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SINKING THE MARINE INDUSTRY: HOW REGULATIONS ARE AFFECTING TODAY'S MARITIME BUSINESSES

HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT, AND REGULATIONS

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

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SINKING THE MARINE INDUSTRY: HOW REGULATIONS ARE AFFECTING TODAY'S MARITIME BUSINESSES

THURSDAY, JULY 12, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON INVESTIGATIONS,
OVERSIGHT AND REGULATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10 a.m., in room 2360, Rayburn House Office Building. Hon. Mike Coffman (chairman of the subcommittee) presiding.

Present: Representatives Coffman, Tipton, and West.

Chairman COFFMAN. This hearing is called to order. Good morning.

This hearing—first of all, I would like to thank you all for joining us today as we examine federal policy and regulatory impediments for small businesses in the marine industry. I know that each of our witnesses have traveled quite a bit to be with us, and we here at the Committee appreciate that.

The coastal and inland water transportation system is often the economic lifeblood of the regions where they are located. A healthy and vibrant water transportation system is critical to the small businesses that directly use the system, as well as those who support those firms. While proven as being one of the most efficient and environmentally friendly methods of transporting goods across the country, an aging system of locks, dams, and undredged channels threatens the continued viability of these waterways as reliable shipping avenues.

It is not just the regular wear and tear on these avenues that is negatively impacting the small businesses that utilize them. State and federal policies, and regulatory impediments also threaten the continued viability of these long-standing industries. We will hear numerous examples today from our witnesses on these issues.

This hearing represents a forum for us to hear firsthand how important the maritime industry is to our nation and the problems that are preventing economic growth. Again, I want to thank each of our witnesses for taking the time to be with us today. Unfortunately, I have an unavoidable scheduling conflict and must leave the hearing. I know that one of my colleagues has been working on issues facing the maritime industry since he came to Washington. And I would ask that the gentleman from Florida, Mr. West, to now chair the hearing.

Mr. WEST. Good morning, ladies and gentlemen. Thank you to Chairman Coffman for allowing me the opportunity to host this important meeting and also to my colleague, Mr. Tipton, from Colorado.

Welcome to our distinguished panelists and thank you for taking the time to answer our questions. As some of you may know, the marine industry in the state of Florida alone is responsible for the creation of more than 200,000 jobs and represents an $18 billion industry. These numbers are only a portion of the large impact that this industry has on our nation. Representing a sizeable chunk of our working population, I see no better time to zero in on the industry which is paramount to our way of life in South Florida and throughout this nation.

I have heard from many in the marine industry and South Florida about how the abundance of regulations emanating from Washington, DC., is making it harder to conduct and maintain successful businesses. Regulations are creating a toxic business environment for so many from builders, manufacturers, and retailers to craftsmen, technicians, and suppliers that are affecting job creators across the board. It is our duty in the House Committee on Small Business to assess these challenges and provide solutions to help businesses grow. It is also my hope that regulators will take note of the valuable insight that is given here today. I look forward to hearing each of your perspectives as we move forward.

Before we begin, I want to give a special thank you to Ms. Kristina Hebert and also Katie McGowan and the entire South Florida marine community for helping to bring this very important and critical issue to our Committee's attention. And at this time I would like to ask would any other member—Mr. Tipton would like to make an opening statement.

Mr. TIPTON. Thank you.

Mr. WEST. Now I would like to talk about the hearing rules. The timing lights that you have before you, each of you will have five minutes to deliver your testimony. The light in front of you will start out as green. When you have one minute remaining, the light will turn yellow. Finally, at the end of your five minutes, it will turn red. Because of the fact we do not have many members here on the panel we can go a little bit over. I ask that you try to adhere though to that time limit.

Our first witness is Kristina Hebert, chief operating officer for Ward's Marine Electric, Inc., in Fort Lauderdale, Florida. Ward's is a 62-year-old third generation family owned and operated business dedicated to providing for the electrical needs of the recreational marine industry. The company provides mobile dockside service, engineering, engraving, and design services, as well as distributes a complete line of marine electric equipment, and most of their service work is performed in marinas and boatyards where they act as subcontractors. Thank you for being with us today, Ms. Hebert, and we look forward to hearing your testimony.

STATEMENTS OF KRISTINA HEBERT, CHIEF OPERATING OFFICER, WARD'S MARINE ELECTRIC, INC., ON BEHALF OF THE MARINE INDUSTRY'S ASSOCIATION OF SOUTH FLORIDA; MARK DUCHARME, VICE PRESIDENT AND CHIEF FINANCIAL OFFICER, MONTEREY BOATS; STEVE ENGEMANN, PRESIDENT, HERMANN SAND AND GRAVEL; U. RASHID SUMAILA, UBC FISHERIES CENTRE, AQUATIC ECOSYSTEMS RESEARCH LABORATORY

STATEMENT OF KRISTINA HEBERT

Ms. HEBERT. Thank you. And I appreciate the opportunity. Thank you, Congressman West, and thank you Congressman Tipton for this opportunity to have this very important hearing to discuss something very significant to our industry.

As stated, my name is Kristina Hebert. I am representing as president the Marine Industry's Association of South Florida, and I am also a board member of the U.S. Superyacht Association.

As Congressman West mentioned, I am third generation owner and operator of Ward's Marine Electric. My family business has been in Fort Lauderdale for 62 years, and as he also mentioned, we do dockside service. And while I have technicians that can travel anywhere across the globe, there is no place better in the entire world than the United States that has the greatest concentration of skilled labor and tradesmen, and specifically in South Florida.

Just to give you an idea, I know the congressman mentioned the statistics for the state of Florida, but in the Tri-County area, which is Broward, Dade, and Palm Beach County, the recreational marine industry represents an $8.9 billion economic impact; 107,000 jobs; and $3.06 billion in wages and earnings. That is extremely significant. This is about workers. These are families that are able to purchase homes, go to school, so on and so forth.

As I stated, my company can travel all across the world. However, we want to make sure that they are able to stay here. As a small business, one of the most—the largest operating expense is obviously workers' compensation. And in my company, customer service does not come first; safety comes first. My employees' safety and the boats' safety. If those two are safe, we will get the customer satisfaction.

With that being said though, workers' compensation is one of our number one operating expenses and it is cumbersome to do that for small businesses. Just to give you an idea, the recreational marine industry is 95 percent as far as the Marine Industry's Association of South Florida. Ninety-five percent of our members are small businesses. They either work for themselves or they work for a small business. And when I say small business, I mean 10 or fewer employees.

The workers' compensation that is required in the marine industry for these workers falls under two categories. One, you have stat compensation; and two, you have longshore and harbor workers' compensation. Congress for many years has sought relief for this, for the recreational industry. Clearly, our workers are not commercial. We are not exposed to the same hazards and have sought numerous times to afford relief to the industry.

In 1984, there was relief done for boats 65 feet. In 2009, as part of the American Recovery and Restoration Act H.R. 1, an amendment was made that would exclude the recreational repair industry instead of creating a footage to exclude it, capture it.

We worked very hard for many years to show the safety record, the risks that are not there for the recreational industry, and paired with the insurance industry. Congress did a great job. You did your job. The amendment was made and it finally afforded an opportunity for small businesses to be able to stick with state workers' compensation, have it be affordable, have our labor rates be comparable to those international, and keep the jobs in the United States to be able to have those 200,000 jobs.

The Department of Labor is the agency in charge of monitoring and enacting that legislation as it relates to the Longshore and Harbor Workers' Compensation Act. They had a rule. I understand agencies have to do rule implementations and there was a lot in the rule that came out that made a lot of sense. And I realize there were some dates and there was some clarification. And as far as the recreational industry on the manufacturing side, they did a great job. There was a clear line established for workers to be able to get covered. What is recreational? What is commercial? Great job.

On the repair side, not so much. There was, number one, a misunderstanding of what the industry represents. Number two, there was not a communication with that segment of the industry. And number three, a definition was put in that relates to commercial maritime shipping and really was not related to the repair industry and has never been a part of the legislative history.

Is there a solution? Why are we here today? Yes. We have language that we would like to be able to substitute, the language that was used to for the manufacturing side, and we know that that would be the intent given that the agency should keep the intent of the congressional amendment that was made in 2009, and it would help small businesses and keep workers covered. Otherwise, they will go without the coverage because it will not be something they can afford.

I thank you for your time and look forward to the resolution.

Mr. WEST. Thank you, Ms. Hebert.

Next up is Mr. Mark Ducharme, vice president and chief financial officer of Monterey Boats in Williston, Florida. Founded in 1985, Monterey Boats employs about 270 people and designs, engineers, and manufacturers several types of boats, pleasure crafts, and cruisers. Mark received his bachelor of science in accounting from the University of Florida and his master's degree in taxation from the University of South Florida. Welcome to the Small Business Committee, Mr. Ducharme.

STATEMENT OF MARK DUCHARME

Mr. DUCHARME. Good morning, Congressmen. Thank you for the opportunity to address you this morning on the business activity tax nexus issue. I am here today representing a broad group of organizations and businesses—the Coalition for Interstate Tax Fairness and Job Growth—a group working together for enactment of the Business Activity Tax Simplification Act. Our coalition has sev-

eral hundred supporters. Among those are small businesses such as my own, Monterey Boats.

Attempts by some states to assess sales, gross receipts or income taxes on business that have customers but no physical presence in the jurisdiction is simply arbitrary and wrong.

We understand states face the great temptation of raising tax revenues from those who do not vote in its elections or utilize state resources. We only engage in interstate commerce by providing products or services and do so without any physical presence in the state, but efforts to expand traditional definitions of "tax nexus" have become completely absurd.

For example, the State of Michigan secured a copy of Monterey Boats' federal tax return and assessed a 2011 "gross receipts tax" in the amount of $376,000, by allocating our entire worldwide sales to the state. Monterey Boats, it should be pointed out, has no property in Michigan, no sales offices in Michigan, no agents in Michigan, and no employees in Michigan. Yet, Michigan claimed the authority to tax our sales based merely on the fact that Monterey Boats has customers in its jurisdiction, and considers nexus is achieved with only one day of contact in the state, including delivery in company-owned rented, leased, or borrowed trucks.

Another example is New Jersey. We receive a phone call in October 2004, from an agent with the New Jersey Division of Taxation notifying our truck was being impounded along with a shipment of boats until we remitted $176,000. After retaining an attorney and negotiating the release of the truck, the driver, and the load of boats, we received a formal jeopardy assessment from the state. We remitted funds to the state and began the appeals process. In addition, the state placed a lien on any receivables due to Monterey for boats sold anywhere in the country. After seven years, in August 2011, and after over $100,000 in legal fees and countless man-hours accumulating information, we received a final determination from the state upholding their position and requiring us to file annual tax returns.

Although we still have the ability to file a final appeal with the New Jersey tax court, it is not economically feasible to do so and they are completely aware of that fact. What is worse is that Michigan and New Jersey are not alone. Massachusetts, for example, claims that a business has established the necessary nexus for corporate income tax purposes if that business has vehicles that travel through Massachusetts more than 12 times in one year, even if it has no employees, offices, or inventory in Massachusetts.

It should be easy for the members of this Committee to see the possibilities and the dangers here. States cast covetous eyes on the potential tax revenue from out-of-state corporations. The previously mentioned tax bills are not part of the budget in planning for Monterey, and it will hinder us as a manufacturer as we attempt to survive in a super competitive environment and keep our 250 employees working steadily and producing our fine boats.

Unless Congress steps in to clarify that the U.S. Constitution requires a physical presence nexus and sets forth a clear bright-line test for what constitutes physical presence, then we will continue to have impossible-to-plan-for laws, regulations, and enforcement action that vary across the 50 states.

There is, in fact, legislation that has been reported favorably by the House Judiciary Committee that we believe would solve the problem. This legislation, the Business Activity Tax Simplification Act (BATSA) would require a business to have some type of physical presence in a given state, excluding a de minimus presence of fewer than 14 days during a taxable year, before a state would be permitted to impose a tax on the business. We believe this is a reasonable and bright-line standard and that businesses could use to plan for their tax responsibilities so that they are not hit unexpectedly with large tax liabilities from states in which they have no physical presence.

BATSA would end the confusion that exists as a result of contradictory state court decisions and the refusal of the Supreme Court to decide the issue. It would apply to business activity taxes, including income and franchise taxes, but it would not apply to transaction taxes, such as sales tax. We believe it is fair for a state to tax instate businesses as though they regularly conduct business there, but we believe it is grossly unfair for any state to reach out and assert that simply passing through the state or selling a few products in the state allows a tax based on total countrywide income. A business should only pay income and similar taxes where it is physically present, and therefore, receives the benefits and protections of the state government.

There is no reason to delay any longer, members of the Subcommittee. The time is right to end unfair business taxation and to make it clear that state taxation of out-of-state entities can only be done within certain well-defined limits. American businesses are not asking for a handout from the Congress, only a fair and level playing field, free from the unexpected tax surprises that I have described to you today. Thank you for your time.

Mr. WEST. Thank you, Mr. Ducharme.

Our next witness is Captain Steve Engemann, president of Hermann Sand and Gravel in Hermann, Missouri. Missouri or Missoura?

Mr. ENGEMANN. It depends on where you are from.

Mr. WEST. Okay. Steve completed his river pilot training at the River School in Memphis, Tennessee, in 2002, and has been employed at Hermann Sand and Gravel since 2000. He began managing the plant in 2005, and in 2010, he became president of the company that employs 10 people. Hermann Sand offers a wide variety of services to his clients, including the sale of sand and gravel; commercial towing services on the Missouri River from St. Louis to Sioux City, Iowa; transportation of construction equipment; tugboat service; and commercial dock repair assistance. Thank you for being with us today, Captain Engemann.

STATEMENT OF STEVE ENGEMANN

Mr. ENGEMANN. Good morning, Chairman, members of the Committee. I want to thank you for the invitation to come. My name is Steve Engemann. I am here representing the marine industry as president of Hermann Sand and Gravel, Inc., located in Hermann, Missouri, about an hour and a half west of St. Louis. We are a small family business that operates on the Missouri River that was founded in 1978. It is owned by my mother, Melba, my brother,

Tim, and myself. We operate two sand and gravel plants, one in Hermann, Missouri, and the other in Jefferson City, Missouri, and we employ 10. We have recently grown our business by leasing a tow line vessel which employs seven at any time it is operating. We pay above average wages, and although the local economy has stretched our budget, we continue to offer 100 percent of employer-paid health care coverage. While other businesses in the area have closed, we continue to research new ways to retain and maintain security for our business and our employees.

Today I have been asked to speak about the impediments of regulation on small business in the maritime industry. I can assure you that these regulations and federal policies have constricted my business, and if left unchecked, will be the ultimate demise of my business and others that work on the Missouri River.

Let me begin by communicating which government agencies regulate our business. These agencies include the U.S. Coast Guard, U.S. Army Corps of Engineers, the U.S. Department of Labor, Mine Safety and Health Administration, the Department of Transportation, the U.S. Fish and Wildlife Service, and the Department of Natural Resources.

I have been trying to get dredging permits renewed since I came to work for the company in 2000. We have spent $185,952 in the last five years for an environmental impact statement and litigation pending to restore our permits to their original tonnage.

There have been numerous meetings, trips, seminars, conferences I have attended so I can press the issue.

The condition that hurts us the most is a 300,000 tons per five mile limit which was imposed on us last year. We are permitted to dredge 120,000 tons at that spot of our permit and once we compete with other companies in that area that have much larger permits, we have to go farther up the river, about seven miles, and our dredging equipment is not big enough so then we are just out the tonnage.

MSHA is an inspection agency that will come and inspect our equipment. They will fine us for anything that is wrong before we are given a chance to fix anything. We certainly are for safety. I believe that you should be fined if you are negligent if you do not fix your equipment, but if you fix it you should not be fined.

After dredging permits were limited in 2008, we started looking for other work that would create new jobs for our employees. We had a mine that was close to our facility that was looking for barge transportation and we were able to ship 22,000 tons of commercial freight out of our sand dock in 2009, and this year we are going to be estimating that we ship 60,000 tons.

The Coast Guard is making vessels go through inspections on a regular basis. I agree with the need for a safe vessel, but they seem to have lost their desire to mark the channel with navigational aids. The Coast Guard can shut my vessel down, but it seems to be okay if we do not have a proper channel or a properly marked channel. I believe that it should be a joint effort to ensure that businesses like ours continue to succeed while understanding the need for regulations, and I feel like we should have the opportunity to audit the Coast Guard and the Corps just like they audit us, and we can work to grow the betterment of the river maritime industry.

The rivers, and particularly the Missouri River, could give great relief to the highways of Missouri and beyond. The Missouri River is a world highway and allows our small company to compete on a global market. There are numerous benefits to a successful barge traffic. You have 64 semi loads on just one barge.

There is a lot of freight on the Missouri River and willing and hungry terminals that want to ship the product. The obstacle standing between small business and successful revenue is the government.

One thing that is most important to us is something that you can help with at Congress. You must pass a budget. Operating without a budget, it gives—the government entity cannot provide any assistance to the public if they do not know how much money they will be allotted. Our goal is to move enough river commerce to be a fully funded river on the Missouri River, which is a billion ton miles.

All the while, I am supposed to be running a business, piloting a boat, managing and maintaining my fleet. I spend hours a day trying to work with the same governing agencies that seem to put me out of business. I am not expecting handouts. I am not looking for a grant. I want the government to provide me the service and stick with the plan that our forefathers laid out ahead of us. We are proud Americans with a strong German heritage in Hermann, Missouri, and we are determined that we want to leave this business to our children, just as our father did for us. We want to provide a safe, secure, and honest living for our employees. Thank you.

Mr. WEST. Our final witness is Dr. U. Rashid Sumaila, professor and director of the Fisheries Economics Research Unit at the University of British Columbia's Fisheries Centre. He specializes in bioeconomics, marine ecosystem valuation, and the analysis of global issues, such as fisheries subsidies (illegal reported unregulated) fishing, and the economics of high and deep seas fisheries. Dr. Sumaila has experience working in fisheries and natural resource projects in Norway, Canada, and the North Atlantic Region, Namibia, and the Southern African region, Ghana and West African region, and Hong Kong and the South China Sea. You have a lot of frequent flyer miles. Thank you for your participation in this hearing, Dr. Sumaila.

STATEMENT OF U. RASHID SUMAILA

Mr. SUMAILA. Thank you very much, Congressman West. I am really grateful for having an opportunity to share some of our research results with you.

The first point I want to make is that my research area does not cover specific statutes and legislative proposals being discussed here at this hearing, but my hope is that our global broad-based economic research, will enrich the hearing, even though I am not into the specifics of the hearing.

Essentially, what we do at my center and my group, in particular, we study the ocean, fisheries, and try to inform and provide research to society in order to find ways that we can maintain the flows of benefits from our oceans through time for the benefit of both the current generation of people and businesses like you and future generations.

So we look at marine recreational activities and in there we are looking at recreational fishing, whale watching, marine mammal watching, diving, kayaking, and all sorts of things that take place on the ocean. And our research shows that this is a huge source of economic values and benefits to the U.S. and to countries around the world. For example, we estimate that over one million people get their income and jobs from marine-related activities worldwide, and the U.S. provides a big chunk of this. About $50 billion are made out of marine recreational activities and what is more interesting, about 110 million people around the world go to the ocean for fun. This is where the jobs come from and where the profits and the dollars come from. So this is a very important source, and the way we manage them and ensure that they keep going is very important.

Now, I have told you how important this is economically, but we all agree, I think, that the basis of this economic well-being is actually the ecosystem. We need to maintain the ecosystem, make it healthy, because upon that comes all these benefits. So that is fundamental.

So if you go to the economic theory of common property, I mean, if you want to keep a healthy ecosystem, which is a common pool, then unfortunately you will have to have some regulation and I think you agree to that. The key thing is to see how to do this in such a way that it does not stop small businesses from surviving, but regulation we need because of the common property nature of the ocean. And I draw from Adam Smith, one of the main economic heroes, and I think for many he was an invisible hand economist who is the most famous one, I think. He sees that nature and the resources they contain belongs to every generation, and the current generation has no right to bind it up for future generations. He said this in 1766, in a lecture in the U.K. I was not there but it looks like I was there at the time. So we need to manage these resources for all generations, and this is Adam Smith, himself, talking. And that means that some regulation is needed, some management. We need to bring all activities into a management system that will ensure that we keep drawing the benefits through time.

Now, in terms of conclusion, I think, as I have said again and again, our research and those of colleagues around the world show that marine recreational activities support billions of dollars of businesses and that these businesses have impacts on the ecosystem and that is a part of the equation. You know, the more we go there, you have 110 million going, there are going to be impacts, and therefore, we need to find a way to manage that if we want these benefits to continue coming through. And from an economic theory of common property, as I said earlier, deregulating completely, deregulating common pool resources can be risky because of the general push to grab the resources. If there is money to be made, we will all want to make it so we need to have some ways to regulate so that we can continue to get the benefits.

Finally, it is important to not forget the fact that a healthy environment is the basis of any economy, no matter how sophisticated the economy is. I made this point at the recent Rio +20 Summit. There was a big dialogue there and I was one of the panelists. Economies, we realize that an economy is based on taking re-

sources from nature. We take the fish. We take the oil, the gas from the oceans and so on, and we do all our economic activities. And what do we do at the end of it? We pump out the things we do not like into nature. Right? The pollutants, the pollution into the ocean. So it is important to recognize that you need nature, and anything we can do to maintain our ecosystems is really important and good for the jobs and the money and the fun we derive from nature. And I just wanted to make this clear today to the Committee. Thank you very much.

Mr. WEST. Thank you, Doctor. And we can start with my colleague, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. Mr. Chairman, I would like to thank you for your leadership on this issue. I know it is something that is incredibly passionate for you and obviously, listening, important for our country as well. I come from the high water country of the entire nation in Colorado, so our oceans are a little limited up there, but this is something that we obviously all have, I believe, truly in common in terms of regulations that we are feeling as businesses. And Dr. Sumaila, I agree with you and I think everybody on the panel would as well. No one is calling for absolute deregulation. It is just common sense regulations that we would like to be able to see because we are part of the ecosystem as well and need to be able to survive. And as we see overreaches from government that are hampering our ability to be able to dredge a river and to be able to keep those people employed, to being able to sell boats in Michigan when you are coming out of Florida, to being able to keep those recreational fleets moving out as well, I have often found that people get a real appreciation actually for the environment when they are exposed to it, and a real appreciation for what is out there. So I do appreciate all of our panel here for being here as well today.

I have a couple of questions here. Ms. Hebert, you were talking about a pretty big industry, $8.9 billion if I wrote that down correctly 107,000 jobs, 95 percent of your businesses are small businesses, people that are trying to be able to provide for their families and actually to be able to contribute back into those communities as well. You had mentioned that there is language to be able to restore congressional intent from 2009. Has it been your experience over the course of your participation in this industry that you see a regulatory body that at times runs off on its own track and exceeds congressional intent or completely distorts congressional intent?

Ms. HEBERT. I would have to say I can only really answer on this issue. And I think the difference between, you know, the marine industry, a lot of people think of it as a hobby, and it is something that people enjoy, but the fact is that we are an industry. In this case, Congress spent a lot of time. The part that is really frustrating, I actually have a letter here that I am going to hold up and it is from August 4, 2004, thanking me for testifying on this issue by a congressman at the time, vice chairman, Subcommittee of Workforce Protections, Judy Biggert. That is eight years almost to the day we vetted this. There was research that was done and yes, for this regulatory agency to supersede the intent, this was bipartisan. This was numerous administrations, and so on and so forth.

I do not think it was done wantfully. I honestly think sometimes there is just a misunderstanding of the industry. We are not here advocating on behalf of yacht owners. We are here advocating on behalf of those 107,000 jobs and families that buy property and have their kids in school and that are Americans. So I think it is more of a misunderstanding versus anything wantful.

Mr. TIPTON. I am just kind of curious. There are some of us who believe that before a lot of these regulations go final, it might be a good idea for the regulatory body, so that we do not have these type of misunderstandings or misinterpretations, go on to be able to bring those regs back for review to the authoritative committee. Would that be a sensible approach in your mind?

Ms. HEBERT. Absolutely. Because we would like the opportunity to simply say—and I think what happened, the intent was not to cause more of a problem. I think there was just a misunderstanding of what the impact would be and the significance of what that impact was. And therefore, if we had had an opportunity to really talk about here is this definition, here is why that will not work. And the other part I want to make very clear is it is not only just about the recreational industry and small businesses having a problem. It is also the insurance industry. The insurance industry needs a bright line to be able to go, you are under longshore or you are not. And remember, you do not get any exclusions from the longshore unless you have state compensation. Every worker must be covered. So the insurance industry is even more confused, and honestly, what has happened is we are much worse because the insurance industry is saying there is no bright line. We do not really know what this definition means. So pretty much everybody in the repair industry, all of your work is now considered commercial under this definition, and I really do not believe that that would have been the case. Had we had the opportunity to review it, I think there would have been that discovery.

Mr. TIPTON. You brought up the American Recovery and Reinvestment Act and how it impacted your businesses. Was that a success, failure as it affected your businesses?

Ms. HEBERT. Well, I will say this. I am not happy with a lot that is in there but page 862, where there was the amendment for the longshore, that absolutely affected my business. I will tell you, I was able to hire three additional people after that went through. Just to give you an understanding of what this longshore means, and I am not sure. I do not want to take up too much time, but the recreational marine industry makes—the difference between, let us say you have got longshore and you have got state comp. Okay. The difference is when it comes into total disability and you have death benefits and lifetime. And, you know what, that is something that is absolutely deserving for those people that are working in those hazardous environments. The recreational industry makes up .001 percent of total disability workers' comp claims. Meaning 99.99 percent of the time it has nothing to do with our industry. Therefore, when you compare apples to apples, state comp is adequate with longshore. However, when you are talking about money, the money to that, it takes my workers' comp and multiplies it three times. So now I am up to upwards of $50 for every $100 of payroll going to workers' comp. I cannot have labor

rates that are competitive. In South Florida, they are going to go to the Bahamas and in the Pacific Northwest, they are going to go to Canada, in the Pacific Southwest, they are going to go to Mexico. These boats are mobile and they have choices.

So for us that was extremely significant because it was immediately jobs stayed here. Boatyards saved hundreds of thousands of dollars, and it is the boatyards that enable workers like myself to come in—plumbers, electricians, builders. So honestly, the ARRA saved our industry with that. We were able to be in a position that we could hold tight when our economy was really not going to go well.

Mr. TIPTON. Thanks for your testimony.

Mr. Ducharme, I am a small business buy, too, and one of the frustrations I think that many of us have is we continue to see moving goalposts, not only in terms of the regulatory process that Ms. Hebert was just talking about but also in regards to the tax code. Can you maybe speak to the importance of being able to have some real certainty in terms of what we need to have in terms of tax code and regulation in this country?

Mr. DUCHARME. Absolutely. The issue that arises is twofold. The first one being not the most significant but it is significant in the sense that from a competitive standpoint, if the tax regs are not consistently applied and applied to everyone in the industry that you are in, then the price point that you are charging for your boat would need to be higher to offset those tax liabilities, and ultimately, you will not be competitive in your industry. So having a clear understanding across the entire breadth of your competitors allows you to compete on a level playing field.

Mr. TIPTON. So common sense and some real certainty, you could save a lot of money probably in terms of attorney fees that you mentioned, $100,000 I think is what I wrote down?

Mr. DUCHARME. Yes.

Mr. TIPTON. You probably would have invested that in your business.

Mr. DUCHARME. Absolutely.

Mr. TIPTON. Help keep people employed.

Mr. DUCHARME. Absolutely.

Mr. TIPTON. Expanded your business and tried to be able to grow it. And the government's policies are inhibiting that development of capital to be directed in those directions.

Mr. DUCHARME. Well, the state's actions by aggressively pursuing those out-of-state corporations and us needing the federal government to keep that flow of interstate commerce going without the impediments of states saying we are looking for revenue, out-of-state corporations seem to be the easiest to get that revenue from, so let us go after them, because they know at the end of the day the cost to actually argue and go to court and fight for what appears to be obvious is very expensive.

Mr. TIPTON. Right. I appreciate that.

Captain, I wanted to be able to ask, and I apologize I am going over time, Mr. Chairman, here a little bit.

Mr. WEST. Continue on.

Mr. TIPTON. With the dredging permits, how long is it taking you to be able to get these permits renewed?

Mr. ENGEMANN. We have been on extension since 2000.

Mr. TIPTON. Since 2000. We are in 2012.

Mr. ENGEMANN. Right.

Mr. TIPTON. Twelve years to be able to do that.

Mr. ENGEMANN. Sometimes they will give you a six-month extension, sometimes it is a year.

Mr. TIPTON. Does that create some uncertainty for you?

Mr. ENGEMANN. Yes. Why would I invest in my business? You do not know if you are going to be dredging next year. The sales are always there and the sand is always there, you know, but if you cannot get a permit to operate then why invest?

Mr. TIPTON. I think that speaks to a very important point that we have tried to address through this Committee and through a variety of committees in terms of the regulatory uncertainty that we are seeing and the inability apparently of this government to be able to give some certainty to people in the private sector when it gets down to some of the permitting. It is an unending process that we are dealing with it seems like that is truly hurting our ability to be able to create jobs.

I want to go a little bit to your point in regards to MSHA as well and the thoughts that they come in the door and it seems to be a fine and punish mentality as opposed to improve and correct. Is that a fair assessment?

Mr. ENGEMANN. Right. Whenever they come, anything they find wrong is a fine depending on how severe the fine or how dangerous the situation is that they may have found. And then it is an allotted fine based on your employees, based on how many times you have been fined for that same thing before. It is quite an equation to come up with your fine amount. We try to do the best that we can, you know, to prevent them, obviously, because we want to have a safe work environment for our employees. But we would fix anything that they found wrong, and most everything that they do find wrong, after the fine we have it fixed before they leave, the inspector leaves, or at a minimum of 24 hours by the time they come back to close out our inspection. So a fine does not—it is just an extra expense that you have to put in your budget every year. It does not make our company any safer to me.

Mr. TIPTON. Well, I appreciate that. Believe it or not, we have that in a lot of businesses. I have dealt with OSHA as well with the same principle of wanting to be able to come in and fine and punish.

I guess I would like to close, and if you would speak to this, Captain, you indicated that you are held to a high standard. You have one problem with that. You want to make sure that you are doing it safely, doing it properly, but government is not holding itself to that same high standard. If they do not mark the channels correctly, you can actually have a problem with being able to safely operate your business because government has failed to do the job that they are charged with doing. How many fines has government paid?

Mr. ENGEMANN. I do not know. My tugboat has been stuck for two days in a spot that we cannot get through.

Mr. TIPTON. How much is that costing you?

Mr. ENGEMANN. It is probably $4,500 a day. We have a crew of seven. We are pushing fertilizer to Nebraska City.

Mr. TIPTON. And whose responsibility, just to be clear, was it to be able to mark that channel? Was it yours?

Mr. ENGEMANN. No.

Mr. TIPTON. Whose?

Mr. ENGEMANN. The Coast Guard and the Corps of Engineers.

Mr. TIPTON. Okay. And the Corps of Engineers.

Mr. ENGEMANN. The Corps of Engineers would make the channel navigable, but we are having issues on the Missouri River with the Endangered Species Act where they make habitats and we have more water going through the habitat channels than we have in the river, navigable river. There is a 40-foot deep channel where the pallid sturgeon are supposed to be swimming and I have got seven feet where my barge is supposed to be.

Mr. TIPTON. I appreciate that and again, I appreciate our panel taking the time to be able to be here. I know it is an expense when you could actually be out doing your job as opposed to sitting in Washington, but I think this is important just to be able to shine the light of day that government can have some real impact. Sometimes there are a few positives that are out there, but we have got to be able to bring some common sense to this regulatory policy, to the taxation policy, and to be able to make sure that we have that common sense balance to be able to meet the needs, not only of our environment but that other portion of the environment, the American people as well. So thank you, and I yield back, Mr. Chairman.

Mr. WEST. Thank you, Mr. Tipton.

My first question overall to the panel, do you think that there is a negative stigma that is associated with the marine industry here in the United States of America?

Ms. HEBERT. Yes.

Mr. WEST. Can you elaborate?

Ms. HEBERT. Absolutely. I, again, think it is a misunderstanding that this is all about gluttonous, having fun, that rich yacht owners are, you know, taking advantage of the government and you do not want to be regulated. There is nothing that could be further from the truth. In fact, I think that the government should mandate that anybody that makes over a certain amount of money be forced to buy a boat of a certain size because the quickest way to put money into the economy is buy a boat. You are either going to constantly be fueling, provisionally, repairing, all of those things. And all of those things, each and every step of the way, create jobs and money. So there is a huge misunderstanding.

Mr. WEST. Anyone else? On average, per year, with one, you know, give an example, what is the provisioning for one boat or one yacht or recreational vessel that you see?

Ms. HEBERT. Well, I can give you one example of a boat that is a 150-foot boat, U.S. built. Their annual budget is $4.5 million. And that is just maintenance. That is I am going to get some repair. I am going to provision. That does not include fuel, which every state, anywhere they go to get fuel, those taxes go, and especially in the state of Florida, they go to the general revenue. But that is, basically, you have crew to maintain it. You are going to Whole

Foods or Publix or your Stop and Shop or your Kroger's or whatever your grocery store is. That is a general maintenance, $4.5 million.

Mr. WEST. Dr. Sumaila, you talked about balancing ecosystems, and I thoroughly agree with you. I am a master scuba diver myself, and of course, you cannot get out to dive unless you have a boat. One of the things that we have down in South Florida, we are finding is that an invasionary species was introduced there. The lion fish has no natural predators, and one of the things that is promoted locally are lion fish rodeos where you get, you know, dive boats to go out and, you know, whack these little rascals and they are good eating as well.

So I think that we do have those systems in place. It does not always have to be by the government coming down with regulation, but you have people that understand that the ecosystem is necessary for them to be able to go out and enjoy, you know, the boating. So I think that you have a system of policing oneself. My question to you is that when you sit and look at the recreational industry, boating industry here in the United States of America as far as them taking care of their ecosystem, how does that compare to some of the other places that you have been in your travels?

Mr. SUMAILA. You are right, Congressman, that regulation is not just about the government. It is about the people themselves and it goes all through the system. We talk about co-management a lot in places where you have business people meeting with government officials to find a way to do it in the co-management fashion. And you also have situations where the businesses and the communities take care of their things. So there is a wide range of ways of making sure that we make and keep the ecosystem healthy.

Mr. WEST. But when you do a comparative analysis between what you see here in America, as you say, you have done studies here and research with other countries where you travel, how does the United States of America rate as far as our recreational marine industry and how we are caring for our ecosystem?

Mr. SUMAILA. This is a question I have not specifically looked at, so I would not be able to give you the scientific kind of answer. But if you go to South Africa, in Namibia, they do have recreational fisheries. And when I compared them and the U.S., it is reasonably similar actually because they do a good job, too, relatively, to the U.S. So yeah, South Africa and Namibia look similar to the U.S. in terms of managing.

Mr. WEST. Ms. Hebert, one of the things—you talked about how this statute, this amendment was part of the American Reinvestment Recovery Act. That is law. And so how do you think it is possible that a government agency can come back and all of a sudden supersede something that was law?

Ms. HEBERT. I am not sure. I think that as Congressman Tipton suggested, I do not know that that was their intention. I think that there was a statute with a definition and they thought, well, let us make the definition better to understand that intent. Had they sat down with the repair segment of the industry and had that conversation and gone through the review and done the legislative review of that, they would have seen that that was inaccurate. I think it is communication. I do not know why that was the case.

Mr. WEST. So they did not do any type of checking with the industry whatsoever?

Ms. HEBERT. There was a comment period put out. We did provide comments. I know that there was some discussion with the manufacturing portion of the industry and there was a very positive relationship. I just think on the repair side it was deemed insignificant. It was never reviewed by the Office of Budget and Management because, again, it was deemed insignificant.

Mr. WEST. Is it deemed insignificant to you?

Ms. HEBERT. Absolutely not.

Mr. WEST. Okay. So again, we have an instance where regulatory fiat trumped the legislative process in your estimation?

Ms. HEBERT. And long term. And I do want to say that this was a long, many Congresses different presidents. Whether it was a republican or democrat administration, this spanned over four congresses. The work was done.

Mr. WEST. Mr. Ducharme, question. You ship your boats worldwide. Can you give us a comparison between the problems that you have that you brought up with Michigan and New Jersey or some others as opposed to when you are shipping your product worldwide? I mean, do you find yourself being at a greater disadvantage doing operations right here within the United States of American than doing it globally?

Mr. DUCHARME. Well, it is the most difficult to understand and the most cumbersome, absolutely. But from an international standpoint we ship to 20 different countries around the world and our responsibility stops once we deliver our product to the boat. So my understanding and information that I have about the European Union or Russia or China is pretty limited. But domestically, it is cumbersome. It is impossible to capture and understand what state or what municipality may be going after our industry and what tactics they may use to determine if they are going to send you a questionnaire, call you on the phone, tell you that they have your boats, you have got to pay some money in order to get them. So it is not easy to plan for.

Mr. WEST. With the growth and the advent of the Internet, do you think that that will provide you the right type of presence in other states? Do you think that would meet that qualification?

Mr. DUCHARME. As far as the Internet and selling our product?

Mr. WEST. Well, being able to have a presence in some of these other states because that is what you were talking about, this ability to say that you have a presence so that you do not receive this type of taxation.

Mr. DUCHARME. Physical presence, correct.

Mr. WEST. Yes.

Mr. DUCHARME. So if there is a bright-line standard that says if you have these particular employees, property, payroll, and you have contact with our state that exceed a certain number of times per year because you are aggressive soliciting sales in our state, then you are going to fall under our taxing jurisdiction. Otherwise, we are not trying to avoid tax but you need to—you will still pay tax within the state that you are domiciled.

Mr. WEST. Do you have any other state taxes that you get hit on?

Mr. DUCHARME. Yes, we pay in the state of Washington, Michigan I mentioned, New Jersey, and Louisiana, and Texas, and New Hampshire.

Mr. WEST. Captain Engemann, you bring up a great point that affects, I think, this industry as a whole with our inland waterways, our ports and what have you. Why do you think it is taking so long for the Corps of Engineers to get through dredging permits?

Mr. ENGEMANN. There is a vast region that we are permitted. We are all permitted together on the Missouri River as one permit. We have individual permits to our company but we have Kansas City to the mouth at St. Louis, and there is a wide range of problems that the local graders may or may not have, like, in Kansas City, they have a bad degradation issue that is not the same where I operate. In Hermann, Missouri, we do not have that issue but I am still delayed with my permits.

Mr. WEST. You mentioned earlier in your testimony all the different agencies that you have to go through, all the wickets. Do they ever have monthly or quarterly coordination meetings where you can sit down and do the one-stop shopping instead of having to stovepipe with each one of these agencies? And do you find there is no crosstalk and coordination between these agencies that you have to contend with?

Mr. ENGEMANN. There is no crosstalk, excuse me. A similar issue with, like you say, my dredge operator got an injury a few weeks ago. I reported an accident report to MSHA and the Coast Guard because he is a marine employee, but it means we are regulated by MSHA. We have to report it as my incident as well. So just one example. We are crossing all the time.

Mr. WEST. You talked about the navigation devices. How often have you told the Coast Guard about this issue with the navigation devices and what type of response have you gotten back?

Mr. ENGEMANN. After a few months go by of negligence, then you will get some response and then they will come out and try to do better. There are big opportunities on the Missouri River to be successful if we can get the Coast Guard and the Corps of Engineers to work with us. We have increased our business tremendously this year and it has got a lot of potential.

Mr. WEST. When you talk about the penalties and fines that you get, are you aware of these checklists that they have? Are there spot inspections? Are they scheduled inspections? If you are, as you said, able to rectify the situation on the spot while the inspector is there, do you still find yourself getting penalized and fined?

Mr. ENGEMANN. Still get fined. Yes, sir.

Mr. WEST. Even if you correct it right there on the spot?

Mr. ENGEMANN. Even if we correct it right there.

Mr. WEST. Annually, last year, how much of an economic impact did that have on you?

Mr. ENGEMANN. I would say $4,000 or $5,000 probably. We try to do our best. Like I say, we appeal something if it is a large fee or something.

Mr. WEST. But even in appealing, does that cost you money in the appealing process?

Mr. ENGEMANN. It takes my time personally. You have a book of regulations from every agency that you try to follow, and in a large

company they probably could have a full-time person be a safety inspector.

Mr. WEST. Compliance person.

Mr. ENGEMANN. But in a small business you cannot afford it.

Mr. WEST. Because you only have 10 employees.

Mr. ENGEMANN. I only have 10 employees.

Mr. WEST. And most of them are out there on the river?

Mr. ENGEMANN. Exactly.

Mr. WEST. To include yourself.

Mr. ENGEMANN. Including myself.

Mr. WEST. Do you sometimes feel that these folks are coming down and they are working counter to you?

Mr. ENGEMANN. Yes, sir. We will hire a consultant sometimes, like a safety consultant, if I feel like we are not keeping up as good as we should or a new regulation that I do not understand, then I hire a professional consultant.

Mr. WEST. Once again that cuts into your profit margin.

Mr. ENGEMANN. Minimum of $1,500 for basically a day or two. They will come out and might do a safety audit on your company or check for noise or dust or something. There is no way we could ever be out of those limits. It is not possible.

Just for an example, dust. We have to check that annually. MSHA checks it annually. We are dredging sand that is wet. I mean, it is never going to have dust. But we still have to check it.

Mr. WEST. Excuse me for laughing.

Mr. ENGEMANN. And it gets to be very frustrating. We intend to be there a long time and we have got long-term employees. We have been here 20 years and growing, and everything we invest in our community, in our business, and this is very frustrating.

Mr. WEST. You know, you and Ms. Hebert are generational businesses. How do you look at the death tax and how that is going to affect you? If we are talking about taking this from 35 percent bracket to 55 percent bracket, dropping the minimum exemption level from $5 million down to $1 million, I mean, are we going to be able to continue to pass on to subsequent generations the businesses that your fathers and forefathers created for you?

Ms. HEBERT. In my opinion, no. I think it is going to create such a disincentive or hurdles that instead of being focused on investing in our businesses and figuring out how, I mean, I plan on being there for our 100th anniversary, and I want to make sure that that happens. But when you have these hurdles such as this, I mean, how do you overcome that? And I think what is going to happen is there will be a way and eventually it will right itself. How many travesties and how many businesses are not going to be there or are not going to make it through?

And at the same time, while our government, as Captain Engemann said, we are not looking for subsidies. We are not looking for any support. Congressman, where is the world's largest boat show?

Mr. WEST. Fort Lauderdale.

Ms. HEBERT. Fort Lauderdale. The city, the state, and the county have contributed in the 53 years of this show zero dollars, and that is okay, because it is still the world's largest boat show. But when you have governments—I just came back from Taiwan last week.

In Taiwan, the United States is between number two and number five on the global order book. Taiwan is number seven. This government, in addition to creating a regulatory environment that does not have hurdles for generations—which by the way that is very generational—they are touting themselves, marching towards status as the world's luxury yacht manufacturing capital of the world. And with incentives and regulations that are for—I mean, they are building an entire waterfront. And you talk about the Army Corps of Engineers. I saw a boatyard change its facilities in one year and they now are able to put their boats in the water. Dredging was done in six months. There was not an Army Corps. Now, is that going to happen overnight? But when these countries figure it out, that we are going to overregulate ourselves, the business will go elsewhere, just like other industries it has. And I think that the death tax is very symbolic of that. Again, I do not think it will be forever gone but there will be many businesses. It will recreate our industry. We will not have the heritage.

Mr. DUCHARME. As a small family business, we take pride and our goal is we raise our kids in the family business. They are a part of our everyday life. And if you have to pay 50 percent tax for the next generation just to get it, that is not going to happen. You would end up selling the business.

Mr. WEST. Would you say that our marine industry is a generational industry?

Mr. DUCHARME. Yes, sir. We are second generation, going to be going on third, hopefully.

Mr. WEST Anything else, Mr. Tipton?

Mr. Tipton. I just had maybe one more, Mr. Chairman. Showing the picture of the yacht, I have a friend and he said the only thing better than owning your own boat is having a friend who owns a boat—when you were talking about the ongoing expenses. But it obviously does create employment.

You know, I do serve on the Small Business Subcommittee and chair, oversee Energy, Ag, and Trade, and one thing that we are always looking for is ways to be able to help American businesses really to be able to export. You are talking about the Taiwanese wanting to become the world's largest yacht builders, to be able to export those boats over here. But I am a little surprised because I think it is positive and we would like to be able to see that grow. U.S. exports, being about—we export about 21 percent of the powerboats manufactured here. Given that many of you are involved in, to some degree, exporting or facilitating some of the exporting that is going on, are there any additional steps that you see that Congress should be considering and should be undertaking to streamline or improve that part of the process?

Ms. HEBERT. I will answer quickly on that. Because I am not in the manufacturing and as far as the export, what I would say is remember that these are boats and they can come back. That if we export them, they do not have to go away because they can come right back. And let us make it easy for them to come back as foreign goods, and let us make sure that we still give them every incentive to come back and spend money in our U.S. waters.

Mr. TIPTON. Great. Thank you, Mr. Chairman.

Mr. WEST. My final question comes back to the first question. We talked about the negative stigma on the marine industry. I would like to ask each and every one of you, what do you think that we can do to put a true American face on this industry to make sure that we do not have regulatory agencies that are coming up with their own little rules and changing rules to go against law? That we can make sure that agencies are out there supporting our business growth and ensure that we can have production manufacturing and also the transfer of goods along our inland waterways? So what would be your suggestions to help us to ensure that we keep the marine industry vibrant and safe to go on for future generations?

Mr. DUCHARME. Well, I think the point that you make that putting a human face on the industry is the most critical. We work with and are a member of the National Marine Manufacturers Association and each one of the manufactures that are a member of the group contribute based on the number of engines that they buy from the likes of Mercury and/or Volvo. And advertising and putting the human face on the family aspect and the jobs that all manufacturers create within the United States, it is a luxury good but it is for enjoyment, and responsible boaters are passionate boaters and they take care of waterways and they take responsibility for the environmental impact. And you find now that as Ms. Hebert mentioned, it is an expensive hobby. And you do not go into it unless you have a lot of passion for boating. And that is the face and the relationship that we have to make with manufacturing and pleasure boating within the U.S.

Mr. ENGEMANN. The one thing is that the agencies that regulate us need to have personal interaction with our companies, whether it be the Corps, Coast Guard, or MSHA, especially the people that make the rules. I want them to come talk to me. I want them to get on my equipment. I want them to get in my mind and see how we work. See how their rules are going to affect us. And there has got to be a common sense approach. You look at how this company's exports go for basically money. I mean, we have got a terrific debt. And the goods that we are shipping in the Missouri River is cash. You know, we are taking soybeans out of the Midwest that are very valuable globally. And that has got to be very important to hold that transportation asset open so we can safely transit. You know, the more goods we get down that river, the more cash comes in. To me that is very simple. I would consider the Missouri River to be the eighth wonder of the world. It was a feat. Whenever they built and designed this thing for 2,500 miles between the dams and the property that was created to grow crops and then they had the most efficient transportation mode highway built along the same—to try to get—I do not know how many states it is, all thinking the same, that is a feat. And now we are blowing holes in it. They lost the common sense approach to keeping our marine system active, viable, and efficient. Thank you.

Mr. SUMAILA. The key point is for the U.S. to do all the country can do to maintain a healthy ecosystem. Taiwan, Thailand, if they keep allowing things to be taken down and the U.S. maintains its own, the businesses will come back here. So that is crucial. And how to do that is the common sense regulation, and you have to

think of the businesses. Make sure you are not putting too much betting on them whilst we do all we can to maintain the ecosystem.

And another thing that maybe the U.S. can do because the U.S. is an influential and powerful nation, is actually looking at these other countries and using whatever instruments and mechanisms to make sure that they do not disadvantage U.S. companies. I think that always you can do that. So Taiwan, if you want to do business with the U.S., there are some things you have got to do or we do not do business with you because that will help us avoid getting into what economies say race them to the bottom. Because if we all just keep saying, okay, if you regulate us and they do not do it with a disadvantage which is true, they are going to keep going down that way, lose the ecosystems that we all need and depend on for these businesses to go on. So maybe that could be another channel to use.

Ms. HEBERT. I think I am probably going to reiterate what all of my colleagues have said, is that a lot of it is communication. I have to say in fairness, I have never sat down with a legislator, regardless of where they are from, and by the end of the conversation not have them understand that the marine industry—many times there is an aha moment depending on where they are from. Not everybody is blessed to be a South Florida representative, but there is always an understanding once it is explained. So some of that onus is on our behalf, and I think it is all working together. I think having a level playing field with trade agreements, being able to do some things back and forth so there is not that incentive one way or the other that is heavy, and just really getting past the word "yacht", and knowing that is okay. Big boats are good things and big boats equal big jobs.

Mr. WEST. Well, thank you all again for being with us today. And as Chairman Coffman noted in his opening statement, the coastal and inland water transportation system is often the economic lifeblood of the regions where they are located. Small businesses across the country utilize our ports, our rivers, our lakes for a wide variety of applications for commerce and recreational alike. The maritime industry is a significant contributor to our national economy, and the federal government needs to do a better job of balancing priorities so that these waterways are maintained so that they remain valuable resources that they are.

I look forward to working with all of you on these issues presented today, and again, I appreciate you being with us today and thank you for your testimony.

I ask for unanimous consent that members have five legislative days to submit statements and supporting materials for the record. And without objection, so ordered. This hearing is now adjourned.

[Whereupon, at 11:12 a.m., the Subcommittee was adjourned.]

Testimony by Kristina Hebert
President of the
Marine Industries Association of South Florida
and on behalf of
the United States Superyacht Association
before the
House Small Business Subcommittee on Investigations, Oversight, and Regulations
July 12, 2012

Mr. Chairman and Members of the Subcommittee, I am Kristina Hebert, President of the Marine Industries Association of South Florida. I am testifying today on behalf of this association and the United States Superyacht Association. I want to thank you, Congressman West and all of the members of this Subcommittee for holding this hearing on the important issue of making affordable workers compensation insurance available for the thousands of men and women who work in the recreational repair industry. An overwhelming majority of these workers are in business independently or work for a small business, and are not only in my home state of Florida, but across the entire country.

My family's business Ward's Marine Electric has been in Fort Lauderdale, FL since 1950. I am a third generation owner and operator. We provide electrical sales, service and engineering to the recreational marine industry. While we have technicians that travel outside of the area, South Florida is the yachting industry capital of the world. There is no other destination across the globe that has the concentration of skilled tradesmen, professionalism or climate to service the recreational marine industry. To give you an idea, the Tri-County/South Florida marine industry represents 107,000 jobs; an economic impact of $8.9 billion in gross output and $3.06 billion in wages and earnings.

The cost of workers' compensation insurance is a significant cost to small business. In the case of small businesses that are in the recreational boating industry, there is the added factor that in some instances the federal Longshore and Harbor Workers Compensation Act (LHWCA or Longshore Act) applies. Enacted at the beginning of the last century, the federal law was created to fill a gap between state and federal jurisdiction.

The National Council on Compensation Insurance, Inc. ("NCCI") manages the nation's largest database of workers compensation insurance information. NCCI develops and defines workers compensation classifications for the insurance industry. Currently there are only two LHWCA classifications for the recreational marine industry. One is for boatbuilding and the other is for boatyards. These classifications have both specific state compensation rates and LHWCA rates. None of the individual trades associated with recreational marine repair such as electric, plumbing, carpentry, etc. have a separate classification as their work is deemed

comparable to that of their land based counterpart. As such, each state has a LHWCA multiplier that is applied to the state compensation rate. In some cases this multiplier has been as high as 3.98 or roughly four times the state compensation rate. This is due to the simple economic principle that the group of insured is smaller than the group of insured under State law. Because there are fewer employees to spread the risk over, LHWCA coverage is dramatically more expensive for essentially the same coverage under State law. As a result, many workers engaged in the repair of recreational vessel went without buying LHWCA coverage because it is unaffordable. Needless to say this was not a good result. Additionally, the number of underwriters for LHWCA coverage is very small. Because the vast majority of the recreational marine industry is comprised of small businesses and premiums are generated by payroll, many businesses were unable to obtain LHWCA coverage. If the insurance company required a business to purchase LHWCA coverage it was not an option to purchase State compensation alone or separately.

Thus a solution was deemed necessary to ensure that all workers in the recreational boating industry were covered by affordable workers compensation insurance and an exemption was sought. The intent of Congress in 1984 in enacting the original exemption for recreational boating was to capture the recreational marine industry and exempt it from LHWCA coverage. It is important to underscore that those exemptions would apply only if the employees were covered under the applicable State compensation systems. In 1984 the largest boat built in the United States was 65 feet, thus the limitation of length in the original exemption.

Today longer recreational vessels are built and repaired. Nearly every U.S. manufacturer, as well as repairer, is working on boats both over and under 65 feet. Therefore, the key elements of status, as a maritime employee under the LHWCA, and situs, as a maritime employee working at a facility under the LHWCA, were difficult to decipher. Insurance providers were in need of clarification to be able to write the appropriate coverage. Small businesses were paying extraordinarily high premiums for duplicative and unnecessary coverage. Many independent workers were unable to purchase coverage and were going without. Those that were able to purchase the coverage were forced to have increased labor rates that were significantly higher than international competitors. This was especially difficult for South Florida with the Bahamas and Caribbean just off the coast as well as the Pacific Northwest and Great Lakes regions and their proximity to Canada. To keep jobs in America and achieve more workers covered under workers compensation, the recreational boating industry and the marine insurance industry once again sought to amend the LHWCA to provide the relief that the industry needed: affordable workers compensation insurance that covered all workers in the industry.

In 2009, Section 803 of the ARRA was passed and amended the LHWCA by altering the description of excluded employees in positions related to recreational vessels under the Longshore Act (33 U.S.C. 902(3)(F)). This was accomplished by

eliminating the length of vessel for which repairs are performed. The stated intent of Congress was to expand the number of employees exempted from the LHWCA. It must be emphasized that Congress did this fully knowing that the law required that exempted employees must be covered by State workers compensation laws to qualify for the exemption under the federal law. Again, no loophole was created whereby someone would be left without coverage under this change. This was intended to allow the insurance industry to provide coverage for the recreational marine repair industry under State law, thereby lowering costs and remaining competitive in this global industry.

This brings me to why I am here today. Ignoring stated Congressional intent, the Department of Labor ("DOL") explicitly limited, not expanded, the exemption for the repair industry. In implementing this expanded exemption, DOL issued a rule on December 30, 2011, that did just the opposite of what Congress intended by adopting a new definition of recreational vessel for a vessel being repaired or dismantled (20 Code of Federal Regulations §701.501(b)(2) and (c) (published at 76 Fed. Reg. 82128 (December 30, 2011)). Specifically, DOL has mandated a definition of recreational vessels that imposes unnecessary and cumbersome additional guidelines to determine how the exemption for recreational marine workers would apply. DOL incorporated a definition of "recreational vessel" used in the shipping laws and then needlessly superimposed a number of cross-referenced maritime statutes to further restrict the category. By incorporating a multitude of definitions not enacted by Congress for the LHWCA and apply them in a way that the exemption would be narrower, not more expansive, DOL created an exhausting and confusing list of vessels that would not be considered recreational vessels when undergoing repair work.

Needless to say, Congress never adopted this definition either in the plain language of the law or in its legislative history. The new rule has instead created confusion in both the recreational marine repair industry and the insurance industry. The misapplication of the exemption brought thousands of workers under the duplicative coverage or even worse left them without any coverage at all. For these reasons, the rulemaking seriously missed the mark and will serve only to cost American jobs and drive economic activity offshore.

Now over eight years after the effort to obtain relief started, the recreational boating industry is worse off than when we started. But the Department of Labor could correct the situation. President Obama has issued Executive Order 12866 tasking the Office of Management and Budget ("OMB") with ensuring that "regulations are consistent with applicable law." The Office of Information and Regulatory Affairs ("OIRA") in particular is required to provide guidance to agencies and review individual regulations. However, OIRA may review only those actions identified by the agency or by OIRA to be "significant regulatory actions," meaning those actions that are likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more;

- Have a material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Unfortunately the DOL, in spite of the economic importance of the recreational boating industry in South Florida, not to mention throughout the entire United States, concluded that it was not a significant regulatory action, nor a major rule, and therefore did not take into account the rule's severe economic impact. Notwithstanding, Executive Order 12866 fortunately also states that the Vice President, in consultation with regulatory policy advisors of the President, may identify regulations that affect a particular group, industry, or sector of the economy for review by the appropriate agencies. Additionally, the Vice President may identify legislative mandates for Congress to reconsider.

We believe that this rule issued by the Department of Labor is a prime candidate for review under the Executive Order. Accordingly, the Administration and DOL should withdraw the rule as it applies to the repair industry in Section 701.501(b)(2) and (3) of title 20 of the Code of Federal Regulations and revise the rule as it applies to the recreational vessel repair industry. This is a narrow fix with a big economic benefit. We note, and emphasize, that the provisions of definition in the rule applicable to manufacturing or building of recreational vessels and public vessels was done correctly and should remain unchanged.

In taking this narrower action, a replacement of the definition can be formulated that will keep the cost of workers' compensation insurance low, allow for more workers to have coverage, and keep jobs and economic activity from going offshore. We recommend that a newly formulated rule contain a definition that applies to recreational vessel repair workers in the same manner that the rule applies to manufactures and public vessels. The definition we recommend is as follows:

> The term "recreational vessel" means—
>
> (A) a vessel—
>
> (I) Being manufactured or operated primarily for pleasure; or
>
> (II) Leased, rented, or chartered to another for the latter's pleasure.
>
> (B) In applying the definition in subparagraph (A) of this section, the following rules apply:
>
> (I) A vessel being manufactured or built, or being repaired under warranty by its manufacturer or builder, is a recreational vessel if the vessel appears intended, based on its design and construction, to be for ultimate

?

recreational uses. The manufacturer or builder bears the burden of establishing that a vessel is recreational under this standard.

(II) A vessel being repaired, dismantled for repair, or dismantled at the end of its life is a recreational vessel if the vessel appears intended, based on its design and construction, to be for ultimate recreational uses and is not normally engaged significantly in a military, commercial, or traditionally commercial undertaking.

(C) Notwithstanding paragraph (B)(II) of this section, a vessel will be deemed recreational if it is a public vessel (a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof) at the time of repair, dismantling for repair, or dismantling, if that vessel shares elements of design and construction with traditional recreational vessels and is not normally engaged in a military, commercial, or traditionally commercial undertaking.

This definition incorporates all of the elements of the definition for manufacturers and public vessels but applies them equally to the repair and dismantling segment of the recreational vessel industry. We believe this is only fair that all segments of the industry are treated the same and that no segment should be discriminated against by having to meet a different standard. This consistency and equal treatment plus elimination of the unnecessary elements contained in the current rulemaking will provide the recreational vessel industry with the needed relief it has long sought. More workers will be covered by workers compensation insurance and not have to take unnecessary risks to just make a living. We do not want to go another eight years without this needed relief. However, without a change in the rule, we face having to start over again and ask Congress to enact this change in the definition as part of the Longshore Act itself.

Thank you again for holding this important hearing. We appreciate having the opportunity to voice our viewpoint.

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Testimony of Mark Ducharme

Vice President and Chief Financial Officer

Monterey Boats

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United States House Committee on Small Business

Subcommittee on Investigations, Oversight and Regulations

July 12, 2012

Testimony of Mark Ducharme, Vice President and Chief Financial Officer

Monterey Boats, Williston, FL

July 12, 2012

Mr. Chairman, Ranking Member Schrader, members of the subcommittee, thank you for the opportunity to address you this morning on the "Business Activity Tax Nexus" issue. I am here today representing a broad group of organizations and businesses – the Coalition for Interstate Tax Fairness and Job Growth – a group working together for enactment of the Business Activity Tax Simplification Act (HR 1439). Our coalition has several hundred supporters. Among those are small businesses such as my own, Monterey Boats, associations such as the National Marine Manufacturers Association and the National Association of Manufacturers, and large corporations like Disney and Microsoft. We are in every state in the country and while we may not agree on some issues we do agree that attempts by some states to assess sales, gross receipts or income taxes on businesses that have customers but no physical presence in the jurisdiction is simply arbitrary & wrong.

We understand state's face the great temptation of raising tax revenues from those who do not vote in its' elections or utilize state resources. We only engage in interstate commerce by providing products or services and do so without any physical presence in the state, but efforts to expand traditional definitions of "tax nexus" have become completely absurd.

For example, the State of Michigan secured a copy of Monterey Boat's federal tax return and assessed a 2011 "gross receipts tax" in the amount of $376,000, by allocating our entire worldwide sales to the state. Monterey Boats, it should be pointed out, has no property in Michigan, no sales offices in Michigan, no agents in Michigan, and no

employees in Michigan. Yet, Michigan claimed the authority to tax our sales based merely on the fact that Monterey Boats has customers in the jurisdiction, and considers nexus is achieved with only 1 day of contact in the state, including delivery in company owned, rented, leased or borrowed trucks. Another example is New Jersey, we received a phone call in October 2004 from an agent with the New Jersey Division of Taxation notifying our truck was being impounded, along with a shipment of boats, until we remitted $176,000. After retaining an attorney and negotiating the release of truck, driver and load of boats we received a formal Jeopardy Assessment from the state. We remitted funds to the state and began the appeals process. In addition, state placed a lien on receivables due to Monterey for boats sold anywhere. After 7 years, in August 2011, after over $100,000 in legal fees, countless man hours in accumulating info, including, preparing NJ sales data, US data and worldwide sales data, we received a final determination from state upholding their position and requiring us to file annual tax returns. Although we still have the ability to file a final appeal with NJ tax court. It isn't economically feasible to do so, and they are completely aware of that fact. What's worse is that Michigan & New Jersey are not alone. Most states that reach across their borders to impose corporate taxes use the argument companies are accessing customers within their borders, other states take it further. Massachusetts, for example, claims that a business has established the necessary "nexus" for corporate income tax purposes if that business has vehicles that travel through Massachusetts more than twelve times in one year, even if it has no employee, office or inventory in Massachusetts. Massachusetts does not require that the vehicles make deliveries or pick-ups in Massachusetts, only that they travel through the state on their way to somewhere else. Presumably the company or contract carriers pay the proper Massachusetts fuel taxes, so this is not about road building and maintenance.

It should be easy for the Members of this committee to see the possibilities – and the

dangers – here: a business could literally be taxed to death by states that are hungry for revenue from any and all sources if each state in which the business has a customer decided to tax the gross receipts of the company in question. States could cast covetous eyes on the potential tax revenue from out of state corporations. In fact, there are numerous examples of overreaching by states against other small businesses in the Marine industry and otherwise. These large tax bills and the legal fees to dispute them are not part of our budget planning, and it may well hinder us as a manufacturer as we attempt to survive in a super-competitive environment and keep our 250 employees, which has already decreased from 600 full time employees, working steadily and producing more of our fine boats.

I could go on with other examples of States that have claimed a dubious nexus as they sought to collect taxes from out-of-state businesses, but I am confident that you understand my point. Suffice it to say that many other revenue-hungry states, including Washington State, Arizona, California, Missouri, Oregon, Pennsylvania, South Carolina and Wisconsin, have also reached across their borders to impose corporate taxes on other similarly situated small businesses. These and other states may be helping their own bottom lines, but they do so at the expense of the national economy and the free flow of interstate commerce.

Unless Congress steps in to clarify that the U.S. Constitution requires a physical presence nexus and sets forth a clear bright-line test for what constitutes physical presence, then we will continue to have a jumble of impossible-to-plan-for laws, regulations and enforcement actions that vary across the fifty states. And that, Mr. Chairman, Ranking Member Schrader, and other Members of this subcommittee, is what needs to be fixed by the Congress.

There is, in fact, legislation that has been reported favorably by the House Judiciary

Committee that we believe would solve the problem. This legislation, the "Business Activity Tax Simplification Act," or "BATSA," was introduced by Reps. Robert Goodlatte (R-VA) and Robert Scott (D-VA), and it now has bipartisan support in the House. H.R. 1439, and would require a business to have some type of physical presence in a given state —excluding a *de minimis* presence of fewer than 14 days during a taxable year—before a state would be permitted to impose a tax on the business. We believe this is a reasonable and bright-line standard that businesses can use to plan for their tax liabilities so they are not hit unexpectedly with large tax liabilities from states in which they have no physical presence.

BATSA would end the confusion that exists as a result of contradictory state court decisions and the refusal of the U.S. Supreme Court to decide the issue. It would apply to business activity taxes, including income and franchise taxes, but it would not apply to transaction taxes such as sales taxes. We believe it is fair for a state to tax in-state businesses and those that regularly conduct business there, but we believe it is grossly unfair for any state to reach out and assert that simply passing through the State or selling a few products in the state allows a tax based on total, country-wide income. A business should only pay income and similar taxes where it is physically present and therefore receives the benefits and protections of the state government.

There is no reason to delay any longer, Mr. Chairman, Ranking Member Schrader, and Members of this subcommittee. The time is right to end unfair business taxation and to make it clear that state taxation of out-of-state entities can only be done within certain well-defined limits. American businesses are not asking for a hand-out from the Congress, only a fair and level playing field, free from the unexpected tax surprises that I have described to you today. Thank you for your time.

Good Afternoon Chairman and members of the Committee. My Name is Steve Engemann and I am here representing the marine industry as President of Hermann Sand & Gravel, Inc. located in Hermann, Missouri, about an hour and a half west of St. Louis, along the Missouri River. We are a small family business founded in 1978 owned by my mother, Melba, my brother, Tim and myself. We operate two sand and gravel plants, one in Hermann, MO and the other in Jefferson City, Missouri and employ 10 people. We have recently grown our business by leasing a tow line vessel which employs 7 people. We pay above average wages and although the economy has stretched our budget we continue to offer 100% of employer paid health care coverage. While other businesses in our area have closed, we continue to research new avenues of revenue to maintain security for our business and our employees.

Today I have been asked to speak about the impediments of regulation on the small businesses of the marine industry. I can assure you that these regulations and federal policies have constricted my business and if left unchecked, will ultimately be the demise of my business and many others that serve the Missouri River and beyond.

Let me begin by communicating which governmental agencies regulate our business. These agencies include the U.S. Coast Guard (USCG), U.S. Army Corp of Engineers (Corps) U.S. Dept. of Labor's Mine Safety & Health Administration (MSHA), Department of Transportation (DOT) U.S. Fish & Wildlife Service and the Missouri Department of Natural Resources (DNR).

We have been trying to get our dredging permits renewed since I believe 2000. We have spent $185,952.00 in the last 5 years for EIS and litigation pending to restore our permits to their original tonnage.

There have been numerous meetings, trips, seminars, conferences I have attended so that I can press the issue of WHY AND HOW we are to continue in business with these restrictions on our permits, not only for myself but also the other dredgers that occupy stretches of the Missouri.

The condition that hurts us the most is 300,000 tons per 5 mile. This limits the amount of sand that we can dredge in a reach. We are permitted to dredge 120,000 tons at each location and we compete with a company that can dredge over two million tons of sand. Once the 300,000 ton limit is reached we must travel up river to the next source for quality sand which is 7 miles from our plant. We do not have the equipment to efficiently go that far. Our company can't justify investing in sand equipment with that small of a permit. We need an exemption and stay with small equipment or a larger permit so we can invest. I have hired former USGS researchers/consultants to do a study with regard to

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the river and the effects of dredging on sediment and streambed conditions. I personally paid for this study and the effects are dramatically in favor of the dredgers and not the Corps.

After our dredging permits were limited in 2008 we started looking for other work that we could do with our crew and equipment. We were lucky to have a clay mine that was close to our facility looking for barge transportation. In 2009 we shipped 22,000 tons of clay on hopper barges. We are estimating this year to be 60,000 tons.

We also had the opportunity to lease a line haul boat this year and operate it on the MO River. So far this year we have moved 100,000 tons of freight to and from 3 main terminals biggest user Agriservice of Brunswick MO, Gavilon, in Neb. City and my own dock at Hermann. That is 67 barges or about 4000 truckloads. We also moved a transformer tow to Brownville NE which was valued at 11 million that came from overseas. This is not counting any sand. This is new business for our company.

MSHA will fine our operation for everything that they find incorrect without even giving us a chance to correct the issue. I am certainly all for safety for those involved and I am more than happy to make changes to our equipment or fix any unsafe equipment that they see without a fine. I believe you should be fined if you are negligent and don't fix things that inspector finds.

The Coast Guard is now making our vessels go thru inspections on a regular basis. I agree with the need for a safe vessel but it seems that they have lost the desire to mark the channel with navigational aids. It is important that we have a safe channel to operate in. The Coast Guard can shut my vessel down for not being 100% compliant but if I run aground because the Coast Guard has not marked the channel or the Corps doesn't maintain a proper channel that supports a 9 draft that's ok? The Coast Guard and the Corps receives revenue regardless if I move any tonnage on the river and yet I have no input into this governing agency nor the guidelines they have in place. I believe the industry should be able to audit these agencies just as they audit us. It should be a joint effort to ensure that businesses like ours can continue to succeed while understanding why we need the regulations they put into place. This would be possible if mutual respect and open lines of communication existed between us.

While I have been working full-time defending the permits to dredge sand, I am fighting a parallel battle of explaining to the Corps the river navigation patterns and challenges we face just to travel up and down the river.

A lack of support from Corps, Coast Guard, the constant fight of water between states and all the studies and wasteful spending from the US Fish and Wildlife because of the endangered species act have forced terminals and business to ship their goods by other less efficient modes.

The rivers and particularly the Missouri River could give great relief to the highways of Missouri and beyond. The MO River is a world highway that allows our small company to compete globally. There are numerous benefits to successful barge traffic including the fact that each barge load of goods relieves 64 semi-truck loads off the interstate highways and empty barges with lots of capacity are available right now in the St. Louis harbor.

There IS freight to move on the MO River, there are WILLING AND HUNGRY Terminals who want to ship product up and down the river. There are business like mine who depend on the livelihood of the river to ensure we can leave the business as a legacy for our children and grand children. The only obstacle standing between small business and successful revenue is the government. The Corp of Engineers needs to let the industry dictate how and where they wish to spend their budget and the navigational aids to assist us in doing our job, need to be under commercial contract.

It amazes me the amount of waste that goes on with the way navigational aids are managed on the MO River. You have the Corps that makes the channel and inspects the channel, but the Corps can't mark channel. The USCG marks the channel, but they don't inspect the channel. We need to work together to use the government assets to best serve the public to get the most reliable and longest shipping season available.

In conclusion, there has to be a plan that can satisfy both the small business owners as well as the Corp of Engineers. However, most importantly Congress MUST pass a budget. This is YOUR responsibility to the public. No governmental agency can provide any assistance to the public of they don't know how much money they will be allotted. We must find a common ground and allow small businesses to thrive instead of failing completely. Our goal is that we move enough river commerce to be a fully funded river and dredge sand to supply our ready mix customers throughout the state of Missouri.

All of the while, I am supposed to be running a business, piloting a boat, managing and maintaining my fleet and I spend hours a day trying to work with the same governing body that it seems is trying to put me out of business. I am not expecting handouts. I am not looking for a grant, I want the Government to provide the service and stick with the plan that our forefathers laid out. We are German, we are persistent, we are determined and we want to leave this business to our children as our father did for us. We just want to provide a safe, secure, honest living for ourselves and for our employees.

Respectfully,
Hermann Sand & Gravel, Inc

Steven W Engemann

Steven W. Engemann
President

July 12, 2012

House Small Business Committee Hearing on the Regulations Governing Recreational Marine Industries: Testimony/ Oral Remarks

U. Rashid Sumaila (PhD), Director and Professor, Fisheries Centre, University of British Columbia

Introduction and areas of research expertise

I am a professor of ocean and fisheries economics at the University of British Columbia (UBC), Canada, and the Director of the Fisheries Centre and Fisheries Economics Research Unit at the UBC Fisheries Centre. I specialize in bioeconomics, marine ecosystem valuation and the analysis of global issues such as fisheries subsidies, IUU (illegal, unreported and unregulated) fishing and the economics of high and deep seas fisheries. I have experience working in fisheries and natural resource projects in the USA, Norway, Canada and the North Atlantic region, Namibia and the Southern African region, Ghana and the West African region and Hong Kong and the South China Sea.

It is worth noting that the specific statutes and legislative proposals being discussed at this hearing are outside of my area of research, but I hope that the broad-based economic research results and ideas I present would help enrich the Hearing.

Marine recreational activities (MRA) research:

- I present research that examines the current and potential value of marine recreational activities worldwide;
- I briefly describe research methodology and results from work reported in Cisneros and Sumaila (2010) - see attached 2 ppt;
- Insights from study:
    - Millions of people engage in MRAs (especially recreational fishing) for fun, jobs and dollars;
    - MRAs at this scale are bound to have environmental consequences (e.g., recreational fishing taking significant quantities of some weak U.S. fish stocks);
    - It is important to note that MRAs rely on a healthy ecosystem, without which the fun, jobs and dollars would disappear.

Broader application of MRA research:

- MRAs undoubtedly support a wide variety of businesses, yet all MRAs require a healthy ecosystem for their existence;
- As I said earlier, the specific statutes and legislative proposals being discussed at this hearing are outside of my area of research, but the key point is that MRAs will only be viable if you protect the healthy ecosystem, and that requires regulation and active management.

- Recreational activities need to be part of the management equation, and participants, both businesses and consumers need to accept responsibility to help ensure that the fun, the jobs and profits continue to flow through time;
- I provide examples from economic theory to illustrate the points made above:
    - The foundational role of a healthy ecosystem - Adam Smith quote: "The Earth and the fullness of it belongs to every generation, and the preceding one can have no right to blind it up from posterity" (Adam Smith, 1766 Lecture on Jurisprudence);
    - On the need for regulations: I will use the economic theories of common pool and the Prisoner's dilemma to illustrate the point.

Some conclusion:

- Our research and those of colleagues around the world show that MRAs support billion dollar businesses, and that these businesses have impacts on the ecosystem;
- To protect the ecosystem and, hence, the businesses and jobs it supports, we need regulation;
- From economic theory, we know that deregulation of businesses that depend on common pool resources is very risky;
- Finally, it is important not to forget the fact that a healthy environment is the basis of any economy no matter how sophisticated.

Attachments

1. Key results of MRA research at the Fisheries Economics Research Unit, UBC Fisheries Centre.
2. Cisneros-Montemayor, A.M., and Sumaila, U.R. (2010). A Global Valuation of Ecosystem-Based Marine Recreation. *Journal of Bioeconomics*, 12:245–268, DOI 10.1007/s10818-010-9092-7.

SAM GRAVES, MISSOURI
CHAIRMAN

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RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business

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July 12, 2012

Mr. Edsel Brown
Assistant Director
Office of Technology
United States Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

Re: Small Business Size Regulations, Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program; Proposed Rule, 77 Fed. Reg. 28,520 (May 15, 2012); RIN 3245-AG46

Dear Mr. Brown:

On May 15, the Small Business Administration (SBA) published the aforementioned proposed rule to implement SBIR and STTR provisions contained in § 5107 of the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1298, 1827 (2011) (NDAA). The Committee believes that adopting the proposed rule in final form[1] will streamline and simplify the ownership and affiliation criteria for participation in the SBIR and STTR programs. Moreover, the proposal ensures that small businesses obtaining venture capital backing will not be prohibited from participation in the program. Finally and most importantly, the approach of the proposed rule evidences congressional intent when it adopted § 5107 of the NDAA.

I. Venture Capital Company Participation in the SBIR/STTR Programs: The Legislative Landscape

Since the program's inception in 1982, small firms needed to attest that they meet certain ownership criteria, such as being 51 percent owned by individuals who are United States citizens or permanent resident aliens. Initially, these criteria, as interpreted by the SBA and agencies with SBIR programs, permitted small firms owned by venture capital companies to participate. The entry of venture capital-backed firms into the SBIR program was not an anomaly but rather fully intended by Congress when it created the program. The Senate Committee on Small Business considered that the SBIR program would be a type of preventure investment which would complement the efforts of venture capitalists. S. REP. NO. 97-194, at 6 (1982). To

[1] The Committee is aware that some industry groups may have certain technical concerns with the proposal. Nevertheless, those technical concerns, which should be addressed by the SBA, do not undermine the Committee's overall support for the approach taken in the proposed rule and believe that significant deviation from that approach would undermine the objectives sought by Congress when it enacted § 5107.

effectuate this, the original SBIR program required agencies, if two proposals were equal in scientific and technical merit, to make an award to the applicant "successful in attracting private capital commitments to pursue commercial applications of Federal research." *Id.* at 8. The Committee believed that this would encourage "additional private investment in these firms."[2] *Id.* at 7.

Participation by venture capital companies changed in 2003, when the Office of Hearings and Appeals (the part of the SBA delegated with addressing challenges to, among other things, determinations of whether a concern is small under agency regulations) issued a decision that venture capital companies could not be considered as "individuals" for the purpose of satisfying the ownership criteria of the SBIR program. The decision forced a number of firms that were majority-owned by venture capital companies and had been participants in the program to exit the program. Many of the firms excluded after the 2003 decision had fewer than 100 employees[3] and – in the case of biotechnology companies – no revenue.

The Committee recognized that a complete bar to venture capital company participation in the program certainly did not reflect on the intention of the original Senate creators of the SBIR program. Nor did it represent good public policy because a small firm's capital structure should not be an impediment to commercializing federal research.[4] Given these concerns, the Committee reported out H.R. 1425, the Creating Jobs through Small Business Innovation Act of 2011. That bill contained provisions (§§ 106 and 107) whose primary objective was to reinstate the ability of small firms with venture capital funding to participate in the SBIR/STTR programs. Section 5107 of the NDAA reflects both the language and policy imperatives set out in §§ 106 and 107 of H.R. 1425. Thus, one of the primary goals of SBIR/STTR reauthorization was achieved – allowing small firms that are majority-owned by qualifying venture capital companies[5] to participate in the SBIR and STTR programs. In short, the legislation enacted by Congress was designed with one overriding policy goal – ensuring small technology business access to necessary financing including equity investment from venture capital companies, hedge funds, or private equity firms.

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[2] To the extent that there is a debate about what was the original conception of the National Science Foundation (NSF) program upon which the Senate modeled its design of the SBIR program was mooted by the clear expression of congressional intent to foster participation by venture capital companies in the SBIR program. Any argument to the contrary simply is contradicted by the language of the Committee report and legislation. If the legislation as enacted in 1982 did not accurately reflect the program as operated by the NSF, then the simple conclusion is that Congress considered adopting that model and rejected it in what became the final legislation.

[3] Firms with less than 500 employees are eligible for participation in the SBIR and STTR program. 13 C.F.R. § 121.702(b). Thus, many of the firms that lost funding were less than one-fifth the size of firms eligible to participate in the program. This belies the notion that concerns with venture financing were somehow bigger than other program participants.

[4] This conclusion is supported by testimony from numerous witnesses before the Committee. That testimony was bolstered by an examination of the Department of Defense's SBIR program by the Rand Corporation and a comprehensive examination of the SBIR program by the National Research Council/National Academy of Sciences released in May 2009.

[5] Section 5107 also applies to hedge funds and private equity firms. Although not mentioned when Congress created the program in 1982, the Committee is aware of increased investment in small technology companies by private equity and hedge funds. For example, the main trade association of SBA-licensed venture capital companies, the Small Business Investor Alliance, has broadened its membership to include private equity firms. *See* http://www.nasbic.org/. Nevertheless, taking Polonius's admonition to Laertes concerning brevity, these comments will use the term "venture capital company" as a stand-in for all three unless context dictates otherwise.

II. Pruning the Landscape: The SBA's Proposed Rules[6]

Enactment of § 5107 of the NDAA expressed congressional intent in a clear manner. Nevertheless, SBA needs to promulgate regulations to implement the will of Congress. The proposed rules issued by the agency on May 15, 2012, for the most part, implement the will of Congress and establish a workable framework for investment by venture capital companies in the SBIR/STTR programs.

A. Proposed § 121.701

Proposed § 121.701 establishes the definition of "domestic business concern." The Committee believes that this definition is sufficiently strong to ensure only United States-based companies can compete for awards without unduly burdening the applicant. Additionally, this provision mirrors statutory language contained in the NDAA defining "venture capital operating company," "hedge fund" and "private equity firm." This proposed change reflects congressional intent by broadening the universe of entities that are eligible for the SBIR program. Adding additional definitions and restrictions would defeat the goal of broadening the pool of companies eligible for the programs and so the Committee urges the SBA to maintain the language of § 121.701.

B. Proposed § 121.702

Proposed § 121.702 outlines the structure of the ownership and control requirements for small firms with significant private investment. This closely hues to congressional intent in the law. Section 107 of H.R. 1425 as adopted in §5107 of the NDAA included provisions that establish clear guidelines governing the participation of small businesses with substantial private investment from venture capital, private equity, or hedge fund companies in the SBIR program. The provisions in the NDAA allowed a small company that is majority-owned by qualifying private investment firms to participate in the SBIR program, so long as the small business concerns do not have: (1) a single private investment company owning a majority of the small business concern; or (2) a private investment company controlling a majority of the small business concern's board of directors' seats. Additional safeguards were included to limit the ability of large corporations to use subsidiaries to participate in these programs.

Section 5107 of the NDAA specifically delineated the affiliations between various outside investors (such as venture capital companies, private equity firms, etc.) and small business concerns for purposes of determining whether the combination is eligible for an award under the SBIR program. Under the section, the Committee directed the Administrator to not consider a business concern to be affiliated with a venture capital company (or any other business that the venture capital company financed) if such outside investment companies do not own 50 percent or more of the business concern and employees of such private investment companies do not constitute a majority of the board of directors of the business concern. Further, a business concern shall be deemed to be "independently owned and operated" if: it is owned in

[6] All of the regulations, when finalized, will appear in Title 13 of the Code of Federal Regulations. As a result, the comments will only cite to the proposed section rather than the title and section.

majority part by one or more natural persons of venture capital companies; there is no single venture capital company that owns 50 percent or more of the business concern; and there is no single venture capital company the employees of which constitute a majority of the board of directors of the business concern.

The Committee concluded that the other portfolio companies owned by a venture capital company are immaterial to the dealings of the small business concern participating in the SBIR or STTR program. As a result, this section clearly defines that the employees for the small business concern and the employees of the firm providing equity investment company are the only ones that shall be counted in determining eligibility for participation in the SBIR or STTR program. In essence, this section limits the reach and scope of the SBA's affiliation rules set forth in 13 C.F.R. Part 121 for the purposes of the SBIR and STTR programs.

Therefore, the Committee believes that Proposed § 121.702 sufficiently reflects congressional intent with regard to the ownership and control structure of a small firm's participation in the SBIR program. Additionally, this provision creates clear and precise benchmarks that allow small businesses to determine their status with regard to affiliation without being overly burdensome and stringent. This section should remain unchanged, and no amendments are necessary to the affiliation changes contained in the rule to effectuate the purpose of § 5107 of the NDAA.

C. Proposed § 121.704

Proposed § 121.704 dictates that size and eligibility status of a concern for the purpose of a funding agreement under the SBIR and STTR programs is determined as of the date the concern submits a written self-certification that it is small and meets the eligibility requirements of the program to the federal agency as part of its initial proposal and at the time of the award. The Committee believes that this is the correct time to certify because it is a date certain event. The applying small business knows when it will submit an offer and can therefore determine with greater accuracy whether it will be small at that time. Additionally, by having small firms certify their status at the time of application, it reduces the resources needed by the SBA and participating agencies investigating the validity of applications. This date of certification is also widely used throughout the SBA's other contracting programs and for the sake of continuity should be incorporated into the SBIR and STTR programs.

D. Proposed § 121.705

The SBA has requested comments on the need to create a new registry to handle the new reporting requirements with regard to majority ownership by multiple venture capital, hedge fund, or private equity firms. Proposed § 121.705, Fed. Reg. at 28525. The SBA is currently seeking to determine if the current Dynamic Small Business Search (DSBS) system can be altered to accomplish these new reporting requirements or if it would be necessary to create a new registry. The Committee suggests that the creation of a new registry would be more prudent. The current DSBS system was not designed to collect and sort the types of information relating to affiliation and capital investment data necessary. Additionally, the new system should

be designed in such a manner that is easy to use by SBA staff, researchers, and Members of Congress.

E. Applicability or Regulations to Both SBIR and STTR

The Committee strongly agrees with the agency's assertion that all of the proposed regulations apply to both the SBIR and STTR programs. As noted in the proposed regulations, § 5104 of the NDAA permits an SBIR Phase I awardee to receive an STTR Phase II and vice versa. This is a new capability for small firms that participate in these programs. Given the fact that companies now have the ability to alternate between the two programs, it is prudent to have these regulations apply to both the SBIR and STTR programs. The possibility of having two different sets of regulations administering the SBIR and STTR programs is counterintuitive and would lead to greater confusion in the small business community.

The Committee believes that the proposed regulations successfully mirror congressional intent. As such, the regulations should be adopted without modification. I appreciate your request for comments and thank you for your consideration.

Sincerely,

Sam Graves
Chairman
House Committee on Small Business

Cc: Mr. Sean Greene
Associate Administrator for Investment and Special Advisor for Innovation
Small Business Administration

Marine Retailers Association of the Americas

9213 Telford Crossing, Minneapolis, MN 55443
Phone/Fax 763.315.8043 Email: matt@mraa.com

Statement for the Record of
Mr. Matthew Gruhn, President
Marine Retailers Association of the Americas
Before the House Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations
On "Sinking the Marine Industry: How Regulations are Affecting Today's Maritime Businesses"
July 12, 2012

The Marine Retailers Association of the Americas greatly appreciates the opportunity to submit a statement for the record to the Subcommittee on Investigations, Oversight, and Regulations on the July 12, 2012 hearing "Sinking the Marine Industry: How Regulations are Affecting Today's Maritime Businesses." We also thank the Subcommittee for its leadership in conducting this very important hearing.

MRAA is the trade association of small businesses in North America that sell and service new and pre-owned recreational boats; provide access to the waters through marinas, access ramps, and boat yards; and sell boat accessory products and parts.

For the past 25 to 30 years, our members have seen the enthusiasm for regulation and the enforcement of those regulations escalate to a level that we would not have thought possible 25 years ago. For example, marinas and boat yards are regulated by the following Federal agencies: the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the Occupational Health and Safety Agency, the Department of Health and Human Services, the U.S. Coast Guard, the Department of the Interior, and the National Oceanic and Atmospheric Administration, among others. In addition, state government agencies also regulate our businesses, including the Department of Environmental Management, Coastal Resources Management Councils, Departments of Health, State OSHA, fire codes, zoning and building inspections, and harbormasters.

There are few, if any, other small businesses that are regulated by such a diverse and numerous groups of agencies. In addition, the regulations are a moving target and are changing and becoming increasingly complicated and difficult to comply with. The typical dealership, marina, and boat yard provide a wide range of sales and service operations and fall under many regulations. Our studies of the cost of complying to regulations average about 500 hours per year for every small business in our industry. This represents about

$48,000 of unbillable time at current labor rates. Most of this time is spent on inspections and recordkeeping, which form the backbone of agency oversight. In addition, many of our members hire outside consultants and engineering firms to perform many of the required training and manual preparation.

We have also noticed that agencies responsible for writing and implementing rule and regulations for the laws passed by Congress oftentimes seem to follow their own agendas and stray from what we believe is Congressional intent. This has been frustrating for our Members and makes the process hard to follow and understand.

A good example is the rulemaking for Longshore and Harbor Workers' Compensation Act written by the Department of Labor. The act was amended by Congress in 2009 in two key ways. Congress defined as an employee only those individuals building recreational vessels over 65 feet in length and it excluded from the definition of employees any individual employed to repair a recreational vessel or dismantle it without regard to length. In 2011 the Department of Labor issued a proposed rule with a revised definition of recreational vessel to include a requirement that a repair yard know the purpose of how the vessel is being used, adding confusion in the application of the rulemaking to the Congressional language. The final rule failed to address the concerns of the recreational boating community in regard to the revised definition of recreational vessel.

MRAA asks Congress to communicate its original intent to the Department of Labor and oversee a constructive change in the definition of "recreational vessel." In addition, MRAA believes the degree of inconsistency between Congressional intent and Executive rulemaking is cause for Congress to oversee the process and to review rulemakings prior to finalization.

Another issue being discussed at the Small Business Committee is the Business Activities Tax being charged by some states to manufacturers simply because their products may be driven through the state for delivery. The patchwork of state tests to determine whether a business has an economic presence in the state leads to considerable uncertainty. Some states are taxing a manufacturer based on gross international income as opposed to just income derived by business transactions in the state. MRAA asks Congress not to delay longer and end this unfair business taxation. Congress should step in to clarify the Constitution's requirement of a physical presence to end the confusion that exists today.

July 24, 2012

The Honorable Mike Coffman
Chairman
Subcommittee on Investigations, Oversight and Regulations
House Small Business Committee
Washington, DC

The Honorable Kurt Schrader
Ranking Member
Subcommittee on Investigations, Oversight and Regulations
House Small business Committee
Washington, DC

Re: Subcommittee on "Sinking the Marine Industry: How Regulations are Affecting Today's Maritime Businesses"—July 12, 2012

Dear Chairman Coffman and Ranking Member Schrader,

I am Mary Jane Cleary, the Washington Federal Affairs Executive and Counsel for the National Council on Compensation Insurance (NCCI). It has come to our attention that there was testimony given about NCCI's workers' compensation insurance database and the Longshore Act during your hearing on July 12th by the representative for the Marine Industries Association of South Florida and the United States Superyacht Association. There are a number of issues mentioned in that testimony which need to be further explained in order to make certain that your hearing record is correct.

The NCCI, which is Florida-based, operates on a not-for-profit philosophy and does business in 36 states while assisting in others. We are regulated by the state insurance departments in each of the states in which we do business. Our main work is to provide a system of class codes for occupations for those states and then to develop what are called "loss costs" (or "full rates" in a few states) for each of the class codes. ("Loss costs" are the portion of the insurance premium that consists of what is expected to be paid by the insurance company for the actual losses and loss adjustment expense in each code. They are approved by the state insurance department in each state. Each insurance company has to provide their own factors for taxes, contingency and profits in each state.) The class codes are updated periodically whereas the loss costs/rates are updated and approved by each state every year.

NCCI calculates the loss costs/rates for more than 600 job classifications. Only a handful of those classifications are available for jobs that strictly occur on navigable

waters. One example would be shipbuilding. However, there are several other jobs (e.g., carpentry, electrical, plumbing) that can occasionally occur on navigable waters. For examples of the class codes that could apply depending upon the situation please see Appendix I.

During the times when the relevant class codes apply, workers would be entitled to the collection of benefits under the Longshore and Harbor Workers Compensation Act (LH&WCA) if an injury occurred. Normally, these workers are only entitled to the state-specific workers' compensation benefits while performing these duties on land. However, in order to charge the proper rate for jobs that can have some Longshore exposure, it is necessary to compare the costs of those benefits relative to the normal state benefits. This comparison results in what is often referred to as the "multiplier". The word multiplier is used because Longshore benefits are expressed as a multiple of state benefits. This multiplier is greater than 1.00 because Longshore benefits are more generous than state benefits in every case. The two main reasons for this are that fact that the Longshore maximum weekly benefits are higher than those of the individual states and those benefits can escalate over time.

The multiplier is applied based on the percentage of time for which the job is conducted on navigable waters. It is not applied to the entire premium for the job class. For example, if a carpenter spends 25 percent of his/her time working on navigable waters, the multiplier would be applied to 25 percent of the premium for that job class. The other 75 percent of the premium would be derived from the standard loss cost/rate for that class.

In order to calculate the multipliers by state, NCCI compares the Longshore benefits to the state-specific benefits. In simple terms, the multiplier is a ratio of the average Longshore benefit to the average state benefit. A multiplier of 2.00 means that Longshore benefits are twice as high as state benefits in a specific state. Individual benefit levels can vary widely by state. As such, the multiplier can vary and its magnitude depends on the level of state benefits.

The table given in Appendix II shows the current Longshore multipliers for the 36 NCCI states and two non-NCCI states for which we calculate multipliers (Indiana and North Carolina). The multipliers range from 1.04 to 2.28 with the average being approximately 1.60.

Also mentioned in the testimony is the limited number of insurance companies ("underwriters") which sell Longshore coverage. In order to be able to sell such coverage an insurance company must meet the requirements established by the Longshore Division of the U.S. Department of Labor. Once a company has done so, it is added to what is called the "white list". However, because all states except Texas require employers of a certain size to purchase workers' compensation insurance coverage for their employees, or to self-insure if the employer can meet the state's labor department qualifications, there must be an alternative method by which such an employer can acquire such coverage if an insurance company won't voluntarily sell

such coverage to an employer. That coverage is available in different forms in all of the states. It is usually called the "alternative market" or the "residual market". NCCI administers such a market in 20 of our states.

NCCI hopes that this information clarifies the portion of the Superyacht Association's testimony about these issues. (We do not address their other main issue about the U.S. Department of Labor's interpretation of the Longshore Act changes dealing with "recreational vessels".)

If anyone of the Subcommittee Members or his/her staff has any questions, please feel free to contact me at the phone number and e-mail address given below.

Thank you for your interest in these issues.

Mary Jane Cleary
Washington Affairs Executive and Counsel
National Council on Compensation Insurance
202-403-8525
maryjane_cleary@ncci.com

Appendices

Appendix I

Below is a summary of some of NCCI's available classifications for the recreational marine repair industry:

- Code 6824F—Boatbuilding or Repair & Drivers—Coverage Under U.S. Act
- Code 6834—Boatbuilding or Repair & Drivers—Coverage Under State Act Only
    - The above classifications include shop and yard work and are applicable to the construction or repair of wood, metal, fiberglass or plastic yachts, motorboats, sailboats or rowboats not exceeding 150 feet in length overall.

- 6826F—Marina & Drivers—Coverage Under U.S. Act
- 6836—Marina & Drivers—Coverage Under State Act Only
    - The above classifications are applicable to waterfront operations including the operation of boat docks, storage facilities, repair shops, or marine railways. Also applicable to the sale or repair of boats and engines, including the sale of parts or accessories, dockside snack bars, and all dockside employees except that the operation of showrooms in town, motels, restaurants, swimming pools, bowling lanes, and other recreational facilities shall be separately rated. Boatbuilding shall be separately rated as Code 6824F or 6834.

- 6874F—Painting—Ship Hulls—Coverage Under U.S. Act
- 6884—Painting—Ship Hulls—Coverage Under State Act Only
    - The above classifications are applied to insureds engaged in the cleaning, scaling, and painting of ships and ship hulls. Refer to Code 5474 for the painting of state rooms, public rooms, galleys, crew quarters, and work areas. If USL&HW coverage is required, the Longshore percentage would be applied to the rate for Code 5474 (i.e. Rule 3-A-4).

- 8380—Automobile Service or Repair Center & Drivers
- 3632—Machine Shop NOC
    - The above classifications are applicable to employers that sell and service marine engines inland and not in conjunction with boat yards, boat docks, or marinas.

In addition to the above classifications, any number of contractor specialty codes may be applicable. For example:

- Code 5474—Painting NOC & Shop Operations, Drivers.
    - As noted above, Code 5474 is applicable to a painting contractor that takes a job painting portions of a ship or boat such as staterooms, galleys, crews' quarters, etc.
- Code 5190—Electrical Wiring—Within Buildings & Drivers

  - Similar to painting, Code 5190 is applicable to an electrician contractor that takes a job wiring a yacht for lighting, etc.
- Code 5437—Carpentry—Installation of Cabinet Work or Interior Trim
  - Similar to above, Code 5437 is applicable to a cabinet contractor that installs cabinetry in the living area, galley, etc.

The above classifications, and others, are applied when a specialist contractor (i.e., not a marina, boat yard, or conversion specialist) performs work on a ship or boat. If USL&HW coverage is required, the state rate or loss cost for the applicable contractor code (i.e. Code 5474, Code 5190, etc.) is multiplied by the Longshore percentage found in the Miscellaneous Values section of the state rate pages in NCCI's ***Basic Manual for Workers Compensation and Employers Liability Insurance*** (***Basic Manual***). The multiplier is used in order to adjust for the higher benefit levels under USL&HW.

Basic Manual Rule 3-A-4 provides the direction required regarding classifications and loss costs or rates subject to USL&HW Act benefits.

In addition to the above, several states may have state special treatments or state exceptions to the national treatment. For example, Florida has a state special classification treatment for the building or repair of fiberglass boats:

- Boatbuilding or Repair—Fiberglass Only & Drivers—Coverage Under U.S. Act
- Boatbuilding or Repair—Fiberglass Only & Drivers—Coverage Under State Act Only
  - The above classifications are applicable to employers' who construct or repair fiberglass yachts, motorboats, sailboats, or rowboats not exceeding 150 feet in length overall, including shop and yard work.

In addition, anything exceeding the 150 foot length is separately classified and the repair would be classified to:

- 6872F—Ship—Repair Conversion—All Operations & Drivers—Coverage Under U.S. Act
- 6882—Ship—Repair Conversion—All Operations & Drivers—Coverage Under State Act Only
  - The above classifications include shop or yard operations as well as the operation of dry docks and marine railways. Applicable only to concerns engaged in general ship repairing or conversion that are equipped to do various kinds of ship repair or conversion work and that undertake such diversified operations as a usual part of their business. Work performed on ship by other concerns shall be assigned to the manual classifications describing the work. Refer to Rule 3-A-4.

Appendix II

Longshore and Harbor Workers Compensation Act Multipliers by State

Alabama	2.13
Alaska	1.37
Arizona	1.17
Arkansas	1.66
Colorado	1.49
Connecticut	1.24
DC	1.04
Florida	2.17
Georgia	1.43
Hawaii	1.31
Idaho	1.17
Illinois	1.39
Indiana	1.60
Iowa	2.06
Kansas	1.56
Kentucky	1.35
Louisiana	2.10
Maine	1.38
Maryland	1.49
Mississippi	1.92
Missouri	1.51
Montana	2.28
Nebraska	1.76
Nevada	1.24
New Hampshire	2.18
New Mexico	1.69
North Carolina	1.88
Oklahoma	1.69
Oregon	2.02
Rhode Island	1.61
South Carolina	1.69
South Dakota	1.47
Tennessee	2.28
Texas	1.64
Utah	1.62
Vermont	1.18
Virginia	1.74
West Virginia	1.91

Congressman Allen West (FL-22)
Constituent Testimony for the Congressional Record

Small Business Subcommittee on
Oversight, Investigations and Regulations

Re: Sinking the Marine Industry:
How Regulations are Affecting Today's Marine Businesses

July 12, 2012

My name is Vicki Abernathy and I am a resident of Florida Congressional District #22. My husband, Gary and I own and operate a small marine manufacturing business based in Coral Springs, Florida. We incorporated PRAKTEK, Inc. in 1998 and registered a d/b/a in 2011 as AERÉ Docking Solutions to better reflect our product selection.

Our internationally-recognized products include: 1. AERÉ Inflatable Fenders – available in over 30 sizes and styles, and 3 strength levels (heavy duty, commercial duty and military grade). We manufacture fenders for the smallest family craft up to the world's largest mega-yachts as well as commercial and military vessels. 2. Fenda-Sox Fender Covers – available in 10 colors and sizes for all commercially available boat fenders protect the boat finish.

We manufacture one of our two major product lines in Broward County, Florida and hope to move the remainder of our manufacturing to Florida in the next few years. Our products are exported world-wide and sold through dealers and directly to boat owners and crew for larger vessels. We have also sold our products to the U.S. Coast Guard and the Alaska Marine Highway.

We had a few tough years but through careful cash management and investment of most of our personal savings, we survived the recession with our 10 employees and have now had 2 years of increasing profits (2010 and 2011). We started 2012 with the strongest sales quarter in our history.

We have some wonderful opportunities just ahead of us in a growing global recreational marine industry with a product line that is well-known as the premier of the industry. We are active in several trade associations in the marine industry and I recently completed 4 years as a member of the Board of Directors of the U.S. Superyacht Association.

Unfortunately, we have not been able to raise capital to grow the business. The banks tell us that we have good cash flow, good growth and a good "story", but claim that we don't meet certain ratios and they don't want to have to explain it to the "bank examiners". We have been told that we don't qualify for financing as we are an existing business (versus a start-up), are not in a "green" industry or don't have "enough" profit. I was actually told by an employee of one of the U.S. largest banks that their commercial loan department will only lend to "small businesses with at least $250,000 in annual profit". I don't think that is a reasonable measure for a small business and I am furious that some of my tax dollars helped to bail out that particular bank.

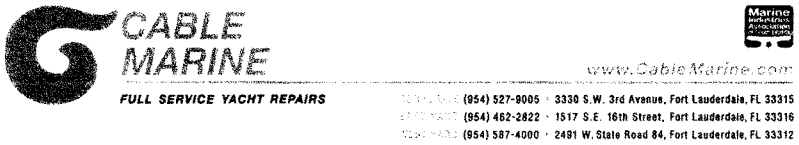
Since the economic downturn, the pendulum of regulation has moved from little or no regulation to a stranglehold on the banking industry that has banks refusing to loan any amount to a small business – unless they really don't need the loan. There needs to be some realistic regulation that will prevent a financial meltdown in our economy, but allow small companies to grow. As Congress knows, small business supports our national economy and the middle class.

I know that we are not alone in our problem. Many, if not most of the businesses in our industry and in our geographical area are small businesses. Although we are small as individuals, the marine industry alone employs thousands in south Florida and we need support!

Respectfully submitted,

Vicki and Gary Abernathy
Owners and Operators

PRAKTEK, Inc.



July 9, 2012

Rep. Allen B. West
22nd District, Florida
1708 Longworth House Office Building
Washington, DC 20515-0922

Dear Rep. West:

Let me start by thanking you for your efforts focusing on the marine industry and the current regulatory environment facing our industry. Complying with the ever-growing list of government regulations is a top concern of businesses within the marine industry, as well as the dire state of the economy and lack of consumer confidence. Like businesses throughout our great country, the marine industry is affected by regulations dealing with employment and labor, the environment, privacy, immigration and employee eligibility, workplace safety and health, and finances. Regulations definitely have their place but government agencies and businesses need to work together to find a balance that fosters an environment where businesses can grow and add jobs in their communities.

OBAMACARE

The uncertainty of the true ramifications of this law makes it difficult to anticipate costs. Some reports claim insurance premiums will fall while others claims insurance premiums will rise. Some say everyone will be able to keep their existing coverage while others say that we're headed towards a single-payer system. Only time will tell, but in the meantime, business owners will be hesitant to hire or expand since a true forecast can' t be made. This is further compounded by the increased capital gain rates imposed under Obamacare. Business owners will have reduced capital resources for reinvestment in their operations, resulting in less expansion of operations and workforce. This is not good news for our economy and our industry.

FLSA, ADA, NLRB and OSHA Regulations

Regulations dealing with employment and workplace safety are necessary, without a doubt. Keeping the workplace safe and the employer-employee relationship fair and protecting people from harassment, discrimination and unfair treatment benefits everyone. Unfortunately, these extensive regulations do make compliance and risk management full of pitfalls for someone without a law degree. Business owners are forced to take more time out of running their

operations to focus on compliance with the extensive compliance issues under these Acts and regulations. The OSHA requirements alone are voluminous. Furthermore, recordkeeping errors, miscommunications or misunderstanding of a legal definition could result in a violation of the FLSA or ADA, absent any "sinister" motive.

The National Labor Relations Board (NLRB) recently finalized its "poster rule." Luckily this rule has been postponed due to legal challenges. This rule is a true example of a government agency overstepping its bounds and further empowering unions.

Dodd-Frank Act

The Act is hundreds of pages long and riddled with stricter standards and regulations that will surely affect the profitability of financial institutions. This will trickle down into reduced capital available for borrowing for small businesses and consumers. Many marine businesses rely on this capital to keep operations going. Many marine consumers rely on this capital to purchase the vessels that keep the marine broker, retailer, repairer and refitter in business. This Act will surely slow economic activity and job creation.

Environmental Regulations and Fuel Prices

The EPA has already issued rules that cost billions of dollars, some of which impact the production, transportation and distribution of gasoline and diesel fuel. The marine industry in South Florida has been feeling the effects of increased gas prices over the past four years. Many of our customers live outside of South Florida and travel to our area from Fall to Spring of each year. Increasing gas prices have caused these customers to either stop their travel south in the mid-Atlantic states or forego their travel south completely. This has affected everything from marine supply sales to storage revenues.

In conclusion, the marine industry has been hit hard during this recession. Many small marine businesses have been forced to close their doors, some of them "household" names in the industry. Our current administration and governmental agencies seem more apt to rely on theoretical idealisms rather than listen to those living in the reality of the regulations they're instituting. It's time to stop stomping on the motivation of the entrepreneurs of this country to grow their operations, income and workforce.

Sincerely,

Kellie Milliken
Vice President/Controller

Statement of

JEFF ERDMANN, GOVERNMENT RELATIONS CHAIRMAN

FLORIDA YACHT BROKERS ASSOCIATION

1550 S.E. 17th St.
Ft. Lauderdale, Florida 33316

Before the

Small Business Subcommittee on
Oversight, Investigations and Regulations

of the

U.S. House of Representatives

**Re: Sinking the Marine Industry:
How Regulations are Affecting Today's Marine Businesses**

July 12, 2012

I am Jeff Erdman, Government Relations chair of the Florida Yacht Brokers Association (FYBA). Our association represents 1142 licensed and bonded brokers and 430 small businesses throughout the state of Florida. We appreciate the opportunity to share with you our thoughts on a number of issues that we believe warrant your attention and action by Congress.

Mr. Chairman, as the national debate ebbs and flows over whether cutting taxes will spur economic growth and job creation, I would like to report that Florida's recent experiment in capping a sales and use tax on boats beginning July 1, 2010 has resulted in the state collecting nearly ten times as much sales tax revenue as was projected during its first year.

Why did the state of Florida take this gamble? With an $18 billion marine industry employing 220,000 Floridians, the Sunshine State has been especially hard-hit by the Great Recession. Our research indicated that Florida's marine industry was losing sales to nearby states and especially to foreign countries with lower or no sales taxes at all.

We sought help from the Florida legislature pointing out that at 6%, the state's sales and use tax was counterproductive. Many small business owners testified that it provided an incentive for Floridians to purchase boats out of state and maintain and provision them elsewhere, resulting in a loss of jobs and economic activity in Florida. The hefty use tax also discouraged non-residents from bringing their boats to Florida for service and provisioning.

Who could blame the consumer? A new 34-ft. powerboat costing $400,000, for example, would have to pay an additional $24,000 in taxes. In comparison, South Carolina has a $300 sales tax cap on boats and in North Carolina the cap is $1,500. To make matters worse, no sales taxes are levied in a number of Caribbean nations including the U.S. and British Virgin Islands as well as the Cayman Islands.

As a result, more than 6 out of 10 buyers of boats sold by Florida brokers were registering and operating their boats outside of Florida in order to legally avoid paying Florida's sales or use tax.

This situation was especially damaging to Florida's marine industry where the aggregate price of brokered boats sold is nearly equal to that of all of the boats sold in the rest of the U.S.

The Florida legislature agreed that action was needed and passed legislation putting an $18,000 sales and use tax cap on boats purchased or brought into Florida.

Mr. Chairman, in its first full year the new sales and use tax cap has generated in excess of $13.46 million in direct sales tax revenue for the state, compared to a $1.5 million first-year loss that had been projected by a Florida legislative staff analysis. Furthermore, sales of boats 40 to 60 ft. in Florida have increased 35 percent, those 60 to 100 ft. by 50% and those over 100 ft. by 80%.

Thomas J. Murray and Associates Inc. conducted the initial research and subsequent survey. Among the survey's findings:

• The average sales price for post-cap transactions in Florida was $907,002 - nearly double the pretax value of closings taking place in Florida prior to the cap.

• In the post-cap era, transactions for which either no sales tax was paid, or the closing was conducted out-of-state, dropped from 21.5% in the pre-cap era to an estimated 12.8% following implementation of the sales tax cap.

Mr. Chairman, our experience with putting a lid on taxes clearly demonstrates that setting a reasonable tax basis for high dollar purchases provides an incentive for more boats to be purchased, provisioned and kept plying our waterways. We are convinced that this will translate into more jobs for those working in the marine industry.

We believe that additional economic activity can be spurred in the marine industry and more jobs created if Congress approves legislation relaxing current restrictions on the sale of foreign-flagged vessels.

Under current U.S. law, foreign built vessels over 24m/80 ft. that have not been imported to the U.S. can only be offered for sale or charter and shown to U.S. citizens at a boat show for up to six months - generally the period between October and March during which major boat shows are held in Ft. Lauderdale, Miami and Palm Beach.

The problem we face is that according to the most recent statistics compiled by YachtWorld.com., during the period 2010 to 2011 it took 496 days to sell a vessel larger than 80 ft. in Florida and an astonishing 766 days to sell a vessel of this caliber elsewhere in the U.S. As you can well imagine, it's not easy being a small businessperson in a business so hamstrung by federal regulations.

In our view, this six-month limitation is not only arbitrary but is costing our economy jobs and tax revenue. For example, there are now approximately 300 boats on the market worth about $1.8 billion that cannot be offered to U.S. citizens while in U.S. waters. Since our research shows that each of these boats would have spent an average of 13 percent of its listing price on upgrades and improvements when sold, we are losing $234 million in post-sale economic activity that could be generating more jobs right here in the U.S.

The FYBA recommends changing the law to create a Central Listing Bond that would allow any size boat to be offered for sale or charter in the U.S. anywhere and anytime, until the vessel is sold. We could also use some help in streamlining the overlapping reporting requirements imposed on visiting foreign yachts by the Department of Homeland Security. Allowing foreign-flagged vessels to report to one central site for U.S. Customs, the U.S. Coast Guard and the U.S. Immigration Service might not only be more efficient, but more effective.

We are convinced that these changes will not only will be good for the marine industry but for the U.S. Treasury as well. The fact is that of the 4,000 superyachts plying the waters of the world, a skilled workforce of more than 28,000 employees has built 21% of this fleet in the U.S. But, building these boats here in the U.S. is only part of the economic picture.

Encouraging the foreign owners of these big boats to visit the U.S. or put their vessels up for sale here is big business. While they may spend upwards of $500,000 per visit, the following analysis demonstrates a net economic impact of more than $4 million if we convince the owner of just one foreign-flagged 180-ft. yacht to keep his vessel in the U.S. for a year.

Total Annual Expenses for a 180-ft. Yacht Kept in the U.S.
$1.4 million Crew salaries
$1.0 million Maintenance and repair
$400,000 Fuel
$350,000 Dockage/ports
$250,000 Crew and guest expenditures
$240,000 Vessel insurance
$165,000 Classification, regulatory and management fees
$140,000 Vessel communications
$110,000 Provisioning
$20,000 Crew education and medical training
$4,075,000 Total

Mr. Chairman, it is no exaggeration to say that the Great Recession has devastated a U.S. recreational marine industry that once dominated the world's markets, but which has been in a slump for some time. New-boat sales (less canoes and kayaks) have plummeted more than 50 percent since 2000, from 465,000 to 228,920. In fact, from 1988 to 2010 annual sales of new outboard boats have sunk from 355,000 to 112,000, inboards boats from 20,900 to 7,300, stern drive boats from 148,000 to 18,700 and sailboats from 14,500 to 4,300.

All of us in the U.S. recreational boating industry and especially our colleagues in the Marine Industries Association of South Florida and the National Marine Manufacturers Association have been working overtime to turn around this uniquely American industry that has an annual economic impact of $72 billion which produces goods and services that are enjoyed by 83 million Americans who recreate on our waterways.

I would also note that 83 percent of the boats sold in the U.S. were made in the U.S. We could use your help to breathe new life into the sails of an industry that is a now net exporter, but which will face increasing competition in the years to come from lower cost foreign boat builders and marine manufacturers.

Thank you for the opportunity to present our views. We look forward to working with members of the subcommittee on these issues and I am happy to respond to any questions you might have.

WORTH AVENUE
YACHTS

July 7, 2012

Congressman Allen B. West
22nd District Florida
1708 Longworth House Office Building
Washington, DC 20515-0922

RE: Hearing on the Marine Industry

Dear Congressman West,

I applaud your efforts in making Congress aware of the problems the marine industry has as a direct result of the present administration's grossly overregulated destruction of the small business climate in America.

As a yacht broker, the clientele I generally deal with are the wealthy entrepreneurs of America, the true machines that make America work. It is these clients of mine that are now on the sidelines waiting for better days before purchasing a yacht. These clients are the American businessman, the entrepreneur, the employer of many, and they are scared of the uncertainty the present administration has born on this country. They are scared of the mounting regulations, the healthcare bill and the many landmines that make it almost impossible to be successful in today's business climate.

Here is a quote from a client of mine just yesterday when putting the brakes on going forward with a purchase: *"The economy is bad and likely to get worse as the politicians just kick the can down the road. It will crash. It is just when. Eventually inflation kicks in but probably not before a deflationary period of trouble. I do not feel comfortable in going forward with a purchase at this time."*

Last month a client in a similar situation just simply stopped negotiating on a purchase, which I might add was a great deal. When asked why he would not go forward with the purchase he said *"I decided not to do anything until after the election and if the results are as we have today I see myself out of the market forever. Wishing for the change we need, no pun intended."*

Yachts might be considered by this administration to be a luxury item, but each yacht that is sold or built has a huge impact on the economy of Florida and those other states that supply the industry with goods and services.

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A simple yacht transaction results in many goods and services being impacted in a positive way. As an example, just to name a few:

- My brokerage receives a fee for our service (I employ 10 people)
- Florida receives a sales tax (flat rate of $18,000 on each transaction)
- Attorneys are needed for the transaction on both sides of the deal
- Financing is often needed for the transaction
- Shipyards are needed for survey and post survey service
- Surveyors are needed for the inspection of the vessel
- Insurance is needed for the vessel post purchase
- Dockage for the vessel
- Crew is hired to maintain the vessel. The crew live aboard the yacht, shop at the local stores, spend money in the local restaurants, rent cars, and simply spend money with the local businesses.
- Refit, upgrades and improvements are needed for every vessel sold with services ranging from paint work, carpentry, fabric, electronics, machinery, etc. of which most of the services are offered by small companies with 20 or less employees.

Billions of dollars of revenue each year is the impact our yachting industry has on America. The bottom line is that we are dying out here and the present administration is a huge deterrent to our survival.

Thank you for the opportunity to offer this testimony.

Kindest Regards,

Michael Mahan