

## **Jones Act Fact Sheet – Deepwater BP Oil Spill Response – July 6, 2010**

Currently, dozens of foreign-flagged vessels are involved in the largest response to an oil spill in U.S. history, and additional specialized foreign skimming vessels are en route to the Gulf to assist in this historic response.

Jones Act waivers have not been required for any current response activities. To date, two preemptive waivers have been granted that would allow a total of seven foreign-flagged vessels to move closer to shore should they need to be evacuated from the wellhead area because of severe weather.

### **Questions & Answers**

#### **Q: Why has the Jones Act not applied to foreign-flagged response vessels in the Gulf to date?**

**A:** Jones Act waivers have not been required for any of these vessels' current activities – for two reasons:

- Jones Act jurisdiction extends to three nautical miles off U.S. shores. The Federal On-Scene Coordinator made a determination that foreign flagged skimming vessels involved in the oil spill response within the Jones Act jurisdiction are exempted from the Act under 46 U.S.C. §55113, if the foreign country provides the same privileges to U.S. vessels.
- Foreign flagged vessels not involved in skimming are currently operating outside of the area that the Jones Act has jurisdiction – the leak site is over 40 miles off shore.

#### **Q: Has the Jones Act stood in the way of any offers of international assistance?**

**A:** In no case has any offer of assistance been declined because of the Jones Act or similar laws.

#### **Q: What will happen should a Jones Act waiver be needed as part of the response?**

**A:** The administration has taken steps to proactively ensure that the Jones Act will not inhibit any offers of assistance now or in the future:

- First, in anticipation of any Jones Act waiver requests, the National Incident Commander (NIC) has coordinated closely with the U.S. Maritime Administration, U.S. Customs and Border Protection, and the Departments of Defense, Energy and State to ensure accelerated processing for any waiver requests.
- Second, in anticipation of possible need for deployment of foreign-flagged specialized oil spill response vessels, the Federal On-Scene Coordinator has made a determination in coordination with other federal agencies that 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.

**Q: Does the Jones Act apply to skimmers?**

**A:** Following a determination made by the Federal On-Scene Coordinator, skimming vessels involved in the oil spill response are exempted from the Jones Act under 46 U.S.C. §55113.

In addition, the Jones Act simply does not apply to vessels skimming oil outside of three nautical miles from the U.S. coast. Currently, hundreds of U.S.-flagged vessels are skimming oil inside three miles.

**Q: Have any Jones Act waivers been granted?**

**A:** Yes. Two preemptive Jones Act waivers have been granted that would allow a total of seven foreign-flagged vessels to move closer to shore should they need to be evacuated from the wellhead area because of severe weather.

These vessels, some of which are already on scene collecting oil being contained by the Discoverer Enterprise from the top hat device, deploy unique technologies that no U.S. flagged vessel is able to provide at this time. The granting of these waivers is a proactive step and the operations these vessels are currently engaged in do not require a Jones Act waiver.

Currently, other vessels periodically deliver the oil they collect to port. However, as part of the ongoing planning for severe weather and potential hurricanes, Jones Act waivers have been granted that would allow these foreign-flagged ships to bring oil closer to shore themselves should the weather get bad enough that an evacuation plan is carried out.

The vessels' presence in the Gulf is part of the federal government's directive that BP create additional redundancy mechanisms that will increase their oil collection capabilities quickly.

**Q: What is the process for determining applicability of the Jones Act, and for obtaining waivers?**

**A:** Generally, the Jones Act requires that all goods transported in coastwise trade between U.S. ports be carried in U.S.-flagged vessels, constructed in the United States, and owned by U.S. citizens. Additionally, U.S. law, generally, requires that 75 percent of the crew on U.S. flagged vessels be U.S. citizens and/or permanent residents.

The determination to grant a Jones Act waiver is considered by U.S. Customs and Border Protection in consultation with the U.S. Maritime Administration, and the Departments of Defense and Energy, and a final decision is made by the Secretary of Homeland Security. The determination is made after the U.S. Maritime Administration has surveyed the industry to determine the availability of U.S. ships.

**Q: Has this process changed for requests related to the BP oil spill response?**

**A:** Yes. In the case of requests related to the BP oil spill response, Admiral Allen has coordinated closely with the U.S. Maritime Administration, U.S. Customs and Border Protection, and the Departments of

Defense, Energy and State to ensure that any waiver requests for offers of assistance determined to effectively aid the response effort will receive accelerated processing.

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. If the assistance being offered is determined to fit the needs of the current response, the Federal On-Scene Coordinator would coordinate expedited processing of the request with CBP, who would make a recommendation to the Secretary of Homeland Security. This recommendation is provided after the U.S. Maritime Administration surveys the availability of U.S. ships. In addition, consideration would be given to the 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 U.S.-flagged vessel to arrive on scene or deploy the specific capabilities needed.

In anticipation of possible need for deployment of foreign flagged specialized oil spill response vessels, the Federal On-Scene Coordinator, 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 United States to keep pace with the unprecedented levels of oil discharges in the Gulf of Mexico. Based upon this determination, foreign specialized purpose-built 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.

## **History**

For more than 200 years, the U.S. Customs Service, now CBP, has been responsible for enforcing and administering laws and regulations setting forth procedures to control and oversee vessels arriving in and departing from U.S. ports, as well as the coastwise transportation of merchandise between U.S. ports. Federal laws protecting U.S. shipping date back to the First Congress in 1789.

The law governing the transportation of merchandise “coastwise” – meaning between U.S. ports – 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 (i.e. the transport of goods or passengers between two points in the same country), 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.

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