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Dear Colleague:

The Deepwater Horizon oil spill is an unprecedented crisis. The extraordinary nature of the spill has raised questions regarding the adequacy of the response. During the past month, much has been said in the press and various social media about the Jones Act and the oil spill, most of it by people who are only vaguely familiar with U.S. maritime law. I am writing to you today to set the record straight about the Jones Act.

What role does the Jones Act play in the response to the Deepwater Horizon oil spill? The Jones Act does not apply to the recovery, transporting, or unloading in a U.S. port of spilled oil in waters outside of the U.S. territorial sea, which extends three miles from shore. From day one of the oil spill, foreign vessels were allowed by law to be engaged by BP to clean up the spill offshore, where the spill originates. No waiver of the Jones Act was needed for this work because the Jones Act does not apply to it.

The recovery of spilled oil within three miles from shore, including transporting and unloading it in a U.S. port, is covered by the Jones Act. But, a 1996 law, now codified as 46 U.S. Code 55113, allows foreign vessels to be used for these purposes if the Federal On-Scene Coordinator (FOSC) determines that there are not an adequate number of U.S. oil spill response vessels available in a timely manner to clean up a spill, and if the foreign country in which the foreign vessel is registered provides reciprocal treatment for U.S. oil spill response vessels. For the oil spill, the Coast Guard FOSC made such a determination on June 16, 2010. The reciprocal treatment requirement may be waived under a separate, fast-acting, Jones Act administrative waiver process authorized by 46 U.S. Code 501.

On June 29, 2010, the State Department announced that 22 offers of assistance from 12 foreign countries or entities to provide skimmers, booms, and equipment were being accepted. Before that date, assistance from nine countries had already been accepted, including skimmers. The National Incident Command continues to review, and in some cases test, offered foreign skimming systems and vessels for their capability to remove the spilled oil from the Gulf of Mexico (e.g., the A WHALE). A foreign skimmer may be rejected because it can't do the job, but it won't be rejected because of the Jones Act. Additionally, Jones Act waivers have been granted to several of the vessels involved in collecting oil from the Deepwater Horizon well.

The U.S. maritime industry has publicly stated that it will not stand in the way of the use of well-established waiver procedures to address this crisis. Now retired Coast Guard Admiral Thad Allen, the National Incident Commander for the Deepwater Horizon oil spill, stated on June 30, 2010 that : "We at no time in the course of this response have been inhibited by anything have to do with what we call [the] Jones Act or Jones Act waivers." While some may want to criticize the response to the oil spill for a variety of reasons, anyone claiming that the Jones Act, the U.S. maritime industry, or U.S. maritime labor has impeded or prevented the use of foreign skimmers or other foreign vessels needed to clean up the spill is clearly wrong.

Why not just waive the Jones Act for the oil spill response, similar to what was done after Hurricane Katrina? The brief post-Hurricane Katrina administrative waiver applied only to tank vessels because the

storm knocked out the Colonial Pipeline, creating a temporary need for tankers that exceeded American capacity. While foreign skimmer vessels are needed for the spill response, they are already allowed to participate without the need for an additional broad waiver. While thousands of vessels, including more than 500 skimmers, are currently participating in the oil spill response (the vast majority of which are American), hundreds of American offshore supply vessels, fishing vessels, and other types of vessels remain idled in the Gulf of Mexico due to the deepwater drilling moratorium and closed fishing areas due to the spill. The current waiver process is working. Enacting a blanket Jones Act waiver for foreign vessels during the spill response would not bring in any more foreign skimmers than are already allowed in, it would only take work away from American vessels and workers in the Gulf of Mexico.

What is the Jones Act? Senator Wesley Jones (R-WA) was the author of section 27 of the Merchant Marine Act, 1920, which requires that transportation of merchandize between points in the United States be conducted on U.S.-built, U.S.-flag vessels. There are actually several other U.S. cabotage laws, including ones that govern the carriage of passengers, dredging, towing, and salvage, all of which are now codified in title 46, United States Code. However their origins reach back to the First Congress's second Act, which instituted a preference for U.S.-flag vessels carrying cargo into U.S. ports. The Founding Fathers understood, as many U.S. leaders have understood since, that America needs a strong merchant fleet to ensure both its economic and national security. Today, Jones Act vessels compete head to head with each other nationwide and with other U.S. modes of transportation in many parts of the country.

Why is the Jones Act good policy? The U.S. Merchant Marine, of which the Jones Act fleet is a vital part, is recognized as "The Fourth Arm of National Defense." A strong merchant marine and Jones Act fleet ensure the United States 1) has world-class vessels to meet sealift needs; 2) has expert and experienced seafarers to man the U.S. government's organic surge sealift ships in times of national emergency; 3) has a modern shipyard industrial base that is critical to the nation's military and economic security; and 4) makes intermodal transportation systems available for defense use through the Voluntary Intermodal Sealift Agreement (VISA). Another benefit of U.S. maritime cabotage laws is safety. U.S.-flag vessels are built and operated to the world's highest safety and environmental standards. Many other countries maintain some form of maritime cabotage laws. The outdated studies quoted by Jones Act opponents as justifications for repeal were long ago refuted by the U.S. Government Accountability Office. U.S. maritime cabotage laws help sustain more than 500,000 American jobs (both union and non-union), many of which are in the Gulf, and $1 billion in economic activity annually, including shipbuilding and repair, vessel operations, and supporting activities. The current and previous four Presidents of the United States have all spoken in favor of maintaining the Jones Act, as have a number of military leaders.

As a resident of the Gulf Coast, I know first-hand the impact of the oil spill and the urgent need to collect the spilled oil before it causes additional damage to the environment and people's livelihoods. While I am a strong supporter of the Jones Act, I understand that some of you don't share that support. While those who don't are certainly entitled to their policy views, those views are undercut when their advocates attempt to support them with incorrect statements and false accusations. The Jones Act is not the problem; the oil spill is the problem. Let's focus on fixing that.

Sincerely,

Gene Taylor

Gene Taylor
Member of Congress