

Jones Act Fact Sheet – 18 June 2010

Background:

Currently 15 foreign-flagged vessels are involved in the largest response to an oil spill in U.S. history. No Jones Act waivers have been granted because none of these vessels have required such a waiver to conduct their operations as part of the response in the Gulf of Mexico.

While we have not seen any need to waive the Jones Act as part of this historic response, we continue to prepare for all possible scenarios, and that's why Admiral Allen provided guidance to process necessary waivers as quickly as possible to allow vital spill response activities being undertaken by foreign-flagged vessels to continue without delay should that be necessary.

To date, the administration has leveraged assets and skills from a number of foreign countries and international organizations as part of this historic, all-hands-on-deck response.

Summary:

In no case has the Federal On Scene Coordinator (FOSC) or Unified Area Command (UAC) declined to request assistance or accept offers of assistance of foreign vessels that meet an operational need because the Jones Act was implicated. The Jones Act was passed in 1920. The Jones Act and similar laws governing coastal shipping were passed to encourage development of the American merchant marine for national defense and commercial purposes. U. S. Custom Border Protection (CBP) in consultation with the Maritime Administration (MARAD) administers waivers of the Jones Act in non-emergent cases. A Jones Act waiver was granted during Hurricane Katrina due to the significant disruption in the production and transportation of petroleum and/or refined petroleum products in the region during that emergency and the impact this had on national defense. In anticipation of Jones Act waiver requests the National Incident Commander (NIC) has coordinated closely with relevant agencies to ensure accelerated processing for any waiver requests. To date, no waivers of the Jones Act (or similar federal laws) have been required because none of the foreign vessels currently operating as part of the BP Deepwater Horizon response has required such a waiver.

PROCESS FOR DETERMINING APPLICABILITY OF JONES ACT AND OBTAINING WAIVERS

Generally, the Jones Act requires that all goods transported in coastwise trade between United States ports be carried in United States flagged vessels, constructed in the United States, owned by United States citizens. Additionally, U.S. law, generally, requires it to be crewed by United States citizens and/or permanent residents. The threshold determination is made by CBP in consultation with MARAD. CBP works closely with the UAC and NIC when such issues arise.

A foreign flagged vessel can still conduct certain planned operations for the BP Deepwater Horizon response if the vessel is an oil spill response vessel (OSRV) and meets the requirements

of 46 U.S.C. § 55113. In all such cases, based on MARAD's determination of availability of Jones-Act qualified vessels, the FOSC makes the determinations required by § 55113 on a case-by-case basis and coordinates with the State Department in the matter as appropriate. To date, none of the foreign flagged vessels deployed in the BP Deepwater Horizon response have needed to rely upon 46 U.S.C. § 55113.

In anticipation of possible need for deployment of foreign flagged OSRVs, the FOSC, in coordination with other federal agencies, determined on June 16, 2010, pursuant to 46 U.S.C. §55113, that there are an insufficient number of specialized oil skimming vessels in the U.S. to keep pace with the unprecedented levels of oil discharges in the Gulf of Mexico. Based upon this determination, foreign specialized skimming vessels may be deployed to response operations if the foreign country provides the same privileges to U.S. vessels. The use of such vessels under these circumstances would not violate the Jones Act or require a Jones Act waiver.

Alternatively, and for vessels not considered to be OSRVs, a Jones Act waiver request, pursuant to 46 U.S.C. § 501, can be submitted by an interested party, either inside or outside the U.S. government. The FOSC would again coordinate this effort with CBP who would make a recommendation to the Secretary of the Department of Homeland Security in consultation with MARAD. In making that determination, consideration would be given to unique characteristics and capabilities of the foreign flagged vessel compared to what is available in the U.S fleet. Consideration would also be given to the impact of any delay in operations that might be caused by waiting for a United States vessel to arrive on scene or deploy the specific capabilities needed. To date, no Jones Act waivers have been necessary because foreign flagged vessels involved in the BP Deepwater Horizon response have not been engaged in activities that would require such a waiver.

HISTORY:

For over 200 years, the United States Customs Service, now CBP, has been responsible for enforcing and administering laws and regulations which set forth procedures to control and oversee vessels arriving in, and departing from, U.S. ports and the coastwise transportation of merchandise between U.S. ports. Federal laws protecting U.S. shipping date back to the First Congress in 1789. The coastwise law governing the transportation of merchandise was first established by Section 27 of the Merchant Marine Act of 1920, sponsored by Senator Wesley L. Jones

(hence its name, the "Jones Act"), which revamped the U.S. shipping laws governing cabotage, shipping mortgages, seamen's personal injury claims, etc. That statute provided that "[N]o merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including districts, territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States."

The intent of the coastwise laws, including the Jones Act, was to promote U.S. shipping interests. The Jones Act (46 U.S.C. § 55102), provides that the transportation of merchandise between

U.S. points is reserved for U.S.-built, owned, and documented vessels. Pursuant to section 55102, “a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of Title 46 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement. Consequently, foreign-flag vessels are prohibited from engaging in the coastwise trade—transporting merchandise between U.S. coastwise points. In addition, the same prohibitions apply to U.S.-flag vessels that do not have a coastwise endorsement on their document, i.e., are not coastwise qualified.