



The Honourable Peter **DeFAZIO**
Chairman of the Committee on
Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

The Honourable **Sam GRAVES**
Ranking Member of the Committee on
Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

The Honourable Roger **WICKER**
Chairman of the Committee on
Commerce,
Science and Transportation
United States Senate
Washington, DC 20510

The Honourable Maria **CANTWELL**
Chairman of the Committee on
Commerce,
Science and Transportation
United States Senate
Washington, DC 20510

13 February 2020

Dear Chairman DeFazio, Chairman Wicker, Ranking Member Graves, and Ranking Member Cantwell,

RE: GLOBAL SHIPPING INDUSTRY PERSPECTIVE ON THE US CONGRESS PROPOSAL TO AMEND INSTALLATION VESSEL PROVISION IN THE COAST GUARD AUTHORIZATION ACT OF 2019

The International Chamber of Shipping (ICS), the European Community Shipowners' Associations (ECSA) and the Asian Shipowners Association (ASA), are the global and regional trade associations for shipowners and operators, representing all sectors and trades.

Their membership combined represents more than 90% of the world's merchant tonnage and is comprised of over forty national shipowners' associations from around the world, some of whose member companies include offshore installation vessel operators providing services to United States' oil exploration and production, as well as to companies developing offshore renewable energy projects.

ICS, ECSA and ASA have been observing the ongoing work within the US Congress concerning the provision that addresses installation vessels (H.R. 3409, Title III, Section 305) in the US Coast Guard Reauthorization Act passed by the House of Representatives on July 24, 2019. Unlike the House of Representatives, the Senate omitted this provision from its version of the US Coast Guard Reauthorization Act (S.2297).

ICS, ECSA and ASA are aware of current negotiations in relation to the provision between the House of Representatives and the Senate. We understand that the intent of these negotiations is to achieve a compromise which both chambers of the US Congress might find acceptable.

In this respect, the global shipping industry wishes to formally make the following remarks, which we hope will assist in your deliberation:

Summary of industry remarks

- **Background:** The United States Congress is currently considering the proposal to amend a provision in the US Coast Guard Reauthorization Act. The proposal, which addresses installation vessels, is likely to have the effect of extending the original intention of the Merchant Marine Act of 1920 (Jones Act) from the transportation of merchandise, to also include maritime construction tasks.
- **Concerns:** (1) The proposed amendments would likely have an adverse impact on the US offshore oil and gas sector, as well as the offshore renewable energy industry; (2) The changes would likely also have a negative impact on non-coastwise qualified offshore installation vessel operators, which have made substantial investments over several years to support this strategic US industry.
- **Potential consequences:** (1) As a result, the proposed amendments would be expected to make offshore oil, gas and offshore wind operations in the US much more costly, less viable and could have knock-on effects for both US offshore oil and gas jobs and US green jobs. The proposed amendments are therefore also likely to hinder offshore oil and gas market forecasts, which currently anticipate growth by an average rate of 10% annually until 2023¹; (2) A proposed waiver procedure is complex and if adopted would likely lead to unwelcomed uncertainty. This uncertainty would undermine confidence in the US offshore energy market, which is vital to ensure that the market remains attractive for long term investment.
- **Recommendation:** The US Customs and Border Protection Agency (CBP), following its latest public consultation concerning Jones Act rulings, developed a framework to address these issues, as outlined in its final ruling published on December 19, 2019 and effective from February 17, 2020. Consequently, it is suggested that Congress carefully consider whether there is the need to overrule a compromise developed between all stakeholders in an open and transparent process.

¹ Source: Rystad Energy, Research and analysis

Concerns regarding the “Installation Vessel” Provision

Based on our understanding, the initial provision on installation vessels passed by the House of Representatives (H.R. 3409, Title III, Section 305) was deemed to be contentious and unlikely to be adopted in the Senate. Consequently, the installation vessel provision appears to have evolved over time, with three major changes put forward, as a means of increasing the prospect of bipartisan support and approval in both chambers of Congress.

In the revised version currently under consideration, it is clarified that: (1) the waiver procedure only applies to lateral movements related to a lifting operation and that a non-coastwise qualified vessel may conduct lifting operations if it remains stationary; and (2) in the event that a non-coastwise qualified installation vessel is providing lifting services when a coastwise qualified vessel operator seeks a determination from the US Maritime Administration (MARAD), the work can continue for up to 90 days until that determination is made. The new text also includes a “savings clause”, which seems to explicitly prohibit vessels with less than 1,000 MT lifting capacity from engaging in lifting operations with any lateral movement.

The waiver procedure: view of the global shipping industry

While the above mentioned revised version (proposed as compromise text) is an attempt to improve the original installation vessel provision, by exempting “stationary” lifts from the waiver provision and providing an extension of up to 90 days to wind down projects that have already begun, ICS, ECSA and ASA respectfully suggest that some fundamental flaws remain.

The revised version under consideration in the US Congress, if adopted, would reinstate (statutorily) the so-called ‘Koff rulings’² – intended to prohibit any lateral movement – and would therefore represent a complete reversal of the recent compromise decision made by the US CBP. This compromise decision was developed with inputs from both US and international maritime stakeholders, in an open and transparent process to resolve perceived inconsistencies over interpretations of how the Jones Act applies to offshore activities, including lifting operations.

In addition, the suggested waiver procedure for vessels with a lifting capacity of or above 1,000 MT would not only represent a considerable burden for non-coastwise qualified vessel operators but, more importantly, would also likely increase commercial unpredictability, risk and costs (as a consequence) to the detriment of the US offshore oil, gas and wind industries.

² HQ 225102 (September 14, 2012), HQ H235242 (November 15, 2012) and HQ H242466 (July 3, 2013)

Potential impact of the proposed amendments

US offshore oil and gas industry

ICS, ECSA and ASA firmly believe that the impact of the revised version will still render offshore oil, gas and offshore wind operations in the US much more costly, less viable and have knock-on effects for both US offshore oil and gas jobs and US green jobs. The revised version is therefore also likely to hinder offshore oil and gas market forecasts, which currently anticipate growth by an average rate of 10% annually until 2023³. This is because such expected growth will largely depend on access being granted to non-coastwise qualified offshore installation vessels. We are therefore concerned that the revised version will continue to be a serious obstacle for the realization of this growth. This would be at the detriment of US interests, both in jobs and investments.

Furthermore, we are concerned that the “savings clause” prohibiting installation vessels with less than 1,000 MT lifting capacity could jeopardize the safety and the lifting capacity accessible to US offshore energy operations - especially if such installation vessels are not allowed to undertake movements incidental to lifting operations. Therefore, the contribution of non-coastwise qualified offshore installation vessel operators, through their provision of specialist know-how and expertise, is vitally important for the sustainable growth of the US offshore oil and gas industries.

US offshore wind industry

Offshore wind energy, while still in its infancy in the US, is expected to become an important part of the US energy supply and is also expected to introduce significant opportunities to the US supply chain, creating thousands of new jobs with wider economic benefits.

ICS, ECSA and ASA understand that there are currently no coastwise qualified vessels capable of performing major component installation for US offshore wind projects (10-12MW turbines) in an efficient and safe manner. This is also likely to be the case for the installation of other major components such as topsides, foundations and substations. Installing these components will require significant installation vessel lifting capacity, which is not currently available on the US market. Furthermore, these operations may require such offshore installation vessels to perform lateral movements. Until coastwise qualified vessels are introduced in the market, the US offshore wind industry will continue to rely on non-coastwise qualified offshore installation vessels to perform such activities, as necessary.

³ Source: Rystad Energy, Research and analysis

Therefore, prohibiting those highly specialist vessels from operating in the US could seriously delay the development of US offshore wind supply. In addition, our concerns (as previously outlined) regarding the impact of the “savings clause” prohibiting installation vessels with less than 1,000 MT lifting capacity equally apply to the US offshore wind industry.

Contribution of non-coastwise qualified offshore installation vessel operators to the successful development of the offshore wind energy sector in the United States

The revised version of the text is likely to place the myriad of market opportunities at the disposal of US coastwise qualified vessel operators at risk. In the life cycle of an offshore wind farm, more than 18 different vessel types are typically required, creating offshore market opportunities for current US coastwise qualified vessel operators. However, if no coastwise qualified vessels are available to perform the major component lifts, then there would be no requirement for and subsequent investment into the residual US supply chain.

In other words, each offshore wind operation performed by a non-coastwise qualified vessel generates operations performed by coastwise qualified vessels. This was the case, for example, during the implementation of the ‘Block Island’ project, where a non-US controlled shipping company successfully used an installation concept utilizing a non-coastwise qualified installation vessel in combination with two coastwise qualified feeder vessels.

This concept featured a high degree of US content, while leveraging the existing supply chain from the Gulf of Mexico, as well as introducing new suppliers from the Northeast coast. For future utility-scale offshore wind developments, the US content is anticipated to be even higher, as more feeder vessels are likely to be deployed to increase the installation rate.

Global shipping industry recommendation

With the above in mind and having participated in the latest CBP public consultation concerning the Jones Act rulings, ICS, ECSA and ASA are of the opinion that the CBP was able to develop a framework to address these issues, as outlined in its final ruling published on December 19, 2019 and effective from February 17, 2020.

As a result, the global shipping industry is strongly of the view that there is no need for the US Congress to intervene and would encourage the Congress not to include any form of installation vessel provision in the US Coast Guard Reauthorization Act.

ICS, ECSA and ASA sincerely hope that the comments and recommendations hereby submitted will be given careful consideration during this process, to safeguard economic growth and energy independence in the United States.

Yours sincerely,



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Mr Guy Platten
Secretary General
ICS



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Mr Martin Dorsman
Secretary General
ECSA



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Mr Michael Phoon
Acting Secretary General
ASA