



SHIPPING | NOVEMBER 2021

BUILT IN THE USA? COAST GUARD ISSUES DETERMINATION ON US BUILT OFFSHORE WIND VESSEL

Significant expansion of the offshore wind energy industry in the United States is expected to fuel a variety of commercial sectors. The U.S. shipbuilding industry is a key sector that is poised for growth due to Jones Act requirements that coastwise qualified vessels be built in a U.S. shipyard. To meet the anticipated requirements for installing and servicing U.S. offshore wind farms, coastwise qualified vessels will be needed. A recent decision by the U.S. Coast Guard's National Vessel Documentation Center (NVDC) provides insight on how stakeholders can comply with the Jones Act's U.S. built requirement.

Jones Act U.S. Built Requirements

The Jones Act serves as the primary law regarding which vessels may engage in coastwise trading. For a vessel to carry cargo or passengers between two coastwise points in the U.S., a vessel must be built and flagged in the U.S. and be owned and crewed by U.S. citizens. While many stakeholders are familiar with Jones Act rulings issued by U.S. Customs and Border Protection (CBP), the NVDC likewise plays a significant role in the Jones Act regulatory system.

The NVDC is a branch of the U.S. Coast Guard that administers vessel documentation and issues vessel endorsements, such as a coastwise trade endorsement. For Jones Act qualified vessels, the NVDC makes U.S. citizenship and U.S. built determinations.

A coastwise qualified vessel must be built in the U.S. For a vessel to be considered built in the U.S., the vessel must meet two basic criteria.¹ First, all the major components of its hull and superstructure must be fabricated domestically. Second, the vessel must be assembled entirely in the United States. In recent years, the NVDC has permitted some exceptions, such as allowing use of foreign steel so long as fabrication of components from the foreign-made steel is done in the U.S.

The Blount Boats U.S. Built Determination

The NVDC recently issued a ruling on the issue of whether vessels (crew transfer vessels for use in U.S. offshore wind farms) proposed to be constructed by Blount Boats, Inc. ("Blount") at its shipyard in Warren, Rhode Island would qualify as U.S. built vessels under the Jones Act regulations. Blount Boats proposed using aluminium panels to form the hulls of the vessels. The panels would be made at a mill in Norway by welding together foreign manufactured extruded aluminium planks. The planks would be joined together edge-to-edge by using "friction stir welding" to create panels for the hull of the vessel. As stated in the NVDC's ruling, apparently there are no U.S. mills or shipyards that could produce the panels using "friction stir welding," but there are fabrication shops in the U.S. that can do similar welding.

The ruling illustrates the complexity of applying the U.S. built test set forth in 46 C.F.R. § 67.97, particularly the nuances for deciding how foreign materials can be used.

The NVDC determined that the aluminium panels would constitute "integral parts of the hull of the vessels," so the planks would have to be welded to form panels in the U.S. in order to meet the U.S. built criteria. Implicit in the

¹ 46 C.F.R. § 67.97. The standards which must be met in order for a vessel to be deemed built in the United States are as follows:

"To be considered built in the United States a vessel must meet both of the following criteria:

(a) All major components of its hull and superstructure are fabricated in the United States; and (b) The vessel is assembled entirely in the United States."

NVDC ruling is the decision that welding the aluminium planks to form panels at the foreign mill would constitute foreign assembly of parts or materials that are integral parts of the hull or superstructure. Consequently, the NVDC determined that this would violate the second criterion of the U.S. built test, which requires the vessel to be "assembled entirely in the United States."

The NVDC also considered whether the welded aluminium panels should be considered: (1) "standard mill stock" that could be used in unlimited quantities in construction of a U.S. built vessel even though produced at a foreign mill, or (2) fabricated components of the hull, which would violate the first criterion of the test that requires all major components of the hull to be fabricated in the United States. Ultimately, the NVDC did not decide this question. Instead, it based the ruling on the second criterion of the test, as discussed above, that welding the planks constitutes "assembly" of parts or materials that will become integral parts of the hull.

The NVDC's ruling has two bottom lines. First, the aluminium planks manufactured at a mill in Norway are "standard mill stock" that can be used in unlimited quantities for constructing the vessels in the U.S. Second, the ruling confirmed that if the aluminium planks are joined to form panels in the U.S. – by welding the planks together at a mill or fabrication shop in the United States – this would comply with the U.S. built criteria.

Conclusion

The Blount Boats ruling is a reminder of the role of USCG/NVDC for Jones Act compliance. The ruling is significant because it appears to be the first NVDC U.S. built determination that applies specifically to offshore wind vessels. The ruling provides some guidance on how the NVDC may rule in future U.S. built determinations.

Given the anticipated increase in construction of offshore wind vessels that will be needed to meet the Biden Administration's green energy goals, the increased use of foreign-sourced materials and vessel components, and the advantages of having coastwise qualified Jones Act vessels to work in U.S. offshore wind farms, we anticipate the NVDC will be called upon to issue more U.S. built rulings as more types of offshore wind farm vessels become constructed in U.S. shipyards.

For more information, please contact the author(s) of this alert



MICHAEL WRAY

Partner, Houston

T 1 (504) 250 2387

E michael.wray@hfw.com



CHRIS HART

Of Counsel, Houston

T +1 (713) 397 9483

E chris.hart@hfw.com



MELANIE FRIDGANT

Associate, Houston

T +1 (281) 305 5154 Associate

E melanie.fridgant@hfw.com



SVETLANA SUMINA

Associate, Houston

T +1 (713) 706 1946

E svetlana.sumina@hfw.com

hfw.com

© 2021 Holman Fenwick Willan LLP. All rights reserved. Ref.

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please email hfwenquiries@hfw.com

Americas | Europe | Middle East | Asia Pacific