.R. 2838, the Coast Guard and Maritime Transportation Act, I request that changes be made to this section before the final version of the legislation is considered.

The largest change that needs to be made to this section is to instruct the U.S. Government Accountability Office (GAO) to conduct this review, instead of the Department of Transportation Inspector General. In 2005, GAO conducted a very thorough review of MARAD's ship disposal program. If Congress is going to direct another review of this program—which again, I believe to be necessary considering the disarray currently found in this program—it only makes sense that we prevent a duplication of effort and instruct GAO to update its 2005 study.

During these tough fiscal times, I believe every government dollar must be spent wisely and that the government promote practices that reduce taxpayer subsidies and generate revenue thereby reducing agency budget needs. I see no reason why the government should spend dollars for disposing of surplus vessels or continue to incur costs and unnecessarily spend taxpayer dollars by delaying disposal of these vessels when there are private U.S. businesses willing and able to pay the government for these same vessels. As such, I believe the language of the Senate's Section 608 must be changed to place more emphasis on reviewing the reasoning behind and the fiscal implications of MARAD's delay in vessel disposal and to ensure that vessels are sold through an open and transparent competitive bid process to ensure that we have the greatest return to the taxpayer. I have attached substitute language to the end of this letter.

SEAS Act:

As you know, the final hours of negotiations on H.R. 4348, the Moving Ahead for Progress in the 21st Century (MAP-21) Act, saw the inclusion of Section 100124, a provision that reduced the amount of food aid that is required to be carried on U.S.-flagged ships from 75 percent to 50 percent. I

respectfully request that this provision be repealed in the final version of the Coast Guard and Maritime Transportation Act.

The last-minute addition of Section 100124 to MAP-21 will cause the U.S.-flagged fleet to lose 16 vessels and $90 million in annual revenue. The provision also needlessly jeopardizes 2,000 American jobs and leaves our military dependent on foreign-flagged, foreign-owned vessels manned by non-U.S. citizens to carry essential cargo overseas during times of conflict.

For all of these reasons, Congressman Elijah Cummings (D-MD) and I introduced H.R. 6170, the Saving Essential American Sailors (SEAS) Act on July 24, 2012. Since that time, H.R. 6170 has garnered 42 cosponsors including 15 members of the U.S. House Committee on Transportation and Infrastructure. Considering this broad bipartisan support, and the facts listed above, I believe it is imperative that the text of the SEAS Act be inserted in the final version of the Coast Guard and Maritime Transportation Act.

POWER Act:

I respectfully request that the text of the House-passed version of H.R. 2360, the Providing for our Workforce and Energy Resources (POWER Act) be included in the final version of the Coast Guard and Maritime Transportation Act.

The POWER Act clarifies that Section 4(a) of the Outer Continental Shelf Lands Act (OCSLA) applies to offshore renewable energy generation. It is critical that we pass this clarification soon, because the uncertainty about OCSLA's application to renewable energy generation is stifling investment in this field.

The POWER Act was passed by the House late last year by voice vote. Prior to passage, the U.S. Department of the Interior stated that H.R. 2360 does not expand our cabotage laws, and U.S. Customs and Border Protection stated they have no objection to its passage.

I understand that this issue falls under the jurisdiction of the Natural Resources Committee, however, considering the necessity and the lack of opposition that has been raised against this legislation, I see no reason that it cannot be included in the Coast Guard and Maritime Transportation Act.

Commercial Vessel Discharge Reform:

I also request that the negotiators on the part of the House insist that Title VII of the House-passed version of H.R. 2838 be included in the final package.

I have the privilege of representing a district that is at the epicenter of waterborne commerce: the Mississippi River, Gulf Intracoastal Waterway, Atchafalaya River, Houma Navigational Canal, Calcasieu Ship Channel, and other significant waterways run through either the old or new 3rd Congressional District of Louisiana. The international and interstate vessels that use these waterways on a daily basis face a patchwork of 29 state and tribal regulations governing the ballast water, layered on top of the two federal standards. Such a system does not provide these operators the consistency they need to engage in interstate or international transportation.

For this reason, I was proud to add my name as a cosponsor to Chairman LoBiondo's H.R. 2840, the Commercial Vessel Discharges Reform Act, and was pleased to see the text of this legislation

included in H.R. 2838 prior to its consideration in the House. I now ask that you once again stand up for the mariners that make a living on all of Louisiana's and the nation's waterways and insist that Title VII be included in the final legislation.

Jones Act Waiver Transparency:

As stated in the September 27, 2012, letter Congressman Elijah Cummings (D-MD) and I sent, I request that the House insist that the final package include the text of Section 410 of the House-passed version of H.R. 2838. This provision will provide much-needed transparency to the Jones Act waiver process.

As you know, during the 2011 drawdown of the Strategic Petroleum Reserve (SPR), the Administration granted a historic number of Jones Act waivers, even though numerous U.S. flagged vessels were available to carry that cargo.

In the aftermath of those waivers, Congressman Cummings and I introduced H.R. 3202. This legislation would require MARAD to include in its waiver steps the U.S. fleet could take to enable these vessels to carry the cargo in question. MARAD would also be required to publish its determinations on its website and notify Congress when a waiver is requested and issued.

Congressman Cummings and I offered the text of H.R. 3202 as an amendment to H.R. 2838 during House floor consideration. I thank you for accepting this amendment and supporting it when it passed by voice vote. I feel that this passage shows there is bipartisan and nearly unanimous support for this provision. As such, I request that you work to ensure Section 410 of the House-passed version of H.R. 2838 is included in the final package and oppose any steps to lessen the important transparency it provides.

Clarification of Responder Immunity:

I respectfully request that a clarification of immunity granted to those who respond to offshore emergencies be inserted in the final version of the Coast Guard and Maritime Transportation Act.

As you will remember, when the House considered H.R. 2838, I offered an amendment (Number 32), which would have clarified the scope of the immunity provided to cleanup and emergency responders to a discharge—or substantial threat of discharge—of oil or a hazardous substance. Unfortunately, the U.S. House Committee on Rules did not make this amendment in order.

In the immediate aftermath following the tragic explosion on the *DEEPWATER HORIZON*, vessels in the area rushed to save lives, render assistance, and extinguish the fires. In the months following this disaster, responders worked to mitigate the oil pouring into the Gulf of Mexico. For their heroic effort, many of these responders saw lawsuits filed against them.

The lawsuits against those who responded to the *DEEPWATER HORIZON* tragedy are baseless and will ultimately be thrown out of court; before that time comes, our responders will incur millions in legal fees and defense costs. Even more damaging than these wasted legal fees is the potential chilling effect these lawsuits will cause on the future rescue, mitigation, and restoration efforts provided in the future by those who work in the Gulf.

Recently, the case for such a clarification crystallized for me when I was speaking to a company based in my district. This company sprayed dispersant in the aftermath of the explosion, at the

direction of the Coast Guard and in strict accordance with all environmental regulations. Despite the company's prudent actions, they were contacted by their insurer after they had concluded mitigation actions and were told that their insurance coverage would not apply to future spill response activities. The insurer's stated reason for this revocation was they were not certain that the current responder immunity laws provide enough protection from the sorts of lawsuits mentioned above. Without insurance, this company cannot participate in future mitigation efforts.

Considering how much we rely on these "Good Samaritan" responders in the moments and months following a disaster, we must include the language of my aforementioned amendment—or some variation—in the Coast Guard and Maritime Transportation Act.

Increased Penalties for Vessel Registry Violations:

When the U.S. House Committee on Transportation and Infrastructure marked up H.R. 5887, the Coast Guard and Maritime Transportation Act of 2012, it approved an amendment I authored to increase the penalties for violating 46 U.S.C. Section 12111(d). I now request that the text of this amendment be included in the final version of the Coast Guard and Maritime Transportation Act.

As you will remember, in 2006, Congress passed a provision prohibiting vessels without a "certificate of documentation" and "registry endorsement" from moving anchors on the OCS. This provision is now found at 46 U.S.C. §12111(d). Unfortunately, the 2006 change made the fine for violating this subsection $10,000 per day.

Since that time a mere $10,000 fine has been shown to be an insufficient deterrent, especially considering that vessels engaged in anchor handling can easily command $50,000 to $60,000 per day. As such, my amendment to H.R. 5887 increased the penalty to the greater of $25,000 per day or twice the charter rate of the vessel.

This increased penalty will ensure that our laws are adhered to and, for this reason, I ask that this amendment be included in the final version of the Coast Guard and Maritime Transportation Act.

Authority to Extend the Duration of Medical Certificates:

I thank you for the inclusion of Section 409 in the House-passed version of H.R. 2838, the Coast Guard and Maritime Transportation Act of 2011. As you are aware, this section allows the Coast Guard to extend the time a medical certificate is considered valid if processing delays or other issues prevent new certificates from being issued. I now ask that the Committee insist this provision be included in the final version of this legislation.

As you will remember, Section 409 is necessitated by the numerous bottlenecks and delays within the National Maritime Center (NMC). These delays were compounded by the 2010 amendments to the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, which took effect at the beginning of this year. These amendments changed the period a medical certificate was valid for from five years to two years for many mariners, thus increasing the workload—and delays—within the NMC.

Until these delays are reduced, Section 409 is needed to ensure maritime workers can continue to earn a good living. As such, I ask that it be included in the final package.

Navigability Determination for the Ringo Cocke Canal:

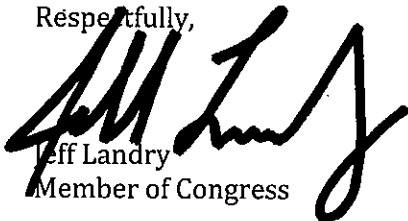
When the U.S. House Committee on Transportation and Infrastructure marked up H.R. 5887, the Coast Guard and Maritime Transportation Act of 2012, it approved an amendment I authored dealing with a small waterway in my district. I now respectfully request that the text of this amendment be included in the final version of the Coast Guard and Maritime Transportation Act.

Specifically, my amendment to H.R. 5887 would require the Coast Guard to submit a report on the impact of additional regulatory requirements imposed on passenger vessels operating on the Ringo Cocke canal, as a result of the Coast Guard's Navigability Determination dated March 25, 2010. My amendment also prohibited the Coast Guard from enforcing any regulatory requirements on this waterway until 180 days after that report is submitted.

While there are numerous waterways in South Louisiana, none with characteristics similar to the Ringo Cocke Canal have been declared navigable. As such, we must have a full understand of what the regulations associated with this determination will mean before these regulations go into place. For this reason, I find it critical that the text of this amendment be included in the final version of the Coast Guard and Maritime Transportation Act.

I thank you both in advance for your thoughtful consideration of these requests. Please do not hesitate to contact me with any questions you may have.

Respectfully,



Jeff Landry
Member of Congress