

**URGENT**

16 July 2010

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC

Dear Senators,

**PROPOSALS IN RESPONSE TO *DEEPWATER HORIZON* OIL SPILL  
RELATING TO THE 'AMERICANIZATION' OF OFFSHORE SHIPPING  
OPERATIONS IN THE EXCLUSIVE ECONOMIC ZONE**

These comments are made on behalf of the International Chamber of Shipping (ICS), which is the principal international trade association for shipowners and operators comprising national shipowners associations from 34 nations, representing about 75% of world shipping tonnage.

We wish to comment in response to issues being considered in Congress in the aftermath of the *Deepwater Horizon* oil spill. We appreciate the far reaching impacts of this environmental disaster, including the truly appalling loss of life, and the need for a determined political response. However, as representatives of international ship operators, we are very concerned by proposals in Section 11 of Bill HR 5629, that have emerged from the House Transportation and Infrastructure Committee, which relate to the Americanization of Offshore Shipping Operations in the Exclusive Economic Zone.

Section 11 of the bill would require all vessels engaged in support of oil drilling activities in, on, above, or below the Exclusive Economic Zone (EEZ), to the extent that the regulation of such activities is not prohibited under customary international law, to be US flag vessels and owned by US citizens.

This proposal appears to be an attempt to remove exemptions to the Jones Act as they pertain to cabotage restrictions that have applied to certain offshore shipping activities involving foreign flag vessels for several decades. We believe Section 11 concerns free trade principles and issues of market access.

We note that the proposals in Section 11 are similar in their effect to those made by U.S. Customs and Border Protection last year (see Customs Bulletin and

Decisions, Volume 43, No 28, July 17 2009), but which were subsequently withdrawn following concerns raised by the international community about free trade principles as well as, *inter alia*, about the short notice period for comment. Based on comments made by the U.S. Customs and Border Protection in the Federal Register, they are expected to reissue proposals governing offshore shipping operations in the near future. We believe this process would provide a better mechanism to address these complicated matters, rather than amalgamating them with legislation which primarily concerns issues in which questions of free trade and market access are not at stake.

We are especially concerned about the very negative signal which this proposal in HR 5629 conveys with regard to the approach taken by the United States towards the maintenance of free trade principles in shipping and good relations with its trading partners. It must be appreciated that these proposals will have very serious commercial implications for many international offshore operators that are members of the national shipowners associations which we represent.

Some of these foreign operators have invested many millions of dollars in specialist ships and equipment in order to provide services to the US offshore drilling industry, which will have to be curtailed if the proposal in Section 11, or a similar one, is carried. Such a dramatic change goes beyond the normal expectations of arrangements between the United States and its trading partners. This is particularly unfortunate in the context of the current global economic downturn, and sets a negative example which could be emulated by other nations around the world. Indeed, if such protectionist policies were copied by other nations, this could impact on those important U.S. shipping companies that operate significant numbers of offshore support vessels in overseas markets, such as West Africa, South East Asia, and South America. Moreover, U.S. oil producers operating in such markets could be compelled to use local shipping companies that might not meet accepted international standards.

We acknowledge (although we do not support) the US rationale underlying the Jones Act, and the desire from some U.S. constituents to further extend coverage to the U.S. offshore support vessel sector. However, it is emphasised that foreign flag operators providing services to the U.S. offshore industry must comply with international standards regarding safety, environmental protection, seafarer training and security, to which the U.S. is a Party through Conventions adopted by the International Maritime Organization (IMO). These requirements are substantiated by very thorough U.S. Coast Guard inspections.

We believe that all ship operators serving the offshore industry in the Gulf of Mexico, U.S. flag and others, are providing a safe and environmentally responsible service to that industry. We believe that concerns about safety are not a valid pretext for what will be perceived outside the U.S. as protectionism that goes against the spirit of the free trade principles to which the U.S. is committed as a member of the World Trade Organization and the OECD.

We stress that ships servicing the offshore oil production sector are part of an entirely separate industry to the oil drilling industry itself. We do not believe there is justification for the legislation being developed in response to the *Deepwater Horizon* spill to be used to address unrelated market access issues involving international ship operators.

When the Senate considers legislation to address this truly terrible incident, we respectfully ask that the nationality of offshore support vessels is not inappropriately included. We request this noting that U.S. Customs and Border Protection is expected to reissue proposals, in the context of the Jones Act, which will address these same matters in the near future.

Yours sincerely

Peter Hinchliffe  
Secretary General  
International Chamber of Shipping