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## Stakes are high for Louisiana maritime industry in debate over decades-old law

By Kimberly Quillen, The Times-Picayune

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Ken Wells, president of Marine Offshore Service Association

A debate over the interpretation of a decades-old maritime law has raised questions about the growing role that foreign vessels play in America's offshore energy industry and the ramifications for U.S. fleet operators.

U.S. Customs and Border Protection has been interpreting the Jones Act, which aims to protect the domestic maritime industry, in a manner that allows foreign vessels to transport oilfield cargo and equipment in the Gulf of Mexico and in other spots where offshore work is done. But last summer, at the urging of U.S. fleet operators, the agency proposed adopting a stricter interpretation of the Jones Act that would restrict the role of foreign vessels to installing equipment offshore, not transporting it.

The U.S. offshore marine industry applauded the move, saying lower-cost foreign vessels have an unfair competitive advantage and dampen the willingness of U.S. operators to invest in fleet expansions.

"We are paying U.S. wages. We're paying U.S. shipyard costs. The Jones Act levels that playing field for us," said Ken Wells, president of the Offshore Marine Service Association, a Harahan group that represents operators of U.S.-flagged vessels working in the energy sector. "The Jones Act is a protectionist law, but it is the law -- and it's there for good reason."

But the American Petroleum Institute and others opposed the move to more strictly enforce the act, saying the energy industry relies on foreign vessels and that limiting their role could hamper oil and gas production.

By limiting foreign vessels, "you'd be dramatically slowing down the expansion of oil production," said Sara Banaszak, a senior economist with the American Petroleum Institute.

Customs withdrew its proposal in September, saying it needed to study the issue further. That review is ongoing, according to the agency.

"Both sides are waiting to see what happens," said Rob Vosbein Jr., general counsel and chief administrative officer for Harvey Gulf International Marine LLC, a New Orleans transport company.

The stakes are high for the Louisiana maritime industry, which spends tens of millions of dollars each year building increasingly sophisticated vessels for work offshore.

"Most of the U.S. companies that do this work are here in Louisiana, and most of the mariners are here in Louisiana," Wells said. "We are talking about \$100 million vessels. And if today, with the stroke of a pen, a government agency could ensure that a local shipyard will get a \$100 million order, that's economic stimulus."

### **Eroding the law**

The local marine industry has long been concerned about the Jones Act's interpretation, which has evolved over the years through a series of Customs rulings. In the eyes of the marine industry, those rulings have gradually eroded their Jones Act protections.

"You stretch it a little bit and you stretch it a little bit with each ruling, and all of the sudden you get something that's far from the original letter and spirit of the law," said Otto Candies III, secretary and treasurer of Otto Candies LLC, a Des Allemands marine transport firm.

### **More in the Gulf**

At the same time, foreign vessels have gradually been moving deeper into U.S. markets. Candies said there are anywhere from 50 to 75 foreign-flagged vessels working in the energy industry in the Gulf.

"The last 10 years or so, those numbers have gone up significantly," he said.

Some foreign vessels moved into the Gulf to perform post-Hurricane Katrina repairs in the Oil Patch, and others are working on larger deepwater projects.

Stephen Dick, executive vice president at Tidewater Inc., said a downturn in exploration activity in the North Sea has also resulted in some foreign vessels going to the Gulf.

"The industry has been coping with this for a while, but now there's an influx of foreign vessels. We need to know what the rules are," Dick said.

"It costs more money to build a ship in the United States," Dick said. "The idea that somebody could build the same type of vessel much more cheaply overseas and bring it here and compete against us is counterintuitive."

But the American Petroleum Institute, which commissioned a study by IHS Global Insight on the economic impact of modifying the interpretation of the Jones Act, believes that curtailing

the activity of foreign vessels comes with its own set of costs.

"What we found in informal analysis is that there are certain categories of vessels that are supporting the activity now that are foreign flagged and could be excluded under a more strict interpretation -- and this could have a very significant impact," Banaszak said.

These vessels are "running all over the world, they're heavily contracted. And what the companies end up doing is they get a project and they're trying to line up all of these pieces and they get a window with a very expensive ship to do this very complicated work," Banaszak said.

A limited supply of vessels could create delays and "choke points in the projects," she said.

Harvey Gulf's Vosbein acknowledges that there are occasions when an energy company may have a need that can't be met by a domestic vessel. But in such situations, the energy company has the option of obtaining a waiver that gives it special permission to use a foreign-flagged vessel.

"I don't want to be quoted as saying we have a U.S. vessel for every need. I can't say that's the case," Vosbein said. "I do believe there are some projects that are done for which there truly are no U.S.-flagged vessels. But that's what the waivers are for."

### **Could spur U.S. shipbuilding**

Vosbein believes that if the Jones Act is strictly interpreted, the waivers that are handed out will encourage American companies to build more vessels.

"If we do this right, then time will result in more commerce and more vessels and (fewer) waivers," he said. "Economics will take care of it."

Furthermore, the certainty that a stricter Jones Act interpretation would provide the industry could also spur vessel construction, Vosbein said.

Companies carefully weigh anticipated demand for a vessel before deciding to build it. And uncertainty over competition from foreign vessels adds another layer of risk that companies must consider.

"If you're going to have an influx of foreign vessels, that could really change dynamically the forecast" for a vessel, Vosbein said. "It adds a lot more uncertainty and risk, which always is going to make people less likely to build."

Banaszak said API's analysis considered an eventual increase in shipbuilding activity, but found that it could take as long as five years for the industry to bring new vessels into service. During that five-year period, the more strict interpretation of the Jones Act would diminish economic activity, culminating in the loss of more than 250,000 offshore and related jobs in 2015, according to Banaszak. The economic impact would begin to subside after 2015

as domestic shipbuilding activity began to catch up.

Banaszak also said the API study took into account the benefits of a surge in domestic shipbuilding driven by a stricter interpretation of the Jones Act.

"They did appreciate that there's some economic activity that's gained by the enforcement of this, which is U.S. shipbuilding work," she said. "Especially at a time like now, we need more jobs and we need to secure activities for American commerce, but this is a tradeoff and you'd be losing more than you'd be gaining.

Wells is confident his industry can meet the demand for vessels, even under a stricter interpretation of the Jones Act.

"I think that this industry has always met the customers' needs, and we will meet them in this regard," he said.

### **Shell works to comply**

Shell Oil Co., one of the leading companies in Gulf of Mexico energy exploration, said most of the vessels it leases are owned by Louisiana companies. Shell also recently contracted with a Louisiana company to build and operate for Shell an anchor handling vessel that will be used on an Alaskan exploration project, according to spokeswoman Kelly op de Weegh.

"Shell has assigned a team of regulatory, Jones Act and legal experts to examine projects and ensure that Shell marine operations comply with the law and (Customs) interpretations of the law," op de Weegh said.

Wells hopes that Customs interpretation is one that soon limits foreign vessel activity.

"We need a level playing field where the laws that are designed to protect American vessels and American mariners are enforced," Wells said. "The longer this goes on without Customs coming out with their interpretation, the more that uncertainty creates a problem for everyone."

Candies agrees.

"There are (similar) laws all around the world. The U.S. is no different. If we want to attempt to operate in certain foreign locales, we have a whole litany of laws that we have to comply with. The foreign operators here are" getting around that, Candies said.

"We're not asking for new laws or any sort of favoritism," he said. "What we're looking for is just fair treatment."

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