Jones Act Waiver

Western Regional Emergency Fuel Coordination Meeting

California Energy Commission
Sacramento, CA

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Gordon Schremp
California Energy Commission
Jones Act - Origins

- Merchant Marine Act of 1920, §27, P.L. 66-261
- Vessels transporting cargo between two U.S. points
  - U.S. flagged
  - Constructed in a U.S. shipyard
  - At least 75 percent owned by U.S. citizens
  - Crewed by U.S. citizens
  - Follow U.S. safety regulations
- Only small portion tankers
  - 65 vessels
  - Less than 2 percent

Source: Karatzas Marine Advisors & Co.
Steadily declining since late 1940s.
Fewer Assets Along West Coast

**Jones Act Vessels — Larger (Non-Alaskan) Vessels Deployed in Petroleum Service**

Excludes 11 Alaska crude tankers

<table>
<thead>
<tr>
<th>Kbbl (1)(2)</th>
<th>U.S. Gulf - Clean</th>
<th>U.S. Gulf - Chemicals</th>
<th>U.S. Gulf - Crude Oil</th>
<th>West Coast (3)</th>
<th>MSC (4)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tankers</td>
<td>2,905</td>
<td>623</td>
<td>4,698</td>
<td>2,356</td>
<td>660</td>
<td>11,242</td>
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<tr>
<td>ATBs</td>
<td>3,708</td>
<td>1,008</td>
<td>2,699</td>
<td>1,365</td>
<td>0</td>
<td>8,780</td>
</tr>
<tr>
<td>Tankers &amp; ATBs</td>
<td>6,613</td>
<td>1,631</td>
<td>7,397</td>
<td>3,721</td>
<td>660</td>
<td>20,022</td>
</tr>
<tr>
<td>% of Capacity</td>
<td>33%</td>
<td>8%</td>
<td>37%</td>
<td>19%</td>
<td>3%</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th># Vessels (1)(2)</th>
<th>U.S. Gulf - Clean</th>
<th>U.S. Gulf - Chemicals</th>
<th>U.S. Gulf - Crude Oil</th>
<th>West Coast (3)</th>
<th>MSC (4)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tankers</td>
<td>9</td>
<td>2</td>
<td>13</td>
<td>7</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>ATBs</td>
<td>16</td>
<td>6</td>
<td>13</td>
<td>8</td>
<td>0</td>
<td>43</td>
</tr>
<tr>
<td>Tankers &amp; ATBs</td>
<td>25</td>
<td>8</td>
<td>26</td>
<td>15</td>
<td>2</td>
<td>76</td>
</tr>
<tr>
<td>% of Number</td>
<td>33%</td>
<td>10%</td>
<td>34%</td>
<td>20%</td>
<td>3%</td>
<td>100%</td>
</tr>
</tbody>
</table>

2 – Does not include the 350+ kbbl Alaskan tanker fleet, nor does it include tank barges less than 140 kbbl.
3 – Primarily clean product service; some dirty product and crude
4 – Military Sealift Command

Majority of larger product tankers operating outside of the West Coast.
Additional Tankers On Order

Total product tanker fleet could see some growth, absent additional retirements.
Jones Act Waivers - Examples

- Weather related events most recent examples of Jones Act waivers being issued; primarily US Gulf and Atlantic Coasts
  - Hurricane Katrina and Rita (2005); Hurricane Sandy (2012)
  - During Katrina, DHS issued 18-day waiver for crude/product movements from SPR
  - During Rita, DHS issued similar 30-day waiver
  - Significant resistance from shipping industry in both cases
  - During Sandy, DHS granted 12-day waiver for product movements from USGC to NE
  - During Sandy, shipping industry did not object to short-term waiver due to political optics

- West Coast supply shortages have not been the subject of Jones Act Waivers – Notwithstanding significant product shortages/price impacts in several instances

Source: Turner, Mason & Company.
Jones Act Waiver

- Why pursue a Jones Act waiver?
- Catastrophic earthquake and anticipated subsequent regional fuel supply shortage
  - Want to maximize ability to bring in supply from outside the area
- In conjunction with fuel specification waivers
  - Closest marine source of fuel would be refineries in Washington state
  - Foreign flagged vessels may also be in transit with an export cargo that could be diverted to California
  - One cargo of 300,000 barrels is roughly 30 percent of California’s average daily gasoline demand
- But how does this process work?
Jones Act Waiver Process

• U.S. Customs & Border Protection (US CBP) manages the process for waivers (issuing agency)

• US CBP receives requests and corresponds most rapidly via Phone #202-325-0030 (non-emergency)

• Secretary of Homeland Security (SECDHS) is the sole approving authority for waivers – there are two paths

• 46 USC 501.A
  • If Secretary of Defense (SECDEF) requests waiver then SECDHS approval is immediate

• The only legal basis for waiver is national defense; Commissioner of Customs has delegated authority for these approvals
Jones Act Waiver Process

• 46 USC 501.B
  ▪ If the request is from other than SECDEF, then waiver can still be issued if signed by SECDHS.
  ▪ US CBP’s enforcement and administration of the Jones Act requires coordination with other interested agencies
    o USCG determines vessel eligibility for coastwise endorsement and issues certificates of documentation
    o U.S. Department of Transportation’s Maritime Administration (MARAD) monitors and assesses the operating status of U.S.-flag vessels, and advises US CBP on such U.S. vessel availability
    o U.S. Department of Energy (DOE) monitors energy supply needs and advises US CBP during periods of actual or imminent shortages of energy on requests for waivers of the Jones Act
    o U.S. Department of Defense (DOD) ascertains the impact of certain energy supply situations on its operations, and whether a waiver request is in the interest of national defense
Jones Act Waiver Process

- Congressional involvement is required (within 48 hours of notification of request and waiver transactions)
  - House Armed Services Committee
  - House Transportation and Infrastructure Committee
  - Senate Committee on Commerce, Science, and Transportation
  - Senate Armed Services Committee

- Waiver Letters require full description of:
  - Reason necessary, ports involved & time period
  - Why MARAD’s recommendations are not feasible

- Law was changed in January 2013 (PL138) to increase process transparency
  - Inform SECTRANS, and Publish the final determination

- Waivers are exceptionally rare
Questions?


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