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Analysis and Recommendations on Cabotage Regulations in Japan: Perspectives from Offshore Wind Projects

June-2024

Analytical Report

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EXECUTIVE SUMMARY

National Context

Japan recognizes offshore wind as a significant contributor to its renewable energy goals and a vital component of its energy transition towards climate neutrality by mid-century. The Japanese government announced plans to construct 30-45 GW of offshore wind capacity by 2040, positioning the country among the world's top three offshore wind power fleets[1].

The design of tenders, along with the necessary technical standards, is crucial not only for Japan to achieve cost-effective renewable energy from offshore wind but also to establish a level playing field for both domestic and international tenderers. However, Japan has either introduced or contemplated on various measures that would undermine the plausibility of European wind power sector players to enter and operate on the Japanese market. Therefore, engaging in dialogue, discussions, and experience-sharing with the EU is highly beneficial to gain insights into applicable technical and regulatory solutions for promoting and operating (floating) offshore wind projects.

Objective of the Report

This Report is intended to: (a) provide detailed regulatory intelligence and an understanding of the regulatory environment in Japan, (b) facilitate dialogues among key business and policy stakeholders; (c) broaden each stakeholder's knowledge and understanding of the respective (floating) offshore wind relevant regulatory environments; and (d) improve public awareness about the opportunities and challenges of (floating) offshore wind with a special focus on climate neutrality and environmental sustainability.

Key highlights

This Report presents a legal analysis of certain issues faced by offshore wind projects in Japan, and provides recommendations based on BM's legal and regulatory expertise as to how these issues may be resolved or avoided, as applicable.

[1] Please refer to the graph on page 4 of the Vision for Offshore Wind Power Industry (1st) issued on 15 December 2020 in the following link: https://www.mlit.go.jp/kowan/content/001382705.pdf

Summary of Analytical Report

Highlights

Cabotage Regulations

Under Article 3 of the Ship Act (*senpaku ho*), A non-Japan-flag vessel cannot transport cargo or passengers between "ports" or call at a "closed port" in Japanese territorial waters without a Special Permit.

Based on the most recent interpretation of Japanese cabotage regulations by the Minister of the Ministry of Land, Infrastructure and Transportation (the "MLIT"), offshore wind farms in Exclusive Economic Zones ("**EEZ**") shall be deemed to be located within Japan and subject to Japanese laws, meaning that construction sites in the EEZ will be deemed by MLIT to constitute a "closed port" for the purposes of Article 3 of the Ship Act, and vessels operating therein will therefore subject to the same cabotage restrictions applicable within Japanese waters.

The Report discusses the process for obtaining Special Permits, noting that the use of Special Permits in the context of floating offshore wind farms becomes problematic due to a lack of transparency of the assessment criteria and the timing of assessment.

Section C offers a sample of cabotage regulations in Germany, derived from our legal research, which we consider reflects best practices for the development of offshore wind projects.

Crew Nationality Requirements

While there is no clear regulatory basis for this requirement, Japanese crews are in practice required on Japan-flag vessels, and this applies in both Japanese territorial waters and the EEZ. Certain exceptions to the requirement exist based on the Maru-Ship System (described in Section B.1.2 of the Report) but these exceptions are unlikely to be useful in the context of offshore wind projects. Potential changes in the legal frameworks are being considered, and it is possible this may impact crew nationality requirements in future.

Recommendations

Based on our findings, we consider that the relaxation or abolishment of Japanese cabotage regulations would be necessary to establish a preferable legal framework in Japan that aligns with the government's target for the development of offshore wind projects and creation of a level playing field for both domestic and international tenderers. We have therefore provided recommendations in Section D for advocating the deregulation or relaxation of cabotage regulations in Japan.

i. Scope

This Report provides a legal analysis of: (a) cabotage regulations in Japanese Territorial Waters and EEZ under Japanese legislation and Japan's international obligations; and (b) restrictions on non-Japanese crew members in Japanese Territorial Waters and EEZ.

BM prepared this Report based on analyzing (i) the vessel ownership requirements, (ii) the operation of special permit (*tokkyo*) rules for exemption from the cabotage regulations; (iii) if there is any preferential treatment in the applicability of exemptions from the cabotage regulations based on the

nationality of the owners or operators of the vessels, (iv) the cabotage regulations in Germany, as a sample of best practice, and (v) recommendations for establishing a preferable legal framework for the development of offshore wind projects in Japan.

BM ensured not to include inconsistencies or overlaps with the previous EU study on cabotage (focused on territorial waters) as instructed by the EU Delegation in Tokyo (the "**EUD**").

ii. Participants / Outreach

This Analytical Report is provided to the EUD for its consideration.

iii. Outputs

This Analytical Report has been revised based on EUD feedback to the semi-final draft provided to the EUD in April 2024.

ANALYTICAL REPORT

A. Cabotage Regulations in Japanese Territorial Waters and Exclusive Economic Zones ("EEZ"): Implications for Offshore Wind Projects

1. Cabotage Regulations in Japanese Territorial Waters

1.1 Description of Japanese Cabotage Regulations

Japanese cabotage regulations are prescribed in the main clause of Article 3 of the Ship Act (*senpaku ho*). Under the regulations, a vessel shall not carry out transportation of cargo or passengers between "ports" in Japan or call at a "closed port"(as explained in section 2.1 below) in Japan unless the vessel is registered as a Japan-flag vessel (*nihon senpaku*), which is discussed in greater detail in Sections 1.2(f) and 1.2(g) below.

Under the regulations, a non-Japan-flag vessel (a "**Foreign Vessel**") cannot transport cargo or passengers between "ports" or call at a "closed port" in Japanese territorial waters, unless it obtains a special permit (*tokkyo*, the "**Special Permit**") from the Minister[2] of the Ministry of Land, Infrastructure and Transportation (the "**MLIT**") pursuant to the proviso to Article 3 of the Ship Act.

For the purposes of this regulation, MLIT in practice interprets that an offshore site designated for an offshore wind project in Japanese territorial waters would fall within the scope of a "closed port" as stipulated in the main clause of Article 3 of the Ship Act.

Therefore, unless a Foreign Vessel has obtained a Special Permit, it is not allowed to carry out construction, operation and/or maintenance work for an offshore wind project.

Article 23 of the Ship Act further provides that if a Foreign Vessel calls at a port in violation of Article 3 of Act 3 of the Ship Act, the captain of such vessel may be subject to imprisonment for up to two (2) years and/or a fine of up to one (1) million yen, and the vessel may be confiscated.

[2] Please note that under the Japanese administrative law regime, an issuer of a permit is a minister and not a ministry.

1.2 Special Permits

(a) Application Process

Article 3-2 of the Ordinance for Enforcement of the Ship Act (*senpaku ho shikou saisoku*) provides that individuals or entities (an "**Applicant**") seeking to obtain a Special Permit must submit an application to the competent maritime authority. For a "closed port", the competent maritime authority should be the regional transport bureau (*chihou unyu kyoku*) with jurisdiction over such "closed port". However, if multiple regions have jurisdiction over the "closed ports", the International Shipping Division of the Maritime Bureau (*kaiji kyoku gaikou ka*) under MLIT should be the competent authority.

MLIT has published a few official guidances explaining the application procedure to obtain a Special Permit (collectively, the "**MLIT Guidance**"[3]). Based on our inquiries to MLIT, there are no other officially published materials related to Japanese cabotage regulations besides the MLIT Guidance.

The MLIT Guidance provides the following information regarding the application requirements for a Foreign Vessel that wishes to call at a "closed port":

(i) Required Documents

- Special Permit application form
- A copy of the Applicant vessel's nationality certificate (*senpaku kokuseki shousho*)
- Other documents (e.g. a list of cargo and crew on board the vessel)

(ii) Timing of Application

No later than one week before the planned date of the Applicant vessel's arrival at the "closed port".

[3] https://www.mlit.go.jp/maritime/specialpermission.html
https://www.mlit.go.jp/onestop/031/images/031-015.pdf (Japanese only)

(iii) Fee

No fee is associated with the application or granting process for the Special Permit. MLIT has confirmed that the Applicant can obtain the Special Permit without any payment to MLIT.

The specific documents required in (i) above may vary depending on factors such as the type of vessel, the proposed business plan of such vessel, whether it is possible to use a Japan-flag vessel for the transportation rather than the Applicant Foreign Vessel, and the Applicant's history of marine transportation in foreign countries.

It is advisable for the Applicant to consult with MLIT and/or the competent maritime authority to determine the exact documents required prior to submitting the formal application.

(b) Granting Process – Overall Timing

The MLIT Guidance states that efforts are made to determine whether to grant the Special Permit within one (1) week of the application for a Foreign Vessel calling at a "closed port".

However, it should be noted that this one (1) week period is not a binding commitment by the authorities and does not include the timing required for prior consultation. When we inquired with MLIT, they stated that the actual time required to process an application for a Foreign Vessel to obtain a Special Permit is difficult to predict.

Generally, the overall process to obtain a Special Permit consists of: (i) a prior consultation with MLIT and/or the competent maritime authority, (ii) the submission of a formal application for the Special Permit, and (iii) the granting of the Special Permit.

Based on our inquiries to MLIT, the prior consultation process may take several months, during which the Applicant explains and furnishes evidence to demonstrate that it meets the criteria (described in (c) below) for the Special Permit, and furnishes any additional documents that may be requested by MLIT. If MLIT finds that the Applicant meets all requirements, they will ask the Applicant to submit the formal application form mentioned in (ii) above.

Therefore, while the standard process to obtain a Special Permit is one week, the overall process to obtain a Special Permit may potentially take six months to over a year[4], and also depends on the view of the relevant responsible personnel at MLIT.

(c) Granting Process - Criteria

The granting of the Special Permit is solely based on the broad discretion of the MLIT.

In connection with this, the MLIT Guidance summarizes the following criteria:

- the Foreign Vessel calling at a "closed port" should not pose any hindrance to the stability of marine transportation in Japan or the safety of the "closed port"; and
- the Foreign Vessel calling at a "closed port" should not violate any laws or regulations in Japan.

However, due to the inherent legal nature of the Special Permit, the MLIT is entitled to consider various factors, including but not limited to those outlined in the published MLIT Guidance.

It is important to note that the determination of whether a Foreign Vessel meets the criteria is made by MLIT on a case-by-case basis, which may include matters beyond the aforementioned elements, and the decision whether to grant a Special Permit relies heavily on the specific facts of each case.

In particular, based on consultation to MLIT, the availability of a suitable Japan-flag vessel which could be used in place of the Foreign Vessel may be taken into account. Thus, it is advisable to consult with MLIT in advance to understand the elements that would be considered in granting the Special Permit to a particular Foreign Vessel.

As listed in Annexes 1 and 2, there are several Japan-flag vessels that are or will presumably be available for offshore wind projects in Japan. However, considering (i) the steady increase in the number of offshore wind projects in Japan requiring suitable vessels for

[4] Please note that the timing required to obtain a Special Permit is not specified. The granting of a Special Permit (including the period of review required) is solely at the discretion of MLIT.

construction and/or operation and maintenance works[5], (ii) that offshore wind developers worldwide are selecting increasingly larger wind turbine generators, entailing the need for heavier foundations and therefore larger vessels capable of installing larger infrastructure, and the number of vessels that have the required capabilities (over 1,600 tons lifting capacity, for example) will not be sufficient, and (iii) that the construction periods for Rounds 1, 2 and 3 of the offshore wind tenders in Japan overlap and this will exacerbate the strain on vessel availability, we believe MLIT may consider granting Special Permits to Foreign Vessels for future offshore wind projects in Japan due to the likelihood of availability constraints (particularly SEP vessels, Anchor Handling Tug Support (AHTS) vessels, Cable Laying Vessels (CLV) and Service Operation Vessels (SOV)).

For your reference, a list of self-elevating platform ("**SEP**") vessels is set out in Annex 1 and a list of other types of vessels used for floating offshore wind projects is set out in Annex 2, in each case of which we are aware and that are owned by Japanese companies or under construction by Japanese contractors.[6]

(d) Timing for Grant of Special Permit

Based on our previous inquiries to MLIT, it should be noted that the Special Permit is typically granted just before the commencement of work for an offshore wind project.

During our inquiry, we explained that from a practical perspective the Special Permit would need to be obtained a few years (e.g. 2-3 years) prior to the expected commencement of work to enable vessel procurement based on anticipated vessel wait times. However, based on consultation to MLIT, the timing cannot be advanced by 2-3 years as MLIT must determine whether to grant the Special Permit based on the circumstances existing at the time of the commencement of work to be carried out by the Foreign Vessel.
Given MLIT's lack of flexibility as to the timing to assess the granting of Special Permits, it seems unlikely that a request to bring the timing forward would be accommodated. As a

[5] For your information, please note that the MLIT has announced on its web site the research conducted by the Mizuho Research and Technology concerning vessels used for offshore wind projects (001706454.pdf (mlit.go.jp)) and Chapter 3 of such research has provided detailed information pertaining to SEP and SOV.
[6] Please note that the legal ownership of each vessel may technically belong to a different entity such as special purpose company established solely for the purpose of owning the vessel.

result, unless changes to the regulations are made or MLIT changes its stance on the timing of the assessment to grant Special Permits, procuring or chartering Foreign Vessels for offshore wind projects would currently need to be made with the uncertainty of whether that Foreign Vessel will actually be able to obtain a Special Permit to perform the tasks for which it is being procured/chartered.

(e) Rights under Special Permits

The transport section and period for the Special Permit shall be specified in the Applicant's application, and once the Special Permit is granted, that transport section and period would apply.

Based on consultation to MLIT, there is no particular limitation to the transportation section and period, but it should be limited to the extent necessary for the business which is to be carried out by the vessel.

If an applicant wishes to renew a Special Permit upon its expiry, a new application is required and there would be a new assessment by MLIT as to whether to grant the Special Permit based on the circumstances at the time.

(f) Japan-Flag Registration - Ownership Requirement

Reflagging a Foreign Vessel to become a Japan-flag vessel is an alternative to obtaining a Special Permit in order for a vessel to engage in an offshore wind project in Japan.

Article 1 of the Ship Act defines a "Japan-flag vessel" (*nihon senpaku*) as a vessel owned by (i) a Japanese authority, (ii) a Japanese national, (iii) a company incorporated under the laws of Japan, if all of its representatives and more than two thirds of its executive officers are Japanese nationals, or (iv) an entity not incorporated under the laws of Japan, if all of its representatives are Japanese nationals.

We noted that Seajacks Zaratan, engaged in one of the first port offshore wind projects in Japan (the Akita/Noshiro project), has changed its flag to Japan-flag to avoid the restrictions on Foreign Vessels under the Japanese cabotage regulations[7] and performed the

[7] Page 14 of https://www.nikkaibo.or.jp/pdf/592_2022.pdf (Japanese only)

installation work for the project. However, considering the lack of sufficient precedents in offshore wind projects in Japan in terms of reflagging or granting special permits, uncertainty as to how the processes would work remains significant and could be seen as another hurdle for Foreign Vessels to start applying for Special Permits or reflagging.

For non-Japanese entities/owners, the ownership of the Foreign Vessel should be transferred to a Japanese national, company or other entity which satisfies the ownership requirements for a "Japan-flag vessel" as described above.

Despite the above reflagging arrangement, as raised in a report named "Regulatory Reform Requests for the Fiscal Year 2023" (please refer to Annex 3 for more details) issued by the Japan Business Federation ("**JBF**")[8], even after a ship has been reflagged, one issue that remains with Japan-flag vessels is crew nationality requirement (please refer to paragraph 1.1 of Section B for more details). Specifically, crew members and technicians boarding Japan-flagged ships are effectively limited to Japanese nationals. But foreign crews and technicians are currently needed for the installation of wind turbines (which are predominantly sourced from overseas) due to gaps in experience, technical expertise, quality and performance assurance, among other reasons. In order to place foreign crews and technicians on ships that have been converted into Japan-flag vessels, the "Maru-Ship" method (see paragraph 1.2 of Section B for more detail on the Maru Ship method) has historically been used. Under this method, however, the period of time from when the vessel first enters a Japanese port until it departs for a location outside Japan is limited to 60 days. Since a vessel using the Maru Ship method needs to call at an overseas port regularly, this can lead to a decrease in operational efficiency and increased construction costs. Vessel crew nationality requirements, seafarer's license requirements and a shortage of qualified domestic workers each contribute to the shortage of appropriately skilled seafarers available for offshore wind projects in Japan.

[8] Please find the full report (Japanese) of JBF in the following link: https://www.mlit.go.jp/kowan/content/001382705.pdf

(g) Registration Process for Change of Ownership

Upon the transfer of ownership, the owner of the vessel should complete (i) the tonnage measurement required by the competent maritime authority (e.g. the regional transport bureau), (ii) the ownership registration with the relevant Legal Affairs Bureau (*touki*) and (iii) the vessel should be registered with the competent maritime authority (*touroku*).

The registration process is administrative, and while various documents need to be submitted for the registration there are no specific criteria that need to be fulfilled.

With regard to the timing required to complete such registration procedure, MLIT's view is that, in general, the tonnage measurement will take a few months to complete and overall registration process may take around three (3) or four (4) months for general cargo ship and around one (1) year for SEP vessels or other specialized vessels (as the case may be)[9]. The registration period largely depends on the type of vessel. Based on consultation to MLIT, the period can be shortened by prior consultation in advance of the application for registration, but uncertainties remain due to the lack of precedent.

When such registration procedure is completed, a vessel's nationality certificate, an international tonnage certificate and a ship inspection certificate etc.[10] will be issued as evidence of the Japan-flag registration.

[9] MLIT Guidance: https://www.mlit.go.jp/maritime/content/001475421.pdf (Japanese only)
[10] The documents to be issued are determined on a case-by-case basis (depending on factors such as the vessel's type and size registered).

2. Cabotage Regulations within the EEZ[11]

2.1 MLIT's Current Interpretation

Based on our previous research and inquiries to MLIT, the term "closed port" mentioned in Article 3 of the Ship Act means any sea area in territorial waters other than "open ports" which are designated under the Customs Act in Japan[12].

In relation to this, we previously consulted MLIT as to whether an offshore wind farm built in the EEZ could be considered a "closed port" for the purposes of the Ship Act. MLIT informed us at that time that their interpretation of Article 3 of the Ship Act does not include any sea area outside of Japanese territorial waters (including the EEZ) as a "closed port".

However, MLIT also suggested that the above interpretation might be changed in the future to recognize a "closed port" in the EEZ. Based on these discussions with MLIT representatives, we were of the view that the interpretation of Article 3 of the Ship Act may in future be expanded to consider areas in the EEZ as "closed ports" in order to apply the same Japanese cabotage restrictions applicable in Japanese territorial waters to vessels operating on offshore wind projects in the EEZ.

We have subsequently been informed by the Ministry of Economy, Trade and Industry (the "**METI**") that MLIT has reconsidered its interpretation of the application of the cabotage regulations in EEZ and has stated that Article 3.2 of the Act on Exclusive Economic Zone and Continental Shelf (the "**EEZ Act**")[13] is applicable to offshore wind farm built in EEZ. Article 3.2 of the EEZ Act states that artificial islands, facilities and structures in the EEZ shall be deemed to be located within Japan and Japanese laws and regulations shall apply to the establishment, construction, operation and use of such artificial islands, facilities and structures in the EEZ. As such, construction sites in the EEZ will be deemed by MLIT to

[11] Please note that as currently the Cabotage Regulations are not applicable, no procedure has been established on the Special Permits in EEZ.
[12] The interpretation of a "closed port" and the list of open ports have officially been announced in the link below: https://www.mlit.go.jp/maritime/specialpermission.html
[13] Link: https://elaws.e-gov.go.jp/document?lawid=408AC0000000074_20150801_000000000000000

constitute a "closed port" for the purposes of Article 3 of the Ship Act and therefore, due to Japanese cabotage restrictions, a Foreign Vessel would be required to change its flag to Japan-flag to avoid Japanese cabotage restrictions or hold a Special Permit to perform offshore wind project work in the EEZ.

We believe this change in the interpretation of the Ship Act by MLIT may aim to enhance protection of Japanese national security, and Japanese ship owner and Japanese ship union interests. We further note that some other countries hold similar positions; considering “facilities” and “structures” located in the EEZ as if they were within the country's territorial water and thus applying their domestic laws. According to an article written by Kentaro Wani, an Associate Professor at the Osaka School of International Public Policy, Osaka University, Sweden (Article 10), France (Article 5) and the UK (Article 3) each have similar provisions in their respective continental shelf regulations. [14] Given the impact this could have on the development of the offshore wind industry in Japan, further communication and engagement with MLIT should be needed going forward.

2.2 Recent Ministerial Discussions regarding Maritime Regulations

We conducted research and analysis on the following ministerial discussions recently made in relation to the offshore wind farm industry in Japan.

(a) Public-Private Council on Enhancement of Industrial Competitiveness for Offshore Wind Power Generation

The METI held two meetings in the Public-Private Council on Enhancement of Industrial Competitiveness for Offshore Wind Power Generation (the "**Public-Private Council**") in July and December 2020 respectively.

The Public-Private Council was organized to collect opinions and concerns from the relevant private sectors, mainly purporting to enhance the development and competitiveness of offshore wind projects in Japan.

[14] Page 10, and footnote 30 of "Ocean Scientific Research Legislation and Legal System of Ocean Structure and International Law" International Issue (September 2018 No. 674) https://www2.jiia.or.jp/kokusaimondai_archive/2010/2018-09_002.pdf?noprint

We reviewed the minutes of the Public-Private Council[15] to check if there has been any legal discussion focusing on the relevant maritime regulations for offshore wind projects in Japan (including the EEZ), but we did not find any noteworthy information on that point.

The Public-Private Council had a working group as well, which publicly issued the "Overview of the Vision for Offshore Wind Power Industry (Phase 1)[16]".

That working group listed certain regulations to be considered for the enhancement of the development and competitiveness of offshore wind projects in Japan, including the relevant maritime regulations such as the Ship Act, the Mariners Act, Immigration Control and Refugee Recognition Act (*shutsunyuukoku kanri oyobi nanmin nintei ho*) etc.

However, other than what has already been covered by other sections in this report, there is no other notable discussion of the relevant maritime regulations in the Public-Private Council or its working group.

(b) Floating Wind Industry Strategy Study Group

METI also held a series of meetings of the Floating Wind Industry Strategy Study Group (the "**Study Group**") from June to July 2023.

Our impression is that these meetings were held for the purpose of conducting public hearings to receive and assess suggestions by the private sectors involved in the floating wind industry (e.g. electricity generation utilities, general contractors, marine contractors, trading companies, turbine manufacturers, financial institutions etc.), mainly from the technical and/or economic perspective.

We have reviewed the minutes of the meetings of the Study Group[17] to confirm whether there has been any useful information related to the relevant maritime regulations for offshore wind projects in Japan (including the EEZ). However, we did not find any related information.

[15] https://www.meti.go.jp/shingikai/energy_environment/yojo_furyoku/index.html (Japanese only)
[16] https://www.meti.go.jp/shingikai/energy_environment/yojo_furyoku/pdf/002_02_e01_01.pdf
[17] https://www.meti.go.jp/shingikai/energy_environment/yojo_furyoku/sangyo_kento/index.html (Japanese only)

(c) Committee on International Legal Issues for Offshore Wind Power Generation in EEZ

We recognize that a committee (the "**Committee**") established by the Cabinet Office has recently discussed various legal matters under international laws and regulations related to the future implementation of offshore wind projects in the EEZ. However, after reviewing the materials published by the Committee so far[18], we did not find any discussion on the interpretation, amendment or new enactment of the relevant maritime regulations in the EEZ or other useful information in relation thereto. Nonetheless, this Committee is relatively neutral from a political perspective, comprised mainly of academics and some government officials, and it may be possible in future to engage with the Committee in connection with their discussions on cabotage in the EEZ.

(d) Task Force for Inspection Regulatory Framework for Renewable Energy Promotion

In addition, the Cabinet Office has held periodical meetings through the Task Force for Inspection of the Regulatory Framework for Renewable Energy Promotion (the "**Regulation Task Force**") since December 2020.

We reviewed various materials including the minutes of meetings No.1 to No.29 of the Regulation Task Force[19] and the ministerial responses to the queries from private sectors[20]. We identified some deregulation requests from the private sector in connection with the maritime regulations for offshore wind projects, such as (i) the improvement of transparency regarding the granting of Special Permits and other governmental approvals, (ii) the relaxation of vessel crew nationality requirements (see Section B) and (iii) a suggestion for the government to designate specific sea areas within which a Special Permit is comprehensively granted to all vessels operating there (i.e. rather than requiring individual Special Permits granted to each vessel).

[18] https://www8.cao.go.jp/ocean/policies/energy/pdf/torimatome.pdf (Japanese only)
[19] https://www8.cao.go.jp/kisei-kaikaku/kisei/conference/energy/e_index.html (Japanese only)
[20] https://www8.cao.go.jp/kisei-kaikaku/kisei/conference/energy/20221111/221111energy14.pdf (Japanese only)

In response to the request for improved transparency in the granting of Special Permits, the Maritime Bureau of MLIT established a consultation office particularly for offshore wind projects in November 2021[21], aiming to address inquiries regarding the relevant maritime regulations.

However, other deregulation requests have not seemingly been accepted so far, and we did not find any other useful information in the relevant materials.

2.3 Summary

As described above, there has been limited progress in discussions regarding the application or improvement of maritime regulations in relation to offshore wind projects in the EEZ.

However, a draft amendment bill of the Act on Promoting the Utilization of Sea Areas for the Development of Marine Renewable Energy Power Generation Facilities has been approved at the Cabinet meeting on March 12, 2024, to expand the installation sites for offshore wind power generation from the current territorial waters to the EEZ[22].

Although this new bill is still subject to approval by the Diet, it is characterized by a 2-step permit scheme for the development of offshore wind projects in the EEZ. Under this scheme:

- the METI designates solicitation zones for installation of wind power generation facilities;
- the METI and the MLIT provide a provisional permit to one business operator ("**Operator Candidate**") intending to install the wind power generation facility in such designated zone (**1st step permit**). If several developers compete to install wind power generation facilities in a designated zone, there will be a competitive auction process to choose the Operator Candidate. The criteria of selection is mentioned in the draft bill, but precise criteria shall be decided in the relevant auction guideline;

[21] https://www8.cao.go.jp/kisei-kaikaku/kisei/conference/energy/performance/2022.html (Japanese only)
[22] https://www.meti.go.jp/english/press/2024/0312_003.html

- the METI and the MLIT establish a council consisting of the Operator Candidate along with other stakeholders (the "**Council**"); and
- if the Operator Candidate satisfies certain criteria, including material consistency with the initial bid parameters of the Operator Candidate (including pricing) and other matters on which the Council has reached consensus, the METI and the MLIT issue a final permit to the Operator Candidate to install such wind power generation facilities (**2nd step permit**).

It is also noteworthy that this new draft bill includes amendments to the following related laws:

- the Port and Harbor Act;
- the Act on the Protection of Marine Resources;
- the Self-Defense Forces Act; and
- the Marine Resources Development Promotion Act.

The Ship Act is not being amended based on this new bill, but as noted in Section 2.1 above, MLIT's new interpretation of the Ship Act means that Japanese cabotage restrictions will nonetheless apply in the EEZ.

B. Crew Nationality Requirement Regulations in Japanese Territorial Waters and the EEZ

1. Nationality Requirement for Crews on Japan-Flag Vessel

1.1 Nationality Requirement for Crews on Japan-Flag Vessels

Under Japanese law, there is no explicit provision requiring Japanese nationality for the crew on-board a Japan-flag vessel. However, the Japanese government has adopted a longstanding informal policy that prohibits foreign crews from boarding a Japan-flag vessel.

If the MLIT finds that a foreign crew is on board a Japan-flag vessel, the MLIT will exercise control over such Japan-flag vessel to ensure compliance with this governmental policy through administrative action or guidance[23]. We are aware that some bilateral navigation treaties exist between Japan and other countries, but based on our review of such bilateral navigation treaties with major countries, we found that they predominantly do not apply to transport and/or trade within Japanese territory.

It should be noted that the above requirement does not apply to a Foreign Vessel that has obtained a Special Permit in accordance with the cabotage regulations.

1.2 Maru-Ship System

Despite the aforementioned governmental policy, the Japanese government has established an exemption known as the "Maru-Ship" system with regards to the crew's nationality.

If a Japan-flag vessel owned by a Japanese entity is chartered to a foreign entity through a bareboat charterparty, and subsequently chartered back to such Japanese entity through a time charterparty, such Japan-flag vessel is considered to be a Maru-Ship.

Once designated as a Maru-Ship, foreign crews are permitted on board the vessel.

However, it should be noted that, if a vessel is admitted as a Maru-Ship, it would be considered engaged in international transportation. Consequently, foreign crews on board the vessel would not be allowed to remain within Japanese territorial waters for more than 30 or 60 consecutive days (the "**60-Day Rule**")[24].

To maintain its status as a Maru-Ship and comply with international transportation requirements, the Maru-Ship must call at an overseas port within the specified time frame and have the foreign crew members leave Japanese territorial waters to an overseas port.

[23] Article 37 of the Mariners Act (*senin ho*) provides that, when an owner of a Japan-flag vessel executes an employment contract with a crew, the vessel owner shall notify the MLIT of such employment contract. As the result of such notification, The MLIT is thereby able to recognize that a foreign crew is or will be on board a Japan-flag vessel.

[24] In principle, this should be 30 consecutive days, however, if a vessel falls within a category of a special ship such as a cruise ship, such period is extended to 60 consecutive days. It is still unclear that a vessel being engaged in offshore wind farm project will fall within the category of the special ship in future.

The Maru-Ship system was originally established in 1991 to address the practical need for certain foreign service employees (e.g. chef, waitress and performer etc.) on board a Japan-flag cruise ship. Subsequently, the Maru-Ship system has expanded to include crew members on various types of the Japan-flag vessels in 2013[25].

Given the history of expansion of the Maru-Ship system, it is conceivable that a practical necessity for having foreign crews on Japan-flag vessels engaging in offshore wind projects could lead to further expansion of the Maru-Ship system.

2. Nationality Requirement for Crews in the EEZ

2.1 Nationality Requirement in the EEZ

The nationality requirement for the crew is a regulation that applies to Japan-flag vessels, regardless of whether they are within Japanese territorial waters or not.

Consequently, the regulations outlined in Section B.1 also apply to Japan-flag vessels operating in the EEZ. In other words, even if a Japan-flag vessel is engaged in offshore wind projects within the EEZ, it remains subject to crew nationality requirements unless it is recognized as a Maru-Ship.

2.2 Visa / Residency Status Requirement in EEZ

Once foreign crews are permitted to on board Japan-flag vessels or Foreign Vessels (through the Maru-Ship method or otherwise), the Ministry of Justice in practice interprets that they do not need a Japanese visa or residency status (a) to carry out construction, operation and/or maintenance work for an offshore wind project within the EEZ, or (b) to make land in the territory of Japan solely for vacation or shopping purposes (within 15 days), subject to prior approval under Article 16 of the Immigration Control and Refugee Recognition Act. However, if foreign crews carry out any business within the territory of Japan, a Japanese visa or residency status would be required.

[25] https://www.mlit.go.jp/common/001024808.pdf (Japanese only)

It should be noted that the legal frameworks pertaining to offshore wind projects in the EEZ are currently under discussion and may be subject to future changes.

As the situation continues to evolve, it is possible that new legislation or interpretations may emerge, potentially impacting existing crew nationality requirements for Japan-flag vessels.

C. Maritime cabotage in Germany

We further conducted legal research on cabotage regulations in Germany, which we consider generally represent best practices for the development of offshore wind projects. We found that in Germany, the cabotage permit[26] does not cover the transport of goods or persons to offshore wind farm locations outside the territorial sea (12 nautical mile zone) as no cabotage permit is required for such transport under German law.

The relevant law in Germany – i.e. the Coastal Shipping Ordinance (Küstenschifffahrtsverordnung – KSchiffVO) - does not specify how far in advance a cabotage permit can be issued before the vessel is used. We consulted with the German authorities, but the authorities were unable to give us a fixed date or general information as to whether a cabotage permit could be granted more than a year (or even several years) in advance. They told us that applications are regularly submitted at extremely short notice. It has never happened before that an application was filed so far in advance. There is therefore no administrative practice in this regard, nor are there any internal guidelines or instructions. However, it may be noted that the authority also informed us that applications for cabotage permits (provided they are submitted at least five days in advance) are in practice always granted. We believe this is because most of the European flag vessels for offshore wind construction are booked well in advance to accommodate the large backlog of future offshore wind construction and EU flag vessels owners have no interest in contesting foreign flag vessel use within EU territorial seas.

As a result of this, the abolition of the cabotage permit system is now also being examined in Germany, so that in future no cabotage permit at all would be required for transport under a non-

[26] The term "cabotage permit" here means the (single trip or annual) permit granted by the authorities upon application for a vessel under a non-EU flag to transport goods or persons within German sea territory and German coastal waters (please note that we do not refer to onshore cabotage).

EU flag (the authorities mentioned that the fact that the cabotage permit is almost always issued means that the cabotage permit is ultimately unnecessary bureaucracy and should therefore be abolished). Accordingly, the key issues paper (Eckpunktepapier) on the Bureaucracy Reduction Act IV (Bürokratieentlastungsgesetz IV) of the German Federal Government provides for the repeal of the Coastal Shipping Ordinance and thus the repeal of the requirement for a cabotage permit. Nonetheless, this plan is not yet included in the first draft bill submitted for this purpose. Based on our no-names inquiries with the authorities, however, they informed us that they still expect the Coastal Shipping Ordinance to be repealed and that a cabotage permit will generally no longer be required from around the beginning of next year. We will wait and see how the legislative process develops. Nevertheless, the original announcement by the Federal Government and, in particular, the corresponding information from the authority (which should have more in-depth insights here), should provide strong indications that the requirement for cabotage permits in Germany will be lifted in the near future.

D. Recommendations

Based on our findings and with reference to the relaxed cabotage regulations in Germany, we consider that the relaxation or abolishment of Japanese cabotage regulations would be necessary to establish a preferable legal framework in Japan that aligns with the government's target for the development of offshore wind projects and creation of a level playing field for both domestic and international tenderers. We recommend the following measures be taken in support of these goals:

1. Joint interest from the JBF and the EU

As explained in our report, the requests from the JBF to relax regulatory restrictions were never adequately addressed. We suggest a close collaboration with the JBF and resubmitting such requests for relaxation of the cabotage regulations, including the following:

- Ensuring that Special Permits are issued within 3 months after application and that applications can be submitted up to 3 years prior to the actual use of a vessel;
- Relaxing the vessel crew nationality requirements; and

- Extending the period between calls at overseas ports for vessels under the Maru Ship system (currently the 60-Day Rule).

2. Discussion and aligned advocacy between the JBF and the EU

Furthermore, it is worth noting that the JBF shares the same concerns as the EU regarding Japanese cabotage regulation. In light of this, it is recommended that the EU engage in a dialogue with the JBF on this matter.

3. Request METI to restart the Public-Private Council Working Group

The cabotage issue should have been discussed and either deregulated or relaxed, as it was one of the 8 items listed for deregulation in the Working Group formed based on the Offshore Wind Industry Vision issued on 15 December 2020 (please refer to Section 2.2(a) of this Report). Although the third Working Group meeting took place on 1 April 2021, the fourth Working Group meeting did not occur as scheduled, and this issue was left unresolved. Despite the establishment of a consultation office at MLIT in November 2021, this issue has yet to be addressed. We recommend that the EU ask METI to restart the Working Group so that it can appropriately consider the cabotage issue.

4. Engage with MLIT for greater transparency in the Special Permit regime

Cabotage restrictions in Japan may not be deregulated or relaxed in the near future, and MLIT may not reverse course on its recently announced change in the interpretation of the Ship Act which applies such cabotage restrictions in the EEZ, but the negative impact of such regulations on the offshore wind industry could still be minimized if there were greater transparency in the system for obtaining Special Permits. As such, we recommend active engagement with MLIT, perhaps in conjunction with METI or organizations such as the JBF, showing the transparency of special permit issuance procedures in other jurisdictions (like Germany) as an example of best practices. MLIT is likely concerned with Japanese national security and the interests of Japanese

ship owners and ship unions, but it is critical they also ensure that cabotage restrictions do not end up doing more economic harm than good to Japan's overall interests.

Annex 1 - List of Japanese Owned or Constructed SEP Vessels

Vessel	Owner	Lifting capacity (t)	Foundation install capacity (by WTG size)
Seajacks Zaratan	Seajacks International	800-900[27]	Up to 9.5 MW[28]
CP-8001	Penta-Ocean Construction Co., Ltd	800	Up to 10 MW[29]
CP-16001	Penta-Ocean Construction Co., Ltd, Kajima Corporation and Yorigami Maritime Construction Co., Ltd	1600[30]	Up to 15 MW[31]
Hakkaku	Obayashi Corporation and Toa Corporation	1,250	Up to 9.5 MW[32]
Blue Wind	Shimizu Corporation	2,500	7 units 8 MW WTG, or 3 units 12 MW WTG[33]

[27] https://www.offshorewind.biz/vessels/seajacks-zaratan/
[28] https://www.offshore-mag.com/renewable-energy/article/14293877/seajacks-reserves-wind-vessel-for-asia-pacific-assignment
[29] https://www.4coffshore.com/vessels/vessel-cp-8001-vid2209.html
[30] https://www.goeidoboku.co.jp/machine/file/new/cp-16001.pdf
[31] https://www.goeidoboku.co.jp/machine/file/new/cp-16001.pdf
[32] https://www.4coffshore.com/vessels/vessel-hakkaku-vid3700.html
[33] https://www.shimz.co.jp/en/company/about/news-release/2022/2022046.html

Annex 2 - List of Japanese Owned or Constructed Vessels for Floating Offshore Wind Projects

1. Anchor Handling Tug Support Vessel (AHTS)

Vessel	Owner	Specifications
Akatsuki	Offshore Operation Co., Ltd.	Please refer to: https://www.oocltd.com/file/akatsuki_EN.pdf
Shin Chou Maru	Fukada Salvage & Marine Works Co., Ltd.	Please refer to: https://www.fukasal.co.jp/ship/pdf/shinchoumaru_02.pdf

2. Spud Barge (Jack-up Barge)

Vessel	Owner	Specifications
Float Raiser	Offshore Wind Farm Construction Corp. (a joint venture of Toda corporation and Yoshida Co., Ltd.)	Please refer to: https://www.toda.co.jp/business/ecology/special/pdf/floatraiser_e.pdf
Ocean Seal II	Fukada Salvage & Marine Works Co., Ltd.	Please refer to: https://www.fukasal.co.jp/ship/pdf/oceanseal2_01.pdf (Japanese only)

3. Heavy Lift Vessel

Vessel	Owner	Specifications
Dainana Daifuku Go	Oomori Construction Co., Ltd.	Please refer to: https://www.om346.co.jp/wp/wp-content/uploads/220610_panhu.pdf (Japanese only)

Dainana Daiyu Go	Sawaki Gumi Co., Ltd.	Not available
Ibaraki 700	Mikuniya Construction Co., Ltd	Not available (under construction)

4. Cable Laying Vessel (CLV)

Vessel	Owner	Specifications
KDDI Cable Infinity	KDDI Cableships & Subsea Engineering Inc.	Please refer to: https://www.k-kcs.co.jp/english/cableship/cable_infinity.html
CLV (to be constructed by Toyo Construction Co., Ltd, name is not determined)	Toyo Construction Co., Ltd	Not available (under construction, to be delivered in 2026)

5. Service Operation Vessel (SOV)

Vessel	Owner	Specifications
TSS Pioneer	Ta San Shang Marine Co., Ltd. (a joint venture of Mitsui OSK Line and Ta Tong Marine)	Please refer to: https://www.tasanshang.com/uploads/others/About%20TSS%20Pioneer.pdf

6. Crew Transfer Vessel (CTV)

Vessel	Owner	Specifications
JCAT ONE, JCAT TWO, JCAT THREE, JCAT TARO, PORTCAT ONE, PORTCAT TWO and PORTCAT THREE	Tokyo Kisen Co., Ltd	For specifications of "JCAT TARO", "PORTCAT ONE", "PORTCAT TWO" and "PORTCAT THREE", please refer to: https://tsuneishi-fc.com/category/craft/ Not available for specifications of JCAT ONE, JCAT TWO and JCAT THREE
Red Star and Red Star II	Akita OW Service (a joint venture of Tokyo Kisen Co., Ltd, Oomori Construction Co., Ltd, Sawaki Gumi Co., Ltd and Akita Kairiku Co., Ltd)	Not available
RERA AS	Nippon Yusen Kabushiki Kaisha	Please refer to: https://www.nyk.com/english/news/2024/20240220.html.

Annex 3 – JBF Report

Regulatory Relaxation for the Utilization of Offshore Wind Power Work Vessels

No. 10 of Regulatory Reform Requests for the Fiscal Year 2023

published by JBF on 12 September 2023

<Request and Reason for Request>

The government established the "Act on Promoting the Utilization of Sea Areas for the Development of Marine Renewable Energy Power Generation Facilities" in 2018 and has been advancing offshore wind power project development in territorial waters and inland waters. The "Offshore Wind Power Industry Vision (Phase 1)" formulated in 2020 set a goal of achieving project development of 10 million kW by 2030 and 30-45 million kW by 2040. Moreover, in Japan, where there are few shallow-water areas, a large-scale introduction of floating offshore wind power, suitable for deep-sea areas, is necessary.

For the construction of offshore wind power, Self-Elevating Platforms (SEP) ships with cranes, cable laying ships, and Anchor Handling Tug Supply (AHTS) ships for towing and mooring are required. However, due to the recent rapid increase in the size of wind turbines, there is a shortage of large-scale SEP and AHTS ships in Japan, which may hinder the construction of offshore wind power.

① Comprehensive Permit for Cabotage Regulations

In the future, as the construction of offshore wind power intensifies, chartering SEP ships from overseas is indispensable. However, under the cabotage regulations (which establishes that, in principle, the transport of goods and passengers within a country should be limited to vessels of its own nationality in order to ensure stable domestic maritime transport, following international practice), if vessels other than Japanese-flagged ships transport goods and passengers within Japan, they need to obtain a permit from the Minister of Land, Infrastructure, Transport and Tourism. Therefore, when chartering SEP ships from overseas, it becomes necessary to apply for a permit for each material transportation and operation from the port to the construction area, resulting in inefficient administrative procedures. Furthermore, reservations for chartering are commonly made

several years in advance of construction, but at the time of reservation, the uncertainty of obtaining a permit can hinder predictability and become an obstacle to business entry. Therefore, a comprehensive permit system should be established where permits can be obtained for multiple voyages by applying for ship types, periods, etc., limited to transportation and operations related to the construction of offshore wind power. It should be noted that this request does not seek a change in the current permit examination criteria (1. The coastal transport does not hinder the securement of stable transport in Japan, etc. 2. It does not hinder the transport of goods or passengers by Japanese maritime transport operators. 3. It does not violate other laws).

② Extension of the Period for "Maru-Ship" Method

Currently, when chartering SEP ships from overseas, there are regulations under the cabotage regulations, but in practice, there is a method of temporarily converting foreign-flagged SEP ships into Japanese-flagged ones. In that case, the crew members boarding the Japanese-flagged ships are limited to Japanese nationals, but currently, foreign workers and technicians are required for the use of overseas-made wind turbines for performance assurance, among other reasons. Therefore, in order to place foreign workers and technicians on ships that have been converted into Japanese-flagged ones, the "Maru-Ship" method (a method in which a Japanese entity leases a vessel it owns to a foreign entity, and the foreign entity boards foreign crew members on the vessel, which is then chartered back by the Japanese entity) is used. However, in the handling of this method, the period from the time the vessel first enters a Japanese port until it departs for a location outside Japan is limited to within 60 days. Therefore, the vessel needs to depart overseas regularly, which can lead to a decrease in the operational rate of transportation and operations, resulting in an increase in construction costs. Therefore, in order to achieve more efficient utilization of SEP ships, the number of days in the handling of the "Maru-Ship" method should be extended. Considering the increased importance of offshore wind power compared to when the 60-day limit was set in 2015, improvements should be made to align with the times.

These measures are expected to contribute to the smooth introduction of offshore wind power and the realization of carbon neutrality.

<Relevant Laws and Regulations>

① Article 3 of the Ship Act

② Matters regarding the handling of mixed passenger vessels using the foreign chartering method (last amended on June 26, 2015. Notification No. 91 of the Director of the Labor Policy Division and the Director of the Labor Standards Division of the Maritime Technology and Safety Bureau, Ministry of Land, Infrastructure, Transport and Tourism)