

Vinson & Elkins

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

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30th Annual David W. Robertson

UT Admiralty and Maritime Law Conference

October 15, 2021



Jones Act and Offshore Wind Vessel Activities

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

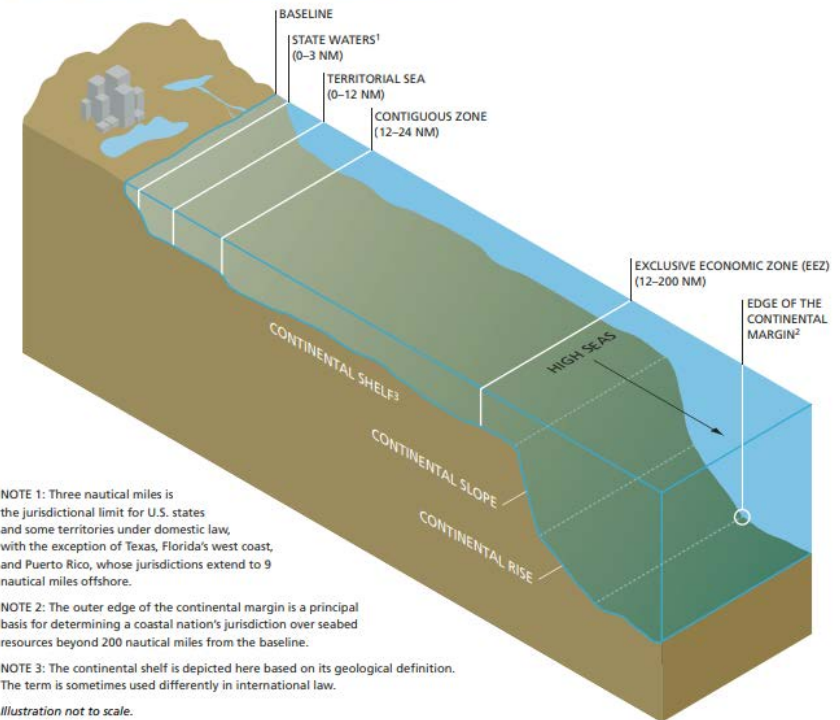


Senator Wesley Jones (R-Wa.)
Photo source: www.govtrack.us

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



NOTE 1: Three nautical miles is the jurisdictional limit for U.S. states and some territories under domestic law, with the exception of Texas, Florida's west coast, and Puerto Rico, whose jurisdictions extend to 9 nautical miles offshore.

NOTE 2: The outer edge of the continental margin is a principal basis for determining a coastal nation's jurisdiction over seabed resources beyond 200 nautical miles from the baseline.

NOTE 3: The continental shelf is depicted here based on its geological definition. The term is sometimes used differently in international law.

Illustration not to scale.

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.

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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"