Appendix B

# The Effects of Cabotage Policy Changes on Other Maritime Sectors

For the purposes of this study, OTA selected four important maritime industry sectors to review and to investigate what, if any, impacts may result from changes in current cabotage policies. The results of those investigations are covered in the main body of this report. The following are brief discussions of each of the other sectors identified. They contain a snapshot of each activity and the current applicability of cabotage policies to that sector. Brief comments are also included concerning the effects of expanding cabotage policies within each sector. The background for these comments were supplied to OTA by the Maritime Administration and the U.S. Customs Service and reviewed by a number of industry representatives.

## Commercial Fisheries

Commercial fishing has been and continues to be a significant U.S. maritime activity within the 200-mile Exclusive Economic Zone (EEZ). Commercial fishing vessels operate in the ocean waters off all coasts, with particular concentrations in the North Atlantic, the Gulf of Mexico, and in Alaskan waters. A great variety of vessel types and sizes are used. A total of about 38,000 commercial fishing vessels (over 5 net tons) were engaged in fishing activities in the United States during 1987, with a total shipboard employment of almost 250,000. The size of the fleet and the number of fishermen employed has increased gradually over the past 10 years, and the percentage of the EEZ catch that is harvested by domestic (versus foreign) vessels has increased dramatically, to about 95 percent today.

A key law governing the operation of fishing vessels within the EEZ is 46 U.S.C. 12108. Under this law, only a U.S. built, owned, and documented vessel may engage in the fisheries in U.S. territorial waters or the EEZ, unless the vessel is issued a permit under the Magnuson Fishery Conservation and Management Act (FCMA) (16 U.S.C. 1801 et seq.). The definition of "fisheries" for purposes of section 12108, in 46 U.S.C. 12101(a), was recently amended by the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 101 Stat. 1778). The current definition of "fisheries," in the law is: engaging in the processing, storing, transportation (except in foreign commerce), planting, cultivating, catching, taking, or harvesting of fish and related marine species and vegetation in U.S. navigable waters and the EEZ. The words "processing, storing, and transporting (except in foreign commerce)" were added by Public Law 100-239. U. S.-flag vessels engaged in the fisheries must be documented with a fishery license or a registry with a fishery endorsement.

Foreign vessels may engage in fishing activities in the EEZ if they have a permit issued by the National Marine Fisheries Service pursuant to the FCMA. Unless permitted by treaty, foreign-flag vessels may not land, in the United States, fish caught or received on the high seas, whether inside or outside the EEZ (see 46 U.S.C. app. 251(a)).

Vessels constructed or reconstructed overseas may be granted a license to fish in the territorial sea and the EEZ adjacent to Guam, American Samoa, and the Northern Mariana Islands. Such vessels must be less than 200 gross tons and otherwise eligible for U.S. documentation and a fisheries license or endorsement.

Since commercial fishing is already effectively restricted to U.S.-flag vessels documented for the fisheries, any policy to extend cabotage laws to include fisheries would have very little effect upon the actual practice even though the requirement for U.S. citizen ownership or control of vessels is somewhat less rigorous under FCMA than under the Shipping Act of 1916. Of course, more restrictive provisions limiting the role of foreign fishing vessels in the U.S. EEZ could be proposed, but the existing policy is based upon the goal of reserving for U.S. fisheries all of the catch up to their capabilities and then allowing foreign fisheries to harvest the surplus. Therefore, it would not be reasonable to expect further economic benefit to U.S. operators if present laws were more restrictive of foreign participation. For these reasons, OTA has concluded that it would not be productive to analyze the costs and benefits of extending cabotage policies to commercial fishing vessels.

## Dredging Vessels

Dredging is a maritime activity that, in the past, has been mostly confined to shallow waters within the territorial sea but, when supporting some of the offshore petroleum activities and other mineral recovery in the EEZ, it has become necessary to think of dredging as an activity that could and does take place far offshore. Most of the harbor and channel dredging activities have been accomplished by the U.S. Army Corps of Engineers, either using Army vessels or vessels under contract to the Army. In addition to an ongoing need for channel dredging, some growth in dredging as support to other offshore activities has taken place in recent years. One

example of this is the dredging needed to construct offshore gravel islands in the Beaufort Sea that have been used as oil production platforms there.

Dredges operating in the United States must be U.S.-built, although foreign ownership and registry are permitted (as provided in 46 app. U.S.C. 292). This policy has been extended (pursuant to the OCSLA) to dredging on the OCS for the purposes of exploring for, developing, or producing resources from the OCS.

In addition to the above, a recent law (Public Law 100-329) amended section 27 of the Merchant Marine Act of 1920 to require that any dredged material that is transported:

. between points and places within U.S. territory;
Ž between points or places within the EEZ; or
. between points or places within U.S. territory and points or places within the EEZ;

must be transported in a U.S. built, owned, and documented vessel. The combined effect of these provisions reserves the dredging trade in U.S. territorial waters and the EEZ to U.S.-built dredges and transport vessels only. In addition, the transport vessels must also be U.S. owned and documented.

It appears that any changes in cabotage policies to extend coverage to dredging vessels would have little or no effect on the current industry practices. It could be possible to amend 46 app. U.S.C. 292 to require U.S. ownership of dredges (as well as U.S. construction), however, that condition is in fact met by almost all of the fleet today. It could also be possible to include dredging within the EEZ for purposes other than that covered under the OCSLA, but they would have only minor importance at present. The Customs Service also warns that it may be confusing to have two statutory provisions applying coast-wise laws to both the EEZ and the OCS because they have different definitions of geographic coverage.

## Marine Mining Vessels

Marine mining is only currently an active industry in a few specialized areas such as: offshore sand and gravel recovery near New York harbor, and alluvia gold mining offshore of Nome, Alaska. Near-term prospects for significant development of a marine mining industry are not good. Much more information about potential mineral resources in the EEZ would be needed before any major commercial mining activity would be contemplated,

The statute covering dredging (46 app. U.S.C. 292), discussed above, also applies to marine mining in the OCS. That is, mining vessels must be U.S. built but not necessarily U.S. owned and operated. Vessels transporting mined material from a point on the high seas within the EEZ to the United States would be covered under cabotage policies. The Deep Seabed Hard Minerals Resources Act (30 U.S.C. 1401 et seq.; 94 Stat. 553) even contains provisions requiring certain vessels to be U.S. documented when recovering minerals from the deep seabed beyond the EEZ if they are operating under a permit pursuant to this act, No deep-sea mining is now underway or planned.

Given the infancy of the marine mining industry and the fact that most activities would be covered under cabotage policies, OTA has concluded that further analysis of this industry is not needed at this time.

## Waste Disposal Vessels

Waste disposal operations in the ocean are growing in recent years as a series of waste disposal problems become more acute for the Nation as a whole and the options of dumping in the ocean, incineration at sea, or just transporting by sea are proposed and, in some cases, used. The current fleet of waste disposal vessels is small and operations are concentrated near some of the major U.S. metropolitan areas such as New York. But this activity will certainly grow, and it may grow substantially.

A recent law, The Transportation of Sewage Sludge Act (Public Law 100-329, 102 Stat. 588) amended section 27 of the Merchant Marine Act of 1920 (the Jones Act) to require that vessels used to transport valueless material (including tugs used to tow barges) from a point or place in U.S. territory to a point or place on the high seas within the EEZ, as well as between any two points within those areas, be U.S. built, owned, and documented. A few exemptions were made in the law including certain barges under construction in a foreign shipyard or already in use by a municipality when the law was passed.

Actual offshore dump sites are designated by the Environmental Protection Agency, either in published regulations or as part of the individual dumping permits issued.

Transportation of hazardous waste from a point in the United States for the purpose of incineration of that waste at sea is subject to cabotage under the eighth and ninth provisos of the Jones Act. No U.S.-flag incinerator ships exist today, and construction of two new buildings has been suspended. Two U, S.-owned, foreign-flag incinerator ships were “grandfathered” to make them eligible for coast-wise trade. The development of incinerator ships stopped in 1987 when EPA decided not to complete final rules for issuing permits to bum waste at sea. It is not clear when such rules might be considered again or, therefore, if and when hazardous waste incineration at sea would be

possible under a U.S. permit. Incineration at sea of nonhazardous wastes, however, has been proposed and it may be possible to anticipate that such activity may become important in the future.

Since most existing and potential activities within the EEZ using waste disposal vessels are already covered by cabotage policies, it appears that a general geographic extension of cabotage would have little or no effect on current practice in the industry.

## Icebreaking Vessels

Most of the icebreaking operations that take place in U.S. waters are carried out by Coast Guard icebreakers, with some assistance from the Canadian Coast Guard and a few private icebreaking vessels. There is usually not a sufficient thickness of ice offshore U.S. coasts to require icebreakers except for Alaskan waters. In Alaskan waters the current practice for transportation by sea is to bring shipping through only during the summer, ice-free season and to stockpile during the winter. This reduces the need for icebreaking services to a minimum.

In the future, there may be an increased need for Alaskan waters icebreaking services if major offshore oil and gas resources are discovered and produced. Some plans for such production in the Beaufort, Chukchi, and Bering Seas call for icebreakers to assist tankers and other vessels engaged in offshore oil transportation.

Currently there are no cabotage laws that apply to commercial icebreaking vessels. Foreign-flag icebreakers could be used in the U.S. EEZ, but the present requirements for the service are limited and such vessels have been used in the past only for certain specialized operations. Extension of cabotage policies to include icebreaking as an activity that would be covered, could have the effect of limiting the activity to U.S. built, owned, and operated vessels. However, the only significant future need for commercial icebreakers seems to be in the offshore oil and gas industry, and OTA has noted this under the analysis of oil and gas exploration and development.

## Shipping in U.S. Pacific Territories

Guam, American Samoa, and The Commonwealth of the Northern Marianas all are presently exempt from cabotage to some extent. The laws that govern shipping operations in these waters are different from the other U.S. cabotage laws cited above.

Foreign-built vessels under U.S. ownership and registry may trade within Guam and between Guam and other U.S. points. American Samoa is totally exempt from cabotage. Only activities of the Federal Government or its contractors within the Northern Marianas are subject to cabotage. As noted in the section on commercial fisheries, foreign built or rebuilt fishing vessels of less than 200 gross tons, which are otherwise eligible for documentation and a fisheries license or endorsement, maybe issued a license to engage in fishing in the territorial sea and fishery conservation zone adjacent to the three territories.

Some in the U.S. maritime industry have suggested that laws affecting trade with and within Guam be changed so as to apply standard U.S. cabotage policies here. This would have the effect of requiring U.S. built and operated vessels to be used. While it appears that increased tourism and military construction on Guam would create some growing demand for shipping services, OTA has not obtained specific data that would allow an accurate estimate of these effects on the shipping industry.

The U.S. Maritime Administration has commented that an extension of cabotage policies to these territories would affect principally American Samoa and the Northern Marianas because there are currently no regular U.S.-flag shipping services to either Samoa or the Northern Marianas; there are two foreign-flag services between Samoa and the U.S. mainland and most service to the Northern Marianas is through Japan. Here again, OTA has not obtained data to make any accurate estimate of costs and benefits of these possible changes.