

**STATEMENT OF JAMES WEAKLEY, PRESIDENT,
LAKE CARRIERS' ASSOCIATION, BEFORE A JOINT HEARING OF
THE HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE'S COAST
GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE AND
THE HOUSE HOMELAND SECURITY COMMITTEE'S MARITIME AND BORDER
PROTECTION SUBCOMMITTEE**

10 a.m., July 7, 2016

**“An Examination of the Maritime Nuclear Smuggling Threat and Other Port Security
and Smuggling Risks in the U.S.”**

Good morning. Thank you for the opportunity to speak to you today. I am Jim Weakley, president of the Lake Carriers' Association (LCA). We represent 14 American companies that operate 56 U.S.-flag vessels on the Great Lakes and carry the raw materials that drive the nation's economy: iron ore and flux stone for the steel industry, aggregate and cement for the construction industry, coal for power generation, as well as salt, sand and grain. Collectively, our members can transport more than 100 million tons of dry-bulk cargo per year and employ more than 1,600 men and women, all of whom are U.S. citizens or legally admitted aliens, and provide annual wages and benefits of approximately \$125 million. In turn, the cargos our members carry generate and sustain more than 103,000 jobs in the eight Great Lakes states and have an annual economic impact of more than \$20 billion.

I would like to provide a brief overview of the Great Lakes Navigation System (GLNS), its different market segments, risk profiles and mitigation strategies. Then I'll focus the majority of my testimony on how Lake Carriers' Association members work to transition their vessels from homeland security risks to homeland security resources. My comments will perhaps be broader than some of the other testifiers today, representing the views of private sector vessel owners.

The GLNS

The GLNS enables maritime commerce on America's Fourth Sea Coast. The five Great Lakes are tied together by three connecting channels (the St. Marys River, the Detroit/St. Clair River system and Welland Canal) and the so-called “Achilles heel of North American Manufacturing,” the locks at Sault Ste. Marie, Michigan. The St. Lawrence Seaway is the umbilical cord that connects the GLNS and its 68 U.S. ports and 35 Canadian ports to global trade. The Great Lakes are a bi-national system supporting both domestic and international trade. For example, the navigation channel crosses the U.S./Canadian border 17 times in the

Detroit/St. Clair River portion of the system alone. If measured as a single region, the eight Great Lakes States and two Canadian Provinces represent the world's third largest economy.

Although there is a great desire to move international container traffic to the GLNS, the majority of the cargo moved today is bulk. The ocean-going international fleet, vessels sometimes referred to as “salties,” primarily bring steel into the Great Lakes region and take grain out. Approximately 225 salties call annually on both sides of the border moving 10 million tons of cargo a year.

“Lakers,” the vessels LCA represents, are ships and barges specifically designed for the Great Lakes trade. Most are self-unloading dry-cargo vessels, although some lack the self-unloading equipment and others move liquid bulk material. Both the United States and Canada reserve their domestic waterborne movements of cargo for “coastwise qualified” vessels. Our nation's “Jones Act-qualified” vessels are American-owned, American-built and American-crewed. In 2013, U.S.-flag lakers transported about 86 million tons of iron ore, coal, limestone, cement, salt, sand and grain in purely domestic moves (between two U.S. points) under the Jones Act. Canadian-flag lakers transported slightly more than 35 million tons of cargo domestically (between two points in Canada), including Canadian points on the Great Lakes ports, the Canadian Arctic or its East Coast.

The Canadian and American fleets compete for the Great Lakes' binational cross-lake cargo. In 2013, the last year for which complete data is available, the total cross-lake trade represented 37.4 million tons of cargo. The Canadian-flag fleet carried 34.6 million of it, representing about 93% of the total. The U.S.-flag fleet carried 2.8 million tons or about 7%.

Great Lakes Security Risk Profile

LCA members are the linchpin of what has been called “[o]ne of the nation's most economically vital systems, the iron mining—integrated steel production—manufacturing supply chain...”¹ In general, iron ore, the primary raw material for steel, is transported by our ships from mines in Minnesota and the Upper Peninsula of Michigan to steel mills in Indiana, Ohio, Michigan and Pennsylvania. So crucial is that waterborne supply chain that the Department of Homeland Security (DHS) has warned that an interruption of domestic shipping services through the Poe Lock at Sault Ste. Marie, Michigan, would have “catastrophic impacts on the regional and National economy,”² including the interruption of steel production and the plunging of the North American economy into a “severe recession.”³

The DHS study estimated that 11 million Americans would become unemployed and 3–5 million Mexicans and Canadians would lose their jobs if shipping through the Poe Lock was interrupted for a six-month period beginning at the start of the shipping season. This is both a

¹ “The Perils of Efficiency: An Analysis of an Unexpected Closure of the Poe Lock and its Impact,” Department of Homeland Security, (October, 2015), at 1. While this report is focused on the impact of a failure of the Soo Lock, through which vessel that are part of this supply chain must pass, the analysis also demonstrates the significant impact of shipping on the Great Lakes economy and beyond.

² *Id.* at 29.

³ *Id.* at iii.

direct and indirect result of the manufacturing made possible by the 60 million tons of key raw materials transiting the Poe Lock, part of the Soo Lock system, on an annual basis. According to DHS, the State of Michigan's unemployment would reach 22%, so exceeding its peak unemployment rate of 15% during the Great Recession.

However, this is a national problem. In fact, the unemployment spikes in the event of an interruption in Great Lakes shipping will ripple through the United States, a result of the far-reaching impacts of the automobile manufacturing and general steel industry. The Army Corps of Engineers (the "Corps"), which operates the Poe Lock, has taken security measures to ensure the protection of the Lock. However, LCA and many others believe that the risk requires construction of a lock that is redundant to the Poe. To its credit, the Corps is undertaking an "Economic Reevaluation Report" (ERR) to update the redundant lock's benefit-to-cost ratio (BCR). The ERR will correct some flawed assumptions in the previous BCR; however, it will not consider the impact of millions of unemployed North Americans. It will only consider the "first order of magnitude impacts" such as the cost to vessels that would have carried the ore. The ERR should be completed by December of 2017, which means the earliest the Corps is likely to begin construction on this ten-year project is FY 20. Like DHS, we believe the strategic importance of the project deserves more attention.

All of that is simply to say that the threat of port and other maritime security risks on the Great Lakes are matters of great concern not just for our industry but also for our nation.

This Hearing

While the House Transportation and Infrastructure Committee and its Coast Guard and Maritime Transportation Subcommittee have always had primary jurisdiction over our issues, there is a tremendous growing national interest in the intersection between our maritime industry and homeland security. As you well know, the length of our nation's water borders far exceeds its land borders, which receive so much more public attention. Therefore, the jurisdiction of the Homeland Security Committee and its Maritime and Border Protection Subcommittee has taken on a role of increased importance as our nation battles smuggling and related issues of all kind. In fact, here's what the Coast Guard has said about the potential vulnerability through our water borders:

The vastness of this system and its widespread and diverse critical infrastructure leave the nation vulnerable to terrorist acts within our ports, waterways, and coastal zones, as well as exploitation of maritime commerce as a means of transporting terrorists and their weapons.⁴

The Great Lakes provide an interesting study on the importance of maritime homeland security. Although much of the national attention is focused on the southern border of the United States, the northern border faces challenging issues of its own. The southern land border of the United States is about 2,000 miles long. However, the Canadian/U.S. border is about

⁴Testimony of Rear Admiral Joseph Servidio, Assistant Commandant for Prevention Policy, before the House Coast Guard and Maritime Transportation Subcommittee, at a hearing titled, "Tenth Anniversary of the Maritime Transportation Security Act: Are We Safer?", September 11, 2012.

5,500 miles long, almost three times as long, and much of that U.S./Canadian border is a water border.

As you can imagine, there are many maritime security issues related to that extensive water border, and we deal with a complex series of interlocking rules and requirements in a world where ships from Canada and around the world move seamlessly between U.S. and Canadian waters. All those laws and regulations play an important role in border security, but, from a practical point of view, one law stands above all others for its impact on American maritime homeland security—the federal law known as the Jones Act.

The Jones Act

The Jones Act, of course, is the fundamental law of the American maritime industry. It requires that any cargo moving between two points in the United States be carried on U.S.-built, U.S.-crewed and U.S.-owned vessels. In other words, American vessels!

Most people on these Subcommittees know that the Jones Act provides important national security and economic benefits. But there is overwhelming evidence that one of the most important benefits of the Jones Act is homeland security, which includes prevention of illegal smuggling but also much more. While the Jones Act is not primarily a homeland security law, its role in keeping our nation secure is significant. Former U.S. Senator Slade Gorton, a former Washington State attorney general and member of the 911 Commission, recently wrote that “helping to plug a porous border is a benefit of the Jones Act that is far too often overlooked.” *Strengthening Border Security: Look No Further Than the Jones Act*, The Hill, February 12, 2016. Likewise, Dr. Daniel Goure of the Lexington Institute, a prominent think tank, has prepared two studies recently, including one titled, *Venerable Jones Act Provides an Important Barrier to Terrorist Infiltration of the Homeland*, Lexington Institute, March 24, 2016. He said, “Since 911, the Jones Act has taken on new significance in a way no one ... could have imagined. It now plays an important role in securing the homeland from the threat of international terrorism.” *The Jones Act and Homeland Security in the 21st Century*, Lexington Institute, June 2016.

Dr. Goure points out that the land borders in America are “dwarfed by 95,000 miles of the national shoreline.” He points out that there are 25,000 miles of navigable waterways in our nation’s inland river system. Of course, many cities in America, large and small, are located along this shoreline. That is certainly true on the Great Lakes.

Of course, virtually all of the vessels that operate in the inland waterways and many of the vessels on the Great Lakes are Jones Act vessels. There are approximately 40,000 Jones Act vessels across the United States. On the Lakes, our fleet includes very large vessels, including ships as large as an aircraft carrier. The homeland security benefit of these Jones Act vessels is noteworthy.

Let me quote directly from one of Dr. Goure’s studies:

The task of securing U.S. seaports and foreign cargoes is daunting by itself. It makes no sense to add to the burden facing domestic security agencies by allowing foreign-owned ships operated by foreign crews to move freely throughout America's inland lakes, rivers and waterways. The requirement that all the officers and fully 75 percent of the crews of vessels engaged in cabotage be U.S. citizens goes a long way to reducing the risk that terrorists could get onboard or execute an attack on a U.S. target. In effect, there is a system of self-policing that reduces the requirement for law enforcement and homeland security organizations to expend time and effort to ensure that these vessels and crews are safe to traverse U.S. waters. Were the Jones Act not in existence, the Department of Homeland Security would be confronted by the difficult and very costly requirement of monitoring, regulating and overseeing foreign-controlled, foreign-crewed vessels in coastal and internal U.S. waters.⁵

My comments, of course, should not be read as an indictment of all foreign shipping companies that come in and out of the United States, including in and out of the Great Lakes. Obviously the overwhelming majority of those companies, vessels and seafarers are not a security threat to the United States. My point is simply that vessels owned and crewed by Americans under the Jones Act have a very different risk profile than foreign vessels. For example, our Jones Act mariners have all gone through extensive background checks in order to receive their licenses, credentials and Transportation Worker Identification Credential (TWIC) cards. Many have been trained at our maritime schools and universities. They live here. They work here. These mariners and the companies they work for are fully subject to the reach of our legal and regulatory system. In fact, many of these mariners and companies are full partners with our American law enforcement agencies through a series of programs and partnerships that encourage American seafarers to report suspicious activities, as discussed further below.

The opposite situation occurs when a foreign vessel with a foreign crew enters a U.S. port. Because those crew members do not live and work here and sometimes are completely unknown to us, there is a system of regulations and requirements to identify and address potential threats. That regulatory system is elaborate, very expensive and, by definition, imperfect. Unfortunately, in some cases we must rely on the screening practices of foreign nations. That's why, according to the U.S. Government Accountability Office, "The Department of Homeland Security (DHS) considers the illegal entry of an alien through a U.S. seaport by exploitation of maritime industry practices to be a key concern."⁶

So if you ask me what the single most important thing you can do to encourage maritime homeland security, I would say support the Jones Act. I have worked as an officer in the Coast Guard, for an American shipping company and now heading an association of American shipping companies, and from every vantage point I have seen that the Jones Act is our best line of maritime homeland security defense.

⁵ "Venerable Jones Act Provides an Important Barrier to Terrorist Infiltration of the Homeland (Goure).

⁶ "GAO-11-195, Maritime Security: Federal Agencies Have Taken Actions to Address Risks Posed by Seafarers, but Efforts Can Be Strengthened", *www.gao.gov*. Retrieved 2016-06-24

Other Great Lakes Security Issues and Practices

The Jones Act is just one of many protections to prevent smuggling and other nefarious activity in the maritime sector. From the perspective of a U.S.-flag Great Lakes vessel operator, our goal is to reduce our vulnerability to all threats as much as possible. As mentioned earlier, our primary homeland security objective is to go from being a homeland security risk to homeland security resource. Here are a few of the many ways that we do that:

National and Regional Risk Profile — Risk is a combination of threat and vulnerability. Others on this panel and the previous one are far more qualified to comment on threat than I am. In fact, our companies depend on the Coast Guard to notify us regarding the current and changing homeland security threat status by its system of “Maritime Security Threat Levels” or “MARSEC.” If the Coast Guard decides to change the threat level based on information in its possession, it notifies us, company security officers and vessel security officers. Once that notification is made, the appropriate action is taken as prescribed in company and vessel security plans. Our relationship with the Coast Guard is highly cooperative.

The second aspect of risk is vulnerability. From vessel perspective, there are both internal and external vulnerabilities. Both of these types are specifically addressed based on the aforementioned individual vessel security assessment and response plans. LCA’s members use the Coast Guard approved “Alternative Security Program for Great Lakes Dry-Bulk Cargo Vessels.” Since the plan is considered “Sensitive Security Information” in accordance with Title 49 of the U.S. Code of Federal Regulations, I will not go into great detail. From a general perspective, we deploy many of the security measures you would expect, including access control, perimeter expansion, personnel screening, vessel security sweeps, random baggage searches and inspection of cargo and ship stores. We not only adjust our security profile based on the prescribed threat level but also on the vessel operations and operational area. For example, if the vessel is moored at a facility that is not required to comply with facility security regulations, undergoing winter maintenance, in long-term storage or operating in restricted waters, we may also adjust our security profile. These types of programs and systems are a core part of how we operate.

Great Lakes Military and Law Enforcement — Obviously, vessel owners, operators and crew form only a piece of the national maritime strategy to prevent smuggling and other threats. The task given our military and law enforcement agencies, including the Coast Guard and Customs and Border Protection in the United States, can be daunting. Using credible intelligence these officials deploy their resources to conduct safety inspections, scrub crew lists, review manifests and conduct full scale law enforcement boardings. The use of random inspections is another tool, and our crews are often subjected to a level of scrutiny that they had not experienced prior to the global war on terror. Our sailors understand the greater national security interests at stake and cooperate with and have the highest regard for American law enforcement agencies like the Coast Guard. We also work with law enforcement agencies to make our vessels available as training platforms both while underway and during maintenance periods.

“Eyes on the Water” — In the wake of the terrorist attacks at the World Trade Center in New York, the Coast Guard has formalized a program that encourages professional mariners to report

suspicious activity on the water. Through its “Eyes on the Water” program, the Coast Guard recognized that the more eyes looking, the better, and who could be more qualified to recognize that something is afloat than the professionals who routinely sail the trade routes. All of our members participate and report unusual or suspicious activity (e.g., when an unmanned aerial vehicle buzzes a vessel or a critical piece of infrastructure). These are low cost, common sense programs that make our homeland more secure, and we are proud to be full partners.

Radar Remote Access — Several LCA members are cooperating with a vendor on a project that we think could benefit both law enforcement and search and rescue responders. The program records vessel radar pictures with automatic identification system (AIS) data and allows shore based operators to remotely access the information. We believe the system, if proven successful, could be used to identify patterns of suspicious activity. Radars can monitor “uncooperative” aircraft and vessels that are not required to or choose not to transmit AIS data. Having the ability to look at a series of historical radar screens in an area can reveal suspicious trends and having real time access to remotely look at a radar picture from a vessel underway vastly expands the ability of shore based monitoring systems.

Mitigation for Salties — Great Lakes pilotage regulations require salties to carry a Canadian or American registered pilot while sailing in the Great Lakes. Other U.S. states have similar pilotage requirements for vessels entering America on international voyages. Although the primary job of the pilot is to provide the vessel master with navigation advice, pilots also perform a vital security function. Often they are the only American aboard a foreign vessel and well-positioned to alert the Coast Guard or other law enforcement officials of suspicious activity or unusual cargo aboard a foreign vessel in our waters destined for our docks. Highly trained American pilots provide an onboard set of eyes with a vested interest in protecting our homeland.

Conclusion

In today’s world, threats to our maritime security are daunting. Every day our LCA companies, and many other companies like them, are executing security plans, cooperating with law enforcement, implementing innovative new programs, operating under the highly beneficial requirements of the Jones Act and, ultimately, working to transition from a security risk to a security resource. This is our goal every single day both as American shipping companies and as America citizens.

Thank you for your interest and for the opportunity to provide my perspective. I am happy to answer any questions you may have.