



## U.S. Congress Moves to Clarify Jones Act Application to Offshore Wind Projects

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On September 24, 2020, the U.S. House of Representatives passed the “Clean Economy Jobs and Innovation Act,” H.R. 4447, including a provision clarifying the application of federal law, such as the “Jones Act,” to offshore renewable projects.

Federal laws automatically apply, absent an exception, to U.S. physical territory. That physical territory includes waters adjacent to the United States depending on the law being applied. The law which reserves domestic maritime trade to qualified U.S.-flag vessels popularly referred to as the “Jones Act” only applies automatically, by administrative interpretation, out to three nautical miles from the U.S. coastline. Beyond 3 NM, its application depends on the Outer Continental Shelf Lands Act originally enacted in 1954 focusing on the oil and gas offshore industry. OCSLA extends federal laws under certain circumstances out to 200 nautical miles on the U.S. outer continental shelf.

When Congress amended federal law to permit the federal government to enter into leases offshore on the U.S. outer continental shelf for renewable energy projects in the Energy Policy Act of 2005, the amendment was ambiguous as to whether all federal laws would be extended to renewable energy projects beyond U.S. territorial limits on the U.S. outer continental shelf. Developers and others have assumed the Jones Act would be applied anyway and have proceeded as if it does apply, but there remains an issue as to whether this is required by current law. The jurisdictional ambiguity has also impeded the process of getting Jones Act technical rulings from Customs and Border Protection which usually provides guidance on issues of Jones Act application to particular vessel movements.

The amendment to H.R. 4447 advanced by Rep. John Garamendi of California would remove that ambiguity and put the offshore renewable energy industry on the same footing in terms of the application of federal law as the offshore oil and gas industry. A similar provision was introduced in the Senate in the spring, but it is unclear whether the Senate will have the time or the inclination to take up the overall legislation before the election or even during a lame duck session of Congress later this year.

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