Parties planning to build and operate offshore renewable energy installations will have to address a variety of regulatory laws, including the Jones Act and the Outer Continental Shelf Lands Act (OCSLA). These laws embody key policies of the US Congress and raise maritime regulatory issues in the context of offshore operations.

### The Jones Act

The coastwise trade laws of the United States consist of various statutes enacted by Congress and the attendant regulations enacted by federal agencies. The coastwise trade laws are administered and enforced by the US Coast Guard, US Customs and
Border Protection, and the Maritime Administration, an agency within the US Department of Transportation.

Foreign flag vessels are not allowed to transport merchandise or passengers between points in the United States to which the coastwise trade laws apply. Foreign flag vessels also are not allowed to tow a vessel between ports and places in the United States to which the coastwise trade laws apply. Dredging in the navigable waters of the United States may only be conducted by vessels that are wholly owned by US citizens and hold a certificate of documentation (issued by the US Coast Guard) with a coastwise trade endorsement.

Section 27 of the Merchant Marine Act of 1920, commonly referred to as the Jones Act, is a key regulatory law that will have to be taken into consideration for offshore wind installations. The Jones Act, currently codified at 46 U.S.C. § 55102, provides that “[a] vessel may not provide any part of the transportation by water, or by land and water, between points in the United States to which the coastwise trade laws apply, either directly, or by a foreign part, unless the vessel” is wholly owned by US citizens and has been issued a coastwise trade endorsement (or is exempt from documentation but otherwise coastwise trade eligible). A coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise.

The US Coast Guard operates the National Vessel Documentation Center and administers laws and regulations related to the documentation of vessels under the US flag, including issuance of certificates of documentation with coastwise trade endorsements. In order for a vessel to receive a certificate of documentation with a coastwise trade endorsement, it generally must be built in the United States, owned by US citizens, and crewed by US citizens. The vessel-owning entity must satisfy the citizenship requirements set forth in the United States Code. The citizenship test is applied up the chain of beneficial ownership such that an intermediate company organized under the laws of a state in the United States will not automatically be deemed a US citizen if its ultimate corporate parent does not satisfy the citizenship requirements. In order to be deemed a US citizen, there can be no non-US citizen control over the owning entity.

In the offshore wind context, the Jones Act limits the participation of noncitizens and will impact how transactions are structured. Since non-US citizens cannot own or operate a coastwise trade qualified vessel, transactions (including financial and charter party arrangements) must be carefully reviewed to ensure compliance with the Jones Act and other coastwise trade laws. Joint ventures involving US citizens that satisfy the requirements of the Jones Act might be considered as a possible structure. Any proposed joint venture would have to satisfy the above statutory requirements under the Jones Act to qualify as a coastwise citizen eligible to own and operate a US flag vessel engaged in coastwise trade. The availability and use of warrants or options to buy shares, or the use of convertible debt or traditional debt secured by a ship mortgage under the Ship Mortgage Act, 46 U.S.C. Chapter 313, must also be evaluated as part of compliance with the Jones Act. The overarching issue of “control” must be considered since a foreign citizen may not have impermissible control over any joint venture if the Jones Act applies. Parties may
submit a request to the US Coast Guard’s National Vessel Documentation Center for approval that a proposed joint venture or other structure complies with the Jones Act.

**Outer Continental Shelf Lands Act and Manning Requirements for Outer Continental Shelf Operations**

Under the OCSLA, the laws of the United States are extended to “. . . the soil and seabed of the outer Continental Shelf and to all artificial islands, and 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 . . . .” 43 U.S.C. § 1333(a)(1). There has been a general assumption that OCSLA applies to offshore wind operations, and currently there are bills pending in Congress that would amend the above provision of OCSLA to specifically include offshore wind.

OCSLA requires that US-owned vessels operating on the Outer Continental Shelf (OCS) be manned by US citizens or permanent resident aliens. 43 U.S.C. § 1356(a)(3).

The OCS manning requirements are not applicable to any vessel that is over 50% owned by citizens of a foreign nation or over which the citizens of the foreign nation have a right to effectively control. 43 U.S.C. § 1356(c)(2). However, such vessels must obtain a Letter of Non-Applicability from the US Coast Guard to operate on the OCS.

The OCS manning restrictions are applicable only to foreign-flagged vessels that are US owned. US flagged vessels are subject to the strict manning requirements for US documented vessels.

A vessel otherwise subject to the OCS manning requirements may obtain a one-year exemption (Letter of Exemption) to those requirements if the owner or operator of the vessel can establish that, despite its diligent efforts, it cannot identify a sufficient number of qualified US citizens or permanent resident aliens to man the vessel. 43 U.S.C. § 1356(c)(1)(B).

Additionally, workers who are not within the regular crew of a vessel are not subject to the OCS manning requirements. These workers are eligible for a Letter of Determination (Specialist Determination) that is issued by the US Coast Guard. 33 C.F.R. § 141.15.

**Conclusion**

Citizenship, manning, crewing, and charter arrangements in connection with offshore wind projects must be carefully considered and reviewed based on the applicability of the Jones Act and OCSLA to those projects.

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