

**REGION III REGIONAL RESPONSE TEAM  
GUIDANCE FOR  
LIMITED JONES ACT WAIVERS  
DURING POLLUTION RESPONSE ACTIONS**

**Introduction**

Federal On-Scene Coordinators (FOSC) and Unified Commands (UC) responding to pollution or the threat of pollution in the ocean and coastal water environment have been challenged to locate suitable vessels or barges to support their response activities. It remains the intent and desire for the FOSC/UC to find and use United States-flagged vessels or barges to support the collection and storage of oil or hazardous substances from the environment, serve as the reception vessel for lightered cargo, support vessel salvage operations, or other needed services of the response. In some responses the FOSC/UC has been unable to identify suitable U.S.-flagged vessels to serve in these capacities. In an effort to protect lives, the environment, and minimize adverse economic impacts, the FOSC/UC has no choice but to use foreign assets when U.S. assets are not available.

This document provides Region III Regional Response Team (RRT) with guidance and decision-making tools to support and assist FOSC/UC actions when they are pursuing the use of foreign-flag vessels to mitigate pollution or the threat of pollution when the Jones Act is applicable. The information contained within this document was developed strictly to identify issues and provide consistent viewpoints and procedures to assist the FOSC/UC and alleviate potential barriers that may inhibit the decision process. This is a planning and preparedness effort and we encourage Area Committee members to incorporate concepts and information from this document into their respective Area Contingency Plans (ACP). It is structured in four sections.

- Section I defines the purpose, authority, and scope of the process;
- Section II contains a decision tree for supporting a request for a limited waiver under the Jones Act;
- Section III contains a decision checklist for Limited Jones Act Waivers; and
- Section IV contains a sample Limited Jones Act Waiver letter.

## Section I

### Purpose

The purpose of this guidance is solely to support and enhance the FOSC/UC's ability to quickly determine the best course of action to obtain a waiver when addressing the use of foreign-flag vessels or barges to support pollution response activities when suitable U.S. flag vessels or barges cannot be located or obligated to assist and support removal/salvage operations to mitigate pollution or the threat of pollution. This guidance outlines the decision-making process, identifies issues, suggests procedures, and provides checklists to help standardize the waiver process. This guidance is a planning and preparedness tool that can be taken in part or in whole and incorporated into various ACP's.

As mentioned earlier, the use of vessels to support the mitigation of a pollution event is an FOSC/UC decision and no RRT concurrence or consultation is necessary. However, the RRT recognizes that in some instances the physical securing of suitable vessels or barges to support various phases of an FOSC/UC response to significant oil spill or hazardous substance incidents is an increasing challenge. These guidelines were developed to allow the FOSC and their Commonwealth/State SOSOC partners, within the UC, to employ concepts or tools from this guidance to help or assist in the obtainment of suitable vessel or barge assets to:

- Prevent or substantially reduce a hazard to human life;
- Minimize the environmental impact of spilled oil;
- Take full advantage of available vessel or barge resources to assist in the containment, collection, or storage of a pollutant, the removal of a stricken vessel's cargo, support salvage operations, or other support deemed necessary in an effort to enhance the efficiency of the overall removal operation when suitable U.S. resources are not available; or
- Reduce or eliminate economic or aesthetic losses, which would otherwise presumably occur without the use of available resources.

### Legal Background

There are two issues that an FOSC/UC must address when engaged in pollution response or salvage actions where suitable U.S.-flagged vessels or barges cannot be identified or are not available to support the response and a waiver to use foreign-flag vessels or barges is needed.

- **Merchandise Coastwise Law:** Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly

or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned, and documented). Pursuant to Title 19, United States Code, § 1401 (c) (19 U.S.C. § 1401 (c)), the word “merchandise” is defined as “...goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited.”

The Jones Act generally applies to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. It should be noted that 46 U.S.C. App. § 883 is applicable to Puerto Rico pursuant to 48 U.S.C. § 744 and 46 U.S.C. § 877.

Jones Act provisions are not applicable in the waters surrounding the United States Territory of the Virgin Islands.

- **Salvage Operations:** Title 46, United States Code Appendix, § 316 (d) (46 U.S.C. App. § 316 (d)), in pertinent part, prohibits the engagement of a foreign vessel in salvaging operations on the Atlantic or Pacific Coast of the United States, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by treaty or when the Commissioner of Customs, after investigation, authorizes the use of a foreign vessel or vessels in the salvaging operations.

In regard to the administration of the above-cited salvage statute, it has been the position of the Customs Service that it is not applicable to the waters of Puerto Rico or the U.S. Virgin Islands. (See Customs memorandum 216.132, dated June 3, 1974; 107038, dated March 8, 1985; 110319, dated July 14, 1989; and 110391, dated May 3, 1990, the latter two of which were in response to prior inquiries from the U.S. Coast Guard regarding the use of non-coastwise-qualified jack-up barges in Puerto Rico.)

### **Scope of Process**

This guidance addresses the process that provides the FOSC/UC with procedures to pursue a Limited Jones Act Waiver when suitable U.S. vessel or barge resources are not available.

- **MARAD Involvement:** The Maritime Administration (MARAD) must be consulted during the search for suitable U.S.-flagged vessels or barges to support the response operation. It is extremely important that MARAD has the opportunity to assist the FOSC/UC in identifying and locating suitable U.S.-flagged vessels or barges. This interaction should be documented because it will be needed to support a Limited Jones Act Waiver request (MARAD Primary and Secondary contacts are located on Page 14 in this document).

- **Limited Jones Act Waiver Process:** The request for a limited waiver should be forwarded to U.S. Customs via the Fifth Coast Guard District Chief, Marine Safety Division (refer to the attached checklist). The Maintenance and Logistics Command Atlantic (MLCA) Legal Department can assist in developing the waiver request and is also available to liaison with the U.S. Customs staff in support of the request. It is important to note that waivers can only be granted considering the following:

The navigation laws administered by the U.S. Customs Service (including the Jones Act) can only be waived under the authority provided by the Act of December 27, 1950 (64 Stat. 1120; note proceeding 46 U.S.C. App. § 1). This statute provides that “the head of each department or agency responsible for the administration of the navigation and vessel inspection laws is directed to waive compliance with such laws upon the request of the Secretary of Defense and the head of such department or agency is authorized to waive compliance with such laws...either upon his own initiative or upon the written recommendation of the head of any government agency whenever he deems that such action is in the interest of national defense.”

The only provision to obtain a Limited Jones Act Waiver is by receiving a national defense waiver from the U.S. Customs/Department of Treasury. The criteria in support of this provision shall be documented within any requested forwarded by the FOSC/UC.

- **Waiver Request Criteria:** The following issues should be addressed and documented within the Limited Jones Act Waiver requested forwarded by the FOSC/UC:
  - Background synopsis of the incident focusing on the operational need for support vessel or barge use;
  - The inability of the FOSC/UC working through its own sources and through MARAD to identify suitable U.S.-flagged vessels to support the operation;
  - The specific extent that you intend to employ foreign-flagged vessels or barges to mitigate the incident;
  - The threat to national defense should the waiver not be granted (such as., block of significant channel, military base, or transportation route.);
  - The request should begin with the following language or similar wording; “This requests an expedited limited waiver of the provisions of 46 U.S.C. App. § 883 on the basis of National Defense to allow for the use of ....”

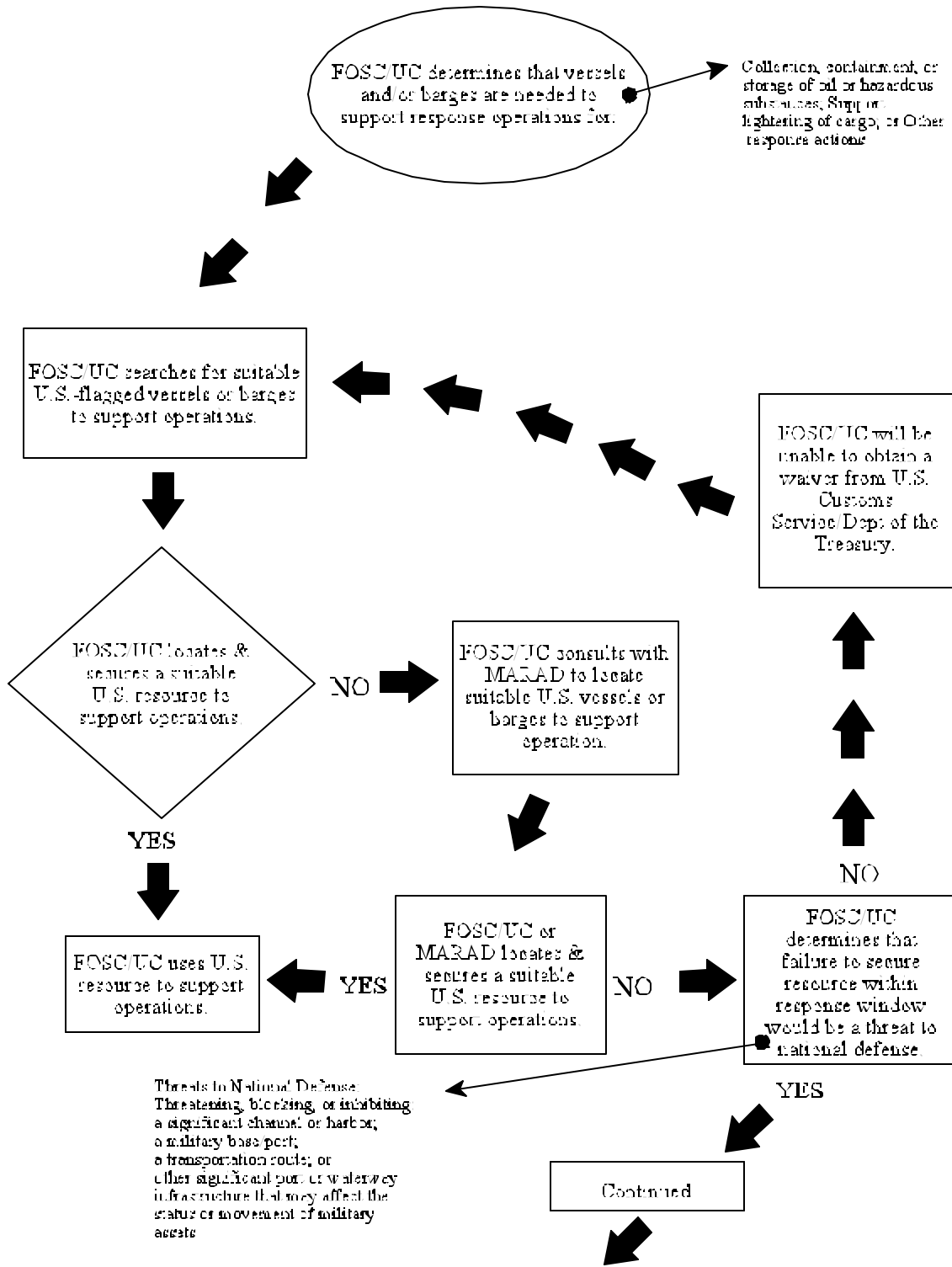
## **Section II**

### **Decision Tree for Requesting Limited Jones Act Waiver**

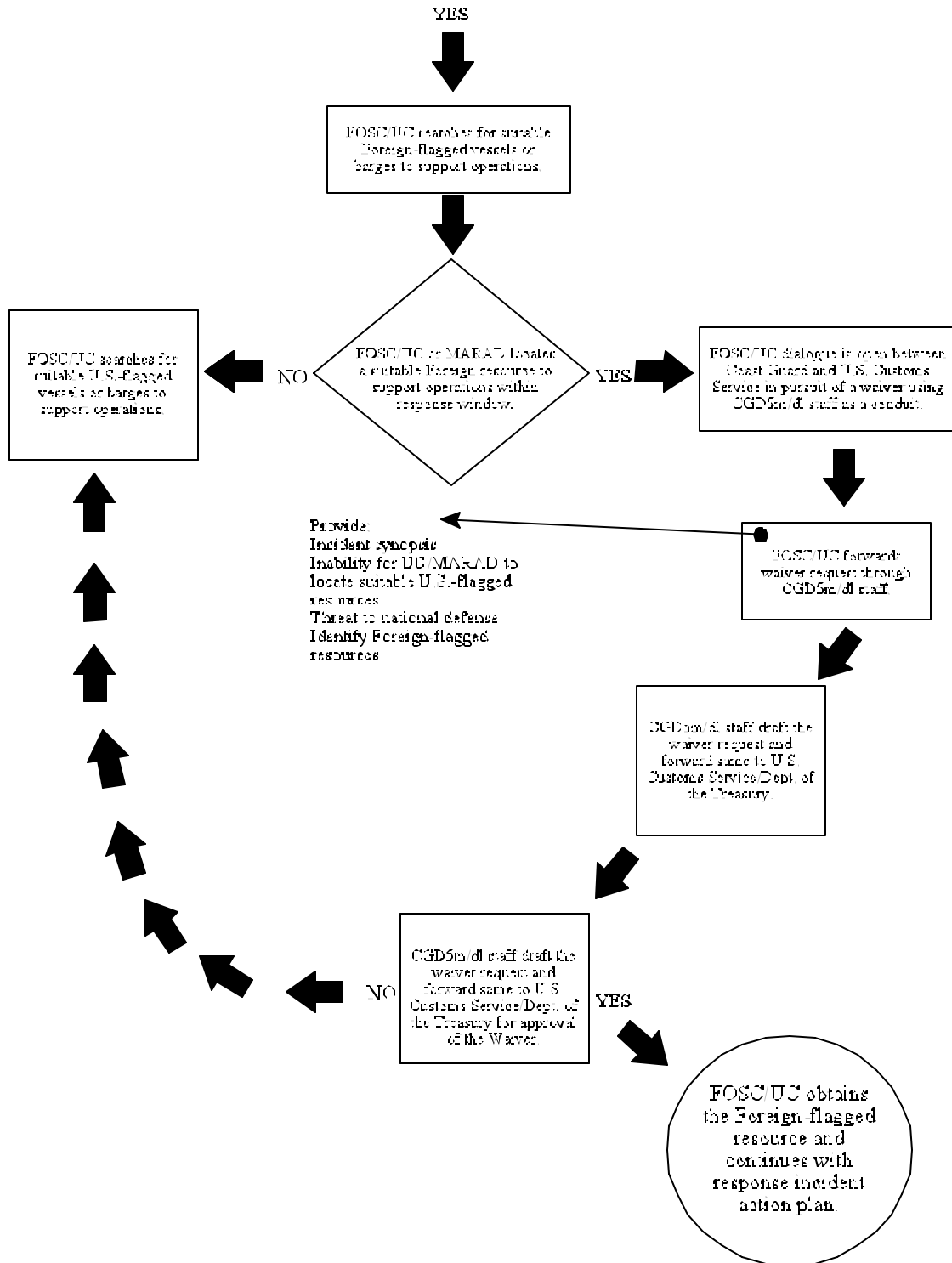
The decision tree for supporting a request for a Limited Jones Act Waiver is as follows. The flowchart follows the various steps and decision-making an FOSC/UC needs to request a waiver. The steps address the following high points in the process:

- Search for suitable U.S.-flagged vessels to support operations;
- Consult with MARAD to assist in the identification and location of suitable U.S.-flagged vessels to support operations;
- FOSC/UC makes determination, in consultation with MARAD, that no suitable U.S.-flagged vessels or barges are available within response windows to properly mitigate the event;
- FOSC/UC determines that the failure to respond quickly within designated response windows would result in a threat to the national defense of the U.S. and states why this is so;
- FOSC/UC identifies suitable foreign-flagged vessels available to support response operations;
- Verbal contact is initiated with the U.S. Customs Service to discuss the waiver request; and
- FOSC/UC forwards a Limited Jones Act Waiver request through the Fifth Coast Guard District Chief, Marine Safety Division to the U.S. Customs Service/Dept of the Treasury.

**LIMITED JONES ACT WAIVER DECISION TREE**



**LIMITED JONES ACT WAIVER DECISION TREE (CONTINUED)**



### **Section III**

Decision checklist for Jones Act Limited Waivers follows. The checklist is separated into six steps.

- **Step 1** - Spill, Pollutant, and Environmental Background Information
- **Step 2** - Identification of U.S.-flagged Vessels or Barges to Support Response Activities
- **Step 3** - Maritime Administration (MARAD) Consultation
- **Step 4** - National Defense Determination
- **Step 5** - Identification of Foreign-Flagged Vessels or Barges to Support Response Activities
- **Step 6** - Limited Jones Act Waiver Request

Each step allows the user to address and check-off each of the issues presented within the “Limited Jones Act Waiver Decision Tree.” Additionally, the checklist provides points of contact and other amplifying information to streamline the process for the FOSC and UC.

**NOTE: This checklist is designed as a job aid or tool to assist the FOSC/UC through the waiver process. The information provided within the checklist was intended to provide a sufficient background on the subject so the checklist would be helpful when separated from other portions of this guidance document. This tool was developed to help quicken an FOSC/UC’s efforts and not hinder the process. There may be portions of the checklist that are not applicable to a specific incident or the user may not need to complete each portion of the checklist to sufficiently meet the objectives of the waiver process.**



**Limited Jones Act Waiver Operational Checklist**

*Step 1: Spill, Pollutant, and Environment Background Information*

**General Information:**

- A. Name of Incident: .....
- B. Unified Command Location: .....
- C. Responsible Party (if known): .....
- D. Date and Time of the Incident: .....

E. Type of Incident: (check all that apply)

- Vessel Grounding
- Vessel Fire
- Facility Incident
- Tank Truck Incident
- Transfer Operation (Vessel, Facility, Truck, or Pipeline)
- Explosion
- Vehicle Accident
- Blowout
- Pipeline
- Mystery
- Pollution Involved or Threatened
- Other: .....

F. Spill Location: .....  
.....

G. Distance and Direction to nearest human use areas (e.g., schools, hospitals, recreation areas, surface water intakes, public wells, channels, harbors, etc.):

| <u>Area</u> | <u>Distance</u> | <u>Direction</u> |
|-------------|-----------------|------------------|
| .....       |                 |                  |
| .....       |                 |                  |
| .....       |                 |                  |
| .....       |                 |                  |

**Pollutant/Oil Information:**

H. Product(s) Released:

- Heavy Crude
- Bunker C/#6 Fuel Oil
- Medium Crude
- Diesel/#2 Fuel Oil
- Jet Fuels
- Gasoline

**G** Other (please specify): .....

I. Product Details:

Product Name: .....

Viscosity: .....

API Gravity: .....

Pour Point: .....

J. Percent Evaporation in:

24 Hours: .....

48 Hours: .....

K. Estimated Volume of Released oil:

gals: .....

bbls: .....

L. Estimated Volume of oil potentially released:

gals: .....

bbls: .....

M. Release Status:

**G** Continuous

**G** Intermittent

One Time Only, Now Stopped?

**G** Yes

**G** No

If Continuous or Intermittent, Specify Rate of Release: ..... gals/bbls per hour

N. Estimated Surface Area Covered: ..... acres/sqft

**Cargo Information:**

O. Cargo Type:

**G** Bulk Oil

**G** Bulk Liquid Hazardous Substance

**G** Dry Bulk

**G** Containerized

**G** Other (please specify): .....

P. Product Details:

Product Name: .....

Q. Estimated Volume of Cargo Released or Threatened to Release: ..... (units)

R. Estimated Volume of Cargo Potentially Released: ..... (units)

S. Release Status:

Continuous

Intermittent

One Time Only, Now Stopped?

Yes

No

If Continuous or Intermittent, Specify Rate of Release: ..... units per hour

T. Estimated Surface Area Covered: ..... acres/sqft

**Environment Information:**

U. Current Weather:

Clear

Partly Cloudy

Overcast

Rain/Snow/Fog

Inversion

24 - Hour Projection: .....

48 - Hour Projection: .....

Wind Speed:

|                           | <u>Surface</u> | <u>Forecasted</u> |
|---------------------------|----------------|-------------------|
| Current Wind Speed (mph): | _____          | _____             |
| Direction (from):         | _____          | _____             |
| 24-Hour Projection (mph): | _____          | _____             |
| Direction (from):         | _____          | _____             |
| 48-Hour Projection (mph): | _____          | _____             |
| Direction (from):         | _____          | _____             |

**Note:** Any information from visual overflights of the slick, including estimations of slick thickness, should be included here. All additional available information pertaining to physical characterization of spilled oil should be included here.

Step 2: Identification of U.S.-Flagged Vessels or Barges to Support Response Activities

**Resource Information:**

A. Vessel(s) and/or barge(s) are needed to: (check all that apply)

G Collect, contain, or store pollutants

G Support lightering of cargo

G Other: .....

B. What types of vessels or barges are needed: .....

.....  
.....

C. What is the response window or target to obtain the needed resource(s)?

Resource Type: ..... hrs/days/week

Resource Type: ..... hrs/days/week

Resource Type: ..... hrs/days/week

D. Does Jones Act provisions apply within the area of operations?

G Yes

G No (If answer is “no” there is no reason to continue with this checklist.)

**Merchandise Coastwise Law:** Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the “Jones Act”), provides in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned, and documented). Pursuant to Title 19, United States Code, § 1401 (c) (19 U.S.C. § 1401 (c)), the word “merchandise” is defined as “...goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited.”

The Jones Act generally applies to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. It should be noted that 46 U.S.C. App. § 883 is applicable to Puerto Rico pursuant to 48 U.S.C. § 744 and 46 U.S.C. § 877.

Jones Act provisions are not applicable in the waters surrounding the United States Territory of the Virgin Islands.

E. Has the Unified Command been able to identify suitable U.S.-flagged vessels or barges to support the response within response windows?

G Yes (If yes, there is no reason to continue with this checklist.)

G No (If no, proceed to Step 3.)

Step 3: Maritime Administration (MARAD) Consultation

**MARAD Consultation to Identify U.S.-Flagged Vessels or Barges:**

- A. Contact MARAD to gain their assistance to identify U.S.-flagged vessels and/or barges that may be suitable to support response needs. The MARAD contacts are as follows:

**Primary Contact:**

MARAD Headquarters  
400 Seventh Street, S.W., Room 7219  
Washington, D.C. 20590  
Tel: (202) 366-5807  
Fax: (202) 366-5063

Deputy Director for National Security Issues: (202) 366-5400

**Secondary Contact:**

MARAD South Atlantic Region/Operations Division  
7737 Hampton Blvd.  
Building 4D, Room 211  
Norfolk, VA 23505  
Tel: (757) 441-6393  
Fax: (757) 440-0812

**24-Hour Point of Contact:**

Mr. Jeff McMahan  
Ship Operations and Maintenance Officer  
MARAD South Atlantic Region  
Home: (757) 546-2497  
Cell: (757) 287-8471

- B. Did MARAD or assets within the Unified Command identify suitable vessels and/or barges to adequately support response operations within available response windows?

**G** Yes (If yes, there is no need to continue with the checklist)

**G** No (If no, proceed to Step 4)

Step 4: National Defense Determination

**Unified Command National Defense Determination:**

- A. The only provision to obtain a Limited Jones Act Waiver is by receiving a national defense waiver from the U.S. Customs Service/Department of the Treasury. This waiver process is supported in accordance with the following provision.

The navigation laws administered by the U.S. Customs Service (including the Jones Act) can only be waived under the authority provided by the Act of December 27, 1950 (64 Stat. 1120; note preceding 46 U.S.C. App. § 1). This statute provides that “the head of each department or agency responsible for the administration of the navigation and vessel inspection laws is directed to waive compliance with such laws upon the request of the Secretary of Defense and the head of such department or agency is authorized to waive compliance with such laws...either upon his own initiative or upon the written recommendation of the head of any government agency whenever he deems that such action is in the interest of national defense.”

- B. Has the FOOSC/Unified Command determined that a failure to receive suitable vessel and/or barge resources within the acceptable response window or time frame would be a threat to the national defense of the U.S.?

- G Yes (If yes, explain why below)
- G No (If no, waiver is not possible)

- C. Threat to National Defense is: .....
- .....
- .....
- .....
- .....

Step 5: Identification of Foreign-Flagged Vessels or Barges to Support Response Activities

**Identification of Foreign-Flagged Resources:**

A. Has the Unified Command been able to identify suitable Foreign-flagged vessels or barges to support the response within response windows and criteria outlined in Step 2 above?

**G** Yes (If yes, proceed to Step 6.)

**G** No (If no, waiver process is delayed, UC needs to continue pursuit of both U.S. and Foreign resources.)

B. What vessels and/or barges have been identified?

Vsl/Barge: .....

Flag: .....

Purpose: .....

Vsl/Barge: .....

Flag: .....

Purpose: .....

Vsl/Barge: .....

Flag: .....

Purpose: .....

Vsl/Barge: .....

Flag: .....

Purpose: .....

Vsl/Barge: .....

Flag: .....

Purpose: .....

Step 6: Limited Jones Act Waiver Request

**Communications with U.S. Customs Service:**

A. Has the FOSC/UC working through the Coast Guard District Marine Safety and Legal staffs verbally communicated with the U.S. Customs Service?

**G** Yes (If, yes, proceed)

**G** No (If no, please make contact...use District to do this for the FOSC/UC)

B. U.S. Custom Service Contacts:

**Primary Contact:**

Entry Procedures/Carrier Rulings Branch  
(202) 927-2320 (24 Hours)

Department of the Treasury  
U.S. Customs Service  
Office of Regulations and Rulings  
1300 Pennsylvania Avenue, N.W.  
Ronald Reagan Building - 3rd Floor  
Washington, D.C. 20229

International Trade Compliance Division  
Main Tel: (202) 927-0760  
Fax: (202) 927-1876/1879

U.S. Custom Service 24-Hour Communications Center Signal Number:  
(407) 975-1926

**Waiver Request:**

A. The following information should be addressed and documented by the FOSC/UC. This information should be forwarded to the applicable Coast Guard District Marine Safety staff who will consult with the District legal staff on the development of the waiver request.

- Background synopsis of the incident focusing on the operational need for support vessel or barge use.
- The inability of the FOSC/UC working through its own sources and through MARAD to identify suitable U.S.-flagged vessels to support the operation within a specific response window.
- The specific extent that you intend to employ Foreign-flagged vessels or barges to mitigate the incident.



- The threat to national defense should the waiver not be granted (e.g., block of significant channel, military base, transportation route, etc.).

B. Fifth Coast Guard District contact:

Marine Safety Division:

Tel - (757) 398-6585

Fax - (757) 398-6503

24 Hr.- (757) 398-6231

Commander, D5 (mr)

Fifth Coast Guard District, Atlantic Area

Federal Building

431 Crawford Street

Portsmouth, VA 23704-5004

C. Eighth Coast Guard District contact:

Marine Safety Division:

Tel - (504) 589-6271

Fax - (504) 589-2077

24 Hr.- (504) 589-6225

Commander (mor)

Eighth Coast Guard District

Hale Boggs Federal Building, Room 1328

501 Magazine Street

New Orleans, LA 70130-3396

D. Ninth Coast Guard District contact:

Marine Safety Division:

Tel - (216) 902-6045

Fax - (216) 902-6059

24 Hr.- (219) 902-6117

Commander (M)

Ninth Coast Guard District

1240 East 9<sup>th</sup> Street

Cleveland, OH 44199-2060

- E. The cognizant Coast Guard District Marine Safety and Legal Departments will draft the waiver request and forward the same to the U.S. Customs Service. The request will contain the following language:

The request should begin with the following language or similar wording: “This requests an expedited limited waiver of the provisions of 46 U.S.C. App. § 883 on the basis of National Defense to allow for the use of ....”

A sample waiver request letter is provided within Section IV of the guidance document.

## **Section IV**

### **Limited Jones Act Waiver Request Sample Letter**

The following document is a sample waiver letter that can be used as a tool to complete the final step of the proceeding checklist. The letter should at a minimum include the following criteria specified within the “Waiver Request” portion of Step 6.

- Background synopsis of the incident focusing on the operational need for support vessel or barge use.
- The inability of the FOSC/UC working through its own sources and through MARAD to identify suitable U.S.-flagged vessels or barges to support the operation within a specific response window.
- The specific extent that you intend to employ Foreign-flagged vessels or barges to mitigate the incident.
- The threat to national defense should the waiver not be granted (e.g., block of significant channel, military base, transportation route, etc.).

Office of Regulations and Ruling  
U.S. Customs Service  
Attn: \_\_\_\_\_  
Entry Procedures and Carriers Branch  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20229

Dear \_\_\_\_\_:

RE: REQUEST FOR NATIONAL DEFENSE WAIVER

This requests an expedited limited waiver of the provisions of 46 U.S.C. App. § 883 on the basis of National Defense to allow for the use of \_\_\_\_\_ foreign-flagged vessels in the response to the grounding of the M/V .....

Provide a synopsis of the situation: .....  
.....  
.....

Explain the inability of the Unified Command, with the assistance of the Maritime Administration to identify suitable U.S.-flagged vessels to support the operation within a specific response window: .....  
.....  
.....

Accordingly I request a limited National Defense waiver to allow \_\_\_ foreign-flag vessels to augment U.S.-barges to effect the immediate and efficient removal of the vessel's cargo of \_\_\_\_\_ to refloat the vessel and alleviate the threat to the channel. The advent of worsening weather along with the progressing damage on board the vessel makes the probability of the vessel breaking apart and blocking the navigable channel of \_\_\_\_\_ harbor high. This would prohibit the passage of U.S. Coast Guard and other U.S. military vessels entering and departing the harbor to fulfill their national defense obligations.

Sincerely,

**Insert name of Captain of 5<sup>th</sup> USCG District**

Captain, U.S. Coast Guard  
Chief, Marine Safety Division  
Fifth Coast Guard District  
By direction of the District Commander

Copy: USCG MSO \_\_\_\_\_  
MARAD, Washington, D.C.