A REVIEW OF VESSELS USED TO CARRY STRATEGIC PETROLEUM RESERVE DRAWDOWNS

(112–90)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JUNE 27, 2012

Printed for the use of the
Committee on Transportation and Infrastructure

Available online at: http://www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=transportation

U.S. GOVERNMENT PRINTING OFFICE

75–375 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JOHN L. MICA, Florida, *Chairman*

DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
FRANK A. LOBIONDO, New Jersey
GARY G. MILLER, California
TIMOTHY V. JOHNSON, Illinois
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
SHELLEY MOORE CAPITO, West Virginia
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
DUNCAN HUNTER, California
ANDY HARRIS, Maryland
ERIC A. "RICK" CRAWFORD, Arkansas
JAIME HERRERA BEUTLER, Washington
FRANK C. GUINTA, New Hampshire
RANDY HULTGREN, Illinois
LOU BARLETTA, Pennsylvania
CHIP CRAVAACK, Minnesota
BLAKE FARENTHOLD, Texas
LARRY BUCSHON, Indiana
BILLY LONG, Missouri
BOB GIBBS, Ohio
PATRICK MEEHAN, Pennsylvania
RICHARD L. HANNA, New York
JEFFREY M. LANDRY, Louisiana
STEVE SOUTHERLAND II, Florida
JEFF DENHAM, California
JAMES LANKFORD, Oklahoma
REID J. RIBBLE, Wisconsin
CHARLES J. "CHUCK" FLEISCHMANN, Tennessee
NICK J. RAHALL II, West Virginia
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
ELIJAH E. CUMMINGS, Maryland
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
RUSS CARNAHAN, Missouri
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
MAZIE K. HIRONO, Hawaii
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
STEVE COHEN, Tennessee
LAURA RICHARDSON, California
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

FRANK A. LOBIONDO, New Jersey, *Chairman*

DON YOUNG, Alaska
HOWARD COBLE, North Carolina
ANDY HARRIS, Maryland
FRANK C. GUINTA, New Hampshire
CHIP CRAVAACK, Minnesota
BLAKE FARENTHOLD, Texas
JEFFREY M. LANDRY, Louisiana, *Vice Chair*
JOHN L. MICA, Florida *(Ex Officio)*
RICK LARSEN, Washington
ELIJAH E. CUMMINGS, Maryland
CORRINE BROWN, Florida
TIMOTHY H. BISHOP, New York
MAZIE K. HIRONO, Hawaii
MICHAEL H. MICHAUD, Maine
NICK J. RAHALL II, West Virginia *(Ex Officio)*

CONTENTS

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

John L. Mica
Chairman

James W. Coon II, Chief of Staff

Nick J. Rahall, II
Ranking Member

James H. Zoia, Democrat Chief of Staff

June 22, 2012

MEMORANDUM

TO: Members, Subcommittee on Coast Guard and Maritime Transportation

FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation

RE: Hearing on "A Review of Vessels Used to Carry Strategic Petroleum Reserve Drawdowns"

PURPOSE

On Wednesday, June 27, 2012, at 10:00 a.m., in room 2167 of the Rayburn House Office Building, the Subcommittee on Coast Guard and Maritime Transportation will meet to review the process used to determine the availability of U.S.-flagged vessels during the summer 2011 drawdown of crude oil from the Strategic Petroleum Reserve (SPR) and what steps are being taken to improve that process.

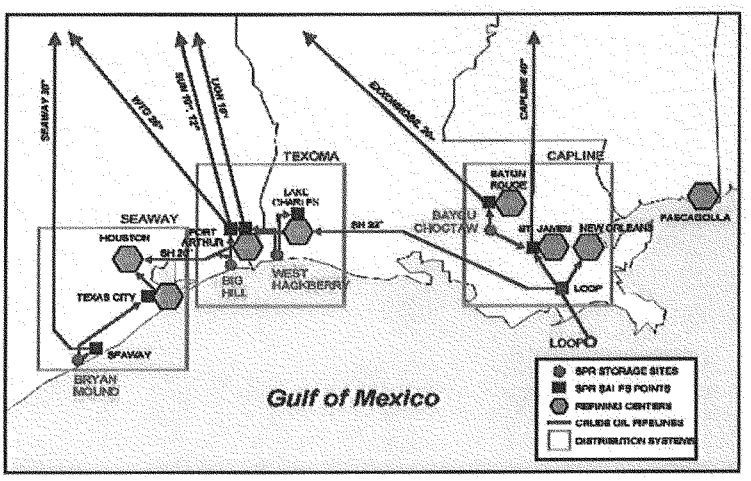
BACKGROUND

Strategic Petroleum Reserve

Established in the aftermath of the 1973-74 Arab oil embargo, the SPR is the federal government's reserve supply of emergency crude oil. The SPR is maintained by the Department of Energy (DOE). With a maximum capacity of 727 million barrels, the SPR is the largest stockpile of government-owned crude oil in the world. The SPR also meets the United States' obligation to the International Energy Agency (IEA) to maintain emergency oil stocks. IEA member countries are required to maintain total oil stock levels equivalent to at least 90 days of the previous year's net imports. As of June 12, 2012, the current inventory in the SPR was 695.9 million barrels, the equivalent of 80 days of import protection (based on 2012 EIA estimate of U.S. net petroleum imports of 8.72 million barrels per day). The United States fulfills its 90 day IEA commitment by combining SPR stocks and industry stocks.

Strategic Petroleum Reserve Storage Sites

The SPR is stored in salt caverns which were built by the DOE deep within massive salt deposits at four sites under the Texas and Louisiana coastline. Storage locations along the Gulf Coast were selected because they provide the most flexible means for connecting to the Nation's commercial oil transport network. SPR caverns range in size from 6 to 35 million barrels in capacity.



Source: Department of Energy

SPR Draw Down Authority

The President has the authority to drawdown the SPR under two laws.

1. The Energy Policy and Conservation Act (EPCA, P.L. 94-163) authorizes a drawdown of the SPR upon a finding by the President that there is a "severe energy supply interruption". Under the law, such an interruption exists when the President determines that:

    - an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration;
    - a severe increase in the price of petroleum products has resulted from such emergency situation; and
    - a price increase is likely to cause a major adverse impact on the national economy.

2. The 1990 Energy Policy and Conservation Act Amendments (P.L. 101-383) authorizes the President to drawdown the SPR for domestic energy supply shortages without having to declare a "severe energy supply interruption" or the need to meet IEA obligations.

   Under the 1990 EPCA Amendments, the President can initiate a drawdown in the event of a circumstance that "constitutes, or is likely to become, a domestic or international energy supply shortage of significant scope or duration" and where "action taken ... would assist directly and significantly in preventing or reducing the adverse impact of such shortage." This authority limits SPR sales to no more than 30 million barrels over a maximum 60-day period only when the SPR inventory is above 500 million barrels.

There have been three presidentially-directed releases from the SPR since it was first established:

- January 1991 – President George H. W. Bush in response to supply shortages at the beginning of Operation Desert Storm (IEA coordinated release);
- September 2005 – President George W. Bush in response to supply shortages due to damage to oil production, distribution, and refining industries in the Gulf from Hurricane Katrina; and
- June 2011 – President Obama in response to supply shortages due to unrest in Libya (IEA coordinated release).

Movement of SPR Oil

Oil from the SPR must be sent to refineries to produce gasoline or other petroleum distillates. SPR oil can be distributed through interstate pipelines to nearly half of the nation's oil refineries or loaded into vessels or barges for transport to refineries along the Gulf and East Coasts. The movement of SPR oil aboard vessels or barges to points in the United States is governed by the Jones Act.

Jones Act - The Jones Act first came into effect as part of the Merchant Marine Act of 1920 to encourage a strong U.S. Merchant Marine for both national defense and economic security. The Jones Act contains a number of provisions designed to protect U.S. shipbuilding and mariner jobs:

1. U.S. Owned and Flagged - Chapter 551 of title 46, United States Code, requires that passengers and merchandise (such as oil) being transported by water between two U.S. points must travel on U.S.-citizen owned vessels documented (flagged) in the United States with a coastwise endorsement.
2. U.S. Built - Chapter 121, of title 46, United States Code, requires vessels seeking a coastwise endorsement to have been built in the United States.
3. U.S. Crewed - Chapter 81, of title 46, United States Code, requires the master, all of the officers, and at least three-quarters of the crew to be U.S. citizens in order for a vessel to be documented in the United States.

Jones Act Waiver Process – The process to waive compliance with the Jones Act and carry merchandise such as SPR oil on vessels that are not U.S.-owned, flagged, built, or crewed is found in section 501 of title 46, United States Code. Section 501(a) provides for a blanket waiver of the Jones Act at the request of the Secretary of Defense and "to the extent the Secretary [of Defense] considers necessary in the interest of national defense". Section 501(b) provides for a conditional waiver of the Jones Act when the head of a federal agency requests a waiver in the interest of national defense. In such cases, section 501(b) requires the Administrator of the Maritime Administration (MARAD) to first determine that Jones Act qualified vessels are not available to carry the cargo before the waiver can be granted. If Jones Act qualified vessels are available, the waiver cannot be granted. Waivers are ultimately issued by Customs and Border Protection (CBP).

DOE, MARAD, CBP Memorandum of Agreement – In October 1987, DOE, MARAD and CBP entered into a memorandum of agreement (MOA) which continues to govern the process the agencies must follow to ensure compliance with the Jones Act during an SPR drawdown (see Attachment A). The MOA and its operating annexes require:

- The agencies to "cooperate fully in the identification of potential demand for and availability of suitable U.S.-flag vessels during a drawdown of the SPR";
- That "prior to the granting of any Jones Act waiver, all reasonable efforts will be made to utilize suitable U.S.-flag vessels";
- MARAD to "provide DOE and Customs with a preliminary profile of available Jones Act vessels";
- DOE to include in its notice of sale that:
    - the Jones Act applies to SPR oil drawdowns;
    - the penalties for failing to comply with the Jones Act; and
    - the procedures to follow to obtain waivers of the Jones Act;
- In the event of a waiver request, MARAD may determine as "suitable" a Jones Act qualified "vessel or vessels with single or collective capacity exceeding the [waiver] requestor's contract commitment".

Standard Sale Provisions – The sales of oil from the SPR is also governed by 10 CFR Part 625. It lays out the process DOE must follow in announcing the sale, accepting offers, setting contract terms, the penalties for failure to perform, and establishes the process an applicant must follow to receive a Jones Act waiver. For Jones Act waivers, 10 CFR Part 625 requires the applicant to list the "reason for not using a qualified U.S.-flag vessel, including documentary evidence of a good faith effort to obtain suitable U.S.-flag vessels and responses received from that effort. Such evidence would include copies of correspondence and telephone conversation summaries."

Summary of 2011 SPR Drawdown

As noted above, on June 23, 2011 President Obama announced the U.S. and its partners in the IEA would release a total of 60 million barrels of oil onto the world market over a 30 day period to offset the disruption in the oil supply caused by unrest in

Libya. As part of the effort, the U.S. pledged to release 30 million barrels of oil from the SPR.

Blanket Waiver – As part of the announcement on the SPR drawdown, DOE indicated there would be a blanket waiver of the Jones Act for vessels seeking to move SPR oil between SPR terminal sites and refineries. A day later, on June 24, 2011 in response to strong adverse reaction from the U.S.-flagged industry and an effort by MARAD to remind DOE of the terms of the 1987 MOA, DOE dropped the language providing for a blanket waiver of the Jones Act. DOE then issued a "Notice of Sale of SPR Oil" which amended and added requirements for bidders on top of those mandated under 10 CFR Part 625. It provided updated information for bidders seeking Jones Act waivers that would be reviewed on a case-by-case basis pursuant to the procedures laid out in the 1987 MOA and 10 CFR Part 625. The Notice of Sale also set minimum delivery lot sizes for SPR oil at 300,000 barrels for vessels and 40,000 barrels for barges.

Questionable Process for Individual Waivers – According to press reports and information provided to the Subcommittee (see attachments), in the days following the issuance of the Notice of Sale officials at the DOE and MARAD made statements and took actions which may have been inconsistent with the laws and regulations governing Jones Act waivers.

On June 28, 2011 David Sandalow, DOE's Assistant Secretary for Policy and International Affairs, Mike Hokana, MARAD's Office of Cargo Preference and Domestic Trade, and representatives from CBP conducted a conference call with potential SPR drawdown bidders to answer questions on the process that would be followed. During the call, a bidder said "no U.S. ships could hold 500,000 barrels and asked if there would be a de facto blanket waiver for large-volume sales." Assistant Secretary Sandalow responded, "Once a bid has been awarded, then, yes, a waiver would be granted in that situation. But you've got to apply for it." (see Attachment B). The statement by the Assistant Secretary appears to imply that Jones Act waiver requests would be granted for foreign vessels with 500,000 barrel capacities before their applications were submitted and reviewed.

On the June 28, 2011 conference call, Assistant Secretary Sandalow also said, "It is not required that purchases be divided into smaller lots so as to meet the requirements of available U.S.-flag vessels." (see Attachment B). This statement appears to contradict the 1987 MOA which grants MARAD authority to allow lot sizes to be divided into "suitable" amounts for carriage on Jones Act qualified vessels.

The failure to subdivide the lots effectively set a de facto 500,000 barrel threshold for SPR oil deliveries notwithstanding the 300,000 barrel minimum set in the Notice of Sale. Such a threshold would effectively eliminate U.S. vessels from consideration.

Emails sent by MARAD officials, copies of which have been received by the Subcommittee, indicate that MARAD officials were aware of a "500k min. standard" set by DOE (see Attachment C).

On the same conference call, Mr. Hokana is quoted in the press as saying about the waiver process, "We want to make this as easy as possible." (see attachment A). This statement appears to undermine MARAD's role in making availability determinations of Jones Act qualified vessels.

By September 2, 2011, DOE had completed the drawdown of 30.6 million barrels of oil from the SPR. Ultimately, 44 waivers of the Jones Act were issued to foreign owned, flagged, built, and/or crewed vessels to carry nearly 25.2 million barrels of SPR oil by water (the remaining 5.4 million barrels went by pipeline). Each waiver involved a foreign vessel carrying 500,000 barrels or more (see Attachment D). Only one delivery of SPR oil was conducted by a qualified Jones Act vessel. That U.S. vessel carried 150,000 barrels or less than 1 percent (0.59%) of the total SPR oil moved by vessel.

Congressional Action

In response to the way in which Jones Act waivers were handled by the Administration during the June 2011 SPR drawdown, Congress has taken the following action:

- The Fiscal Year 2012 Consolidated and Further Continuing Appropriations Act (P.L. 112-55) requires that MARAD when reviewing Jones Act waiver applications "consider as suitable a vessel or vessels with single or collective capacity" and requires MARAD to provide CBP with a list of all U.S.-flag vessels capable of moving oil from the SPR.
- The Fiscal Year 2012 Consolidated Appropriations Act (P.L. 112-74) prohibits the use of funds to issue future Jones Act waivers for SPR drawdowns until the Department of Homeland Security (DHS) has consulted with the Department of Transportation, DOE, and the U.S.-flag industry and taken adequate steps to ensure the use of U.S.-flag vessels. It further requires DHS to notify Congress within 48 hours of any request for a waiver.
- H.R. 2838, The Coast Guard and Maritime Transportation Act of 2011 includes an amendment authored by Representatives Jeff Landry and Elijah Cummings to require MARAD to include in its vessel availability assessments information on actions that could be taken to enable Jones Act qualified vessels to carry the cargo for which the waiver is sought. It further requires MARAD to publish its availability determinations on its website and notify Congress when a waiver is requested and granted.

WITNESSES

Panel I

The Honorable John D. Porcari
Deputy Secretary
U.S. Department of Transportation

Panel II

Mr. Thomas Allegretti
President and CEO
American Waterways Operators
testifying on behalf of
American Maritime Partnership

ATTACHMENT A

M84

AGREEMENT AMONG THE
U.S. CUSTOMS SERVICE OF THE DEPARTMENT OF THE TREASURY,
MARITIME ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION,
AND THE DEPARTMENT OF ENERGY
CONCERNING DRAWDOWN OF THE STRATEGIC PETROLEUM RESERVE

In order to comply with the requirements of Section 27 of the Merchant Marine Act, 1920 (the Jones Act), 46 U.S.C. 883, and to ensure the unimpeded distribution of crude oil from the Strategic Petroleum Reserve (SPR) during a severe energy supply interruption, and to the extent such action is necessary in the interest of national defense within the meaning of P.L. 81-891, 64 Stat. 1120 (Dec. 27, 1950), the U.S. Customs Service, the Maritime Administration, and the Department of Energy agree:

1. That they will cooperate fully in the identification of the potential demand for and availability of suitable U.S.-flag vessels during a drawdown of the SPR;

2. That program coordinators shall be appointed by each Department to serve as the principal liaison officers between the Departments and that these program coordinators will be identified to all signatories of this Agreement within 30 days of the date it becomes effective, and immediately in the event of any change in program coordinators thereafter;

3. That these coordinators will develop and implement Operating Annexes to this Agreement that are consistent therewith for the processing of waivers of the Jones Act for carriage of SPR crude oil to domestic destinations;

4. That prior to the granting of any Jones Act waiver, all reasonable efforts will be made to utilize suitable U.S.-flag vessels, including subsidized vessels, to the extent all approvals required for these vessels can be expeditiously granted;

5. That the Department of Energy shall make available to potential SPR purchasers the administrative information necessary to apply for a Jones Act waiver or to have a shipowner request domestic operating approval for a subsidized vessel in accordance with these Operating Annexes;

6. That the Department of Energy shall obtain the concurrence of the Department of Defense that the movement of SPR crude oil is necessary in the interest of national defense, unless such finding already has been established by Presidential proclamation;

7. That the Department of Energy, at its discretion, may act for one or more prospective purchasers of SPR oil; and

M84 13 (ADD)

8. That any party may request a deviation from or change in this Agreement. The parties to this Agreement will negotiate the provisions to effect deviations or changes requested to this Agreement, and such revisions shall become effective on such date as is agreed upon by the parties. Deviations from or changes to any Operating Annexes will be permitted only as agreed upon by the program coordinators.

This Agreement is effective when signed by all Departments.

Commissioner of Customs
Customs Service
Department of the Treasury

Date: October 16, 1987

Maritime Administrator
Maritime Administration
Department of Transportation

Date: 9/28/87

Deputy Assistant Secretary
for Petroleum Reserves
Department of Energy

Date: 9/24/87

Deputy Assistant Secretary
for Energy Emergencies
Department of Energy

Date: 9/24/87

OPERATING ANNEX A

In accordance with the Agreement among the Customs Service of the Department of the Treasury, the Maritime Administration of the Department of Transportation, and the Department of Energy (DOE), dated October 16, 1987, this Operating Annex outlines the procedures for the processing of applications from purchasers of Strategic Petroleum Reserve (SPR) crude oil for Jones Act waivers covering specific voyages and requests from operators of subsidized vessels, at the request of SPR purchasers, for authorization of domestic operation in carrying SPR crude oil.

1. After the decision to draw down the SPR and prior to the issuance of the Notice of Sale (NS) offering SPR crude oil for sale, DOE will notify the Customs Service (hereafter Customs) and the Maritime Administration (MarAd) of the amount of SPR crude oil to be offered, the delivery period, and the locations at which it is to be loaded.

2. Pursuant to receipt of the notification in paragraph 1. above, MarAd will provide Customs and DOE with a preliminary profile of available Jones Act vessels, as well as the potential availability of Construction Differential Subsidy (CDS) (Appendix I) and Ready Reserve Fleet (RRF) vessels for carriage of SPR crude oil.

3. The NS, issued by DOE, will incorporate Standard Sales Provisions B.3, "Requirements for vessels-caution to offerors," and C.7, "Application procedures for 'Jones Act' waivers," which are Appendix II to this Annex. DOE will apprise Customs and MarAd of any subsequent modifications of these provisions which would materially impact the procedures outlined in this Annex.

4. As soon as practical after release by the SPR Project Management Office Contracting Officer, an abstract of offers received to purchase SPR crude oil will be provided to Customs and MarAd.

5. Within one business day of receipt of a Jones Act waiver request, in conformance with the requirements of this Annex, Customs will request MarAd to determine the availability of suitable coastwise-qualified vessels to meet the requestor's SPR contract commitment. In making this request to MarAd, Customs will reference the telex or telegram by which the original waiver request was made, of which MarAd, in accordance with Standard Sales Provision C.7, should have already received a duplicate information copy. Upon full consideration of such factors as delivery date, bid price, and efficient use of available capacity, MarAd may determine as "suitable" a vessel or vessels with single or collective capacity exceeding the requestor's contract commitment. The vessel or vessels so determined must be able to load crude oil in a safe manner without significant detriment to loading schedules.

ATTACHMENT B

6. Within two business days after receipt of the duplicate information copy of the request from the requestor, MarAd will respond to Customs with either concurrence or nonconcurrence with the waiver request.

7. In the case of nonconcurrence with the waiver request, MarAd will provide Customs with specific information on available suitable coastwise-qualified vessels and the information source by which MarAd determined their availability.

8. Within one business day of receipt of MarAd's concurrence or nonconcurrence, Customs will act to grant or deny the original waiver request. A denial will include in the telex or telegram to the requestor the specific vessel availability information provided by MarAd.

9. DOE will be made a concurrent recipient of all correspondence between Customs and Marad, Customs and the requestor and, if applicable, MarAd and the requestor concerning Jones Act or CDS waiver request processing.

10. All parties will make a good faith effort to respond within the working day limits specified in this Annex.

11. Termination or modification to this Operating Annex will be made in accordance with paragraph 8 of the Agreement cited above.

Gary S. Musich
Name
Associate Administrator for Marketing and Domestic Enterprise
Title
9 Feb 1988
Date

Kathryn C. Peterson
Name
Chief, Carrier Rulings Branch
Title
2/29/88
Date

John W. Bartholomew
Name
Director, Office of Strategic Petroleum Reserve
Title
2/15/88
Date

Appendix I to Operating Annex A

This Appendix outlines the procedure for use of subsidized vessels by purchasers of SPR crude oil. It addresses both the situation where the purchaser initially elects to use a subsidized vessel and the situation where, in the course of processing a Jones Act waiver application, MarAd determines that a subsidized vessel is available to perform the voyage for which the Jones Act waiver is being sought. In the former case, the first step of the procedure does not apply.

- o If there is no Jones Act vessel available, but there is a U.S. vessel available that was built with construction-differential subsidy (CDS), MarAd will so advise Customs, in accordance with paragraph 7 of Operating Annex A, noting that the vessel owner must apply to MarAd for a waiver of Section 506 and possibly Section 805(a) (if the vessel is also receiving operating-differential subsidy) of the Merchant Marine Act, 1936, as amended. Customs will so advise the SPR purchaser.

- o The SPR purchaser will ask the owner of the CDS vessel to submit to MarAd a prompt request for the necessary waivers. For speed and brevity, the request may incorporate by reference appropriate contents of the earlier Jones Act waiver request by the offeror. However, the request must contain an agreement for CDS payback pursuant to Section 506.

- o Upon receipt of the vessel owner's request, MarAd will have two full working days to process the waiver(s). MarAd will telex and follow up by telephone with all Jones Act vessel owners to advise them of the request, to determine if there are any objections to the waiver(s). A Jones Act vessel owner will have (within the 2-day processing period) 24 hours from receipt of initial notification to respond to MarAd with particulars of vessel availability and position.

- o If there are shown to be Jones Act vessels available and in a position to meet the loading dates required, no Section 506 and/or 805(a) waivers may be approved. Section 805(a) requires a hearing for any intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwide or intercoastal service.

- o If the owner's waiver application is satisfactory and no Jones Act vessel owner objects to the waiver(s), MarAd will issue the waiver(s), immediately notifying the applicant, Customs, and DOE.

B.3 Requirements for vessels - caution to offerors

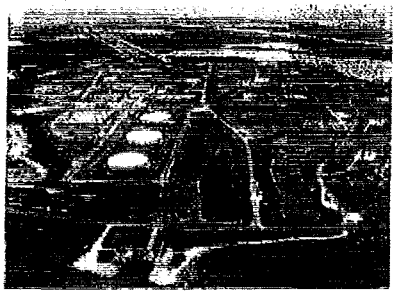
(a) The "Jones Act", 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin Islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Treasury. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision No. C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Transportation's interim rule concerning Reception Facility Requirements for Waste Materials Retained on Board (33 CFR Parts 151 and 158) implements the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). This rule prohibits any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oily waste reception facilities. SPR marine terminals (see Exhibit E, SPR Delivery Point Data) have Certificates of Adequacy and reception facilities for vessel sludge and oily bilge water wastes; however, the terminals may not have reception facilities for oily ballast. Accordingly, tankships without segregated ballast systems will be required to make arrangements for and be responsible for all costs associated with appropriate disposal of such ballast, or they will be denied permission to load SPR petroleum at terminals which lack reception facilities for oily ballast.

ATTACHMENT B

DOE offers more details on SPR auction

Sayeh Tavangar 2 months ago



Inside Energy Extra (28-Jun-11)

An Energy Department briefing with refiners and oil traders Tuesday gave some hints about companies interested in snapping up oil from the Strategic Petroleum Reserve and how they might transport it.

The auction for the 30 million barrels of crude - the third-ever presidentially directed drawdown of US emergency stockpiles - starts at 1 p.m. CDT Wednesday, with deliveries occurring in August.

"We're committed to getting all this additional oil into the market as soon as possible and not later than August 31," David Sandalow, DOE's assistant secretary for policy and international affairs, said on the conference call.

Potential bidders on the call included BP, Statoil, Koch Supply and Trading, Valero, Morgan Stanley, JP Morgan and Hepco.

Officials from DOE, Customs and Border Protection and the Maritime Administration fielded questions about how the government would enforce the Jones Act, a maritime law that requires US-flagged vessels to carry shipments between US ports.

Sandalow said companies could seek expedited waivers of the law after they post winning bids. He said the buyers would have to demonstrate that they either cannot find a US ship or that available ones cannot hold the amount of crude t hey purchased. The government would then grant a waiver in two days.

"If a US ship of adequate size is available, it must be used for marine delivery of oil purchased under the SPR release," Sandalow said. "It is not required that purchases be divided into smaller lots so as to meet the requirements of available US-flag vessels."

Michael Hokana of the customs authority added: "We want to make this as easy as possible."

A Statoil representative posed the scenario of a buyer getting a Jones Act waiver only to have a US ship free up later. "Can it be revoked if any US-flagged ships show up available after the waiver was granted?" he asked.

Sandalow said that once granted, waivers would be "unconditional and permanent" for the duration of the permit.

A caller from Valero said no US ships could hold 500,000 barrels, and asked if there would be a de-facto blanket waiver for large-volume sales.

"Once a bid has been awarded, then, yes, a waiver would be granted in that situation," Sandalow said. "But you've got to apply for it."

On Thursday, DOE promised a blanket waiver of the Jones Act, but rescinded it a day later. It told bidders they would have to apply for individual waivers and promised to expedite their review.

DOE set the base reference price (BRP) for Light Louisiana Sweet at $112.78/barrel, based on Argus assessments. Bidders will submit a fixed-price bid for the crude stream, but the difference between the fixed-price bid and the BRP will be called the price adjustment factor (PAF). Bids must be 95% of that BRP, or $107.141/b.

The government will then rank the bids to determine the winner. When it comes time to lift the crude, the PAF will be applied to a new calculation of the five-day average of LLS to determine the final price.

Meghan Gordon

ATTACHMENT C

From:	Hokana, Michael (MARAD)
To:	Williams, Linda (MARAD)
Subject:	Update: SPR Shell Jones Act Waiver request of 7/7/11
Date:	Friday, July 08, 2011 10:42:53 AM
Attachments:	Shell Response to CBP of 070811 (2).docx

Linda: Please see the below pre the 1100 meeting. I would like you to attend, Tom's Old Office.

All the best,

Mike

Michael Hokana
Office of Cargo Preference & Domestic Trade
Maritime Administration
Tel: 202-366-0760
Fax:202-366-7901
michael.hokana@dot.gov

From: Hokana, Michael (MARAD)
Sent: Friday, July 08, 2011 10:14 AM
To: Bloom, Murray (MARAD); Gilmore, David (MARAD); Vogel, Jeff (MARAD); Brennan, Dennis (MARAD); Yarrington, Michael (MARAD)
Subject: FW: SPR Shell Jones Act Waiver request of 7/7/11

Murray: Pre-1100 meeting; Tom Harrelson's old office . Update: Shell oil asked for a waiver last night late. MARAD has a 3 hour reply requirement Denise said send Customs our availability list , which I did until a MARAD letter could be developed . Customs said that general availability is not enough, they want a letter concurring or not concurring with a waiver.

Customs is the final decision maker.

The Administrator crafted this first paragraph (attached above) to put more onus on DOE to set the 500K min. standard. MAR-100 talking with S2 now for approval. ←

There is a 200K bbl OSG barge available but it would have to make three trips TX to LA

I hope this helps...

Mike.

Michael Hokana
Office of Cargo Preference & Domestic Trade
Maritime Administration

ATTACHMENT C

Thank you.

From: Matsuda, David (MARAD)
Sent: Tuesday, July 12, 2011 08:11 PM
To: Smith, Douglas A <Douglas.A.Smith@dhs.gov>; Daniel.Poneman@hq.doe.gov <Daniel.Poneman@hq.doe.gov>; Porcari, John (OST); JHL <Jhl@dhs.gov>; Froman, Michael B. <Michael_B._Froman@nss.eop.gov>; Tamarin, Nathanael P. <Nathanael_P._Tamarin@who.eop.gov>
Cc: De Vallance, Brian <Brian.DeVallance@dhs.gov>; brandon.huribut@hq.doe.gov <brandon.huribut@hq.doe.gov>; jonathan.levy@hq.doe.gov <jonathan.levy@hq.doe.gov>; Frias, Michael <Michael.Frias@dhs.gov>; Krepp, Denise (MARAD); Sweetnam, Glen E. <Glen_E._Sweetnam@nss.eop.gov>
Subject: RE: Jones Act Board Meeting

All-

Two items:

1. We have heard from several in the U.S. maritime industry, who have serious concerns about this SPR/Jones Act waiver process as a departure from previous practices. While they were pleased to learn that the President did not issue a blanket Jones Act waiver, they are concerned because no winning bidders are contacting them about potential work, and they are starting to believe this process is facilitating a means for the winning bidders to exclude them altogether. They are particularly curious about the policies underlying the need to move entire lots—even on journeys as short as from Texas to Louisiana—with a foreign-flag vessel.

   We have urged them to refrain from commenting publicly until they learn about the process and the rationale behind it, and believe they will so refrain if they have an opportunity to meet with DOT/DOE/DHS officials. Several barge owners are flying in on Thursday, to be joined by their representatives in Washington, possibly including labor. We have scheduled them at 3 p.m. on Thursday here at DOT and ask that DOE/DHS be available to meet with them and discuss their concerns. We can provide a final guest list when you RSVP to Denise (cc:'d).

2. In addition, following up on the discussion over the weekend, we have now seen 3 separate requests by Shell Oil to move over 1.5M barrels of oil in roughly 500k barrel increments, and they were winning bidders on an additional 2.0M barrels. We fully appreciate the Administration priorities discussed at length prior to today on the need to move expeditiously, but under the Jones Act we are hard-pressed to find that no U.S. flag vessel is available for transportation of <u>any</u> of the Shell oil without fully understanding their transportation plan for the entire amount of the oil they purchased and without hearing evidence that Shell dealt in good faith with U.S. carriers to try to procure their transportation services. If we are to presume Shell (and all winning bidders) will simply transport the oil only in 500k barrel shipments (this is not a contractual obligation, correct?), and seek Jones Act waivers for each of them to carry all of it on foreign flag vessels for the entire 3.5M barrels, there may be no opportunities at all for U.S. flag in this initiative.

   It is possible that Shell's overall transportation plan could include a mix of both foreign flag and U.S. flag—without adding any additional trips—but we would like to understand it first and determine whether reasonable efforts have been made to work with the U.S. companies. We are asking to discuss this further before making a finding on availability here, and will set up a call in the a.m. if that works for everyone.

Thanks.

ATTACHMENT D

SPR RELEASE - AUGUST 2011

CONTRACT AWARD REPORT

	Offeror	Contract No.	Award Date	Barrels (1,000's)	Waiver Approved MARAD	Waiver Approved DHS	Load Window	Draw Point	Discharge Window	Location	Cons. District	Rep.	Ship Name	Flag	Owner Domicile	Note #	Amd.	Shipment Cmplid
	Conocophillips	DE-SCR6-11P067001	7-Jul	600	8-Jul	8-Jul	18-20-Jul	Nederland, TX	21-23-Jul	LOOP, LA	LA-3	Jeff Landry	Eagle Anaheim	Singapore	Singapore	5, 8		X
		DE-SCR6-11P067001	7-Jul	600	22-Jul	22-Jul	1-3 Aug	Nederland, TX	3-5-Aug	LOOP, LA	LA-3	Jeff Landry	Eagle Anaheim	Singapore	Singapore	5, 8		X
2	Conocophillips	DE-SCR6-11P067003	7-Jul	550	12-Aug	13-Aug	14-16-Aug	Freeport, TX	26-31-Aug	Bayway, NJ	NJ-13	Albio Sires	Eagle Anaheim	Singapore	Singapore			
		DE-SCR6-11P067005	7-Jul	600	28-Aug	30-Aug	31 Aug-2 Sep	Freeport, TX	15-17 Sep	LOOP, LA	LA-3	Jeff Landry	Constellation Spirit	Marshall Isl				
3	ExxonMobil	DE-SCR6-11P067006	7-Jul	580	5-Aug	5-Aug	9-11-Aug	Nederland, TX	13-16-Aug	LOOP, LA	LA-3	Jeff Landry	Maran Alkes	Greece	Greek			
4	Hess Energy	DE-SCR6-11P067004	6-Jul	1,000	Virgin Islands no waiver needed								SPT Explorer/ Canal Spirit			2		X
		DE-SCR6-11P067004	6-Jul	500	5-Aug	5 Aug	8-11-Aug	Nederland, TX	12-15-Aug	Beaumont, TX	TX-27	Ted Poe	Eagle Sevilla	Singapore	Singapore			
		DE-SCR6-11P067004	6-Jul	500	10-Aug	10-Aug	11-13-Aug	Nederland, TX	17-19-Aug	Paulsboro	NJ-1	Rob Andrews	Yasa Golden Bosphorus	Marshall Isl	Greek?		XXX	
5	J.P. Morgan Ventures	DE-SCR6-11P067005	6-Jul	500	15-Jul	15-Jul	23-25 Jul	Freeport, TX	25-27 Jul	Maraux, LA	LA-3	Jeff Landry	Eagle Subaru	Singapore	Singapore	5, 8		X
		DE-SCR6-11P067005	6-Jul	500	18-Jul	20-Jul	19-21-Jul	Freeport, TX	23-24-Jul	Pascagoula, MS	MS-4	Steven Palazzo	HS Tosca	Liberia	Cleman	5		X
		DE-SCR6-11P067006	6-Jul	600	6-Aug	8-Aug	12-14-Aug	Freeport, TX	14-16-Jul	Maraux, LA	LA-3	Jeff Landry	Eagle Trenton	Singapore	Singapore			
6	Marathon Petroleum	DE-SCR6-11P067008	6-Jul	500	21-Jul	25-Jul	1-3 Aug	Freeport, TX	5-7-Aug	Garyville, LA	LA-3	Jeff Landry	Eagle Terrance	Singapore	Singapore	5, 8	X	X
		DE-SCR6-11P067008	6-Jul	500	1-Aug	2-Aug	7-8-Aug	Nederland, TX	10-12-Aug	Garyville, LA	LA-3	Jeff Landry	Paramount Hanover	United Kingdom	Singapore	8		
7	Marathon Petroleum	DE-SCR6-11P067007	6-Jul	500	3-Aug	5-Aug	10-12-Aug	Freeport, TX	12-14-Aug	Garyville, LA	LA-3	Jeff Landry	Eagle Terrance	Singapore	Singapore	5, 8		
		DE-SCR6-11P067007	6-Jul	500	11-Aug	11-Aug	17-19 Aug	Freeport, TX	20-22-Aug	Garyville, LA	LA-3	Jeff Landry	Eagle Sevilla	Singapore	Singapore			
8	Murphy Oil USA	DE-SCR6-11P067008	6-Jul	500	8-Jul	8-Jul	3-5 Aug	Nederland, TX	5-7-Aug	Meraux, LA	LA-3	Jeff Landry	Eagle Trenton	Singapore	Singapore	5, 8		
9	Plains Marketing LP	DE-SCR6-11P067009	6-Jul	500	11-Jul	20-Jul	29-31-Jul	Freeport, TX	1-3-Aug	Ingleside, TX	TX-27	Blake Farenthold	Paramount Hilton	Isle of Man	Singapore	5, 8		X
		DE-SCR6-11P067009	6-Jul	500	5-Aug	5-Aug	8-10-Aug	Nederland, TX	10-12-Aug	Maraux, LA	LA-3	Jeff Landry	Eagle Khaleesi	Singapore	Singapore	13	XX	X
10	Plains Marketing LP	DE-SCR6-11P067010	6-Jul	500	6-Jul	6-Jul	18-20-Jul	Freeport, TX	21-23-Jul	St. James, LA	LA-3	Jeff Landry	Eagle Kiau	Singapore	Singapore	3	X	
		DE-SCR6-11P067010	6-Jul	500	16-Aug	17-Aug	18-21 Aug	Nederland, TX	26-27 Aug	Houston, TX	TX-22	Pete Olson	Eagle Stargazer	Panama	Singapore	5, 8		X
11	Shell Trading (US)	DE-SCR6-11P067011	7-Jul	500	7-Jul	8-Jul	15-17-Jul	Nederland, TX	18-18-Jul	St. James, LA	LA-3	Jeff Landry	Pelopandonk	Liberia	Russian (State)			
		DE-SCR6-11P067011	7-Jul	500	12-Jul	15-Jul	16-18-Jul	Nederland, TX	23-25-Jul	Big Stone, DE	DE	John Carney	Eagle Stealth	Marshall Isl	Singapore	7, 8		X
12	Shell Trading (US)	DE-SCR6-11P067012	7-Jul	500	12-Aug	12-Aug	17-19-Aug	Nederland, TX	17-19-Aug	LOOP, LA	LA-3	Jeff Landry	Kea Spirit	Bahamas		6		X
		DE-SCR6-11P067012	7-Jul	500	15-Aug	19-Aug	19-21-Aug	Freeport, TX	21-23 Aug	Corpus Christi, TX	TX-27	Blake Farenthold	Nassau Spirit	Bahamas				
13	Shell Trading (US)	DE-SCR6-11P067013	6-Jul	500	12-Jul	21-Jul	28-30-Jul	Nederland, TX	28-Jul-2 Aug	LOOP, LA	LA-3	Jeff Landry	Eagle Atlanta	Singapore	Singapore	5, 8, 9	X	X
14	Shell Trading (US)	DE-SCR6-11P067014	6-Jul	500	28-Jul	28-Jul	5-7-Aug	Nederland, TX	7-9-Aug	LOOP, LA	LA-3	Jeff Landry	Eagle Sapporo	Singapore	Singapore	5, 8, 14	XX	X
		DE-SCR6-11P067014	6-Jul	150	Carried on US-flag vessel													
15	Sunoco Inc	DE-SCR6-11P067016	6-Jul	700	6-Aug	6-Aug	16-21-Aug	Nederland, TX	26-2 Aug	Philadelphia, PA	PA-1	Bob Brady	Fjilkon	Greece	France (Euronav)			
16	Sunoco Inc	DE-SCR6-11P067018	6-Jul	700	12-Aug	13-Aug	25-27-Aug	Nederland, TX	1-3-Sep	Philadelphia, PA	PA-1	Bob Brady	Bonangel Luanda	Bahamas		3		
17	Tesoro Refining	DE-SCR6-11P067017	6-Jul	1,200														
	Voyage pt. 1	DE-SCR6-11P067017	6-Jul	600	18-Aug	19-Aug	3-5 Aug	Freeport, TX	21-25 Aug	East Coast of Panama	N/A	N/A	Overseas Jessie Canejo	Marshall Isl.	Marshall Isl.	1, 11, 16	XX	X
	Voyage pt. 2	DE-SCR6-11P067017	6-Jul	600	19-Aug	19-Aug	26-30 Aug	West Coast of Pana	11-13 Sep	Anacortes, WA	WA-2	Rick Larsen	Caribbean Galaxy	Panama	Liberia	15, 12	XX	
17.5	Voyage pt. 1	DE-SCR6-11P067017	6-Jul	600	21-Jul	6 Aug	6-8 Aug	Freeport, TX	12-14 Aug	Nikiski (Kenai), Alaska	N/A	N/A	Overseas Yellowstone	Marshall Isl.	Marshall Isl.	1, 11		
	Voyage pt. 2	DE-SCR6-11P067017	6-Jul	600	21-Jul	6-Aug	15-16-Sep	no Amusites, Pana	30-Sep-1-Oct	Barbar's Point, HI	HI-2	Mazie Hirono	Caribbean Galaxy	Panama	Liberia	11, 8		
18	Trafigura AG	DE-SCR6-11P067015	6-Jul	550	Pipeline transfer approved by DOE											15		
19	Trafigura AG	DE-SCR6-11P067019	6-Jul	550	22-Aug	23-Aug	25-27 Aug	Port Arthur, Texas	30 Aug-1 Sep	Port Arthur, Texas	TX-27	Ted Poe	Overseas Ania	Marshall Isl.				
20	Valero Energy	DE-SCR6-11P067020	6-Jul	500	18-Jul	20-Jul	26-27 Jul	Nederland, TX	30-Jul-2 Aug	St. James, LA	LA-3	Jeff Landry	Eagle Sevilla	Singapore	Singapore	5, 8,15		X
		DE-SCR6-11P067020	7-Jul	500	20-Jul	22-Jul	26-28 Jul	Freeport, TX	31 Jul	Corpus Christi, TX	TX-27	Blake Farenthold	Overseas Rebecca	Marshall Isl.	Marshall Isl.	1, 8, 16		X
21	Valero Energy	DE-SCR6-11P067021	7-Jul	500	6-Aug	5-Aug	11-13-Aug	Nederland, TX	18-18-Aug	St. James, LA	LA-3	Jeff Landry	Eagle Sapporo	Singapore	Singapore			
		DE-SCR6-11P067021	7-Jul	500	19-Aug	19-Aug	25-27 Aug	Freeport, TX	30-31 Aug	St. James, LA	LA-3	Jeff Landry	Overseas Rebecca	Marshall Isl.	Marshall Isl.			
22	Valero Energy	DE-SCR6-11P067022	7-Jul	500	2-Aug	5-Aug	6-16-Aug	Freeport, TX	26-31-Aug	Corpus Christi, TX	TX-27	Blake Farenthold	Kassia Spirit	Bahamas	Marshall Isl.			
		DE-SCR6-11P067022	7-Jul	500	4-Aug	5-Aug	10-12-Aug	Nederland, TX	12-14-Aug	St. Charles, LA	LA-1	Steve Scalise	Overseas Evesglades	Marshall Isl.	Marshall Isl.			
23	Vitol Inc	DE-SCR6-11P067026	11-Jul	500	Pipeline transfer approved by DOE												X	
		DE-SCR6-11P067026	11-Jul	500	16-Aug	16-Aug	21-23 Aug	Nederland, TX	20-22 Sep	Delaware City, DE	DE-1	John C. Carney Jr.	DS Power	Liberia		15,10		
		DE-SCR6-11P067025	11-Jul	500	17-Aug	16-Aug	23-25 Aug	Nederland, TX	20-22 Sep	Delaware City, DE	DE-1	John C. Carney Jr.	Montray	Liberia		10		
		DE-SCR6-11P067024	11-Jul	500	17-Aug	16-Aug	22-23 Aug	Freeport, TX	31 Aug-2 Sep	Philadelphia, PA	PA-1	Bob Brady	Yasa Golden Manmara	Marshall Isl		10		
		DE-SCR6-11P067028	11-Jul	500	22-Aug	22-Aug	23-25 Aug	Nederland, TX	10-12 Sep	Meraux, LA	LA-3	Jeff Landry	Genmar Strength	Liberia		10		
		DE-SCR6-11P067029	11-Jul	500	25-Aug	26-Aug	27-29 Aug	Nederland, TX	2-5 Sep	Meraux, LA	LA-3	Jeff Landry	Overseas Evesglades	Marshall Isl.	Marshall Isl.	10		
24	Vitol Inc	DE-SCR6-11P067029	11-Jul	500	25-Aug	26-Aug	28-31 Aug	Freeport, TX	2-5 Sep	Corpus Christi, TX	TX-27	Blake Farenthold	Eagle Stavanger	Panama	Singapore	10		
		DE-SCR6-11P067026	11-Jul	500	26-Aug	29-Aug	27-29 Aug	Freeport, TX	5-7 Sep	Bayway, NJ	NJ-13	Albio Sires	HS Tetara	Liberia		10		
25	BP Oil Supply	DE-SCR6-11P067027	11-Jul	500	12-Jul	14-Jul	20-22-Jul	Nederland, TX	22-24-Jul	St. James, LA	LA-3	Jeff Landry	Eagle Sydney	Panama	Singapore	5, 8		X

Current - 29-Aug- 2011

Notes *****

1	All "Overseas" vessels are owned by foreign subsidiaries of Overseas Shipholding, Inc
2	No requirement for Jones Act waiver for transfer/shipment
3	Plains conveniently amended request after our internal conversations on not granting waiver
4	Shell request for lot 7013, granted on Jul-15, revoked by CBP Jul-18, after requesting a change in load date and vessel TBD, revised waiver issued
5	HS Tosca owned by Schiffahrts-Gesellschaft "HS Tosca" mbH & Co. KG (Germany)
	All "Eagle" vessels are owned by AET Shipmanagement, Pte Limited (Singapore), which is indirectly controlled by the government of Malaysia
	Vessel owned by Sovcomflot, a Russian State-owned corporation
9	Amended for different vessel with later load date, discharge remained the same
10	Letter from Sen. Markowski, questioning legality of bids
11	Tesoro is planning its 1200 bbl. Needs four waivers for both proposed two part (1 &2)
12	
13	Affiliated with AET, jointly owned by Enterprises Shipping & Trading SA
14	Amended for different vessel. Load and discharge date moved.
15	Cone by pipeline
16	Tesoro has requested approval for modifying its original waiver to allow splitting its 600K bbls load into 300K bbls loads to transit the canal with Overseas Jessie Canejo loading at SPR and Caribbean Galaxy delivering the cargo to the dest.
17	Requested that the waiver be amended to allow cargo be split into two different lots for delivery at separate ports.

XXI.

A REVIEW OF VESSELS USED TO CARRY STRATEGIC PETROLEUM RESERVE DRAWDOWNS

WEDNESDAY, JUNE 27, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:02 a.m. in Room 2167, Rayburn House Office Building, Hon. Frank A. LoBiondo (Chairman of the subcommittee) presiding.

Mr. LOBIONDO. The subcommittee will come to order.

The subcommittee is meeting today to review the process used to determine the availability of U.S.-flag vessels during the summer 2011 drawdown of crude oil from the Strategic Petroleum Reserve.

I would like to thank Ranking Member Larsen for requesting a hearing on this important topic. The subcommittee is very happy that he suggested it. My hope is that we will get some answers today to several important questions regarding the conduct of the administration and identify what mistakes were made so we can avoid this situation from happening in the future.

On June 23, 2011, President Obama announced that the U.S. and its partners would release a total of 60 million barrels of oil into the world market over a 30-day period to offset the disruption in oil supply caused by unrest in Libya. As part of the effort, the U.S. pledged to release 30 million barrels of oil from the Strategic Petroleum Reserve.

As most of us here today are aware, the waterborne transportation of oil from the SPR to U.S. refineries is governed by the Jones Act. That is law. The Jones Act protects our national security and promotes job growth in the United States maritime sector by requiring merchandise and passengers moving between two points in the U.S. to be carried on U.S.-built, U.S.-owned, U.S.-crewed, and U.S.-flagged vessels.

The Jones Act has been the law since 1920. In 1987, the Department of Energy, MarAd and Customs signed an agreement outlining the process agencies must follow to ensure compliance with the Jones Act during the Strategic Petroleum Reserve drawdown.

During last summer's drawdown, however, reports from the press indicate the administration may have deliberately ignored U.S. law in issuing over 40 Jones Act waivers for the transport of oil from the SPR. After issuing a blanket waiver and then rescinding it a

day later, it appears as though the administration was assuring potential bidders for SPR oil that individual waivers would be granted for large volume sales before applications were even submitted.

It also appears the administration made no effort to use its authority to require the oil to be divided into smaller lots in order to be carried on U.S.-flag vessels.

I find these actions extremely disturbing, particularly because it came at a time when so many Americans were out of work and these were American jobs that were affected. It is puzzling that an administration claiming to being doing everything they can to help America's unemployed would allow vessels crewed by foreigners, not Americans, owned by foreigners, built in foreign countries, and flying foreign flags to carry nearly all of the Strategic Petroleum Reserve oil released. In fact, only one U.S. vessel was used. That vessel carried less than 1 percent of the 25 million barrels of SPR oil that was moved on water.

U.S.-owned vessels crewed by American mariners stood ready, were willing, and again, ready to move more of the oil, but it seems the administration decided to leave them at the dock.

I look forward to hearing from our witnesses today on how this situation unfolded and why it unfolded. I am particularly interested in whether promises were made that Jones Act waivers would be granted before applications were submitted. I am also eager to hear an explanation regarding what appears to be a de facto 500,000 barrel lot size that effectively disqualified available U.S.-flag vessels.

Finally, I am interested in hearing from an industry on the status of the Jones Act fleet at the time of the drawdown. It is important for us to know that there was, indeed, sufficient capacity available to move more of the oil and the process by which the administration was made aware of U.S.-flag vessel availability.

I want to thank the witnesses for appearing today, and now I yield to Mr. Larsen.

Mr. LARSEN. Mr. Chairman, thank you for convening this morning's hearing to examine how best to uphold the integrity of the Jones Act when future shipments of oil are released from the Strategic Petroleum Reserve, or the SPR.

The Jones Act exists for good reason. It sustains a vibrant and strong domestic maritime industry. It creates job opportunities for U.S. mariners. It underpins U.S. maritime defense policy.

As you know, the ranking Democratic member of the full committee, Congressman Rahall, and I are both strong supporters of the Jones Act. On behalf of Mr. Rahall and I, I want you to know that we very much appreciate your quick action to schedule this morning's hearing as we requested in our April 24 letter to you and Chairman Mica.

Thank you.

Unfortunately, we missed such an opportunity to support the Jones Act last year. In response to oil shortages attributed to civil unrest in Libya, the President initiated in June 2011 a drawdown from the SPR for only the third time in history. Regrettably and contrary to longstanding policy under the Jones Act, U.S. tankers carried less than 1 percent of the oil from the SPR.

Instead the administration authorized 44 separate waivers of the coastwise laws to allow foreign tankers to transport this oil. The administration denied available U.S. carriers this valuable and vital business.

U.S. industry has available capacity to move U.S. strategic oil reserves on U.S.-flag ships putting U.S. mariners to work. I do not know of anyone on this committee who agreed with these controversial waivers, and Congress has responded accordingly to uphold the integrity of the Jones Act.

First, Congress passed language to prohibit the use of funds to issue future Jones Act waivers for SPR drawdowns for the balance of this fiscal year until the administration has taken adequate steps to ensure the use of U.S.-flag vessels.

Second, the House adopted an amendment offered by Congressman Cummings and Congressman Landry that strengthens information and notice requirements for any future Jones Act waivers. These actions are warranted and helpful, but they are limited in their scope and duration.

Consequently, I concluded that we need to look squarely at the waiver process itself to ensure that future SPR releases benefit both our domestic maritime industries and the overall U.S. economy. With this thought in mind, it is my intention this morning not just to look backward, but to look forward.

No one is satisfied with the status quo. Clearly we need a constructive dialogue on how best to release SPR reserves. Now is the time to begin that effort.

By working together with you, Mr. Chairman, I contend that such a dialogue could produce a body of sensible, practical reforms to the waiver process, reforms that work for the U.S. economy, provide opportunities for our domestic maritime industries, and put U.S. seafarers to work. Those are the outcomes upon which we can agree, and I look forward to beginning that dialogue this morning.

The Jones Act exists for good reason. Let's use it for good effect.

Thank you.

Mr. LOBIONDO. Thank you, Mr. Larsen. And, again, thank you for the suggestion to move forward expeditiously with this.

The first witness today is the Honorable John D. Porcari, deputy secretary of the U.S. Department of Transportation. Mr. Porcari, the floor is yours.

TESTIMONY OF HON. JOHN D. PORCARI, DEPUTY SECRETARY, UNITED STATES DEPARTMENT OF TRANSPORTATION

Mr. PORCARI. Thank you, Chairman LoBiondo, Ranking Member Larsen and members of the committee. I appreciate the invitation to discuss the Maritime Administration's role in determining Jones Act vessel availability during the Strategic Petroleum Reserve drawdowns.

The Obama administration unequivocally supports the Jones Act and is committed to the continued success of the U.S. Merchant Marine. This administration has shown this commitment——

Mr. LOBIONDO. Excuse me. Is your microphone on?

Mr. PORCARI. Yes.

Mr. LOBIONDO. Could you pull it a little bit closer?

Mr. PORCARI. Certainly.

Mr. LOBIONDO. Thank you.

Mr. PORCARI. The Obama administration unequivocally supports the Jones Act and is committed to the continued success of the U.S. Merchant Marine. This administration has shown this commitment through the strong enforcement of the Jones Act, including the imposition of the largest fine ever recorded for a Jones Act violation and efforts to establish new markets, including marine highway services that will promote investment and create U.S. jobs in the maritime industry.

In addition, the administration is focused on increasing cargo opportunities for U.S.-flag ships and crews through agreements reached for the first time with Ex-Im Bank and the Department of Energy.

In keeping with this commitment, the Obama administration did not issue a blanket waiver of the Jones Act for the 2011 Strategic Petroleum Reserve drawdown, unlike previous administrations. In June of 2011, President Obama authorized a drawdown of the SPR as part of an international effort to address the crude oil supply disruption caused by civil unrest in Libya. The Energy Department offered 30 million barrels to private buyers, largely oil companies and oil traders.

MarAd surveyed the maritime industry and determined that the Jones Act coastwise tank fleet was already largely fully employed. Only two tankers of the 56 in the Jones Act fleet showed interest in carrying SPR oil during the drawdown period. Owners of about a dozen tank barges also indicated general interest.

Relying solely upon the small amount of excess capacity in the Jones Act fleet to carry 30 million barrels of oil in 30 days on an emergency basis would have made the United States unable to meet its international obligations and effectively address the Libyan oil supply disruptions. Thus, waivers of the Jones Act were considered.

The Department of Homeland Security's Customs and Border Protection is responsible for waivers of the Jones Act. MarAd's role is to determine the availability of Jones Act vessels to perform the required carriage and advise CBP of its findings. CBP, as you know, makes the final decision on whether or not to issue a waiver.

During the 2011 SPR drawdown, MarAd provided CBP with availability determine for each requested waiver. MarAd considered each waiver request individually and made determinations based on its own survey of the maritime industry regarding whether vessel operators were interested and available.

In certain cases, MarAd found available Jones Act vessels and advised CBP accordingly. As a result, all SPR oil was moved quickly to market without major disruptions to the regular commercial movement of oil. In fact, one shipment was moved on the Jones Act vessel, as you pointed out, an apparent first for a major drawdown of the SPR.

The Obama administration firmly believes that Jones Act implementation is consistent with the drawdown of the SPR. That is why we did it. MarAd's goal is to maximize the use of available Jones Act vessels during an SPR drawdown, and MarAd believes this can be accomplished without impacting a drawdown's effectiveness.

Future SPR drawdowns, should there be any, may lead to additional opportunities for Jones Act vessels as MarAd is worked with DOE, DHS, and DOD to strengthen SPR auction processes to further include opportunities for Jones Act carriers.

Mr. Chairman, thank you for this opportunity to discuss MarAd's role in the SPR drawdown process. I am happy to respond to any questions you and members of the subcommittee may have.

Mr. LOBIONDO. We thank you very much. I am first going to turn to turn to Mr. Larsen for questions.

Mr. LARSEN. Thank you, Mr. Chairman.

Thank you, Mr. Secretary.

Contrary to your statement, the maritime industry will insist that there was available capacity in the U.S.-flag tanker and barge fleet to carry a substantial portion of the 30 million barrels. I am not sure how you made the statement that you did, but I think I would like to hear specifically can you tell us on what basis the DOE, CBP and MarAd conclude that American vessels were not available.

Mr. PORCARI. OK. I would be happy to, and it is an excellent question.

Let me first go back to this SPR release itself, and as the Chairman correctly pointed out, it began with a blanket waiver of the Jones Act. It is important to point out that the Maritime Administration and the Secretary quickly got involved at the highest levels to make it clear that we wanted to make Jones Act vessels eligible and that we believed that a case-by-case determination of Jones Act eligibility was the best way to do that.

Just to run through the math quickly, there were a total of 56 U.S.-flag tankers that were coastwise qualified. Eleven of these are dedicated crude carriers. Two of them were available during the recent drawdown.

On the tank barge side, there were 30 U.S.-flag coastwise qualified tank barges. First on the tankers, of the two that were listed as available, upon further investigation, one was engaged under contract in Brazil at the time and would have taken 14 days to get to the U.S. coast. The other one was in dry dock.

Of the available barges, as I mentioned, there are 30 coastwise qualified barges. Fifteen of the thirty had issues that could arguably be said were impediments to their use. Three of them required shipyard work. Four required a Coast Guard waiver for not having crude oil washing systems. Seven were offered with the limitation that the charter had to clean the barges with three loads of heating fuel to make them suitable for the shipment, and finally, one of the barges did not have a vapor recovery system which prevented it from being used at certain of the loading locations.

The fact is MarAd declined three nonavailability waiver requests because we believe U.S.-flag vessels of sufficient capacity were available on the timeframe required under our international obligations for the strategic petroleum reserve release.

Mr. LARSEN. So can you talk to us about the role that the 500,000 barrel lot size plays in excluding potential carriers from participating in the SPR drawdown and how that impacted U.S.-flag carriers, and where the 500,000 lot size comes from?

Mr. PORCARI. The 500,000 barrel lot size for the sale of the crude oil was set by the Department of Energy. The transport, the vessel transport of oil was originally set at 350,000 barrels. When we saw that there were two tankers that had less than 350,000 barrels of capacity but over 300,000, we prevailed upon the Department of Energy to lower that requirement from 350,000 barrels to 300,000 barrels so that those two at the time what we thought were available tankers would qualify for that. So we actively engaged with DOE, and I would say that DOE was quite willing to lower the 350,000 barrels to 300,000 barrels for the transport of it.

Ultimately, as I mentioned, those two tankers were not available in the timeframe for specific reasons, but both through that release and should there be future releases, we believe one of the important things that we can and will do is work aggressively with Department of Energy based on real availability of U.S. tankers and tank barges to write them into and make the Jones Act vessels eligible as much as possible.

Mr. LARSEN. It would seem that would be at least the spirit of the Jones Act, if not the law. Does the 500,000 barrel lot size create a barrier to participation for U.S.-flag carriers?

Mr. PORCARI. It is my understanding——

Mr. LARSEN. So my understanding, that is a purchase lot size.

Mr. PORCARI. Right.

Mr. LARSEN. And then from there it could be divvied up or aggregated after that.

Mr. PORCARI. Exactly. It is important to distinguish between the purchase lot size of 500,000 and the vessel transport lot size. And given the makeup of the U.S. fleet, tankers and tank barges, we think that having the number as low as possible for maximum eligibility is important.

It is also critical, obviously, that the true availability be within the timeframe designated in the SPR release. We believe very strongly in the Jones Act. It is akin to an insurance policy that the Nation has, and you cannot buy insurance after your house is on fire.

When we need the Nation's Jones Act fleet and at least as importantly, the U.S. crews that come with it, whether it is a natural disaster or a defense emergency, we cannot build a fleet then. We think this is an opportunity for the Jones Act fleet, just as we have prevailed upon the Ex-Im Bank and Energy to start using Jones Act vessels for project cargos where they were not specifically included before; we see this as an opportunity. And, again, I would point out that the two previous releases by the George H.W. Bush administration and the George W. Bush administration had a blanket waiver of the Jones Act. We do not think that is the right thing to do.

Mr. LARSEN. The next panelist will have some, I think, points on the bidding process, and so I want to find out there are some bookends in this debate regarding the role of SPR bidders. It is my understanding that oil purchasers and traders requested that their entire lot be transported in one trip, but that was not a requirement of DOE's Notice of Sale.

So why do we agree to these requests when the evidence is clear that it can unfairly disadvantage U.S. carriers?

Mr. PORCARI. We had, at the time, and subsequently have had very productive discussions with DOE about optimizing the ability of U.S.-flag fleet, given the fleet mix that we have, to participate in these releases balanced with at the end of the day this SPR release is for national strategic reasons, and the timing of it in most cases is dictated by international releases designed to impact the market positively.

We think we have certainly learned lessons from this first ever attempt to bring the Jones Act vessels into an SPR release. We have had very good discussions, including with industry. It is important to point out that we convened a meeting with industry after this release, and one of the clear homework items that we have collectively is we need and industry needs to provide better real time, true availability information so that in determining whether there are Jones Act vessels available, we know whether they are truly available in that timeframe, if they're of sufficient size, and if they can work in the loading facilities that DOE has designated.

We think working closely on those on an individual basis in the future will actually maximize the ability to use Jones Act vessels.

Mr. LARSEN. Do you think the desires of the purchasers of the SPR oil to use large, foreign-flag vessels puts pressure on DOE and you to supersede clear Federal law on Jones Act to require American vessels first?

Mr. PORCARI. I do not, sir. I think that originally there was a blanket waiver and we prevailed in an interagency discussion to have a case-by-case waiver process shows that it can and will work. Again, I think it is clear, and I think that industry would agree there are clear lessons learned from this release that we can do it more effectively in the future.

In this day and age real time true availability information is one of the ways we need to do that. But I think it is clear, and this administration has been very strong in supporting the Jones Act and supporting U.S. manufacturing and industries in general. This is an across the board attempt by the administration to maximize U.S. jobs, maximize U.S. employment, and quite frankly, to keep the Jones Act fleet viable for the reasons stated in the original Jones Act.

Mr. LARSEN. Mr. Chairman, I have just one more set of questions for this witness right now if you do not mind. It has to do with the future.

And can you be more specific about what steps the administration is doing to ensure full compliance with the Jones Act and new requirements enacted by this Congress last fall with respect to the waiver process in the event of another drawdown this year, knowing full well, I think, that that probably runs out September 30th? But this Congress has shown a clear intent on what we want to see happen clearly after the existing authority runs out.

Mr. PORCARI. I will be happy to. And, first, Congress' intent is very clear, and I would say it is very consistent with what the administration wants to do. The nature of an SPR release is that there is little or no warning. So it puts a premium on having our act together and having an interagency process in place in advance before any SPR release is announced.

We have had ongoing and very extensive discussions at the senior levels, for example, with my counterparts in both the Department of Energy and the Department of Homeland Security on how we can do the process better in the future. That includes an active partnership with industry on an ongoing basis so if there is a snap decision to have an SPR release, the process is in place. The availability information is better known.

In this release, for example, the Maritime Administration by email had previously used brokers to survey availability. They sent out an email to industry at the time. We think there are better real time ways to have that kind of information including if there are vessels that are under short-term contract that can get out from those contracts and do this work, knowing those kinds of particulars.

Mr. LARSEN. There may be further questions for the next panelist I have, but I yield back.

Before I do, I just want you to know I have to step into the anteroom to visit my hometown Boys and Girls Club folks. So I will just be right there, but I will be right back.

Mr. LOBIONDO. And, of course, you will be listening as you are in there, right?

Mr. Cravaack.

Mr. CRAVAACK. Thank you, Mr. Chair.

I appreciate it, Mr. Secretary, your being here today.

Section 501(b) of the Title 46 requires administration of MarAd to determine the suitability of Jones Act qualified vessels are not available to carry the cargo before a waiver can be granted, correct?

Mr. PORCARI. Correct.

Mr. CRAVAACK. OK. How did MarAd determine the nonavailability of U.S.-flag vessels for the SPR drawdown?

And did MarAd reach out to the U.S.-flag industry?

Mr. PORCARI. Yes, we did reach out to the U.S.-flag industry. Availability means available within the timeframe of the SPR release, including the total movements required for that particular lot sale, meeting the technical requirements, whether it's Coast Guard licensing, vapor recovery systems, having the tankers or the tank barges in a condition where they can receive crude oil. They may require cleaning, for example. Those all are a part of that.

We then make that information that determination available to Customs and Border Protection in the Department of Homeland Security, who ultimately makes the waiver determination.

What we are focused on going forward is being able to do that as quickly in as real time a basis as possible, and our intention is wherever possible to make opportunities available for the Jones Act fleet rather than having them written out in a blanket way by blanket waivers as has been done previously.

Mr. CRAVAACK. OK, sir. Thank you very much.

And with that said then, according to data provided by MarAd, only one U.S.-owned, built, flagged, and crewed vessel moved SPR oil during the 2011 drawdown. That vessel moved less than 1 percent of the total SPR oil that moved on the water.

So are you saying, sir, it is the DOC's position that there was only one qualified Jones Act vessel available at that time?

Mr. PORCARI. Actually, sir, we declined three nonavailability waiver requests. One of the three ultimately resulted in the barge movement that you mentioned. The other two were shipped by other means, perhaps pipeline. I am not sure, but we did this on a case-by-case basis based on that lot of shipment, the best real time information we had on availability, and meeting that timeframe.

And, again, everything else being equal, the larger the vessel, the less movements that are needed and the easier it is to meet the timeframe.

Mr. CRAVAACK. OK. Then how many waivers were actually granted for foreign-owned, built, flagged, and crewed vessels for the 2011 drawdown?

Mr. PORCARI. I believe the number is 44, but I need to go back and verify that.

Mr. CRAVAACK. OK. Forty-four, and again, only 1 percent of U.S.-flag maritime fleet vessels could actually rise to the occasion?

Mr. PORCARI. One of the things that we found, Mr. Cravaack in actually doing the determinations, and it is both a good news and a bad news scenario, is that much of the U.S.-flag fleet was engaged, was under contract or subcontract, and actually was working at the time. We believe that with better information and with more real time information, we should have better availability, but it will entirely depend on the market conditions at the time.

The status of the Jones Act fleet, if it is employed elsewhere, the timing of the release, again, this is the first time that any administration has tried to use the Jones Act fleet during an SPR release. We believe, just like we have done with project cargos with the Ex-Im Bank and with the Department of Energy, that it is an opportunity to write the Jones Act fleet into rather than exclude it from business.

Mr. CRAVAACK. I truly believe that a strong maritime fleet is essential to our national security.

Mr. PORCARI. It truly is.

Mr. CRAVAACK. I am a strong proponent of that. So with that said, what outreach has MarAd had with the representatives of U.S.-flag industry and labor in the wake of the 2011 SPR drawdown to address their concerns and the concerns that you just spoke about right now?

What are we doing to make sure that our fleet is ready to go when we need her?

Mr. PORCARI. One of the things that we did in the wake of the last SPR release was the Maritime Administrator and I convened a meeting with industry, Mr. Allegretti and others, on this specific issue and partly to deconstruct the events during that release, but mostly looking forward how we can do this better together.

Ultimately this has to be a partnership. We believe very strongly in this partnership, and we think that by being smart and quick about this process that we in the future, should there be a future SPR release, that we can actually have better participation by the Jones Act fleet, again, depending on its actual availability.

Mr. CRAVAACK. Thank you, Mr. Chairman. I appreciate your indulgence of the time, and I yield back.

Mr. LOBIONDO. Thank you, Mr. Cravaack.

Actually Mr. Larsen and Mr. Cravaack covered an awful lot of what I had, but to go over this a little bit more, so you are, I think actually admitting that there was a de facto 500,000 barrel lot size threshold.

Mr. PORCARI. For the sale, not necessarily the transport, Mr. Chairman. In other words, the DOE sale advertisement had a 500,000 barrel minimum for bidding on it. It was our intention and in our discussions with DOE we wanted to make sure that the transport by any successful bidder was in quantities small enough that the U.S.-flag fleet could actually use it.

So, again, DOE originally had 350,000 barrels as the minimum threshold. There were not any available U.S. tankers at 350,000. There were two potential available tankers at 330,000. We got DOE to lower that to 300,000 because we wanted those tankers to be used.

Mr. LOBIONDO. So how many actual shipments were less than 500,000?

Mr. PORCARI. I do not know offhand, and on a lot by lot basis we will be happy to get that information.

Mr. LOBIONDO. You know, we are not trying to give you a hard time, but this just kind of is not gibing here that only, you know, 1 percent of the movement can come from U.S.-flag vessels, and we just need to try to get to the bottom of it. But mostly since we cannot undo what was done, to try to understand this process for the future and, you know, if the industry was, you know, at 100 percent employment and everything was fine, you know, OK, there is just not availability. But we are just getting a different story about the availability.

So I do not want to be repetitive with the questions again because Mr. Larsen had most of these questions. I will leave it at that for now.

I would like to make note that Mr. Cummings is wrapped up in a markup, but that he had questions specifically, and we will take them for the record so that Mr. Cummings can get his questions answered.

And, Mr. Porcari, we thank you very—oh, Mr. Landry, thanks for joining us. OK. You are recognized.

Mr. LANDRY. Thank you, Mr. Chairman.

Deputy Secretary, this committee, I believe, is growing tired of me saying that I represent more Jones Act jobs than any other Member in this body. Twenty-eight thousand men and women are employed in my district because of the Jones Act.

Considering this information, do you find it ironic that I also represent the destination of more SPR releases transported on foreign-flag vessels than any other Member in the country?

In other words, all of the oil released or a vast majority of the oil that is released out of the strategic reserve is then shipped to my district, but not by American-flag vessels while at the same time, I represent more mariners than any other Member.

Mr. PORCARI. I would classify it as an opportunity. We share the strong belief that the Jones Act both protects U.S. jobs and protects U.S. national interests, and the purpose of reversing what had previously been a blanket waiver in all cases on releases and going on a case-by-case basis was to provide whatever opportunities we pos-

sibly could for Jones Act vessels and their U.S. crews to participate.

And we think we clearly learned lessons from this release. Should there be another one in the future, sir, we believe that a close partnership with industry and better real time information will allow us to maximize the Jones Act participation.

Mr. LANDRY. Are you saying that the lessons that were learned move you so that if we have another release that the process that you would use would be more transparent and more applicable to sticking to the preamble of the Jones Act?

Mr. PORCARI. First, in terms of transparency, we posted the vessel availability on the MarAd Web site as a way to make sure we got the word out. I think from a policy point of view, the most important decision was made immediately, which was unlike previous administrations not to grant a blanket waiver and just waive the Jones Act, but instead to focus on opportunities to get Jones Act vessels and crews involved.

We agree with both the letter and the spirit of the Jones Act in the sense that it exists for a reason, and that reason is that it is in the vital interest of the United States to have a strong U.S.-flag fleet and even more important than the vessels themselves in some ways, the crews, the U.S. crews.

Mr. LANDRY. So are you saying that you believe that you all went through every possible scenario and worked diligently to uphold the preamble of the Jones Act in the process that you all used in granting these waivers? I mean, do you feel that today or do you feel that moving forward you can do a better job of insuring that American-flag vessels have an opportunity to carry it?

Because it bothers me that while mariners that I represent sit on a dock, they get to watch a foreign-flag vessel pass their dock with oil, with oil paid for by their hard earned tax dollars, and that oil is being transported by foreign-flag vessels.

And I am just trying to ensure that me and you have an understanding and that what you're telling this committee is that, look, maybe we did not do as good of a job as we could. I mean, you feel like you have, and that is what I am trying to understand. Do you think that you can take some steps in the future that would further strengthen the ability of U.S.-flag vessels to have a seat at this table?

Mr. PORCARI. The short answer is yes. We believe there clearly are steps that we can take in partnership with industry to do a better job. As with anything else, we should be learning from experience, and this was the first time that anyone tried to get the Jones Act fleet involved in an SPR release.

Mr. LANDRY. And let me just tell you I appreciate the fact that you recognize that you can do a better job. Not many people come before us and admit, and I think that is very noble of you. I want you to know that, and I hope that you live up to that word and the next time we do a better job of getting more U.S.-flag vessels involved.

Mr. PORCARI. Sir, there is not a day that goes by that I do not realize I can do a better job, and we should all be learning from it. I very much look forward to working with you going forward should there be another release.

And in the nature of the releases, it is quick and with no warning so that it can impact markets. That puts a premium on doing the work upfront very collaboratively. We have had some very good collaborative work with our colleagues at the Department of Energy and the Department of Homeland Security and others in both lessons learned and should there be another release, how it can be done better, just as we are doing with trying not to grant Buy America waivers on the manufacturing side, just as we are doing with the Ex-Im Bank agreement that we have where they are using U.S. vessels and we are not in the same way before, and just as we are doing with the Department of Energy. It was not necessarily using U.S.-flag ships for project cargo shipments and they are now.

We see every one of these as an opportunity, even if it is at the margins. These margins add up to strengthen U.S. jobs and to get maximum U.S. employment for the Jones Act that we need in case of emergency.

Mr. LANDRY. Thank you, Mr. Chairman. I yield back.

Mr. LOBIONDO. Thank you.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Deputy Secretary Porcari, a waiver was issued. First of all, it is good to see you again.

Mr. PORCARI. It is good to see you.

Mr. CUMMINGS. A waiver was issued to Marathon Petroleum on July 25, 2011, which stated and I quote, "You have purchased 1 million barrels of crude oil from the SPR, and this portion represents 500,000 barrels."

The waiver noted that MarAd had made a nonavailability determination regarding the subject request. Looking at MarAd's nonavailability determination it states, and I quote, "We have found no single U.S.-flag vessel available to carry the entire lot of cargo in one trip as requested by Marathon."

Similarly, on July 20th, a waiver was issued to J.P. Morgan Ventures Energy Corporation for the movement of 500,000 barrels of a $1.5 million barrel purchase from the SPR. Regarding this waiver, MarAd wrote, and I quote, "We found no single U.S.-flag vessel available to carry the entire lot of cargo in one trip as requested by J.P. Morgan."

The question is this. It is my understanding that there were Jones Act qualified vessels capable of carrying oil released from the SPR. Why were the Jones Act waivers for Marathon and J.P. Morgan Ventures and for dozens of other firms issued? Why is that?

Mr. PORCARI. Mr. Cummings, we tried to make sure we had good information on availability. I do not know those two specific ones on July 25th and 20th of the top of my head. What I would like to do because I want to give you a precise answer is actually go back and make sure we review those records and find out the particular circumstances of those.

Each of the waiver requests was based on availability at that specific time, based on that specific shipment and with whatever other parameters were specified. So I cannot specifically comment on those two without some further research, but I would be happy to do that.

Mr. CUMMINGS. In these cases, Marathon and J.P. Morgan were already moving less than the entire amount of the oil they had purchased. Given that the Jones Act is the law of the land, I want to know, and I am sure you can get back to me on this, why were Marathon and J.P. Morgan required to break down their shipment sizes and move only the number of barrels that could be carried on Jones Act qualified vessels?

In other words, why would MarAd write that there was no single U.S.-flag vessels available to carry the entire lot of cargo in one trip as J.P. Morgan requested? And why was J.P. Morgan not required to change its request or use more than one single vessel so that it could comply with the law?

That is what I am concerned about.

Mr. PORCARI. It is a fair question, and I would like to get you the particulars on that. I do know the timeframes of the actual transport are one of the variables that were important, but these are two specific transactions, and I think we need to look into those specifics.

I would further comment that this was sea change, if you will, for the bidders. In other words, up until this time when the Obama administration specifically tried to make Jones Act vessels available, all previous releases got blanket waivers. Bidders on SPR oil never had to think about or worry about U.S.-flag fleet availability.

We have all learned lessons from this release. One of the lessons is by the bidders who need to understand and I think now do understand in a much more specific way that we are serious about this and that they need to really work to find availability, and so I will get back to you on those two.

Mr. CUMMINGS. One last thing. Based on the emails available to the committee, was not MarAd aware at the time that it was issuing nonavailability determination that lots of 500,000 barrels might exceed the carrying capacity of all Jones Act qualified vessels? If so, did MarAd inform the Department of Energy that the lots should be broken into smaller sizes to ensure it could move on Jones Act compliant vessels?

Mr. PORCARI. Yes, my understanding is the two things. The minimum bidding quantity that DOE specified which was 500,000 barrels and then separately the transport, which could be less than 500,000 barrels, I am told that 500,000 is basically a yardstick in the industry that they use.

Our contention then and now is that does not mean you have to transport 500,000 barrels in one crude carrier, which would exclude all but the largest U.S.-flag ships that are fully engaged in Alaska trade, for example, that the transport could be in smaller quantities. That is why when DOE first put out 350,000 barrels as the minimum for transport, we prevailed on them to lower to 300,000 because it would allow two U.S. tankers that we thought were available at the time to actually transport the oil.

Mr. CUMMINGS. I see my time is up. Thank you very much.

Mr. LOBIONDO. Mr. Cummings, for your information, the Department of Energy and the American Petroleum Institute were both invited today, but declined our invitation. I think I could guess why.

Mr. CUMMINGS. I thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Harris.

Dr. HARRIS. Thank you very much, Mr. Chairman.

And, Mr. Deputy Secretary, it is good to see you again, and thank you for the work you did for Maryland as our Transportation Secretary.

Let me follow up on the gentleman from Maryland and what he asked because according to press reports, you know, well, I guess it was almost a month before those determinations were made for Marathon and J.P. Morgan that the Congressman referred to. Senior officials from DOE, MarAd, you know, conducted a conference call with potential drawdown. This is a month before they grant it, where a senior DOE official indicates that Jones Act waivers would be granted to bidders carrying 500,000 barrels or more.

Well, if I were them and I had a DOE official that said, "Oh, just say you are going to transport 500,000 because we will get the waiver," that sounds like, you know, someone either was not aware of the Jones Act or the importance of the Jones Act to maintaining our fleet and the economic importance.

Now, I find this a little interesting because the Department of Energy comes before our committee and the Science, Space and Technology and all the time talks about creating American jobs, and this is one of the goals of the department and all, and here is a DOE official a month before waivers are granted that specifically the reason for the waiver is that the bidder asked to transport 500,000 barrels. Well, a month before, they were told, "Well, basically you might as well ask for it because we are going to grant you the waivers."

What is going on? I mean, why is the DOE involved? They are not involved in the waiver process, are they?

Mr. PORCARI. No, they are not specifically involved in the waiver process, and in fairness to our DOE colleagues, the two previous SPR releases by two previous administrations had blanket waivers. This is not a process that they had been through before, and we worked very closely with them and very aggressively to make sure wherever possible Jones Act vessels could be included.

I cannot comment on the specifics of the press report. I do not know it offhand, and I am leery about press reports in general, but there was certainly an education process with industry, with the bidders on the crude oil for the Jones Act process.

To the extent they were familiar with it, they may not have been familiar with all of the details and the fact that the waiver where the Maritime Administration part of it, sir, is we determine whether vessels are available based on those individual circumstances, and then Customs and Border Protection in DHS actually either does or does not issue a waiver based on that.

So it is a partnership in that sense. Industry had a number of questions about this. We tried to answer those questions, and I am talking about the industry bidding on the oil in this case. We in DOE tried to answer those questions.

I think going forward, they clearly understand how serious we are about using wherever possible Jones Act vessels and crews.

Dr. HARRIS. Sure. No, and I appreciate that, you know, we say that in the past it has been done, but in the past we are not in, you know, the third year of what the President admits is the larg-

est economic downturn since the Great Depression. I mean, this is not the same instance.

We had an opportunity to use American-flag vessels with Americans, American labor, and we decided not to. And so one question I have is, is the DOE involved?

The DOE in previous administration did not have the authority to give waivers either, did they? You said the DOE official just, I guess, assumed it because previous administrations had done it?

Mr. PORCARI. What had happened previously, and I would respectfully disagree with the contention. We saw this as an opportunity to bring the U.S.-flag fleet in rather than exclude it.

There have been two SPR releases prior to this one by the George H.W. Bush administration and the George W. Bush administration.

Dr. HARRIS. Sure. No, I understand the history, but you know, is it true that only 1 percent of the oil was delivered on U.S.-flag vessels?

Mr. PORCARI. We basically did not grant three waiver requests, and two of them ultimately used other means to transport the oil. The one waiver request that we denied or that we recommended denial, DHS denied and it was complied with, transported about 150,000 barrels. That is right.

Dr. HARRIS. Out of how many? One hundred and fifty thousand barrels out of how many?

Mr. PORCARI. The total release was 30 million.

Dr. HARRIS. Well, I suspect that we could probably do a little better job than that in the future, and I hope we are serious about it.

Can you get me information? I assume that the department was part of that conference call on June 28, 2011?

Mr. PORCARI. We did have a Maritime Administration representative on that, and I will be happy to get you——

Dr. HARRIS. Could you determine whether that, in fact, is true, that on that call, you know, the DOE official indicated that waivers would be granted?

And again, Mr. Chairman, I wish the DOE was here to answer, you know, under what authority they are making Jones Act determinations in conference calls with bidders that I think the evidence shows resulted in what would be expected. If you are told that a waiver is going to be granted, why bother to look for an American vessel when you are already told upfront that waivers would be granted?

Thank you very much, Mr. Chairman.

Mr. LOBIONDO. Mr. Cummings, back to you.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I am only going to take a few minutes. I just wanted to just say a few words.

I am deeply concerned about the issuance of waivers to allow Jones Act qualified vessels to carry cargo between United States ports, including the issuance of waivers following the 2011 release from the Strategic Petroleum Reserve. The Jones Act is the law of the land. It is the cornerstone of our United States maritime capability, and it should be waived only in the interest of rarest of circumstances.

To increase transparency surrounding the issuance of waivers, Congressman Landry and I introduced H.R. 3202, the American Mariners Job Protection Act. The bill would require MarAd to include in its assessments of the availability of Jones Act compliant vessels information on the actions that could be taken that enable Jones Act qualified vessels to carry the cargo for which a waiver is sought.

MarAd would also be required to publish its determinations on its Web site and provide notification to Congress when a waiver is requested or issued.

I thank the Chairman, Mr. LoBiondo, and Ranking Member Larsen, as well as Ranking Member Rahall and other members of this subcommittee for their support.

Congressman Landry and I most recently offered this legislation as an amendment to the National Defense Authorization Act of 2012, and it was adopted. And I certainly hope that it will be included in the final NDAA conference report.

On July 15, 2011, I wrote to Secretary LaHood to inquire about the issuance of waivers to enable Jones Act compliant vessels to carry oil released from the Strategic Petroleum Reserve. On August 29, 2011, Secretary LaHood provided copies of some documents associated with approximately 20 of the waivers. I appreciate the information Secretary LaHood provided, but I am deeply disappointed in DHS and DOE are not here today to discuss this matter.

I have tried without success to assemble all of the agencies that are involved in the waiver process, and again today I see that the agencies will simply not come together to provide the clarity we need about exactly how this process is conducted.

I continue to believe that we need to get all of the parties together in one room to understand what occurred in 2011 and what steps need to be taken in the future to ensure that there is compliance with the Jones Act.

Thank you very much, Mr. Chairman.

Mr. Landry, I understand you have a brief statement and/or question.

Mr. LANDRY. Yes. Mr. Chairman, I just wanted to try to clarify an answer that the Deputy Secretary gave to Mr. Cummings a while ago when he mentioned or I thought I heard him say that DOE set the 500,000 barrel limit or you mentioned that the 500,000 barrel limit came from DOE.

Mr. PORCARI. It is in the DOE prospectus for sale of the SPR release.

Mr. LANDRY. Well, Mr. Chairman, I am holding the Notice of Sale from I believe DOE, which says that the minimum delivery lot sizes are 100,000 barrels for pipeline and 300,000 barrels for vessels.

Now, nowhere in this notice do I see 500,000. In fact, we got to 500,000 because someone slipped information to the industry telling them that if they went to 500,000 they would get the waivers.

Now, you and I just had a discussion about how we move forward in helping our mariners in this country, and the way we help them is by making sure that when DOE says 300,000 barrels because

they know that we can use U.S.-flag vessels to move their cargo at this volume, that we try to adhere to it.

So I just wanted to correct the record, Mr. Chairman, in that the Deputy Secretary said it was DOE that issued a 500,000 barrel limit, and would you like to retract that?

Mr. PORCARI. No, there are two separate things here, Mr. Landry. One is the minimum bid amount that bidders for the oil can bid on, and that is 500,000 barrels. The delivery——

Mr. LANDRY. No, no, no. That is 300,000.

Mr. PORCARI. The delivery of the product was 300,000 barrels. It was originally, I would point out, 350,000 barrels, and we prevailed upon DHS or DOE to lower that because we knew there were two tankers that could carry up to 330,000 barrels.

So you are absolutely right about the delivery size at 300,000, and we specifically asked them to lower it from 350 which it originally was to 300 so that two U.S. tankers that we thought were available at the time could get that business.

Mr. LANDRY. Did they get the business?

Mr. PORCARI. They did not. Of the two tankers one was under contract in Brazil and the other one was either in or headed to dry dock.

Mr. LANDRY. Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Harris.

Dr. HARRIS. Thank you.

Just a very brief followup because your testimony was that we actually shipped 150,000 barrels. That is the only shipment on American-flag vessel.

Mr. PORCARI. Yes, and that was actually a barge. So, in other words——

Dr. HARRIS. So 300,000 was not the real minimum. I mean, that document says it is supposed to be 300,000. I mean——

Mr. PORCARI. They can always break up the shipment and do it with two or three barges, which is something that we encouraged wherever possible.

Dr. HARRIS. So you could have broken up a shipment of 500,000 into a 300 or a 350 and 150 also.

Mr. PORCARI. That is correct. That is correct.

Dr. HARRIS. So why was that not encouraged?

Mr. PORCARI. It was, in fact, encouraged. Again, for the industry bidding on the oil, we encouraged them as part of this process to look at multiple shipments. So if they bid for 500,000 barrels, they had the ability to ship it on three barges or a tanker and two barges or whatever.

Dr. HARRIS. And that was not encouraged in the June 28th phone call, that June 28th conference call. I guess you will try to get me the records, but again, apparently on that conference call DOE said 500,000 is OK and you'll get a waiver. That does not sound like encouraging breaking up shipments.

Mr. PORCARI. Well——

Dr. HARRIS. How did the department encourage breaking up shipments if not on a conference call like that when you have the bidders on the line saying, you know, "How are you going to ship this?"

I mean, again, it is just not apparent to me that that encourages breaking it up if you say, "Look. You are going to get a waiver if you request a shipment of 500,000."

Mr. PORCARI. No, it is a fair question. One of the purposes of a case-by-case waiver determination was to see with those particular circumstances on those dates within whatever parameters were in that particular bid, if there was a way to use U.S. vessels, any combination of U.S. vessels.

And we think one of the lessons learned, quite frankly, is that better real time information on combinations of vessels that might be available might well encourage more U.S. vessel usage, and we think going forward. And we have worked closely with our colleagues in Energy and DHS and others, for example, on tabletop scenarios since the last release to try to figure out the mechanics of encouraging and knowing to the extent possible U.S. vessel availability.

Dr. HARRIS. OK. Thank you.

Thank you for giving me that extra time, Mr. Chairman.

Mr. LOBIONDO. OK. Mr. Porcari, I thank you very much for being here today. We are going to take a short, brief adjournment so we can move to, or recess so we can move to Panel 2, and we will be proceeding very directly.

Mr. PORCARI. Thank you, Mr. Chairman.

[Recess.]

Mr. LOBIONDO. The committee will come to order.

Our second witness this morning is Mr. Tom Allegretti, president, The American Waterways Operators (AWO), and testifying on behalf of AWO and the American Maritime Partnership.

Mr. Allegretti, thank you for being here. You are recognized.

TESTIMONY OF THOMAS ALLEGRETTI, PRESIDENT, THE AMERICAN WATERWAYS OPERATORS (AWO), ON BEHALF OF AWO AND AMERICAN MARITIME PARTNERSHIP

Mr. ALLEGRETTI. Thank you, Mr. Chairman, for the opportunity to testify today on behalf of AWO and the American Maritime Partnership.

The domestic maritime industry shares your goals for today's hearing, to shed light on the circumstances that gave rise to approximately 50 Jones Act waivers during last year's drawdown of the Strategic Petroleum Reserve and to ensure that history does not repeat itself in the event of another drawdown this summer.

The Jones Act is the law of the land for good reason. It undergirds the national security, homeland security, and economic security of the United States. What we witnessed last year was the hollowing out of the Jones Act by unelected agency officials. Taking a critical look back at that experience is essential to insuring that as we move forward, such a travesty never happens again.

What happened last year was illegal and unacceptable. Administration officials took actions that effectively excluded American vessels owned by American companies, crewed by American mariners from transporting American oil between American ports. They did this by establishing an arbitrary, unwritten minimum lot size for vessel movements that had no basis in law.

Potential purchasers of SPR oil were promised Jones Act waivers in advance, and the administration delivered on those promises even as available American vessels and American mariners sat idle. The result, approximately 50 Jones Act waivers and only one lifting by a U.S.-flag vessel. More than 99 percent of the oil moved on foreign vessels with foreign crews.

We appreciate the subcommittee's oversight in probing how this disregard for the law could have transpired, and we are troubled that Deputy Secretary Porcari has not been joined today by officials from the Department of Energy. We hope that Congress will continue to press all of the departments that share responsibility for the mismanagement of last year's SPR drawdown for answers to this fundamental question: how a Federal action intended to help the American economy could have been carried out under unwritten ground rules that expressly favored foreign companies and foreign workers to the detriment of Americans.

We also hope that Congress will continue to press the administration to clarify its plans to ensure compliance with the Jones Act. And with the new requirements governing the waiver process that you all enacted last fall, clarity is especially needed on the steps the departments will take to make full use of American vessels first in the event of another SPR drawdown.

We appreciate DOT and the Maritime Administration meeting with AWO and AMP this spring to discuss the availability of American vessels and their suitability for the movement of SPR crude, but we are disappointed that the Department of Energy has been unwilling to meet with us, and we are especially troubled that the administration has not yet made clear what actions it will take to avoid a repeat of last year's debacle.

Chairman LoBiondo, Ranking Member Larsen, members of the subcommittee, I want to be very clear about what the American maritime industry is saying with respect to another SPR drawdown. First, we are saying that the Jones Act requires the use of American vessels to move crude oil from the SPR to another U.S. destination. Nowhere does it say that American vessels must be used only if they meet arbitrary, unwritten criteria developed secretly by an administration official.

Second, we are saying that American vessels and American mariners are available in substantial numbers to move SPR crude today and that they are fully capable of doing this work. We are not saying that the domestic fleet has the capability to move all of the oil in a drawdown within a short period of time.

And, third, we are saying that the administration should establish procedures that make clear that available American vessels will be used first and to the full extent of their capability and availability, and that Jones Act waivers will be issued only when no American vessels are available.

Our message is simple. The law is clear. American vessel owners and American mariners are ready, willing and able to do what they do best, move cargo safely, securely, and economically for the benefit of our customers and our country, but in order to do so we need the administration to follow the law.

Thank you again for the opportunity to address this most serious situation today.

Mr. LOBIONDO. Thank you, Mr. Allegretti.

An explanation offered by the Department of Energy and MarAd for not contracting Jones Act qualified vessels is that U.S.-flag vessels carrying less than 500,000 barrels cannot meet berthing and/or discharging parameters set forth by many receiving facilities. Do you believe this is true?

Mr. ALLEGRETTI. I do not. But I will say this is reflective, Mr. Chairman, of the essential problem that we have with the administration and which you heard repeated here this morning. There is a mentality that resides within the Department of Transportation and the Department of Energy that essentially starts from the premise that what are the impediments, was the word used in the Secretary's statement submitted; what are the impediments to the use of American vessels and how do we deal with those impediments, and we have heard a range of them.

American vessels are too small. They are too few. Well, what is the sufficient number that makes them not too few? What is the size that makes them not too small?

All of the vessels that were available last year during the SPR drawdown in the barge fleet exceeded the minimum lot size in the DOE Notice of Sale, which was 40,000 barrels.

We also hear that what you just said, DOE does not think that our vessels are capable of berthing at SPR terminals. That is incorrect, but it also is irrelevant. It is not a factor in the Jones Act.

Then we hear that the size of our vessels is not consistent—and this is probably the part that is most Orwellian to me—not consistent with the desires of the oil purchasers, with their transportation plans, and with purchaser preferences, as though these matters supersede the law. And when we ask the administration to consider that these are outside the ambit of the Jones Act, what we get back is a legalistic interpretation that it is within MarAd's discretion to consider factors like loading windows, berth schedules, and cargo size in determining American vessel availability.

And the end result of all of that is what you saw last year. There were more than 25 American-flag tank barges that were capable of lifting SPR oil during that drawdown, and not a single one of them got any work.

Mr. LOBIONDO. Can you tell me what the difference was between the vessels that were bypassed by Department of Energy and MarAd during this 2011 drawdown and the vessels that delivered oil to the Strategic Petroleum Reserve in the first place?

Mr. ALLEGRETTI. Well, there are two principal differences. As you all said, 99 percent of the oil was delivered on foreign-flag vessels with foreign crews registered under the laws of foreign nations. And so that would be one distinction.

The other major distinction is the size, and so it raises this issue of the secret 500,000 barrel minimum, that the public documents that are available to folks in our industry say that if you have a tank barge in excess of 40,000 barrels, you are eligible to lift this oil.

And so think about this, Mr. Chairman. I know that you and other members of the committee try to look at the effect of your laws on real men and women. So think about it from this perspective for a second. You are an American-flag barge owner. You are

probably a family-owned company. You have probably been in the business for three, four or five generations. You have reinvested the profits of your company consistently back into the business providing good jobs in your community and around the country. You play by the rules. You have complied with all of the new requirements of OPA–90, which means that over the course of the last 20 years, you have invested hundreds of millions of dollars in the recapitalization of your fleet.

And so you now have a fleet of vessels that are technologically advanced, state-of-the-art, the very model of efficiency for coastwise transportation, and you hear that the administration is going to draw down the SPR, and you look at the Notice of Sale, and it says 40,000 barrel minimum. You think, "Well, great. I have got plenty of vessels that are more than 40,000 barrels that are available, and I would be interested in that work."

And then you wait for the phone call. You wait for the oil company or the oil trader or the charterer to call you and ask you about the availability of your vessel, but no phone call comes in.

And then the next thing you hear is that the Maritime Administration has made a declaration that there are no American vessels available to lift this cargo, and you look out your window and you have got vessels sitting idle at your dock.

So if you are an American vessel owner, you have to be extraordinarily concerned about how this process went. I said it was illegal. You know, it was also unfair, and I think what it points us is that this process utilized by the Maritime Administration to determine the availability of vessels really was a sham.

Mr. LOBIONDO. Well, I appreciate that, but let me maybe ask this a little bit differently because I want to make sure I understand this correctly.

Is it not true that the vessels that were bypassed are the same type of vessels that made the original deliveries?

Mr. ALLEGRETTI. Absolutely, Mr. Chairman. I am sorry if I misinterpreted your question. That is absolutely true. The original filling of the Strategic Petroleum Reserve was done by a company no longer in business by the name of Coastal Towing, which had the contract for the original filling. Coastal Towing's barges were all in the neighborhood of 20, 25, 30,000 barrels.

So we filled the Strategic Petroleum Reserve with smaller barges, and it is also, in fact, true that as the reserve has had to be replenished, we have use ATVs to do that. These are the very vessels that were overlooked last summer during the drawdown.

Mr. LOBIONDO. OK. Thank you, Mr. Allegretti.

Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

Thank you, Mr. Allegretti, for coming today.

You say that in the industry there are 25 or so available vessels.

Mr. ALLEGRETTI. Last year.

Mr. LARSEN. Yes, right. Sorry. Last year. Secretary Porcari sort of went down a list by number and category of vessels that were not available for whatever reason.

I did not do the math and add those up. I do not know that they added up to 54. I do not know if you did the math. It is possible it added up to 29, leaving the 25 available. Can you give us your

evaluation of the list that Mr. Porcari gave us, the reasons why and the number of vessels not available?

Mr. ALLEGRETTI. I would be happy to. And I might pivot off of something you said in your statement, Mr. Larsen.

Mr. LARSEN. Sure.

Mr. ALLEGRETTI. About looking for practical reforms. This is an area that would be rich in that regard. One of the things that the Maritime Administration does, which it is not well equipped to do is to evaluate the commercial market. So it asks questions about when is your next dry docking. What kind of cargo did you carry the last time? What are you going to carry the next time?

These are questions the Government does not need to be involved in. There is an unbelievably efficient system of cargo transportation in the United States that works perfectly day in and day out. The essence of what oil companies do for the movement of their cargos is to work with vessel owners and figure out how do I get this cargo from this place to this place. What is the most efficient way to do that? What vessels are available? How do I reposition vessels to make this work?

These decisions go on every single day. So to have the Government try to micromanage the connection between a particular cargo and a particular vessel is really absurd. We could simplify this process and, I think, enhance the integrity of the Jones Act by doing one simple thing. We can say the Jones Act is the law of the land. You shall use American vessels first until there are no American vessels.

So using the scenario of last year's drawdown, if the Department of Energy had not given advanced warning to the oil purchasers that it was going to give them automatic Jones Act waivers, all they needed to do was ask, and had said instead, "It is our expectation that you will follow the law and that you will contract with American vessel companies to move your cargo until there are none left," those guys would have figured out how to get that cargo to market, believe me, and we would not have had all of this kind of Maritime Administration management of what the list actually says.

Mr. LARSEN. Does MarAd and DOE have access to this database for cargo transportation vessel availability?

Mr. ALLEGRETTI. Well, there are two answers to that question. Last summer the list that Deputy Secretary Porcari was referring to was actually a Maritime Administration list that was on MarAd's Web site. It reached out to vessel owners, said, "What do you have available?" and compiled that information, and it updated it on a regular basis.

We found that that system did not provide sort of all of the detail and clarity that they were looking for. So one of the things that came out of our conversations this past spring with Secretary Porcari and the folks at MarAd was for us to try to help them put together a better list with more specificity about vessel availability and timeframes of availability, which we have done, and which we have shared with them.

And so that list shows that at this point in time we have availability in the next 30 days more than 30 American-flag vessels with a capacity of somewhere between 50 and 150,000 barrels each,

with an aggregate capacity of about 2½ million barrels. That is where we stand today.

Mr. LARSEN. So if there was an SPR drawdown today of 30 million on the same level they had last year, you could do 2½ million of that 30, but that would max out the U.S. industry today.

Mr. ALLEGRETTI. That is right. We could do 2½ million of the initial drawdown, but I would also point out that those vessels will become available again at some point in the timeframe of the drawdown, and so part of what the reform has to do is to be looking at an ongoing basis about vessel availability.

Mr. LARSEN. Right. Can you comment some on your views with regards to this 500,000 barrel lot size?

And the question I had for Mr. Porcari had to do with whether or not that creates an artificial barrier to participation. Now, that's a purchasing lot size, but in your experience in the industry, does it not seem obvious there might be some connection between those who are purchasing and those who are delivering?

You buy 500,000; you want to deliver the 500,000.

Mr. ALLEGRETTI. Oh, exactly. And that is the problem, that you know, I thought that the answers on that question were incomplete. It is true that the 500,000 refers partly to the purchase of the oil, and if it had gone from there to you may purchase in 500,000 barrel lots, but you must deliver consistent with the requirements of the law, that would have been fine and we would all be here today celebrating that action rather than protesting it.

But that is not what happened. It was if you buy in 500,000, we will give you a waiver to transport it at 500. And I am sure the committee has this information available to it. If not, we would be happy to share it through our Freedom of Information Act request of the agencies. There are many documents that we have received and reviewed that make clear that although they never rescinded the 40,000 and 300,000 barrel minimums in their notice of sale, as a de facto matter they changed that to make it 500,000. And that is why there were 44 waivers of the Jones Act, because there was a de facto 500,000 barrel minimum, and there are no American vessels available to do that.

Mr. LARSEN. Right. Back to the issue of potential reforms to the waiver process, do you have other contributions to that, to reform ideas?

Mr. ALLEGRETTI. Well, you know, the simplest is simply if we could all start at the same premise, and I think that is part of the problem that we have. Secretary Porcari talked about active partnership with industry, and we certainly welcome that, but a partnership has to be based on kind of a mutual understanding and mutual basis of similar philosophy, and we do not have that here.

We have the industry saying follow the law, and we have the administration saying there are a bunch of impediments that get in the way of following the law. And I thought one of the things that was most troubling about Secretary Porcari's testimony was he talked about looking for a process to bring us in, to bring the American-flag vessel industry in.

We are already in. The law requires us to be in, and yet they see us on the outside and they see reforms that give us a greater op-

portunity, as he put it, to participate. We have the first opportunity to participate under the law, not the last.

So I would say if we could have a fundamental understanding about the premise from where we depart, that would be wonderful.

Mr. LARSEN. Thank you.

Mr. Chairman, thank you.

Mr. LOBIONDO. Mr. Harris.

Dr. HARRIS. Thank you very much.

Let me ask. Obviously other shipments occur of oil between two American ports in everyday commerce in the United States. What percent of those shipments right now are delivered on Jones Act vessels?

Mr. ALLEGRETTI. All of them. Between U.S. ports?

Dr. HARRIS. Yes. So in everybody business conducted.

To put it in perspective, what we are expected to believe is that although on everyday business 100 percent of shipments can be delivered on a Jones Act vessel, when normal commerce is conducted in the sale and purchase of oil, when the U.S. decides to sell part of its stock of oil, we can only do one-half of 1 percent? Am I missing something here?

I mean, all of a sudden when the U.S. Government is the seller of the oil instead of some other producer, we can only ship 1/200 of it complying with Jones Act?

Again, I am astounded.

Mr. ALLEGRETTI. You are not missing anything, sir.

Dr. HARRIS. OK.

Mr. ALLEGRETTI. It goes to the issue of difference in the fundamental premise from which we depart.

Dr. HARRIS. Right. Because I assume that when a normal conventional trade of oil is made, the DOE and MarAd is not on the phone between the prospective purchaser and the seller saying, "You know, do not worry about that Jones Act because if you just contract for 500,000 barrels with an American producer, do not worry. We will allow you to."

I assume that is not the way business is normally conducted.

Mr. ALLEGRETTI. No, sir. No, sir. And actually one thing that is relevant to your question is that this industry, the coastwise transportation of petroleum industry has undergone a fundamental transformation in the last 25 years. Part of that was driven by the requirements of OPA–90, which required double hauls, and so that spurred the reconstruction of all vessels going forward that want to participate in that trade.

But the other thing that has changed fundamentally that is different than it was prior to OPA–90 is the partnership that exists between the oil companies and the vessel owners who transport their cargo where there is a fundamental partnership about how do we do this, what kinds of vessels do we want; are we both committed to flawless operations and no spills? And that is a very strong partnership, and so the state-of-the-art industry that exists today is part of that.

And so you cannot have that partnership without them having a close commercial working relationship.

Dr. HARRIS. So what you are suggesting is that the oil companies actually have a better relationship with the transport companies than the U.S. Government does, functional relationship.

Mr. ALLEGRETTI. That is undoubtedly true.

Dr. HARRIS. I also do not understand, and I guess I could have asked the Secretary although it is probably higher administration policy. What was the emergency about getting this oil shipped without complying with Jones Act?

I mean once the decision is made that you are going to release the oil, its effect on the market is there. I mean, the market assume 30 million barrels of extra production are there. If it is released today, tonight, tomorrow, next week, next month, the market knows it is there.

Is there an emergency that you can tell that meant we could not wait? Because as you suggest, some of these vessels could have been just recycled through the process. I mean, until we are literally on an everyday basis we ship 100 percent of that American produced oil. What was the emergency? Was there a perceived emergency?

Mr. ALLEGRETTI. Well, there was an articulated emergency by the Department of Energy which laid out initially the goal of all of these cargos being into the economy within 30 days of the announcement of the drawdown at the beginning of July.

Dr. HARRIS. And what was the purpose of that that you could tell?

I mean, I am sorry. I have to ask you because the Department of Energy is not here to ask the question. But I mean, did some economist suggest that, you know, at 35 days it does not work? The effect is gone. At 40 days the effect is gone? Is this voodoo economics, oil economics out of the department?

Mr. ALLEGRETTI. I mean, I do not know. I cannot tell you. I cannot speak for them, thankfully, and I cannot tell you what their basis of 30 days was, but here is what I can tell you, that it was a false goal on their part, and they knew that they were not going to achieve it, and I think they used it as a mechanism to exclude American vessels from the process.

Factually, although they had a 30-day goal, there were still cargos moving to terminal locations 90 days later.

Dr. HARRIS. On foreign vessels.

Mr. ALLEGRETTI. On foreign vessels. So they did not deliver the cargo for 90 days. So one has to conclude that somewhere in that 90-day process there had to be room for American vessels to participate.

And I will add this. The Department of Energy has provided not once scintilla of evidence to show what it suggests, that by the use of smaller American vessels we would have had a materially damaging effect on the President's policy. There is no evidence to suggest that.

Dr. HARRIS. Well, thank you very much.

And thank you, again, Mr. Chairman.

Mr. LOBIONDO. Mr. Landry.

Mr. LANDRY. Mr. Chairman, thank you.

My friend Mr. Harris has it right on the point. You know, at my house my wife and I set down some rules for my 7-year-old, and

when he does not want to follow them, he can give me every excuse in the world why he should not have to follow that rule. That kind of sounds like where we are at in this issue.

You know, it is like it is a missed opportunity by this agency. So if you break it down in simplistic terms, like Mr. Harris said, there was no immediate rush. These refineries were not running out of oil. Is that not correct?

Mr. ALLEGRETTI. That is correct.

Mr. LANDRY. So the immediate indication by the administration to the markets that it was going to make available 30 million barrels of oil was in their mind supposed to have an effect on the market to lower the price at the pump. That was the excuse, right?

But then those refineries are not short of oil. They basically just stopped some foreign oil from coming into the refinery at that time, said, "Wait a minute. We do not need that shipment right now. Those tankers can sit off in the Gulf of Mexico, anchor down, and wait till we get this 30 million barrels."

Of course, what we know is that it is voodoo economics, Mr. Harris. I mean, the whole thing was a scam, all right, to try to tell the American people that this administration was going something to lower the price at the pump, when it is real easy to do. You have just got to the bit in the ground down in the Gulf of Mexico.

And so we could have easily just said, "Follow the law and allow American workers to transport that oil over a 30-, 60-, 90-, 100-day period of time," than to try to shove all that oil into those refineries at that particular time because once they did that, those refineries simply picked up the phone and said, "Hey, Saudi Arabia. Send your oil back now because we have got all of the American oil we need, and now you can bring your tankers in."

Am I missing something?

Mr. ALLEGRETTI. No, I do not think so, Mr. Landry. I think that you have described it perfectly.

Mr. LANDRY. So really the agency just missed an opportunity to put Americans to work. So what we hear out of this administration and out of these agencies is how American jobs are so important to them and how their main goal is to create American jobs. And when they had an opportunity to create or preserve American jobs, they said no. Is that a correct statement?

Mr. ALLEGRETTI. That certainly was the effect of the actions taken by the agencies last summer.

Mr. LANDRY. And so to simply solve this problem, it just needs to be said that if we are going to release the oil out of the Strategic Petroleum Reserve, barring an emergency tantamount to refineries actually running out of crude, that there is really no excuse not to use American-flag vessels.

Mr. ALLEGRETTI. In our view, sir, none whatsoever.

Mr. LOBIONDO. Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

Mr. Allegretti, you wrote in your testimony, and I quote, "To this day DOE, DOT and DHS have not provided a satisfactory explanation for the American vessel unavailability determinations that amounted to a de facto blanket waiver of the Jones Act."

You also wrote that you have been unable to meet with the Department of Energy to discuss this issue. At the time of the 2011

SPR drawdown, what steps did you and the Jones Act industry take to make MarAd and other agencies aware of the availability of Jones act qualified vessels to move oil released from the SPR?

And what response did you receive from MarAd and other agencies?

Mr. ALLEGRETTI. Well, the process that MarAd had in place that time was to reach out directly to the owners of the vessels and to inquire of them what vessels do you have available and what timeframes, and so they were compiling the list that appeared on the MarAd Web site at that time.

And we found that the list was often inaccurate, and it also suffered from these sort of governmental decisions about that vessel really is not available because it is scheduled to go into the dry dock next month.

So we reached out to MarAd and we suggested a different process where we would be able to provide them with more real time information, which we have done, and we would be happy to share that with the committee, the report that we have submitted to MarAd. We have given them now the second version of it, which we updated from the first.

Mr. CUMMINGS. Now, when you presented that information, did you get any response? I mean, did they say, "Yeah, we got it. Thank you very much" or, "we are going to use this"? Did they say, "To hell with you"?

I mean, what did they do? What happened?

Mr. ALLEGRETTI. Well, we did get a response the first time we submitted it and, you know, a polite thank you. We will take a look at it, and then we submitted an update a couple of months later, and I do not think we have actually received a response to that second submission.

Mr. CUMMINGS. And what kind of details, I mean, did you provide them with? I mean, when you say you gave them up to date, what does that mean?

Mr. ALLEGRETTI. Well, we have reached out to our members, the members of American Maritime Partnership and AWO and asked them to tell us what vessels do they have available, and we asked them to do that in three basic tranches. One is vessels immediately available today to move SPR oil.

The second tranche is vessels that will become available in the next 30 days, and then the third is vessels that might be reasonably available in the next 90 days, and then beyond that if it becomes very speculative.

So we do list all other American vessels, but without a designation of their availability because we don't have that information.

So what this shows them, just to give you the snapshot of what this says, is that there are currently 31 vessels available on the spot market today or will be available in the next 30 days, and they have a collective capacity of about 2½ million barrels of tankage.

Mr. CUMMINGS. So subsequent to the drawdown, can you identify the agencies with whom you have met to discuss this issue, and what responses have you received from them?

Mr. ALLEGRETTI. Well, we have met with, of course, MarAd and DOT, and I would say, you know, those are largely positive ex-

changes, although we have not gotten to the place where we have a shared premise about what the law says. I would put it that way.

We have been very disappointed in our outreach to the Department of Energy. We actually had a situation where we were trying to set up a meeting. We think the Energy Department would benefit by a little bit of education about marine transportation. They were resistant to setting it up.

We reached out to a U.S. Senator and asked her to help us get the meeting set up, and she did that for us. So we had a meeting set on a day in March, and we brought in four executives of tank barge companies from around the country. They all flew in that day. We took them over to the Department of Energy. We went through the security process, went up to the conference room to an empty table to be told that the Department of Energy decided not to meet with us.

Mr. CUMMINGS. Did they say why?

Mr. ALLEGRETTI. No. And we called them subsequently to ask what happened. Can we talk? And none of our phone calls were returned.

Mr. CUMMINGS. Whom have you attempted to meeting with? I mean, who were you trying to meet with? Who did you think you wanted to meet with?

Mr. ALLEGRETTI. I had better check the record so as not to misstate that. We did have the names of a couple of folks who we thought were scheduled to meet with us.

Mr. CUMMINGS. I mean, did you have some written confirmation? I mean, you did not just show up. You did not just barge in?

Mr. ALLEGRETTI. No, we do not barge in, sir.

[Laughter.]

Mr. CUMMINGS. No pun intended.

Mr. ALLEGRETTI. No pun intended. No, we had written confirmation that the meeting was set for, as I recall, 11:00 a.m. on this particular date, and we met with our folks earlier that morning, and we did a little bit of huddling to get ready for the meeting, and we went over there and they did not show up.

Mr. CUMMINGS. I see my time has expired. Thank you, Mr. Chairman.

Dr. HARRIS. [presiding.] I recognize Ms. Hirono.

Ms. HIRONO. Thank you very much.

And I do apologize for being late for the hearing. I think that we share the concerns about the blanket waiver of the Jones Act whenever the reserves are tapped. I have that concern also, but going forward, part of the issue apparently is the capacity of the Jones Act ships to be able to transport the oil that is release.

Is there anything that we can do in the future to expand the capacity of our Jones Act ships? Do we need to, you know, do a lot more to support shipbuilding, for Jones Act ships being built in our country? What are some of your thoughts so that we can avoid this kind of or minimize a blanket waiver of the Jones Act every time we release oil from the reserves?

Mr. ALLEGRETTI. Thank you, ma'am.

I would like to narrow my answer to just the vessels that are engaged in the coastwise transportation of petroleum because that is sort of the subject of the hearing today.

I would say that the size of the fleet, of the American fleet is sized to the requirements of the customer base. So you do not find ordinarily lots of excess capacity in the fleet. You would not expect that if people would build very expensive capital assets for which there is no work.

So the system of commercial transportation actually works pretty well in managing supply and demand, and I do not think that there is a need for Government incentive to expand the size of that fleet because I think the fleet is sized in the requirements of the customer base.

Ms. HIRONO. So does that mean that every time that there is a release from our reserves that we are going to see a blanket waiver and we just have to live with it? The Jones Act ships or you all have to live with it?

Mr. ALLEGRETTI. Oh, no, not at all. No, not at all because, you know, the system is not perfect. So to the extent that where we stand today is 31 available vessels of aggregate capacity of 2½ million barrels, there is an excess in the market at least insofar as the customer requirements exist today. So they are available to move SPR oil.

And so if we would use those first to the full extent of their availability and then seek Jones Act waivers, that would seem to be making the best use of American assets with the surge capacity of foreign assets when we run out of availability.

Ms. HIRONO. That makes a lot of sense. So why are we not going that route?

Mr. ALLEGRETTI. I am not sure I know the answer to that. It has really been a subject of some curiosity to us. I guess that is as kind a way as I can put it.

The commentary we heard today from the department, I think, actually suggests a grim picture for the future. We have had a year of controversy about this issue. Congress has been fantastic in the clarity of its expression about the importance and integrity of the Jones Act, and yet if you read Secretary Porcari's statement, what you will see is essentially a justification of past action, past action which resulted in more than 99 percent of the oil moving on foreign bottoms.

And when you look to the forward program of what will we do in the future different, I think it is very grim. I think what that testimony says is that the Jones Act fleet is hampered by impediments that make it difficult for us to use it for the transportation of SPR oil. I see no evidence of a change in mentality. I see no evidence to suggest that if there is another drawdown of the SPR after July 1, after the Iranian situation develops internationally, that we will not find ourselves in the same exact situation of 99 percent of the oil moving on foreign bottoms because the Department of Energy will have established minimum lot sizes that the oil purchasers will take full advantage of.

So I think looking forward, I wish I could say that I thought that we had the basis for a better understanding, but I do not see it in the written testimony.

Ms. HIRONO. And the minimum lot size, that is an administrative decision. It is not based on any requirement of any law or any regulation that is in place?

Mr. ALLEGRETTI. That is exactly right, and it is inconsistent with the published notice of sale that the Department of Energy published for the public. So what you have is a public document that says one thing, and you have an unwritten criteria that says something different, which is, in fact, the de facto criteria that drove all of the decisions about transportation.

Ms. HIRONO. Thank you.

I think there must be something we can do, Mr. Chairman, because we seem to all be on the same the page as to the results that we are looking for.

Thank you.

Dr. HARRIS. Thank you very much.

Let me just make a brief comment. Going forward, could you fill us in on what the industry looks like? You know, we are having an American renaissance of energy in the country where I suspect that we are going to have more, not fewer shipments of energy between American ports. What is the industry doing? Are more ships being built? Is production increasing? Is it stable?

Could you just give us an idea where it is going?

Mr. ALLEGRETTI. I can give you an anecdotal idea. I would not say that it is a scientifically valid idea.

What I hear from the folks that I talk to is that they are bullish on the future of marine transportation for petroleum and energy products in the United States because of developing technologies, because of new opportunities on the North Slope of Alaska, and that they are staying very close to their customer base.

That is what drives decisions for construction of vessels, is understanding customer requirements and the customer's expectation of transportation needs over the long term. So I would say a short answer is I think they feel bullish about the future of that part of the business.

Dr. HARRIS. And is our capacity increasing in our ability to ship on American-flag vessels?

Mr. ALLEGRETTI. In the petroleum area?

Dr. HARRIS. Yes.

Mr. ALLEGRETTI. Yes. Domestically yes.

Dr. HARRIS. Thank you.

Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

Just a final comment from me. First off, you have given us a lot of food for thought on waiver process reforms. I think that is an important direction for us to look. So I appreciate your testimony.

Second is if the available capacity of the U.S. fleet is something less than 30 million, I hope we can focus on 100 percent of that capacity being available and being used for whatever number short of 30 that is being used.

Finally, I have great respect for my friend from Louisiana. Unfortunately he is not here, but the effort in Libya last year, there is a lot of debate about it. We are here debating about the implementation of the Jones Act as it applies to the SPR and not so much about the international effort in Libya or the related international effort to release oil from national Strategic Petroleum Reserves, not just in the U.S. but in other countries in order to alleviate price

spikes that resulted from, first off, the potential action and then the actual action in Libya.

I personally do not characterize the release in SPR as a scam in any way, shape or form by this administration, nor did I characterize it as a scam under the second Bush administration. That is not my view, and I want to be clear about that.

I do have problems with how it was implemented and the purpose of this hearing and the reason I called for or asked the Chairman for this hearing was to consider how we can improve the implementation of any SPR drawdown so that we are better utilizing the availability of a qualified and capable and available U.S. fleet. That is what our goal should be.

Mr. ALLEGRETTI. Mr. Larsen, might I just say I hope you heard my answer to Mr. Landry as speaking to the issue of Jones Act and not to the larger foreign policy question.

Dr. HARRIS. Ms. Hirono, do you have a closing? Ms. Hirono, do you have a statement?

No. No further comments?

[No response.]

Dr. HARRIS. Well, if there are no further questions, I thank Mr. Allegretti again for his testimony and the Members for their participation.

The subcommittee stands adjourned.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

STATEMENT OF JOHN D. PORCARI
DEPUTY SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

Strategic Petroleum Reserve Drawdown

June 27, 2012

Good morning (*Chairman LoBiondo, Ranking Member Larsen*), and Members of the Subcommittee. Thank you for the opportunity to discuss the Maritime Administration's (MARAD) role in determining vessel availability during Strategic Petroleum Reserve (SPR) drawdowns. I am pleased to appear before you today to highlight MARAD's role in supporting the U.S.-flag fleet in the case of an SPR drawdown.

The Jones Act is one of the strongest elements of U.S. maritime policy. It encourages investment in privately owned U.S. companies, shipyards, merchant vessels, and employment of U.S. citizens in the maritime industry. Congress and the Executive Branch have long viewed the sustainment of our domestic maritime industry to be necessary for our national and economic security. The Administration supports the Jones Act and the Maritime Administration takes seriously its responsibility to promote this industry in accordance with this policy.

Strategic Petroleum Reserve Background

Congress created the SPR in 1975 under the Energy Policy and Conservation Act, following the 1973-1974 oil embargoes. The Department of Energy (DOE) is responsible for managing the SPR and for initiating actions to release crude oil from the Reserve when directed by the President. The act of transporting crude oil from the SPR requires interagency coordination and is governed by the 1987 and 1990 Memoranda of Agreement between DOE, the former Customs Service now embodied as Customs and Border Protection in the Department of Homeland Security (DHS), and the Department of Transportation (through MARAD).

The process begins with a DOE action to announce a drawdown of the SPR, generally pursuant to a specific authorization from the President, pursuant to the Energy and Policy Conservation Act (42 USC 6240, 6241). The Secretary of Energy may draw down and sell petroleum from the SPR at a rate the Secretary of Energy determines and in accordance with established SPR competitive sales procedures.

DOE is responsible for issuing the official Notice of Sale to potential bidders. The Notice of Sale contains the amount of oil to be released, the terms and conditions of the sale, and specific instructions for preparation and submission of offers. Included within the Notice of Sale are Sales Provisions which establish how bidders are to submit their bids, the timeframe for delivery,

minimum delivery lot sizes, delivery points, terminal requirements, and vessel loading requirements.

Each bidder is responsible for its own analysis of available transportation options for loading at designated SPR terminals and arranging for transportation through direct negotiation with private transportation providers.

Since the establishment of the SPR, there have been three drawdowns authorized by the President associated with oil supply disruptions caused by Operations Desert Shield/Desert Storm in 1991, Hurricane Katrina in 2005, and instability in Libya in 2011.

Jones Act waivers are issued under the authority of the Secretary of the Department of Homeland Security (DHS), and are enforced by Customs and Border Protection (CBP). As part of DHS' deliberations, MARAD is required to determine if suitable U.S. flag vessels are available. The Department of Defense (DOD) may determine if a waiver is essential to the national defense.

Jones Act/Domestic Fleet Overview

When cargoes, including SPR oil, are moved by water between domestic points, the Jones Act, the commonly used reference for maritime cabotage law (46 U.S.C. § 55102), generally requires that the goods be transported on vessels that are U.S.-built, U.S.-flagged, and U.S.-citizen owned and crewed. The fundamental purpose of the Jones Act is to maintain reliable domestic shipping services and to help sustain a domestic maritime industry of shipbuilders, vessel operators, and merchant mariners. The Jones Act ensures that vessels sailing on our Nation's waterways meet American safety and environmental standards. Moreover, the Jones Act also ensures availability of additional vessel capacity and availability of trained mariners for the Ready Reserve Force in times of war or national emergency.

Our Jones Act fleet is comprised of the vessel types and carrying capacities that serve our Nation's domestic commerce along our coasts, the inland waterways and the Great Lakes. The domestic fleet consistently and reliably serves many diverse markets, both large and small. Whether cargo needs to move to Alaska or Guam, Houston or Cleveland – our domestic fleet delivers the goods. Even as the fleet continues to meet the needs of existing markets, it is also responsive to new opportunities. For example, the offshore supply vessel segment of the Jones Act fleet has grown rapidly to serve the requirements of the petroleum industry in the Gulf of Mexico. Much of our agricultural production is tied to our inland waterways transportation system, where tugs and barges move millions of tons of grain destined for domestic and overseas markets. Each year, nearly 870 million barrels of crude oil and petroleum products are also moved along our waterways by tugs and tank barges to power our industries as well as the vehicles we drive.

The Jones Act fleet is also a major source of employment for U.S. citizens in the maritime industry, generating jobs in shipbuilding and support activities across the Nation. Thousands of Americans work in our shipyards and aboard our ships. If called upon, many of the mariners sailing in the coastwise trades are available and capable of being mobilized rapidly to sail internationally in time of war or national emergency.

2011 SPR Drawdown

In the summer of 2011, the oil supply disruptions caused by the unavailability of Libyan light/sweet crude oil tightened gasoline and fuel oil markets, which were further aggravated by the loss of refined product exports from Japan following the Tohoku earthquake that damaged refineries earlier that year. The loss of Libyan crude oil created a risk of significant economic slowdown in the United States and around the globe, a slowdown that would have resulted in greater pressure on our economy and on American jobs. The magnitude of the Libyan disruption on global oil markets was much more significant than the market disruption that triggered the decision to release strategic stocks in the wake of Hurricanes Katrina and Rita.

President Obama authorized the SPR sale as part of a larger, coordinated release of petroleum by International Energy Agency (IEA) member countries in response to the disruption of oil supplies from Libya. On June 23, 2011, the President issued a finding that a drawdown and sale from the SPR were required by U.S. obligations under the International Energy Program implemented by the IEA, as provided in the Energy Policy and Conservation Act. The U.S. committed to provide 30 million of the 60 million barrels the IEA requested to be released by its member countries. Because of the urgency, the IEA sought to have all the oil to market within 30 days. Most U.S. loadings were complete by August 31, 2011. In total, 30.64 million barrels of U.S. SPR oil were sold; 24.31 million barrels were moved by tanker, 6.18 million barrels were shipped by pipeline, and 150,000 barrels were moved by a coastwise qualified U.S.-flag barge.

At this point, I want to make it very clear that this Administration did not conduct this SPR drawdown under a blanket waiver of the Jones Act, as has been typically done, and instead allowed the process to be carried out by considering individual waiver applications on a case-by-case basis, consistent with the Jones Act, in order to provide the best opportunity for U.S.-flag vessels to compete to move SPR crude oil. We believed this process would accomplish the goals of the Jones Act while meeting the key objective of moving oil to market quickly in order minimize U.S. petroleum product market disruptions. Waivers were thus only considered on a case-by case-basis, after evaluation of waiver requests, assessment of DOE's drawdown requirements and a review of Jones Act-qualified vessel availability. These actions were in accordance with established mechanisms governing waiver requests and existing interagency coordination processes.

The DOE is authorized to set terms and requirements of an SPR drawdown. To meet DOE's 31-day schedule of the 2011 drawdown, DOE released stocks from the SPR on an expedited basis. A complicating factor in an SPR drawdown is that its success relies on third-party bidders to purchase the oil. Buyers have the choice of using tanker, barge, or pipeline to best meet their individual requirements. The Jones Act does not apply to cargo movements by pipeline.

In addition, purchaser-traders can choose not to buy SPR oil if the terms are not suitable for their business. Of the crude oil cargoes moved on the water, most crude oil is shipped in large tankers (i.e., with a capacity of 500,000 barrels or greater), which take advantage of efficiencies and economies of scale. Many crude oil supply chains are structured to handle only these larger tankers, and do not have facilities or operations which can accommodate smaller barges. This is

consistent with efforts to maintain crude stock levels and to meet future refinery production schedules.

Moreover, in a 1985 study evaluating DOE's plans to sell oil from the SPR, GAO found that allowing many smaller purchases could impair DOE's maximum drawdown capabilities because it is easier to accommodate fewer large purchases per day than many small ones. GAO also found that the use of many small barges to deliver SPR oil could slow the loading rate, resulting in increased barge traffic, which could overwhelm the capacity of SPR terminals to handle them. This challenge is still true today, given that the delivery of SPR crude oil must be coincident with commercial activities at the DOE delivery points. [1]

MARAD announced information related to the drawdown on its website and sought specific information on the number, size, and type of available U.S. coastwise-qualified vessels to ensure maximum use of U.S.-flag vessels.

Due to the ordinary course of business booking schedules by qualified carriers, and the typical immediacy of release of the SPR stock in the 2011 drawdown, there was, as expected, limited availability of U.S.-flag vessels. Of the 55 tankers in the Jones Act fleet, none of the large tankers (350,000 barrels or greater, as referred to in the DOE SPR Notice of Sale) were available. Owners and operators advised MARAD that there were 30 U.S.-flag, coastwise qualified tank barges that were technically qualified and interested in carrying SPR oil for the 31-day drawdown window. The capacity range for the available barges was from 80,000 to 234,000 barrels. Although the barges exceeded DOE's minimum delivery lot size of 40,000 barrels, the drawdown could not have been accomplished within the DOE-prescribed timeframe using only these smaller barge vessels because they may take longer to load, have less capacity and have longer travel times than large tankers.

During MARAD's assessment of vessel availability, the owner of two large tankers initially expressed interest in carrying SPR oil in the 330,000-barrel range. At MARAD's urging and in consultation with DOE and DHS, DOE lowered the minimum lot size of its Notice of Sale to 300,000 barrels in order to increase opportunities for the U.S.-flag fleet. Nonetheless, the two coastwise qualified crude oil tankers that initially expressed interest were not in fact available. One was dry-docked and the other was under charter and required notice of at least 14 days to become available. Therefore, these tankers were effectively not available in the timeframe of the drawdown.

In the 2011 SPR drawdown, U.S.-flag carriers had the opportunity to participate in every shipment. During this drawdown, CBP, which enforces the Jones Act, asked MARAD for determinations of availability on 44 shipments. Most of the bidders opted to move the petroleum in lots of 500,000 barrels or more of oil, in accordance with industry preferences. In each case,

---

[1] Evaluation of The Department of Energy's Plan To Sell Oil From The Strategic Petroleum Reserve, BY THE COMPTROLLER GENERAL Report to the Chairman, Subcommittee on Fossil and Synthetic Fuels, Committee on Energy and Commerce, House of Representatives of The United States, GAO/WED-85-80, JUNE 5.1986.

See http://www.gao.gov/assets/150/142896.pdf.

MARAD found no U.S.-flag tankers with capacity in excess of 300,000 barrels to be available. Approximately 25 million barrels of crude oil were transported as a result of waivers granted. In each case, Jones Act waivers were only granted by DHS after MARAD made a carefully-considered determination of non-availability. One buyer purchased one smaller lot of 150,000 barrels, which was carried on a U.S.-flag barge.

The optimal market condition for the tanker/tank barge industry is balance between vessel supply and demand, and we have found market conditions in the domestic petroleum trades are generally stable. Excess capacity is most likely to occur in the tug and barge segment, rather than in the larger self-propelled tanker segment of the tanker fleet. At any given time there will be some idle vessel capacity available for a limited time due to seasonal or other changes in demand. But generally, because the owners keep their vessels employed as much as possible, the size of the pool of idle vessels is small and is not likely to be sufficient to carry more than a fractional portion of a large, short-term surge in demand such as occurs in an SPR drawdown.

MARAD's Goal

MARAD's primary goal during an SPR drawdown is to ensure U.S.-flag fleet participation to the fullest extent possible consistent with the purpose of the Jones Act and the national objectives of the drawdown itself. Although MARAD makes every effort to maximize the use of the domestic fleet, the parameters of an SPR drawdown are established by DOE and carried out through private sector traders and transportation providers in an effort to successfully meet the expedited timeframe and objectives of the drawdown. The Administration does not believe that the Jones Act is inconsistent with the procedure necessary for a successful SPR drawdown.

MARAD's Role

MARAD's role is to determine the availability of U.S.-flagged vessels under the applicable statutory provisions authorizing Jones Act waivers and DOE's specific requirements for the drawdown, and to inform CBP of that availability relevant to requests for Jones Act waivers pending with DHS. MARAD determines availability by surveying the vessel owners of the U.S. coastwise-qualified industry to establish whether any have an ability or willingness to carry the cargo for which a waiver has been sought.

Jones Act Waivers

Congress has provided limited authority for waiving the Jones Act in 46 U.S.C. § 501. In the 2011 drawdown, if a purchaser of SPR oil chose to take delivery by vessel and was unable to find a suitable U.S. coastwise-qualified tank vessel, that buyer could request a Jones Act waiver.

Jones Act waiver requests are administered by CBP within DHS. Waivers may be issued by the Secretary of DHS. DHS consults with MARAD on the availability of U.S. coastwise-qualified vessels prior to making a decision to waive the Jones Act.

As implemented in 2011, upon receipt of a request, CBP committed to request within one day that MARAD determine the availability of suitable coastwise-qualified vessels to meet the waiver requestor's SPR contract commitment prior to making a waiver decision. To facilitate its

determination, MARAD consulted with all Jones Act vessel owners to advise them of the carriage opportunity. Jones Act vessel operators then had 24 hours from receipt of initial notification to respond to MARAD with the particulars of vessel availability and position. MARAD checked the requirements of each individual request with DOE to validate the requirements of the request, including the vessel type, size, and time frame of the cargo movement. Within 48 hours of referral by CBP, MARAD responded to CBP with an availability determination regarding U.S.-flag vessels capable of meeting the requirements and parameters set forth by DOE in the Notice of Sale, as well as the information by which availability was determined. CBP, as the final waiver authority, then acted to grant or deny the waiver request.

Implementing Future Drawdowns

Following the 2011 drawdown, new legislative language was included in the 2012 Consolidated Appropriations Act (P.L.112-74, Sec. 529) and the Consolidated and Further Continuing Appropriations Act (P.L. 112-55, Sec. 172) to require more information be included in Jones Act waiver determinations regarding SPR, and that MARAD provide additional information to DHS. Specifically, the Consolidated Appropriations Act prohibits Jones Act waivers from being issued unless the Secretary of Homeland Security takes "adequate measures to ensure the use of United States flag vessels." Additionally, the Consolidated and Further Continuing Appropriations Act of 2012 prohibits a finding of non-availability of qualified U.S. flag capacity "unless as part of that determination the Secretary of Transportation, after consultation with representatives from the U.S.-flag maritime industry, provides to the Secretary of Homeland Security a list of U.S.-flag vessels with single or collective capacity that may be capable of providing the requested transportation services and a written justification for not using such United States flag vessels."

Consistent with the new legislative requirements, MARAD, DOE, and DHS are working together to better coordinate their SPR related processes and procedures. MARAD has engaged in several meetings with its partner agencies (DOE, DHS and DOD) to better identify impediments to using U.S.-flag vessels during a drawdown, should there be one. These impediments include facility constraints, time constraints, competing commercial activity at SPR terminals impacting berth availability, SPR oil bidder preferences and business practices, and the implications these have for vessel availability. These improved procedures are designed to ensure the maximum participation of U.S.-flag vessels through consultation with the maritime community and to improve the transparency of the process.

MARAD believes that the important lessons learned during the 2011 drawdown will enable future SPR releases to provide additional opportunities for Jones Act carriers. We have identified a range of actions to encourage the use of U.S.-flag tankers, articulated tug barges (ATBs), and barges, while achieving the objectives of an SPR drawdown and are working with our federal agency partners to implement them.
I look forward to sharing more information on this subject with you in the near future.

Conclusion

SPR drawdowns by their very nature respond to national emergencies requiring Presidential action. The SPR drawdown of 2011 was accomplished without a blanket waiver of the Jones

Act and involved a U.S. Jones Act carrier for the first time in memory. We expect that with sufficient advance scenario planning, should future drawdowns be necessary, they will present even more opportunities for Jones Act carriers. The Maritime Administration seeks to ensure the maximum use of U.S.-flag vessels to carry domestic shipments in fulfillment of the requirements of the Jones Act. In 2011, the otherwise full employment of the U.S. tanker fleet and loading constraints resulted in limited opportunities for use of Jones Act vessels.

Despite these limitations, the Administration made significant efforts to expand opportunities for U.S.-flag transport of the petroleum released from the SPR. The Administration did not grant a blanket waiver of the Jones Act, and MARAD scrutinized each individual waiver request. In addition, the Maritime Administration worked with DOE and DHS to increase the opportunity for US-flag tanker participation.

With regard to a possible SPR drawdown in the future, MARAD is finalizing new procedures to ensure compliance with the 2012 Consolidated Appropriations Act and the Consolidated and Further Continuing Appropriations Act and is working closely with other agencies to achieve the maximum use of suitable U.S.-flag vessels.

Mr. Chairman, I wish to express my appreciation for the opportunity to present and discuss MARAD's role in the SPR drawdown process and for the Committee's continuing support for maritime programs. I am happy to respond to any questions you and the members of this Committee may have.

##

TESTIMONY OF THOMAS ALLEGRETTI, PRESIDENT, THE AMERICAN WATERWAYS OPERATORS, ON BEHALF OF THE AMERICAN MARITIME PARTNERSHIP, ON THE SUBJECT OF JONES ACT WAIVERS RELATED TO STRATEGIC PETROLEUM RESERVE DRAW DOWNS

TESTIMONY GIVEN BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE'S COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE

JUNE 27, 2012

Good morning. I am Thomas Allegretti, president of The American Waterways Operators (AWO), the national trade association for the U.S. inland and coastal tugboat, towboat, and barge industry. Today I am testifying on behalf of AWO and the American Maritime Partnership (AMP), the largest legislative coalition in the history of the American maritime industry, representing every element of our nation's domestic shipping business.

Thank you for the opportunity to testify today about issues related to the Administration's 2011 Strategic Petroleum Reserve (SPR) draw down, which occurred almost exactly one year ago, and particularly about issues related to the Administration's issuance of Jones Act waivers during that draw down. My testimony will focus first on the circumstances leading to Jones Act waivers during the 2011 draw down and then turn to the worrisome potential for Jones Act waivers during a future draw down.

Brief Summary of Testimony

In the summer of 2011, an SPR draw down designed to help Americans actually had the opposite impact for American vessel operators and American mariners. Despite longstanding law to the contrary, virtually all transportation of crude oil from our nation's SPR was effectively reserved for foreign vessels crewed by foreign mariners while American crews, vessels, and companies stood by available but excluded from the process. As recounted by the *New York Times,* the Administration "repeatedly bypassed federal law by allowing all the oil to move on foreign-owned vessels." The *Times* added:

> Even as unemployment hovered over 9 percent, the administration approved dozens of applications to transport nearly 30 million barrels of domestic crude oil within the borders of the United States on tankers employing foreign crews and flying the flags of the Marshall Islands, Panama and other foreign countries.

Particularly troubling was the Administration's approach to approving the waivers. Despite President Obama's own stated support for the Jones Act, there is strong evidence, described in detail below, that Administration officials established an informal minimum delivery lot size of 500,000 barrels – a level that they knew would effectively exclude the U.S. fleet – in direct contradiction of the much smaller minimum delivery lot sizes that were

established in the Department of Energy's (DOE) own Notice of Sale; conveyed that information informally to potential purchasers of crude oil in advance of the formal SPR sale; promised crude oil purchasers in advance that Jones Act waiver requests would be approved for volumes of 500,000 barrels or more and then fulfilled that promise without fail; and almost universally evaded the Jones Act, a fundamental American transportation law. The approach was contrary to federal law governing the sale, draw down, and transportation of crude oil from the SPR. The advance guarantee of approval for all Jones Act waivers is particularly odious because the Jones Act waiver process is a regulated administrative legal proceeding governed by federal rules of fairness and due process.

That first Jones Act waiver application was approved for a vessel named **PETROPAVLOVSK**, a large tanker flying the flag of Liberia, homeported in Monrovia, built in Japan, and owned/managed from Cyprus by Sovcomflot, a Russian State-owned corporation. That first waiver was for oil transportation between Texas and Louisiana, indisputably a movement requiring an American vessel under the Jones Act. Shell Trading was awarded a contract as an SPR crude oil purchaser on July 7, requested the Jones Act waiver for a 500,000 barrel movement on **PETROPAVLOVSK** the same day, and saw it approved by four federal departments/agencies within 24 hours. The approval of that waiver was followed by 51 similar Jones Act waivers to the benefit of foreign vessels and foreign shipping companies in the space of several months – more waivers of this kind, we believe, than in the entire 90-plus year history of the Jones Act. Ultimately, the vessels used for the SPR draw down flew the flags of the Bahamas, Greece, the Isle of Man, Liberia, the Marshall Islands, Panama, Singapore, and the United Kingdom. The 2011 SPR draw down occurred with virtually no participation by the American maritime industry despite unambiguous laws requiring the use of American vessels to move the SPR oil. To the best of our knowledge, only one small movement occurred on an American vessel. This record of waivers in 2011 is a serious stain on the integrity of the Jones Act.

The American maritime industry, deeply distressed by the 2011 draw down, has started early and is taking all possible steps to avoid a similar circumstance should another draw down occur this year, as has been widely discussed in the press and as the Administration has repeatedly said remains an option. Since the 2011 draw down, significant additional legislation has been enacted and more is pending to emphasize to the DOE and the Departments of Transportation and Homeland Security that Congress will not allow America's federal transportation laws to be casually ignored. We deeply appreciate the leadership of this Committee, and that of many other members of the House and the Senate, in enacting these new laws, and we look forward to working with this Subcommittee to avoid a repeat of the unacceptable events of 2011. The remainder of this testimony addresses this situation in more detail.

Detailed Background

1) THE 2011 SPR DRAW DOWN

On June 23, 2011, approximately one year ago, the Obama Administration announced a draw down of 30 million barrels of petroleum from our nation's SPR. As part of that announcement, Energy Secretary Steven Chu said the draw down was necessary "in response to

the ongoing loss of crude oil due to supply disruptions in Libya and other countries and their impact on the global economic recovery."

A) Transportation of Crude Oil During a Draw Down

The key issue in this hearing, of course, is the transportation of the crude oil in the SPR to refineries in the United States. Through a highly regulated process, potential purchasers of crude oil submit bids to DOE to purchase SPR oil and then are responsible for the transportation of the oil from the SPR location in the U.S. to a specific refinery in the U.S. Transportation can occur either by pipeline or by vessel on either tankers or barges.

Because transportation under an SPR draw down occurs between two points in the United States, any maritime transportation is subject to the Jones Act, the fundamental law regulating domestic American maritime transportation. *46 U.S.C. § 55102.* The Jones Act requires that any merchandise transported between two points in the United States move on American vessels – vessels owned by Americans, built in the United States, registered in the United States, and crewed by Americans. I don't need to reiterate here why the Jones Act is important to our country. It is essential to our national, economic and homeland security, and for those reasons it has received strong support from every Administration and from every Congress of this generation. There is no dispute that SPR movements are subject to the Jones Act. In fact, DOE's own regulations for SPR draw downs stipulate that "failure to comply with the Jones Act ... will be considered to be a failure to comply with the terms of any contract [and p]urchasers who have failed to comply with the Jones Act" may be subject to penalties even beyond those imposed by the Jones Act itself. *10 C.F.R. Part 625, Appendix A, Price Competitive Sale of Strategic Petroleum Reserve Petroleum, C.2.* There is no dispute by any party that the Jones Act fully applies to the SPR movements at issue here today.

B) Broad Jones Act Waiver Immediately Rescinded

The initial announcement of the 2011 draw down on June 23, 2011 included a blanket Jones Act waiver. In essence, a blanket waiver would have put aside the Jones Act and allowed the transportation of SPR oil by foreign vessels. According to emails received by AMP under the Freedom of Information Act (FOIA), DOE officials notified the U.S. Maritime Administration (MARAD), the agency responsible for administering the Jones Act within the U.S. Department of Transportation (DOT), of the blanket waiver at 9:51 a.m. on the very morning of the public draw down announcement, a notification that appears to have caught MARAD officials off guard.[1] Based on FOIA information, it appears that MARAD Administrator David Matsuda did not learn of the plans for a blanket Jones Act waiver until about 1 hour before the public announcement of it.[2]

---

[1] Email from Lindsay Partusch, DOE, to MARAD officials, June 23, 2011, 9:51 a.m.

[2] Email from David Matsuda, MARAD, to Chris McMahon, MARAD, copied to six other MARAD officials. Sent at 11:05 a.m. on June 23, 2011. Shortly before the public announcement, Matsuda was responding to an email informing him of the announcement and blanket waiver. "So they are releasing something today?!!" he asked. "Do we oppose? What was the result of our survey of vessels available for work? Can we put some contingencies in their waiver, at least?"

MARAD fought back against the blanket waiver, even though it had already been publicly announced. A MARAD official reported to his superiors at the agency that "[MARAD has] offered to locate [U.S.] tankers on a case by case basis to support the release but DOE is choosing to seek a general waiver of the Jones Act..."[3] An email from the MARAD to DOE described a blanket waiver as "premature," reminded the DOE of a Memorandum of Agreement to "make full use of American vessels," and provided a "listing of U.S.-flag tank vessels that can be made available to carry this cargo."[4] Faced almost immediately with opposition from within its own Administration and from others who noted that significant American tank vessel capacity was available to assist with the draw down, the Administration and DOE, within 24 hours, rescinded the blanket waiver and announced that the Jones Act would apply. Another email from a MARAD official described the situation this way:

> DOE tried to put through Jones Act waiver as part of the SPR draw down, however, the Maritime Administrator (Matsuda) and the DOT Secretary went to the White House and had it removed. The new amended solicitation is attached (without a waiver provision).[5]

The Jones Act requires that American vessels be used between U.S. coastal and inland points in an SPR draw down. However, in certain cases where a national security declaration has been made, federal law also permits so-called "case-by-case" Jones Act waivers in circumstances where no American vessel is available. Three federal departments/agencies share the responsibilities for considering waiver requests per the SPR draw down – MARAD, which determines if American vessels are available; U.S. Customs and Border Protection (CBP), which has legal authority to grant the waivers; and the Department of Homeland Security (DHS), which ultimately signs the waiver.[6] The waiver process is governed by 46 U.S.C. § 501(b).

On June 24, the very day that the broad Jones Act waiver was rescinded, the DOE issued its "Notice of Sale of SPR Oil," outlining its detailed specifications for the purchase, transportation and delivery of the SPR oil. In its Notice of Sale, as amended, DOE specifically required compliance with its Standard Sales Provisions at 10 C.F.R. Part 625, including the requirement for compliance with the Jones Act. The Notice of Sale established "minimum delivery lot sizes" of 40,000 barrels for barges and 300,000 barrels for self-propelled vessels.[7]

C) DOE's Actions Related to the Jones Act

Within days of the release of the Notice of Sale, DOE took actions that irrevocably altered the normal SPR draw down process in a manner that assured the exclusion of all U.S.

---

[3] Email from Mike Hokana, MARAD, to Chris McMahon, MARAD, June 23, 2011, 11:30 a.m.

[4] Email from Hokana, MARAD, to Kelly Gele, DOE contracting officer, June 24, 2011, 8:36 a.m.

[5] Email from Hokana, MARAD, June 24, 2011, 12:17 p.m.

[6] In addition to those three traditionally involved departments/agencies, DOE became part of this SPR process, "verifying" that the waiver request was consistent with the draw down.

[7] Notice of Sale, DE-NS96-11PO97000, Supplements and Amendments to the Standard Sales Provision, section 3. The tanker limit was originally set at 350,000 barrels but then quickly reduced to 300,000 barrels purportedly to increase opportunities for American vessel participation in the draw down.

vessels. Even today, one year after the fact, it is still not entirely clear what happened behind the scenes at DOE and other federal departments and agencies to circumvent the Jones Act and exclude Americans from the movement of the SPR oil.

What is known is that DOE expressly informed potential purchasers of oil in advance that Jones Act waiver requests for large SPR shipments would be approved, an action that effectively excluded the entire American fleet. Ironically, DOE offered that assurance of guaranteed Jones Act waivers within days of the rescission of the blanket waiver and despite the facts that: 1) no waivers had even been requested yet; and 2) DOE is not the federal department with jurisdiction or authority over the Jones Act administrative waiver process. On June 28, 2011, David Sandalow, DOE's assistant secretary for policy and international affairs, answered questions from potential purchasers during a DOE briefing. *Inside Energy Extra* reported on the following exchange between Sandalow and one potential purchaser:

> A caller from Valero said no US ships could hold 500,000 barrels, and asked if there would be a de-facto blanket [Jones Act] waiver for large-volume sales.
>
> "Once a bid has been awarded, then, yes, a waiver would be granted in that situation," Sandalow said. "But you've got to apply for it."[8]

An advance guarantee of waiver approval by a government official is astounding because the Jones Act waiver process is a highly regulated legal administrative process governed by federal rules requiring fairness and due process. Ultimately, Assistant Secretary Sandalow's advance guarantee was fulfilled as 52 waivers were approved, all for lot sizes of 500,000 barrels and larger.

In addition, there is evidence that DOE informally adopted and conveyed to the purchasers a 500,000 barrel minimum transportation lot size – flatly contrary to the minimum delivery lot sizes specified in the Notice of Sale[9] – resulting in the exclusion of the entire American fleet. The secret 500,000 barrel minimum was rumored throughout the process but never admitted by any federal department, despite repeated inquiries by the maritime industry. At least one email received under FOIA refers to DOE and the "500K min. standard."[10] It seems no coincidence that well over half of the Jones Act waiver requests (and approvals) were for exactly a 500,000 barrel lot size and all of the waiver requests (and approvals) were for transportation in lot sizes 500,000 barrels and above.[11]

---

[8] DOE Offers More Details on SPR Auction, by Meghan Gordon, *Platt's Inside Energy Extra*, June 28, 2011, page 2.

[9] The minimum delivery lot sizes in the Notice of Sale were 40,000 barrels for barges and 300,000 barrels for tankers.

[10] Email from Hokana to multiple MARAD officials, July 8, 2011, as part of the consideration of the first waiver request for the **PETROPAVLOVSK.**

[11] MARAD chart, received under FOIA. It is believed that one 150,000 barrel movement occurred on a U.S. vessel and about 50 moved on foreign ships under Jones Act waivers at transportation delivery sizes of 500,000 barrels and above.

One email from MARAD Administrator Matsuda to the leadership of DOE, DHS, DOT, and others during the early days of the waiver process is particularly illuminating regarding the 500,000 barrel requirement:

> ...[W]e have now seen 3 separate requests by Shell Oil to move 1.5M barrels of oil in roughly 500k barrel increments, and they are winning bidders on an additional 2.0M barrels. We fully appreciate the Administration priorities discussed at length prior to today on the need to move expeditiously, but under the Jones Act we are hard-pressed to find that no U.S. flag vessel is available for any of the Shell oil without fully understanding their transportation plan for the entire amount of the oil they purchased and without hearing evidence that Shell dealt in good faith with U.S. carriers to try to procure their transportation services. If we are to presume Shell (and all winning bidders) will simply transport the oil only in 500k barrel shipments **(this is not a contractual obligation, correct?),** and seek Jones Act waivers for each of them to carry all of it on foreign flag vessels for the entire 3.5M barrels, there may be no opportunities at all for U.S. flag vessels in this initiative.[12]

D) More Than 50 Jones Act Waivers

What followed next was sadly predictable. Despite the clear application of the Jones Act and the requirement to use available American vessels first, the potential purchasers of crude oil made their bids based on the use of large foreign vessels and, once selected, immediately applied for Jones Act waivers. The first waiver request came from Shell Trading on July 7, the same day that Shell's oil purchase contract was awarded by DOE. Shell asked permission to move oil from Freeport, Texas to Sugarland Terminal, Louisiana, clearly a Jones Act movement. However, following the direction of DOE Assistant Secretary Sandalow, Shell Trading requested a waiver to move 500,000 barrels on a vessel named **PETROPAVLOVSK**, a large crude oil tanker flying the flag of Liberia, homeported in Monrovia, built in Japan, and owned/managed from Cyprus by Sovcomflot, a Russian State-owned corporation. On July 8, within 24 hours of the request, DOE had endorsed it, MARAD had apparently found that no U.S. vessels were available, and CBP and DHS had approved the waiver. That same day three additional waivers were approved – all three were for vessels registered in Singapore and all three were in the approximate 500,000 barrel range, per DOE Assistant Secretary Sandalow's comments.

One of the core elements of any waiver decision is an "availability" determination by MARAD. Under 46 U.S.C. § 501(b), after a national defense determination is made, a formal waiver request from an interested party is granted only when no U.S. vessel is available. Upon receipt of a waiver request, MARAD generally surveys American vessel companies, brokers and others using email and other lists to determine if U.S. vessels are available. Only upon a finding that a waiver is in the interest of national defense and when no U.S. vessels are available can a waiver be granted under 46 U.S.C. § 501(b).

---

[12] Email from Matsuda to many federal officials, July 12, 2011, 8:11 p.m. (emphasis supplied).

Beginning in late June and continuing throughout the summer, MARAD received waiver requests from SPR oil purchasers, surveyed the American industry, received countless assurances of American vessel availability, and yet repeatedly determined that no American vessels were available. Within two weeks, about 10 waivers had been granted. Within slightly over a month, about 40 were granted. Ultimately, the vessels used for the draw down flew the flags of the Bahamas, Greece, the Isle of Man, Liberia, the Marshall Islands, Panama, Singapore, and the United Kingdom. Only one small movement of 150,000 barrels occurred on an American vessel in the course of the entire draw down compared to 52 total waivers.

One background paper received under FOIA even suggested that purchasers were "booking cargo on foreign-flag vessels and then seeking a waiver."[13] Such a circumstance demonstrates how perverted the process had become during the 2011 draw down.

It is also not clear to what extent the purchasers of the crude oil[14] met their legal obligation to attempt to identify American vessels. DOE's regulations make clear that the first obligation lies with the purchasers of the crude oil:

> Any request for waiver should include ... [the] reason for not using qualified U.S. flag vessel, including documentary evidence of good faith effort to obtain suitable U.S. flag vessel and responses received from that effort. Such evidence would include copies of correspondence and telephone conversation summaries.[15]

To provide some context, in a typical year only a very small number of Jones Act waivers are applied for, much less approved. Although comprehensive statistics of this kind are not kept, it is believed that the 52 waivers during the 2011 draw down is greater than all the waivers of this type that have been approved under the Jones Act since the law was enacted in 1920.

The unprecedented number of waivers granted, combined with the obvious incongruity of transferring American maritime jobs to foreign vessel operators during an operation designed to help the American economy, drew the attention of a range of media outlets. On August 23, 2011 the *New York Times* featured an article titled "Oil Reserves Sidestep U.S. Vessels" that began this way:

> WASHINGTON – In its hurry to transport millions of barrels of oil from federal stockpiles to stabilize world oil prices earlier this summer, the Obama administration has repeatedly bypassed federal law by allowing nearly all the oil

---

[13] "Talking Points for August 11 SPR Meeting," undated MARAD document.

[14] Purchasers of the 2011 SPR crude oil were Barclays Bank Blc, ConocoPhillips, ExxonMobil Oil Corporation, Hess Energy Trading Company, J.P. Morgan Ventures Energy Corporation, Marathon Petroleum Company, Murphy Oil USA, Inc., Plains Marketing LP, Shell Trading (US) Company, Sunoco Inc. (R&M), Tesoro Refining & Marketing Company, Trafigura AG, Valero Energy Corp., Vitol Inc., and BP Oil Supply.

[15] 10 C.F.R. Part 625, App. A, C.7(e)(6).

> to move on foreign-owned vessels, drawing protests from domestic maritime operators...
>
> Even as unemployment hovered over 9 percent, the administration approved dozens of applications to transport nearly 30 million barrels of domestic crude oil within the borders of the United States on tankers employing foreign crews and flying the flags of the Marshall Islands, Panama and other foreign countries.[16]

E) A Sham Process?

Throughout the 2011 draw down, U.S. vessel operators scrambled to decode a process that consistently excluded American vessels despite their availability. With each waiver request, MARAD actively surveyed American vessel availability and clearly American vessels that exceeded the minimum vessel size requirements established in the Notice of Sale were ready, able and available to move the SPR oil. In fact, throughout the summer MARAD maintained on its own website a comprehensive list of American vessels that were available to move the crude oil – MARAD's list was even titled "U.S. FLAG AVAILABILITY/SPR RELEASE 2011." And every American vessel on MARAD's public list exceeded the minimum vessel size outlined in the DOE's Notice of Sale. There were no apparent operational impediments to using these vessels, as many of the American vessels that were available were the same types of vessels that had delivered crude oil to fill the SPR in the first place. Nonetheless, MARAD repeatedly found that no American vessels were available and approved the waivers. Despite protests by Congress and the American maritime industry, ultimately virtually all SPR crude oil was transported on foreign vessels under Jones Act waivers based on the incredible finding that no American vessels were available.

There is evidence now to suggest that the entire American vessel availability process undertaken by MARAD was a sham – rendered meaningless by decisions made in early July regarding the 500,000 barrel minimum that effectively eliminated the entire U.S. fleet. If true, the massive efforts undertaken by MARAD, DOT and the American maritime industry during the summer of 2011 each time a waiver request came in – frantic efforts to gather information about the availability of American ships on extremely short notice – were meaningless given the secret 500,000 barrel minimum transportation lot size requirement. It was well-known from the beginning of this process that all American tankers with over 500,000 barrel capacity were fully employed in Alaska and elsewhere and were not available. If true, each waiver review during the SPR draw down was executed under conditions that guaranteed the final result in advance.

Although most of the discussion of the 500,000 barrel minimum transportation lot size appears to have occurred behind closed doors, one incident described in documents received under the FOIA is telling. On August 13, ConocoPhillips was granted a Jones Act waiver to move 500,000 barrels of SPR crude oil from Texas to New Jersey on a foreign vessel. Shortly afterward, ConocoPhillips' circumstances changed and it requested a modified Jones Act waiver, proposing to divide the movement into two parts

[16] "Oil Reserves Sidestep U.S. Vessels," by John M. Broder, *New York Times*, August 23, 2011.

– one delivery for 250,000 barrels to a New Jersey refinery and another for 250,000 barrels to a Pennsylvania refinery.[17] MARAD responded that it had determined that an American vessel was available to help move one of the 250,000 vessel lots, specifically named the American vessel, and directed ConocoPhillips to contact the American vessel's charterer.[18] Instead, ConocoPhillips withdrew its request to break the movement into two smaller lots and reverted to the single 500,000 barrel movement using the original waiver for a foreign vessel flying the flag of Singapore.[19]

In one equally notable case, MARAD officials appeared to think that a large SPR oil purchase was being broken down into lots small enough to move on American vessels. "Really? Are they committing to offer this piece to US flag?" asked a surprised MARAD Administrator Matsuda in an email. In response, his staff noted that "[n]o one from DOE contested that this large lot is being broken into smaller parcels."[20] Ultimately and predictably, however, the large lot was broken into three parcels of 500,000 barrels each and moved on vessels from Singapore and Liberia. The fact that the MARAD Administrator would find it surprising that DOE and a purchaser would agree to "offer this piece to U.S. flag" – despite the legal requirement under the Jones Act to do so – is symptomatic of the entire unacceptable situation, one in which the Administration clearly did not proceed from the premise that the Jones Act is the law of the land and cannot be summarily ignored.

Finally, it is unbelievable to us that MARAD never exercised its authority to make availability determinations based on the "collective capacity" of multiple vessels in the American fleet, something that it is specifically authorized to do by a Memorandum of Agreement between the federal agencies for SPR draw downs.[21] That authority – which would, for example, encourage the use of two smaller vessels to move a 500,000 barrel transportation lot – would have led directly to the movement of the oil on American vessels. As described below, the requirement that MARAD consider the collective capacity of multiple American vessels on availability determinations has been codified in federal law since the 2011 draw down. MARAD's unwillingness or inability to exercise its authority here was a key component of the perverted process that denied cargo to American vessels and employment to U.S. mariners.

---

[17] Memorandum from ConocoPhillips to DOE, DOT and DHS, August 23, 2011.

[18] Email from MARAD to ConocoPhillips, August 25, 2011, 6:20 p.m.

[19] Email from ConocoPhillips to DOE, DOT and DHS, August 27, 2011, at 9:55 a.m.

[20] Email exchange between MARAD officials, including Administrator Matsuda, between 6:07 p.m. and 6:42 p.m. on July 15, 2011.

[21] *Agreement Among the U.S. Customs Service of the Department of the Treasury, Maritime Administration of the Department of Transportation, and the Department of Energy concerning drawdown of the Strategic Petroleum Reserve*, effective October 16, 1987. The Agreement says, "MARAD may determine as 'suitable' a vessel or vessels with single or collective capacity exceeding the requestor's contract commitment." (emphasis supplied)

F) The Federal Explanation

To this day, DOE, DOT and DHS have not provided a satisfactory explanation for the American vessel "unavailability" determinations that amounted to a *de facto* blanket waiver of the Jones Act. No Administration official has confirmed the presence of the secret 500,000 barrel transportation size limit, which appears to have driven the entire process. No Administration official has explained why MARAD's collective capacity authority in the memorandum among the federal agencies was not exercised. Perhaps most remarkably, Administration officials have actually congratulated themselves for their efforts to include the American fleet in the draw down, citing the rescission of the original blanket Jones Act waiver and the decision to include lower minimum vessel size standards in the Notice of Sale.[22]

At one point, Administration officials argued that American vessels were too small and too few to transport all the oil.[23] However, American vessel operators never argued that the U.S. fleet could move all the oil. In fact, the federal waiver provisions require only that U.S. vessels be used first. If all available American vessels had been employed in the draw down, U.S. companies would not have objected to subsequent waivers. Instead, virtually no American vessels were used, even those readily available. As to the size of the vessels, it was DOE that established the "minimum delivery lot sizes" of 40,000 barrels for barges and 300,000 for tankers in its Notice of Sale. Every vessel that the American maritime industry considered available exceeded those requirements. In addition, some of the American vessels that were available in 2011 were the very same types of vessels that had helped fill the SPR with crude oil in the first place.

The most consistent explanation offered by the Administration to explain the waivers has been tied to the "desires"[24] of the oil purchasers to use larger foreign vessels to transport approximately 500,000 barrel lots in a single vessel movement. For example, a White House official, quoted in the *New York Times*, stated that the waivers were in part due to "the volumes requested by the purchasing companies..."[25] MARAD indicated at one point that the waivers were necessary to meet the "transportation plans" of the purchasers of the oil. Several of MARAD's unavailability findings specifically cited the lack of an American vessel to "carry the entire lots of cargo in one trip as requested by the applicants." And a letter from senior DOE and DOT officials noted that purchasers of oil had "elected" to move the oil by tankers.[26]

---

[22] Letter from Daniel B. Poneman, DOE Deputy Secretary, and John D. Porcari, DOT Deputy Secretary, to Sen. Mary Landrieu, December 27, 2011.

[23] Id.

[24] "Desires" is the description used by DOE in endorsing many of the Jones Act waiver requests (e.g., "ConocoPhillips' desire to move 500,000 barrels of crude oil ... in one shipment...").

[25] "Oil Reserves Sidestep U.S. Vessels," *New York Times*.

[26] Poneman and Porcari letter.

It is simply incredible to us that these Administration officials could conclude that the transportation desires and plans of the oil purchasers to use large foreign ships trump and override the clear requirements of the Jones Act, federal regulations, the Notice of Sale, and other federal law.

G) The Bottom Line

The American Maritime Partnership urges this Committee to review this situation with care and inquire into at least the following areas:

- How a federal action designed to help the American economy could expressly favor foreign shipping companies and foreign workers to the detriment of American mariners and vessel owners and lead to the largest number of Jones Act waivers in history.
- Whether the federal departments adopted and conveyed to the purchasers a secret 500,000 barrel minimum transportation lot size, despite much lower minimums in the DOE's own Notice of Sale. If so, how was the 500,000 barrel minimum lot size information conveyed to the oil purchasers and why was it never conveyed to the maritime industry?
- How a DOE official with no jurisdiction or authority over the waiver process could inform the potential purchasers in advance that their Jones Act waivers would be approved (and they were).
- How the desires of purchasers of this SPR oil to use large foreign vessels could supersede federal law requiring the use of American vessels first.
- Whether the purchasers of the crude oil met their legal obligation to attempt to identify available American vessels and whether DOE enforced its own regulations and verified compliance by seeking documentary evidence of good faith efforts to obtain suitable U.S. flag vessels and responses received from that effort.
- Why MARAD failed to exercise its authority to consider the "collective capacity" of multiple American vessels in determining availability.

2) FUTURE DRAW DOWNS

For as disappointed as we are with the inexplicable actions of the Administration in this terrible saga, we are most gratified and appreciative of the many actions taken by Congress since 2011 to avoid a similar situation in future draw downs.

A) Congressional Action

Congress responded quickly to the record number of waivers by enacting legislation impressing upon the federal agencies the need to follow existing law. Specifically, no waiver approvals may be granted until DHS "takes adequate measures to ensure the use of United States flag vessels." *Section 529 of Division D of the Consolidated Appropriations Act of 2012, P.L. 112-74.* Moreover, no waivers may be granted unless DOT has determined whether U.S.-flag vessels with single or collective capacity are capable of assisting in the SPR move. If not, DHS must provide a written justification for not using those U.S.-flag vessels. *Section 172 of Division C of the*

Consolidated and Further Continuing Appropriations Act of 2012, P.L. 112-55. Prior to taking either of these steps, the Departments are statutorily required to consult with representatives of the U.S.-flag maritime industry. The Fiscal Year 2013 version of the DHS Appropriations bill, which was adopted by the full Senate Appropriations Committee on May 22, contained similar language.

In addition to enacted legislation, several related pieces of legislation have been approved by the House of Representatives and may be enacted into law yet this Congress. As you well know, Section 409 of H.R. 2838, the Coast Guard Authorization Act of 2011, includes an amendment sponsored by Congressmen Cummings and Landry that requires MARAD to include information in its vessel availability assessments regarding actions that could be taken to encourage use of American vessels; publish its determinations on its website; and notify Congress when a waiver is requested or issued. Similar language was also adopted by the full House of Representatives in the Defense Authorization Act of Fiscal Year 2013, H.R. 4310. In addition, Section 6 of the Senate's MARAD Authorization Act of Fiscal Year 2012 requires MARAD's certification to the Senate Armed Services Committee, the Senate Commerce Committee, the House Transportation and Infrastructure Committee and the House Armed Services Committee that "it is not possible to use a United States flag vessel or United States flag vessels collectively to meet the national defense requirements" before any waiver can be granted.

In addition to this legislation, numerous Members of Congress, including key Members of this Subcommittee, have expressed their displeasure to the Administration in a variety of ways, including written correspondence.

This array of impressive actions by Congress should make abundantly clear to the Administration the fact that its actions are viewed as inconsistent with longstanding U.S. transportation policy. Today's hearing is an important part of Congress's oversight of the continued integrity of the Jones Act. We applaud you for that.

B) Maritime Industry Response

The American maritime industry also has been aggressive in taking steps to avoid a similar situation. Media reports continue to suggest that another SPR draw down may occur in 2012.

In particular, we have met with federal officials regularly over the last several months at our initiative to ensure that the Administration has accurate information about the availability of U.S. vessels. On several occasions, we have arranged for senior officials from tank vessel companies to come to Washington, D.C. to meet with federal officials regarding issues related to any future draw down. (Unfortunately, despite repeated attempts, we have been unsuccessful in arranging a meeting with DOE.) At the request of federal officials, we have surveyed the industry and provided updated information about the availability of American vessels. We have responded to a broad range of technical questions from federal officials. Most recently we met with federal officials to address misconceptions by certain federal departments about operational issues related to vessels, including barges, and their ability to deliver crude oil to and

from SPR terminals. For example, some DOE officials apparently believe that barges cannot serve certain SPR terminals, even though barges have served and do serve those very terminals. One thing is clear: there continues to be a great deal of confusion on the part of the federal government regarding the way the maritime industry works that could be overcome with a more regular exchange of information between the American vessel industry and the federal departments and agencies, including DOE. We are doing everything in our power to correct those errors now before new decisions are made that cannot be reversed.

We have invested a great deal of time and resources to develop vessel availability lists at the request of the federal departments/agencies and to update those lists showing vessels available now on the spot market, available in 30 days, and available in 60 days. These lists, which we assume are supplemented with information gleaned by MARAD itself, are conservative because not all tank vessel companies participated in our survey. However, even an incomplete list showed there are at least 30 American vessels with 2.5 million barrels of capacity available to move crude oil within 30 days in the event of another draw down.

On April 16, 2012, AMP received a response to our letter to DOT Secretary Ray LaHood, DOE Secretary Steven Chu, and DHS Secretary Janet Napolitano urging compliance with the Jones Act in any future SPR draw downs.[27] We were pleased that it acknowledged the Jones Act as "a well-established element of U.S. law" and described President Obama as "committed to the faithful implementation of its provisions." According to the letter, "In the event of a future decision to release petroleum from the SPR, our Departments will continue to operate consistent with the Jones Act, including the recently enacted appropriations language referenced in your letter." Frankly, however, we were concerned by the use of the word "continue," as it suggested that the Department officials believe that their previous actions were consistent with the law. Finally, the letter promised a continuation of "our dialogue" on the subject.

Our concern here is not merely semantic. Actions speak louder than words. Given the very troublesome actions of the Administration throughout 2011 in the previous draw down, we remain extraordinarily concerned with the potential for repeat actions from the Administration in the next draw down. Missing from the April 16 letter, and missing from all verbal communications we have had with the Administration, is the clear and unambiguous commitment that in any future draw down, all available American vessels will be utilized for the transportation of SPR oil before any waiver of the Jones Act is sought. We have yet to receive such an assurance from the Administration, and until it is provided, we have no choice but to be extremely concerned about how the Administration will enforce the Jones Act in the next draw down.

[27] The letter to the AMP Board of Directors was signed by Matsuda, Sandalow, and David V. Aguilar, Acting CBP Commissioner, on April 16, 2012.

3) CONCLUSION

The American maritime industry is deeply grateful for this Committee's and this Subcommittee's willingness to address this serious issue. As described in detail above, federal actions in 2011 were unlawful, constituted poor public policy, occurred with an almost total absence of transparency, and sadly resulted in a record number of Jones Act waivers within a short period. Those actions cost American companies and American workers much needed employment opportunities. We are committed to working with you and, we hope, with the relevant departments and agencies to ensure that such a circumstance never occurs again and that any future draw down is executed in full accordance with federal law.

Thank you for the opportunity to testify today.

○