

# U.S. Customs & Border Protection



## **Coastwise Trade: Navigating through the Jones Act**

# UNIFORMED COMPONENTS



Office of Air and Marine

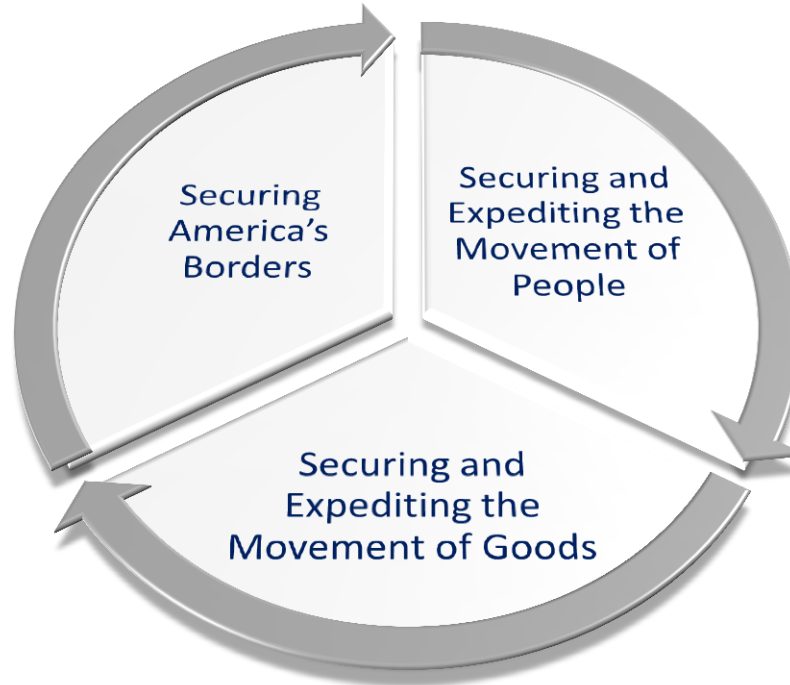


Office of Border Patrol



Office of Field Operations

# THREE PRONGED MISSION



# What Are Coastwise Trade Laws

Restrict transportation of passengers and merchandise between points in the United States by vessels that are;

- Built in the United States
- Documented under U.S. law
- Owned by citizens of the United States

*CBP is the enforcement arm of Coastwise Trade*

# Purpose of Coastwise Laws

To create a “coastwise monopoly” for the **development and protection of domestic shipbuilding and American maritime interests** by prohibiting transportation of merchandise and passengers between coastwise points in the United States by vessels not coastwise qualified.

- Protection of the maritime interest in the United States
- Protection of the shipbuilding interest in the United States

# Jones Act & National Security

Domestic Maritime System includes:

- Over 360 Seaports
- Excess of 3,000 seaport facilities
- Over 40,000 regulated vessels

National Security mission is a layered approach

- Enforcement of the Jones Act

# Jones Act & National Security

## Without Coastwise Trade Laws

Southern land border	– 1,989 miles
Northern land border	– 5,525 miles
National coastline	– 95,000 miles

Without coastwise trade laws:

- Unfettered access by foreign-owned vessels
  - Inland waterways, rivers, harbors
  - Unencumbered access to seaport facilities
    - Refineries, critical infrastructures, etc...

# Merchandise v. Equipment

- 19 U.S.C. 1401(c) – “...goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of Title 31.
- Vessel Equipment - items which are “necessary and appropriate for the navigation, operation, or maintenance of a vessel and for the comfort and safety of the persons on board.” Treasury Decision (T.D.) 49815(4) (1939)

**\*\*When transported by the vessel on which it is used.**



# The Jones Act

46 U.S.C. 55102

No vessel may 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 is:**

- U.S.-built, owned and documented with a coastwise endorsement or, if exempt from documentation, would otherwise be eligible.

# The Jones Act - Penalties

46 U.S.C. 55102(C)

## Penalty

- Merchandise subject to seizure OR
- **Monetary penalty equal to the value of the merchandise** OR
- actual cost of the transportation, whichever is greater, from any person transporting the merchandise or actually causing it to be transported.

# Additional Maritime Coastwise Trade Laws

- **Passenger Vessel Services Act (PVSA)**
  - 46 U.S.C. 55103
- **Dredging Act**
  - 46 U.S.C. 55109
- **Towing Act**
  - 46 U.S.C. 55111
- **Salvage Act**
  - 46 U.S.C. 80104
- **Oil Spill Response Act**
  - 46 U.S.C. 55113

# Jones Act Division of Enforcement (JADE)

- National Unit approved July 2017
- Located within Field Office, New Orleans
- Education & Enforcement

# Purpose of JADE

- Provide uniformity across CBP and the industry regarding coastwise trade laws
- Clearinghouse for all coastwise trade law issues
- Facilitate legitimate trade

# What Will JADE Do

- Assist ports of entry with issues involving coastwise trade
- Contact ports of entry when allegations are forwarded to our attention
- Providing outreach to industry partners
- Monitor e-Allegation portal for Jones Act allegations
- Providing awareness training to CBP and internal DHS partners
- Provide informal preliminary findings to industry partners on coastwise trade questions
  - Consultation with Chief Counsel/Regulations & Rulings

**Formal rulings will be requested through Regulations & Rulings**

# Jones Act Division of Enforcement (JADE)

## How to contact the JADE

- Mike Hebert - (504) 670-2074
- Roy Gauthreaux - (504) 670-2308
- Group Mail box is [jonesact@cbp.dhs.gov](mailto:jonesact@cbp.dhs.gov)

# Where Does the Jones Act Apply?

- The United States, including island territories and possessions of the United States.
- U.S. Territorial Waters of the United States
  - 3nm wide belt wide, seaward of the territorial sea baseline
  - Internal waters, landward of the territorial sea baseline
    - Inland navigable waterways



# Jones Act Application Exceptions

46 U.S.C. 55101

- American Samoa
- Northern Mariana Islands
- Virgin Islands (until President declares otherwise)

Puerto Rico – **Jones Act applies**, PVSA does not unless U.S vessel available. 46 U.S.C. 55104

# Where Does the Jones Act Apply?

The laws of the United States are extended to the **subsoil** and **seabed of the OCS** and to **all artificial islands**, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the OCS were an exclusive Federal jurisdiction located within a State.

**Outer Continental Shelf Lands Act OCSLA - 43 U.S.C. 1333(a)(1)**

# Applicability To OCS



# Does OCSLA Apply?

## 2 – Prong Test

- Is the “installation or device” –

(1) “permanently or temporarily attached”

AND

(2) “for the purpose of exploring for, developing or producing resources therefrom”



# Formal Rulings

- <http://rulings.cbp.gov/index.asp>
- Regulations and Rulings, Office of Trade at Headquarters
- 19 CFR 177.9(c)
  - No other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter.

# Offshore Drilling

## Are You Attached?

Attachment is recognized in the following circumstances:

- Drill stem is inserted into the seabed;
- Support or anchoring system is in place but the drill stem is not yet inserted into the seabed;
- While “**dynamically positioned**” over a drill site with only the drill stem expected to be in contact with the seabed, the stem is temporarily withdrawn for reasons of safety, service, adjustment, or repair;
- Platforms or production facilities attached to the seabed by any means.

# What Is A Point

- Domestic Seaports
- Areas within the territorial waters
- Drilling rig or MODU that is operating on the OCS in the drilling mode
- Production facilities
- Vessels attached in support of oil & gas activities

# Registry Endorsement

## 46 U.S.C. 12111 (Registry Endorsement)

- (d)(1) Only a vessel for which a certificate of documentation with a **registry endorsement** is issued may engage in—
  - (A) the setting, relocation, or recovery of the anchors or other mooring equipment of a **mobile offshore drilling unit** that is **located over the OCS**;



# Registry Endorsement (cont'd)

- (B) the transportation of merchandise or personnel to or from a point in the U.S. from or to a MODU located over the OCS that is **not attached** to the seabed.
- (2) Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12112 of this title (46 U.S.C. 12112).

# Vessel Documentation

- Registry Endorsement
  - Vessel can engage in foreign trade
- Coastwise Endorsement
  - Vessel can engage in unrestricted coastwise trade, dredging, & towing.

# Vessel Documentation

## U.S. Built

U.S. built vessel permanently loses coastwise endorsement eligibility if:

- Sold in whole or part to a non U.S. citizen
- Vessel is registered under laws of a foreign country
  - 46 USC 12132 (a)
  - Vessels of more than 200 gross tons
- Rebuilt outside of the United States
  - 46 USC 12132 (b)
  - Determination made by USCG

# United States Maritime Administration (MARAD)

- Department of Transportation
- Responsible for determining if there are eligible coastwise qualified vessels that can perform the job.



**M O V I N G T H E**  
**AMERICAN**  
**ECONOMY**

# e-Allegations

<https://eallegations.cbp.gov/Home/allegation>



# Waiver Authority

## 46 U.S.C. 501

- (a) Department of Defense request – CBP grants in-house
  - Criterion – **National Defense**
- (b) All other requests – Secretary of DHS is deciding authority
  - Criterion - **National Defense & consultation by MARAD**



# Points to Remember

- **CBP** – Enforces coastwise laws
- **U.S. Coast Guard** - Determines vessel eligibility for coastwise endorsement
  - Issues certificates of documentation
- **Maritime Administration** – Assesses U.S. vessel availability