

Major maritime nations worldwide have a long history of devising laws and regulations to promote and protect their own merchant marine. In decades, and even centuries, past, a strong maritime industry has been a nation's foundation for both military and economic security. Even in the modern, high-tech world, ships carry over 90 percent of international trade, and the merchant marine remains an important national resource for the transportation of cargo and personnel for defense purposes.

One common approach to promote and protect the maritime industry has been to prohibit foreign vessels from participating in domestic, coastal (or "cabotage") shipping. Most, if not all, nations with a seafaring history have so-called cabotage laws that require ships engaged in coastal trade to be domestically built, owned, and operated. The United States is no exception. U.S. laws define coastal trade, in general, as the transportation of either passengers or cargo between two points within the United States. In general, no foreign vessels may engage in such trades.

In recent times, the variety and complexity of shipping and other maritime activities along our coasts and in the nearby ocean have multiplied. Past policies and definitions no longer apply unambiguously to many of these offshore operations. New laws, regulations, and interpretations are in place that include some specific activities and exclude others from the concept of cabotage law. Some new policies have extended U.S. jurisdiction over ocean zones adjacent to our coasts. The United States now claims jurisdiction over all fisheries (except highly migratory species like tuna) resources within a 200-mile conservation zone, and all seabed mineral resources on the continental shelf off our coasts and beyond to any point where extraction is feasible. In 1983 a Presidential proclamation created a 200-mile Exclusive Economic Zone

(EEZ) consistent with that established by many other countries who are parties to the international Law of the Sea Convention (the United States is not a signatory). In 1988, the President issued a proclamation that extended our territorial sea from 3 miles to 12 miles. According to an interpretation by the U.S. Customs Service, this proclamation was for international purposes only and does not affect the definition in cabotage laws of a 3-mile territorial sea.

Within this framework of change, advocates of the U.S. maritime industry have made proposals to expand the concepts of cabotage law or to more carefully define the coverage of existing laws in order to limit "unfair" foreign competition that has inevitably expanded its presence. These proposals are subject to considerable debate because a number of industry sectors could experience economic effects from policies that restrict international competition. In order to better understand the costs and benefits from several proposed policy changes, the House Committee on Merchant Marine and Fisheries asked the Office of Technology Assessment (OTA) to study "the economic and national security impacts of extending the cabotage policy to all forms of commercial maritime activities conducted within the Exclusive Economic Zone." In addition, they asked OTA to "assess the economic and national security impact of extending the existing cabotage laws to the Virgin Islands." This background paper is the result of that requested study.

In its analysis, OTA found that foreign competition has indeed become a factor in a number of maritime activities within the EEZ. This competition, however, has also been limited, both by traditional U.S. coast-wise shipping laws as well as several specific, newer applications of those laws.

For example, while U.S. builders of offshore oil platforms must compete with those of Korea

and Singapore in the EEZ, the transportation associated with the offshore oil industry is protected from foreign competition by U.S. Customs Service rulings, based on the Outer Continental Shelf (OCS) Lands Act, that make such transportation, in effect, coast-wise trade. Also, while foreign competition for some shipping services within the EEZ is now allowed in offshore lightering¹ of foreign-flag tankers and in trade with certain U.S. territories, these activities have not represented major areas of business growth. In addition, some newer laws have restricted foreign competition in such maritime activities as fish processing, offshore dredging, waste disposal, and marine mining in the EEZ.

Given this mixed situation, OTA reviewed the status of foreign competition for all significant maritime activities in the EEZ and selected four of these for further analysis of costs and benefits that might occur if cabotage laws were extended to them. OTA concluded that these four sectors—the Virgin Islands trade, offshore lightening, offshore oil and gas operations, and commercial cruises are both commercially significant and possibly subject to substantial impacts from cabotage laws. OTA also concluded that all other sectors had either minor commercial significance or were already generally subject to cabotage law.

In its four-sector evaluation, OTA found that very little hard data exist to project accurate, specific impacts from several possible changes to cabotage law that would tighten control over foreign participation in trade activities. However, OTA has taken the limited data as well as a variety of discussions and observations that were offered by industry representatives and produced the analyses in this report. In general, the analyses show that only a few specific benefits would result from the proposed

changes. The following summarizes OTA's key findings:

- Of all the sectors evaluated, the commercial cruise industry—and especially the subsector of one-day cruises to nowhere—appears to have the most potential for significant benefits for U.S. interests if cabotage laws were applied. The business consequences of such an action are uncertain, but the added costs, if the action were successful, appear to be directed toward a generally healthy industry.
- Most industry respondents to OTA's inquiries believe that the consequences of extending cabotage laws will take the form of an industry shift to alternatives that just further avoid a commitment to U.S.-built and U.S.-operated vessels. The results, therefore, could lead to a decrease rather than an increase in opportunities for the U.S. maritime industry.
- National security enhancements from extending cabotage laws could take the form of possible additions to strategic sea-lift capability and increases in seafaring employment that would result. If the most favorable outcomes are assumed, the results could be U.S.-flag fleet additions of up to 20 shuttle tankers and 10 passenger ships. Both of these ship types are considered militarily useful. The Shipbuilding Industrial Base could also benefit if these vessels were built in U.S. yards.
- There are some obvious direct costs to other affected industries and to certain consumers if cabotage laws were extended. There are also some costs that are neither obvious nor certain. All of these must be carefully evaluated in each specific case in order to arrive at a sound policy choice.

¹The practice of unloading cargo from very large ships into smaller vessels outside of a harbor, usually because the harbor or harbor entrance is too shallow for the larger ships.

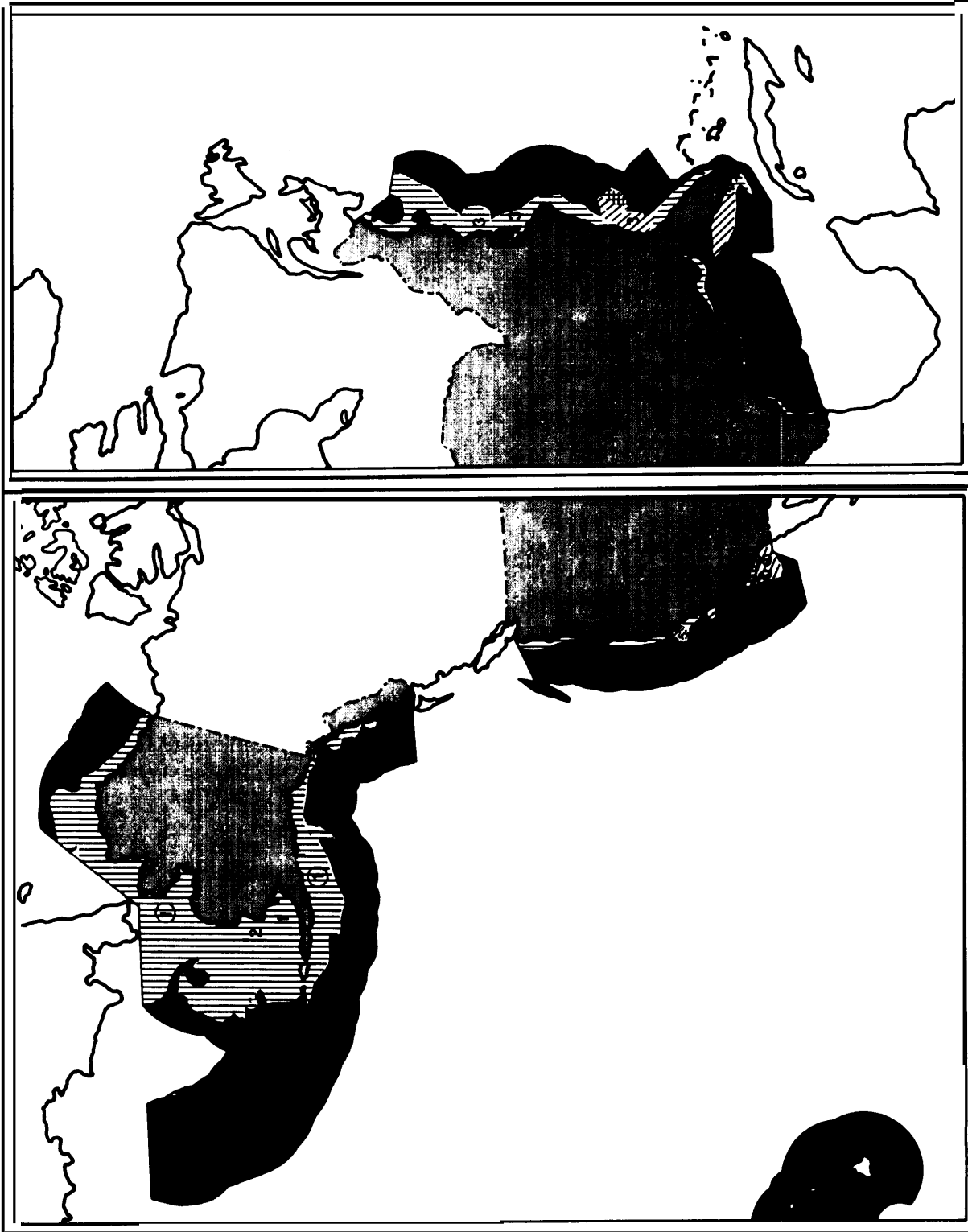


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The 200-mile E of Economic Zone (EEZ), shown here, contains a sea surface area equivalent to more than two-thirds of the land area of the entire United States.