



August 7, 2013

The Honorable Duncan Hunter  
Chairman  
Subcommittee on Coast Guard and  
Maritime Transportation  
House Transportation and  
Infrastructure Committee  
507 Ford House Office Building  
House of Representatives  
Washington, DC 20515

The Honorable John Garamendi  
Ranking Member  
Subcommittee on Coast Guard and  
Maritime Transportation  
House Transportation and  
Infrastructure Committee  
505 Ford House Office Building  
House of Representatives  
Washington, DC 20515

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Dear Chairman Duncan Hunter and Ranking Member Garamendi:

On July 25<sup>th</sup>, Congressman Pedro Pierluisi, Resident Commissioner from Puerto Rico, introduced H.R. 2838, the Puerto Rico Interstate Commerce Improvement Act of 2013. The bill would undermine one of the essential tenants of the domestic American shipping laws, the U.S.-build requirement, for certain cargoes moving between Puerto Rico and the mainland United States. On behalf of the American Maritime Partnership (AMP), representing all elements of our nation's domestic maritime industry, I write to express our strong opposition to H.R. 2838.

The coastwise laws of the U.S.—commonly referred to as the Jones Act—are essential to the continued economic viability of the U.S. transportation system and to the maintenance of a U.S.-flag fleet to support that system. Those laws require vessels operating in the domestic trades—i.e., carrying cargo or passengers from one point in the United States to another point in the United States—to be (i) owned and operated by American citizens; (ii) built in the United States; and (iii) documented under the laws of the United States (which requires the use of American mariners to crew the vessels).

AMP is disappointed to see Congressman Pierluisi pursue this legislation. During the Subcommittee on Coast Guard and Maritime Transportation's recent hearing on the American maritime industry, AMP provided extensive testimony about the important role that the industry plays in U.S. economic, homeland, and national security. It also discussed the domestic U.S.-flag fleet's proven capabilities to meet the demands of the marketplace and its flexibility to meet the needs of shippers. Those include the construction of new state-of-the-art ships powered by liquefied natural gas (LNG) for the Puerto Rico trades.

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Congressman Pierluisi suggests that a recent U.S. Government Accountability Office (GAO) study on domestic shipping and Puerto Rico<sup>1</sup> justifies the need for the legislation. That is not the case. In fact, the GAO report specifically noted that “[r]ecent announcements from two Jones Act carriers concerning plans to build new vessels indicate the willingness of the U.S.-flag industry to respond to market demand.”<sup>2</sup> On this point, GAO and AMP agree—the domestic American maritime industry is capable of meeting the needs of Puerto Rico, including in the bulk and LNG market sectors. The GAO report concluded “the law has helped ensure reliable, regular service between the United States and Puerto Rico—service that is important to the Puerto Rican economy.”<sup>3</sup> GAO also confirms in its concluding observations that “the original goal of the [Jones] Act remains important to military preparedness and to the shipbuilding and maritime industries.”<sup>4</sup>

In addition to these general observations about the impacts of H.R. 2838 and the positive benefits offered by the domestic American maritime industry, I want to specifically address the potential impact of a relaxation of the U.S.-build requirement for self-propelled ships and tankers carrying bulk cargoes, including LNG, refined petroleum products, and agricultural products, as is proposed by the bill.

#### Waivers Provided For in the Bill Are Unnecessary

Congressman Pierluisi states that the GAO report indicates that there are not enough Jones Act-compliant LNG or petroleum (product and crude) tankers to handle Puerto Rico’s needs. That is not correct. GAO makes no such judgments in its report. In fact, it states “to the extent that the lack of available vessels *may* be causing shippers to seek foreign sources for some products, this lack of availability may signal the need for new Jones Act vessels to enter the trade.”<sup>5</sup> GAO also said that “eliminating the U.S.-build requirement and allowing Jones Act carriers to deploy foreign-built vessels to serve Puerto Rico could reduce or eliminate U.S. shipyards’ expectations for future orders from the market and could have serious implications for recent orders . . .”<sup>6</sup> Further, GAO cites to officials in the Department of Defense who stress the importance of the retaining a shipbuilding industrial base, which would be undermined by a waiver of the U.S.-build requirement.

The domestic American maritime industry continues to meet the demands of shippers in Puerto Rico and is making further investments to meet those shippers’ needs. For example, an American tanker company recently announced plans to construct four 50,000 deadweight ton LNG-conversion-ready product carriers with a 330,000 barrel cargo capacity, with options to

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<sup>1</sup> U.S. Gov’t Accountability Office, GAO13-260, Puerto Rico: Characteristics of the Island’s Maritime Trade and Potential Effects of Modifying the Jones Act (2013) [hereinafter “The GAO Report”].

<sup>2</sup> *Id.* at 21.

<sup>3</sup> *Id.* at 29.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 21 (emphasis added).

<sup>6</sup> *Id.* at 28.

build four additional ships.<sup>7</sup> Another American tanker company purchased two new 600-foot, 330,000-barrel capacity tankers that will be involved in transporting either crude oil or refined products such as gasoline and jet fuel in the Gulf of Mexico.<sup>8</sup> These American-built tankers represent significant investments by American shipping companies to meet the demands of the marketplace. If the demand exists for petroleum tankers in Puerto Rico, then you can be sure that American shipping companies will make the necessary investments to meet those demands.

Moreover, there is no need for a waiver of the U.S.-build requirement for the movements of LNG from the mainland U.S. to Puerto Rico. First, the shipping statutes already provide for significant flexibility to move LNG to Puerto Rico from the mainland U.S. Specifically, the statute below permits the coastwise use of an LNG or liquefied petroleum gas tanker that was built in a foreign shipyard before October 19, 1996:

Notwithstanding any agreement with the United States Government, the Secretary may issue a certificate of documentation with a coastwise endorsement for a vessel to transport liquefied natural gas or liquefied petroleum gas to Puerto Rico from other ports in the United States, if the vessel—

- (1) is a foreign built vessel that was built before October 19, 1996; or
- (2) was documented under this chapter before that date, even if the vessel is placed under a foreign registry and subsequently redocumented under this chapter for operation under this section.<sup>9</sup>

The GAO report noted that 37 vessels exist—13 built in the U.S. and 24 built in a foreign shipyard—that would qualify under this provision. Moreover, in November 2011, Congress enacted a Coast Guard authorization bill that contained a provision authorizing the coastwise employment under U.S.-flag of three specific LNG vessels.<sup>10</sup> To date, none of these vessels has been employed in the Puerto Rico LNG trades. The reason is because domestically-sourced LNG will not be available for delivery into Puerto Rico until 2016 at the earliest—and more likely not until 2017 or 2018, due to regulatory and construction timelines associated with the liquefaction projects. As such, the Jones Act and the availability of coastwise-qualified LNG tankers is not a relevant factor in considering Puerto Rico's current energy situation.

To be more specific, currently there are *no* operational liquefaction/export facilities on the mainland U.S. And prior to mid-2017, there will only be one mainland U.S. liquefaction/export terminal in service, Cheniere's Sabine Pass terminal in Louisiana. Sabine

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<sup>7</sup> Press Release, NASSCO, General Dynamics NASSCO to Construct Four Product Tankers for American Petroleum Tankers (May 31, 2013), *available at* <http://www.nassco.com/breaking-news/2013/05/general-dynamics-nassco-to-construct-four-product-tankers-for-american-petroleum-tankers/>.

<sup>8</sup> Press Release, Crowley, Crowley Purchases Two New Jones Act Tankers from Aker Philadelphia Shipyard (Aug. 20, 2012), *available at* <http://www.crowley.com/News-and-Media/Press-Releases/Crowley-Purchases-Two-New-Jones-Act-Tankers-from-Aker-Philadelphia-Shipyard>.

<sup>9</sup> 46 U.S.C. § 12120 (emphasis added).

<sup>10</sup> Pub. L. No. 112-61, 125 Stat. 754 (2011).

Pass currently estimates that its commercial operations will begin in the early 2016. As a result, prior to the commencement of liquefaction/export operations at a facility on the mainland U.S., it is not physically possible to export domestically-sourced U.S. natural gas as LNG via LNG tankers to Puerto Rico. After Sabine Pass, the earliest another liquefaction/export facility will be in service is likely in the mid-to-late 2017 range given current regulatory processes.

Thus, the availability of coastwise-qualified LNG carriers is irrelevant at this stage, making the need for legislation moot. It also means that Congressman Pierluisi's assertions that his legislation would "benefit energy producers in the states" and "provide a direct benefit to consumers, who will see their electricity bills decrease" are not correct.

Finally, Congressman Pierluisi attributed the lack of U.S.-flag coastwise qualified vessels for bulk agricultural products, and the higher rates for coastwise-qualified vessels, as a justification for his bill. However, the GAO report specifically stated "[d]ata was not available to verify the extent to which changes in sourcing [of agricultural products] occurs because of higher transportation costs on Jones Act vessels."<sup>11</sup> It also stated that "over the longer term, the market may adjust through new shipbuilding for the Jones Act trade, as long as expectations of demand and freight rates are sufficient to support capital investment" and that "[r]ecent announcements from two Jones Act carriers concerning plans to build new containerships and tankers indicate that the U.S.-flag industry is responding to the emergence of new market demand."<sup>12</sup> The domestic American maritime industry has consistently responded to the needs of shippers in Puerto Rico and will continue to do so (including for bulk commodities).

#### Bill Would have Significant Adverse Impact on the Shipbuilding Industrial Base

One of the key findings of the GAO report is that "the military strategy of the United States relies on the use of commercial U.S.-flag ships and crews and *the availability of a shipyard industrial base to support national defense needs.*"<sup>13</sup> (Emphasis added.) Congressman Pierluisi's bill would undermine the ability to sustain a shipbuilding and repair industrial base to support national defense. The domestic American shipbuilding and repair industry plays a crucial role in ensuring the defense of the nation.

The Jones Act is one of the fundamental maritime laws supporting the shipyard industrial base of this nation. Puerto Rico represents one of the major U.S. domestic shipping trades, and the repeal of the U.S.-build requirement, as is proposed by H.R. 2838, would have significant implications for future commercial investments in building ships in the United States to meet Puerto Rico's needs. It could also have implications for other domestic shipping trades.

In fact, the capital and human investments made by these shipyards represent the essence of our defense shipbuilding and repair industrial base. Maintaining robust commercial opportunities for America's shipbuilding and repair yards is essential to national security. The

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<sup>11</sup> The GAO Report, *supra* note 1, at 19.

<sup>12</sup> *Id.* at 14.

<sup>13</sup> *Id.* at 5 (emphasis added).

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Lexington Institute, a prominent think tank, appropriately described the implications of undermining those opportunities: “Without deliberate and purposeful support for this industry, there could well be dire national security consequences.”<sup>14</sup>

These are the primary reasons the Department of Defense and the U.S. Navy have long been supporters of the Jones Act.

AMP Strongly Opposes H.R. 2838

A key finding of the GAO report was that “modifying the Jones Act in Puerto Rico would have uncertain effects and may result in difficult trade-offs.”<sup>15</sup> AMP believes the effects of H.R. 2838 are clear and there is no legitimate justification for this legislation. Elimination of the U.S.-build requirement would hurt U.S. national security by undermining the defense shipbuilding and repair base of the nation and would have serious implications for future commercial shipbuilding orders in the U.S. Moreover, AMP believes that any purported benefits of the proposal are overstated. And there are no trade-offs that would justify enactment of the bill because it would fundamentally undermine the economic and national security of the U.S.

As such, AMP strongly opposes H.R. 2838 and urges you not to bring it up for further consideration. We appreciate your attention to this important matter and look forward to working with you further to continue to strengthen the domestic American maritime industry.

Sincerely,



Thomas A. Allegretti  
Chairman

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<sup>14</sup> Dr. Daniel Goure, *The Contributions of the Jones Act to U.S. Security*, Lexington Institute (Oct. 2011).

<sup>15</sup> The GAO Report, *supra* note 1, at 22.