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Via Email: CBPPublicationsResponse@cbp.dhs.gov

U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
Border Security and Trade Compliance Division
799 9th Street, N.W., Mint Annex
Washington, D.C. 20001

Re: 51 *Customs Bulletin* 3 at 1 (Jan. 18, 2017)
Proposed Modification and Revocation of Ruling Letters Relating to Customs
Application of the Jones Act to the Transportation of Certain Merchandise
and Equipment Between Coastwise Points

Dear Director Vereb,

The International Association of Drilling Contractors (IADC) is a not for profit organization with approximately 1,500 member companies representing the worldwide drilling industry. Pertinent to these comments, IADC's membership includes drilling contractors currently operating mobile offshore drilling units (MODUs) in the areas subject to the jurisdiction of the United States, and the vast majority of drilling contractors offering MODUs in the competitive market, worldwide. Our comments are submitted without prejudice to any member's right to have or express different or opposing views.

On January 18, 2017, Customs and Border Protection (CBP) published a notice of proposed modification of headquarters' ruling letters relating to CBP's application of the coastwise laws to certain merchandise and vessel equipment that are transported between coastwise points. "Proposed Modification and Revocation of Ruling Letters Relating to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points," 51 *Customs Bulletin* 3 at 1 (Jan. 18, 2017) (hereinafter the "2017 Notice"). A focal point of the 2017 Notice is on certain ruling letters that concern the definition of "vessel equipment," as originally set forth in T.D. 49815(4) (March 13, 1939)

The purpose of this letter is to set forth IADC's position on the substance of the 2017 Notice as to three main points. First, although the 2017 Notice directly references ruling letters related to the offshore drilling industry, none of those letters pertain to the actual performance of drilling operations. Nonetheless, the Notice supports the notion that drilling operations conducted when a MODU is stationary cannot themselves violate the

Jones Act. We request that CBP confirm the accuracy of that view in any final action it takes on the Notice.

Second, IADC is concerned about the Notice's treatment of "vessel equipment" and how that term might be applied to items carried on MODUs travelling from one location to another. Although the targeted ruling letters¹ identified in the 2017 Notice do not implicate MODUs specifically, the 2017 Notice references a number of activities that are analogous and relevant to MODU operations currently occurring on the U.S. Outer Continental Shelf (OCS). The 2017 Notice broadly purports "to cover any ruling which pertains to whether certain articles transported on vessels are considered vessel equipment pursuant to T.D. 49815(4)." The Notice's restrictive view of "vessel equipment" could have direct and immediate implications for MODUs now operating on the OCS. IADC believes there is no justification to change the definition of "vessel equipment" and even if there were, Section 625 of the Tariff Act of 1930 is not the proper mechanism for doing so. For these reasons, IADC objects to the 2017 Notice, and requests that CBP withdraw the 2017 Notice.

Third, in the event CBP adopts the Notice despite our objections, IADC requests that CBP clarify that "vessel equipment" includes items on MODUs that are "necessary and appropriate . . . for the navigation, operation or maintenance of the vessel and for the safety of the persons on board," including items such as drilling mud and chemicals, risers, well control equipment (such as the blow out preventer (BOP) stack), drill string, and other equipment that are necessary for the operations and critical to the safety of the MODU, its crew, property, and the environment. T.D. 49815(4) (March 13, 1939).

IADC has joined with the American Petroleum Institute, the Association of Diving Contractors International, the Independent Petroleum Association of America, the International Association of Geophysical Contractors, the International Marine Contractors Association, the Louisiana Mid-Continent Oil and Gas Association, the Offshore Operators Committee, the Petroleum Equipment & Services Association and the U.S. Oil and Gas Association (collectively, the "Trades") to offer comments on the 2017 Notice. IADC fully supports the comments offered by the Trades and the purpose of this letter is to complement and supplement the Trades' comments, particularly as to issues unique to offshore drillers.

¹ The 2017 Notice specifically proposes modification of HQ 101925 (Oct. 7, 1976), revocation of HQ 108223 (Mar. 13, 1986), HQ 108442 (Aug. 13, 1986), HQ 113838 (Feb. 25, 1997), HQ 115185 (Nov. 20, 2000), HQ 115218 (Nov. 30, 2000), HQ 115311 (May 10, 2001), HQ 115522 (Dec. 3, 2001), HQ 115771 (Aug. 19, 2002), and to "revoke or modify any treatment previously accorded by CBP to substantially identical transactions." Further, with respect "vessel equipment" defined by T.D. 49815(4) (Mar. 13, 1939), CBP proposes to revoke HQ 105644 (June 7, 1982), HQ 110402 (Aug. 18, 1989), HQ 111889 (Feb. 11, 1992), HQ 112218 (July 22, 1992), HQ 113841 (Feb. 28, 1997), HQ 114305 (Mar. 31, 1998), HQ 114435 (Aug. 6, 1998), HQ 115333 (Apr. 27, 2001), HQ 115487 (Nov. 20, 2001), HQ 115938 (Apr. 1, 2003), HQ H004242 (Dec. 22, 2016), modify HQ 111892 (Sept. 16, 1991), HQ 115381 (June 15, 2001), HQ 116078 (Feb. 11, 2004), HQ H029417 (June 5, 2008), HQ H032757 (July 28, 2008), and "revoke and/or modify all other previously issued ruling letters with findings that are inconsistent with" the 2017 Notice.

Again, the views and comments in this letter are offered without prejudice to comments that may be offered individually by our members.

I. Executive Summary

The offshore energy industry is critically important to the U.S. national interest from both an economic and a national security standpoint. IADC members operate a wide variety of MODUs, including self-elevating units (jack-ups), semisubmersibles and drillships, which may be temporarily fixed on location, or positioned over the well by either a spread-mooring system or, increasingly more common, by a dynamic positioning (DP) system. MODUs then drill through a pipe called a marine riser, which is connected to a BOP stack that is latched onto a wellhead on the seabed. These MODUs also use a lower marine riser package (LMRP) which sits between the last joint of riser and the BOP to conduct drilling activities.

IADC members' services are an essential component of the U.S. offshore energy industry and a core component of the overall domestic energy industry. IADC's members provide thousands of U.S. jobs and are at the forefront of developing the new and innovative technologies that are responsible for ever-expanding U.S. energy production capabilities and improved safety. Such contributions are substantial stimulators of both the U.S. and global economy.

As a result of IADC members' contributions to technological advancement, oil and gas exploration and production has pushed out farther into deeper water. The development and construction of the equipment to support this industry has taken place at an enormous cost and over decades of constantly-changing and increasingly complex market conditions. In such a business environment, the industry relies on any market factors with some degree of predictability, which includes the ability to deploy foreign-built MODUs on the OCS. Today, none of the MODUs deployed for deepwater drilling operations on the OCS, or elsewhere, are coastwise-qualified vessels, although there is one coastwise qualified semisubmersible MODU that is currently engaged in well-servicing operations, but not drilling. Additionally, the vast majority of self-elevating MODUs that are used in water depths of up to 350 feet are now also foreign flagged and not qualified for coastwise trade.

MODUs are constructed and designed to serve highly specialized drilling and well-servicing functions which, in turn, require made for purpose equipment and systems. Systems used for drilling functions, such as the deployment of marine risers or drill string, may not be essential for the physical movement of a MODU from place to place, but are nevertheless essential to the MODU's function and safety during drilling operations. Such systems render MODUs increasingly self-sufficient and make it possible to operate in deepwater, remote, and/or hostile environments in a safe and cost-effective manner. Foreign flagged MODUs routinely and permissibly transport "vessel equipment" and "usual supplies and equipment necessary for the drilling operations" to offshore well locations without violating the coastwise laws. HQ 109817 (Nov. 14, 1988).

IADC urges CBP to confirm that the 2017 Notice does not represent a change to the definition of "vessel equipment" as it applies to drilling operations and that non-merchandise "vessel equipment," which includes drilling equipment and materials necessary for safe drilling operations, may continue to be transported from coastwise point to coastwise point by a foreign flagged drilling vessel without violating coastwise laws. In the event that CBP declines to provide this confirmation, IADC requests that CBP withdraw the 2017 Notice and engage in notice and comment ruling making pursuant to the Administrative Procedure Act (APA). 5 U.S.C. § 553.

II. CBP's Proposed Modifications Are At Odds with the Economics and Practical Needs of the Drilling Industry

For nearly 30 years,² MODU operators have structured their operations under the following guidance regarding the use of non-coastwise qualified MODUs on the OCS:

The Customs Service, in interpreting the coastwise laws, has consistently held that a vessel used solely in drilling operations is not considered to be engaged in the coastwise trade. Accordingly, the use of the non-coastwise-qualified drilling vessel under consideration solely for drilling purposes in United States coastal waters or waters over the OCS adjacent to the United States would not violate the coastwise laws, provided that the vessel carried no persons other than the usual crew and personnel engaged in the drilling operations and no merchandise other than the usual supplies and equipment necessary for the drilling operations.

As indicated in the above discussion of the applicability of the coastwise laws to the United States OCS, the drilling vessel would be considered a coastwise point while attached to the seabed of the OCS for the purpose of drilling or exploring for resources from the OCS. The vessel would be considered to be so attached to the seabed of the OCS while engaged in drilling operations and while at anchor before or after engaging in drilling at that location. Any service vessel transporting merchandise or passengers between the United States mainland or any other United States coastwise point and the vessel while it was considered to be a coastwise point would be required to be coastwise qualified.

² *Shipbuilders Council of America v. U.S.*, 868 F.2d 452, 454 (D.C. Cir. 1989).

HQ 109817 (Nov. 14, 1988). In context of MODU operations, "the usual supplies and equipment necessary for the drilling operations" encompasses a broad category of material and items.

A. Marine Drilling Riser

On MODUs, the marine drilling riser has always been considered to be part of the "usual supplies and equipment necessary for the drilling operations."

The marine drilling riser, along with the BOP and LMRP, is deployed or paid out from the MODU to connect the MODU to the seabed. In conjunction with the drillpipe, the marine drilling riser serves as a conduit to contain drilling fluids and to return them to the surface for treatment, reuse, or disposal. Thus, the marine riser is a critical safety component of the MODU's operations and should continue to be considered "vessel equipment," the transportation of which is exempt from the coastwise laws.

MODUs are also designed with complex automated systems for the safe and efficient storage, onboard handling, deployment, retrieval, and re-stowage of the marine drilling riser and associated components. A "typical" riser configuration for drilling a well in 10,000 feet of water includes: (1) a telescopic joint; (2) 5 non-buoyant 90-foot joints; (3) 107 buoyant 90-foot joints of varying buoyancy; (4) 29 non-buoyant 90-foot joints; and (5) the LMRP to connect to the BOP. The total weight of this riser configuration is approximately 4.4 million pounds (2,200 tons). As such, the loading and offloading of the marine riser and associated components to and from the MODU is not considered a routine operation because it cannot be accomplished with the automated handling systems, but only with the MODU's cranes. The periodic loading and offloading of the entire marine riser and associated components would be an enormous and expansive undertaking with substantial safety risks to both the MODU's crew and the attending support vessels' personnel. These activities would require additional operations that would put crew and other personnel at risk of injury, increase the risk of property damage, and potential damage to the environment, and due to the added costs, may make some drilling operations economically infeasible in areas under U.S. jurisdiction.

B. Drill String

The drill string is deployed or paid out from the MODU through the riser to drill the well. Well depth records continue to be set, but can and do easily exceed 30,000 feet. MODUs are designed with complex automated systems for the safe and efficient storage, onboard handling, deployment, retrieval, and re-stowage of the drill string. The potential reclassification of the drill string as merchandise would require additional lifts to and from adjacent vessels by the MODU's cranes, instead of using the automated systems already in place. These unnecessary operations would put the safety of crew at risk every time they are performed.

C. Third-Party Equipment

Other uncertainties arise with the third-party equipment that may be brought to a MODU to assist with the drilling operation and then left onboard as the MODU is moved from well site to well site. This equipment may include, but is not limited to, cementing units, remotely operated vehicles (ROVs), various specialty tools and equipment, materials and waste containers, skids, etc. Such equipment is the "usual supplies and equipment necessary for drilling operations." Changing this guidance raises the same concerns addressed above and, the only feasible workaround in the event of a reclassification—offloading onto coastwise qualified vessels for transport and then loading back onto the MODU at the new well site—needlessly puts the crew, property, and environment at risk.

III. CBP's Current Exception of "Vessel Equipment" from Coastwise Trade Regulations is Purposefully Broad and Expansive—It Encompasses Anything Essential to Vessel Operations or Safety

"Vessel equipment" is a CBP-created term of art. The Jones Act, 46 U.S.C. § 55102(b), restricts the transportation of merchandise from points in the United States that are subject to the coastwise laws (*i.e.*, coastwise points) to coastwise qualified vessels. The scope of "merchandise" is broad and is defined to include even "valueless material." 46 U.S.C. § 55102(a). As set forth in T.D. 49815(4), however, "merchandise" does not include "vessel equipment," and "vessel equipment" expressly includes equipment and materials critical to the safe operation of the vessel. The transportation of merchandise is defined as "when merchandise laden at a point embraced within the coastwise laws ('coastwise point') is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise." 19 C.F.R. § 4.80b(a). Citing 43 U.S.C. § 1333(a)(1), CBP has determined that a MODU that is physically connected to the seabed of the OCS by anchor or by other equipment qualifies as a coastwise point. As a result, non-coastwise qualified foreign vessels, including most MODUs on the OCS, may transport "vessel equipment," but cannot transport merchandise, between two coastwise points.

CBP's concept of "vessel equipment" is based on a 1939 Treasury Decision which stated:

The term 'equipment,' as used in section 309, as amended, includes portable articles necessary and appropriate for navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

T.D. 49815(4) (March 13, 1939) (emphasis added). As originally defined, and reaffirmed by subsequent ruling letters, the definition of "vessel equipment" envelops a wide variety of equipment and materials necessary for safe and efficient vessel operations. As the offshore energy industry evolved, ruling letters at issue in the 2017 Notice reveal that CBP has taken a sensible and pragmatic approach to the definition of "vessel equipment" that accounts for advances in vessel technology and oil and gas operations.

A. CBP's Existing Interpretation of "Vessel Equipment" and Focus on the Operation a Vessel are consistent with the 1939 Treasury Decision and the General Maritime Law

The definition of "vessel" within the Customs laws replicates the Rules of Construction Act. 19 U.S.C. § 1401; 1 U.S.C. § 3. A "vessel" "includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." *Id.*; see also *Lozman v City of Riviera Beach, Florida*, 133 S.Ct. 735 (2013). Although the concept of a "vessel" traditionally referred to something that primarily transported passengers or cargo from place to place across navigable water, the concept of what is and is not a vessel has grown and expanded as maritime commerce has changed.

For offshore oil and gas operations, the seminal vessel status case was *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959), which held that a floating submersible drilling rig made fast to the ocean floor by retractable "jack-up" legs is a vessel since its inherent characteristic is the ability to be towed from place to place. Subsequent court cases held that all other assortments of offshore barges and other equipment used in the oil and gas industry were vessels.³ The critical test applied to determine what is and is not a vessel, however, looks directly at "the purpose for which the craft is constructed and the business in which it is engaged." See *Robert W. Parsons*, 191 U.S. 17, 30 (1903). The purpose of a MODU is to undertake well construction (drilling) and related servicing activities.

B. CBP's Existing Definition of Vessel Equipment Includes Materials and Equipment Essential for Safe Vessel Operations

Notwithstanding the fact that CBP has always interpreted vessel equipment broadly, CBP's stated intention in the 2017 Notice is to bring current CBP guidance in line with the meaning of "vessel equipment" contemplated by T.D. 49815(4). That definition "includes portable articles necessary and appropriate for . . . operation or maintenance of the vessel

³ See, e.g., *Producers Drilling Co. v. Gray*, 361 F.2d 432 (5th Cir. 1963) (submersible drilling barge designed to transport drilling equipment to a well site, to submerge for drilling operations, and to refloat for movement to a new site); *Hicks v. Ocean Drilling & Exploration Co.*, 512 F.2d 817 (5th Cir. 1975) (a submersible oil storage facility built on a barge with tanks that was capable of being submerged or raised); *Parks v. Dowell Div. of Dow Chem. Corp.*, 712 F.2d 154 (5th Cir. 1983) (drilling tender anchored for extended periods to a fixed offshore platform, but that was capable of being moved and was moved to transport men or equipment or in times of rough weather).

and . . . **safety** . . ."⁴ To the extent material aids in the safe operation of a MODU, that material should be considered to be "vessel equipment" under T.D. 49815(4).

Indeed, in HQ 111892 (Sept. 16, 1991), safety was one of the factors highlighted by CBP in its decision to treat three (3) Yokohama fenders transported by a foreign flagged tank vessel to be used in ship-to-ship lightering operations as "vessel equipment." Yokohama fenders do not aid in a vessel's transportation; instead they are an important piece of safety equipment that prevents hull-to-hull contact during the transfer of potentially hazardous cargo. The specialized drilling equipment and materials onboard a MODU actively protect the MODU, personnel, and the environment from the hazards posed by well bore pressures, dangerous gases, and metallurgical component failures and should similarly be excepted from coastwise restrictions.

IADC's members operate in a heavily regulated industry where safety is the number one priority, along with a dedication to the protection of the environment. Safe operations are efficient operations. As such, items required by law to be onboard that are provided to ensure safe and efficient operations for MODUs while engaged in drilling or other operations on the OCS qualify as "vessel equipment" under T.D. 49815(4).

C. BSEE Has Implemented Specific Safety Rules and Regulations to Improve the Safety of Vessels Engaged in Drilling Operations

On April 29, 2016, the Bureau of Safety and Environmental Enforcement (BSEE) published the Final Rule regarding Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control in the Federal Register. 81 Fed. Reg. 25888 (April 29, 2016); 30 C.F.R. Part 250. The sobering motivation for this immense regulatory undertaking was safety:

A primary purpose of this rulemaking is to prevent future well-control incidents, including major incidents like the 2010 *Deepwater Horizon* catastrophe. In addition to the loss of 11 lives, that single event resulted in the release of 134 million gallons of oil, which spread over 43,300 square miles of the GOM and 1,300 miles of shoreline in several states. The environmental and other damages caused by the *Deepwater Horizon* incident were immense and have had long-lasting and widespread impacts on the Gulf and the affected states.

81 Fed. Reg. 25890. In particular, BSEE has created regulations governing the use and application of drilling mud, well casing, and cement as an absolutely critical safety function of vessels performing drilling operations on the OCS. This material and the systems on MODUs are intended to prevent a catastrophic event that could endanger human lives, property, the environment, and the MODU itself.

⁴ T.D. 49815(4) (Mar. 13, 1939) (emphasis added).

1. Drilling Mud, Weighted Fluid, and other Chemical Well Additives are Critical Components of Well Control and Vessel Safety

Drilling mud, weighted fluid, and other chemical well additives are necessary components of drilling operations. To the extent that a vessel is performing drilling operations on the OCS, the use of these materials is critical to the operation of the vessel. Without them, drilling operations cannot take place, and the vessel would be as useless as a cargo ship without the bunkers necessary to steam to its next port of call.

Drilling mud and other well additives are also the first line of defense for preventing a catastrophic loss of well control. When properly used, these materials maintain appropriate pressure in the wellbore to counteract the natural formation pressures that, if unchecked, might result in a kick or blowout. Because of their critical role in the control of the immense pressures present within and throughout the well and formation, these fluids are necessary components of a MODU's operations while drilling safely. *See* 30 C.F.R. § 250.414 (requiring planned safe drilling margin with default safety minimum of 0.5 pound per gallon below the lower casing shoe pressure).

Although not all chemical additives are specifically designed for well control, they are still utilized to accomplish a MODU's primary drilling or well-intervention purposes.⁵ Indeed, the loss of control of an offshore well poses risk to the lives of the vessel crew and other contractors engaged in drilling operations, to the vessel, and to the environment. To the extent that drilling mud, weighted fluid, and other chemical additives are necessary for safe well operations, they should continue to be considered vessel equipment necessary for the operation of the vessel based upon a reasonable and well-supported interpretation of T.D. 49815(4) (Mar. 13, 1939) in the context of modern offshore oil and gas operations.

2. Casing & Cementing Operations Are Likewise Critical to Safe Operation of MODUs

The BSEE regulations pertaining to casing and cementing operations are aimed at preserving life, property, and the environment by preventing a catastrophic loss of well control. *See* 30 C.F.R. § 250.420. Specifically all casing and cementing programs are required to "properly control formation pressures and fluids." 30 C.F.R. § 250.420(a)(1). Under BSEE regulations, parties are required to design all casing to "withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof" and include "safety measures that ensure well control during drilling and safe operations during the life of the

⁵ For example, some chemical additives are designed to inhibit the frequently encountered and toxic molecular compound hydrogen disulfide (H₂S) which, although deadly to humans, is more often a concern because of its tendency to cause metallurgical corrosion on the drilling components in the well. Such corrosion may lower the yield properties of tubular and pressure control equipment and eventually threaten safety of the MODU. The introduction of chemical additives to address operational safety considerations are critical to effective and efficient drilling operations on the OCS.

well." 30 C.F.R. § 250.420(b)(1)–(2). For cementing operations, there is also a specific regulatory requirement for the use of a weighted fluid during displacement to maintain an overbalanced hydrostatic pressure during the cement setting time. 30 C.F.R. § 250.420(c)(2). These regulatory requirements help define safe operations for MODUs performing drilling operations on the OCS. As stated before, such materials are "vessel equipment" for the purposes of the coastwise laws.

IV. The 2017 Notice Raises Significant Concerns and Contradicts Efforts by BSEE and the USCG in promoting safety and the protection of the environment.

The 2017 Notice makes no reference to vessel safety equipment. The *Deepwater Horizon* tragedy is a stark reminder of the dangers faced by vessels, their crews, and the environment when conducting drilling operations. Following the *Deepwater Horizon* incident, extensive reports were issued by numerous federal agencies, including the United States Coast Guard (USCG)⁶ and the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMR),⁷ BSEE's predecessor. A bi-partisan presidential commission was appointed to investigate the cause of the incident and issued a multi-volume report with recommendations to improve offshore safety.⁸ Many of the safety recommendations have since been adopted in regulations promulgated by BSEE and the USCG. CBP's proposed interpretation of the coastwise laws could impact technologies already regulated by BSEE or the USCG—for safety purposes—and put MODU operators in an uncomfortable and uncertain position.

As CBP is fully aware, BSEE and the USCG are the lead regulators for offshore operations, which include MODU operations. With the goal of promoting the safety of life, property, and the protection of the environment, BSEE and the USCG have entered in to several Memorandum of Understanding ("MOU") and/or Memorandum of Agreements (MOA), with the designed goal of advancing interagency consistency in the regulation of offshore operations. See BSEE/USCG MOU dated November 27, 2012. On June 4, 2013, BSEE⁹ and the USCG¹⁰ entered into a MOA concerning MODU operations. BSEE/USCG MOA:

⁶ The USCG's "Report of Investigation into the Circumstances Surrounding the Explosion, Fire, Sinking and Loss of Eleven Crew Members aboard the Mobile Offshore Drilling Unit, *Deepwater Horizon*, in the Gulf Mexico April 20-22, 2010" is available at <https://www.uscg.mil/hq/cg5/cg545/dw/exhib/DWH%20ROI%20-%20USCG%20-%20April%2022,%202011.pdf>

⁷ The BOEMR "Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout dated September 14, 2011" is available at https://docs.lib.noaa.gov/noaa_documents/DWH_IR/reports/dwhfinal.pdf

⁸ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling report entitled *The Deep Water The Gulf Oil Disaster and Future of Offshore Drilling* is available at <https://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf>

⁹ "When a MODU is temporarily attached to the seabed, BSEE regulates well operations including drilling, completions, workover, production, and decommissioning. See BSEE/USCG MOA: OCS-08.

¹⁰ "MODUs fall under USCG authority for regulation of vessels, are inspected and certificated by the USCG under Title 46 of the U.S. Code, and are subject to USCG regulatory authorities under OCSLA for all matters relating to the promotion of safety of life and property (43 USC § 1333(d)), as well as for unregulated hazardous

OCS-08. As set forth in the MODU MOA, both BSEE and the USCG have regulatory oversight of crane and/or lifting system operations. BSEE/USCG MOA: OCS-08, Annex 1 at Items 4.f; 16.

Prior the issuance of the 2017 Notice, CBP was on notice of BSEE and the USCG's concerns over the safety of offshore lifting operations. Attached as exhibits to API's 2009 comment¹¹ were two letters both dated April 22, 2009 from the U.S. Department of the Interior (DOI) to industry associations stating that the Minerals and Management Service (MMS) and the USCG "to have significant concerns about the safety of Outer Continental Shelf (OCS) lifting operations." The DOI letter also indicated that the regulators and industry should take further steps to "achieve better lifting safety results."

The concerns over safe lifting operations espoused in 2009 by BSEE's predecessor agency (the MMS) and the USCG have not abated. On July 16, 2013, the BSEE Director spoke at the Offshore Safe Lifting Conference¹² and stated:

All of us working offshore have the same goal. Safety at all levels, at all times. This isn't just a slogan for BSEE to put on bumper stickers. This is the guiding principal that drives every decision we make. Safety must come first.

Addressing the implementation of new industry lifting standards, the BSEE Director stated:

BSEE actively participated in the creation of these new standards, and we are currently evaluating them for incorporation into our regulations. Our participation in the development of these new standards is one illustration of our belief that safety is paramount and that industry and government must work together if we are to achieve our goal of zero accidents.

Two years later, on July 14, 2015, the BSEE Director again spoke at the Safe Lifting Conference¹³ and told an industry group that:

Unfortunately, lifting incidents have been a persistent trend. Ten years ago, when I reported to the U.S. Coast Guard Headquarters and began regular interaction with the Mineral Management Service on offshore

working conditions on the Outer Continental Shelf (OCS) (43 USC§ 1347(c))." See BSEE/USCG MOA: OCS-08.

¹¹ API submitted comments in connection with CBP's Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment Between Coastwise Points," 43 *Customs Bulletin* 28 at 54 (July 17, 2009) (the "2009 Notice").

¹² The full text of the July 16, 2013 speech is available on BSEE's website at <https://www.bsee.gov/sites/bsee.gov/files/public-comments/public-comments-notice/bsee-addresses-2013-offshore-safe-lifting-conference.pdf>.

¹³ The full text of the July 14, 2015 speech is available on BSEE's website at <https://www.bsee.gov/site-page/safe-lifting-conference-remarks>.

safety, lifting emerged as a key area of joint focus. More recently, review of our incident data within BSEE underscores that the problem has not yet been solved. Hard numbers show that lifting is not as safe as it should be.

To further underscore the safety concerns over offshore lifting operations, BSEE and USCG wrote to CBP on September 1, 2015 in connection with whether the Jones Act coastwise restrictions applied to heavy lift crane vessel operations. Both BSEE and the USCG requested CBP to take safety considerations into account.

If the intent of the 2017 Notice is to limit the definition of vessel equipment, then the result will be a dramatic increase in offshore heavy lifting operations which increases the dangers to those working offshore and contradicts the positions taken by BSEE and the USCG, which are the primary regulators of OCS operations.

V. Conclusion

IADC requests that the CBP confirm that the 2017 Notice does not change the definition of “vessel equipment” as it applies to drilling operations. In the alternative, the 2017 Notice should be withdrawn. If CBP continues to believe that changes to the status quo are justified, CBP should adhere to well-established legal and administrative precedent and commence the regulatory process to ensure that all the full effects of the proposed action are analyzed and understood per the requirements of the APA.

In the absence of such a withdrawal, CBP must provide for a sufficient time before any change becomes effective to permit the industry time to make operational, commercial, and contractual adjustments and grandfather all ongoing contracts executed in reliance on the 40 years of prior precedent.

We appreciate the opportunity to provide these comments. If you have any questions or need clarification, please do not hesitate to contact the undersigned by phone at (713) 292-1964, or email at alan.spackman@iadc.org.

Sincerely,



Alan Spackman
Vice President, Policy, Government & Regulatory Affairs