H. R. ___

To require the Commissioner of U.S. Customs and Border Protection to make certain determinations in enforcing the Jones Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GARAMENDI introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To require the Commissioner of U.S. Customs and Border Protection to make certain determinations in enforcing the Jones Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Close Agency Loopholes to the Jones Act”.

SEC. 2. FINDINGS.

Congress finds the following:
(1) In 1920, Congress enacted the Merchant Marine Act (chapters 121 and 551 of title 46, United States Code), commonly referred to as the “Jones Act”.

(2) In 1953, Congress enacted the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) applying the Constitution, laws, and civil and political jurisdiction of the United States to the outer Continental Shelf.

(3) In 2020, Congress enacted section 9503 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) affirming that application of the Constitution, laws, and civil and political jurisdiction of the United States to the outer Continental Shelf also applies to non-mineral energy resources and exploring for, developing, producing, transporting, or transmitting such resources.

(4) Therefore, the Jones Act prohibits the use of a non-Jones Act qualified vessel for the provision of any coastwise transportation of merchandise to or from a port of the United States (including territories or possessions to which the coastwise laws apply) to any point on the outer Continental Shelf,
or between any two points on the outer Continental Shelf.

(5) U.S. Customs and Border Protection (hereinafter referred to as “CBP”) is responsible for interpreting and enforcing the Jones Act. CBP has issued ruling letters and other interpretative guidance to requesting parties that provide the description of proposed activities.

(6) Unlike most federal agencies, CBP is required by section 625(c) of the Tariff Act of 1930 (19 U.S.C. 1625(c)) to follow its past interpretive guidance and treatments of “substantially identical transactions,” unless it institutes a public notice and comment process to modify or revoke that interpretative guidance. As a result, CBP and market participants treat as binding ruling letters and interpretative guidance in addressing whether and how the Jones Act applies in substantially identical factual situations.

(7) Thus, CBP’s ruling letters—even if legally incorrect—have substantial impacts: When CBP purports to authorize a foreign vessel to transport merchandise between coastwise points, unless ordered by a federal court to rescind such ruling letters, CBP does not take enforcement action against
other foreign vessels engaging in substantially iden-
tical transactions, and vessel operators accordingly
rely on CBP’s past ruling letters and guidance
issued to other parties.

(8) Over several decades, CBP has purported to
create an array of exemptions from the prohibitions
of the Jones Act for the benefit of foreign vessels.

(9) On December 11, 2019, CBP published
Customs Bulletin and Decisions, Vol. 53, No. 45
(hereinafter referred to as the “2019 Decision”) re-
voking a handful of its interpretations, recognizing
that the analyses employed therein were inconsistent
with the Jones Act and original congressional intent,
including by using statutory language “out of con-
text,” having been superseded by amendments, or
being predicated on CBP-created distinctions that
had always been “irrelevant” under the Jones Act.

(10) However, the 2019 Decision still left in
force many ruling letters inconsistent with the Jones
Act and original congressional intent, espousing the
same unlawful doctrines, revoked others that prop-
erly interpreted the Jones Act, and created several
new loopholes that purport to immunize much of the
same foreign vessel activities that are now, and have
always been, prohibited under the Jones Act.
Thus, CBP has created invalid exemptions from the prohibition embodied in the Jones Act, using a variety of new and old doctrines inconsistent with original congressional intent. In 2014, the Supreme Court of the United States found in Utility Air Regulatory Group. v. Environmental Protection Agency (573 U.S. 302, 328) that it is a “core administrative law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate”.

These invalid, ultra vires doctrines, and their uses, include—

(A) an unlawfully broad interpretation of “vessel equipment” which conflicts with Congress’ statutory description of “merchandise,” and the explicit, limited statutory exemption;

(B) the “paid out not unladen” doctrine, which provides that pipe or cable laying operations are not coastwise trade subject to the Jones Act – even when the pipe is laid between two coastwise points, and in spite of Congress’ statutory prohibition against foreign vessels performing “any part of the transportation by water” of merchandise;
(C) the “paid out not unladen” doctrine is also used by foreign vessel operators to justify the transportation of merchandise attached to the paid out pipe or cable;

(D) the “lifting operations” exemption, which purports to permit self-propelled movements by a vessel when using a crane or like equipment to install or remove merchandise on or from offshore facilities or subsea infrastructure;

(E) the “decommissioning activity” exemption, which purports that merchandise transported as a result of decommissioning – i.e., the restoration of the sea-floor and the water surface by plugging and abandoning the well and removing the installation and facility – is not subject to the Jones Act;

(F) the “offshore research vessel” misapplications, which improperly extends the exclusion for oceanographic or limnological research vessels to commercial research activities that directly support the exploration for, or development, production, transportation, or transmission of, resources, on the outer Continental Shelf; and
(G) the “pristine seabed” exemption, where CBP has purported to hold that Outer Continental Shelf Lands Act’s explicit application to the “subsoil and seabed” of the outer Continental Shelf does not include the “pristine seabed”.

(13) If a ruling letter is contrary to the statute’s plain text and the expressed intent of Congress, or found unpersuasive by a Federal Court, it will be invalidated as arbitrary and capricious.

(14) Federal Courts have not squarely addressed the interpretations contained in these CBP ruling letters and other guidance, and thus have never upheld these interpretations as valid and authoritative.

SEC. 3. PRECLUDING EXEMPTIONS FROM JONES ACT REQUIREMENTS FOR CERTAIN FOREIGN VESSELS.

The Secretary may not provide any exemption from the requirements of chapters 121 and 551 of title 46, United States Code (commonly referred to as the “Jones Act”), to the owner of a foreign vessel engaging in commercial transportation services to directly support the exploration for, or development, production, transportation, or transmission of, resources, including non-mineral en-
ergy resources, from a planning or leasing area designated
by the Secretary of the Interior under the Outer Con tin-
ental Shelf Lands Act (43 U.S.C. 1331 et seq.).

SEC. 4. OCEANOGRAPHIC RESEARCH VESSELS.

(a) IN GENERAL.—In enforcing chapter 551 of title
46, United States Code, the Secretary may not determine
that a vessel engaging in commercial research activities
to directly support the exploration for, or development,
production, transportation, or transmission of, resources,
including non-mineral energy resources, from a planning
or leasing area designated by the Secretary of the Interior
under the Outer Continental Shelf Lands Act (43 U.S.C.
1331 et seq.) is not engaged in trade or commerce under
such chapter.

(b) OCEANOGRAPHIC RESEARCH VESSEL CLARIFI-
CATION.—Section 50503 of title 46, United States Code is
amended by inserting “, except that any vessel engaging
in commercial research activities to directly support the
exploration for, or development, production, transpor-
tation, or transmission of, resources, including non-min-
eral energy resources, from a planning or leasing area des-
ignated by the Secretary of the Interior under the Outer
Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) may
be determined to be engaged in trade or commerce under
this section” after “trade or commerce”. 
(c) **DESIGNATION.**—The Commandant of the Coast Guard shall deny any request from a foreign vessel to be designated as an oceanographic research vessel for any such vessel engaging in commercial research activities to directly support the exploration for, or development, production, transportation, or transmission of, resources, including non-mineral energy resources, from a planning or leasing area designated by the Secretary of the Interior under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

(d) **REVOCATION OR MODIFICATION OF CERTAIN RULING LETTERS.**—

(1) **IN GENERAL.**—The Secretary shall revoke or modify, as appropriate, the following headquarters ruling letters:

   (A) HQ H216579 (May 15, 2012).
   (B) HQ H205655 (March 20, 2012).
   (C) HQ 112830 (August 12, 1993).
   (D) HQ 110364 (September 29, 1989).

(2) **SUBSTANTIALLY IDENTICAL TRANSACTIONS.**—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions
described in the ruling letters listed in paragraph (1).

(c) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report detailing the total number vessels known or estimated to operate under section 50503 of title 46, United States Code, during each of the preceding 10 fiscal years.

(2) CONTENTS.—The report required under paragraph (1) shall include the following elements:

(A) The total number of foreign vessels known or estimated to operate as oceanographic research vessels during each of the preceding 10 fiscal years.

(B) The total number of vessels documented under the laws of the United States known or estimated to operate as oceanographic research vessels, or engage in activities similar to the work conducted by oceanographic research vessels, during each of the preceding 10 fiscal years.
SEC. 5. U.S. CUSTOMS AND BORDER PROTECTION RULINGS.

(a) VESSEL EQUIPMENT.—

(1) IN GENERAL.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not apply an interpretation of the terms “vessel equipment” or “equipment” that conflicts with the definition of the term “merchandise” or sections 55105, 55106, 55107, 55108, 55110, 55113, and 55115 of such title.

(2) REVOCATION OR MODIFICATION OF CERTAIN RULING LETTERS.—

(A) IN GENERAL.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect interpretation of the terms “vessel equipment” or “equipment” as described in paragraph (1), including the following headquarters ruling letters:

(i) HQ H032757 (July 28, 2008).

(ii) HQ H029417 (June 5, 2008).

(iii) HQ H004242 (December 22, 2006).

(iv) HQ 116078 (February 11, 2004).

(v) HQ 115938 (April 1, 2003).

(vi) HQ 115771 (August 19, 2002).

(vii) HQ 115333 (April 27, 2001).
(B) SUBSTANTIALLY IDENTICAL TRANSACTIONS.—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in the ruling letters listed in subparagraph (A).

(b) PAID OUT NOT UNLADEN.—
(1) In general.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not determine that pipe or cable laying operations, including the transportation of merchandise attached to such pipe or cable, are not subject to such chapter because the vessel pays out the pipe or cable to a coastwise point.

(2) Revocation or modification of certain ruling letters.—

(A) In general.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect determination with respect to pipe or cable laying operations described in paragraph (1), including the following headquarters ruling letters:

(i) HQ 115522 (December 3, 2001).
(ii) HQ 115487 (November 20, 2001).
(iii) HQ 115311 (May 10, 2001).
(iv) HQ 115333 (April 27, 2001).
(v) HQ 114435 (August 6, 1998).
(vi) HQ 114305 (March 31, 1998).
(vii) HQ 105644 (June 7, 1982).
(viii) HQ 101925 (October 7, 1976)
(also referred to as T.D. 78–387).
(B) **SUBSTANTIALLY IDENTICAL TRANSACTIONS.**—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in the ruling letters listed in subparagraph (A).

(c) **LIFTING OPERATIONS.**—

(1) **IN GENERAL.**—In enforcing chapter 551 of title 46, United States Code, the Secretary may not exempt lifting operations from the requirements of such chapter.

(2) **REVOCATION OR MODIFICATION OF CERTAIN AGENCY ACTIONS.**—The Secretary shall—

(A) revoke or modify, as appropriate, any ruling letters that apply the exemption described in paragraph (1); and

(B) modify the Customs Bulletin and Decision issued on December 11, 2019, titled “Modification and revocation of ruling letters relating to CBP’s application of the Jones Act to the transportation of certain merchandise and equipment between coastwise points” (Customs Bulletin and Decisions, Vol. 53, No. 45) to be consistent with paragraph (1); and
(C) revoke or modify, as appropriate, any other treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in this paragraph.

(3) REINSTATEMENT OF CERTAIN RULING LETTERS.—Upon revoking and modifying the agency actions under paragraph (2), the Secretary shall reinstate the following headquarters ruling letters (popularly known as the “Koff rulings”):

(A) HQ H242466 (July 3, 2013).
(B) HQ H235242 (November 15, 2012).
(C) HQ H225102 (September 24, 2012).

(d) INSTALLATION ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall revoke the following headquarters ruling letters in which the Secretary determined that certain installation activities do not involve transportation of merchandise between points in the United States for purposes of section 55102 of title 46, United States Code:

(A) HQ 115185 (November 20, 2000).
(B) HQ 115218 (November 30, 2000).
(C) HQ 113838 (February 25, 1997).
(D) HQ 108442 (August 13, 1986).
(2) **Similar ruling letters.**—The Secretary shall revoke or modify, as appropriate, any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in the ruling letters described in paragraph (1).

(e) **Decommissioning.**—

(1) **In general.**—In enforcing chapter 551 of title 46, United States Code, the Secretary may not exempt merchandise transported as a result of decommissioning an installation or facility on the outer Continental Shelf from the requirements of such chapter.

(2) **Revocation or modification of certain ruling letters.**—The Secretary shall revoke or modify, as appropriate—

(A) any ruling letters that apply the exemption described in paragraph (1), including the headquarters ruling letter HQ H004242 (December 22, 2006); and

(B) any treatments, including ruling letters, accorded by the Secretary to transactions that are substantially identical to the transactions described in the ruling letter described in subparagraph (A).
(f) **Subsoil or Seabed Samples.—**

(1) In general.—In enforcing chapter 551 of title 46, United States Code, the Secretary may not determine that—

(A) subsoil or seabed samples are not merchandise for purposes of section 55102 of title 46, United States Code; or

(B) taking subsoil or seabed samples from the seabed is not considered an installation or other device for purposes of section 4(a)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(1)).

(2) Revocation or Modification of Certain Ruling Letters.—

(A) In general.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect determination described in paragraph (1), including the following headquarters ruling letters:

(i) HQ H317289 (March 25, 2021).

(ii) HQ 115799 (September 30, 2002).

(iii) HQ 116602 (January 30, 2006).

(iv) HQ 108442 (August 13, 1986).
(B) Substance ly Identical Transactions.—The Secretary shall revoke or mod-
ify, as appropriate, any treatments, including
ruling letters, accorded by the Secretary to
transactions that are substantially identical to
the transactions described in the ruling letters
listed in subparagraph (A).

(g) Pristine Seabed.—

(1) In General.—In enforcing chapter 551 of
title 46, United States Code, the Secretary may not
determine that such chapter does not apply to—

(A) the pristine seabed of the outer Conti-
nental Shelf; or

(B) articles or devices, including seismic
nodes or rock, aggregate, or other scour protec-
tion materials, either temporarily or perma-
nently placed onto or embedded into the seabed
on the outer Continental Shelf.

(2) Attached Articles.—In enforcing chap-
ter 551 of title 46, United States Code, the Sec-
retary shall determine that any articles or devices
described in paragraph (1)(B) that are attached to
the seabed are merchandise for the purposes of sec-
tion 55102 of such title.
(3) Revocation of certain ruling letters.—The Secretary shall revoke or modify, as appropriate, any ruling letters that apply an incorrect determination described in paragraph (1), including the following headquarters ruling letters:

(A) HQ H317289 (March 25, 2021).

(B) HQ 115799 (September 30, 2002).

(4) Reinstatement of ruling letter.—Upon revoking and modifying the agency actions under paragraph (3), the Secretary shall reinstate headquarters ruling letter HQ H309186 (January 27, 2021).

SEC. 6. PETITIONS BY DOMESTIC INTERESTED PARTIES.

(a) In general.—Chapter 551 of title 46, United States Code, is amended by adding at the end the following:

“§ 55124. Petitions by domestic interested parties

“(a) Request for interpretive ruling.—The Secretary of Homeland Security shall, upon written request by an interested party, furnish, within 60 days, an interpretive ruling regarding a non-coastwise qualified vessel’s activities and compliance with Federal laws in the internal waters of the United States, the territorial sea, and the waters of the outer Continental Shelf, including the vessel’s compliance with this chapter and section
If the interested party believes that the conclusion of such interpretive ruling, or any other interpretive ruling regarding the interpretation, application, or enforcement of the coastwise laws, is incorrect, such party may file a petition with the Secretary setting forth the following:

“(1) Such party’s understanding of the factual scenario.

“(2) The outcome of the decision that such party believes to be proper in the provided factual scenario and the reasons supporting such party’s belief.

“(b) DETERMINATION ON PETITION.—If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the conclusion reached in the contested letter is not correct, the Secretary shall determine the proper outcome and notify the petitioner of the Secretary’s determination within 60 days.

“(c) CONTEST BY PETITIONER.—If the Secretary determines that the contested interpretive ruling filed pursuant to subsection (a) is correct, the Secretary shall notify the petitioner within 30 days. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than 30 days after the date of the notification, notice that it desires to contest the ruling.

Upon receipt of notice from the petitioner, the Secretary
shall cause publication to be made within 7 days of the Secretary’s determination as presented in the ruling letter.

“(d) Review of Interpretive Ruling.—Not later than 90 days after the petitioner files the notice of a desire to contest a ruling under subparagraph (c), any interested party may commence an action in any district court of the United States, subject to the venue requirements of section 1391 of title 28, by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of such court, contesting any legal conclusions of the Secretary.

“(e) Rulemaking.—Not later than 60 days after the date of enactment of this section, the Secretary shall issue such regulations as are necessary to implement this section.

“(f) Definitions.—In this section:

“(1) Coastwise Qualified Vessel.—The term ‘coastwise qualified vessel’ has the meaning given such term in section 55108(a).

“(2) Interested Party.—The term ‘interested party’ means—

“(A) the owner or operator of a vessel engaged in coastwise trade;

“(B) a manufacturer of coastwise qualified vessels;
“(C) a certified union, recognized union, or group of workers or mariners which is representative of an industry engaged or employed in—

“(i) the coastwise trade; or

“(ii) construction of coastwise qualified vessels;

“(D) a trade or business association of which the majority of members are—

“(i) owners or operators of vessels engaged in coastwise trade;

“(ii) manufacturers of coastwise qualified vessels; or

“(E) an association of which the majority of members are persons described in paragraphs (1) through (4).”.

(b) RULEMAKING.—Not later than 60 days after the date of enactment of this Act, the Secretary shall issue such regulations as are necessary to implement the amendments made by subsection (a).

(e) CLERICAL AMENDMENT.—The analysis for chapter 551 of title 46, United States Code, is amended by adding at the end the following:

“55124. Petitions by domestic interested parties.”.
SEC. 7. CONGRESSIONAL REVIEW ACT APPLICABILITY.

(a) In General.—Notwithstanding section 804(3)(A) of title 5, United States Code, for purposes of the application of chapter 8 of such title to a covered ruling letter, the term “rule” shall be read to include such a covered ruling letter.

(b) Definition.—In this subsection, the term “covered ruling letter” means a ruling letter issued after the date of enactment of this Act.

SEC. 8. NOTIFICATION.

(a) Advance Notification Required.—Prior to engaging in any activity or operations on the outer Continental Shelf, the operator of a foreign vessel used in such activity or operations shall file with the Secretary a notification describing all activities and operations to be performed on the outer Continental Shelf and an identification of applicable ruling letters issued by the Secretary that have approved the use of a foreign vessel in a substantially similar activity or operation.

(b) Publication of Notices.—

(1) Publication.—The Secretary shall publish a notification under subsection (a) in the Customs Bulletin and Decisions within 14 days of receipt of such notification.

(2) Confidential Information.—The Secretary shall redact any information exempt from disc-
closure under section 552 of title 5, United States Code, in a notification published under paragraph (1).

4 SEC. 9. PUBLICATION OF FINES AND PENALTIES.

(a) IN GENERAL.—Section 55102 of title 46, United States Code, is amended by adding at the end the following:

“(d) PUBLICATION OF PENALTY.—

“(1) IN GENERAL.—Not later than 14 days after the issuance of a pre-penalty notice or a penalty, including a settlement, under subsection (c), the Secretary of Homeland Security shall publish such pre-penalty notice or a notification of such penalty in the Customs Bulletin and Decisions to the party impacted by the penalty.

“(2) CONTENTS.—A pre-penalty notice or penalty notification published under paragraph (1) shall include—

“(A) the name and the International Maritime Organization identification number of the vessel that is the subject of the penalty;

“(B) the name of the owner of the vessel that is the subject of the penalty;

“(C) the amount of the fine or value of merchandise seized; and
“(D) a summary of the alleged misconduct and justification for imposing a penalty.”.

(b) RULEMAKING.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue such regulations as are necessary to implement the amendments made by subsection (a), including—

(1) regulations regarding the information to be contained in a penalty notification under section 55102(d) of title 46, United States Code (as amended by such subsection); and

(2) any changes to existing regulations relating to penalties issued by the Secretary.

SEC. 10. REPORT ON ENFORCEMENT OF COASTWISE LAWS.


SEC. 11. RULES OF CONSTRUCTION.

(a) OUTER CONTINENTAL SHELF LANDS ACT.—Nothing in this Act may be construed to nullify or supersede any other provision of law relating to the outer Conti-
(b) Ruling Letters.—Nothing in this Act may be construed as congressional validation of a ruling letter, interpretative guidance, doctrine, or other action relating to the enforcement of chapters 121 and 551 of title 46, United States Code (commonly referred to as the “Jones Act”) issued by the Secretary.

SEC. 12. DEFINITIONS.

In this Act:

(1) Lifting Operations.—The term “lifting operations” means self-propelled movements by a vessel when using a crane, or other similar equipment, to install or remove merchandise on or from offshore facilities or subsea infrastructure.

(2) Merchandise.—The term “merchandise” has the meaning given such term in section 55102(a) of title 46, United States Code.

(3) Oceanographic Research Vessel.—The term “oceanographic research vessel” has the meaning given such term in section 2101 of title 46, United States Code.

(4) Outer Continental Shelf.—The term “outer Continental Shelf” has the meaning given
such term in section 2 of the Outer Continental

(5) RULING LETTER.—The term “ruling letter”
means any ruling letter or headquarters ruling letter
relating to the enforcement of chapters 121 and 551
of title 46, United States Code (commonly referred
to as the “Jones Act”), issued by the Commissioner
of U.S. Customs and Border Protection pursuant to
sections 502(a) or 625 of the Tariff Act of 1930 (19
U.S.C. 1502(a) and 1625).

(6) SECRETARY.—The term “Secretary” means
the Secretary of Homeland Security, acting through
the Commissioner of U.S. Customs and Border Pro-
tection.