

## By the Capes -- A Primer on U.S. Coastwise Laws

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### Introduction

Title I of the Merchant Marine Act of 1936 declares, in part, that the national defense and the development of domestic commerce of the United States require a merchant marine sufficient to carry the nation's domestic waterborne commerce. A number of federal laws guide this policy, including several that restrict domestic commerce to vessels that are constructed in the United States, owned by U.S. citizens, and registered under the U.S. flag. While actual interpretation and enforcement of those laws is the responsibility of the U.S. Customs Service and the U.S. Coast Guard, the Maritime Administration (MARAD) is concerned with their effect on the national programs that it administers. Accordingly, MARAD is frequently the first of the three agencies to be contacted on questions concerning the coastwise laws.

This pamphlet has been prepared as an aid to better understand the origin, purpose and content of the coastwise laws. It is not intended to be an exhaustive treatment of the subject. Accordingly, MARAD of the Department of Transportation, and the United States Government do not represent this summary discussion of the major coastwise laws as determinative with regard to any particular set of facts requiring construction or interpretation of the pertinent statutes and regulations implementing the coastwise laws. Readers are urged to consult the cited statutes (United States Code) and regulations (Code of Federal Regulations) for their full text as well as rulings of the U.S. Customs Service or U.S. Coast Guard for interpretations applicable to specific situations.

General inquiries concerning this publication or the coastwise laws may be made to:

U.S. Department of Transportation, Maritime Administration, Office of Ports and Domestic Shipping, 400 Seventh Street, S.W., Washington, D.C. 20590 Tel: (202) 366-4357 Fax: (202) 366-6988

### The Coastwise Laws

*Q. What is the Jones Act?*

A. As popularly used, the term refers to several U.S. laws that govern the domestic transportation of merchandise and passengers by water. Strictly speaking, it applies only to Section 27 of the Merchant Marine of 1920 [46 U.S.C. 883; 19 CFR 4.80 and 4.80(b)] which has come to bear the name of its sponsor, Senator Wesley L. Jones.

*Q. What does Section 27 do?*

A. Basically, it provides that merchandise transported entirely or partly by water between U.S. points--either directly or via a foreign point--must travel in U.S.-built, U.S.-citizen owned vessels that are U.S.-documented by the Coast Guard for such carriage.

*Q. Does Section 27 apply to passengers as well?*

A. No. However, another law enacted in 1886 requires essentially the same standards for the transport of passengers between U.S. points [46 App. U.S.C. 289; 19 CFR 4.80(a)].

*Q. Are there similar laws affecting other kinds of marine activity?*

A. Yes. *Fishing* in U.S. territorial waters and the Fishery Conservation Zone (3-200 miles from the territorial sea baseline) may be conducted only by U.S.-built and documented vessels (with fishery license or endorsement). However, in the Fishery Conservation Zone, fishing may be conducted by foreign fishing vessels holding permits from the National Marine Fisheries Service. Except as otherwise provided by treaty, foreign vessels may not land in U.S. ports any fish caught or received on the high seas (16 CFR 4.96, 10.78 and 10.79). *Towing* in U.S. harbors or between U.S. points must be performed by a U.S.-built and documented tug, except where the towed vessel is in distress (46 U.S.C. App. 316; 19 CFR 4.92). *Salvage* operations in U.S. waters must be performed by U.S. documented vessels (not necessarily U.S.-built), except as provided by treaty or unless the Customs Service is satisfied that no suitable U.S. vessel is available (46 U.S.C. 316(d); 19 CFR 4.97). *Dredging* in U.S. waters must be performed by a U.S.-built and document dredge (PL 100-329).

*Q. Is there a name for such laws?*

A. They are known collectively as "coastwise laws." The word "cabotage" is probably derived from the French word "caboter" meaning to sail coastwise or "by the capes."

*Q. Was the Jones Act the first law of its kind?*

A. No. There have been cabotage laws in this country since 1789. The first one imposed a fee upon foreign built vessels operating in the coastal trades and fisheries and gave U.S.-built and U.S.-owned vessels preferential treatment with respect to tonnage taxes and cargo import duties.

*Q. Do other countries have cabotage laws?*

A. Most major trading nations of the world have or have had cabotage laws of some kind (See MARAD publication, *By the Capes Around the World: A Summary of World Cabotage*

Practices.)

*Q. What is the purpose of having such laws?*

A. The broad purposes, common to most countries, are to assure reliable domestic shipping service and the existence of a maritime capability that is completely subject to national control in times of war or national emergency. Vessel construction and repair in domestic yards helps to sustain these critical national mobilization capabilities. The freight money earned by these vessels remains in the national economy as opposed to being exported, while public revenues benefit from both corporate and personal tax receipts. Requirements for citizen crews provide employment and develop a cadre of trained and experienced seafarers. In the United States, the business opportunities guaranteed by these laws has encouraged high risk, pioneering shipping innovations such as integrated tug/barge combinations, containerization, and high speed roll-on/roll-off vessels.

*Q. Do U.S. cabotage laws apply uniformly throughout the country and its territories and possessions?*

A. Not entirely. For example, American Samoa is fully exempt, and the Commonwealth of the Northern Mariana Islands is exempt, except with regard to the activities of the United States government and its contractors in the Northern Mariana Islands (48 U.S.C. 1664; Pub. L. 94-241, Article V). The Virgin Islands are exempt until declared otherwise by Presidential Proclamation (46 App. U.S.C. 877). Foreign-built, U.S. flag vessels may operate between Guam, American Samoa, Wake, Midway or Kingman Reef and other U.S. ports (46 U.S. C 12105). Passengers may travel between the U.S. mainland and Puerto Rico on a foreign-flag passenger vessel, provided there is no eligible U.S. vessel offering such service [46 U.S.C. 289 (c)].

*Q. Are there other kinds of exceptions to the coverage of the cabotage laws?*

A. Yes. There are several provisos in Section 27 which have been added over the years to address conditions deemed by Congress to warrant special treatment. Topics covered include service on the Yukon River; established ferry services owned by railroads; joint U.S. and Canadian rail/water movements; carriage of empty cargo accessory equipment; transfers of cargo between ship borne barges of the same owner; and transport of fish processing supplies.

*Q. Are there any circumstances under which a foreign-built vessel may operate in U.S. domestic service?*

A. A foreign-built or foreign-flagged vessel wrecked in U.S. waters, when it is salvaged and rebuilt in the United States, may be reflagged and awarded domestic operating authority if the cost of the rebuilding is at least three times the appraised value of the vessel *immediately*

*following salvage* (46 U.S.C. 14). Also, a foreign-built or foreign-flagged vessel which is captured in war by citizens of the United States and lawfully condemned as prize, or adjudged to be forfeited for a violation of U.S. law, becomes eligible for reflagging with domestic operating authority (46 U.S.C. 12106-08).

*Q. What requirements must be met by a vessel for it to be considered as built in the United States?*

A. For documentation purposes, the U.S. Coast guard considers a vessel to be built in the United States if all major components of its hull and superstructure are fabricated in the United States, and the vessel is assembled entirely in the United States (46 CFR Part 67).

*Q. If a U.S.-built vessel is operated under foreign registry, can it return to U.S. registry with domestic trading privileges?*

A. It can return to U.S. registry but it loses its domestic trading privileges. Any period of foreign registry makes a vessel permanently ineligible to operate in U.S. domestic trade (46 U.S.C. 883). However, there have been instances in which Congress enacted special legislation to restore domestic trading privileges of U.S. -built, reflagged vessels.

*Q. Can a U.S.-built vessel that is rebuilt over seas keep or regain its domestic trading privileges?*

A. Foreign rebuilding of a vessel of 500 or more gross tons disqualifies it for any subsequent employment in the domestic trades (46 App. U.S.C. 883). Determination of when rebuilding has occurred requires a technical assessment by the U.S. Coast Guard.

*Q. Are there any circumstances under which a U.S. corporation owned by non-citizens may own and operate vessels in U.S. domestic trade.?*

A. Yes. Under the provisions of the "Bowaters Act," a 1958 amendment to the Jones Act (46 App. U.S.C. 883-1) corporations that are organized under the laws of the United States, owned by non-citizens, and primarily engaged in the manufacturing or mineral industries may transport their proprietary cargo on their own or chartered barges. To be eligible for documentation under the laws of the United States under the Bowaters amendment, a self-propelled vessel (tug/towboat) must be less than 500 gross tons.

*Q. What Federal agency is responsible for administration of vessel documentation?*

A. The U.S. Coast Guard National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV, Tel: 1-800-799-8362, rules on the standards and issues the endorsements necessary to document vessels in the United States.

*Q. Do the cabotage laws apply to points located on the U.S. Outer Continental Shelf (OCS)?*

A. The Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1333) provided for extension of certain U.S. laws to the OCS. The Customs Service has ruled that they apply to mobile drilling rigs during the period that the rigs are secured to or submerged on the OCS (TD 54281, 1/9/57). Subsequent Customs rulings have applied the laws to drilling platforms, artificial islands, and similar structures, and to warehouse vessels anchored at a point over the OCS when these vessels are used to resupply drilling rigs on the OCS.

*Q. What is the practical effect of such rulings?*

A. The effect has been to require that water transportation of merchandise and personnel between such structures and vessels, and between them and U.S. points not on the OCS, be accomplished by U.S.-built, U.S.-owned, and U.S.-documented vessels.

*Q. Which office of the Customs Service deals with interpretation and enforcement of the cabotage laws?*

A. The U.S. Customs Service, Entry Procedures and Carriers Branch, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229 is responsible for interpreting and enforcing the cabotage laws. Formal requests for ruling must be submitted in writing. Informal requests for advice on proposed activities may be made to (202) 927-2320.

*Q. Under what circumstances may foreign cruise ships conduct cruises from U.S. ports?*

A. If a passenger leaves a vessel at the same port where boarding took place, there has been no transportation *between* U.S. points. Vessel calls at intermediate U.S. points in the course of a single cruise are also allowable, provided that no passenger permanently leaves the vessel at any of those ports and that a call is made at one or more foreign ports. However, if the cruise itinerary includes a call at a foreign port sufficiently far from the United States (as for example in South America, Europe, Asia or Africa), a passenger may permanently leave the vessel at any subsequent U.S. port. When a passenger boards and leaves a vessel at the same U.S. point, and the vessel touches no other U.S. or foreign points but merely goes on a so-called "voyage to nowhere," the coastwise passenger law is not violated if the vessel proceeds beyond U.S. territorial waters into the high seas or foreign waters (19 CFR 4.80(a)). This is not true, however, for passengers aboard a charter fishing vessel, since such vessels are considered to be engaged in coastwise trade, even though their itinerary may be identical to that of a cruise vessel on a "voyage to nowhere." Charter fishing boats must satisfy the same U.S. construction and ownership requirements as any other vessel in coastwise trade.

*Q. Is there any provision for waiver of the cabotage laws?*

A. The navigation laws (including the Jones Act) can only be waived under the authority provided by the Act of December 27, 1950 (64 Stat. 1120; note preceding 46 U.S.C. App. § 1) and then only *in the interest of national defense* . Waivers may also be accomplished through special legislation. Neither process has been extensively used. If the Secretary of Defense states that a waiver is in the interest of national defense, Treasury *must* grant it. Treasury *may* grant a waiver on its own initiative or upon the written recommendation of the head of any other government agency when such a waiver is deemed by Treasury to be in the interest of national defense. Few waivers have been granted for purely commercial shipping activities; most have been to accommodate governmental activity.

A. Have there been any recent amendments to the Jones Act?

A. Yes. In 1988, Congress passed Public Law 100-329 that extended the requirement for U.S.-flag registry to any tow or vessel transporting valueless material or any dredged material between a point in the United States and a point within the Exclusive Economic Zone or between points in the Exclusive Economic Zone.

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