

Vinson&Elkins

Offshore Wind and the Complexities Presented by U.S. Maritime Laws

John Michael

Partner and Head – Maritime & Offshore Practice
Vinson & Elkins LLP

30th Annual David W. Robertson

UT Admiralty and Maritime Law Conference

October 15, 2021



The “Jones Act”

- Section 27 of the Merchant Marine Act of 1920 – the “Jones Act” and related regulations requires the use of U.S.-flag vessels to (1) transport people and products between two U.S. points, and (2) engage in dredging and towing activities in U.S. waters.
 - These U.S.-flag vessels must be:
 - Built in the U.S.;
 - Owned by U.S. citizens; and
 - Manned by U.S. citizens.
- The Jones Act applies within the navigable waters of the U.S.
 - Coastal waters generally within 3 nautical miles of shore (9 nautical miles for Texas, Western Florida, and Puerto Rico)
- U.S. Customs and Border Protection (CBP) is charged with determining which voyages or vessel movements are covered by the Jones Act.
 - Fines and penalties for Jones Act violations

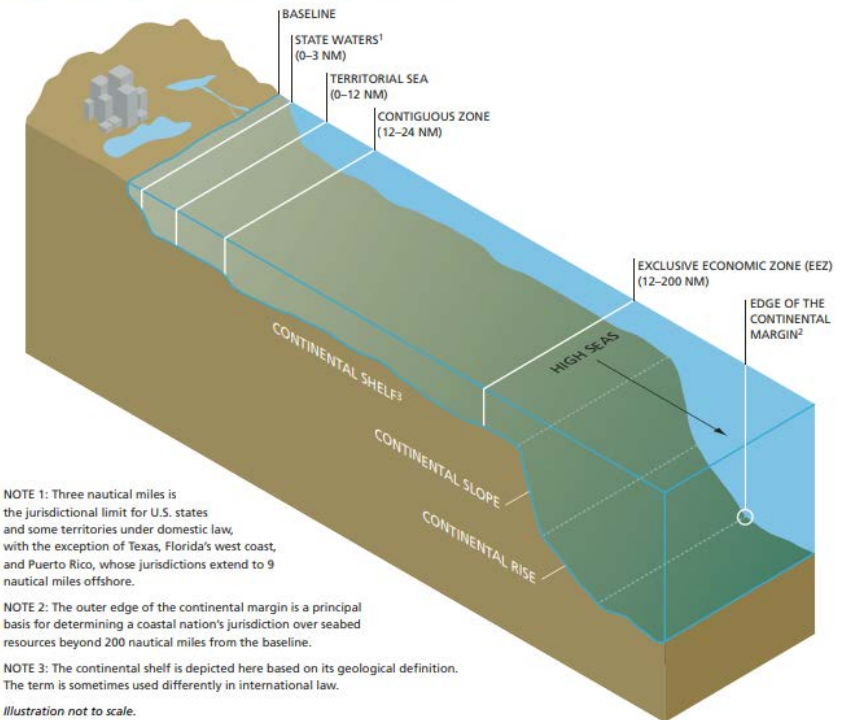


Senator Wesley Jones (R-Wa.)
Photo source: www.govtrack.us

Congress Extends Jones Act to Offshore Wind Projects

- OCSLA does not explicitly mention the Jones Act, but it extends “[t]he Constitution and laws and civil and political jurisdiction of the United States ... to the subsoil and seabed of the outer Continental Shelf.
- In addition, OCSLA extends federal jurisdiction to “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, **including non-mineral energy resources**” (emphasis added).
- Two Recent “Jones Act” Rulings by CBP:
 - Transportation of “scour protection” materials to protect wind turbine generator foundations (01/27/21)
 - Transportation and installation of wind turbine generators by a foreign-flagged jack-up vessel (02/04/21)

Figure P.1 Lines of U.S. Authority in Offshore Waters



Several jurisdictional zones exist off the coast of the United States for purposes of international and domestic law. Within these zones, the United States asserts varying degrees of authority over offshore activities, including living and nonliving resource management, shipping and maritime transportation, and national security. A nation's jurisdictional authority is greatest near the coast.

Also available as part of the eCourse

[Offshore Wind Energy Projects and the Complexities Presented by U.S. Maritime Laws](#)

First appeared as part of the conference materials for the

30th Annual David W. Robertson Admiralty and Maritime Law Conference session

"Offshore Wind Energy Projects and the Complexities Presented by U.S. Maritime Laws"