

# Frequently Asked Questions About the Jones Act and the Gulf Oil Spill

## WHAT IS THE JONES ACT?

The "Jones Act" refers to several provisions of federal law that reserve certain maritime services within American domestic waters for U.S.-built, U.S.-owned, and U.S.-crewed vessels. Almost every nation has similar laws, which are known as cabotage laws. The primary purpose of a cabotage law is to draw a distinction between international trade (between countries) and domestic trade (within a country). Ships (and airplanes and trucks) that operate in U.S. domestic trade must obey American laws, including immigration, employment, safety, environmental, tax, labor and other laws. American laws in almost every category are stricter than the laws that govern shipping in international trade. Pertinent to the Gulf oil spill, the law already includes well-established provisions that allow the use of foreign vessels when no American vessel is available. American law is particularly flexible in allowing the use of foreign oil spill response vessels such as skimmers.

## HAS THE JONES ACT RESULTED IN FOREIGN VESSELS, PARTICULARLY FOREIGN SKIMMING VESSELS, BEING TURNED AWAY?

The National Incident Command (NIC) says there has been "no case" where an offer of foreign assistance has been declined because of the Jones Act. In fact, the U.S. State Department has said that "[a] number of offers of assistance have been accepted," including Mexican skimmers, Norwegian skimming systems and other assets from Canada, Germany, and the Netherlands. The Jones Act does not even apply to skimming operations outside of 3 miles from shore. Oil skimming outside 3 miles, including near the well 50 miles from shore that is the source of the leak, is completely open to foreign oil spill response vessels. That is where the vast majority of skimming has occurred so far.

The Jones Act also can be waived on a case-by-case basis if there is a need but no American vessel is available to meet that need. That waiver process is always quick but it has been streamlined even further by Admiral Thad Allen and the NIC since the spill to deal with any waiver requests. Additionally, on June 16, 2010, the Coast Guard Federal On-Scene Coordinator for the oil spill determined that there is an insufficient number of specialized oil skimming vessels in the U.S. to respond to this spill. This determination allows foreign specialized skimming vessels to be deployed within 3 miles of the shore if the foreign country provides the same privileges to American skimming vessels in that country's waters.

## ARE THESE CASE-BY-CASE WAIVERS BEING GRANTED?

The NIC says "no waivers of the Jones Act ... have been required because none of the foreign vessels currently operating as part of the BP Deepwater Horizon response has required such a waiver." As discussed above, the deployment of specialized foreign skimming vessels that is now taking place does not require a waiver of the Jones Act. If the use of foreign vessels is necessary, the American maritime industry has stated publicly that it will not oppose the use of these well-established waiver procedures.

## **THE CONSUL GENERAL OF THE NETHERLANDS WAS QUOTED AS SAYING THAT HIS COUNTRY OFFERED VESSELS BUT THE U.S. AND BP DECLINED. WHY?**

We do not know why those particular Dutch vessels were declined (or even if they were) but we do know it wasn't because of the Jones Act. As mentioned earlier, foreign vessels can skim oil or perform most other maritime services freely in the area where most of the oil can be found – out beyond 3 miles from our shoreline – plus the streamlined provisions in the law to allow foreign skimmers to operate within 3 miles have been activated. Many foreign (and U.S.-flag) vessels and assets, including from the Netherlands, are actively involved in the Gulf cleanup.

## **IF THE PROBLEM ISN'T THE JONES ACT, WHY ISN'T EVERY AVAILABLE SKIMMING VESSEL IN THE WORLD AT WORK IN THE GULF?**

The problem isn't the Jones Act – even state-of-the-art American vessels are standing by in the Gulf, ready and willing to participate in the cleanup. Also, oil spill response equipment offered by foreign nations, such as Norwegian skimming systems, can be deployed on U.S. vessels. In some cases, according to the NIC, offers of international assistance have been turned down because the offer did not fit the needs of the response. The Gulf oil spill is an unprecedented disaster. Finding, evaluating, procuring, and directing oil spill response vessels or skimming, booms or other response equipment does not happen overnight, and both BP and the federal government have acknowledged that the procurement of skimmers has not occurred as quickly as people would like. The most recent count is that about 500 vessels are skimming as part of BP's so-called Vessels of Opportunity Program.

## **WHY NOT JUST WAIVE THE WHOLE JONES ACT LIKE PRESIDENT BUSH DID AFTER HURRICANES KATRINA AND RITA?**

As noted, the problem is not the Jones Act but possibly one of the overwhelming task of vetting resources necessary to meet this unprecedented disaster. As the needs and available resources are sorted out, every available and useful vessel should be used. However, American vessels and American workers should be given first priority.

A blanket waiver of the Jones Act, as opposed to a vessel-specific waiver (where no American vessel is available), would do away with that basic, common sense approach. It would effectively outsource to foreigners work that Americans legally should get and very much need, especially in this region and economy. A broad waiver eliminating any employment opportunities for American workers would be an odd and even cruel approach considering the economic devastation of the oil spill and related fishing and drilling restrictions on American fishermen, offshore supply vessel operators and others in the Gulf.

## **ARE THERE ENOUGH AMERICAN VESSELS TO DEAL WITH THIS CATASTROPHE?**

Hundreds of American vessels are already involved in the Gulf cleanup but there are many more American vessels standing by waiting to be called. The American fleet is one of the largest in the world and is deeply committed to helping with the cleanup. And when you add in fishing vessels in the Gulf of Mexico that sit idle because of the oil spill, the numbers of American vessels available to assist in the clean-up increases significantly. In fact, foreign vessels can lawfully participate in the cleanup in a variety of ways, and many are already doing so.

## **IF THE JONES ACT IS NOT THE PROBLEM, WHY ARE SOME PEOPLE BLAMING IT FOR DELAYS IN THE OIL SPILL CLEAN-UP?**

People are frustrated considering the catastrophic nature of the Gulf spill. Some Americans do not understand the Jones Act and think it may be an impediment to the cleanup, but it is not. The law does not even affect most of the spill clean-up and is designed to allow, in emergency situations like the Gulf oil spill, the use of foreign ships when no American vessel is available. The system works, and American law is particularly flexible in temporarily allowing the use of foreign oil spill response vessels, like skimmers, when necessary.

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