No. 03-814

In the Supreme Court of the United States

WILLARD STEWART, PETITIONER

v.

DUTRA CONSTRUCTION COMPANY

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

To qualify for "seaman" status under the Jones Act, 46 U.S.C. App. 688(a), a worker must have "an employment-related connection to a vessel in navigation." *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 357 (1995). The question presented is what is the legal standard for determining whether a special purpose watercraft (such as a dredge) is a Jones Act "vessel."

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INTEREST OF THE UNITED STATES

This case presents the question of the appropriate standard for determining whether a dredge is a "vessel" such that an individual employed on it is a "seaman" entitled to bring a negligence action under the Jones Act. 46 U.S.C. App. 688(a). A Jones Act "seaman" is synonymous with a "master or member of a crew of any vessel" excluded from workers' compensation coverage under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 902(3)(G). *McDermott Int'l, Inc.* v. *Wilander*, 498 U.S. 337, 345-346 (1991). The Jones Act and the LHWCA are accordingly "mutually exclusive compensation regimes." *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 355-356 (1995).

The Secretary of Labor administers the LHWCA. 33 U.S.C. 939. The Secretary has delegated her responsibilities to the Director of the Office of Workers' Compensation Programs (OWCP), who administers the LHWCA pursuant to

regulations codified at 20 C.F.R. Pts. 701-704. The Director may be a party and participate in any proceedings under the LHWCA. Because of the mutually exclusive nature of coverage under the Jones Act and the LHWCA, resolution of the question presented will define the extent of the LHWCA's coverage in this area and may affect the administration of the Act by the Director of OWCP. For instance, the Director has taken the position in his administration of the LHWCA that an employee on a dredge is a seaman excluded from the LHWCA under 33 U.S.C. 902(3)(G). Br. for the Director, OWCP, *Lorimer* v. *Great Lakes Dredge & Dry Dock Co.*, 36 Fed. Appx. 294 (9th Cir. 2002) (No. 70849) (*available in* 2001 WL 34108609). The United States therefore has a substantial interest in this case.

STATEMENT

This case concerns the applicability of the Jones Act to an individual employed on a dredge working in Boston Harbor. For the reasons set forth below, the United States submits that a watercraft qualifies as a Jones Act vessel (and its crew as "seamen") if the craft is used or practically capable of being used as a means of transportation on water, and that the dredge at issue in this case should be deemed a vessel in navigation for Jones Act purposes.

1. The Jones Act provides that "[a]ny seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury." 46 U.S.C. App. 688(a). The Act thus provides a worker who is a "seaman" with a negligence cause of action against his employer. The LHWCA is a workers' compensation statute that applies to certain employees injured in the course of maritime employment "upon the navigable waters of the United States" and in adjoining areas. 33 U.S.C. 903(a). The LHWCA defines an

"employee" covered by the Act as "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include * * * *a master or member of a crew of any vessel*." 33 U.S.C. 902(3)(G) (emphasis added).

The "master or member of a crew of any vessel" excluded from the LHWCA is synonymous with the "seaman" covered under the Jones Act. In other words, the phrase "'master or member of a crew' restates who a 'seaman' under the Jones Act is supposed to be." *McDermott Int'l, Inc.* v. *Wilander*, 498 U.S. 337, 348 (1991); accord *Harbor Tug & Barge Co.* v. *Papai*, 520 U.S. 548, 553 (1997) ("[T]he LHWCA and the Jones Act are 'mutually exclusive'" since the "masters and crewmembers [excluded under 33 U.S.C. 902(3)(G)] are the seamen entitled to sue for damages under the Jones Act." (quoting *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 355-356 (1995)). "Thus, it is odd but true that the key requirement for Jones Act coverage now appears in another statute." *Wilander*, 498 U.S. at 347.

"The key to seaman status is employment-related connection to a vessel in navigation." *Wilander*, 498 U.S. at 355. That requirement has two components: (1) the "employee's duties must 'contribute[] to the function of the vessel or to the accomplishment of its mission'" and (2) the employee "must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Chandris*, 515 U.S. at 368 (citation omitted); *Harbor Tug & Barge*, 520 U.S. at 554. The requirement that a seaman have a connection to a vessel in navigation that is substantial in duration and nature distinguishes sea-based employees, who are covered by the Jones Act, from land-based maritime workers, who

have only a transitory connection to a vessel in navigation and are covered by the LHWCA. *Ibid.*

The question whether a worker has the requisite employment-related connection to a vessel in navigation is a mixed question of law and fact. The court "define[s] the legal standard," and the jury "finds the facts, and * * * applies the legal standard." *Wilander*, 498 U.S. at 356. "If reasonable persons, applying the proper legal standard, could differ as to whether the employee" is a seaman, "it is a question for the jury." *Ibid.* Conversely, "summary judgment or a directed verdict is mandated where the facts and the law will reasonably support only one conclusion." *Ibid.*

2. Respondent employed petitioner as a marine engineer to maintain the mechanical systems of the *Super Scoop*, "a large floating platform * * * equipped with a clamshell bucket." Pet. App. 16-17. Respondent used the *Super Scoop* to dig a cross-harbor trench in the Boston Harbor for the Ted Williams Tunnel. *Id.* at 17; see *DutraSuper Scoop* (visited May 7, 2004) <http://www.bigdig.com/thtml/equip30.htm> (picture of *Super Scoop* in Boston Harbor); accord Dan McNichol, *The Big Dig* 56-57 (2000). The *Super Scoop* "operates as a dredge, removing silt from the ocean floor and dumping sediment onto one of two scows that float alongside." Pet. App. 17; see 9 *The Encyclopedia Americana* 374 (Int'l ed. 2000) ("Typically, a dredge [has] some sort of scoop to pick up material and a derricklike mechanism to lift the scoop with its load and to dump it."). Once the *Super Scoop* filled her scows, tugboats towed the scows out to sea where they disposed of the dredged material. Pet. App. 17.

The *Super Scoop* had "navigation lights, ballast tanks, and a dining area for the crew." Pet. App. 17. The *Super Scoop*'s chief officer was referred to as "captain," and the employees working on it as "crew." C.A. App. 254-255 (Def's Admis. Resp. Nos. 17, 21). Crew members generally were required to wear life jackets while working on the *Super Scoop* and

were transported to and from it by boat. *Ibid.* (Def's Admis. Resp. Nos. 19, 20). The Coast Guard classified the *Super Scoop* as an industrial vessel, and respondent was required to register her with the Coast Guard and comply with safety regulations issued by the Coast Guard and the United States Department of Transportation. Pet. App. 17.[1] In addition, the American Bureau of Shipping had issued a load-line certificate to the *Super Scoop*. *Ibid.*; C.A. App. 268 (certificate); see Committee on Standardization and Special Research, *A Port Dictionary of Technical Terms* 133 (1940) ("The term load-line means a line or mark to indicate maximum depth to which a vessel may be loaded safely.").

The *Super Scoop* had limited means of self-propulsion. Crew members used anchors and cables to move the *Super Scoop*, and during her operations in the Boston Harbor she typically moved once every two hours, covering a distance of 30 to 50 feet. Pet. App. 17; C.A. App. 252 (Def's Admis. Resp. No. 5) ("[O]n most days during the time that the Superscoop was performing dredging it would be moved a short distance by use of its anchors."). For movement over longer distances, the *Super Scoop* was towed by another vessel, as when she was towed from her home base in California, through the Panama Canal, and up the Eastern seaboard to Boston Harbor. *Ibid.* (Def's Admis. Resp. No. 4).

In 1993, during the course of petitioner's employment on the *Super Scoop*, petitioner boarded one of the adjacent scows to make repairs. Pet. App. 18. The *Super Scoop*'s crew proceeded to move the scow while petitioner was working, causing it to collide with the *Super Scoop*. Jolted

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[1] The Coast Guard's certificate of inspection provided that the *Super Scoop* was required to be unmanned while in oceans but that the "vessel may carry up to 10 industrial personnel when operating on protected waters in Boston Harbor between East Boston and South Boston." C.A. App. 266 (12/12/91 Certificate of Inspection). The certificate also authorized the *Super Scoop* to carry up to 466 short tons of deck cargo. *Ibid.*

by the impact, petitioner fell to a deck below and sustained serious injuries. *Ibid.*

3. Petitioner filed suit in the United States District Court for the District of Massachusetts under the Jones Act, 46 U.S.C. App. 688(a), alleging that he was a seaman injured by respondent's negligence. He also filed an alternative claim (in the event that he was found not to be a seaman) under Section 5(b) of the LHWCA, 33 U.S.C. 905(b), which authorizes employees covered by that Act to sue a "vessel" owner as a third party for an injury caused by the owner's negligence. Pet. App. 3.

Respondent moved for summary judgment on the Jones Act claim, arguing that petitioner was not a seaman. Respondent acknowledged that petitioner was "a member of the [*Super Scoop*'s] crew," Pet. App. 21, and that his "duties contributed to the function" of the *Super Scoop*, C.A. App. 38 (Def's Mem. in Support of Sum. J.), but argued that the *Super Scoop* was not a vessel in navigation. Respondent relied upon the First Circuit's decision in *DiGiovanni* v. *Traylor Brothers*, 959 F.2d 1119 (en banc), cert. denied, 506 U.S. 827 (1992), which held that "if a barge or other float's 'purpose or primary business is *not* navigation or commerce,' then workers assigned thereto for its shore enterprise are to be considered seamen only when it is in actual navigation or transit" at the time of the plaintiff's injury. *Id.* at 1123 (quoting *Bernard* v. *Binnings Constr. Co.*, 741 F.2d 824, 829 (5th Cir. 1984)). The district court entered summary judgment in favor of respondent, holding that the *Super Scoop* was not a vessel in navigation because "the primary purpose of this thing, of this [*Super Scoop*] is dredging, not transportation" and "[t]he fact that it moves people across the water is incidental to its primary purpose." Pet. App. 66.

4. a. On petitioner's interlocutory appeal pursuant to 28 U.S.C. 1292(a)(3), the court of appeals affirmed. Pet. App. 15-29. The court concluded that it was bound by *DiGiovanni*, *id.* at 22-25, and held that "a dredge like the [*Super Scoop*] comes within the * * * court's holding in *DiGiovanni*," *id.* at 26. The court rejected petitioner's argument that "dredging itself is a form of navigation and transportation" because "to dredge, the *Super Scoop* must transport the clamshell bucket and associated equipment across the harbor, and must cause the dredge material to be carried out to sea." *Id.* at 26-27. The court of appeals reasoned that the analysis in *DiGiovanni* "focuses on *primary* functions and, at bottom, dredging is primarily a form of construction" and that "[a]ny navigation or transportation that may be required is incidental to this primary function." *Id.* at 27. The court concluded that the *Super Scoop* was a "floating stage[] used primarily as [an] extension[] of the land for purpose of securing heavy equipment to construct a passage across the sea," and therefore was not "a vessel in navigation within the jurisprudence of the Jones Act." *Ibid.*

The court of appeals also rejected petitioner's reliance on the court's recognition in *DiGiovanni* that workers connected to a structure whose primary purpose is not navigation may nonetheless be considered seamen if the structure "'is in actual navigation or transit' at the time an injury occurred." Pet. App. 28 (quoting 959 F.2d at 1123). The court found it "irrelevant" that petitioner was injured on the scow while the scow was in motion because petitioner's "status as a seaman depends upon the movement *vel non* of the *Super Scoop*" at the time of injury. *Ibid.*

b. On remand, the district court entered summary judgment in favor of respondent on petitioner's alternative claim that respondent was liable for negligence as an owner of a "vessel" under the LHWCA, 33 U.S.C. 905(b). Pet. App. 4. The court of appeals observed that respondent had conceded

that the *Super Scoop* was a "vessel" for purposes of Section 905(b), explaining that "the LHWCA's definition of 'vessel' is 'significantly more inclusive than that used for evaluating seaman status under the Jones Act.'" *Id.* at 5 (quoting *Morehead* v. *Atkinson-Kiewit*, 97 F.3d 603, 607 (1st Cir. 1996) (en banc)). The court nonetheless affirmed the district court's conclusion that respondent's alleged negligence was committed in respondent's capacity as an *employer* and thus respondent was not liable as an owner of a vessel under 33 U.S.C. 905(b). Pet. App. 5-14.

SUMMARY OF ARGUMENT

A. The term "vessel" should be given its generally established maritime meaning at the time Congress passed both the Jones Act in 1920 and the LHWCA shortly thereafter in 1927. At that time, a "vessel" was commonly defined with reference to the generic definition of the term to "include[] every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U.S.C. 3. Congress also passed both statutes against the background of maritime case law similarly construing the term "vessel" to include all floating structures that have a transportation function or practical capability and that do not serve in effect as an extension of land.

There is no reason for a different construction of the term "vessel" for purposes of the Jones Act and the LHWCA. Indeed, shortly after passage of the LHWCA, this Court in *Norton* v. *Warner Co.*, 321 U.S. 565, 571 & n.4 (1944), relied on 1 U.S.C. 3 and general maritime case law in holding that a barge was a vessel for purposes of the seaman exclusion under the LHWCA "even when [the barge] has no motive power of its own, since it is a means of transportation on water."

B. The court of appeals erred in determining that respondent's dredge, the *Super Scoop*, was not a vessel in naviga-

tion for purposes of determining petitioner's status as a seaman under the Jones Act. The term "vessel" does not require a watercraft to have as its "primary" purpose a transportation function. Rather, the correct test under 1 U.S.C. 3 and general maritime law is whether the craft serves or is practically capable of serving a waterborne transportation function such that it is not merely in effect an extension of land. Nor does a watercraft's status as a vessel depend on whether the craft is "in transit" at the time a worker is injured. Adoption of such a regime would produce inequitable, unpredictable, and arbitrary results as it would cause workers regularly exposed to the perils of navigation to move in and out of seaman status depending on the fortuitous circumstance of whether the watercraft was in motion at the time of injury.

Nothing in the requirement that the vessel be "in navigation" (*Chandris*, 515 U.S. at 373) supports the court of appeals' focus on a watercraft's "primary" function or its engraftment of an "in transit" requirement for "vessel" (and thus "seaman") status. A watercraft that serves a transportation function *is a vessel*, and once she is placed in service, she remains *in navigation* until such time as the vessel is removed from service for a significant period of time. *Id.* at 373-374.

Summary judgment for respondent was in error because the undisputed facts demonstrate that the *Super Scoop* was a vessel in navigation at the time of petitioner's injury. She served as a "means of transportation on water," 1 U.S.C. 3, as she transported equipment and crew across the Boston Harbor to perform her work of dredging. It is implausible to characterize the *Super Scoop* as an essentially land-based structure, because her ability to transport machinery over water from her home port to the site of the dredging project, as well as to carry equipment and crew along the course of the project, were essential to her ability to dredge. Because

the *Super Scoop* regularly moved across the navigable waters of the Boston Harbor, her workers were exposed to the perils of navigation such as the type of collision with another vessel that occurred in this case.

C. The conclusion that the *Super Scoop* is a vessel is supported by the settled view, at the time Congress passed both the LHWCA and Jones Act, that dredges were vessels. Indeed, this Court held in *Ellis* v. *United States*, 206 U.S. 246, 259 (1907), that "floating dredges" operating in Boston Harbor were "vessels" whose workers were "seamen as that name commonly is used." There is no indication in either statute that Congress intended to depart from that decision or the numerous similar decisions of the lower courts holding dredges to be vessels given their waterborne transportation of equipment and crew. Quite to the contrary, the legislative history of the LHWCA indicates that Congress understood that dredges were vessels whose workers were seamen entitled to sue under the Jones Act.

ARGUMENT

RESPONDENT'S DREDGE TRANSPORTED EQUIPMENT AND CREW OVER WATER AND WAS THEREFORE A "VESSEL IN NAVIGATION"

The court of appeals held that, for purposes of coverage under the Jones Act, "a vessel in navigation" includes only those watercraft whose "primary" purpose is navigation or transportation, unless the watercraft at issue was "in actual navigation or transit" at the time of the injury. Pet. App. 27. The court of appeals' decision departs from two well-established principles of maritime law at the time of the passage of the LHWCA in 1927 and the Jones Act in 1920. *First*, the general maritime definition of a vessel includes a watercraft that is a means of transportation on water, regardless of her "primary" purpose or state of transit at any given point in time. *Second*, maritime law has long

considered a dredge to be a vessel whose critical purpose and function is waterborne transportation of crew and equipment. Because the dredge at issue in this case, the *Super Scoop*, transported machinery to Boston Harbor for the "Big Dig" project and transported crew and equipment as she dredged a trench, the dredge was a vessel in navigation under the Jones Act.

A. "Vessel" Should Be Interpreted In Accordance With Its General Maritime Meaning Of A Watercraft That Is A Means Of Transportation On Water

Although Congress did not define the term "seaman" when it enacted the Jones Act in 1920, it gave "content" to the term in 1927 when it passed the LHWCA and excluded from the Act's coverage a "master or member of a crew of any vessel," 33 U.S.C. 902(3)(G), a phrase Congress intended to encompass Jones Act seamen, *i.e.*, those workers with an "employment-related connection to a vessel in navigation." *Chandris*, 515 U.S. at 357. Neither the Jones Act nor the LHWCA provides a meaningful definition of "vessel."[2] The

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[2] The Jones Act does not employ the term "vessel." 46 U.S.C. App. 688(a). The LHWCA contains a definition of "vessel" that provides:

> Unless the context requires otherwise, the term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

33 U.S.C. 902(21). Unlike the master or crew member provision of 33 U.S.C. 902(3)(G), which was enacted as part of the original 1927 Act, the quoted definition was adopted as part of the 1972 Amendments to the Act (Act of Oct. 27, 1972, Pub. L. No. 92-576, § 18(a), 86 Stat. 1263) in conjunction with the third-party vessel owner provision of 33 U.S.C. 905(b). The definition elaborates on the persons who can be held responsible for

term "vessel," however, is a maritime term of art, and in the absence of a contrary indication Congress can be assumed to have intended it to have its established meaning "under the general maritime law." *Wilander*, 498 U.S. at 342; see *Director, OWCP* v. *Greenwich Collieries*, 512 U.S. 267, 275 (1994) (interpreting "burden of proof" "to have the meaning generally accepted in the legal community at the time of enactment"). Thus, the term "vessel" should be given its generally established meaning as of the time that Congress passed the Jones Act in 1920 and "refine[d]" its meaning in 1927 through passage of the LHWCA. *Wilander*, 498 U.S. at 347; see *id.* at 342 (assessing state of maritime law at time of Jones Act, and concluding that it did not require a seaman's duties to aid in the navigation of the vessel), 348 (determining that the LHWCA did not change existing maritime rule).

1. *The statutory definition of vessel*

The appropriate starting point for determining whether a watercraft is a "vessel" is the general definition set forth in 1 U.S.C. 3, entitled "'Vessel', as including all means of water transportation." Under this Rules of Construction definition, "[t]he word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U.S.C. 3. That definition was first used by Congress in an anti-smuggling statute, Act of July 18, 1866, ch. 201, § 1, 14 Stat. 178, and was incorporated into Section 3 of the Revised Statutes in 1874, well before the passage of both the Jones Act and the LHWCA. Congress has regularly employed the

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the negligent operation of a vessel, but provides no guidance on the requisite elements of a "vessel" itself. *McCarthy* v. *The Bark Peking*, 716 F.2d 130, 133 (2d Cir. 1983) (LHWCA's definition of vessel is "circular" and "[o]bviously * * * does not provide precise guidance"), cert. denied, 465 U.S. 1078 (1984).

definition in 1 U.S.C. 3 "for the purpose of determining the scope of various shipping and maritime transportation laws." *Foremost Ins. Co.* v. *Richardson*, 457 U.S. 668, 676 (1982).[3]

There is no indication in either the Jones Act or the LHWCA that Congress intended to depart from the generic definition of vessel in Title 1. To the contrary, this Court has already applied 1 U.S.C. 3 in a case arising under the LHWCA. In *Norton* v. *Warner Co.*, *supra*, the Court held that a bargeman was a "member of the crew of a[] vessel," 33 U.S.C. 902(3)(G), and was therefore a "seaman" excluded from coverage of the Act. The barge in that case "had no motive power of its own, and was moved either by towing or for shorter distances, by the winding up of a cable," and "never went to sea but was confined in its operation to waters within a radius of thirty miles of Philadelphia." 321 U.S. at 567. Citing 1 U.S.C. 3 and various general maritime decisions, the Court held that "a barge is a vessel within the meaning of the Act even when it has no motive power of its own, since it is *a means of transportation on water*." 321 U.S. at 571 & n.4 (emphasis added). *Norton* accordingly stands for the proposition that the 1 U.S.C. 3 definition of "vessel" supplies the applicable standard for determining the scope of coverage of the LHWCA (and thus the Jones Act as well).[4]

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[3] Similar definitions are employed in other statutes. See 16 U.S.C. 916(e); 18 U.S.C. 553(c)(3); 18 U.S.C. 3667; 19 U.S.C. 1401(a); 22 U.S.C. 456(c); 26 U.S.C. 5688(c); 33 U.S.C. 1321(a)(3); 33 U.S.C. 1502(18); 33 U.S.C. 1601(1); 33 U.S.C. 2003(a); 33 U.S.C. 2402(11); 33 U.S.C. 2701(37); 42 U.S.C. 201(i); 42 U.S.C. 9601(28); 46 U.S.C. App. 801; 47 U.S.C. 153(39)(A); 49 U.S.C. 80301(3); 49 U.S.C. 13102(21).

[4] The definition of "vessel" does not sweep in every structure theoretically capable of serving in some fashion as a conveyance over water at some point. In *Evansville & Bowling Green Packet Co.* v. *Chero Cola Bottling Co.*, 271 U.S. 19, 22 (1926), the Court held that a wharfboat secured to the shore by cables was not a vessel under 1 U.S.C. 3 because

2. *The traditional maritime law understanding of "vessel"*

The statutory definition of "vessel" is consistent with the use of the term at maritime law to include all watercraft that have a transportation function or practical capability and to exclude watercraft that function as an extension of land. 1 Steven F. Friedell, *Benedict on Admiralty* § 165, at 10-10 (7th ed. 2003) ("There is no legally significant difference between the statutory definition of the term 'vessel' and the meaning attributed to it by the general maritime law as obtaining in this country."). Thus, it was well-settled by the time of the passage of the Jones Act and the LHWCA that the salient factor in determining whether a structure was a vessel was whether the structure was "an instrument of naval transportation." 1 Erastus C. Benedict, *The American Admiralty* § 53, at 74 (5th ed. 1925); Robert M. Hughes, *The*

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the wharfboat "was not practically capable of being used as a means of transportation." The Court further explained:

> It served * * * as an office, warehouse and wharf, and was not taken from place to place. The connections with the water, electric light and telephone systems of the city evidence a permanent location. It performed no function that might not have been performed as well by an appropriate structure on the land and by a floating stage or platform permanently attached to the land. It did not encounter perils of navigation to which craft used for transportation are exposed.

Ibid. Similarly, the Coast Guard, which regulates vessels as defined in 1 U.S.C. 3 (see 46 U.S.C. 2101(45)), has explained that a "vessel taken out of transportation and permanently moored (or a PMV) falls somewhere between a statutory definition of a vessel and a building or land structure and is deemed to be substantially a land structure" that is best regulated by "appropriate standards enforced by local building codes, fire marshals and other jurisdictions." 2 U.S. Coast Guard, *USCG Marine Safety Manual* B4-44 (2000) (internal quotation marks omitted). "Some examples of such PMVs are showboats, theaters, hotels, gaming sites, restaurants, museums, and business offices on a barge." *Ibid.*

Handbook of Admiralty Law § 5, at 14 (2d ed. 1920) ("The character of craft included in the admiralty jurisdiction is any movable floating structure capable of navigation and designed for navigation.").

For instance, in *Cope* v. *Vallette Dry Dock Co.*, 119 U.S. 625, 627 (1887), this Court held that a drydock, a "fixed structure" "permanently moored" to shore, was not a vessel subject to maritime salvage, because the drydock "was not designed for navigation, and could not be practically used therefor." The Court also observed that a ferry bridge, hinged or chained to a wharf, and a floating meeting house, kept in place by surrounding pilings were "in the same category." *Ibid.*; cf. *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, 359-360 (1969) (treating fixed artificial island drilling platforms not as vessels subject to admiralty law).

By contrast, in *The Robert W. Parsons*, 191 U.S. 17, 29-34 (1903), the Court held that a canal boat drawn by horse power was a vessel subject to admiralty jurisdiction, and in so ruling explained that "neither size, form, equipment, nor means of propulsion are determinative factors upon the question of jurisdiction, which regards only the purpose for which the craft was constructed, and the business in which it is engaged." *Id.* at 30. The craft's "purpose" and "business," the Court explained, must be that of navigation, *id.* at 31, *i.e.*, any carriage of persons or property on water. Thus, the Court observed that the term had been broadly held to include "steamers * * * engaged in carrying freight and passengers * * *, a barge, without sails or rudder, used for transporting grain, [and] a floating elevator." *Id.* at 30 (citations omitted). The Court concluded that a canal boat, a structure "engaged in commerce and navigation," *id.* at 31, was distinct from land-like structures such as a "dry dock," "ferry bridge or sailors' floating meeting house," which were "no more used for the purposes of navigation than a wharf or a warehouse projecting into or upon the water, *id.* at 34.

B. The Court Of Appeals Erred In Applying Its "Primary Function" and "Actual Transit" Test To Conclude That Respondent's Dredge Was Not A Vessel In Navigation

The court of appeals entered summary judgment on the question of the *Super Scoop*'s vessel status by employing a standard under which a floating watercraft is not a vessel in navigation unless its "primary" function is navigation or transportation, or it is "in actual navigation or transit" at the time of a worker's injury. Pet. App. 23, 27. Applying that standard, the court of appeals concluded that the *Super Scoop* was not a vessel in navigation even though it "moved with some regularity across navigable waters" and "possessed the commonly understood characteristics of a vessel," such as compliance with the regulations of the Coast Guard that apply to vessels. *Id.* at 26 n.3, 27. The court of appeals reached that result by reasoning that "dredging is primarily a form of construction" and that "[a]ny navigation or transportation that may be required is incidental to this primary function." *Id.* at 27. That analysis was flawed in several respects.

1. *The court of appeals' standard was erroneous*

Nothing in the statutory definition of vessel in 1 U.S.C. 3 or the general understanding of the term at maritime law at the time Congress passed the Jones Act and the LHWCA requires a court to determine a watercraft's "primary" function or whether the craft "is in transit" at a particular point in time. Pet. App. 27. Under the statutory definition and the settled meaning of the term before the passage of the Jones Act and the LHWCA, the correct test is instead a simple, bright-line inquiry into whether the watercraft has a waterborne transportation function or practical capability. A watercraft that meets that test is a vessel, and she is not deprived of that status simply because she performs other

functions, such as serving as a workplace or work platform for workers to perform their duties (such as fishing or diving for treasure or salvage). *Manuel* v. *P.A.W. Drilling & Well Serv., Inc.*, 135 F.3d 344, 351 (5th Cir. 1998) ("[A] vessel can serve the dual function of transporting cargo, equipment, or persons across navigable waters and acting as a work platform.").

The fact that a watercraft may be temporarily stationary likewise does not change the fundamental character of the watercraft as a waterborne means of transportation. Thus, in *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 535 (1995), the Court held that an anchored barge was within federal admiralty jurisdiction: "Even though the barge was fastened to the river bottom and was in use as a work platform at the times in question, at other times it was used for transportation." Cf. *Senko* v. *LaCrosse Dredging Corp.*, 352 U.S. 370, 372 (1957) (upholding finding that worker on dredge was seaman under Jones Act even though "the dredge was anchored to the shore at the time of petitioner's injury" and "this dredge, like most dredges, was not frequently in transit"; vessel status was not at issue). Nothing in the statutory definition, the general maritime law, the Jones Act, or the LHWCA provides any justification for limiting "vessel" status to a watercraft whose "primary" function is navigation. A focus on a watercraft's "primary" purpose (and whether its transportation function is "incidental" to that purpose), moreover, would add a layer of unnecessary complexity for courts adjudicating claims under both statutes, as well as for the Department of Labor that administers the "master or member of a crew" exclusion under the LHWCA.

This Court has construed the Jones Act and the LHWCA to require an employment-related connection to a vessel "in navigation," *Wilander*, 498 U.S.C. at 354; *Chandris*, 515 U.S. at 373, but the "in navigation" requirement also does not

require a vessel to be "in transit" at the time of a worker's injury or to have as its "primary" purpose that of navigation. The "in navigation" requirement does not "narrowly or literally" require a vessel to be in motion or "navigating in an operational sense" at a given point in time; rather, it requires a vessel generally to have been placed in, and to remain in, service. 1 Robert Force & Martin J. Norris, *The Law of Seamen* § 2:17, at 2-91 (5th ed. 2003) (*Law of Seamen*).

Thus, "a vessel does not cease to be a vessel when she is not voyaging, but is at anchor, berthed, or at dockside." *Chandris*, 515 U.S. at 373 (quoting *DiGiovanni*, 959 F.2d at 1121). Rather, the vessel is "in navigation, although moored to a dock, if it remains in readiness for another voyage." *Id.* at 374 (quoting 2 *Law of Seamen* § 30.13, at 364 (4th ed. 1985)). Indeed, a vessel remains "in navigation" when placed in drydock or a shipyard for minor repairs. *Ibid.*; 1 *Law of Seamen*, 2-91.[5] Accordingly, a watercraft that serves as a means of transportation on water is a vessel and she remains in navigation as long as she is in service, notwithstanding the fact that at various times she serves as a stationary workplace for her crew.[6]

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[5] "At some point, however, repairs become sufficiently significant that the vessel can no longer be considered in navigation." *Chandris*, 515 U.S. at 374; see, *e.g.*, *West* v. *United States*, 361 U.S. 118, 122 (1959) ("The *Mary Austin*, as anyone could see, was not in maritime service. She was undergoing major repairs and complete renovation."); *Roper* v. *United States*, 368 U.S. 20, 21, 23 (1961) (SS *Harry Lane* had "withdrawn from navigation" when she "was deactivated from service and 'mothballed'" and "lost her Coast Guard safety certification as well as her license to operate."); cf. 46 C.F.R. 90.05-1(a)(1) (exempting from Coast Guard regulations "[a]ny vessel while laid up and dismantled and out of commission").

[6] The question presented seeks the Court's resolution of "[w]hat is the legal standard for determining whether a special purpose watercraft (such as a dredge) is a Jones Act 'vessel'" (Pet. i) and does not expressly mention the "in navigation" requirement. The phrase "Jones Act 'vessel'"

The court of appeals' focus on whether a watercraft is "in actual navigation or transit" at the time of injury also conflicts with the "fundamentally status based" inquiry under the Jones Act. *Chandris*, 515 U.S. at 361. "In evaluating the employment-related connection of a maritime worker to a vessel in navigation, courts should not employ a 'snapshot' test for seaman status, inspecting only the situation as it exists at the instant of injury; a more enduring relationship is contemplated in the jurisprudence." *Id.* at 363 (internal quotation marks omitted). A contrary regime would "engraft[] upon the statutory classification of 'seamen' a judicial gloss so protean, elusive, or arbitrary as to permit a worker to walk into and out of coverage in the course of his regular duties." *Ibid.* (internal quotation marks omitted). Indeed, *Chandris* also makes clear that "maritime workers who obtain seaman status" do not automatically lose their status simply because they are injured *off* the ship. 515 U.S. at 360. *A fortiori*, a worker with a sufficient connection to a watercraft that is a vessel does not lose his seaman status simply because the craft is not in movement at the time of the injury.

The standard employed by the court of appeals, however, permits a craft to move in and out of vessel status depending on whether the craft is in transit, even though the worker may be performing the exact same functions and exposed to

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is best understood, however, as synonymous with a "vessel in navigation." In any event, because (a) the court of appeals framed the issue as whether the *Super Scoop* was a "vessel in navigation" (Pet. App. 20-29), (b) the body of the petition raises the issue (Pet. 6-7 n.3), and (c) the "in navigation" requirement is so intertwined with the vessel-status of a watercraft, the issue of whether the *Super Scoop* was "in navigation" is fairly encompassed within the question presented. Sup. Ct. R. 14.1(a); *e.g.*, *Kolstad* v. *American Dental Ass'n*, 527 U.S. 526, 540 (1999); *Ohio* v. *Robinette*, 519 U.S. 33, 38 (1996); *Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 382 (1995).

the same water-based risks whether or not the craft is in motion at the time of an accident. *DiGiovanni*, 959 F.2d at 1128 (Torruella, J., dissenting) (majority's standard would "lead to much uncertainty as the same object may be a vessel or non-vessel from moment to moment" and the "same person, doing the same work, on the same object will receive different legal treatment depending on a totally fortuitous condition"). Thus, had petitioner been injured on the *Super Scoop* while it was in transit anywhere in the Boston Harbor, he would apparently have been considered a seaman. The court of appeals' regime therefore undermines the "interests of employers and maritime workers alike in being able to predict who will be covered by the Jones Act (and, perhaps more importantly for purposes of the employers' workers' compensation obligations, who will be covered by the LHWCA) before a particular work day begins." *Harbor Tug & Barge*, 520 U.S. at 558 (quoting *Chandris*, 515 U.S. at 363).

2. *The* Super Scoop *was a vessel in navigation*

The court of appeals erred in holding that no trier of fact could conclude that the *Super Scoop* was a vessel in navigation. The undisputed facts show the contrary: the *Super Scoop* was a watercraft that was in service as a "means of transportation on water." 1 U.S.C. 3. Respondent used the *Super Scoop* not only as a means of transporting equipment from worksite to worksite but also as a means of transporting equipment and crew as she moved through the Boston Harbor to conduct the dredging operations. As the First Circuit recognized, the *Super Scoop*'s "function was *to move* through Boston Harbor, from East Boston to South Boston, digging the ocean bottom as it moved." Pet. App. 2 (decision following remand, emphasis added); accord Dan McNichol, *The Big Dig* 56 (2000) ("The Super Scoop's mission: to begin digging a 50-foot-deep, 100-foot-wide, 3/4-mile-long trench below the surface of Boston Harbor."). To that end, "[t]he

Super Scoop typically move[d] once every two hours, covering a distance of thirty to fifty feet." Pet. App. 17; see generally 9 *The Encyclopedia Americana*, *supra*, at 374 ("After the dredge has removed all of the material it can reach," and spuds holding the dredge in place are raised, "the dredge is moved ahead 5 to 10 feet * * * to the next position by pulling on anchor lines, by placing the dipper ahead and drawing in on it, or by using a tug."). That "mobility was essential to the work it was designed and built to perform." *Manuel*, 135 F.3d at 351.

The court of appeals thus erred in concluding that the *Super Scoop* served as an "extension of land" because "at bottom, dredging is primarily a form of construction." Pet. App. 27. That reasoning erroneously conflates the status of a vessel as a waterborne means of transportation with the particular use or purpose for which the vessel and her equipment and workers are employed. "The art of dredging refers to the submarine excavation of soils (sediment) and bedrock, and a dredger can be regarded as a vessel incorporating specialised machinery for such an operation." *Conway's History of the Ship: The Shipping Revolution* 147 (Conway Maritime Press 1992); accord 9 *The Encyclopedia Americana*, *supra*, at 373 (A dredge is "a barge or other vessel equipped for digging mud, sand, rock, and other deposits from the bottoms of waterways. The major purpose of dredging is to maintain clear channels."); Alfred Dudszus & Ernest Henriot, *Dictionary of Ship Types* 94 (Conway Maritime Press 1986) (giving history of a dredger and defining it as "[a] vessel designed for scouring and deepening channels and anchorages * * *; it carried machinery powered by men or natural forces to enable it to carry out its tasks").

Here, respondent may have been engaged in a project relating to the construction of the Ted Williams Tunnel, but it used a vessel to complete the job. The *Super Scoop* operated away from shore and its mobility over water was

essential to its purpose and use. It cannot be said that the *Super Scoop* "performed no function that might not have been performed as well by an appropriate structure on the land and by a floating stage or platform permanently attached to the land." *Evansville & Bowling Green Packet Co.* v. *Chero Cola Bottling Co.*, 271 U.S. 19, 22 (1926). Quite to the contrary, it is difficult to imagine how the *Super Scoop* would have been of any utility to respondent without the ability to transport its machinery, equipment, and crew across the Boston Harbor.

Presumably for the above reasons, respondent concedes that the *Super Scoop* is a "vessel" whose owner may be liable for negligence to longshoremen under 33 U.S.C. 905(b). Pet. App. 5; Br. in Opp. 4-5. But the term "vessel" should have the same meaning in the seaman exclusion of Section 902(3)(G) of the same Act, under the presumption that "identical words used in different parts of the same act are intended to have the same meaning." *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 570 (1995). The First Circuit has suggested that Section 905(b) may have a broader scope than the seaman exclusion under Section 902(3)(G) because the latter provision, as construed by this Court in *Wilander*, 498 U.S. at 354, requires a vessel to be "in navigation." *Morehead*, 97 F.3d at 607 & n.3. Presumably, however, Section 905(b) similarly carries with it an "in navigation" requirement. See *Richendollar* v. *Diamond M. Drilling Co.*, 819 F.2d 124, 125, 127-128 (5th Cir.) (holding that a jackup drilling rig "positioned [in shipyard] on blocks, on land" that "was approximately 85% complete" on date of accident was "not a vessel within the admiralty jurisdiction of the federal courts and thus not covered by Section 905(b)"), cert. denied, 484 U.S. 944 (1987). In any event, any such distinction would not aid respondent in this case. At the time of petitioner's injury, the *Super Scoop* was plainly "in navigation" since she

was fully operational in her mission to dig a trench across the Boston Harbor.

The conclusion that the *Super Scoop* is a vessel in navigation also is fully consistent with the "clear distinction" Congress drew between "land-based workers" under the LHWCA, "whose employment does not regularly expose them to the perils of the sea," *Chandris*, 515 U.S. at 368, and "sea-based maritime workers" under the Jones Act, who "owe their allegiance to a vessel and not solely to a land-based employer," *Wilander*, 498 U.S. at 348. Petitioner spent "[n]inety-nine percent of his time while on the job" aboard the *Super Scoop* (C.A. App. 27 (Def's Mem. in Support of Sum. J.)) in navigable waters of the United States and was subject to the same risks of injury as other seamen. Indeed, petitioner was injured in a traditional maritime accident when the *Super Scoop* collided with one of its scows in the Boston Harbor. Compare *The Virginia Ehrman*, 97 U.S. 309, 310 (1878) (owner of a steam-dredge was an owner of a vessel who was entitled to recover under admiralty law when it collided with two other vessels while dredge was "carefully and skillfully anchored, with three anchors properly set to keep her in position to prosecute her work"). Moreover, because petitioner worked as a marine engineer on the *Super Scoop* while she moved equipment and crew across the Boston Harbor, petitioner "encounter[ed] perils of navigation to which craft used for transportation are exposed." *Evansville*, 271 U.S. at 22.[7]

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[7] This Court often has used the phrase "perils of the *sea*" to describe the hazards to which seaman are exposed. *E.g.*, *Harbor Tug & Barge*, 520 U.S. at 560 (emphasis added). That phrase, of course, encompasses the hazards posed by being away from shore in "navigable waters" of the United States. *Swanson* v. *Marra Bros.*, 328 U.S. 1, 7 (1946); see, *e.g.*, *Senko*, 352 U.S. at 372-374 (Mississippi River); *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 38 (1943) (Lake Michigan); *Norton*, 321 U.S. at 567 (vessel "never went to sea").

C. Classifying A Dredge As A Vessel Is Supported By Settled Maritime Law At The Time Congress Passed The Jones Act and LHWCA

1. *Pre-enactment case law*

Congress passed both the Jones Act and the LHWCA against the settled background principle that dredges were vessels whose workers could be seamen. In *Ellis*, *supra*, the Court found that workers on dredges and scows used to dig a portion of a 35-foot channel in the Boston Harbor were "seamen as that name commonly is used" and therefore were excluded from a statute limiting the daily work hours of certain "laborers and mechanics." 206 U.S. at 259. The Court held that "[t]he scows and *floating dredges were vessels*" that "were within the admiralty jurisdiction of the United States." *Ibid.* (emphasis added). The Court relied upon, *inter alia*, Section 3 of the Revised Statutes (1875 ed.) (now codified as 1 U.S.C. 3) and the Court's decision in *The Robert W. Parsons*, *supra*. See 206 U.S. at 259.

The Court in *Ellis*, 206 U.S. at 259, also relied on "[a] number of cases as to dredges in the circuit and district courts" referenced in *Bowers Hydraulic Dredging Co.* v. *Federal Contracting Co.*, 148 F. 290 (S.D.N.Y. 1906). That case in turn had listed eight decisions cited for the proposition that "it is settled law that a court of admiralty has jurisdiction over dredges." *Id.* at 292. Those decisions uniformly treated dredges as vessels. One such case, *Saylor* v. *Taylor*, 77 F. 476, 477 (4th Cir. 1896), was also cited with approval in *Ellis* (206 U.S. at 260), and held that a mud dredge with "no natural powers of propulsion" was a vessel under Section 3 of the Revised Statutes whose workers were entitled to a maritime lien for their services. The Fourth Circuit explained that the dredge's occupation was to "transport from place to place the steam shovel placed upon her * * * and the engine and hands employed on her, and

to maintain them afloat in her work of deepening channels in navigable waters."[8] Another such case was the Third Circuit's decision in *The International*, 89 F. 484 (1898), which likewise held that a dredge was a vessel under Section 3 of the Revised Statutes because the dredge's "permanent home was on navigable water, and it was intended and adapted for navigation and transportation by water of its crew, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstruction from channels and harbors in aid of navigation and commerce." *Id.* at 485.

The remaining decisions cited in *Bowers Hydraulic Dredging Co.* are to similar effect. See *McMaster* v. *One Dredge*, 95 F. 832, 834 (D. Or. 1899) ("a dredge capable of being moved from place to place on navigable waters, and of the transportation to place of machinery, or sand and gravel taken from the bottom of rivers, is a vessel, and * * * subject to [an admiralty] lien" for materials and supplies); *McRae* v. *Bowers Dredging Co.*, 86 F. 344, 348 (D. Wash. 1898) (dredge is a maritime vessel subject to a lien for wages earned by its workers; dredge "has mobility, and her element is the water. She can be used afloat, and not otherwise. She has carrying capacity, and her employment has direct reference to commerce and navigation"); *The Starbuck*, 61 F. 502 (E.D. Pa. 1894) ("That a dredge and her

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[8] The court observed:

> [I]t seems a stretch of the imagination to class the deck hands of a mud dredge in the quiet waters of a Potomac creek with the bold and skillful mariners who breast the angry waves of the Atlantic; but such and so far-reaching are the principles which underlie the jurisdiction of the courts of admiralty that they adapt themselves to all the new kinds of property and new sets of operatives and new conditions which are brought into existence in the progress of the world.

Saylor v. *Taylor*, 77 F. at 479.

scows are to be treated as one concern, and are subject to the admiralty jurisdiction has been several times decided, and I think rightly."); *The Atlantic*, 53 F. 607, 608 (D. S.C. 1893) ("Dredges and scows are subject to a maritime lien for services rendered."); *Aitcheson* v. *The Endless Chain Dredge*, 40 F. 253, 254 (E.D. Va. 1889) ("As to the question whether a steam-dredge, which is a floating scow fitted with steam appliances, buckets, and scoop, for deepening channels of navigation and like purposes, is a subject of admiralty jurisdiction, there have been repeated decisions in the United States and Great Britain in the affirmative."); *The Pioneer*, 30 F. 206, 207 (E.D.N.Y. 1886) (dredge was "used in naval transportation when she transported from place to place the steam-shovel and engine and maintained the same afloat on navigable water"); *The Alabama*, 22 F. 449, 451 (S.D. Ala. 1884) (finding that a dredge and her two scows were together engaged in the business of "transportation by water-craft" and that dredge alone is a vessel because it "navigated from one place to another" and "remov[ed] obstructions in the way of commerce by water").[9]

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[9] There were additional decisions pre-dating the Jones Act and the LHWCA that had held a dredge to be a vessel. *E.g.*, *Richmond Dredging Co.* v. *Standard Am. Dredging Co.*, 208 F. 862, 866 (9th Cir. 1913) (holding that a dredge "is the subject of admiralty jurisdiction"); *North Am. Dredging Co.* v. *Pacific Mail S.S. Co.*, 185 F. 698, 702 (9th Cir. 1911) ("A floating dredger capable of carrying her own machinery and implements and working crew, when employed as an aid to commerce in deepening navigable channels and harbors, is subject to the maritime law."); *The Steam Dredge No. 6*, 222 F. 576 (S.D.N.Y. 1915) ("though the dredge had no motive power, * * * she nevertheless was used at the time of the mishap in deepening the waterway for vessels engaged in interstate commerce and was carrying her machinery from place to place, and was therefore subject to maritime liens and risks"); see Hughes, *supra*, at 15 (observing that there are "many cases extending the jurisdiction over dredges," including "those which lift the mud by dippers, and deposit it in scows to be towed away"); see also *City of L.A.* v. *United Dredging Co.*, 14

Congress in passing both the Jones Act and the LHWCA was presumably aware of the Court's decision in *Ellis* and the numerous decisions of the lower courts holding that dredges were vessels. Congress accordingly must have intended that a dredge could be a vessel whose workers were seamen excluded under the LHWCA and therefore covered under the Jones Act. *Bowen* v. *Massachusetts*, 487 U.S. 879, 896 (1988) (interpreting statute in light of "well-settled presumption that Congress understands the state of existing law when it legislates"); see *Wilander*, 498 U.S. at 342 ("[W]e assume that when a statute uses [a maritime term of art], Congress intended it to have its established meaning.").[10]

F.2d 364, 366 (9th Cir. 1926) (dredges are vessels, and engineers employed upon them are "clearly seamen" within the meaning of federal statutes, and thus beyond the authority of city licensing ordinances) (cited with approval in *Norton*, 321 U.S. at 571); cf. *In re Hydraulic Steam Dredge No. 1*, 80 F. 545, 556 (7th Cir. 1897) (declining to resolve whether the term "vessel" encompassed a steam dredge that discharged material through pipes upon shore for the creation of a land embankment but concluding contract at issue was not maritime in nature).

[10] As indicated in the text, some of the early decisions involved dredges that had deepened or widened harbors and rivers for navigation by other vessels, whereas the *Super Scoop* was deepening and widening the Boston Harbor for the placement of a vehicular tunnel. None of the early decisions, however, indicates that the vessel status of a dredge depended on its use in *aiding* the transportation function of *other vessels*, and the statutory definition in 1 U.S.C. 3 imposes no such requirement. Rather, the inquiry is whether the dredge is a means of water transportation. *McMaster*, 95 F. at 833 ("The reason * * * for holding that the dredge [i]s a vessel * * * is because she [i]s constructed so as to move from place to place upon navigable waters."). Moreover, any standard that would turn on the specific purpose for which the dredge was deepening or widening a body of navigable water would create the type of "snapshot" regime eschewed in *Chandris*, 515 U.S. 363, by making a dredge's vessel status vary from project to project, even though a worker's connection to the vessel, and risks from the perils of navigation, may remain the same.

2. *The legislative history of the LHWCA*

Classifying a dredge as a vessel is also consistent with the legislative history of the LHWCA. The bill that became the LHWCA, S. 3170, "originally excluded a master or members of a crew of a vessel, but was amended so as to extend to them the benefits of compensation." *Nogueira* v. *New York, New Haven & Hartford R.R.*, 281 U.S. 128, 136 (1930); see H.R. Rep. No. 1767, 69th Cong. 2d Sess. 20 (1927). The House thus reported a bill that would have included seamen by extending the coverage of the Act to "any maritime employment performed * * * [a]s master or member of a crew of a *barge, lighter, tug, dredge, vessel, or other ocean, lake, river, canal, harbor, or floating craft*." *Id.* at 2 (emphasis added). As the House Report explains, the bill was drafted "so as to provide the benefits of compensation to seamen, or, to use the language of the bill, 'to masters and members of the crew.'" *Id.* at 20. After the seamen affected by the bill expressed their bitter opposition to their inclusion in the Act and preference for retaining their remedies under the Jones Act, the House amended the bill, and Congress passed the final bill to exclude "a master or a member of a crew of any vessel." 68 Cong. Rec. 5403, 5900, 5908 (1927); *Nogueira*, 281 U.S. at 134; *Warner* v. *Goltra*, 293 U.S. 155, 160 (1934).

Although the final language of the Act excluded seamen by employing the phrase "any vessel" instead of the earlier phrase "a barge, lighter, tug, dredge, vessel, or other ocean, lake, river, canal, harbor, or floating craft," Congress presumably intended that the shorter and equally comprehensive phrase "*any* vessel" would encompass all of the illustrative watercraft included in the House version of the bill, such as barges, tugs, and dredges. In enacting the LHWCA's exclusion of "a master or member of a crew of any vessel," Congress intended to remove from LHWCA cover-

age the same class of workers—seamen—that had been initially included in the bill reported by the House Judiciary Committee. *E.g.*, 69 Cong. Rec. at 5403 (responding to question about committee report's statement that the bill provides compensation benefits to seamen, Rep. Graham stated that "[t]his is an amendment taking the seamen out"). Because the language in the final bill defining seamen was considered to be synonymous with that in the reported bill, the reported bill's reference to a "dredge" is a clear indication that Congress understood that the phrase "any vessel" in the final enactment would include a watercraft such as a dredge. That conclusion is particularly warranted in light of the generally established view under maritime law at the time of the LHWCA's enactment that dredges were vessels. See pp. 24-27, *supra*.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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