

CURRENT CABOTAGE POLICIES

Current U.S. cabotage and related laws apply to water transportation between points in the United States, including certain points on the Outer Continental Shelf (OCS), and to certain other marine activities conducted within U.S. territorial waters or the Exclusive Economic Zone (EEZ).¹² The term “cabotage,” when used with regard to vessels, is usually defined to mean “coastal navigation and trade, especially between ports of a country.” In the context of this report, however, “cabotage” is defined to mean the set of national policies or regulations that seek to reserve U.S. coast-wise navigation and trade solely to vessels that are U.S. built and operated.

The Customs Service enforces cabotage laws with authority from section 27 of the Merchant Marine Act of 1920 (the Jones Act), the Passenger Ship Act of 1886, and the Towing Act of 1940. The inclusion of certain points on the OCS within the realm of coast-wise trade is codified in the 1978 Amendments to the OCS Lands Act of 1953, and the inclusion of certain fishing vessels within the definition of “cabotage” policies is covered under Chapter 121 of Title 46, United States Code (46 U.S.C. ch. 121) and the Fisheries Conservation and Management Act of 1976.³

In addition to the above, a 1983 Presidential proclamation created a 200-mile EEZ that assured U.S. jurisdiction over the resources contained within waters of the zone as well as the seabed and subsoil beneath them.⁴ A number of proposals since then have sought to include this EEZ within the various definitions of coast-wise trade and domestic maritime activities that could be subject to cabotage

policies. This report examines the effects of such proposals to extend traditional cabotage policies by reviewing the status and trends of several important maritime activities and projecting the impacts that may occur should policy changes be made.

The scope of current U.S. cabotage policy is almost entirely based on the concept of transportation (of both cargo and passengers). Proposals to extend this policy have taken two general forms. One is to define more broadly, or more specifically, certain transportation routes (or points of origin and destination) so as to include trades previously excluded. This is known as a zonal approach. It could be considered an attempt to close “loop-holes” in current policy. The second form is to include other, nontransportation activities under the concept of cabotage so as to require the use of U.S. built and operated vessels. This is usually known as a “functional approach.” Such an approach has already been taken in the case of commercial fishing vessels. Both of these forms are examined in this report. An example of the first may be to extend cabotage to “cruises to nowhere” that begin and end in U.S. ports and stay within the EEZ. An example of the second may be to include certain oil-field service vessels that operate within the EEZ under cabotage policies.

PROPOSALS TO CHANGE POLICIES

In a December 1987 report, and again in September 1988, the Commission on Merchant Marine and Defense recommended the preservation, enforcement, and strengthening of current cabotage laws.^{5,6} The 1987 report further recommended that a study be done of the costs and benefits of extending the

¹ “Extension of Cabotage to All Commercial Activities in the Exclusive Economic Zone,” report prepared for OTA by the U.S. Maritime Administration, August 1988.

² Review of Maritime Administration report contained in letter to Peter Johnson, OTA, from B. James Fritz, Chief, Carrier Rulings Branch, U.S. Customs Service, Nov. 14, 1988.

³ Mark Aspinwall “The Coastwise Trade Meets the Exclusive Economic Zone,” winter 1988-89, vol. 31, No. 4, pp. 83-88.

⁴ Executive Proclamation No. 5030 (1983).

⁵ s-ond Report of the Commission on Merchant Marine and Defense: Recommendations, ” prepared for the President and the Congress, Dec. 30, 1987, Washington, DC.

⁶ Third Report of the Commission on Merchant Marine and Defense: Findings of Fact and Conclusions, ” prepared for the President and the Congress, Sept. 30, 1988, Washington, DC.

Jones Act to the Virgin Islands trade and to commercial maritime activities within the 200-mile EEZ. The Commission has suggested that if prospective results from these actions are seen to be beneficial, Congress should pass appropriate legislation. The Commission's 1987 report pointed to loopholes and inconsistencies that allow profitable foreign-vessel operations within our EEZ. In its 1988 report, the Commission stated it was skeptical that many significant benefits would accrue from extending cabotage coverage. Reports from domestic operators to the Commission reinforced this conclusion.

In any case, proposals to strengthen and expand U.S. cabotage laws are supported mainly by the Commission's work. In addition, OTA has received a number of comments from industry supporters of these proposals.⁷ Supporters argue that it is both appropriate and beneficial (to U.S. operators) to extend cabotage laws. Most would limit the law's application to transportation of cargo and passengers, presumably because of historical precedent. Several proponents also note benefits to the U.S. shipbuilding industry from building more Jones Act vessels. The severe downturn of commercial shipbuilding in recent years not only affects the U.S. shipyard defense mobilization base but makes it more difficult for those remaining U.S.-flag operators to get reliable and cost-effective construction and repair work done. The common rationale for policies to assist and strengthen the U.S. merchant marine (U.S.-flag ship operators) and the U.S. shipbuilding base is that of national security. The Commission stresses the current shortfall in sea-lift capacity to respond to a national emergency. The most serious deficiency appears to be in seagoing manpower, but projections for the year 2000 show a substantial inability to meet defense requirements in manpower, shipbuilding, and operational vessels as well.

There is also substantial opposition to the notion of expanding U.S. cabotage laws—usually expressed by those concerned about either the direct effect upon other industries or the consumer, or the negative impact on principles of free trade and open competition.⁸ In general, some direct effects upon

other industries or consumers can be estimated if it is determined which path operators would take if cabotage policies change. The effects could be in the form of increased cost of services or a loss of one service sector in favor of another. It is very difficult, however, to trace the complete range of possible effects when many options are available to react to policy changes, and this is usually the case in coastal or EEZ maritime services. For example, an increase in costs for services to offshore oil operations could just add to the normal cost of producing oil (and be passed to consumers) or, if the costs are significant, they could affect decisions about future investments in offshore projects.

OTA has not analyzed the above wide range of possible economic effects. Instead, we have chosen some specific sectors and specific direct effects of changes to cabotage that can be readily anticipated.

In addition, the question of how policies to expand cabotage may be detrimental to notions of free and open trade is obvious. If one accepts the free-trade approach without qualification, then the consequences of foreign competition must be accepted. Some U.S. industry sectors, thus, may not survive. To assure their survival usually requires some compromise in free trade principles.

Finally, the need for a strong maritime industry as an arm of U.S. forces for defense can only be questioned by taking a view of defense strategy different from the current convention. OTA has not analyzed defense strategies. If one accepts current strategy, it is obvious that future military sea-lift requirements require a national shipping and shipbuilding capability. At present that capability is being met by an increase in the military support fleet and reserve fleets rather than a substantial reliance on U.S. commercial maritime capabilities. Those that support policies to strengthen the U.S. merchant marine—such as expanding cabotage—claim that military needs can be more effectively and efficiently served this way. OTA has not analyzed the relative costs and benefits of this approach. But, it is clear that the added cost of any extension of cabotage by government fiat will be borne by the private sector even if the policy would be more efficient for the Nation as a whole.

⁷See list of respondents (app. A of this report) to OTA's inquiry about data and comments on cabotage policies.

⁸Ibid.

In sum, the basic policy debate about whether expansion of certain cabotage laws would enhance national security in the most efficient way hinges on military strategy concepts that are beyond the scope of this study. OTA will address, however, when discussing specific maritime activities, what national security capabilities may be enhanced if the U.S. Merchant Marine benefits from such support. In addition, OTA will not evaluate pros and cons of

free-trade policies but will discuss the direct consequences of expanding cabotage coverage in certain sectors, to the extent that analysis can clearly identify them. This report, then, will focus on clarifying those aspects of this complex debate that are subject to analytical treatment. Other arguments can be found in numerous past studies on the subject and in the several reports of the Commission on Merchant Maritime and Defense, itself.



Photo credit: Rowley Maritim Corp

A S ag g barge se gaged coa twi ad e rved d m ic p a

cab tag aws