Maritime Law Association of the United States

Questions related to ownership and other property interests in MORUs

Treatment of Domestic MORUs as property

1. **Would the courts in your jurisdiction recognize any of the categories of MORU as a "vessel" or "ship" or other "marine equipment" or other special type of property? If so, please explain with authorities.**

ANSWER: United States courts may recognize a MORU as a vessel under certain circumstances.

United States statute defines a vessel as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."[1] The United States Supreme Court (under the *Lozman/Dutra* line of cases) has interpreted that definition to mean that a structure will qualify as a vessel under the statute if a "reasonable observer, looking at the [structure's] physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water."[2] "The question remains in all cases whether the watercraft's use as a means of transportation on water is a practical possibility or merely a theoretical one."[3] Thus, the determination of whether a MORU is recognized as a vessel depends on the MORUs category, i.e., ship-shaped hull, SPAR, semi-submersible, tension-leg platform, barge, or other buoyant hull concept. United States courts have further fashioned tests to determine whether work platforms qualify as a vessel.[4] In the instance that a structure does not physically look like a traditional vessel, United States courts have determined the status of a vessel is based on the structure's transient or non-transient nature and characteristics: if a facility or structure will be affixed to the seabed for the entirety of its useful life (or if unmooring/untethering of floating facility structure to allow for movement would be impractical/non-feasible), it is not a vessel.[5]

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[1] 1 U.S.C. § 3; 46 U.S.C. §115 (incorporating 1 U.S.C. §3 definition of "vessel" into Title 46 of the U.S. Code).

[2] *Lozman v. City of Riviera Beach*, 568 U.S. 115, 121 (2013).

[3] *Stewart v. Dutra Const. Co*., 543 U.S. 481, 496 (2005).

[4] *See, e.g.*, *ExPert Oil & Gas, LLC v. Hdi Glob. Specialty Se*, 2024 WL 4512354, at *7 (E.D. La. Oct. 17, 2024) ("[B]arge at issue meets the "plain and commonly accepted" definition of "watercraft" [under *Lozman*]. Although it was affixed to the side of the platform and not being used for transportation, it was clearly still capable of such as evidenced by its floating several miles away during Hurricane Ida. Indeed, even while affixed to the platform, the barge was floating in the water.")

[5] *Jordan v. Shell Oil Co.*, 2007 U.S. Dist. LEXIS 56337, 2007 WL 2220986 (S.D. Tex. Aug. 2, 2007). *See also*, *Lozman*, 568 U.S. at 124; *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625, 627-28 (1887). *See also Warrior Energy Servs. Corp. v. ATP Titan M/V,* 551 F. App'x 749, 752 (5th Cir. 2014) (TITAN floating spar production platform NOT A "VESSEL" – "TITAN is moored to the floor of the Outer Continental Shelf by twelve chain mooring lines connected to twelve anchor piles, each weighing 170 tons and each embedded over 200 feet into the seafloor, and by an oil and gas production infrastructure[;] has not been moved [as of decision in 2014] since it was constructed and installed at its current location in 2010 [;] has no means of self-propulsion, apart from repositioning itself within a 200–foot range by manipulating its mooring lines[; and] moving the TITAN would require approximately twelve months of

SPARs and tension-leg platforms are not vessels.[6] Semi-submersibles, MORUs with ship-shaped hulls, barges, and buoyant hull concepts will likely qualify as vessels by U.S. courts if their intended purpose will be to move from location to location, even if temporarily moored to the seafloor.[7]

If a MORU does not qualify as a "vessel" under the *Lozman/Dutra* test, and to the extent it is erected on the subsoil and seabed of the U.S. Outer Continental Shelf (OCS), the MORU may be subject to the civil laws of the "adjacent State" pursuant to the OCS Lands Act (OCSLA)[8] – including potentially with respect to property rights, including mortgages and liens.[9] Thus, under the *federal* OCSLA statutes, the *non-federal* law of *individual U.S. states* may govern property

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preparation, at least fifteen weeks for its execution, and would cost between $70 and $80 million."). *See also Mendez v. Anadarko Petroleum Corp*., 466 F. App'x 316, 318–19 (5th Cir. 2012) ("Although the [RED HAWK] spar floats, it is permanently moored by six mooring lines that are attached to 18–foot anchors deeply embedded into the sea floor under 5,000 feet of water. The mooring lines are 78 feet long. Steel flow lines and export pipelines further attach the spar to extraction points in one direction and to an onshore production facility in Louisiana, by way of another platform, in another direction. The RED HAWK spar is permanently affixed to the sea floor and can only be moved after detaching the substantial moorings and pipelines that have been joined to its structure. The relocation study shows that moving the spar would involve detaching all the moorings and severing the pipelines; would take nearly two months; would cost of $42 million; and would require abandoning the mooring system and building a new mooring system at the new site. The relocation study shows at most that the RED HAWK is theoretically capable of maritime transportation but not practically capable.").

[6] *Baker v. Director, Office of Workers' Compensation* Programs, 834 F.3d 542, 545-46 (5th Cir. 2016) (holding that a tension-leg platform was not a vessel); Warrior *Energy Servs. Cop. V. ATP Tital M/V*, 551 Fed. App'x. 749, 663 (5th Cir. 2014) (holding and citing precedent that SPARS are not vessels).

[7] *BW Offshore USA, LLC v. TVT Offshore AS*, 145 F. Supp. 3d 658, 663 (E.D. La. 2015) (FPSO BW PIONEER qualiied as a "vessel" – "BW PIONEER is 'ship shaped' and built on the base of a converted oil tanker. It maintains a full marine crew and flies the flag of Bermuda. Importantly, it retains its own propulsion system and can detach itself from the well and relocate under its own power in as little as six hours. Though its primary purpose is oil production, this fact is not dispositive to its status as a vessel."); *Case v. Omega Natchiq, Inc.*, 2008 U.S. Dist. LEXIS 52931, 2008 WL 2714124 (S.D. Tex. July 10, 2008) ("semisubmersible drilling rigs are generally considered vessels"); *Manuel v. P.A. W. Drilling & Well Serv., Inc.*, 135 F.3d 344, 351-52 (5th Cir. 1998 (holding that a drilling "craft" was a vessel because is was a "highly mobile unit" deployed to nineteen different sites over tow years); *Columb v. Texaco, Inc.*, 736 F.2d 218, 220-21 (5th Cir. 1984) (finding that a drilling barge was "highly mobile" due to routine relocation).

[8] 32 U.S.C. §§1331 *et seq*. "Adjacency" is determined by assessing whether the situs of the OCS installation "would be within the area of the [adjacent] State if its boundaries were extended seaward to the outer margin of the [OCS]." 43 U.S.C. §1333(a). "Adjacency" is a factual determination that can involve complex historical authorities, including U.S. regulatory agency records, presidential declarations, and prior caselaw. *See, e.g.*,

Danos & Curole Marine Contractors, Inc. v. BP Am. Prod. Co., 61 F. Supp. 3d 679, 685 (S.D. Tex. 2014); *Reeves v. B & S Welding, Inc*., 897 F.2d 178, 180 (5th Cir. 1990)

[9] *See, e.g.*, *In re Fieldwood Energy LLC*, 2021 WL 4839321, at *11 (Bankr. S.D. Tex. Oct. 15, 2021) (applying Louisiana Oil Well Lien Act as applicable lien law to oil well/platform on Louisiana-adjacent OCS installation);

Cutting Underwater Techs. USA, Inc. v. Eni U.S. Operating Co., 671 F.3d 512, 518 (5th Cir. 2012).

rights relating to MORUs installed on the state-adjacent OCS.[10] Because different U.S. states may have differing property law regimes, there is the potential for deviation/non-uniformity as to how non-vessel MORUs on the OCS may be treated with respect to security rights.

a. Would the courts in your jurisdiction recognize any of the categories of MORU as a "vessel" or "ship" if it were equipped with an integrated dynamic positioning or other station-keeping system, (including any automated system, or remotely or autonomously directed system)?

ANSWER: Yes, in most circumstances, but subject always to the overall *Lozman/Dutra* analysis. The United States Coast Guard ("USCG") has taken the position that a dynamic positioning system will generally qualify a vessel as self-propelled, which in turn would tend to render it practically capable of being used as a means of transportation over water.[11]

2. Is it possible in your jurisdiction to record ownership interests in any (or all) of the categories of MORU in a public register?

ANSWER: Yes, if the MORU is documented with the USCG's National Vessel Documentation Center ("NVDC").[12] **N.B.** It is possible that a craft could be documented with the NVDC as a "vessel," but later determined *not to qualify as a "vessel"* under U.S. general maritime law viz. the *Lozman/Dutra* standard.[13] *See also* Response to Question 11.a *infra*, discussing federal statutes

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[10] **N.B.** With respect to semi-submersible/floating bottom moored/tethered structures, there is a fairly complex arguable discrepancy between the *OCSLA text* regarding applicability of adjacent-state law and the way that the U.S. Fifth Circuit Court of Appeals has *jurisprudentially applied* that OCSLA text. *See, e.g.*, *In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on Apr. 20, 2010*, 808 F. Supp. 2d 943, 952–53 (E.D. La. 2011), *aff'd sub nom. In re Deepwater Horizon*, 745 F.3d 157 (5th Cir. 2014). *See alo* David W. Robertson, *The Outer Continental Shelf Lands Act's Provisions on Jurisdiction, Remedies, and Choice of Law: Correcting the Fifth Circuit's Mistakes*, 38 J. MAR. L. & COM. 487, 534–35 (2007). Further development regarding this jurisprudential/textual disconnect may affect whether/to what extent adjacent state law may apply to MORUs on the U.S. OCS.

[11] USCG Commandant, Change Notice 16000.70, CH-3 to Marine Safety Manual Volume II, COMDTINST M16000.7B (2021). ("Vessel equipped with directional maneuvering equipment and/or substantial propulsion assist units will normally be considered self-propelled (this would include dynamic positioning (DP); notwithstanding the fact that a towing vessel may be employed in the operation.").

[12] *See* 46 CFR, Subpart P.

[13] *See Armstrong v. Manhattan Yacht Club, Inc.*, 2013 WL 1819993, at *6 (E.D.N.Y. Apr. 30, 2013) ("Notably, in an unreported opinion, the Fifth Circuit concluded that a floating oil and gas platform, moored to the ocean floor, was not a "vessel," even though it was registered with the U.S.C.G. as an "industrial vessel" and was subject to routine inspections by the U.S.C.G. *See Mendez v. Anadarko Petro. Corp.*, 466 Fed. App'x 316, 317–19 (5th Cir.2012) (per curiam) (affirming summary judgment in employer's favor as the floating platform was not a vessel); see also [*Pavone v. Mississippi Riverboat Amusement Corp.,* 52 F.3d 560(5th Cir.1995)] at 564, 568–70 (declining to extend vessel status to a dockside casino barge, even though the barge at issue was registered with the U.S.C.G. and licensed with the Mississippi Gaming Commission, which only licenses operators of "vessels" and "cruise vessels"). *Mendez* underscores this Court's duty to evaluate the physical

that allow for "vessel" registry (with the NVDC) for ocean thermal energy conversion facility or plantship (even if such facilities might not otherwise constitute "vessels".

a. If so, would it be registered as a "vessel" or "ship" or other "marine equipment" or other special type of property? If so, please explain with reference to authorities.

ANSWER: If the MORU is documented with the NVDC, it would likely be registered as an "Industrial Vessel," which is defined as: "This term means every vessel which by reason of its special outfit, purpose, design, or function engages in certain industrial ventures. Included in this classification are such vessels as drill rigs, missile range ships, dredges, cable layers, derrick barges, pipe lay barges, construction and wrecking barges. Excluded from this classification are vessels carrying freight for hire or engaged in oceanography, limnology, or the fishing industry."[14]

b. If so, would it be registered in your jurisdiction's public register of ships, or in another public register?

ANSWER: Yes, in the U.S., a MORU would be registered or "documented" with the NVDC.

c. If it is registered in your jurisdiction (whether as a "vessel" or "ship" or other "marine equipment" or other special type of property), would it be entitled to fly the flag of your jurisdiction and be deemed to have that nationality? If so, please explain with reference to authorities.

ANSWER: Yes.[15]

3. Assuming that a MORU is the subject of leases, subleases, or charters (including demise charters) or sub-charters in your jurisdiction, is it possible to record such lease interests in any (or all) of the categories of MORU in a public register in your jurisdiction? If so, please describe. If so, please also describe the procedure to file such agreements or notice thereof.

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characteristics and activities of the Clubhouse to determine whether it is a vessel. Otherwise, this Court would be improperly delegating its analysis to the U.S.C.G. and its classification system.").

[14] 46 C.F.R. § 90.10-16. The form application to document a vessel with the NVDC has a section for applicants to identify a vessel's primary service. *See* Section K of the form CG-1258: https://www.dco.uscg.mil/Portals/9/DCO%20Documents/NVDC/CG-1258.pdf?ver=MPJjdit5LaS5B0_IFJv_1A%3D%3D . The form has a box to check for a "Mobile Offshore Drilling Unit" but does not have a corresponding box for a MORU. *Id.*

[15] *See* 46 CFR, Part 67.

ANSWER: Yes, with the Surface Transportation Board of the United States. Filings can be made electronically.[16]

4. **In your jurisdiction, is the acceptance by a registrar or other governmental body of a MORU (or type of MORU) as a "ship" or "vessel" or equivalent term dispositive of its legal status as a "ship" or "vessel" or equivalent term under your law for purposes other than registration under domestic law?**

ANSWER: No, however, while not dispositive of "vessel" status, registration with the USCG is often considered as evidence in the analysis of "vessel" status.[17]

5. **Is it possible in your jurisdiction to record liens, maritime liens, claims, encumbrances (e.g. mortgages or hypotheques) against any such category of MORU in a public register? If so, please explain details and limitations on such register.**

ANSWER: If a MORU is registered with the NVDC, then yes, mortgages can be recorded with the NVDC, as well as notices of claims of liens.[18]

6. **Is there any priority given to a registered creditor in such property in your jurisdiction? If so, please explain.**

ANSWER: Yes, a mortgagee under a "preferred mortgage"[19] has priority over, among other things, later-filed mortgages and priority over liens for necessaries that arise after the preferred mortgage is recorded with the NVDC.[20]

Treatment of Foreign MORUs as property

7. **Does your jurisdiction recognize ownership of any such property (i.e. any category of MORU) as evidenced by an entry in a public register of another jurisdiction?**

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[16] *See*: https://www.stb.gov/resources/need-assistance/how-to-file/

[17] *See* Response to Question 11 for further details.

[18] *See* 46 CFR, Part 67, Subpart Q and Subpart R; *see also* 46 U.S.C., Chapter 313.

[19] The definition of a "preferred mortgage" is set forth in 46 U.S.C. § 31301(6) ("[P]referred mortgage … (A) means a mortgage that is a preferred mortgage under section 31322 of this title [i.e. preferred mortgage is a mortgage, whenever made, that (1) includes the whole of the vessel;(2) is filed in substantial compliance with section 31321 of this title; (3)(A) covers a documented vessel; or (B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter]; and (B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office

[20] *See United States v. One 254 Foot Freighter, M/V Andoria*, 570 F. Supp. 413 (E.D. La. 1983); *see also The Lottawanna*, 87 U.S. 201 (1873).

ANSWER: In the United States, ownership is generally a question of state law, and as such, the answer to this inquiry would depend on the state's law applicable to the particular MORU. Generally, though, state law would likely recognize an entry in a public register of another jurisdiction as evidence of ownership of a MORU, subject to any evidence of fraud or the like.

8. If:

(i) a MORU (or any type thereof) is categorized as a "vessel" or "ship" or other "marine equipment" or other special type of property in another jurisdiction and is registered and/or flagged as such in that jurisdiction, BUT

(ii) the MORU would not be considered a "vessel" or "ship" under the domestic laws of your jurisdiction,

would the courts or relevant authorities in your jurisdiction nonetheless treat the foreign registered MORU as a "vessel" or "ship" for:

a. Purposes of arrest of the MORU?

ANSWER:

The classification of the MORU as a "vessel" or "ship" (whether in a foreign jurisdiction/flag state or otherwise) is not necessary to initiate a *maritime attachment* proceeding under certain limited circumstances, pursuant to Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure ("Supplemental Rules"). A Rule B attachment (which is a *remedy*, not a substantive *claim*) is available whenever there is an underlying claim (whether the action be *in personam* or *in rem*) governed by the general maritime law, or for purposes of obtaining security pending determination of cause of action/claim (including a claim in arbitration) under foreign law/in a foreign jurisdiction. Property, whether a vessel or not, that is within the judicial district, belonging to a defendant not found in the district, is subject to attachment as security under Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure ("Supplemental Rules").[21] Accordingly, a MORU (whether a vessel or a non-vessel) located in a judicial district in the United States might be subject to attachment under Rule B, although as a practical matter, obtaining process to execute/perfect the attachment might be difficult or impossible if the MORU were technically/arguably "in" the judicial district (i.e. offshore of the

[21] A plaintiff may seek an attachment of defendant's tangible or intangible personal property within the district, when the defendant is not within the district. Rule B (1)(a).

OSCLA-extended geographical confines of the district), but never came into port or some other location where process could be perfected by the U.S. Marshal.[22]

Notably, a U.S. court would ostensibly apply U.S. general maritime law (i.e.the *Lozman/Dutra* test and the U.S. Code "vessel" definition) to determine whether a MORU is or is not a "vessel," *regardless* of whether a foreign jurisdiction, or even the MORUs flag state (if applicable) document the MORU as a "vessel" under their own law. For comparison, even when the U.S. Coast Guard has "registered" -i.e. flagged – a structure as a U.S.-flagged "vessel," courts have gone on to hold that the structure *is not in fact a "vessel"* under U.S. general maritime law.[23]

To the extent a MORU is a non-vessel asset, it may be subject to seizure/attachment/sequestration under individual U.S. state laws.

Separately, ONLY a "vessel" or other maritime property aboard a vessel can be arrested *in rem* (i.e. under the fiction of personification of the vessel as the entity liable for the asserted claims) as a direct defendant in an action to enforce a maritime lien (pursuant to the U.S. federal Commercial Instruments and Maritime Liens Act, CIMLA, 46 U.S.C. §§31301 *et seq*.), including a lien arising out of a maritime tort, or whenever a statute of the United States provides for a maritime action *in rem*, pursuant to Supplemental Rule C, regardless of whether the owner/party responsible for the defendant vessel is located within the judicial district.[24] Accordingly, to the extent a MORU qualified as a "vessel" under U.S. law, the MORU and any equipment/appurtenances aboard may be subject to *in rem* Rule C arrest (including for liens under CIMLA or otherwise). Note that the U.S. District Court for the Eastern District of Louisiana has confirmed the availability of Rule C arrest proceedings against a "Met Mast" tower (i.e. a meteorological monitoring tower that was to be installed in connection with a fixed offshore wind project off the coast of Maryland).[25]

b. Purposes of foreclosure on a mortgage / hypothecation of the MORU?

ANSWER:

[22] *See, e.g., ITT Indus. Credit Co. v. Phoenix Sea Drill Big Foot II,* 1983 WL 640 (E.D. La. 12/16/83) (refusing request for issuance of "order directing the U. S. Marshal of this district to seize the vessel where she is presently working on the [OCS] 10 miles from the coast of Louisiana").

[23] *See, e.g.*, *In re Biloxi Casino Belle Inc*., 176 B.R. 427, 434 (Bankr. S.D. Miss. 1995)("The United States Coast Guard['s] [issuance of] certificates of documentation for the barges which form the foundation of these casinos…is not determinative of whether the casinos constitute "vessels" as defined by 1 U.S.C. § 3.").

[24] "When available. An action in rem may be brought: (1) To enforce any maritime lien; (b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto. Rule C (1).

[25] *MARMAC, LLC v. InterMoor, Inc*., 566 F. Supp. 3d 559, 566 (E.D. La. 2021),

NO. Only to the extent the MORU were a "vessel" would foreclosure on a ship mortgage be available nder Rule C of the Supplemental Rules and CIMLA.[26]

c. Purposes of enforcement of maritime liens on the MORU?

ANSWER:

NO. Only to the extent the MORU were a "vessel" would arrest and enforcement of maritime liens be available under Rule C of the Supplemental Rules and CIMLA.[27]

d. Any or all other purposes?

ANSWER: *See above* discussion of Rule B attachment. Only in certain circumstances for attachment as a remedy in support of maritime *claims*. A plaintiff can file suit for attachment of a vessel or property to secure a maritime *claim* under Rule B of the Supplemental Rules if: admiralty jurisdiction exists and, when the MORU is found within the judicial district and the defendant is not.

9. Would your jurisdiction accord the same priority of lienors and recorded creditors of a foreign-registered MORU as such lienors and creditors would have in the jurisdiction where the MORU was originally recorded or registered?

ANSWER: Not necessarily. U.S. courts would generally apply U.S. law to lien ranking, and U.S. law may or may not align with foreign law.[28]

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[26] 46 U.S.C. 31325(b)(1) ("On default of any term of [a] preferred mortgage, the mortgagee may[] enforce [its] preferred mortgage lien in a civil action in rem for … a vessel titled in a State, or a *foreign vessel*."). *See, e.g.*, *Ray Capital Inc. v. M/V Newland Castellano*, 2016 U.S. Dist. LEXIS 102646, 2016 WL 4154459 (S.D. Ga. Aug. 4, 2016 (holding that 46 U.S.C. 31325 allowed for the arrest of a foreign registered vessel where the owner foreclosed on a preferred mortgage). *See also*, 46 U.S.C. 31301(6) (providing that a "preferred mortgage" is "a mortgage … that is established as a security on a foreign vessel if the mortgage … was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at a port of registry of the vessel of at a central public office").

[27] Marime liens on a vessel are defined under CIMLA 46 U.S.C. §31301, and include: necessaries, including repairs, supplies, towage, and the use of a drydock or marine railway; damage arising out of a maritime tort; wages of a stevedore when employed directly by a vessel personnel defined in 46 U.S.C. § 31341; wages of the crew of the vessel; general average claims; and salvage claims, including contract salvage. Competing maritime/CIMLA liens are ranked in reverse chronological order, with the most recent "necessaries" priming later-provided ones: "[T]he Fifth Circuit resorts to [t]he inverse-order rule of maritime liens, which provides that the last lien to attach takes priority over all others." *Louisiana Int'l Marine, L.L.C. v. Drilling Rig Atlas Century*, 2012 WL 4718558, at *7 (S.D. Tex. Aug. 21, 2012).

[28] *See Banco de Credito Industrial, S.A. v. Tesoreria General de la Seguridad Social de España*, 990 F.2d 827, 838 (5th Cir. 1993) (holding that the law governing the underlying claim determined the existence of a maritime lien but the law of the forum determined the rank of various maritime liens). "United States ranks liens and mortgages very differently from the rest of the world . . . ." William Tetley, *Maritime Liens, Mortgages & Conflicts of Laws*, 6 U.S.F. Mar. L.J. 1, 5 (1993).

a. If your jurisdiction is party to the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926 or the International Convention on Maritime Liens and Mortgages 1993, would your jurisdiction recognize a MORU as a "vessel" or "sea-going vessel" (respectively) for purposes of that Convention?

ANSWER: N/A.

10. What law would your jurisdiction apply to, or what law would it consider to govern, a sale or a change of ownership of a foreign-registered MORU which is operated in the EEZ of your jurisdiction?

ANSWER: As a general matter of standard commercial practice, vessel/offshore structure sale/ownership transfer transactions typically include contractual choice-of-law provisions whereby the parties to the transactions specify and designate the law governing the transaction. U.S. courts are likely to uphold and apply the law chosen by the parties to the underlying transaction. Absent a contractual choice-of-law provision, a United States court would likely apply the so-called *Lauritzen* factors to determine the governing law. In *Lauritzen*, In *Lauritzen* , the U.S. Supreme Court provided seven non-exclusive factors that courts use to determine which country's law applies: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured party; (4) the allegiance of the defendant ship owner; (5) the place of contract; (6) the inaccessibility of a foreign forum; and (7) the law of the forum.[29]

In the context of involuntary sales (i.e. sales pursuant to judicial foreclosure *in rem* based on preferred ship mortgages and/or maritime liens pursuant to CIMLA, and/or bankruptcy sales) the issue of governing law is more complex. There is an apparent split in authorities (among the U.S. First, Second and Third Circuit Courts of Appeals, and the Fifth and Ninth – and partially also the Second - Circuit Courts of Appeals) as to whether the *Lauritzen* factors, or the Restatement (Second) of Conflicts of Law, or the express provisions of CIMLA should apply with respect to *in rem* vessel foreclosure proceedings against a foreign-flagged vessel subject to a foreign (non-U.S.) ship mortgage.[30] The First/Second/Third Circuits generally hold that CIMLA (and its predecessor statute the Ship Mortgage Act) **exclusively** govern all foreclosures of foreign ship mortgages in American courts. The Fifth/Ninth (and Second) Circuits have held that the *Lauritzen* factors and/or the Restatement multi-factor analysis (i.e. (1) the needs of the interstate and international systems, (2) the relevant policies of the forum, (3) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, (3) the protection of justified expectations, (4) the basic policies underlying the particular field of

[29] *Lauritzen v. Larsen*, 345 U.S. 571, 583–91 (1953).

[30] *See Oil Shipping (Bunkering) B.V. v. Sonmez Denizcilik Ve Ticaret A.S.*, 10 F.3d 1015, 1020 (3d Cir. 1993) (discussing split of authorities).

law, (5) certainty, predictability and uniformity of result, and)6) ease in the determination and application of the law to be applied).

Would your answer vary (and if so, how would it vary) if the MORU was:

a. Foreign-owned but not registered, or

ANSWER: Same answer as above.

b. Operated in the territorial sea of your jurisdiction?

ANSWER: Same answer as above.

11. Are there any reported decisions in your jurisdiction which address the legal classification (as "ship", "vessel" or other "marine equipment" or other special type of property) of:

a. MORUs (of any type);

ANSWER: The MLAUS is unaware of any United States jurisprudence addressing vessel status (*vel non*) of MORUs as defined in this questionnaire.

Notably, however, the United States has enacted federal legislation specifying (as a matter of federal *statutory* law) that "[f]or the purposes of the documentation laws, for which compliance is required under paragraph (1) of this subsection [i.e. vessel documentation laws], ocean thermal energy conversion facilities and plantships **shall be deemed to be vessels** and, if documented, vessels of the United States for the purposes of the Ship Mortgage Act, 1920 (46 U.S.C. 911-984) [currently codified as CIMLA]."[31] Likewise, "[f]or the purposes of chapter 535 of Title 46 [regarding Capital Construction Fund financial assistance programs], any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, **shall be deemed to be a vessel operated in the foreign commerce of the United States**."[32] Thus, to the extent a MORU qualifies as an "ocean thermal energy conversion facility or plantship" under these statutes, it would ostensibly be deemed a "vessel" for purposes of U.S. regulatory requirements relating to "vessel documentation, inspection, and manning laws" and potentially available federal incentive funding.

However, with respect to non-regulatory, non-incentive-based legal issues/claims (i.e. private/commercial tort and contract claims), the *Lozman/Dutra* test would ostensibly remain applicable, notwithstanding the statutory/regulatory deemed-"vessel" definition for such facilities. U.S. jurisprudence recognizes that just because a structure/facility may be inspected/documented

[31] 42 U.S.C. §9118.

[32] 42 U.S.C. §9141.

by the U.S. Coast Guard and referred to in U.S Coast Guard regulatory documents as a "vessel" is not determinative of vessel status for all non-regulatory purposes.[33] *See also Todd Shipyards Corp. v. United States*, determining that a floating dry dock, which the owner intended to use to move "vehicles, equipment, and materials for shipyard operations" between various locations in the United States, was not a "vessel" for purposes of 19 U.S.C. §1401 (the customs statute that provides a substantially identical "vessel" definition as 1 U.S.C. §3) *and compare* with U.S. Customs and Border Patrol Letter Ruling HQ H032257 (8/1/2008) (ruling that a non-self-propelled floating dry dock (virtually identical to that in *Todd Shipyards)* – which was not permanently moored and was capable of and intended to perform transporting of other vessels over water between points within a harbor via tow – **qualified as a "vessel" under 1 U.S.C. §3** due in part to the fact that the dry dock was registered as a vessel with the USCG, and even though that registration was purportedly solely a result of financing covenants imposed by secured lenders of the owner.[34]

As a final point of analogy, the (non-MORU) gas turbine power generation barges at issue in *Lee v. Astoria Generating Co., L.P.*, may provide useful guidance for how MORUs may be classified. In this case, the Court of Appeals of New York (i.e. a *state* level tribunal, and not a U.S. federal level court), found that "the barge, located on navigable waters in Gowanus Bay, is a vessel within the [Longshore Harbor Workers Compensation Act]. The barges owned by Astoria/Orion have been tugged on water approximately once a decade to a maintenance station and, at least once, to provide energy to another part of New York City in an emergency. Thus, the barge at issue is practically capable of being used as a means of transportation on water. Although the barge is stationed at the Gowanus facility, because it is not permanently anchored or moored, it has not lost its status as a vessel. Accordingly, the barge is a vessel under section 905(b)." 13 N.Y.3d 382, 391 (NY 2009). These barges housed individual gas turbine generating units. *Id*. at *387. By analogy, any barge-mounted or similar floating MORU facility practically capable of use for transportation of persons/equipment may qualify as a "vessel."

b. Offshore wind turbines (fixed or floating);

ANSWER: The MLAUS is unaware of any United States jurisprudence addressing vessel status (*vel non*) of fixed or floating offshore wind turbines. However, fixed bottom offshore facilities related to oil and gas production are non-vessels under U.S. law, and thus (by analogy) the same would likely apply to fixed bottom wind turbines.[35] .

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[33] Mendez v. Anadarko Petroleum Corp., 466 F. App'x 316, 317 (5th Cir. 2012) ("Coast Guard classif[ication of] the spar as an 'industrial vessel' [is not dispositive]."); ATP TITAN, 941 F. Supp. 2d at 703 (same).

[34] *See also* CBP Ruling HQ 115580 (Mar. 20, 2002) ("The assumption that the courts would reach the same conclusion as to vessel status for all federal laws in cases where a water craft is involved falls of its own weight.").

[35] *Nolan v. Coating Specialists, Inc*., 422 F.2d 377, 379 (5th Cir. 1970) ("Fixed off-shore platforms are not vessels.")

c. Mobile Offshore Drilling Units ("MODUs");

ANSWER: Yes: *In re Deepwater* Horizon, 745 F.3d 157 (5th Cir. 2014) (treating the MODU as a vessel under maritime law); 33 C.F.R. § 140.10 ("Mobile Offshore Drilling Unit or MODU means a vessel, other than a public vessel of the United States, capable of engaging in drilling operations for exploration or exploitation of subsea resources.").

d. FSUs and FPSOs

ANSWER: The MLAUS is unaware of any United States jurisprudence addressing vessel status (*vel non*) of floating storage units (FSUs). However, U.S. federal statute 33 U.S.C. §3801 expressly includes FSUs as "vessels" within the general definition of 1U.S.C. §3: "The term 'vessel' has the meaning given that term in section 3 of Title 1, including …floating storage units, and floating production, storage, and offloading units." The *Lozman/Dutra* test would nonetheless remain determinative as to whether an FSU is a vessel.

As for floating production, storage, and offloading (FPSOs), in addition to being included within the "vessel" definition quoted above at 33 U.S.C. §3801, U.S. jurisprudence (under *Lozman/Dutra* test) that an FPSO may be a "vessel."[36]

Questions related to arrest

1. **Would it be possible to arrest, seize, detain, or otherwise proceed *in rem* or otherwise against a MORU for a maritime claim in your jurisdiction (whether under domestic law or binding convention)?**

ANSWER: Yes, under Rule C of the Supplemental Rules to the extent the MORU qualifies as a vessel and to the extent the underlying claim was for a maritime lien against the MORU; and potentially under Rule B of the Supplemental Rules, *regardless* of whether the MORU were a vessel or not, to the extent the MORU were the property of a defendant entity, not present in the judicial district where the MORU was located, in connection with a claim governed by general maritime law. *See* Response to # 8 *supra*.

a. If so, on what grounds?

ANSWER: *See* response to #8 *supra*. A plaintiff may pursue an action *in rem* against a vessel or other marine property to enforce a maritime *lien* under CIMLA and/or arising out of a maritime tort. CIMLA defines maritime liens as: relating to claims for damage arising out of a maritime tort; wages of a stevedore when employed directly by a vessel personnel defined in 46 U.S.C. § 31341;

[36] *BW Offshore USA, LLC v. TVT Offshore AS*, 145 F.Supp.3d 658 (E.D. La. 2015) (holding that a FPSO unit was a vessel); *Petrobras Am., Inc. v. Vicinay Cadenas, S.A.,* 815 F.3d 211, 217 (5th Cir 2016) ("FPSO [was] technically a vessel").

wages of the crew of the vessel; general average claims; and salvage claims, including contract salvage.[37]

NOTE ALSO – Supplemental Rule D provides for an *in rem* arrest remedy for "[i]n all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all actions so maintainable with respect to the possession of cargo or other maritime property."

b. Is the answer to this question determined by flag state law or the domestic maritime law of your jurisdiction?

ANSWER: The laws governing the underlying substantive claim generally determine whether a vessel or other maritime property is subject to Rule C *in rem* arreswhen operating within the limits of the judicial district in the United States. For Rule C arrest matters, "if foreign law is found to apply, it may be found that the vessel is not subject to arrest in the United States, although it would be under American law."[38]

For Rule B attachment procedure, however, there is a split in authority, with some cases holding that United States general maritime law applies to the *procedural* determination of whether the underlying claim *is maritime or note* for purposes of supporting the Rule B attachment (even if the underlying claim may itself be *substantively* governed by foreign law that might not consider the claim to sound in admiralty); and others holding that foreign law governs both the question of whether the underlying claim sounds in admiralty and the substantive elements of such claim.[39]

2. Is it possible to arrest, seize, detain, or otherwise proceed against a MORU for *non*-maritime claims in your jurisdiction?

ANSWER: No, as the underlying requirement to utilize Rules B and C of the Supplemental Rules is a maritime claim and admiralty jurisdiction of the court. For Rule B, the claim *must* be maritime

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[37] 46 U.S.C. 31301.

[38] Thomas J. Schoenbaum, Admiralty and Maritime Law § 21:4. The action in rem : Rule C, 2 Admiralty & Mar. Law § 21:4 (6th ed.)

[39] *Cf. Flame S.A. v. Freight Bulk Pte. Ltd.,* 762 F.3d 352, 359 (4th Cir. 2014) ("Supreme Court precedent strongly indicates that federal law should control our determination of whether a claim, such as the FFA dispute in this case, sounds in admiralty."); SLS Shipbuilding Co. v. Ionia Mgmt. S.A., 2011 WL 2652365, at *2 (S.D. Tex. July 5, 2011) (generally discussing split in authorities and holding that "[t]he prevailing view appears to be that whether a prima facie maritime claim exists is an entirely procedural question, so federal law applies.") *with Al Fatah Int'l Nav. Co. v. Shivsu Canadian Clear Waters Tech*. (P) Ltd., 649 F. Supp. 2d 295, 299 (S.D.N.Y. 2009) (holding the opposite and discussing split in authority).

in nature.[40] For Rule C, the *in rem* claim *must* be to enforce a maritime lien. Thus, a *non*-maritime claim will not relate sufficiently enough to invoke admiralty jurisdiction for arrest and attachment proceedings.[41]

As noted above in response to #1, non-vessel MORUs could potentially be subject to seizure/attachment/sequestration under individual U.S. adjacent-state legal regimes under the OCSLA.

3. **If a MORU were arrested, seized, detained, etc. in your jurisdiction, would it be possible to obtain a release of the MORU from such arrest/detention on posting of an adequate security? If so, please provide authority.**

ANSWER: Yes. Supplemental Rule E, provides a mechanism to release the vessel or maritime property by posting security, not to exceed " twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisement, whichever is smaller" and subject to "interest [on the stipulated or court-ordered security amount] at 6 per cent per annum." [42] The Rule E procedure specifically provides for a "prompt hearing" for the court to set security (if the parties cannot reach a stipulation on the amount/terms). Note also that *in rem* arrest and/or attachment under Rules C and B (respectively) are subject to a right to counter-security in favor of the defendant owner/interest holder in the attached/arrested property (to the extent the owner has a viable substantive counterclaim) under Rule E(7).

Questions related to limitations of liability

1. **Assuming that a MORU was not used for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of Convention on Limitations of Liability for Maritime Claims, 1976), would the owner or salvor of the MORU benefit in your jurisdiction form the limitations of liability found in the Limitations of Liability for Maritime Claims, 1976 and/or its Protocols ("LLMC 1976/1996/2012)?**

ANSWER: Not Applicable, as the United States is not a signatory to the LLMC 1976/1996/2012.

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[40] *See, e.g.*, *James v. M/V "Eagle Express"*, 2012 U.S. Dist. LEXIS 105072, 2012 WL 3068791 (S.D. Ala. July 27, 2012) ("Accordingly, if a court determines that a plaintiff's claim is not maritime in nature, the attachment remedy afforded by Rule B is not available.")

[41] *Id.* at *16-19 (holding that a non-maritime lien cannot give rise to an in rem action and arrest of a vessel under Rule C).

[42] "[T]he court may, on the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, require the plaintiff, defendant, claimant, or other party to give security, or additional security, in such sum as the court shall direct to pay all costs and expenses that shall be awarded against the party by any interlocutory order or by the final judgment, or on appeal by any court." Rule E(2)(b).

2. **Assuming that a MORU is used to provide electrical power to *other* types of floating units or fixed or subsea facilities which were themselves exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of LLMC), would the owner or salvor of that MORU benefit in your jurisdiction from the limitations of liability found in LLMC 1976/1996/2012?**

ANSWER: Not Applicable, as the United States is not a signatory to the LLMC 1976/1996/2012.

3. **Would a MORU benefit from any other (non-LLMC based) forms of limitations of liability under the domestic law of your jurisdiction? If so, please explain with reference to authorities.**

ANSWER: . To the extent a MORU is a "vessel" under United States general maritime law, the MORU would be entitled to pursue exoneration from, or limitation of liability for, any maritime casualty involving the MORU, pursuant to the provisions of the U.S. Limitation of Liability Act, 46 U.S.C. §§30501 *et seq*.

Questions related to innocent passage and transit

1. **Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's internal waters (cf. UNCLOS Art. 8(2))?**

ANSWER: Not applicable, as the United States is not a signatory to UNCLOS. However, the United States does recognize that principles of innocent passage as set forth in UNCLOS are binding as customary international law: "The right of innocent passage has long been recognized as customary international law. *See, e.g., Corfu Channel case (UK/Albania)*, I.C.J. Reports 1949 p.28; *U.S. V. Louisiana,* 394 U.S. 11, 22 (1969)."[43]

See also, however, with respect to MORUs that may qualify as "ocean thermal energy conversion facilities or plantships," the provisions of 42 U.S.C. §9118, which include certain safety/environmental/navigational protection and jurisdictional authorizations – "subject to principles of international law" - for such facilities operating under license from the United States.

2. **Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's territorial sea (cf. UNCLOS Art. 17, 24(a))?**

ANSWER: See Response to #1 *supra*.

[43] U.S. National Oceanic and Atmospheric Administration (NOAA), "Jurisdiction Over Vessels," https://www.noaa.gov/jurisdiction-over-vessels (last accessed 6 January 2025).

a. Would your jurisdiction recognize its own criminal jurisdiction on board a foreign-registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 27?

ANSWER: Not applicable, as the United States is not a signatory to UNCLOS. The United States does assert criminal jurisdiction over vessels passing through the territorial sea of the United States, and further asserts jurisdiction over foreign vessels on the high seas. *See* 18 U.S.C. §7.[44]

b. Would your jurisdiction recognize its own civil jurisdiction on board a foreign-registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 28?

ANSWER: However, the United States ostensibly exercises limited civil jurisdiction over vessels engaged in innocent passage through the territorial sea as set forth in the Restatement (Second) of Foreign Relations Law of the United States § 47 (1965):

> (1) A state may not exercise its enforcement jurisdiction under the rule stated in § 20, to levy execution against or to arrest a foreign vessel in innocent passage through its territorial sea, for the purpose of a civil proceeding, unless
>
> (a) the vessel is a merchant vessel or a government-owned vessel operated for commercial purposes, and
>
> (b) the proceeding is with respect to obligations or liabilities assumed or incurred by the vessel itself in the course or for the purpose of its voyage through the waters of the state.
>
> (2) A state may not exercise its enforcement jurisdiction under the rule stated in § 20, to stop or divert a foreign vessel in innocent passage through its territorial sea, in order to exercise civil jurisdiction in relation to a person aboard the vessel, except with respect to a personal obligation or liability connected with an obligation or liability of the vessel for which the vessel is subjected to levy or arrest under the rule stated in Subsection (1)(b).[45]

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[44] U.S. Department of Justice, Criminal Resource Manual CRM 500-999 670. Maritime Jurisdiction (available at https://www.justice.gov/archives/jm/criminal-resource-manual-670-maritime-jurisdiction).

[45] *See also* Restatement (Third) of Foreign Relations Law § 513 (1987) ("Similar restrictions apply to the exercise of civil jurisdiction by the coastal state. The coastal state "should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship." It "may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course of or for the purpose of its voyage through the waters

3. **If there are straits used for international navigation in the waters adjacent to your jurisdiction, would a right of transit passage (or innocent passage) be recognized in your jurisdiction for a foreign-registered MORU being towed through that strait (cf. UNCLOS Art. 38, 45)?**

ANSWER: See Response to #1 *supra*.

4. **If your jurisdiction is an archipelagic State (within the meaning of UNCLOS Art. 46), would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's archipelagic waters (cf. UNCLOS Art. 52))?**

ANSWER: Not applicable, as the United States is not an archipelagic state within the meaning of UNCLOS Art. 46.[46]

Question related to sovereign immunity and rights of owners or creditors to remove property from established MORU operations

1. **In your jurisdiction, does the sovereign prohibit by law the arrest, repossession or seizure by a creditor of property under lease or contract with an organ of the state (such as a public utility)?**

ANSWER: A creditor may not cause an arrest, repossession or seizure proceeding against a vessel that is owned, possessed, or operated by the United States; or cargo owned or possessed by the United States.[47]

Vessels and cargo of a foreign State can be subject to arrest or seizure in limited circumstances pursuant to the Foreign Sovereign Immunities Act (FSIA) (discussed *infra*).[48]

2. **In your jurisdiction, may the sovereign/state waive immunity by contract for the benefit of creditors or lienors seeking to recover leased property (e.g. a leased MORU) or damages in the event of a default by the sovereign or another responsible party under a contract or lease to produce or supply energy to a sovereign- or state- owned entity?**

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of the coastal State." These provisions do not apply, however, to "a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.").

[46] *See* Office of the Staff Judge Advocate, U.S. Indo-Pacific Command, 97 INT'L L. STUD. 12, 13 (2021) *available at* https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2940&context=ils

[47] 46 U.S.C. § 30908.

[48] 28 U.S.C. § 1605(b) – (d).

ANSWER: Yes, as contemplated by the FSIA. While the FSIA does not specifically address contracts/leases to produce or supply energy to a sovereign- or state-owned entity, the FSIA does generally recognize contractual waiver of foreign sovereign immunity and/or invalidity of foreign sovereign immunity in specified contractual circumstances. These include contractual waivers by the foreign sovereign – i.e. when "the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver."[49] Additionally, the FSIA dictates waiver of foreign sovereign immunity as a matte of U.S. law when the underlying "action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States." "Commercial activity" is defined as "either a regular course of commercial conduct or a particular commercial transaction or act[; and] [t]he commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose."[50]

The FSIA also dictates waiver of sovereign immunity with respect to claims arising out of seizure of property rights "in violation of international law" by a foreign sovereign, when such property ("or property exchanged for such property") is "present in" the U.S. or is owned/operated by an "agency or instrumentality" of the foreign sovereign "in a commercial activity in the" U.S.[51]

The FSIA also dictates waiver of sovereign immunity with respect to claims for personal injury or death or damage/loss of property "occurring in" the U.S. "and caused by the tortious act or omission" of the foreign sovereign or its employees/officials **except** for claims arising out of such persons "discretionary functions" or with respect to claims of "malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights."[52]

With specific reference to "vessels," the FSIA also dictates waiver of foreign sovereign immunity with respect to *in rem* arrest of foreign sovereign-owned vessels based on maritime liens and/or preferred ship mortgages (under CIMLA), in the following specified circumstances:

> (b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a

[49] 28 U.S.C. §1605(a)(1).

[50] 28 U.S.C. §1603(d).

[51] 28 U.S.C. §1605(a)(3).

[52] 28 U.S.C. §1605(a)(5).

maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: Provided, That--

> (1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and
>
> (2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief *in personam* in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46 [i.e. CIMLA]. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 [CIMLA] and in accordance with the principles of law and rules of practice of suits *in rem*, whenever it appears that had the vessel been privately owned and possessed a suit *in rem* might have been maintained.

When an action against a foreign sovereign is available under the FSIA, punitive damages are not recoverable against the foreign sovereign.[53]

[53] 28 U.S.C. §1606.