



## **RESPONSE OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES**

***Question 1: Is there a statutory, regulatory or other definition in your legal system which conveys a meaning similar to the above definition of either “Vessel” or “Ship”? If so, which is (are) the terms and their corresponding definitions?***

***Please provide details of all qualifiers to such definitions, such as minimum length, tonnage, registry, design, intended trade or usage, etc.***

Admiralty and maritime law in the United States are matters of federal law and the definition of “vessel” is derived from federal statutes which have been interpreted by federal courts. The Rules of Construction Act (the “RCA”) provides the default definition of “vessel” used throughout the U.S. Code,<sup>1</sup> which definition applies “unless the context indicates otherwise.”<sup>2</sup> Under Section 3 of the RCA (“Section 3”), the definition of “vessel” includes “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”<sup>3</sup>

Courts have applied the Section 3 definition in different contexts, including liability cases arising under suits brought against “vessel” owners pursuant to the Longshore and Harbor Workers’ Compensation Act (the “LHWCA”),<sup>4</sup> in determining whether a person is a “seaman” for purposes of the Jones Act<sup>5</sup> and when assessing federal admiralty jurisdiction generally.<sup>6</sup> There is little legal doubt as to the nature of traditional categories of vessel (such as bulkers, oil tankers, etc.). The courts have also held that Mobile Offshore Drilling Units (“MODUs”) are vessels. However, a substantial amount of litigation has occurred regarding marginal structures, and to the extent that courts may occasionally reach divergent conclusions, a degree of uncertainty may exist in the jurisprudence.

Before the decision of the United States Supreme Court in *Stewart v. Dutra*,<sup>7</sup> the general consensus of federal courts was that structures other than traditional vessels must be either instrumentalities of commerce, used for transportation purposes on navigable waters, or actually

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<sup>1</sup> See *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 490 (2005).

<sup>2</sup> See 1 U.S.C.A. § 1 (2012). It should be noted that the term “vessel” is also defined with variations in specific provisions of federal statutes, e.g., 19 U.S.C.A. § 1401(a), 49 U.S.C.A. § 13102 (25).

<sup>3</sup> See 1 U.S.C.A. § 3 (2012).

<sup>4</sup> See 33 U.S.C.A. §§ 901-950 (2009); *Stewart*, 543 U.S. at 490.

<sup>5</sup> See 46 U.S.C.A. § 30104 (2012); *Holmes v. Atl. Sounding Co.*, 429 F.3d 174, 182 (5th Cir. 2005).

<sup>6</sup> See *Lozman v. City of Riviera Beach*, 133 S. Ct. 735, 740 (2013).

<sup>7</sup> See *Stewart*, 543 U.S. at 481.

involved in transit at the time of the relevant incident in order to be considered “vessels” for purposes of federal law.<sup>8</sup> For Jones Act purposes, it was necessary to show that a worker was assigned to a “vessel in navigation” in order to invoke the protections for seamen available under this statute.<sup>9</sup>

*Stewart* involved a worker injured on a dredge primarily designed and used for the digging of an underwater trench, which incidentally transported workers and equipment to the worksite in the course of its operation. In this case, the Court determined that a watercraft qualifies as a Section 3 vessel so long as its use as a means of transportation on water “is a **practical possibility** [rather than] a merely theoretical one[.]”<sup>10</sup> Therefore, under *Stewart*, it is not necessary that a watercraft’s primary purpose be transport over water, or that it actually “be in motion” to be considered a Section 3 vessel.<sup>11</sup> The inquiry instead depends on the particular facts of each case relating to the practical possibility of the use of the structure for water transportation.<sup>12</sup>

In elaborating this test, the *Stewart* Court acknowledged long-held judicial precedent that required a watercraft be “in navigation” in order to qualify as a vessel for purposes of the Jones Act, but clarified that the navigation requirement is relevant for the purpose of evaluating “whether the craft is ‘used, or capable of being used’ for maritime transportation . . .” in accordance with Section 3.<sup>13</sup> Based on this approach, watercraft “taken out of service, permanently anchored, or otherwise rendered practically incapable of maritime transport” may be considered “out of navigation” and thus not Section 3 vessels.<sup>14</sup> Applying this approach, the *Stewart* Court concluded that the dredge was a Section 3 vessel because, though not designed primarily for transport, it was actually engaged in maritime transportation and, though stationary at the time of the injury, remained “in navigation” because it was only temporarily halted for repair.

Following *Stewart*, courts sometimes struggled to apply its analysis with respect to structures that are indefinitely or permanently moored to land. Additionally, certain structures were susceptible to findings that they are vessels when they might not have been prior to *Stewart*.<sup>15</sup> During this time, the Fifth Circuit found that an accommodation barge was a vessel in *Holmes v. Atlantic Sounding Inc.*, a 2006 case in which the court withdrew its decision and reconsidered the

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<sup>8</sup> See, e.g., *Tonnesen v. Yonkers Contracting Co.*, 82 F.3d 30, 33-34 (2d Cir. 1996); *DiGiovanni v. Traylor Bros., Inc.*, 959 F.2d 1119, 1123 (1st Cir 1992).

<sup>9</sup> See, e.g., *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 354 (1991) (“We believe the better rule is to define ‘master or member of a crew’ under the LHWCA, and therefore ‘seaman’ under the Jones Act, solely in terms of the employee’s connection to a vessel in navigation. This rule best explains our case law and is consistent with the pre-Jones Act interpretation of ‘seaman’ and Congress’ land-based/sea-based distinction.”) (emphasis added).

<sup>10</sup> See *Stewart*, 543 U.S. at 496.

<sup>11</sup> See *id.* at 495-96 (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 363 (1995)).

<sup>12</sup> See *id.* at 496 (citing *Chandris*, 515 U.S. at 373).

<sup>13</sup> See *id.* at 489 (citing 14 Stat. 178 (1866)).

<sup>14</sup> See *id.* at 496.

<sup>15</sup> After *Stewart*, the U.S. Coast Guard released guidance to indicate its approach for determining whether for a marginal structure is a vessel for documentation purposes. The test included various factors including an assessment of the structure’s “purpose, function and mission” and whether the craft “(i) is surrounded by a cofferdam or other structure . . . such that . . . it is in a moat with no practical access to navigable water, (ii) is affixed to shore, (iii) would be endangered by its construction if operated in navigation, and (iv) and can get underway in less than 8 hours.”U.S. Coast Guard Commandant Instr. 16000.7B, Marine Safety Manual, Vol. II: Materiel Inspection B5.I.4 (2014).

relevant facts in light of *Stewart*.<sup>16</sup> The court’s analysis turned on the basis that the relevant structure had the practical capability of being used for navigation on water. Similarly, in *Bunch v. Canton Marine Towing Co., Inc.*, a cleaning barge moored to a river bottom was found to be a vessel following the analysis set forth in *Stewart*.<sup>17</sup> By contrast, a number of other cases have led to outcomes where floating casinos and spars were determined not to be vessels when moored in such a manner such that they are effectively removed from navigation on an indefinite basis.<sup>18</sup>

The Supreme Court returned to the subject of vessel status in *Lozman v. City of Riviera Beach*, a 2013 case involving a maritime lien on a floating home designed and used exclusively as a residence, but which had occasionally been moved over water in the past. In *Lozman*, the Court added a reasonable observer standard to the application of *Stewart*’s “practical possibility” test, stating that “a structure does not fall within the scope of [Section 3] unless a reasonable observer, looking to the [structure]’s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.”<sup>19</sup> Applying this test to the floating home, the *Lozman* Court found that it was not a Section 3 vessel.<sup>20</sup> Factors of design (e.g., the lack of any means of self-propulsion or steering mechanism) and the infrequency of its actual travel over water (just four times over a period of seven years) figured prominently in the *Lozman* Court’s conclusion.<sup>21</sup> But the *Lozman* Court did not fully address case law following *Stewart* involving structures that were indefinitely or permanently moored to land.

Therefore, based on Section 3 and applicable judicial precedent, under US law a “vessel” must be used or capable of use for transportation on water, be in navigation (or not permanently out of navigation) such that transportation is a practical possibility, but subject to whether a reasonable observer, looking to the structure’s physical characteristics and actual use, would consider the structure designed to a practical degree to carry people or goods over water.

Some commentators, and the dissent in *Lozman* itself, worry that the Court has unnecessarily complicated the question of vessel status in *Lozman*, creating uncertainty in the maritime industry.<sup>22</sup> Of particular concern is the *Lozman* majority’s introduction of “a subjective

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<sup>16</sup> 437 F.3d 441.

<sup>17</sup> 419 F.3d 868 (8th Cir. 2005). See also *Uzdavines v. Weeks Marine, Inc.*, 418 F.3d 138, 144-45 (2d Cir. 2005) (finding that a bucket dredge “indistinguishable from the dredge at issue in *Stewart*” was a vessel for purposes of the Jones Act); *Pettis v. Bosarge Diving, Inc.*, 751 F.Supp.2d 1222, 1227-28 (S.D. Ala. 2010) (finding that a launch used to transport and support divers, which had not been out of service or permanently affixed so as to lose its character as a watercraft, was a vessel for purposes of the Jones Act).

<sup>18</sup> See, e.g., *De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185, 187-88 (5th Cir. 2006) (finding that a floating casino “physically capable of sailing” but indefinitely moored, receiving services such as water and telephone lines from land-bound sources, and intended by the owners to remain used exclusively for gaming rather than any maritime purpose, was not a vessel for purposes of admiralty tort claim); *Ford v. Argosy Casino Lawrenceburg*, No. 4:07-CV-0017, 2008 WL 817113, at \*1 (S.D. Ind. Mar. 24, 2008) (same); *Richardson v. Kerr-McGee Oil & Gas Corp.*, No. 08-1074, 2011 WL 2565315, at \*3 (E.D. La. June 28, 2011) (finding that a spar connected to the ocean floor and moved only rarely and with difficulty was not a vessel for purposes of the Jones Act).

<sup>19</sup> See *Lozman v. City of Riviera Beach*, 133 S. Ct. 735, 741 (2013).

<sup>20</sup> See *id.*, at 739.

<sup>21</sup> See *id.* at 737.

<sup>22</sup> Robert Force & Martin J. Norris. *The Law of Maritime Personal Injuries*, § 4:13 (2016).

component into the vessel-status inquiry” *vis-à-vis* the watercraft owner’s intent as to the watercraft’s purpose which may contribute to a sense of uncertainty in the maritime industry.<sup>23</sup>

Moreover, by omitting to clarify the *Stewart* holding as it affects structures indefinitely or permanently moored to land, the *Lozman* Court left in place post-*Stewart* precedent that could lead to troubling outcomes. In the extreme, cases holding that such structures are not vessels could be used to challenge the validity of preferred vessel mortgages since, pursuant to the Commercial Instruments and Maritime Lien Act of 1988, a structure must be a vessel within the meaning of Section 3 in order for a preferred mortgage to attach.

**2. In your system, does the definition of “vessel” (or equivalent term) vary depending on the subject of a particular law? For example, does the definition differ for purposes of documentation, registry, flagging and mortgaging or when applied to seagoing labor, environmental, casualty, insurance or taxation law?**

The definition of the term “vessel” as set forth at 1 U.S.C. § 3 provides the default definition used throughout the U.S. Code (and related federal regulations) “unless the context indicates otherwise[.]”<sup>24</sup> For example, the regulations relating to registration under the U.S. flag provide that a vessel “includes every description of watercraft or other contrivance capable of being used as a means of a transportation on water, but does not include aircraft.”<sup>25</sup> The definition is generally consistent regardless of the statutory or regulatory context (such as vessel registration, taxation, etc.), and courts would generally apply the same test to whether a structure is a “vessel.”

**3. Does your legal system provide for a unique process of seizure, foreclosure, forced sale or ranking and priority of claims against vessels that are different from such processes for other types of property? If so, please explain.**

Yes, under U.S. law the procedures for arrest of vessels are under the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, in the Federal Rules of Civil Procedure for the United States District Courts (the “Supplemental Rules”). Rule C of the Supplemental Rules governs arrest of vessels.

The Supplemental Rules provide that the order of priority of maritime liens is as follows:<sup>26</sup>

1. Expenses of justice during *custodia legis*;
2. Seamen’s wage claims (wages, maintenance and cure), for crew, officers and masters;
3. Salvage and general average claims;
4. Tort claims, including personal injuries and death;

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<sup>23</sup> See *Lozman* at 751 (Sotomayor, J., dissenting).

<sup>24</sup> See *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 488 (2005) (citing 1 U.S.C.A. § 1 (2012)).

<sup>25</sup> See 46 C.F.R. § 67.3 (2012).

<sup>26</sup> See 46 U.S.C.A. § 31301 (2010); *Kopac Int’l. Inc. v. M/V BOLD VENTURE*, 638 F.Supp. 87, 89-90 (W.D. Wash. 1986); *U.S. v. M/V ANDORIA*, 570 F.Supp. 413, 415 (E.D. La. 1983).

5. Liens for necessities supplied to the vessel prior to the recording of a mortgage;
6. Preferred ship mortgage liens;
7. Liens for necessities supplied to the vessel.

A preferred mortgage lien on a foreign flag (non-U.S.) vessel ranks in priority after a lien for necessities provided in the United States.<sup>27</sup>

Within a class of lien (other than a mortgage lien), the more recent lien has priority over an older lien.<sup>28</sup> Earlier recorded mortgages have priority over later recorded mortgages. Other than the categories set forth above, a mortgage will prime other liens, even tax liens.<sup>29</sup>

***4. Has the 1993 Convention on Maritime Liens and Mortgages (“MLM-93”) been adopted or followed in your jurisdiction?***

No, the MLM-93 has not been ratified in the United States.

***5. In your jurisdiction is the acceptance by the registrar or other governmental body or property as a “ship” or “vessel” or equivalent term dispositive of its status under your law?***

No, factors such as whether a vessel is registered with the United States Coast Guard are not dispositive, but likely would be relevant to the type of factual analysis required under *Stewart*.

***6. If property is categorized as a “vessel” in another jurisdiction and is so registered and flagged, but would not be a vessel under the definition in your jurisdiction, would the courts or relevant authorities in your jurisdiction treat that property as a vessel for all purposes, including arrest and foreclosure? Or would the Courts in such a circumstance decline to enforce an asserted claim or mortgage if the subject is not a vessel under your jurisdiction?***

U.S. courts will not necessarily treat a structure that is categorized as a “vessel” in another jurisdiction as a vessel unless it qualifies under relevant law. By contrast, U.S. courts will generally enforce foreign law mortgages over foreign flag vessels. However, as noted above, a lien for necessities supplied in the U.S. has priority over the lien of a mortgage on a foreign flag vessel.

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<sup>27</sup> See 46 U.S.C.A. § 31326(b)(2) (2006).

<sup>28</sup> See *The St. Jago de Cuba*, 22 U.S. 409, 416 (1824).

<sup>29</sup> *Crimson Yachts v. Betty Lyn II Motor Yacht*, 603 F.3d 864, 870 (11th Cir. 2010) (“Maritime liens have priority over non-maritime liens and priority over other maritime liens in reverse chronological order: that is, the most recent lien possesses the superior claim.”); *Helm v. Vahle*, No. 3:16-CV-630, 2017 WL 1352225, at \*4 (N.D. Fla. Apr. 7, 2017) (citing *U.S. v. One (1) 254 Ft. Freighter, the M/V Andoria*, 570 F.Supp. 413, 415 (E.D. La. 1983) for the order of priority of maritime lien claims, with mortgage liens taking priority over tax liens); *Cargill Inc., Skibsassuranceforening v. MT Pacific Dawn*, 876 F.Supp. 508, 510 n.2 (S.D.N.Y. 1995) (same). See also *U.S. v. Jane B. Corp.*, 167 F.Supp. 352, 356 (D. Mass. 1958) (“A tax lien is given no priority by 26 U.S.C.A. § 3670. It is clearly a nonmaritime lien. Hence it is not entitled to priority over a subsequently recorded preferred ship mortgage.”) (citations omitted); *Gulf Coast Marine Ways v. J.R. Hardee*, 107 F.Supp. 379, 385 (S.D. Tex. 1952) (“Since the Government's tax lien is non-maritime, I do not believe that it has priority, even though notice is filed pursuant to a state statute, over maritime liens in general, certainly not over the preferred maritime liens created under the Ship Mortgage Act.”).

**7. Are there any reported decisions in your jurisdiction which address the legal classification of any of the following property?**

There is a substantial amount of jurisprudence respecting many of the property classifications set forth below occurring both before and after *Stewart* and *Lozman*, the outcomes of which are heavily fact dependent.

**1. Non-Self-Propelled Barges**

- In the *Lozman* case, the Supreme Court observed that propulsion is an important factor in an analysis as to whether a structure is a vessel, but it is not dispositive.<sup>30</sup>
- Prior to *Stewart*, a barge is a vessel within the meaning of the LHWCA even when it has no motive power of its own, since it is a means of transportation on water.<sup>31</sup>
- Following *Stewart*, a cleaning barge, originally built for navigation, but later moored to the riverbed by spud poles, which did not have propellers, did not move by itself, and had been moved from its mooring to travel across the river during the relevant time period, was deemed to be a vessel.<sup>32</sup>

**2. Self-Propelled Barges**

- A barge is a vessel within the meaning of the LHWCA since it is a means of transportation on water.<sup>33</sup>

**3. Accommodation Barges**

- Following *Lozman*, a barge used as a “floating hotel” to accommodate workers, with no rudder or capacity for self-propulsion, which had remained stationary for years and had an interior similar to living quarters, was not a vessel for purposes of 1 U.S.C. § 3.<sup>34</sup>
- Following *Lozman*, a floating clubhouse, listed as a passenger barge with the Coast Guard, moored to the sea floor and incapable of moving on its own power, was not a vessel for purposes of the Jones Act.<sup>35</sup>
- Following *Stewart*, a “floating dormitory” was found to be a vessel even though it was not intended to transport passengers or cargo since it was practically capable of being used for navigation on water.<sup>36</sup>

**4. Mobile Offshore Drilling Units**

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<sup>30</sup> *Lozman*, 133 S. Ct. at 741 (citing *The Robert F. Parsons*, 191 U.S. 17, 31 (1903)).

<sup>31</sup> *Stewart*, 543 U.S. at 492 (citing *Norton v. Warner Co.*, 321 U.S. 565, 571 (1944)).

<sup>32</sup> See *Bunch v. Canton Marine Towing Co.*, 419 F.3d 868, 873 (8th Cir. 2005).

<sup>33</sup> See *Norton v. Warner Co.*, 321 U.S. 565, 571 (1944).

<sup>34</sup> *Martin v. Fab-Con, Inc.*, 9 F.Supp.3d 642, 649-50 (E.D. La. 2014).

<sup>35</sup> *Armstrong v. Manhattan Yacht Club, Inc.*, No. 12-CV-4242, 2013 WL 1819993, at \*7 (E.D.N.Y. Apr. 30, 2013).

<sup>36</sup> *Holmes v. Atl. Sounding Co.*, 437 F.3d 441, 448 (5th Cir. 2006).

- An tension leg offshore oil structure was not a vessel because it had no means of self-propulsion, had no steering mechanism or rudder, and had an unraked bow; it could only be moved by being towed through the water; and when towed to its permanent location, it would not carry cargo, nor would be used to transport equipment and workers over water in the course of its regular use.<sup>37</sup>
- After *Lozman*, mobile offshore drilling units, as well as other structures, including the Deepwater Horizon, have been held to be vessels under maritime law.<sup>38</sup>
- A floating oil and gas production facility, which was moored miles offshore on the outer continental shelf, had not been moved since it was constructed and installed at its current location, had no means of self-propulsion, and would require 12 months to prepare to move was not practically capable of transportation on water and was therefore, as a matter of law, not a vessel.<sup>39</sup>
- A barge which was equipped for use in navigable waters, had traveled a considerable distance through such waters to its present site and was, at the time of an accident, located in a navigable canal, was determined to be a vessel.<sup>40</sup>
- Prior to *Stewart*, a submersible drilling barge “stabilized in navigable water” was a vessel under the Jones Act.<sup>41</sup>

## **5. Wind Turbine Towers (floating or permanently fixed)**

We are not aware of applicable judicial precedent.

## **6. Jack Up Drill Rigs**

- A jack-up rig “may be a ‘vessel’ for purposes of maritime law.”<sup>42</sup>
- Prior to *Stewart*, special purpose structures whose primary function is not transportation, such as a drilling barge with retractable legs that raise the barge out of the water, are vessels under the Jones Act.<sup>43</sup>
- Fifth Circuit precedent makes clear that permanently fixed drilling platforms are not Jones Act vessels, but that jack-up rigs and liftboats are vessels even when temporarily attached to the ocean floor.<sup>44</sup>

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<sup>37</sup> See *Baker v. Dir.*, *OWCP*, 834 F.3d 542, 546-47 (5th Cir. 2016).

<sup>38</sup> See *U.S. v. Transocean Deepwater Drilling, Inc.*, 767 F.3d 485, 490 (5th Cir. 2014).

<sup>39</sup> See *Warrior Energy Servs. Corp. v. ATP Titan M/V*, 551 F. App’x 749, 751-52 (5th Cir. 2014).

<sup>40</sup> See *Producers Drilling Co. v. Gray*, 361 F.2d 432, 437 (5th Cir. 1966).

<sup>41</sup> See *Marine Drilling Co. v. Autin*, 363 F.2d 579, 579-80 (5th Cir. 1966).

<sup>42</sup> *Vickers v. Chiles Drilling Co.*, 822 F.2d 535, 537 (5th Cir. 1987).

<sup>43</sup> See *Offshore Co. v. Robison*, 266 F.2d 769, 779 (5th Cir. 1959).

## 7. Construction Barges

- A flexifloat barge/platform used in part as a work platform and in part as a means of transporting men and machinery across the water to a job site may be a vessel (motion to dismiss based on an argument that it was not a vessel was denied).<sup>45</sup>

## 8. Submarines

A nuclear submarine undergoing sea trials was a vessel for purposes of admiralty jurisdiction under the Suits in Admiralty Act and Public Vessel Act.<sup>46</sup>

## 9. Seaplanes

- A seaplane is not a “vessel”, and therefore, its pilot is not a “seaman” such that survivors would be entitled to bring claims under Jones Act.<sup>47</sup>
- Seaplanes (including helicopters) are included within the meaning of the term “vessel” in the codification of the International Regulations for Preventing Collisions at Sea, 33 U.S.C. § 1601 *et seq.* (1977).<sup>48</sup>

## 10. Hydroplanes (Air Cushion)

We are not aware of applicable judicial precedent.

## 11. Vessels under Construction

- A semi-submersible drilling rig under construction and on which a worker was injured, but which had not yet been put into navigation as an instrument of commerce, was not a vessel under the Jones Act.<sup>49</sup>
- Floating hulls that are 70 to 90 percent complete are “vessels” for purposes of the LHWCA<sup>50</sup> where floating hulls are capable of being used as means of transportation on water.<sup>51</sup>
- Unfinished pleasure craft which are incapable of launch and insured as stock for sale are not “vessels.”<sup>52</sup>

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<sup>44</sup> *Bishop v. Chet Morrison Contractors, LLC*, No. 3:12-CV-165, 2012 WL 3648412, at \*2 (S.D. Tex. Aug. 23, 2012).

<sup>45</sup> *See Koernschild v. W.H. Streit, Inc.*, 834 F.Supp. 711, 718 (D.N.J. 1993).

<sup>46</sup> *Crawford v. Elec. Boat Corp.*, 515 F.Supp.2d 282, 289 (D. Conn. 2007).

<sup>47</sup> *See Smith v. Pan Air Corp.*, 684 F.2d 1102, 1113-1114 (5th Cir. 1982).

<sup>48</sup> *See Barger v. Petroleum Helicopters*, 692 F.2d 337, 344 (5th Cir. 1982).

<sup>49</sup> *See Cain v. Transocean Offshore USA, Inc.*, 518 F.3d 295, 303 (5th Cir. 2008).

<sup>50</sup> *See Caruso v. Sterling Yacht & Shipbuilders, Inc.*, 828 F.2d 14, 15-16 (11th Cir. 1987); *Williams v. Avondale Shipyards, Inc.*, 452 F.2d 955, 958 (5th Cir. 1971).

<sup>51</sup> *See Hall v. Hvide Hull No. 3*, 746 F.2d 294, 297-98 (5th Cir. 1984).



- A newbuilding financed under the U.S. Title XI<sup>53</sup> program can be mortgaged as a vessel prior to its documentation with the US Coast Guard regardless of whether it is capable of being used as a means of transportation on water; this holding does not address non-Title XI vessels.<sup>54</sup>

## 12. Unmanned Vessels

We are not aware of applicable judicial precedent.

## 13. Vessels Devoted Temporarily or Permanently to Storage of Bulk Commodities

- Prior to *Stewart*, a damaged refrigerated cargo carrier which had been converted into a stationary shrimp processing, freezing, and storage plant and was connected to land with telephone and electric lines, was held to be as vessel subject to maritime lien, since it was capable of being used as means of transportation under tow although it was without motive power and steering mechanism.<sup>55</sup>
- In an older arbitral decision, a naval sloop without fittings and used for storage of gunpowder while permanently anchored is not a vessel.<sup>56</sup>

## 14. Vessels in “Cold Layup”

In the context of seamen’s tort claims, a number of cases have determined that laid-up vessels are not vessels for purposes of the Jones Act. By contrast, certain permanently moored craft have been held to be vessels in the context of mortgage disputes.

- Decedent’s work on various vessels year-round qualified him as a ‘seaman’ under the Jones Act, despite the fact that the ship upon which decedent was working when he died was laid up for the winter and thus out of navigation.<sup>57</sup>
- Vessel converted to use for storage and electricity generation and contractually barred from being used for transportation remained subject to a preferred vessel mortgage (though executed when the vessel was in navigation), but the workers aboard the vessel were not ‘seamen’ and thus did not have maritime wage liens that would be superior to the preferred ship mortgage.<sup>58</sup>

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<sup>52</sup> See *Trident Marine Managers, Inc. v. M/V Serial #CEBRF0661586*, 688 F.Supp. 301, 302 (S.D. Tex. 1987).

<sup>53</sup> The Title XI program, named for Title XI of the Merchant Marine Act of 1936, 46 U.S.C. Appx. §1271 et seq. (2016), is a program to finance the United States domestic construction of vessels, featuring guaranties from the United States and as secured by preferred vessel mortgages.

<sup>54</sup> See *United States v. Trident Crusader*, 366 F.3d 391 (5<sup>th</sup> Cir. 2004)

<sup>55</sup> See *Pleason v. Gulfport Shipbuilding Corp.*, 221 F.2d 621, 623 (5<sup>th</sup> Cir. 1955).

<sup>56</sup> See *Coelleda* (ArbtrNY), 1932 A.M.C. 1044.

<sup>57</sup> See *Estate of Rainsford v. Wash. Island Ferry Line, Inc.*, 702 F.Supp. 718, 724 (E.D. Wis. 1988). See also *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187, 190-91 (1952).

<sup>58</sup> See *New England Fish Co. v. Barge or Vessel Sonya*, 332 F.Supp. 463 (D. Alaska 1971).

- A vessel which had been laid up for six months was not in navigation such as to be a vessel for purposes of the Jones Act.<sup>59</sup>
- A vessel which had been laid up for winter on the Great Lakes was a “vessel” for purposes of limitation of liability statutes.<sup>60</sup>
- A vessel which had entered winter lay-up, being moored semi-permanently to the dock for the winter season, requiring further Coast Guard inspection before being permitted to sail again, with its engine having been disassembled and its crew mostly dismissed for the season, was “out of navigation,” which “render[ed] those employed upon her ineligible as non-seamen to proceed under the Jones Act.”<sup>61</sup>
- Given that the Court of Appeals for the Ninth Circuit had previously held that a disputable issue of fact existed as to whether a ship which had been permanently moored for five years remained ‘in navigation’ within the meaning of the Jones Act,<sup>62</sup> a federal district court within the Ninth Circuit erred by holding that vessels were out of navigation as a matter of law due to having been laid up for the winter.<sup>63</sup>

### **15. Derelict Vessels or “Dead Ships”**

Worker was not a seaman for purposes of the Jones Act where structure in question was not being used and not capable of being used as a means of transportation.<sup>64</sup>

### **16. Vessels under Conversion or Renovation**

- A yacht during repair period, even though repairs were so extensive as to temporarily disable her, was a vessel.<sup>65</sup>

### ***8. Please identify any of the Convention usages and limitations which are at variance with the equivalent terms in your national system and explain the variations.***

The United States follows the International Regulations for Preventing Collisions at Sea and has adopted the following definition of the term “vessel” for these purposes: “vessel” means every description of watercraft, including nondisplacement craft and seaplanes, used or capable of being used as a means of transportation on water.<sup>66</sup>

The United States is not otherwise party to the international conventions identified in this question.

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<sup>59</sup> See *Lupo v. Consolidated Mariners, Inc.*, 261 F.Supp. 450, 457 (S.D.N.Y. 1966).

<sup>60</sup> See *In re Great Lakes Transit Corp.*, 53 F.2d 1022, 1022 (N.D. Ohio 1931).

<sup>61</sup> See *Boyd v. Ford Motor Co.*, 948 F.2d 283, 289 (6th Cir. 1991).

<sup>62</sup> *Martinez v. Signature Seafoods, Inc.*, 303 F.3d 1132, 1137 (9th Cir. 2002).

<sup>63</sup> See *James v. Wards Cove Packing Co., Inc.*, 2007 A.M.C. 897, 899-900 [LTD] (9th Cir. 2006).

<sup>64</sup> See *Gonzales v. United States Shipping Board Emergency Fleet Corp.*, 3 F.2d 168 (E.D.N.Y. 1924)

<sup>65</sup> See *Crimson Yachts v. Betty Lyn II Motor Yacht*, 603 F.3d 864, 875-76 (11th Cir. 2010).

<sup>66</sup> See 33 U.S.C.A. § 1601 (2012).

***9. Are there any instances involving your jurisdiction in which inconsistent or conflicting definitions of “vessels”, “ships” or equivalent terms have impacted results in any legal proceedings of which you are aware? If so, please provide the details.***

Although the interpretation of the statutory definition of the term “vessel” is generally applied on a consistent basis throughout the United States federal courts, the analysis is heavily fact dependent. Therefore, while courts apply the same definitions and jurisprudential framework as in effect at a given time, there may be cases where it appears similar types of watercraft are treated differently by different courts.